

Republic of South Africa

Companies Act, No. 71 of 2008, as amended

**MEMORANDUM OF INCORPORATION FOR A LISTED PUBLIC COMPANY**

Name of company: **SANLAM LIMITED**

Registration No.: 1959/001562/06

This MOI was adopted by Special Resolution passed on [ ] 2012 in substitution for the existing memorandum of incorporation of the Company.

## 1. INTERPRETATION

In this MOI, -

- 1.1. words that are defined in the Companies Act but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act, read where necessary with definitions in the listings requirements of the JSE. For ease of reading, such terms have been capitalised in this MOI;
- 1.2. unless the context otherwise requires –
  - 1.2.1. **"Charter Document"** means any charter document approved by the Board relating to the powers, duties, functions and operation of any Board committee and/or statutory committee of the Company;
  - 1.2.2. **"Companies Act"** means the Companies Act, No. 71 of 2008, as amended or any legislation which replaces it;
  - 1.2.3. **"Company"** means Sanlam Limited (Registration Number 1959/001562/06) or by whatever other name it may be known from time to time;
  - 1.2.4. **"Deliver"** means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 38 (*Notices*) and the Companies Act;
  - 1.2.5. **"Effective Date"** means the date on which the Companies Act came into operation, namely 1 May 2011;
  - 1.2.6. **"Electronic Address"** means in regard to Electronic Communication, any email address furnished to the Company by the Holder;
  - 1.2.7. **"Holders"** means:
    - 1.2.7.1. the registered holders of Shares issued by the Company from time to time and who are entered as such in the Securities Register of the Company, which include, for the avoidance of doubt, shareholders holding Shares through the Nominee Companies arrangements; and
    - 1.2.7.2. if applicable, the holders of any Securities (other than Shares), issued by the Company from time to time, but only to the extent that such Securities confer Voting Rights on the holders thereof in

respect of any matter to be considered by the holders of Shares contemplated in clause 1.2.7.1;

- 1.2.8. **"Ineligible or Disqualified"** means ineligible or disqualified as contemplated in the Companies Act, which shall apply not only to Directors but also to members of Board committees and statutory committees and Prescribed Officers and the Company secretary of the Company;
- 1.2.9. **"JSE"** means the exchange operated by JSE Limited, (Registration Number 2005/022939/06) (or any other name by which it may be known in the future) or its successor body;
- 1.2.10. **"Listings Requirements"** means the listings requirements issued by JSE Limited in respect of securities listed on the JSE, as amended from time to time;
- 1.2.11. **"MOI"** means this Memorandum of Incorporation;
- 1.2.12. **"Nominee Companies"** means Sanlam Share Account (Proprietary) Limited and Sanlam Fundshares Nominee (Proprietary) Limited, respectively;
- 1.2.13. **"Participant"** means a depository institution accepted by a Central Securities Depository as a participant in the Securities Services Act;
- 1.2.14. **"Present"** means, in relation to any Holder entitled to exercise any Voting Rights at Shareholders Meetings, that such Holder is:
  - 1.2.14.1. present in person; or
  - 1.2.14.2. represented by:
    - 1.2.14.2.1. proxy; or
    - 1.2.14.2.2. a letter of representation (in respect of a Holder which is a juristic person); or
    - 1.2.14.2.3. an agent appointed under a general or special power of attorney (in respect of any individual);
- 1.2.15. **"Regulations"** means regulations published pursuant to the Companies Act from time to time;
- 1.2.16. **"Securities Services Act"** means the Securities Services Act, No. 36 of 2004, as amended;

- 1.2.17. **"SENS"** means the Securities Exchange News Service, or its successor;
- 1.2.18. **"Uncertificated Securities"** means securities as defined in the Securities Services Act which are by virtue of the Companies Act transferable without a written instrument and are not evidenced by a certificate;
- 1.2.19. **"Writing"** includes Electronic Communication but as regards any Holder entitled to vote, only to the extent that such Holder has notified the Company of an Electronic Address;
- 1.3. terms defined in clause 41.1 shall bear the meaning ascribed to them in such clause for all purposes in terms of this MOI;
- 1.4. all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise, and shall include any amendment, alteration or modification of any such section and/or any new section of the Companies Act which substitutes an existing section in whole or in part;
- 1.5. all references to any statutory provision is to such statutory provision as at date of adoption of this MOI and as amended and/or re-enacted and/or consolidated and/or replaced from time to time, and includes all statutory instruments or orders made pursuant to any such statutory provision (as amended and/or re-enacted and/or consolidated and/or replaced).
- 1.6. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.7. words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);
- 1.8. if any term is defined within the context of any particular clause in this MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision and/or clause 41;
- 1.9. save during the period contemplated in item 4(4) of Schedule 5 of the Companies Act when this MOI shall prevail, if the provisions of this MOI are in any way inconsistent with the unalterable provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act; and
- 1.10. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.

## 2. **CALCULATION OF BUSINESS DAYS**

When a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by —

- 2.1. excluding the day on which the first such event occurs;
- 2.2. including the day on or by which the second event is to occur; and
- 2.3. excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 2.1 and 2.2 respectively.

## 3. **PUBLIC COMPANY**

The Company is a Public Company as it is not a Private Company or a State-Owned Company or a Personal Liability Company.<sup>1</sup>

## 4. **OBJECTS**

To carry on the business of an investment holding company and all such ancillary and/or incidental activities as may be determined by the Board from time to time.<sup>2</sup>

## 5. **POWERS AND CAPACITY OF THE COMPANY**

- 5.1. The Company has the powers and capacity of an Individual except to the extent that a Juristic Person is incapable of exercising any such power or having any such capacity. Without limiting the generality of the foregoing, but subject to any prohibition contained in this MOI, the Company may do anything which the Companies Act empowers a Company to do.
- 5.2. Save to the extent otherwise permitted by the Companies Act and/or the Listings Requirements, the Holders may not ratify any action by the Company or the Board that is inconsistent with any limit, restriction or qualification applicable to such action.
- 5.3. The Company may sue or be sued in any court of law by its corporate name. All powers of attorney, bonds, deeds, contracts and other documents which may have to be executed on behalf of the Company shall be signed by any person or persons authorised to do so by resolution of the Board.

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<sup>1</sup> Section 8(2)(d)

<sup>2</sup> Para 3 Memorandum and Articles June 2009 ("**M & A**").

## 6. **AMENDMENTS TO THE MOI**

- 6.1. Save for correcting errors substantiated as such from objective evidence or which are self-evident errors<sup>3</sup> (including, but without limitation *ejusdem generis*, spelling, punctuation, reference, grammar or similar defects and references to sections in the Companies Act, the Regulations and/or the Listings Requirements) in the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with section 16(1) and a Special Resolution passed by the Holders. The Board shall publish a copy of any such correction effected by the Board on the Company's web site.
- 6.2. For the avoidance of doubt, an amendment to the MOI shall be deemed to include, but not be limited to, the actions listed in schedule 10.5(d) of the Listings Requirements.

## 7. **THE MAKING OF RULES**

The Board shall not make Rules.<sup>4</sup>

## 8. **AUTHORISED SHARES AND ALLOTMENT AND ISSUE**

- 8.1. The Company is authorised to issue the following numbers and classes of Shares (which includes Shares already issued at any time)<sup>5</sup> -
- 8.1.1. 4 000 000 000 (four billion) ordinary Shares with a par value of R0.01 (one cent) each, which shall have Voting Rights in respect of every matter that may be decided by voting and which shall rank after all other classes of Shares in the Company which do not rank *pari passu* with the ordinary Shares as regards Distributions and returns of capital, but save as aforesaid shall be entitled to receive the net assets of the Company upon its liquidation<sup>6</sup>;
- 8.1.2. 56 500 000 (fifty six million five hundred thousand) "A" convertible participating Deferred Shares with a par value of R0.01 (one cent) each, having the rights, terms and conditions set forth in clause 41.2.1; and
- 8.1.3. 56 500 000 (fifty six million five hundred thousand) "B" convertible participating Deferred Shares,

it being recorded (for the avoidance of doubt) that the Deferred Shares shall, upon the exercise of the Conversion Rights set out in clause 41, be reclassified as Ordinary Shares

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<sup>3</sup> Section 17(1)

<sup>4</sup> Section 15(3) (altered), JSE LR 10.4, Schedule 10.

<sup>5</sup> Schedule 5(6)(2)

<sup>6</sup> Section 37(3)(b)(ii)

and/or Redeemable Preference Shares, which Shares shall accordingly form part of the authorised share capital of the Company.

- 8.2. The Board shall not have the power to amend the authorisation (including increasing or decreasing the number) and classification of Shares (including determining rights, limitations, preferences and other terms) as contemplated in section 36(2)(b) or 36(3).<sup>7</sup>
- 8.3. To the extent that the Company immediately before the Effective Date had authorised but unissued par value Shares in its capital of a class of which there were issued Shares, the unissued Shares of that class may be issued by the Board at par or at a premium or at a discount.<sup>8</sup>
- 8.4. No rights, privileges or conditions for the time being attached to any class of Shares of the Company nor any interests of that class of Shares may (unless otherwise provided by the terms of issue of the Shares of that class) whether or not the Company is being wound up, be varied in any manner adverse to the Holders of that class of Shares, nor may any variations be made to the rights, privileges or conditions of any class of Shares, such that the interest of another class of Shares is adversely affected, unless a Special Resolution has been passed by the Holders of that adversely affected class of Shares with the support of more than 75% (seventy five per cent) of the Voting Rights exercised on the Special Resolution at a separate meeting of the Holders of that class of Shares. The provisions of this MOI relating to Shareholders Meetings shall *mutatis mutandis* apply to any such separate meeting, except that –
  - 8.4.1. the necessary quorum shall be a Holder or Holders of the class Present and holding at least 51% (fifty one percent) of the capital paid or credited as paid on the issued Securities of that class;
  - 8.4.2. if at any adjourned meeting of such Holders, the required quorum contemplated in clause 8.4.1 is not Present, those Persons entitled to vote who are Present shall be a quorum.
- 8.5. Notwithstanding any implication in this MOI to the contrary, the Board may not authorise any financial assistance by the Company for purposes of or in connection with the subscription for or purchase of its Securities or those of a Related or Inter-related company without complying with section 44(3).

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<sup>7</sup> JSE LR 10.9 (c), Schedule 10.

<sup>8</sup> Regulation 31

## 9. **AUTHORITY TO ISSUE SHARES**

- 9.1. The Board shall not have the power to issue authorised Shares<sup>9</sup> (other than as contemplated in clause 9.4) without the prior approval contemplated in clause 9.2 and the approval of the JSE (to the extent legally necessary).
- 9.2. As regards the issue of Shares –
- 9.2.1. the Board shall not have the power to allot or issue Shares as contemplated in sections 41(1) and (3) or as contemplated in section 5.50 of the Listings Requirements without the prior approval of a Special Resolution;
- 9.2.2. the Board shall not have the power to allot or issue Shares and/or to grant options to subscribe for unissued Shares, other than those contemplated in clause 9.2.1, without the prior approval of an Ordinary Resolution.
- 9.3. Any approval contemplated in clause 9.2 may be in the form of a general authority to the Board, whether conditional or unconditional, to allot or issue any Shares contemplated in clause 9.2 in their discretion, or in the form of a specific authority in respect of any particular allotment or issue of such Shares. Such authority shall endure for the period provided in the Ordinary Resolution or Special Resolution in question but may be revoked by Ordinary Resolution or Special Resolution, as the case may be, at any time.
- 9.4. The Board may issue capitalisation Shares in accordance with section 47, but may not offer a cash payment in lieu of awarding a capitalisation Share without the prior approval of a Special Resolution.<sup>10</sup>
- 9.5. No Shares of a class which is listed on the JSE may be issued other than as fully paid.

