

**COMPANIES ACT, 2008**

**MEMORANDUM OF INCORPORATION  
OF A PROFIT COMPANY**

**(PUBLIC COMPANY)**

**NAME OF COMPANY:**

**SAPPI LIMITED**

**("Company")**

**REGISTRATION NUMBER:**

**1936/008963/06**

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## 1. INTRODUCTION

1.1 The Company is a public company in terms of the Act and, accordingly:

1.1.1 the Company is not prohibited from offering its securities to the public; and

1.1.2 the transfer of the Company's securities is unrestricted, save as set out in this Memorandum. **[Section 8(2)(d)] [Paragraph 10.2(a) of Schedule 10 to the Listings Requirements]**

1.2 Subject to 8.1 and 8.2 of this Memorandum, this Memorandum does not contain any restrictive conditions contemplated in section 15(2)(b) of the Act and does not contain any requirement for the amendment of any particular provision of this Memorandum, in addition to the requirements of the Act. **[Sections 15(2)(b) and 15(2)(c)]**

## 2. INTERPRETATION

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

2.1 words importing any one gender shall include the other two genders;

2.2 the singular shall include the plural and vice versa;

2.3 any word which is defined in the Act and is not defined in 2.6, shall bear that statutory meaning in this Memorandum;

2.4 the headings have been inserted for convenience only and shall not be used for or assist or affect their interpretation;

2.5 any references to sections are references to sections of the Act;

2.6 each of the following words and expressions shall have the meaning stated opposite it and cognate expressions shall have a corresponding meaning,

namely:

- |       |                         |  |
|-------|-------------------------|--|
| 2.6.1 | “the Act”               | the Companies Act, 2008 together with the Companies Regulations, 2011, as amended or substituted from time to time;  |
| 2.6.2 | “JSE”                   | the JSE Limited, registration number 2005/022939/06, or any other successor body licensed as an exchange under the Securities Services Act, 2004, as amended or substituted from time to time; |
| 2.6.3 | “Listings Requirements” | the Listings Requirements of the JSE, as amended or substituted from time to time;   |
| 2.6.4 | “this Memorandum”       | this Memorandum of Incorporation and its Schedules, which form part of it; and   |
| 2.6.5 | “the Republic”          | the Republic of South Africa.  |

### 3. GENERAL

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

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

#### 3.2 Powers of the Company

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

#### 3.3 Memorandum of Incorporation and rules

- 3.3.1 The requirements set out in section 16(1)(c)(i) of the Act regarding

proposals for amendments to this Memorandum apply without amendment and any amendment of this Memorandum, including an amendment to the Memorandum for the change of name of the Company, must be approved by special resolution of the shareholders of the Company who are entitled to exercise voting rights on the resolution unless such amendment is ordered by a court in terms of section 16(1)(a) and 16(4) of the Act. **[Section 16(2)] [Paragraphs 10.5(d) and 10.5(d)(vii) of Schedule 10 to the Listings Requirements]**

3.3.2 The board shall not have the power to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or this Memorandum, in accordance with the provisions of sections 15(3) to 15(5) of the Act. **[Sections 15(3), 15(4), 15(5) and 15(5A)] [Paragraph 10.4 of Schedule 10 to the Listings Requirements]**

3.3.3 If the board, or any individual authorised by the board, alters this Memorandum in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, it must publish a notice of such alteration by publishing the alterations on the Company's website, and must file a notice of alteration in the manner prescribed by the Act. **[Section 17(1)] [Paragraph 10.4 of Schedule 10 to the Listings Requirements]**

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

The authority of the board to authorise the Company to provide direct or indirect financial assistance to any person contemplated in section 45 of the Act applies without limitation, restriction or qualification. **[Section 45(2)]**

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

The solvency and liquidity test provided in section 4 of the Act applies without amendment. **[Section 4(2)(c)]**

## 4. SECURITIES OF THE COMPANY

### 4.1 *Pari Passu*

All the securities in each class shall rank *pari passu* in all respects. **[Section 37(1)] [Paragraph 10.5(a) of Schedule 10 to the Listings Requirements]**

### 4.2 Authorisation for shares

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

4.2.1.1 unissued shares to shareholders of a particular class of shares, pro rata to the shareholders existing shareholding, unless any such shares were issued for an acquisition of assets; **[Paragraph 10.1 of Schedule 10 to the Listings Requirements]**

4.2.1.2 unissued shares or grant options, to subscribe for cash, other than as envisaged in 4.2.1.1 above, as the directors in their discretion think fit, if approved by the shareholders at a shareholders meeting, subject to the Listings Requirements; **[Paragraphs 10.1 and 10.9(a) of Schedule 10 to the Listings Requirements]** and

4.2.1.3 shares that are fully paid up. **[Paragraph 10.2(a) of Schedule 10 to the Listings Requirements]**

4.2.2 For so long as is required by the Listings Requirements, any amendment to this Memorandum to:

4.2.2.1 increase or decrease the number of authorised shares of any class of shares;