## 10. **DEBT INSTRUMENTS**

No special privileges may be granted to secured and unsecured debt instruments as contemplated in section 43(3)(a).<sup>11</sup>

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<sup>9</sup> Section 38(1), article 3.2 M & A

<sup>10</sup> Article 27 M & A, JSE LR 10.6, Schedule 10



## 11. PRE-EMPTION ON ISSUE OF EQUITY SECURITIES

- 11.1. For purposes of this clause 11, the term “*Equity Security*” shall mean an ordinary Share of the Company and other Securities which confer general Voting Rights on the holders thereof.
- 11.2. Subject to clause 11.3, Equity Securities of a particular class in the Company which are authorised but unissued and which are intended to be issued for cash, shall be offered to the existing Holders of that class of Securities by way of a rights offer *pro rata* to their holding in that class of Securities immediately before the offer was made, with a reasonable time (as determined by the Board) allowed to subscribe for such Securities. If any fraction of a Security will have to be issued, that fraction may be sold for the benefit of the Holder of the security in question in such manner as the Board may determine. After the expiration of the time within which an offer may be accepted, or on the receipt of an intimation from the Person to whom the offer is made that he declines to accept the Securities offered, the Board may issue such Securities in such manner as it thinks most beneficial to the Company.
- 11.3. The provisions of clause 11.2 shall not apply to:
- 11.3.1. Shares which are to be issued to or in terms of a share incentive scheme approved by a Special Resolution;
  - 11.3.2. any issue of Shares approved in accordance with clause 9.1;
  - 11.3.3. Equity Securities which are to be specifically issued in terms of option or Conversion rights.
- 11.4. Notwithstanding anything to the contrary contained in this MOI, the Company may exclude from any rights offer any Holder or category of Holders:
- 11.4.1. in accordance with section 99(7) and with the approval of the JSE (to the extent necessary); or
  - 11.4.2. if the Company is precluded by any law or regulatory requirement (including but not limited to anti-money laundering legislation) from extending such rights offer to such Holder or category of Holders.

**12. CERTIFICATES EVIDENCING ISSUED SECURITIES, UNCERTIFICATED SECURITIES AND SECURITIES REGISTER**

- 12.1. The Securities issued by the Company may either be certificated (that is evidenced by a certificate)<sup>12</sup> or uncertificated, in which case the Company must not issue certificates evidencing or purporting to evidence title to those Securities.<sup>13</sup>
- 12.2. Any Securities issued by the Company after the date of adoption of this MOI shall be Uncertificated, save for Shares to be issued to existing Holders of certificated Shares. Should a Holder become entitled, in accordance with section 54, to a certificate in respect of any Uncertificated Securities held by it, an original certificate shall be issued to the Holder. For every subsequent certificate issued in respect of the same Securities to the same Holder, the Board shall be entitled, as it may deem fit, to require a charge in settlement of the reasonable costs included in such issue.
- 12.3. The Company shall convert its share register into a Securities Register with effect from the Effective Date,<sup>14</sup> which shall reflect all such information in relation to certificated or Uncertificated Securities, as the case may be, as may be required in terms of sections 49 and 50.
- 12.4. The Company shall, in relation to the issue, re-acquisition, surrender or transfer of any of its uncertificated Securities, enter or cause to be entered the information prescribed in terms of the Companies Act into the Company's Securities Register.
- 12.5. Securities certificates shall be issued in such manner and form as the Board shall from time to time prescribe, save that they must -
- 12.5.1. state on the face –<sup>15</sup>
- 12.5.1.1. the name of the Company;
- 12.5.1.2. the name of the Person to whom the Securities were issued;
- 12.5.1.3. the number and class of Securities and the designation of the series, if any, evidenced by that certificate; and
- 12.5.1.4. any restriction on the transfer of the Securities (which are not listed on the JSE) evidenced by that certificate;

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<sup>12</sup> Section 49(2)(a)

<sup>13</sup> Section 49(2)(b)

<sup>14</sup> Section 50(1)

<sup>15</sup> Section 50(1)(a)

- 12.5.2. be signed by two Persons authorised by the Board by autographic, mechanical or electronic means.<sup>16</sup>
- 12.6. Each class of Securities must be distinguished by an appropriate numbering system.<sup>17</sup>
- 12.7. A certificate for Securities registered in the names of 2 (two) or more Persons shall be Delivered to the Person first named in the Securities Register and Delivery of a certificate for Securities to that Person shall be a sufficient Delivery to all joint Holders.
- 12.8. If a certificate for Securities or share warrant to bearer is defaced, lost or destroyed, it may be renewed, on such terms, as to evidence and indemnity and payment of such fee as the Board thinks fit, and (in case of defacement) on delivery of the old certificate or share warrant to bearer to the Company.
- 12.9. A Person –
- 12.9.1. acquires the rights associated with any particular Securities of the Company when that Person's name is entered in the Securities Register as a Person to whom those Securities have been issued or transferred; and
- 12.9.2. ceases to have the rights associated with any particular Securities of the Company when the transfer to another Person, re-acquisition by the Company, or surrender to the Company of those Securities has been entered in the Securities Register.
- 12.10. After receiving a notice from a Central Securities Depository or Participant that a Holder who wishes to withdraw all or part of the Uncertificated Securities held by that Person in an Uncertificated Securities Register, and obtain a certificate in respect of those withdrawn Securities, the Company must –
- 12.10.1. immediately enter the relevant Person's name and details of that Person's holding of Securities in the Securities Register and indicate on the Securities Register that the Securities so withdrawn are no longer held in uncertificated form;
- 12.10.2. within 10 (ten) Business Days, or 20 (twenty) Business Days in the case of a Holder who is not resident within South Africa –
- 12.10.2.1. prepare and Deliver to the relevant Person a certificate in respect of the Securities; and

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<sup>16</sup> Section 50(1)(b)

<sup>17</sup> Section 51(4)

12.10.2.2. notify the Central Securities Depository that the Securities are no longer held in uncertificated form,

and may charge the Holder a reasonable fee to cover the actual costs of issuing a certificate.

12.11. If the Company issues certificated Securities which are not listed on the JSE but which are of the same class as Securities which are so listed, the certificates for those Securities must be stamped "unlisted securities" and may only be released by the Company with the written permission of the JSE.

### 13. **REGISTER OF DISCLOSURES AND NOTIFICATION**

The Company must –

- 13.1. establish and maintain a register of the disclosures of all Beneficial Interests made in terms of section 56(7), which register shall comply with the requirements of the Companies Act<sup>18</sup>;
- 13.2. publish in its annual Financial Statements a list of the Persons who hold Beneficial Interests equal to or in excess of 5% (five per cent) of the total number of Securities (as contemplated in section 56(7)) of that class issued by the Company, together with the extent of those Beneficial Interests;<sup>19</sup>
- 13.3. file a copy of a notification with the Panel of the acquisition or disposal of any Beneficial Interest in respect of the issued Securities of a class which results in the holding of the Person making such acquisition or disposal falling within a higher or lower multiple of 5% (five per cent) of the issued Securities of that class than the multiple held by such person immediately prior to such acquisition or disposal;<sup>20</sup>
- 13.4. report the information to the Holders of the relevant class of Securities in respect of which the Company has received a notification of the type referred to in clause 13.3 by means of publishing same on SENS within 48 (forty eight) hours of receiving such notification, unless it relates to the disposal of any Beneficial Interest of less than 1% (one per cent) of the class.<sup>21</sup>

### 14. **SECURITIES HELD BY ONE PERSON FOR THE BENEFICIAL INTEREST OF ANOTHER**

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<sup>18</sup> Section 56(7)(a)

<sup>19</sup> Section 56(7)(b)

<sup>20</sup> Section 122(1)

<sup>21</sup> Section 122(3)(b), JSE LR 3.83(b)

If any Securities are registered in the name of a Person who is not the holder of the Beneficial Interest in such Securities, that registered Holder of any such Security must disclose to the Company –

- 14.1. the identity of the person on whose behalf that Security is held;<sup>22</sup>
- 14.2. the identity of each Person with a Beneficial Interest in the Securities so held, the number and class of Securities held for each such Person with a Beneficial Interest, and the extent of each such Beneficial Interest;<sup>23</sup>

in accordance with the time periods as stipulated in section 56(4).

## 15. **PROHIBITION AGAINST THE COMPANY TAKING A LIEN**

The Company shall not be entitled to take any lien over any Securities issued by it.<sup>24</sup>

## 16. **LISTINGS ON OTHER STOCK EXCHANGES**

- 16.1. The Company may seek listings on such other stock exchanges (in addition to the JSE) as the Board may consider appropriate from time to time, it being recorded that as at the Effective Date, the Shares of the Company are also listed on the Namibian Stock Exchange.
- 16.2. For so long as the Securities of the Company are listed on any stock exchange in addition to the JSE, if the listing on the JSE is the primary listing<sup>25</sup> and if the Company is obliged to obtain the approval of the JSE in regard to any matter, it shall, to the extent legally necessary, be obliged also to obtain the consent at the same time of any other stock exchanges on which it is listed and failing receipt of such consent, the Company shall not be permitted to undertake the act for which the consent was required.

## 17. **COMMISSION**

- 17.1. The Company may, subject to clause 17.2, pay commission not exceeding 10% (ten per cent) of the subscription price at which Securities of the Company are to be issued to any Person, in consideration of him subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities or of him procuring or agreeing to procure subscriptions, whether absolute or conditional, for any Securities.<sup>26</sup>

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<sup>22</sup> Section 56(3)(a)

<sup>23</sup> Section 56(3)(b)

<sup>24</sup> JSE LR 10.12, Schedule 10

<sup>25</sup> JSE LR section 18.1

<sup>26</sup> JSE LR 10.14, Schedule 10

- 17.2. No commission contemplated in clause 17.1 shall be paid in consideration for a subscription or agreement to subscribe for Shares without the prior approval of an Ordinary Resolution.

## 18. **TRANSFER OF SECURITIES**

- 18.1. There is no restriction on the transfer of Securities.
- 18.2. The transfer of any Securities which are certificated shall be implemented using the then common form of transfer. Every instrument of transfer shall be left at the transfer office of the Company at which it is presented for registration, accompanied by the certificate of the Securities to be transferred, and or such other evidence as the Company may require to prove the title of the transferor or his rights to transfer the Securities.<sup>27</sup>
- 18.3. All authorities to sign transfer deeds granted by Holders for the purpose of transferring Securities that may be lodged, produced or exhibited with or to the Company at any of its transfer offices shall as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices the Company shall be entitled to give effect to any instruments signed under the authority to sign, and certified by any officer of the Company, as being in order before the giving and lodging of such notice.<sup>28</sup>
- 18.4. The Company must enter in its Securities Register regarding every transfer of any Securities the information contemplated in section 51, provided that such entry may be made only if the transfer is evidenced by a proper instrument of transfer that has been delivered to the Company<sup>29</sup> or was effected by operation of law.<sup>30</sup>
- 18.5. The Securities Register may, upon receipt of the JSE's approval and after notice has been given by advertisement in the South African Government Gazette and a newspaper circulating in the district in which the office of the Company is situated, and, in the case of any branch register, be closed during such time as the Board thinks fit, not exceeding in aggregate 60 (sixty) days in each year.

## 19. **TRANSMISSION OF SECURITIES BY OPERATION OF LAW**

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<sup>27</sup> Article 7.4 M & A.

<sup>28</sup> Article 7.4 M & A.

<sup>29</sup> Section 51(6)(a)

<sup>30</sup> Section 51(6)(b)

Subject to the laws relating to securities transfer upon or in respect of the estates of deceased Persons and the administration of the estates of insolvent and deceased Persons and Persons under disability -

- 19.1. the parent or guardian or curator of any Holder who is a minor;
- 19.2. the trustee of an insolvent Holder;
- 19.3. the liquidator of a body corporate Holder;
- 19.4. the tutor or curator of a Holder under disability;
- 19.5. the executor or administrator of the estate of a deceased Holder; or
- 19.6. any other Person becoming entitled to any Securities held by a Holder by any lawful means other than transfer in terms of this MOI,

shall, upon production of such evidence as may be required by the Board, have the right either -

- 19.7. to exercise the same rights and to receive the same Distributions and other advantages to which he would be entitled if he were the Holder of the Securities registered in the name of the Holder concerned; or
- 19.8. himself to be registered as the Holder in respect of those Securities and to make such transfer of those Securities as the Holder concerned could have made, but the Board shall have the same right to decline or suspend registration as it would have had in the case of a transfer of the Securities by the Holder.

## 20. **ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**<sup>31</sup>

- 20.1. The Company shall keep accurate and complete Accounting Records in one of the official languages of the Republic of South Africa to enable the Company to satisfy its obligations in terms of the Companies Act or any other applicable law and regulatory requirements.
- 20.2. The Company shall prepare its Financial Statements in accordance with the International Financial Reporting Standards and shall have its annual Financial Statements audited. In addition the annual Financial Statements shall reflect the -
  - 20.2.1. Beneficial Interests of the Directors and material Shareholders (as contemplated in the Listings Requirements);

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<sup>31</sup> Article 23.1.1 M & A

- 20.2.2. number and status of any Securities issued by the Company which are not listed on the JSE.
- 20.3. The Board shall from time to time determine at what times and places and under what conditions, subject to the requirements of the Regulations, the Holders and holders of Beneficial Interests are entitled to inspect and take copies of –
- 20.3.1. the MOI;<sup>32</sup>
  - 20.3.2. amendments to the MOI;<sup>33</sup>
  - 20.3.3. records in respect of Directors;<sup>34</sup>
  - 20.3.4. reports to Annual General Meetings;<sup>35</sup>
  - 20.3.5. annual Financial Statements;<sup>36</sup>
  - 20.3.6. notices and minutes of Shareholders Meetings;<sup>37</sup>
  - 20.3.7. communications generally to Holders;<sup>38</sup>
  - 20.3.8. the Securities Register.<sup>39</sup>
- 20.4. Apart from the Holders and holders of Beneficial Interests, no other Person shall be entitled to inspect any of the documents of the Company (other than the Securities Register and the register of Directors) unless expressly authorised by the Board or by Ordinary Resolution.<sup>40</sup>
- 20.5. The Company shall notify the Holders and the holders of Beneficial Interests of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements.<sup>41</sup> If a Holder or holder of Beneficial Interests demands a copy of the annual Financial Statements, the Company shall make same available to such Holder / holder of Beneficial Interests free of charge.<sup>42</sup>

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<sup>32</sup> Section 26(1)(a)

<sup>33</sup> Section 26(1)(a)

<sup>34</sup> Section 26(1)(a)

<sup>35</sup> Section 26(1)(c)

<sup>36</sup> Section 26(1)(c)

<sup>37</sup> Section 26(1)(d)

<sup>38</sup> Section 26(1)(d)

<sup>39</sup> Section 26(1)(e)

<sup>40</sup> Section 26(6)

<sup>41</sup> Section 31(1)(a)

<sup>42</sup> Section 31(1)(b)



- 20.6. A copy of the annual Financial Statements of the Company will be made available to Holders at least 15 (fifteen) days prior to the date of the Annual General Meeting at which such Financial Statements will be considered.

## 21. **AUDIT COMMITTEE**

- 21.1. At each Annual General Meeting, the Company must elect an Audit committee comprising at least 3 (three) members,<sup>43</sup> unless –
- 21.1.1. the Company is a subsidiary of another company that has an Audit committee<sup>44</sup>; and
- 21.1.2. the Audit committee of that other company will perform the functions required in terms of the Companies Act on behalf of the Company.<sup>45</sup>
- 21.2. Each member of the Audit committee must comply with the requirements set out in section 94(4) and the requirements of the Board (as set out in the Charter Document of the Audit committee) and shall be nominated by the Board for election at the relevant Annual General Meeting.
- 21.3. In addition, the majority of the members of the Audit committee at any particular time must have academic qualifications, or experience, in economics, law, corporate governance, finance, actuarial, accounting, commerce, industry, public affairs or human resource management.
- 21.4. The duties of the Audit committee shall be those set out in section 94(7), together with such additional duties as may be set out in its Charter Document.
- 21.5. The Company must pay all expenses reasonably incurred by its Audit committee, including, if the Audit committee considers it appropriate, the fees of any consultant or specialist engaged by the Audit committee to assist it in the performance of its functions.<sup>46</sup>
- 21.6. No Person shall be elected as a member of the Audit committee, if he is Ineligible or Disqualified and any such election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected as a member of the Audit committee nor act as a member of the Audit committee. A Person placed under probation by a court must not serve as a member of the Audit committee unless the order of court so permits.

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<sup>43</sup> Section 94(2)

<sup>44</sup> Section 94(2)(a)

<sup>45</sup> Section 94(2)(b)

<sup>46</sup> Section 94(11)

- 21.7. A member of the Audit committee shall cease to hold office as such immediately he becomes Ineligible or Disqualified in terms of the Companies Act.

## 22. **APPOINTMENT OF AUDITOR**

- 22.1. The Company shall appoint as Auditor an audit firm registered with the Independent Regulatory Board for Auditors (and accredited as such on the JSE's list of auditors) at its Annual General Meeting, provided that such Auditor shall comply with the provisions of section 90(2).
- 22.2. Nothing precludes the election by the Company at its Annual General Meeting of an Auditor other than one nominated by the Audit committee, but if such an Auditor is elected, the appointment is valid only if the Audit committee is satisfied that the proposed Auditor is independent of the Company.<sup>47</sup>
- 22.3. If an Annual General Meeting does not appoint or reappoint an Auditor, the Board must fill the vacancy in the office in accordance with section 91. A retiring Auditor may be automatically re-appointed at an Annual General Meeting without any resolution being passed, unless any of the circumstances contemplated in section 90(6) are present.
- 22.4. Any Auditor appointed by the Company shall ensure that the designated Individual auditor responsible for performing the Audit must comply with the requirements of section 90(2), provided that the provisions of section 92 shall at apply at all times.
- 22.5. The Auditor's rights and functions shall be regulated in accordance with section 93.
- 22.6. If a vacancy arises in the office of Auditor (including in the circumstances contemplated in section 91(5)), the Board shall comply with the provisions of sections 91(2) and 91(3).
- 22.7. The provisions of clauses 35.4 and 35.6 apply *mutatis mutandis* to the Auditor.

## 23. **SHAREHOLDERS MEETINGS**<sup>48</sup>

- 23.1. The Company shall convene an Annual General Meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous Annual General Meeting, or within an extended time allowed by the Companies Tribunal on good cause shown<sup>49</sup>, which must at a minimum provide for the following business to be transacted –<sup>50</sup>

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<sup>47</sup> Section 94(9)

<sup>48</sup> Article 9.1 M & A

<sup>49</sup> Section 61(7)

<sup>50</sup> Section 61(8)

- 23.1.1. presentation of –
  - 23.1.1.1. the Directors' report;
  - 23.1.1.2. Audited Financial Statements for the immediately preceding financial year;
  - 23.1.1.3. an Audit committee report;
- 23.1.2. election of Directors, to the extent required by the Companies Act or the MOI;
- 23.1.3. appointment of –
  - 23.1.3.1. an Auditor for the ensuing year;
  - 23.1.3.2. an Audit committee;
- 23.1.4. any matters (other than proposed resolutions) raised by Holders for discussion, with or without advance notice to the Company. Should a Holder wish to raise a matter which requires the passing of a resolution, such resolution shall be subject to the provisions of clause 23.5; and
- 23.1.5. the declaration or sanction of any dividend, in addition to dividends declared by the Board from time to time.
- 23.2. The Company may not permit resolution/s that could be voted on at a Shareholders Meeting to be dealt with by round robin resolutions of those Persons entitled to vote.
- 23.3. The Board or the Company secretary, if there are no Directors, may convene a Shareholders Meeting whenever it deems fit.
- 23.4. The Company must hold a Shareholders Meeting –
  - 23.4.1. at any time that the Board is required by the Companies Act or the MOI to refer a matter to Holders entitled to vote for decision;<sup>51</sup>
  - 23.4.2. whenever required in terms of section 70(3) to fill a vacancy on the Board, where such vacancy gives rise to the number of Directors falling below the minimum number of directors stipulated in clause 25.1<sup>52</sup>; and

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<sup>51</sup> Section 61(2)(a)

<sup>52</sup> Section 61(2)(b)

23.4.3. if one or more Written and signed demands for such a Shareholders Meeting is/are delivered to the Company, and -

23.4.3.1. each such demand describes the specific purpose for which the Shareholders Meeting is proposed; and

23.4.3.2. in aggregate, demands for substantially the same purpose are made and signed by the Holders of at least 10% (ten per cent) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the Shareholders Meeting,

within 30 (thirty) days after the date upon which the first such demand is delivered to the Company.

23.5. Each resolution shall be expressed with sufficient clarity and specificity<sup>53</sup> and accompanied by sufficient information / explanatory material<sup>54</sup> to enable a Person who is entitled to vote on the resolution to determine whether to participate in the Shareholders Meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing.<sup>55</sup>

23.6. Every Shareholders Meeting shall be held where the Board determines from time to time.<sup>56</sup> A Shareholders Meeting may be held entirely by Electronic Communication, or the Company may provide for participation in a Shareholders Meeting by Electronic Communication so long as the Electronic Communication employed ordinarily enables all Persons participating in that Shareholders Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Shareholders Meeting, as set out in section 63(2).

23.7. The Holder of any Securities, which are in certificated form, and thus not subject to the rules of Strate as the Central Securities Depository, in which any Person has a Beneficial Interest must deliver to each such Person –<sup>57</sup>

23.7.1. a notice of any Shareholders Meeting of the Company at which those Securities may be voted within 2 (two) Business Days after receiving such a notice from the Company; and

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<sup>53</sup> Section 65(4)(a)

<sup>54</sup> Section 65(4)(b)

<sup>55</sup> Section 65(6)

<sup>56</sup> Section 61(9)

<sup>57</sup> Section 56(10)

- 23.7.2. a proxy appointment to the extent of that Person's Beneficial Interest, if the Person so demands in compliance with section 56(11).
- 23.8. A Shareholders Meeting shall be called by at least 15 (fifteen) Business Days' notice<sup>58</sup> Delivered by the Company to all Holders entitled to vote or otherwise entitled to receive notice and to the JSE.<sup>59</sup> An announcement shall also be made on SENS.
- 23.9. A Holder entitled to vote, who is Present at a Shareholders Meeting –
- 23.9.1. is regarded as having received or waived notice of the Shareholders Meeting if at least the required minimum notice was given;<sup>60</sup>
- 23.9.2. has a right to –
- 23.9.2.1. allege a Material defect in the form of notice for a particular item on the agenda for the Shareholders Meeting; and
- 23.9.2.2. participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice;<sup>61</sup> and
- 23.9.3. except to the extent set out in clause 23.9.2 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholders Meeting.<sup>62</sup>
- 23.10. The chairperson of the Shareholders Meeting shall be entitled, in his sole and absolute discretion, to determine the materiality of any alleged defect contemplated in clause 23.9.2.1. Should the chairperson deem the alleged defect to be immaterial, the item on the agenda for the Shareholders Meeting shall be discussed and voted on in the normal course.
- 23.11. A notice of a Shareholders Meeting must be in Writing and must include<sup>63</sup>–
- 23.11.1. the date, time and place for the Shareholders Meeting, and the Record Date for the Shareholders Meeting;
- 23.11.2. the general purpose of the Shareholders Meeting, and any purpose contemplated in clause 23.1, if applicable;

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<sup>58</sup> Article 9.3 M & A altered by Section 62(1)(a) and JSE LR 10.11(a), Schedule 10

<sup>59</sup> JSE LR 10.11 (f), (e), Schedule 10

<sup>60</sup> Section 62(7)(a)

<sup>61</sup> Section 62(7)(b)

<sup>62</sup> Section 62(7)(c)

<sup>63</sup> Section 62(3)

- 23.11.3. in the case of the Annual General Meeting a summary of the annual financial statements of the Company, together with directions for obtaining a copy of the annual financial statements of the Company;<sup>64</sup>
- 23.11.4. a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Shareholders Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;
- 23.11.5. a reasonably prominent statement that –
  - 23.11.5.1. a Holder entitled to attend and vote at the Shareholders Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Shareholders Meeting in the place of the Holder entitled to vote;
  - 23.11.5.2. a proxy need not be a Holder;<sup>65</sup>
  - 23.11.5.3. the proxy may not delegate the authority granted to him as proxy;
  - 23.11.5.4. participants in a Shareholders Meeting are required to furnish satisfactory identification in terms of section 63(1) in order to reasonably satisfy the Person presiding at the Shareholders Meeting;
  - 23.11.5.5. participation in the Shareholders Meeting by Electronic Communication is available, and provide any necessary information to enable Holders entitled to vote or their proxies to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Holder entitled to vote or proxy, except to the extent that the Company determines otherwise.
- 23.12. A Shareholders Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 23.13, only if every Person who is entitled to exercise Voting Rights in respect of each item on the agenda of the Shareholders Meeting is Present at the Shareholders Meeting and votes to approve the ratification of the defective notice.<sup>66</sup>

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<sup>64</sup> JSE LR 10.19, Schedule 10

<sup>65</sup> Article 11.4 M & A

<sup>66</sup> Section 62(4)