4.2.2.2 reclassify any shares that have been authorised but not issued;

- 4.2.2.3 classify any unclassified shares that have been authorised but not issued;
- 4.2.2.4 determine the preferences, rights, limitations or other terms of any class of authorised shares or amend any preferences, rights, limitations or other terms so determined; **[Sections 36(2)(b) and 36(3)]**
- 4.2.2.5 create any class of shares **[Paragraph 10.5(d)(i) of Schedule 10 to the Listings Requirements];**
- 4.2.2.6 convert one class of shares into one or more other classes; **[Paragraph 10.5(d)(iii) of Schedule 10 to the Listings Requirements];**
- 4.2.2.7 consolidate or sub-divide securities, **[Paragraphs 10.5(d)(v) and (vi) of Schedule 10 to the Listings Requirements]**

must be approved by special resolution of ordinary shareholders, save where such an amendment is ordered by a court in terms of sections 16(1)(a) and 16(4), subject to the requirements of the Act. **[Paragraphs 10.5(d) and 10.9(c) of Schedule 10 to the Listings Requirements] [Sections 36(2)(b) and 36(3)]**

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

The authority of the board to authorise the Company to provide financial assistance to any person for the purpose of, or in connection with, the subscription of any option, or any securities, issued or to be issued by the Company or a related or inter-related company, or for the purchase of any securities of the Company or any related or inter-related company, in accordance with the Act applies without limitation, restriction or qualification. **[Section 44(2)]**

#### 4.4 **Capitalisation shares**

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

4.4.1 approve the issue of any authorised shares of the Company as capitalisation shares, on a pro rata basis to the shareholders of one or more classes of shares;

4.4.2 approve the issue of shares of one class as capitalisation shares in respect of shares of another class; or

4.4.3 permit shareholders to elect to receive a cash payment in lieu of a capitalisation share or a scrip dividend (as defined in the Listings Requirements), at a value determined by the board.**[Sections 47(1) and (2)] [Paragraphs 10.6 and 10.7 of Schedule 10 to the Listings Requirements]**

#### 4.5 **Company or subsidiary acquiring Company's shares and distributions**

Any acquisition by the Company or a subsidiary company of the Company's shares and any distribution to shareholders will be subject to the provisions of the Act and the Listings Requirements. For so long as required by the Listings Requirements no repayment of capital to shareholders shall be made on the basis that it may be called up again and dividends must be payable to shareholders registered as at the date subsequent to the date of declaration of the dividend. **[Paragraphs 10.8, 10.9(b), 10.17(a) and (b) of Schedule 10 to the Listings Requirements]**

#### 4.6 **Debt instruments**

The authority of the board to authorise the Company to issue secured or unsecured debt instruments applies without limitation, restriction or qualification, provided that the board may not grant special privileges such as attending and voting at shareholders meetings of the Company or the appointment of directors in respect of such debt instruments.**[Sections 43(2)(a) and 43(3)] [Paragraph 10.10 of Schedule 10 to the Listings**



## **Requirements]**

### **4.7 Registration of beneficial interests**

The registration of the Company's issued securities in the name of, one person for the beneficial interest of another is allowed without limitation or restriction. **[Section 56(1)]**

### **4.8 Commission**

The Company may pay commission to any person in consideration of such person subscribing, or agreeing to subscribe, for any shares of the Company or of such person procuring, or agreeing to procure, subscriptions for shares, provided that such commission shall be subject to any limitations in the Act or the Listings Requirements. **[Paragraph 10.14 of Schedule 10 to the Listings Requirements]**

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

All authorities to sign transfer deeds granted by holders of shares for the purpose of transferring shares 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. **[Paragraph 10.2(b) of Schedule 10 of the Listings Requirements]**

### **4.10 Shares not subject to lien**

Shares shall not be subject to any lien in favour of the Company and shall be freely transferable. **[Paragraph 10.12 of Schedule 10 to the Listings**

## **Requirements]**

### **4.11 Securities registered in the name of a deceased or insolvent holder**

No securities registered in the name of a deceased or insolvent holder shall be forfeited if the executor fails to register them in his own name or in the name of the heir(s) or legatees when called upon by the directors to do so.