- 23.13. If a Material defect in the form or manner of giving notice of a Shareholders Meeting relates only to one or more particular matters on the agenda for the Shareholders Meeting –
- 23.13.1. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda;<sup>67</sup> and
  - 23.13.2. the Shareholders Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified in terms of clause 23.12.<sup>68</sup>
- 23.14. An immaterial defect in the form or manner of Delivering notice of a Shareholders Meeting, or an accidental or inadvertent failure in the Delivery of the notice to any particular Holder to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Shareholders Meeting.<sup>69</sup>
- 23.15. A Person who holds a Beneficial Interest in any Securities may vote in a matter at a Shareholders Meeting if:<sup>70</sup>
- 23.15.1. the Beneficial Interest includes the right to vote on the matter and the Person's name is on the Company's register of disclosures as the holder of a Beneficial Interest; and
  - 23.15.2. the Person holds a proxy form from the Holder in respect of such Securities.
- 23.16. Business may be transacted at any Shareholders Meeting only while a quorum is Present.<sup>71</sup>
- 23.17. The quorum necessary for the commencement of a Shareholders Meeting shall be sufficient Persons Present at the Shareholders Meeting to exercise, in aggregate, at least 25% (twenty five per cent) of all of the Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the Shareholders Meeting<sup>72</sup> but the Shareholders Meeting may not begin unless, in addition, at least 3 (three) Holders entitled to vote are Present.<sup>73</sup>
- 23.18. A matter to be decided at the Shareholders Meeting may not begin to be considered unless those who fulfilled the quorum requirements of clause 23.17, continue to be Present. If a

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<sup>67</sup> Section 62(5)(a)

<sup>68</sup> Section 62(5)(b)

<sup>69</sup> Section 62(6)

<sup>70</sup> Section 56(9)

<sup>71</sup> Section 64(1), 64(2)

<sup>72</sup> Section 64(2)

<sup>73</sup> JSE LR 10.11 (h), Schedule 10

resolution is proposed to meet the Listings Requirements, notwithstanding that the Holders of Securities not listed on the JSE shall be entitled to be counted in the quorum as a matter of law, they shall not be taken into account for the purposes of determining whether or not the quorum requirements of the JSE have been attained.<sup>74</sup>

23.19. If a quorum is not Present within 30 (thirty) minutes<sup>75</sup> from the time appointed for the Shareholders Meeting to commence, or if the quorum requirements in clause 23.18 cannot be achieved for any one or more matters, the Shareholders Meeting shall be postponed, without motion, vote or further notice, subject to clause 23.22, for 1 (one) week to the same time on the same day<sup>76</sup> in the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday. If a quorum is not Present at such adjourned Shareholders Meeting within 30 (thirty) minutes from the time appointed for the Shareholders Meeting, the Person/s entitled to vote and Present shall be deemed to be the requisite quorum.<sup>77</sup>

23.20. A Shareholders Meeting, or the consideration of any matter being debated at the Shareholders Meeting, may be adjourned from time to time without further notice on a motion supported by Persons entitled to exercise, in aggregate, a majority of the Voting Rights –

23.20.1. held by all of the Persons who are Present at the Shareholders Meeting at the time; and

23.20.2. that are entitled to be exercised on at least one matter remaining on the agenda of the Shareholders Meeting, or on the matter under debate, as the case may be.<sup>78</sup>

Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be Delivered to Holders), as agreed at the Shareholders Meeting.

23.21. A Shareholders Meeting may not be adjourned beyond the earlier of <sup>79</sup>–

23.21.1. the date that is 120 (one hundred and twenty) Business Days after the Record Date; or

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<sup>74</sup> JSE LR 10.24, Schedule 10

<sup>75</sup> Section 64(6)

<sup>76</sup> Section 64(4)

<sup>77</sup> Section 64(8)

<sup>78</sup> Section 64(10)

<sup>79</sup> Section 64(12)



- 23.21.2. the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.
- 23.22. No further notice is required to be Delivered by the Company of a Shareholders Meeting that is postponed or adjourned as contemplated in clause 23.19, unless the location or time for the Shareholders Meeting is different from<sup>80</sup> –
- 23.22.1. the location or time of the postponed or adjourned Shareholders Meeting; or
- 23.22.2. a location or time announced at the time of adjournment, in the case of an adjourned Shareholders Meeting.
- 23.23. After a quorum has been established for a Shareholders Meeting, or for a matter to be considered at a Shareholders Meeting, the Shareholders Meeting may continue, or the matter may be considered, so long as at least 1 (one) Person with Voting Rights entitled to be exercised at the Shareholders Meeting, or on that matter, is Present at the Shareholders Meeting.<sup>81</sup>
- 23.24. The chairperson, if any, of the Board shall preside as chairperson at every Shareholders Meeting. If there is no such chairperson, or if at any Shareholders Meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the Shareholders Meeting or is unwilling to act as chairperson, the Persons entitled to vote who are Present shall select a Director present at the Shareholders Meeting, or if no Director be present at the Shareholders Meeting, or if all the Directors present decline to take the chair, the Persons entitled to vote shall select one of their number which is Present to be chairperson of the Shareholders Meeting.
- 23.25. At any Shareholders Meeting a resolution put to the vote (excluding resolutions regarding administrative matters or the order of proceedings, which may proceed by way of a show of hands) shall be decided on a poll.
- 23.26. A poll shall be taken in such manner as the chairperson directs, which may include electronic voting, and the result of the poll shall be deemed to be the resolution of the Shareholders Meeting at which the poll was demanded. Scrutineers may be appointed by the chairperson to calculate and declare the result of the poll, and if appointed their decision, which shall be conveyed by the chairperson of the Shareholders Meeting, shall be deemed to be the resolution of the Shareholders Meeting at which the poll is demanded.

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<sup>80</sup> Section 64(7)

<sup>81</sup> Section 64(9)

- 23.27. In the case of an equality of votes the chairperson of the Shareholders Meeting shall be entitled to a second or casting vote.
- 23.28. Any person entitled to a Share in terms of clause 19 may vote at any Shareholders Meeting in respect thereof in the same manner as if he were the Holder of that Security: provided that (except where the Board has previously accepted his right to vote in respect of that Security) at least 24 (twenty four) hours before the time of holding the Shareholders Meeting at which he proposes to vote, he shall have satisfied the Board that he is entitled to exercise the right referred to in clause 19.<sup>82</sup>
- 23.29. Every resolution of Shareholders is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of an particular matter contemplated in this MOI, shall require to be adopted with the support of at least 50% (fifty per cent) of the Voting Rights exercised on the resolution. A Special Resolution shall require to be adopted with the support of at least 75% (seventy five per cent) of the Voting Rights exercised on the resolution. For so long as the Company is listed on the JSE, if any of the Listings Requirements require an ordinary resolution to be passed with a 75% (seventy five per cent) majority<sup>83</sup>, the resolution shall instead be required to be passed by a Special Resolution.<sup>84</sup>
- 23.30. Every Person entitled to vote who is Present at the Shareholders Meeting shall have the number of votes determined in accordance with the Voting Rights associated with the Securities in question. Where the Holders of Securities, other than ordinary Shares and any special or deferred Shares created for the purposes of Black Economic Empowerment, are entitled to vote on any resolution in accordance with this MOI, the total voting rights of such Holders shall not exceed 24,99% (twenty four comma ninety nine percent) of the total Voting Rights of all Persons entitled to vote in respect of such resolution. If a resolution is proposed to meet the requirements of the JSE, the votes of Holders of Securities not listed on the JSE shall not be taken into account for the purposes of determining whether or not the requirements of the JSE have been attained.<sup>85</sup>
- 23.31. In the case of joint Holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint Holders; and for this purpose seniority shall be determined by the order in which the names stand in the Securities Register.<sup>86</sup>

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<sup>82</sup> Article 11.3 M & A

<sup>83</sup> JSE LR 10.11 (a), Schedule 10

<sup>84</sup> Section 65

<sup>85</sup> JSE LR 10.5(b)(c), Schedule 10

<sup>86</sup> Article 11.2 M & A

- 23.32. No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration, but it may be revoked at any time.<sup>87</sup> The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy<sup>88</sup>, and delivering a copy of the revocation instrument to the proxy, and to the Company.<sup>89</sup> The appointment is suspended at any time and to the extent that the Holder entitled to vote chooses to act directly and in person in the exercise of any rights as a Holder entitled to vote.<sup>90</sup>
- 23.33. The form appointing a proxy and the power of attorney, if any, under which it is signed shall be delivered to the Company or any Person which it has identified in the notice of meeting as being a Person to whom proxies may be delivered on behalf of the Company, no later than 48 (forty eight) hours prior to the time scheduled for the commencement of the Shareholders Meeting, provided that the Chairperson of the Shareholders Meeting shall be entitled, in his sole and absolute discretion, to accept or reject any proxies delivered to the Company (or the Person authorised to receive the proxies as aforesaid) less than 48 (forty eight) hours prior to the time scheduled for the commencement of the Shareholders Meeting.
- 23.34. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Securities in respect of which the proxy is given, unless the Company is informed in writing of such death, insanity, revocation or transfer at its Registered Office before the commencement of the Shareholders Meeting or adjourned Shareholders Meeting at which the proxy is used.<sup>91</sup>
- 23.35. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form, and may also be provided by means of Electronic Communication if approved by the Board. The Company shall supply a generally standard form of proxy upon request by a Holder entitled to vote.
- 23.36. If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as he sees fit unless the proxy indicates otherwise.<sup>92</sup>

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<sup>87</sup> Section 58(2)(b)

<sup>88</sup> Section 58(4)(c)(i)

<sup>89</sup> Section 58(4)(c)(ii)

<sup>90</sup> Section 58(4)(a)

<sup>91</sup> Section 58(7)

<sup>92</sup> Section 58(7)

- 23.37. The Company must keep minutes of the meetings of the Shareholders, and include in such minutes every resolution adopted by the Shareholders.
- 23.38. Resolutions adopted by the Shareholders–
- 23.38.1. must be dated and sequentially numbered; and
  - 23.38.2. are effective as of the date of the resolution, unless the resolution or any regulatory requirement states otherwise.
- 23.39. Any minutes of a meeting, or a resolution, signed by Chairperson of the Shareholders Meeting, or by the Chairperson of the next Shareholders Meeting, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
- 23.40. Any extract from such minutes or extract from any resolution in writing, if signed by any Shareholder or by the Company secretary, or by any duly authorised person acting in the place of the Company secretary, shall be receivable as evidence of the matters stated in such minutes or resolution.

## 24. **RECORD DATES**

- 24.1. The Board shall determine each Record Date<sup>93</sup> in accordance with the applicable rules of the Central Securities Depository and the Listings Requirements.<sup>94</sup>
- 24.2. If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is<sup>95</sup> –
- 24.2.1. in the case of a Shareholders Meeting, the latest date by which the Company is required to Deliver to Holders entitled to vote, notice of that Shareholders Meeting;
  - 24.2.2. in the case of dividends, the day immediately following the date of declaration or the date of confirmation of the dividend, whichever is the later;
  - 24.2.3. the date of the action or event, in any other case.
- 24.3. The Company must publish a notice of a Record Date for any matter in accordance with the rules of the relevant Central Securities Depository, or alternatively by –
- 24.3.1. delivering a copy to each Holder; and

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<sup>93</sup> Section 59(1)

<sup>94</sup> JSE LR 10.15, Schedule 10

<sup>95</sup> Section 59(3)

24.3.2. posting a conspicuous copy of the notice –

24.3.2.1. at its registered office;

24.3.2.2. on its web-site, if it has one; and

24.3.2.3. on SENS.

## 25. ELECTION OF DIRECTORS AND VACANCIES

25.1. The minimum number of Directors shall be 6 (six) and the maximum 20 (twenty).<sup>96</sup> Subject to any provisions of the Listings Requirements to the contrary, any failure by the Company at any time to have the minimum number of Directors does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.<sup>97</sup>

25.2. At the Annual General Meeting held in each year 1/3 (one third) of the non-executive Directors, or if their number is not a multiple of 3 (three), then the number nearest to, but not less than 1/3 (one third) shall retire from office, provided that in determining the number of Directors to retire no account shall be taken of any Director who has been appointed as an executive Director.<sup>98</sup> The Directors so to retire at each Annual General Meeting shall be those who have been longest in office since their last election. As between Directors of equal seniority, the Directors to retire shall, in the absence of agreement, be selected from among them by lot: Notwithstanding anything herein contained, if, at the date of any Annual General Meeting any Director will have held office for a period of 3 (three) years since his last election or appointment he shall retire at such Annual General Meeting, either as one of the Directors to retire in pursuance of the foregoing or additionally thereto. A retiring Director shall act as a Director throughout the Annual General Meeting at which he retires. The length of time a Director has been in office shall be computed from the date of his last election. Retiring Directors shall be eligible for re-election.

25.3. No Person, including a Director retiring at the Annual General Meeting shall, unless recommended by the Board for election, be eligible for election to the office of Director at any Annual General Meeting unless:

25.3.1. not less than 7 (seven) days nor more than 14 (fourteen) days before the day appointed for the Annual General Meeting, a Holder or Holders holding in aggregate not less than 100 000 (one hundred thousand) Shares and who are entitled to be Present and vote at the Annual General Meeting for which such

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<sup>96</sup> Article 13.1 M & A, Section 66(3), JSE LR 10.16 (a), Schedule 10 requires a minimum of 4.

<sup>97</sup> Section 66(11)

<sup>98</sup> Article 14.1 M & A.

notice is given notify the Company secretary In Writing of their intention to propose such Person for election; and

- 25.3.2. the Person to be proposed notifies the Company secretary of his willingness to be elected.
- 25.4. If at any Annual General Meeting, the place of any retiring Director is not filled, he shall if willing continue in office until the dissolution of the Annual General Meeting in the next year, and so on from year to year until his place is filled, unless it is, on the recommendation of the Board, determined at such Annual General Meeting that such vacancy shall not be filled.
- 25.5. Each of the Directors, other than a Director contemplated in clause 25.10, shall be elected (which in the case of a vacancy arising shall take place at the next Annual General Meeting), in accordance with clause 25.7 as a Director.
- 25.6. There are no general qualifications prescribed by the Company for a Person to serve as a Director in addition to the requirements of the Companies Act. The Board, with the assistance of the nominations committee, must make recommendations to the Holders regarding the eligibility of Persons nominated for election as Directors, taking into account their past performance and contribution, if applicable. A brief *curriculum vitae* of each Person standing for election or re-election as a Director at a Meeting or the Annual General Meeting, must accompany the notice of the Meeting or Annual General Meeting.
- 25.7. In any election of Directors, the election is to be conducted as follows –
  - 25.7.1. a series of votes of those entitled to exercise votes regarding such election, each of which is on the candidacy of a single individual to fill a single vacancy; and
  - 25.7.2. in each vote to fill a vacancy –
    - 25.7.2.1. each Voting Right entitled to be exercised may be exercised once; and
    - 25.7.2.2. the vacancy is filled only if a majority of the Voting Rights exercised support the candidate.
- 25.8. No Person shall be elected as a Director if he is Ineligible or Disqualified<sup>99</sup> and any such election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be

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<sup>99</sup> Section 69(2)(a)

elected as a Director<sup>100</sup> nor act as a Director.<sup>101</sup> A Person placed under probation by a court must not serve as a Director unless the order of court so permits.

25.9. The election of a Director shall take effect<sup>102</sup> as at the date upon which he has complied with the provisions of section 66(7).<sup>103</sup>

25.10. Any vacancy occurring on the Board may be filled by the Board, but so that the total number of the Directors shall not at any time exceed the maximum number fixed,<sup>104</sup> if any, but any Individual so appointed shall cease to hold office at the termination of the first Shareholders Meeting to be held after the appointment of such Individual as a Director unless he is elected at such Shareholders Meeting.<sup>105</sup>

25.11. The continuing Directors (or sole continuing Director) may act notwithstanding any vacancy in their body. Should the number of Directors be reduced below the number fixed by or pursuant to this MOI as the minimum, the continuing Directors or Director shall as soon as possible, but in any event not later than 3 (three) months from the date that the number falls below the minimum, fill the vacancy or call a Shareholders Meeting for the purpose of filling the vacancy.<sup>106</sup>

25.12. If there is no Director able and willing to act, then any Holder entitled to exercise Voting Rights in the election of a Director may convene a Shareholders Meeting for the purpose of appointing Directors.

25.13. The Company shall not have any Alternate Directors.

25.14. Life directorships and directorships for an indefinite period are not permissible.

## 26. CESSATION OF OFFICE AS DIRECTOR

26.1. A Director shall cease to hold office as such –

26.1.1. immediately he becomes Ineligible or Disqualified or the Board resolves to remove him on such basis, and in the latter case the Director has not within the permitted period filed an application for review or has filed such an application

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<sup>100</sup> Section 69(2)(a)

<sup>101</sup> Section 69(2)(b)

<sup>102</sup> Article 13.3 M & A

<sup>103</sup> Section 66(7)(b)

<sup>104</sup> Article 13.2 M & A

<sup>105</sup> JSE LR 10.16(c), Schedule 10.

<sup>106</sup> JSE LR 10.16(d), Schedule 10

- but the court has not yet confirmed the removal (during which period he shall be suspended);<sup>107</sup>
- 26.1.2. when his term of office contemplated in clauses 25.2 and 25.4 expires;<sup>108</sup>
- 26.1.3. when he dies;<sup>109</sup>
- 26.1.4. when he resigns by Written notice to the Company;<sup>110</sup>
- 26.1.5. if the Board determines that he has become incapacitated to the extent that the person is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time, and the Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended);<sup>111</sup>
- 26.1.6. if he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a director of the company<sup>112</sup>
- 26.1.7. if he is removed by Ordinary Resolution;<sup>113</sup>
- 26.1.8. if he is removed by a resolution passed by 75% (seventy five percent) of the Board for being negligent or derelict in performing the functions of a Director, and the Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended);<sup>114</sup>
- 26.1.9. he files a petition for the surrender of his estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement or composition with his creditors generally<sup>115</sup>; or

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<sup>107</sup> Section 70(3)(b)(i)

<sup>108</sup> Section 69(4)

<sup>109</sup> Section

<sup>110</sup> Section 70(1)(b)(i)

<sup>111</sup> Section 70(1)(b)(i)

<sup>112</sup> Section 10(1)(b)(3), 71(3)(a)

<sup>113</sup> Section 70(1)(b)(iv)

<sup>114</sup> Section 71(3)(b), Section 70(1)(b)(vi)(bb)

<sup>115</sup> Article 13.8.1 M & A



- 26.1.10. if he is otherwise removed in accordance with any provisions of the Companies Act and/or this MOI; or
- 26.1.11. if he is absent from meetings of the Board for 6 (six) consecutive months without leave of the Board and 75% (seventy five percent) of the Board resolve that the office be vacated, provided that the Board shall have the power to grant any Director leave of absence for any or an indefinite period<sup>116</sup>; or
- 26.1.12. on the day of his 70<sup>th</sup> (seventieth) birthday.<sup>117</sup>

## 27. **REMUNERATION<sup>118</sup> OF DIRECTORS AND MEMBERS OF BOARD COMMITTEES<sup>119</sup>**

- 27.1. The Directors or members of Board committees shall be entitled to such remuneration for their services as Directors or members of Board Committees as may have been determined from time to time by Special Resolution within the previous 2 (two) years. In addition, the Directors shall be entitled to all reasonable expenses in travelling (including accommodation) to and from meetings of the Board and Holders, and the members of the Board committees shall be entitled to all reasonable expenses in travelling (including accommodation) to and from meetings of the members of the Board committees as determined by a disinterested quorum of Directors.<sup>120</sup> The Company may pay or grant any type of remuneration contemplated in sections 30(6)(b) to (g) to any executive Directors.
- 27.2. A Director may be employed in any other capacity in the Company or as a director or employee of a company controlled by, or itself a subsidiary of, the Company and in that event, his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors.<sup>121</sup>

## 28. **FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND RELATED AND INTER-RELATED PARTIES**

- 28.1. The Board's powers to provide direct or indirect financial assistance as contemplated in section 45(2) are not limited in any manner.<sup>122</sup>
- 28.2. If the Board adopts a resolution as contemplated in section 45(2) regarding financial assistance to the Directors/Prescribed Officers and others contemplated in that section, the

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<sup>116</sup> Article 13.8.4 M & A

<sup>117</sup> Article 13.8 .9 M & A

<sup>118</sup> Article 13.5 M & A

<sup>119</sup> Section 66(8)

<sup>120</sup> Article 13.6 M & A, JSE LR 10.16(f), Schedule 10

<sup>121</sup> Article 15.3 M & A, JSE LR 10.16(e), Schedule 10

<sup>122</sup> Article 12.2 M & A

Company shall Deliver to all Shareholders notice in Writing of that resolution and to any trade union representing its employees –

28.2.1. within 10 (ten) Business Days after the Board adopts the resolution, if the total value of all loans, debts, obligations or assistance contemplated in that resolution, together with any previous such resolution during the financial year, exceeds 1/10<sup>th</sup> (one tenth) of 1% (one percent) of the Company's net worth at the time of the resolution; or

28.2.2. within 30 (thirty) Business Days after the end of the financial year, in any other case.<sup>123</sup>

## 29. GENERAL POWERS AND DUTIES OF THE BOARD

29.1. The business and affairs of the Company shall be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Company, except to the extent that the Companies Act or this MOI provides otherwise.

29.2. The Board shall have the power to delegate to any person or persons any of its powers and discretions and to give to any such person or persons the power of sub-delegation. The delegation of such powers and discretions may be reduced or withdrawn at any time by the Board.

29.3. The Board must appoint a chief executive officer and an executive financial Director, and may from time to time appoint further executive Directors (provided always that the number of executive Directors shall at all times be less than ½ (one half) of the number of Directors in office) for such period and at such remuneration and generally on such terms they may think fit, and it may be made a term of their appointment that they be paid a pension, gratuity or other benefit on their retirement from office.

29.4. The Board may from time to time entrust to and confer upon an executive Director such of the powers vested in the Board as it may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as it may think expedient; and it may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the Board, and may from time to time revoke or vary all or any of such powers. An executive Director appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Board and after

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<sup>123</sup> Section 45(5)

powers have been conferred upon her/him by the Board in terms hereof she/he shall be deemed to derive such powers directly from this clause.<sup>124</sup>

### 30. **BOARD COMMITTEES**

- 30.1. The Board may appoint any number of Board committees and delegate to such committees any authority of the Board in accordance with the applicable Charter Documents.<sup>125</sup> The Board must appoint a human resources committee, a risk committee, a nominations committee and a social and ethics committee. The members of any such committees (other than the nominations committee, which shall have as its members only non-executive Directors, the majority of whom must be independent (as defined in Listings Requirement 3.84(f), and which must be chaired by the chairperson of the Board) may include Persons who are not Directors as long as they are not Ineligible or Disqualified to be Directors, but such Persons shall not be able to vote.<sup>126</sup>
- 30.2. No Person shall be appointed as a member of a Board committee, if he is Ineligible or Disqualified<sup>127</sup> and any such appointment shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A Person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.
- 30.3. In addition to the requirements of the Companies Act, a Person shall comply with such qualifications or requirements as may be stipulated in the relevant Charter Document in order to serve as a member of a Board committee.
- 30.4. A member of a Board committee shall cease to hold office as such immediately he becomes Ineligible or Disqualified in terms of the Companies Act.
- 30.5. Subject to the provisions of its Charter Document, a Board committee may consult with or receive advice from any person.
- 30.6. Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this MOI regulating the meetings and proceedings of the Board.

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<sup>125</sup> Section 72(1), Article 17 M & A

<sup>126</sup> Section 77(2)

<sup>127</sup> Section 72(2)(a)(1)

- 30.7. The composition of such committees, a brief description of their mandates, the number of meetings held and other relevant information must be disclosed in the annual report of the Company.