**[Paragraph 10.13 of Schedule 10 to the Listings Requirements]**

### **4.12 Limitation of voting rights**

The holders of any securities other than ordinary shares and any special shares created for the purposes of black economic empowerment (“special shares”) shall not be entitled to vote on any resolution taken by the Company save as expressly provided for in this Memorandum. For so long as this is required by the Listings Requirements, in instances where shareholders other than ordinary shareholders and holders of special shares are allowed to vote at shareholders meetings or annual general meetings, their votes may not carry any special rights or privileges and they shall be entitled to one vote for each share that they hold, provided their total voting rights at a shareholders meeting or annual general meeting may not exceed 24.99% (twenty four point ninety nine percent) of the total voting rights of all shareholders at such meeting. It is recorded that the existing rights of the holders of A ordinary shares in the Company are preserved. **[Paragraphs 10.5(c) and 10.5(h) of Schedule 10 to the Listings Requirements]**

## **5. SHAREHOLDER RIGHTS AND PROXY FORMS**

### **5.1 Information rights of persons holding a beneficial interest in shares**

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

### **5.2 Representation by concurrent proxies**

5.2.1 The right of a shareholder to appoint two or more persons

concurrently as proxies (“concurrent proxies”) applies without limitation or restriction; provided that the instrument appointing the concurrent proxies clearly states the order in which the concurrent proxies votes are to take precedence in the event that both or all of the concurrent proxies are present, and vote, at the relevant meeting.

5.2.2 The right of a shareholder, to appoint more than one proxy to exercise voting rights attached to different shares held by that shareholder is not limited or restricted. **[Section 58(3)(a)]**

5.3 **Authority of proxy to delegate**

A proxy is prohibited from delegating that proxy’s authority to act on behalf of the shareholder appointing him to another person. **[Section 58(3)(b)]**

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

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

5.5 **Proxy without direction**

The right of a proxy to exercise, or abstain from exercising, any voting right of the shareholder appointing him without direction, except to the extent that the instrument of proxy provides otherwise, applies without restriction or limitation. **[Section 58(7)]**

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

A record date for any action or event shall be determined in accordance with the Act and the Listings Requirements. **[Section 59(1)] [Paragraph 10.15 of**

## **Schedule 10 to the Listings Requirements]**

### **6. SHAREHOLDERS MEETINGS**

#### **6.1 Convening of shareholders meetings**

Only the board is specified in this Memorandum to call a shareholders meeting. **[Sections 61(1) and 61(3)]**

#### **6.2 Shareholders right to requisition a meeting**

The percentage of voting rights required for the requisition by shareholders of a shareholders meeting specified in section 61(3) of the Act shall apply. **[Section 61(3)]**

#### **6.3 Location of shareholders meetings**

The authority of the board to determine the location of any shareholders meeting, which may be held in the Republic, is not limited or restricted. **[Section 61(9)]**

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

6.4.1 The period of notice of shareholders meetings prescribed by the Act, being 15 business days, applies. **[Sections 62(1) and 61(2)]**  
**[Paragraphs 10(11)(a) and (b) of Schedule 10 to the Listings Requirements.]**

6.4.2 Notice of shareholders meetings shall be delivered to each shareholder entitled to vote at such meeting and who has elected to receive such notice and for so long as required by the Listings Requirements a copy of the annual financial statements must be distributed to shareholders together with the notice. **[Paragraphs 10.11(e) and 10.19 of Schedule 10 to the Listings Requirements]**

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

Unless authorised by the board for a particular meeting, no provision will be made for any shareholders meeting to be conducted by electronic communication, or provision made for one or more shareholders, or proxies for shareholders, to participate in any shareholders meeting by electronic communication. **[Section 63(2)]**

## 6.6 **Quorum for shareholders meetings**

6.6.1 The percentage of voting rights specified in terms of section 64(1):

6.6.1.1 being at least 25% of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting apply for a shareholders meeting to begin; and **[Paragraph 10.11(h) of Schedule 10 to the Listings Requirements]**

6.6.1.2 being at least 25% of all the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda apply for the consideration of any matter to be decided at any shareholders meeting. **[Sections 64(1) and 64(2)] [Paragraph 10.11(h) of Schedule 10 to the Listings Requirements]**

6.6.2 For so long as is required by the Act and/or the Listings Requirements, a meeting may not begin or a matter begin to be debated unless at least 3 (three) shareholders are present at the meeting. **[Section 64(3)] [Paragraph 10.11(h) of Schedule 10 to the Listings Requirements]**

6.6.3 This Memorandum specifies 30 minutes (or such longer or shorter period as the chairman of the shareholders meeting may determine), in substitution for the time period specified in sections 64(4) and 64(5), for a quorum to be established before a shareholders meeting may be adjourned. **[Sections 64(4), 64(5) and 64(6)]**

6.6.4 Unless the chairman of the shareholders meeting determines otherwise, the period provided for in section 64(4) for the adjournment of a shareholders meeting shall apply. **[Sections 64(4) and 64(6)]**

## 6.7 **Adjournment of shareholders meetings**

The maximum periods for the adjournment of shareholders meetings specified in sections 64(12) of the Act apply.