### 31. **SOCIAL AND ETHICS COMMITTEE**

- 31.1. The Board shall appoint a social and ethics committee unless it is a Subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required on behalf of the Company, or the Company has been exempted in terms of the Companies Act from having to have a social and ethics committee.<sup>128</sup>
- 31.2. The social and ethics committee must comprise not less than 3 (three) Directors or Prescribed Officers, at least 1 (one) of whom must be a Director who is not involved in the day-to-day management of the Company's business, and must not have been so involved within the previous 3 (three) financial years.<sup>129</sup>
- 31.3. The social and ethics committee shall have the functions set out in Regulation 43(5) and shall be entitled to exercise the rights set out in section 72(8), subject to the requirements of and stipulations contained in the applicable Charter Document.
- 31.4. The Company must pay all the expenses reasonably incurred by its social and ethics committee, including, if the social and ethics committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the social and ethics committee in the performance of its functions.<sup>130</sup>

### 32. **PERSONAL FINANCIAL INTERESTS OF DIRECTORS AND PRESCRIBED OFFICERS AND MEMBERS OF BOARD COMMITTEES**

- 32.1. For the purposes of this clause 32, "Director" includes a Prescribed Officer, and a person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board.<sup>131</sup>
- 32.2. This clause 32 shall not apply to a Director in respect of a decision that may generally affect –

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<sup>128</sup> Regulation 43(2)

<sup>129</sup> Regulation 43(4)

<sup>130</sup> Section 72(9)

<sup>131</sup> Section 75(1)(a)

- 32.2.1. all of the Directors in their capacity as Directors, but in that case all the Directors shall act in accordance with and as if section 75(3) were applicable unless the Directors are acting pursuant to an authorisation given by the Holders for the Board to make a decision within certain thresholds, relating to their capacity as Directors; or
  - 32.2.2. a class of Persons, despite the fact that the Director is one member of that class of Persons, unless the only members of the class are the Director or Persons Related or Inter-related to the Director.
- 32.3. If despite the requirements of JSE, there is only 1 (one) Director in office at any time, that Director must comply with the requirements of section 75(3).
- 32.4. A Director may at any time disclose any Personal Financial Interest in advance by delivering to the Board, or Holders (if the circumstances contemplated in clause 32.2 prevail), a notice in Writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.<sup>132</sup>
- 32.5. If, in the reasonable view of the other non conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.
- 32.6. If a Director (whilst the circumstances contemplated in clause 32.2 are not applicable), has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board, or Knows that a Related Person has a Personal Financial Interest in the matter, the Director<sup>133</sup> -
- 32.6.1. must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;
  - 32.6.2. must disclose to the meeting any Material information relating to the matter, and Known to the Director;
  - 32.6.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;

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<sup>132</sup> Section 75(4)

<sup>133</sup> Section 75(5)

- 32.6.4. if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 32.6.2 or 32.6.3;
- 32.6.5. must not take part in the consideration of the matter, except to the extent contemplated in clauses 32.6.2 or 32.6.3;
- 32.6.6. while absent from the meeting in terms of this clause 32.6 –
  - 32.6.6.1. is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum; and
  - 32.6.6.2. is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
- 32.6.7. must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.
- 32.7. If a Director acquires a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, or Knows that a Related Person has acquired a Personal Financial Interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board, or to the Holders entitled to vote (if the Company is a company contemplated in clause 32.2), the nature and extent of that Personal Financial Interest, and the material circumstances relating to the Director or Related Person's acquisition of that Personal Financial Interest.<sup>134</sup>
- 32.8. A decision by the Board, or a transaction or agreement approved by the Board, or by the Holders (if the Company is a company contemplated in clause 32.2), is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if <sup>135</sup>–
  - 32.8.1. it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 32; or
  - 32.8.2. despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or so declared by a court.

### 33. PROCEEDINGS OF THE BOARD

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<sup>134</sup> Section 75(6)

<sup>135</sup> Section 75(7)

- 33.1. The chairperson of the Board or a Director authorised by the Board –
- 33.1.1. may, at any time, call a meeting of the Board;<sup>136</sup> and
- 33.1.2. must call a meeting of the Board if required to do so by at least 2 (two) Directors.<sup>137</sup>
- 33.2. The Board may determine what period of notice shall be given of meetings of the Board and may determine the means of giving such notice<sup>138</sup> which may include telephone, telefax or Electronic Communication.<sup>139</sup> It shall be necessary to give notice of a meeting of the Board to all Directors even those for the time being absent from South Africa.<sup>140</sup>
- 33.3. If all of the Directors –
- 33.3.1. acknowledge actual receipt of the notice;
- 33.3.2. are present at a meeting of the Board; or
- 33.3.3. waive notice of the meeting,
- the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.<sup>141</sup>
- 33.4. The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- 33.5. Unless otherwise resolved by the Board, all its meetings shall be held in the city or town where the Company's Registered Office is for the time being situated. A meeting of the Board may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of the Board by Electronic Communication so long as the Electronic Communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.<sup>142</sup>
- 33.6. The quorum for a Board meeting is 6 (six) Directors, of whom at least 4 (four) shall comprise non-executive Directors.

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<sup>136</sup> Section 73(1)

<sup>137</sup> Section 73(2)

<sup>138</sup> Section 73(4)

<sup>139</sup> Section 73(3)

<sup>140</sup> Section 73(4)(b)

<sup>141</sup> Section 73(5)(a)

<sup>142</sup> Section 73(3)

- 33.7. Subject to the provisions of the Listings Requirements, the Board may elect a chairperson, deputy chairperson and lead Director of the Company, from amongst the non-executive Directors and determine the period for which he is to hold office. If no such chairperson is elected, or if at any meeting the chairperson is not present within 15 (fifteen) minutes after the time appointed for holding it, the Directors present may choose one of their number to be chairperson of the meeting.
- 33.8. Each Director has 1 (one) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 33.9. In the case of a tied vote, the chairperson shall be entitled to cast a deciding vote.
- 33.10. The Company must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes<sup>143</sup> –
- 33.10.1. any declaration given by notice or made by a Director as required by clause 32;
- 33.10.2. every resolution adopted by the Board.
- 33.11. Resolutions adopted by the Board<sup>144</sup> –
- 33.11.1. must be dated and sequentially numbered; and
- 33.11.2. are effective as of the date of the resolution, unless the resolution states otherwise.
- 33.12. Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.<sup>145</sup>
- 33.13. Any extract from such minutes or extract from any resolution in writing, if signed by any Director or by the Company secretary, or by any duly authorised person acting in the place of the Company secretary, shall be receivable as evidence of the matters stated in such minutes or resolution.
- 33.14. A round robin resolution shall, once inserted in the minutes of the Board kept in accordance with clause 33.10, be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted, provided that each Director who is able to receive notice, has received notice of the matter to be decided upon. Such resolution shall be deemed to

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<sup>143</sup> Section 73(6)

<sup>144</sup> Section 73(7)

<sup>145</sup> Section 73(8)



have been passed on the date on which it was signed by the last Director who signed it (unless a statement to the contrary is made in that resolution). For the purpose hereof a round robin resolution means a resolution passed other than at a meeting of Board, in respect of which, subject to clause 33.10, not less than a majority of Directors voted in favour by signing in Writing a resolution in counterparts, within 20 (twenty) Business Days after the resolution was submitted to them.<sup>146</sup>

#### 34. **PRESCRIBED OFFICERS**

34.1. No Person shall hold office as a Prescribed Officer, if he is Ineligible or Disqualified. A Person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in him being a Prescribed Officer nor act in such office nor undertake any such functions. A Person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.<sup>147</sup>

34.2. A Prescribed Officer shall cease to hold office as such immediately he becomes Ineligible or Disqualified in terms of the Companies Act.<sup>148</sup>

#### 35. **APPOINTMENT OF THE COMPANY SECRETARY**

35.1. The Board must appoint the Company secretary from time to time, who –

35.1.1. shall be a permanent resident of South Africa who is not Ineligible or Disqualified and, who shall remain so while serving as the Company secretary; and

35.1.2. shall have the requisite knowledge of, or experience in, relevant laws<sup>149</sup>; and

35.1.3. may be a juristic Person subject to the following<sup>150</sup> –

35.1.3.1. every employee of that juristic person who provides company secretary services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified;

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<sup>146</sup> Section 74

<sup>147</sup> Section 69(2)

<sup>148</sup> Section 69(3)

<sup>149</sup> Section 86(2)

<sup>150</sup> Section 87(1)

- 35.1.3.2. at least 1 (one) employee of that juristic person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 35.1.1 and 35.1.2;
- 35.2. Within 60 (sixty) Business Days after a vacancy arises in the office of company secretary, the Board must fill the vacancy by appointing a Person whom the Board considers to have the requisite knowledge and experience. A change in the membership of a juristic person or partnership that holds office as company secretary does not constitute a vacancy in the office of company secretary, if the juristic person or partnership continues to satisfy the requirements of clause 35.1.3.<sup>151</sup>
- 35.3. If at any time a juristic person or partnership holds office as company secretary of the Company<sup>152</sup> –
- 35.3.1. the juristic person or partnership must immediately notify the Board if the juristic person or partnership no longer satisfies the requirements of clause 35.1.3, and is regarded to have resigned as Company secretary upon giving that notice to the Company;
- 35.3.2. the Company is entitled to assume that the juristic person or partnership satisfies the requirements of clause 35.1.3, until the Company has received a notice contemplated in clause 35.3.1; and
- 35.3.3. any action taken by the juristic person or partnership in performance of its functions as Company secretary is not invalidated merely because the juristic person or partnership had ceased to satisfy the requirements of clause 35.1.3 at the time of that action.
- 35.4. The Company secretary may resign from office by giving the Company 1 (one) month's Written notice or less than that with the prior Written approval of the Board.<sup>153</sup>
- 35.5. The Company secretary may be removed from office by way of a resolution of the Board.
- 35.6. If the Company secretary is removed from office by the Board, the Company secretary may, by giving Written notice to that effect to the Company by not later than the end of the financial year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that financial year, not exceeding a reasonable length, setting out the Company secretary's contention as to the circumstances that resulted

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<sup>151</sup> Section 86(4)

<sup>152</sup> Section 87(3)

<sup>153</sup> Section 89(1)

in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.<sup>154</sup>

## 36. DISTRIBUTIONS

- 36.1. The Company may make Distributions from time to time, provided that it shall comply with section 46 and the Listings Requirements (to the extent applicable) in respect of each Distribution to be made.
- 36.2. A dividend may be declared by the Board.
- 36.3. A dividend or other Distribution payable in cash relating to a Share may be paid by such method as the Board may in its absolute discretion determine. Different methods of payment may apply to different Holders or groups of Holders.
- 36.4. No notice of change of address or instructions as to payment given after the determination of a dividend or other Distribution by the Company in terms of clause 36.1, shall become effective until after the dividend or other Distribution has been made, unless the Board so determines at the time the dividend or other Distribution is approved.
- 36.5. All unclaimed dividends or other Distributions as contemplated in this clause shall be held by the Company in trust for the benefit of the Holders until claimed, provided that any dividend (but not any other Distribution which shall be held by the Company until lawfully claimed) remaining unclaimed for a period of not less than 5 (five) years from the date on which it became payable may be forfeited by resolution of the Board for the benefit of the Company.
- 36.6. The Company shall not pay interest on any dividend or other Distribution due to any Holder.
- 36.7. The Company shall be entitled to terminate the payment of dividends to any Holder if the correspondence enclosing a dividend cheque is returned undelivered and/or such cheque remains uncashed and/or any payment made by electronic transfer is unsuccessful due to invalid or incorrect bank account details provided by the Holder on 3 (three) or more consecutive occasions. Pending receipt by the Company of a notice of change of address and/or valid bank account details from the Holder concerned, all further dividends payable to such Holder shall be regarded as unclaimed dividends and be subject to the provisions of clause 36.5.

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<sup>154</sup> Section 89(2)

### 37. LOSS OF DOCUMENTS

The Company shall not be responsible for the loss in transmission of any cheque, warrant, certificate or (without any limitation *eiusdem generis*) other document sent through the post either to the registered address of any Holder or to any other address requested by the Holder.<sup>155</sup>

### 38. NOTICES

38.1. The Company may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Holder or holder of Beneficial Interests through any of the methods set out in the Regulations and, without limitation, by sending them prepaid through the post or by transmitting them by any form of Electronic Communication, subject to clause 38.3. The Company must give notice of any Meeting to each Holder.

38.2. Any Holder or holder of Beneficial Interests who/which has furnished an Electronic Address to the Company, by doing so –

38.2.1. authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to him; and

38.2.2. confirms that same can conveniently be printed by the Holder / holder of the Beneficial Interests within a reasonable time and at a reasonable cost.<sup>156</sup>

38.3. Any notice, document, record or statement or notice of availability of the foregoing sent by the Company shall be deemed to have been delivered on the date and time determined in accordance with Table CR3 in the Regulations.

38.4. A Holder or Person entitled to Securities (or his executor) shall be bound by every notice in respect of the Securities Delivered to the Person who was, at the date on which that notice was Delivered, shown in the Securities Register or established to the satisfaction of the Board (as the case may be) as the Holder of or Person entitled to the Securities, notwithstanding that the Holder or Person entitled to Securities may then have been dead or may subsequently have died or have been or become otherwise incapable of acting in respect of the Securities, and notwithstanding that any transfer of the Securities was not registered at that date. The Company shall not be bound to enter any Person in the Securities Register as entitled to any Securities until that Person gives the Company an address for entry on the Securities Register.

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<sup>155</sup> Article 26 M & A

<sup>156</sup> Section 6(10)

- 38.5. If joint Holders are registered in respect of any Securities or if more than 1 (one) Person is entitled to Securities, all notices shall be given to the Person named first in the Securities Register in respect of the Securities, and notice so Delivered shall be sufficient notice to all the Holders of or Persons entitled to or otherwise interested in the Securities.
- 38.6. The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with clause 2), the provisions of clause 2 shall also be applied.
- 38.7. The holder of a Share warrant to bearer shall not, unless it be otherwise expressed in the warrant, be entitled in respect thereof to notice of any Shareholders Meeting or otherwise.
- 38.8. As regards the signature of an Electronic Communication by a Holder, it shall be in such form as the Board may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Board, it shall be constituted by the Holder indicating in the Electronic Communication that it is the Holder's intention to use the Electronic Communication as the medium to indicate the Holder's approval of the information in, or the Holder's signature of the document in or attached to, the Electronic Communication which contains the name of the Holder sending it in the body of the Electronic Communication.