## 6.8 **Shareholders resolutions**

6.8.1 There shall be no higher percentage of voting rights required to approve an ordinary resolution than the percentage voting rights specified in the Act, provided that resolutions required to be approved by an increased majority in terms of the Listings Requirements must be approved by such increased majority. **[Sections 65(7) and 65(8)]**

6.8.2 There shall be no different percentage of voting rights required to approve a special resolution than the percentage voting rights of 75% specified in the Act. **[Section 65(9) and 65(10)] [Paragraph 10(11)(a) of Schedule 10 to the Listings Requirements]**

6.8.3 A special resolution is only required for matters contemplated in section 65(11) of the Act. **[Section 65(12)]**

## 6.9 **Shareholders meetings in terms of the Listings Requirements**

Shareholders meetings that are called for the purpose of passing any resolution required in terms of the Listings Requirements may not be voted on in writing as provided for in section 60 of the Act. **[Paragraph 10.11(c) of Schedule 10 to the Listings Requirements]**

## 6.10 **Notice of shareholders meetings to the JSE**

6.10.1 A copy of all notices of shareholders meetings must be sent to the

JSE at the same time as notices are sent to shareholders if required in terms of the Listings Requirements.

6.10.2 All notices of shareholders meetings must also be announced through the official news service of the JSE at the same time as notices are sent to shareholders, or as soon thereafter as is as practicable. **[Paragraph 10.11(f) of Schedule 10 to the Listings Requirements]**

#### 6.11 **Ratification of *ultra vires* acts**

Any resolution for the ratification of any action by the Company or the directors contemplated by section 20(2) of the Act shall be prohibited if such ratification is of an action which is contrary to the Listings Requirements, unless otherwise agreed with the JSE. **[Paragraph 10.3 of Schedule 10 to the Listings Requirements]**

### 7. **DIRECTORS AND OFFICERS**

#### 7.1 **Composition of the board of directors**

7.1.1 This Memorandum specifies 4 directors as the minimum number of directors of the Company, which number is higher than the minimum number of directors required in terms of section 66(2) of the Act, and 20 directors as the maximum number of directors of the Company. **[Sections 66(2) and (3)]**

7.1.2 Subject to 7.2 and the Listings Requirements, the shareholders shall elect the directors, and shall be entitled to elect one or more alternate directors, in accordance with the provisions of section 68(1) of the Act. **[Sections 68(1)]**

7.1.3 This Memorandum does not provide for the appointment of any person as an *ex officio* director of the Company. **[Section 66(4)(a)(ii)]**

7.1.4 Subject to the requirements of the Act, the chairman of the board

shall be entitled, subject to the written approval of the majority of the directors, to appoint any person as a director in terms of section 66(4)(a)(i), provided that such appointment must be approved by the shareholders at the next shareholders meeting or annual general meeting. **[Section 66(4)(a)(i)] [Paragraphs 10.16(b) and 10.16(c) of Schedule 10 to the Listings Requirements]**

7.1.5 Subject to 7.2, this Memorandum does not stipulate any additional qualifications or eligibility requirements than those set out in the Act or the Listings Requirements for a person to become or remain a director or a prescribed officer of the Company; provided that, for as long as the Listings Requirements require it, the board, through its committee delegated responsibility to consider nominations, should recommend eligibility of directors. **[Section 69(6)] [Paragraph 10.16(g) of Schedule 10 to the Listings Requirements]**

7.1.6 Subject to the Act and this Memorandum, at every annual general meeting of the Company, one third of the directors for the time being or, if their number is not a multiple of three, then the number nearest to, but not less than one-third or if there are less than three, then all the directors shall retire from office. The directors so to retire at every annual general meeting shall be those who have been longest in office since their last election. As between directors of equal seniority, the directors so to retire shall, unless they otherwise agree among themselves, be selected by lot; provided that notwithstanding anything to the contrary in this Memorandum: **[Paragraph 10.16(g) of Schedule 10 to the Listings Requirements]**

7.1.6.1 if at the date of any annual general meeting any director shall have held office for a period of three years since his last election or appointment (computed from his last election, appointment or date upon which he was deemed re-elected), he shall retire at such meeting either as one of the directors to retire in terms of this 7.1.6, or in addition to the directors who retire in terms of this 7.1.6;

7.1.6.2 a director who intends to retire voluntarily at the annual



general meeting may be taken into account in determining the one third of the directors to retire at such meeting;

7.1.6.3 the identity of the directors to retire at such annual general meeting shall be determined as at the date of the notice convening such meeting; and

7.1.6.4 a director retiring at an annual general meeting shall retain office until the close or adjournment of such meeting. **[Section 68(1)] [Paragraph 10.16(g) of Schedule 10 of the Listings Requirements]**

7.1.7 Retiring directors shall be eligible for re-election to the office of director at any shareholders meeting only upon the recommendation of the board. **[Paragraph 10.16(g) of Schedule 10 of the Listings Requirements]**

7.1.8 Without derogating from the provisions of the Act, a director shall cease to be a director:

7.1.8.1 if the director gives notice to the Company of the director's resignation as a director with effect from the date of, or such later date as is provided for in, such notice;

7.1.8.2 if the director becomes insolvent, or assigns the director's estate for the benefit of the director's creditors or suspends payment of the director's liabilities or files a petition for the sequestration of the director's affairs, or compounds with the director's creditors; and

7.1.8.3 if the director is requested in writing by all the director's co-directors to resign.