## 39. **INDEMNITY**<sup>157</sup>

- 39.1. For the purposes of this clause 39, "Director" includes current and former Directors, Prescribed Officers, and/or members of a committee of the Board, irrespective of whether or not such persons are or were also members of the Board and/or members of the Audit committee.<sup>158</sup>
- 39.2. Subject to any limitation placed on the Company in this regard in terms of the Companies Act and/or the Listings Requirements, the Company shall be entitled to indemnify any Director against any liability which such Director may incur in exercising his duties, to advance expenses to a Director in the circumstances contemplated in section 78(4), and to purchase insurance in this regard in accordance with section 78(7). The Company is entitled

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<sup>157</sup> Article 34 M & A altered by section 77

<sup>158</sup> Section 77(1)

to claim restitution from a Director or of a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78.<sup>159</sup>

39.3. Subject to the provisions set out in this MOI, the Companies Act and/or the Listings Requirements, any current or former officer or servant of the Company (other than a Director) shall be indemnified by the Company against all costs, losses and expenses which any such officer or servant may incur or become liable to by reason of any contract entered into or act or deed done by him as such officer or servant or in any way in the discharge of his duties, save where such costs, losses and expenses arise from such officer or servant's negligence or dishonesty.

39.4. This MOI, or any part hereof, does not constitute a stipulation in favour of a third party, nor does it confer benefits upon any third party.

#### 40. **ACQUISITION OF OWN SECURITIES**

The Company is authorised to acquire its own Securities, subject to compliance with the Companies Act and the Listings Requirements.

#### 41. **TERMS AND CONDITIONS OF THE DEFERRED SHARES<sup>160</sup>**

##### 41.1. **Interpretation**

In this clause 41, unless inconsistent with or otherwise indicated by the context –

41.1.1. **"A' Deferred Shares"** means 56 500 000 (fifty six million five hundred thousand) 'A' participating deferred Shares in the share capital of the Company with a par value of R0,01 (one cent) each, each of which shall carry the rights specified in clause 41.2.1;

41.1.2. **"B Deferred Shares"** means 56 500 000 (fifty six million five hundred thousand) 'B' convertible participating Deferred Shares;

41.1.3. **"Accrued Value"** means the value of a Deferred Share, as determined in accordance with clause 41.2.1.4;

41.1.4. **"Associate"** means a business or entity in which the Sanlam Group has a significant shareholding or interest and over which it exercises a material influence in directing operational and management activities and in respect of

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<sup>159</sup> Section 78(8)

<sup>160</sup> Article 38 M & A

which the operational results, new business flows, revenues and embedded or other value, are accounted for to the extent applicable, in the Sanlam Group consolidated financial statements;

- 41.1.5. **"Auditors"** means the auditors of the Company from time to time or where relevant, the auditors of any of the Subsidiaries from time to time;
- 41.1.6. **"Chief Actuary"** means the statutory actuary of Sanlam Life appointed in terms of the Long-term Insurance Act, No. 52 of 1998, as amended;
- 41.1.7. **"Conversion Date"** means the day on which the 'A' Deferred Shares or the 'B' Deferred Shares (as the case may be) are converted in accordance with clause 41.2.5;
- 41.1.8. **"Conversion Reference Date"** means, in respect of the 'A' Deferred Shares and the 'B' Deferred Shares respectively, the day on which the Accrued Value as calculated in accordance with clause 41.2.1.4 reaches R7,65 (seven rand and sixty five cents) or in the case of clause 41.2.1.5, as soon as reasonably possible after 31 December 2013;
- 41.1.9. **"Conversion Notice"** means the notice whereby the holder of the Deferred Shares exercises a Conversion Right in accordance with clause 41.2.5.1;
- 41.1.10. **"Conversion Right"** means, in the instance of clause 41.2.1.3, the right to convert such number of Deferred Shares into Ordinary Shares as determined by that clause or in the instance of clause 41.2.5.1, the right to convert such number of Deferred Shares into Ordinary Shares and into Redeemable Preference Shares as determined by that clause;
- 41.1.11. **"Deferred Shares"** means the 'A' Deferred Shares and the 'B' Deferred Shares;
- 41.1.12. **"Final Accrued Value"** means the accrued value of a Deferred Share, as determined as soon as reasonably possible after 31 December 2013 in accordance with clause 41.2.1.4;
- 41.1.13. **"Financial Year"** means the financial year of the Company, commencing on 1 January every year;
- 41.1.14. **"First Financial Year"** means the Financial Year of the Company which shall commence on 1 January 2004 and end on 31 December 2004;
- 41.1.15. **"NBEV"** means the value of new life insurance business originated in South Africa by Sanlam Life from time to time for any particular Financial Year as

determined by the Chief Actuary and published in the annual financial statements of the Company, being the discounted value at the point of sale, using a risk-adjusted discount rate, of the projected stream of after-tax financial soundness valuation profits for new business issued during the particular Financial Year, reduced by the cost of capital at risk over the life of the new business;

- 41.1.16. **"NBEV Component"** means that component of the Value-Add that is calculated in accordance with clause 41.2.1.7.3 with reference to the NBEV;
- 41.1.17. **"Ordinary Shares"** means ordinary shares in the share capital of the Company;
- 41.1.18. **"Redeemable Preference Shares"** means the Redeemable Preference Shares with a par value of R0.01 (one cent) each in the share capital of the Company which shall carry the rights as set out in clause 41.2.3;
- 41.1.19. **"Redemption Number"** means the number of the Deferred Shares to be converted into Redeemable Preference Shares and redeemed as provided for and determined by clause 41.2.1.5;
- 41.1.20. **"SCI"** means Sanlam Collective Investments (Proprietary) Limited (Registration Number 1967/002865/06), a company duly registered and incorporated with limited liability in accordance with the Company laws of the Republic of South Africa and every member of the Sanlam Group who conducts substantially similar business;
- 41.1.21. **"SCI Component"** means that component of the Value-Add calculated in accordance with clause 41.2.1.7.5 with reference to the SCI Funds;
- 41.1.22. **"SCI Funds"** means all South African originated funds managed by SCI from time to time but specifically excluding institutional funds, any funds managed by SCI under any third party administration agreements and any funds managed by SCI under any white-label agreements, unless specifically stated to the contrary by SCI;
- 41.1.23. **"SIM"** means Sanlam Investment Management Proprietary Limited (Registration Number 1967/011973/07), a company duly registered and incorporated with limited liability in accordance with the Company laws of the Republic of South Africa and every member of the Sanlam Group who conducts substantially similar business;
- 41.1.24. **"SIM Component"** means that component of the Value-Add that is calculated in



accordance with clause 41.2.1.7.4 with reference to the Segregated Funds;

- 41.1.25. **"Sanlam Group"** means Sanlam and its Subsidiaries and Associates;
- 41.1.26. **"Sanlam Life"** means Sanlam Life Insurance Limited (Registration Number 1998/021121/06), a public company duly registered and incorporated with limited liability in accordance with the Company laws of the Republic of South Africa and every member of the Sanlam Group who conducts substantially similar life insurance business;
- 41.1.27. **"Segregated Funds"** means all South African originated funds managed by SIM from time to time on behalf of third party institutions on an agency basis, as identified by SIM from time to time, and which are not linked to any policy issued by any member of the Sanlam Group and which do not appear on the Company's consolidated balance sheet (and excluding, for the purposes of clarity, any pooled funds or segregated funds on the Company's consolidated balance sheet and funds received from SCI, Innofin Proprietary Limited and Sanlam Private Investments Proprietary Limited);
- 41.1.28. **"Subsidiary"** means a subsidiary as defined in the Companies Act and **"Subsidiaries"** has a corresponding meaning;
- 41.1.29. **"Value-Add"** or **"VA"** means the aggregate in any Financial Year of the NBEV Component, the SIM Component, and the SCI Component as calculated in accordance with clause 41.2.1.7; and
- 41.1.30. **"Valuer"** means a reputable and independent international investment bank nominated by the Company.

#### 41.2. **Rights Attached To The Deferred Shares And The Redeemable Preference Shares**

The following rights and conditions shall attach to the Deferred Shares and the Redeemable Preference Shares in the authorised and issued share capital of the Company:

##### 41.2.1. Rights Attached to the 'A' Deferred Shares

The 'A' Deferred Shares shall have the following rights:

- 41.2.1.1. Save for the rights as set out in this clause 41.2.1 and subject to clause 41.2.1.5.4, the holders of the 'A' Deferred Shares shall have the same rights as the holders of the Ordinary Shares, including but not limited to the right to receive notice of and to attend each general meeting of the Company and to vote at any such meeting

on the same basis as the holders of the Ordinary Shares, each 'A' Deferred Share conferring the right to exercise 1 (one) vote.

- 41.2.1.2. Each 'A' Deferred Share shall have the right to receive out of the distributable profits which the Company determines to distribute from time to time, during each Financial Year of the Company, commencing with the First Financial Year, amounts determined in accordance with the following formula –

$$DDA = OD \times \frac{R0.01 + (CVA \div R56\,500\,000)}{R7.65}$$

where:

DDA = the amount of the dividend per 'A' Deferred Share, expressed in rand, to be determined for the Financial Year in question;

OD = the sum of the amounts of all the dividends per Ordinary Share expressed in rand declared by the Company on the Ordinary Shares for the Financial Year in question; and

CVA = the cumulative Value-Add, inclusive of the Value-Add, if any, for the previous Financial Year,

provided that no dividend will be payable in the event that CVA is zero. The dividend in respect of the Deferred Shares will be paid simultaneously with the payment of any dividend on the Ordinary Shares in the share capital of the Company, for the Financial Year in question.

- 41.2.1.3. If and when the Accrued Value of the 'A' Deferred Shares after their allotment and issue, is equal to R7.65 (seven rand and sixty five cents) per share, the holder of the 'A' Deferred Shares may exercise a Conversion Right by serving a Conversion Notice on the Company and, following the service of a Conversion Notice, all the 'A' Deferred Shares shall on the Conversion Date and in accordance with the MOI convert to the same number of Ordinary Shares of the Company and shall in all respects rank *pari passu* with the Ordinary Shares including but not limited to the right to receive dividends out of the divisible profits which the Company determines to distribute from time to time.

- 41.2.1.4. For the purposes of clause 41.2.1.3, the Accrued Value of an 'A' Deferred Share for any Financial Year shall be determined in accordance with the following formula:

$$AV = R0.01 + \frac{CVA}{56\,500\,000}$$

where:

AV = the accrued value to be determined;

CVA = the cumulative Value-Add, inclusive of the Value-Add, if any, for the previous Financial Year.

- 41.2.1.5. If by the Conversion Reference Date the Final Accrued Value is less than R7.65 (seven rand and sixty five cents) per share, then the following provisions shall apply -

41.2.1.5.1. a number of the 'A' Deferred Shares to be determined in accordance with clause 41.2.1.5.2, shall be converted on the Conversion Date, into the same number of Redeemable Preference Shares which shall have the rights as set out in clause 41.2.3;

41.2.1.5.2. the number of 'A' Deferred Shares to be converted to Redeemable Preference Shares will be determined according to the formula:

$$RD = \left( \frac{R7.65 - FAV}{R7.65} \right) \times 56\,500\,00$$

where:

RD = The Redemption Number to be determined (rounded up if it includes a fraction of one half or more and rounded down if it includes a fraction of less than one half); and

FAV = The Final Accrued Value of an 'A' Deferred Share.

41.2.1.5.3. All of the 'A' Deferred Shares which are not so converted into Redeemable Preference Shares shall be converted on the Conversion Date to the

same number of Ordinary Shares ranking *pari passu* with the other Ordinary Shares.

41.2.1.5.4. Upon the winding-up of the Company, the 'A' Deferred Shares shall be deemed to have been converted immediately prior to the winding-up into Ordinary Shares and Redeemable Preference Shares in accordance with this clause 41.2.1.5.

41.2.1.6. All calculations of Value-Add and Accrued Value in this clause 41.2.1 will be based on the Sanlam Group audited results for each completed Financial Year and will be performed annually as soon as practically possible after the completion of the Sanlam Group annual audit.