## 7.2 **Vacancies**

7.2.1 The board may appoint any person who satisfies the requirements for election as a director to fill any vacancy and serve as a director

on a temporary basis until the vacancy is filled by election in accordance with section 68(1) of the Act. **[Section 68(3)]**

7.2.2 If the number of directors falls below the minimum provided for in this Memorandum, the remaining directors must as soon as possible and in any event not later than three months from the date that the number of directors falls below the minimum, fill the vacancies or call a shareholders meeting for the purpose of filling the vacancies. If required by the Listings Requirements:

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

7.2.2.2 after the expiry of the three month period the remaining directors shall be permitted to act for the purpose of filling vacancies or calling shareholders meetings for the purpose of filling the vacancies. **[Paragraph 10.16(d) of Schedule 10 of the Listings Requirements]**

7.2.3 As provided for in the Act any failure by the Company at any time to have the minimum number of directors required by the Act or this Memorandum, does not limit or negate the authority of the board, or invalidate anything done by the board or the Company. **[Paragraph 10.16(d) of Schedule 10 to the Listings Requirements]**

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

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

### 7.4 **Directors' meetings**

7.4.1 This Memorandum does not restrict the directors from acting otherwise than at a meeting by adopting the decision by written consent of the majority of the directors, given in person, or by

electronic communication, as contemplated in section 74(1) of the Act, and, for so long as it is required by the Listings Requirements, any resolution passed in terms of this 7.4.1 must be inserted in the minute book of the Company. **[Section 74(1)] [Paragraph 10.16(j) of Schedule 10 of the Listings Requirements]**

7.4.2 The percentage or number of directors upon whose request a meeting of the board must be called in terms of section 73(1) of the Act is not amended by this Memorandum. **[Section 73(1) and 73(2)]**

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

7.4.4 The authority of the board to determine the manner and form of giving notice of its meetings is not limited, restricted or qualified. **[Section 73(4)]**

7.4.5 The authority of the board to proceed with a board meeting in accordance with the requirements of section 73(5)(a) of the Act, despite a failure or defect in giving notice of the meeting applies without limitation, restriction or qualification. **[Section 73(5)(a)]**

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

7.4.7 In the case of an equality of votes at any meeting of the directors, the chairman shall have a second or casting vote, provided that, for so long as required by the Listings Requirements, where the quorum of directors is 2, the chairman shall not be permitted to have a casting vote if only 2 directors are present at meeting of the directors. **[Paragraph 10.16(i) of Schedule 10 of the Listings Requirements]**

## 7.5 **Chairman**

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

7.5.2 If at any time there is more than one deputy chairman, the right in the absence of the chairman to preside at a meeting of the directors or of the Company shall be determined as between the deputy chairmen present, if more than one, by seniority in length of appointment or otherwise as resolved by the directors. **[Paragraph 10.16(i) of Schedule 10 to the Listings Requirements]**

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

7.6.1 The ability of the Company to pay remuneration to its directors for their service as directors in accordance with section 66(9) of the Act applies without limitation, restriction or qualification. **[Section 66(8)]**

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

## 7.7 **Indemnification of directors, officers and employees**

7.7.1 For the purposes of this 7.7, 'director' shall have the meaning ascribed to that term in section 78(1) of the Act.

7.7.2 The ability of the Company to advance expenses to a director to

defend any legal proceedings arising from his service to the Company, or to indemnify a director against such expenses if the proceedings are abandoned or exculpate the director or arise in respect of any liability for which the Company may indemnify the director in terms of sections 78(5) and 78(6) of the Act applies without limitation, restriction or qualification. **[Section 78(4)]**

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

7.7.4 Subject to the provisions of the Act, every director and other officer or employee of the Company ("Indemnified Person") shall be indemnified and held harmless by the Company against, and it shall be the duty of the directors out of the funds of the Company to pay, all costs, losses and expenses, including reasonable travelling and subsistence expenses, which any such Indemnified Person may incur or become liable to pay by reason of any contract entered into, or any act or omission done or omitted to be done by him in the discharge of his duties or in his capacity as such Indemnified Person, unless such an act or omission is attributable to his own negligence, default, breach of duty or breach of trust.

7.7.5 Subject to the provisions of the Act, no Indemnified Person shall be liable for:

7.7.5.1 any act or omission of any other Indemnified Person; or

7.7.5.2 joining in any receipt or other act; or

7.7.5.3 any loss or expense suffered by the Company in consequence of any absence of, or any defect in, any title to any property acquired by order of the directors for or on behalf of the Company; or

7.7.5.4 any absence of, or defect in, any security upon which any of

the monies of the Company shall be invested; or

7.7.5.5 any loss or damage arising from the insolvency or delictual act of any person with whom any monies, shares or assets shall be deposited; or

7.7.5.6 any loss or damage occasioned by any error of judgment or oversight on the part of such Indemnified Person; or

7.7.5.7 any other loss, damage or misfortune whatever which shall happen in or in relation to the execution of his office or employment,

unless the same be attributable to his own negligence, default, breach of duty or breach of trust.

7.7.6 This Memorandum does not limit, restrict or qualify the ability of the Company to purchase insurance to protect a director against any liability or expenses for which the Company is permitted to indemnify a director in terms of the Act and this Memorandum, or to protect the Company against any contingency including, but not limited to:

7.7.6.1 any expenses that the Company is permitted to advance or for which the Company is permitted to indemnify a director in terms of the Act; or

7.7.6.2 any liability for which the Company is permitted to indemnify a director in terms of the Act. **[Section 78(7)]**

## 7.8 **Committees and delegation**

7.8.1 Without derogating from any of the provisions of the Act, nothing in this Memorandum (including this 7.8) limits, restricts or qualifies the authority of the board to appoint any number of committees, or to delegate to any such committee or any executive director of the Company any of the authority of the board. **[Section 72(1)]**

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

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

7.8.2.2 may consult with or receive advice from any person;

7.8.2.3 may be remunerated for their services as such; and

7.8.2.4 provided that the committee is duly constituted, have the full authority of the board in respect of any matter referred to it.

**[Section 72(2)]**

7.8.3 Without derogating from any of the provisions of the Act, the board may from time to time, where it has established a committee or delegated any authority of the board to an executive director of the Company in terms of 7.8.1 and 7.8.2 above include in any such delegation the power to sub-delegate the powers referred to in 7.8.1 and 7.8.2 above to such person or persons as the committee or the executive director thinks fit, subject to such terms and conditions as the committee or the executive director thinks fit, and may from time to time revoke, withdraw, alter or vary all or any such powers.

7.9 **Director may be employed in the Company or subsidiary**

A director may be employed in any other capacity in the Company or as a director or employee of a subsidiary of the Company and, in such event, his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of directors. **[Paragraph 10.16(e) of Schedule 10 to the Listings Requirements]**

7.10 **Directors' travelling and other expenses**

Directors may be paid all their travelling and other expenses, properly and necessarily incurred by them in and about the business of the Company, and in attending meetings of the directors or of committees of the directors; and, if any director is required to perform extra services, to reside abroad or be specifically occupied about the Company's business, he may be entitled to such remuneration as is determined by a disinterested quorum of directors, which may be either in addition to or in substitution for any other remuneration payable, subject to the provisions of the Act. **[Paragraph 10.16(f) of Schedule 10 to the Listings Requirements]**

7.11 **Life directorships**

For so long as required by the Listings Requirements, life directorships and directorships for an indefinite period are not permissible. **[Paragraph 10.16(k) of Schedule 10 to the Listings Requirements]**

8. **GENERAL PROVISIONS**

8.1 **Amendment of classes of shares, preferences, rights, limitations or other terms**

If any amendment relates to the variation of any preferences, rights, limitations and other terms attaching to any other class of shares already in issue, that amendment must not be implemented without a special resolution taken by the holders of the shares of that class of shares at a separate meeting. In such instances, the holders of the shares of that class of shares may be allowed to vote at the meeting of ordinary shareholders subject to 8.2, 4.12 and the Listings Requirements. No resolution of shareholders may be proposed or passed, unless a special resolution of the holders of the shares of that class of shares have approved the amendment. **[Paragraph 10.5(e) of Schedule 10 of the Listings Requirements]**

8.2 **Rights and conditions attaching to the "A" Ordinary Shares**

8.2.1 The "A" ordinary shares of R1.00 ("the "A" Ordinary Shares") shall



rank *pari passu* with one another and, save as set out in this 8.2, with the ordinary shares in the authorised and issued share capital of the Company.

8.2.2 The “A” Ordinary Shares shall confer on the holders thereof from time to time (the “A” Holder(s)) the following rights, privileges and obligations:

8.2.2.1 The date on which the “A” Ordinary Shares are subscribed for is hereinafter referred to as the “Subscription Date”.

8.2.2.2 Each “A” Ordinary Share shall confer on the “A” Holder the right to receive a dividend at the same time as and on the same terms as any dividend that may from time to time be declared to the holders of the ordinary shares, equal to 50% (fifty percent) of the dividend per ordinary share declared by the Company from time to time, provided that the “A” Ordinary Shares shall not confer on the “A” Holder the right to receive any Special Dividend which may be declared. For the purposes hereof “Special Dividend” shall mean a dividend declared other than out of the earnings and distributable reserves of the Company generated in the ordinary course of business and shall specifically exclude any distributable reserves or earnings arising out of any re-valuation of assets, disposals of major assets or other transactions not in the ordinary course of business of the Company.