41.2.1.7. Calculation of the Value-Add

The Value-Add to be used in the calculations provided for in clauses 41.2.1.2 and 41.2.1.4 shall be determined on the following basis:

41.2.1.7.1. The Value-Add shall –

41.2.1.7.1.1. be the aggregate of the components set out in clauses 41.2.1.7.3 and 41.2.1.7.4 and 41.2.1.7.5. Each component shall however be calculated on its own and shall not impact or limit any of the other components. There shall be no limits on any single component;

41.2.1.7.1.2. not take account of any negative NBEV Component, SIM Component or SCI Component during a particular Financial Year. Any such negative NBEV Component, SIM Component or SCI Component (as the case may be) shall be carried forward and be set-off against future positive

NBEV Components, SIM Components or SCI Components (as the case may be);

- 41.2.1.7.1.3. be limited to Sanlam's effective interest in the entity or business concerned;
- 41.2.1.7.1.4. be limited to business originated in South Africa;
- 41.2.1.7.1.5. exclude, in respect of all 3 (three) components, value derived from new business as a result of the reinvestment with the Sanlam Group of the proceeds from the surrender of individual material Sanlam Life policies relating to group business, unless otherwise agreed to by the Company;
- 41.2.1.7.1.6. exclude, in respect of all 3 (three) components, Value-Add directly attributable to corporate action by the Company in the Financial Year in which the corporate action in question is implemented, including, without limitation, any acquisition or disposal by it or any joint venture or partnership entered into by it, unless otherwise agreed to by the Company;
- 41.2.1.7.1.7. be calculated with effect from 1 January 2004; and
- 41.2.1.7.1.8. be certified by the Auditors who shall act as experts and not arbitrators and whose decision shall, save in the instance of manifest error, be final.

41.2.1.7.2. Any calculation required in terms of clause 41.2.1.7.1.6 shall be determined by the auditors, acting as experts and not as arbitrators and whose decisions shall be final and binding on the Company and all its Shareholders.

41.2.1.7.3. The NBEV Component in any Financial Year shall be calculated by the Chief Actuary as follows:

$$EVC_1 = [0.25 \times (NBEV_1 - NBEV_0)] + [(0.75 \times EVC_0)]$$

where:

EVC1 = The current year NBEV component to be calculated

EVC0 = The NBEV component in the preceding year (which for the sake of clarity shall in the first Financial Year, be zero)

NBEV1 = NBEV in the current year

NBEV0 = NBEV in the preceding year.

41.2.1.7.4. The SIM Component in any Financial Year shall be calculated by SIM in respect of Segregated Funds as follows:

SIM Component =

$$\left[ \sum_{i=1}^n M \times (F - C) \right] \times (1 - t) \times 10 \times 50\%$$

where:

n = The number of mandates for the management of third party funds gained or lost by SIM during any particular Financial Year, the names and quantum to be determined by SIM from time to time;

F = the annual base fee, net of any directly related asset management fees payable to any asset manager not a member of the Sanlam Group,

expressed as a percentage of the market value of the funds managed, as negotiated between SIM and each client for the management of funds under each mandate gained or lost during any particular Financial Year and assumed for the purposes of this calculation to be equal to the net fee for achieving performance equal to the relevant benchmark, provided that where the net fee is substantially structured around outperformance of a benchmark the net fee will be adjusted to reflect a reasonable estimate of the expected outperformance as determined by SIM;

C = the annual cost, expressed as a percentage of the market value of the funds managed under each mandate gained or lost during any particular Financial Year, which for the purpose of the SIM Component is agreed to be 0,1% (zero comma one per cent);

M = the market value of the third party funds, managed under each mandate, gained (positive M) or lost (negative M) during any particular Financial Year; and

t = the prevailing tax rate for companies during any particular Financial Year.

41.2.1.7.5. The SCI Component in any Financial Year shall be calculated by SCI as follows:

SCI Component =

$$[NIF \times (1 - c) \times (1 - t) \times 1 \times 15\%] \\ + [NAF \times (1 - c) \times (1 - t) \times 3 \times 15\%]$$

where:

NIF = the Initial Fees actually received and accounted for in respect of SCI Funds during any particular Financial Year, and net of any commissions paid and internal marketing cost

charged during that Financial Year;

NAF = the Annual Fees actually received and accounted for in respect of SCI Funds during any particular Financial Year, net of asset management and trustee fees, and multiplied by the ratio of the average market value of the net inflows received by SCI to the average market value of the total funds under management by SCI in any particular Financial Year;

c = the audited cost to income ratio of SCI for any particular Financial Year, calculated excluding the effect of trading profits, investment income and any other income or expense not of an operational nature;

t = the prevailing tax rate for companies during any particular Financial Year.

#### 41.2.2. Rights Attached to the 'B' Deferred Shares

The 'B' Deferred Shares shall carry all of the same rights and have the same terms and be subject to all of the same conditions, mutatis mutandis, as those applicable to the 'A' Deferred Shares, as set out in clause 41.2.1, subject to the following variations:

41.2.2.1. Any excess of the Accrued Value over R7.65 (seven rand sixty five cents) in respect of the 'A' Deferred Shares which have accrued the entitlement to be converted to Ordinary Shares will be carried forward and accounted for in the Value-Add for the 'B' Deferred Shares;

41.2.2.2. The 'B' Deferred Shares shall not be issued unless and until all of the 'A' Deferred Shares shall have accrued the entitlement to be converted to Ordinary Shares.

#### 41.2.3. **Rights Attached to the Redeemable Preference Shares**

The Redeemable Preference Shares shall have the following rights:

41.2.3.1. None of the Redeemable Preference Shares shall confer the right to receive any dividend out of the divisible profits which the Company



determines to distribute from time to time.

- 41.2.3.2. Each Redeemable Preference Share shall confer the right on the winding-up of the Company or on any return of capital, to the repayment of an amount equal to its par value of R0.01 (one cent) per Redeemable Preference Share and such repayment shall rank *pari passu* with any payment to the holders of Ordinary Shares.
- 41.2.3.3. Save as set out in clause 41.2.3.2, the Redeemable Preference Shares shall not be entitled to any further participation in the Company's profits or in any distribution of the assets or capital of the Company.
- 41.2.3.4. The Company shall be obliged to redeem all of the Redeemable Preference Shares at their par value of R0.01 (one cent) per Redeemable Preference Share within 30 (thirty) days of the Conversion Date. At the time and place so fixed, the registered Holders of the Redeemable Preference Shares shall be bound to surrender to the Company the certificates relating thereto in order that the same may be cancelled. Upon such surrender the Company shall pay to the registered holder, or his duly authorised agent, the amount payable to him in respect of such redemption.
- 41.2.3.5. The Holders of the Redeemable Preference Shares shall be entitled to receive notice of and to attend each general meeting of the Company, but shall not be entitled to vote at any such meeting, unless a resolution for the reduction of the Company's capital, or the cancellation of the Redeemable Preference Shares, or a resolution which directly or indirectly and adversely affects any of the rights or conditions attached to the Redeemable Preference Shares is to be proposed at that meeting, in which event the Holders of the Redeemable Preference Shares shall be entitled to vote on that resolution only.
- 41.2.3.6. If the Holders of the Redeemable Preference Shares are entitled to vote in terms of clause 41.2.3.5, then on each resolution on which they are entitled to vote they shall, if Present, have 1 (one) vote for each Redeemable Preference Share on each resolution on which they are entitled to vote.
- 41.2.3.7. The rights and conditions attaching to the Redeemable Preference

Shares shall not be deemed to be varied or abrogated by the creation or allotment of any further Shares unless those new Shares rank, as regards participation in the assets of the Company, in some or all respects in priority to the Redeemable Preference Shares.

41.2.3.8. The rights or conditions attaching to the Redeemable Preference Shares may be varied or cancelled by means of a Special Resolution passed by the Company and –

41.2.3.8.1. with the consent in writing of the holders of  $\frac{3}{4}$  (three quarters) of the Redeemable Preference Shares; or

41.2.3.8.2. with the sanction of a resolution passed in the same manner, *mutatis mutandis*, as a Special Resolution of the Company, at a separate general meeting of the Holders of the Redeemable Preference Shares.

41.2.3.9. The Company shall not be liable to a Holder of any Redeemable Preference Shares for interest on any unclaimed redemption monies.

41.2.4. **Conversion of the Deferred Shares**

41.2.4.1. The conversions provided for in clauses 41.2.1.3 and 41.2.1.5 shall take place as follows –

41.2.4.1.1. the Conversion Right shall be exercised by written notice to the Company in a form and manner to be determined by the Board specifying the number of shares to be converted. Such notice shall reach the transfer secretaries or the Company secretary by not later than 21 (twenty one) days after the Conversion Reference Date and shall be accompanied by the certificate(s) of the Deferred Shares to be converted and by such other reasonable evidence, if any, as the Board may require to prove the title of the person exercising the right to convert. A Conversion Notice shall not be withdrawn without the consent in writing of the Board;

41.2.4.1.2. the Holders of the Deferred Shares shall be given

not less than 6 (six) weeks' notice in writing prior to the last date on which Conversion Notice may be lodged in respect of the Conversion Reference Date advising them of the Conversion Right;

- 41.2.4.1.3. a Holder of Deferred Shares shall not be obliged to serve a Conversion Notice immediately after the Conversion Reference Date but any Conversion Notice shall be served before the last day of the Financial Year ending on 31 December 2013, in the absence of which the conversion will take place irrespective of whether a Conversion Notice has been served;
- 41.2.4.1.4. on the Conversion Date all Deferred Shares to be converted in terms of either clauses 41.2.1.3 and 41.2.1.5, as the case may be, shall become automatically converted on the basis as set out in those clauses;
- 41.2.4.1.5. forthwith upon any such conversion the Company shall issue to the Holder free of charge a new certificate for the Shares so converted to Ordinary Shares or Redeemable Preference Shares, as the case may be; and
- 41.2.4.1.6. the Ordinary Shares arising pursuant to a conversion shall, from the date of conversion thereof, rank *pari passu* in all respects with the then existing Ordinary Shares of the Company, and shall entitle the Holder thereof to any dividends declared thereafter (and the Holders thereof shall have no rights to dividends pursuant to clause 41.2.1.2 in respect of any period preceding such a conversion).

#### 41.2.5. **Change of Rights Attached to the Deferred Shares**

41.2.5.1. If, prior to the Conversion Date –

- 41.2.5.1.1. the Company consolidates or subdivides any of its Ordinary Shares into further (par value) shares; or

41.2.5.1.2. the Company changes the date of either the beginning or end of its Financial Year,

the Company and the Holders of the Deferred Shares shall agree the terms upon which the terms attached to the Deferred Shares shall be adjusted so as to be fair and consistent with their initial terms. Should the Company and the Holders of the Deferred Shares not be able to agree such alternative terms, the Auditors shall determine the adjustment to be made to the terms of the Deferred Shares in accordance with the provisions of clause 41.2.5.2.

41.2.5.2. Any adjustment required in terms of clause 41.2.5.1 and determined by the Auditors, acting as experts and not as arbitrators and their determination shall be final and binding on the Company and all its shareholders.

41.2.5.3. Any adjustment required in terms of clause 41.2.5.1 shall be certified by the Auditors to the ordinary Shareholders of the Company as being consistent with the initial terms of the Deferred Shares.

41.2.5.4. If, prior to the Conversion Date, a material change occurs in the business of the Company or the long-term insurance or asset management industries in South Africa, which alters the effect of the provisions of clause 41.2.1.7 in a way that adversely affects the interests of the Holders of these Shares to a material extent and in the absence of agreement between the Company and the Holders of the Deferred Shares to any adjustments that need to be made to the terms of the Deferred Shares, then the provisions of clause 41.2.1.7 will be reviewed by the Auditors and adjusted to such extent as is necessary to avoid (or if avoidance is not possible to ameliorate) that adverse effect. If for any reason the Auditors decline or are unable to perform that task it shall be performed by the Valuer, in either case acting as experts and not as arbitrators, and whose determination shall be final and binding on the Company and all its shareholders.

42. **ALLOTMENT AND ISSUE OF DEFERRED SHARES<sup>161</sup>**

- 42.1. In this clause 42, unless inconsistent with or otherwise indicated by the context, words and expressions defined in clause 41.1 shall bear the same meanings in this clause 42.
- 42.2. All Deferred Shares issued (including Deferred Shares issued after an increase in the share capital of the Company) as contemplated in clause 41 will be subject to the provisions of the Listings Requirements.
- 42.3. Each further issue of Deferred Shares shall comply with the provisions of this MOI.
- 42.4. Notwithstanding anything to the contrary contained in the MOI, the votes of each Holder of the Deferred Shares will rank equally with each other and equally with the votes of the holder of an equivalent number of Ordinary Shares.

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<sup>161</sup> Article 39 M & A