8.2.2.3 The Company shall, on 26 August 2019, be entitled, but not obliged, to reduce the issued share capital of the Company by repurchasing and cancelling the “A” Ordinary Shares or such portion thereof determined in accordance with Articles 8.2.2.4 and 8.2.2.5 at a repurchase price equal to the par value thereof and subject further to the provisions of this 8.2, such date being hereinafter referred to as the “Repurchase Date”. Notwithstanding the provisions hereof, the repurchase of “A” Ordinary Shares shall be subject to the provisions of the Act and no repurchase of “A” Ordinary Shares which is

contrary to the requirements thereof shall be given effect to.

8.2.2.4 If the Company exercises its entitlement in accordance with 8.2.2.3, the Company shall:

8.2.2.4.1 determine the 30 day volume weighted average traded price per share (the "Transaction Price") of the ordinary shares of the Company on the JSE calculated as at the trading day immediately prior to the Repurchase Date;

8.2.2.4.2 calculate, on the basis described in 8.2.2.5 the number of "A" Ordinary Shares (the "Cancellation Shares") which the Company shall repurchase in full and cancel;

8.2.2.4.3 repurchase in full and cancel the Cancellation Shares;

8.2.2.4.4 on 30 August 2019 (the "Conversion Date"), convert such number of the "A" Ordinary Shares which shall not have been repurchased and cancelled in terms of 8.2.2.3 (the "Conversion Shares"), into ordinary shares;

8.2.2.4.5 procure that the Conversion Shares, after their conversion into ordinary shares, shall be listed on the JSE by not later than 5 (five) Business Days after the Conversion Date; and

8.2.2.4.6 by not later than 5 (five) Business Days after the Conversion Date, instruct the Central Securities Depository Participant of the Company irrevocably and in writing to credit the account of the "A" Holder held with its Central Securities Depository Participant with the ordinary shares into which the relevant Conversion Shares shall have been converted.

8.2.2.5 If the Company exercises its entitlement in accordance with 8.2.2.3, the Company shall repurchase in full and cancel in terms of respectively 8.2.2.3 and 8.2.2.4 by reference to the

formula:

$$N = [A \times (1 + r)^t] / B$$

where:

N is the number of Cancellation Shares which the Company shall be entitled to cancel, which number shall not be greater than the number of "A" Ordinary Shares;

A is a value equal to the number of "A" Ordinary Shares issued, multiplied by the 30 day volume weighted average price as at Friday, 5 February 2010 of the Company's ordinary share price traded on the JSE (being R33.50 (thirty three Rand fifty cents)) less the par value thereof;

r 9,1% (nine comma one percent) per annum;

t is the number of years from the Subscription Date to the Repurchase Date;

B is the Transaction Price determined in accordance with 8.2.2.4.1.

#### 8.2.2.6

If the Company declares a Special Dividend as contemplated in 8.2.2.2 then the formula set out in 8.2.2.5 shall be adjusted, on such basis as the auditors of the Company for the time being shall certify as being fair and equitable to the "A" Holders, in such manner as may be necessary to take account of the Special Dividend and to place the "A" Holders in substantially the same economic position in which they would have been but for the declaration and payment of the Special Dividend.

#### 8.2.2.7

The Company shall also be entitled, but not obliged, to

exercise its rights to repurchase in full the “A” Ordinary Shares *mutatis mutandis* in terms of 8.2.2.4 by giving written notice thereof to the “A” Holders at any time after it has become entitled to do so pursuant to 8.2.2.14 and subject to 38.2.15.

8.2.2.8 When the Company exercises its repurchase rights pursuant to the aforesaid provisions of this 8.2, a sale of shares in respect of the “A” Ordinary Shares that are the subject matter of the repurchase rights so exercised (the “Repurchased Shares”) shall be deemed to have been entered into between the Company and the “A” Holders, which sale shall be subject to the further terms and conditions as set out in this 8.2.

8.2.2.9 On the Repurchase Date, the “A” Holders shall be deemed to have delivered to the Company (who shall up until the Purchase Date have held such shares on behalf of the “A” Holders) the share certificates evidencing the Repurchased Shares and the “A” Holders hereby irrevocably and in *rem suam* nominate and appoint the Company acting through any director of the Company, with power of substitution, as the “A” Holders’ attorney and agent in the “A” Holders’ name, place and stead to procure delivery of the Repurchased Shares and effect signature on behalf of the “A” Holders of the documents referred to in this 8.2.2.9, in favour of the Company.

8.2.2.10 The Company shall forthwith cancel the Repurchased Shares on transfer of title to it in accordance with the Act.

8.2.2.11 The “A” Holders shall warrant that on the Repurchase Date they shall be entitled and able to give free and unencumbered title of the Repurchased Shares and no person will have any right of any nature whatsoever to acquire any of the Repurchased Shares.

8.2.2.12 No cession, disposal, transfer, encumbrance, pledge, hypothecation, donation, sale or other alienation whatever of any “A” Holder shall be permitted during the period calculated

from the Subscription Date until the Repurchase Date (the “Lock-in-Period”), save with the prior written consent of the Company which it may, in its sole discretion, withhold, and any action taken in contravention of the provisions hereof shall not be recognised by the Company and save as provided for in 8.2.2.14.

8.2.2.13 The occurrence, during the Lock-in-Period, of the following events shall be an early termination event save that the events shall only be an early termination event if such event is not remedied (if capable of remedy) within a period of 30 (thirty) days of written notice from the Company requiring that such event be remedied, or such longer period as the Company in its reasonable discretion may permit:

8.2.2.13.1 any “A” Holder engaging, or attempting to engage, in any activity contrary to the provisions of 8.2.2.12;

8.2.2.13.2 any “A” Holder amending its trust deed or other constituent document in any material respect without the prior written consent of the Company which it may, in its sole discretion, withhold; and

8.2.2.13.3 the failure by the “A” Holders to notify the Company of the occurrence of an event constituting an early termination event within 5 (five) Business Days of becoming aware of it.

8.2.2.14 If an early termination event occurs during the Lock-in-Period, which is not remedied or does not cease to exist within the remedy period, the Company shall have the right, in its sole discretion, but not the obligation, at any time thereafter while the early termination event is not remedied or does not cease to exist, to exercise its repurchase rights in respect of the “A” Holder which is responsible for the early termination event mutatis mutandis in accordance with 8.2.2.5 (the “Call Option”), and in that event the Repurchase Date shall be deemed to be the date on which the Company gives the

notice contemplated in 8.2.2.15.

8.2.2.15 The Company shall be entitled to exercise the Call Option in terms of 8.2.2.14 at any time within a period of 90 (ninety) Business Days after the expiry of a period of 30 (thirty) days referred to in 8.2.2.13.

8.2.2.16 Save as set out in this 8.2, the “A” Ordinary Shares shall rank pari passu in all respects with the ordinary shares, it being recorded, for the avoidance of doubt, that in the event that the Company shall take any action of whatsoever nature in relation to and/or in connection with the amendment of any of the rights attaching to the ordinary shares and/or the par value of the ordinary shares the Company shall take the same action mutatis mutandis in relation to the “A” Ordinary Shares. Without detracting from the generality of the foregoing:

8.2.2.16.1 where an offer is made or a scheme is proposed which could result in the change of control of the Company, the Company shall be entitled (but not obliged) to exercise its rights in terms of 8.2.2.5 on not less than 20 Business Days written notice to the “A” Holders, in which event the Repurchase Date shall be deemed to be a date specified as such in such notice. “change of control” for purposes hereof shall mean a party acquiring more than 35% of the shareholding of the Company;

8.2.2.16.2 if a rights offer is undertaken in respect of the ordinary shares, then the “A” Holders shall be entitled to participate in such rights offer on the basis that they shall be offered ordinary shares. Where the rights offer results in the “A” Holders being allocated nil paid rights pursuant thereto or the right to acquire additional shares pursuant to an open offer by the Company, the “A” Holders may sell such rights in the market or to third party investors at the market value

thereof. The “A” Holders shall be entitled to subscribe for such of the nil paid rights as are allocated to them under such rights offer, provided they have the financial resources to subscribe at the rights offer price required;

8.2.2.16.3

where any subdivision or consolidation of ordinary shares of the Company occurs, the same subdivision or consolidation shall be applied in respect of the “A” Ordinary Shares;

8.2.2.16.4

where the Company makes a dividend distribution other than in cash, or issues bonus or capitalisation shares, such dividend shall become part of the assets of the “A” Holders and shall be subject to the provisions of this Memorandum, provided always that a bonus or capitalisation issue to “A” Ordinary Shareholders shall be in the form of Ordinary Shares.

### 8.3 **Unclaimed dividends**

For so long as is required by the Listings Requirements, the Company must hold all monies due to shareholders for the benefit of shareholders, provided that the board may cause any such monies unclaimed for a period of three years (from the due date for payment) to be forfeited for the benefit of the Company. **[Paragraph 10.17(c) of Schedule 10 to the Listings Requirements]**

## **SCHEDULE 1 – AUTHORISED SHARES**

### A. Classified shares

- 725 000 000 ordinary shares of R1.00 (one Rand) each, each of which shall entitle the holder, subject to any preferences, rights or other share terms of any class of shares in the Company ranking prior to the ordinary shares, -
  - (i) to one vote for every ordinary share;
  - (ii) to receive any distribution in accordance with the holder's voting power;
  - (iii) on a liquidation of the Company, to receive the net assets of the Company in accordance with the holder's voting power;
  - (iv) to all of the preferences, rights or other terms set out in the Act or this Memorandum;
  - (v) to any other rights at common law insofar as such rights are not inconsistent with this Memorandum or the Act.
  
- 19 961 476 'A' ordinary shares of R1.00 (one Rand) each in the capital of the Company with the rights, preferences and limitations set out in 8.2 of the Memorandum.

### B. Unclassified shares

None.