

This Memorandum of Incorporation which will be proposed for approval and adoption by way of a special resolution at the Sun International General Meeting of shareholders to be held on 13 July 2020, has been initialled by the Chairman for purposes of identification



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**CHAIRMAN**

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**MEMORANDUM OF INCORPORATION**

**OF**

**SUN INTERNATIONAL LIMITED**

**A PUBLIC COMPANY**

(Registration Number 1967/007528/06)

Registration Date: 11 July 1967

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# 1 DEFINITIONS AND INTERPRETATION

## 1.1 Definitions

In this Memorandum of Incorporation, unless clearly inconsistent with or otherwise indicated by the context -

- 1.1.1 "**Act**" means the Companies Act, No. 71 of 2008, as amended, re-enacted or replaced from time to time, and includes all schedules and the Regulations to such Act;
- 1.1.2 "**Associate**" means any person in respect of which the Company, by virtue of ownership, right of appointment, management agreement or other agreement of any kind, has the ability to control or direct, directly or indirectly, the appointment of the board or the majority of any other executive body, or to control or direct, directly or indirectly any decision making process or the management of such person;
- 1.1.3 "**Board**" means the board of directors from time to time of the Company;
- 1.1.4 "**Central Securities Depository**" has the meaning set out in section 1 of the Financial Markets Act;
- 1.1.5 "**Certificated Securities**" means Securities issued by the Company that are not Uncertificated Securities;
- 1.1.6 "**Commission**" means the Companies and Intellectual Property Commission established by section 185 of the Act;
- 1.1.7 "**Company**" means Sun International;
- 1.1.8 "**ECT Act**" means the Electronic Communications and Transactions Act, No. 25 of 2002, as amended, re-enacted or replaced from time to time;

- 1.1.9 "EFT" means electronic funds transfer;
- 1.1.10 "**Electronic Communication**" has the meaning set out in section 1 of the ECT Act;
- 1.1.11 "**Financial Markets Act**" means the Financial Markets Act, No. 19 of 2012, as amended, re-enacted or replaced from time to time;
- 1.1.12 "**Financial Statements**" includes the annual financial statements of the Company unless the context indicates otherwise;
- 1.1.13 "**General Meeting**" includes the annual general meeting, any general meeting and any special general meeting of the Company unless the context indicates otherwise;
- 1.1.14 "**JSE**" means the exchange, licensed under the Financial Markets Act, operated by the JSE Limited (Registration Number 2005/022939/06), a public company duly incorporated in the Republic;
- 1.1.15 "**Listings Requirements**" means the JSE Listings Requirements, as applicable from time to time;
- 1.1.16 "**Memorandum of Incorporation**" means this memorandum of incorporation as may be amended from time to time;
- 1.1.17 "**Participant**" has the meaning set out in section 1 of the Financial Markets Act;
- 1.1.18 "**Regulations**" means the regulations published in terms of the Act, from time to time;
- 1.1.19 "**Republic**" means the Republic of South Africa;

- 1.1.20            "**Securities**" means any instrument falling within the meaning of "securities" as set out in section 1 of the Financial Markets Act irrespective of their form or title, issued or authorised to be issued, by the Company and includes Shares unless expressly referred to otherwise in this Memorandum of Incorporation;
- 1.1.21            "**Securities Register**" means the register of issued Securities of the Company required to be established in terms of section 50(1) of the Act;
- 1.1.22            "**Shares**" means Sun International ordinary shares of no par value each in the authorised and issued share capital of the Company from time to time;
- 1.1.23            "**Solvency and Liquidity Test**" has the meaning attributed thereto in section 4 of the Act;
- 1.1.24            "**Strate Regulations**" means all regulations relating to Uncertificated Securities, from time to time published by Strate Proprietary Limited;
- 1.1.25            "**Sun International**" means Sun International Limited or such other name as designated to the Company from time to time, duly incorporated under the registration number recorded on the first page of this Memorandum of Incorporation;
- 1.1.26            "**Sun International group**" means Sun International Limited and its subsidiaries and Associates;
- 1.1.27            "**Uncertificated Securities**" means any "securities" defined as such in section 1 of the Financial Markets Act; and
- 1.1.28            "**Uncertificated Securities Register**" means the record of Uncertificated Securities administered and maintained by a Participant or Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository.

## 1.2 Interpretation

- 1.2.1 In this Memorandum of Incorporation, unless clearly inconsistent with or otherwise indicated by the context -
- 1.2.1.1 words and expressions defined in the Act and which are not defined herein, shall have the meanings given to them in the Act;
- 1.2.1.2 a reference to an article by number refers to a corresponding provision of this Memorandum of Incorporation;
- 1.2.1.3 any reference to the singular includes the plural and *vice versa*, any reference to natural persons includes legal persons and *vice versa* and any reference to a gender includes the other gender.
- 1.2.2 The headings in this Memorandum of Incorporation have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.2.3 Words and expressions defined in any article shall, for the purposes of the article, bear the meanings assigned to such words and expressions in that article.
- 1.2.4 Any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner or form permitted in terms of the Act and/or the ECT Act.
- 1.2.5 Any reference in this Memorandum of Incorporation to -
- 1.2.5.1 "**days**" means a calendar day, unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time;

1.2.5.2 "writing" means legible writing and in English and includes printing, typewriting, lithography or other mechanical process, as well as any electronic communication in a manner and a form permitted in terms of the Act.

1.2.6 The use of the words "include" and "including" in this Memorandum of Incorporation followed by a specific example or examples shall not be construed or interpreted as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording and/or such specific example or examples and the words "other" or "otherwise" shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

## 2 JURISTIC PERSONALITY

2.1 The Company is a pre-existing company as defined in the Act and, as such, continues to exist as a public company as if it had been incorporated and registered in terms of the Act, as contemplated in Item 2 of the Fifth Schedule to the Act, and this Memorandum of Incorporation replaces and supersedes the Memorandum of Incorporation of the Company applicable immediately prior to the filing hereof.

2.2 The Company is incorporated in accordance with and governed by -

2.2.1 the unalterable provisions of the Act and the Listings Requirements;

2.2.2 the alterable provisions of the Act and the Listings Requirements, subject to the limitation, extensions, variations or substitutions set out in this Memorandum of Incorporation; and

2.2.3 the provisions of this Memorandum of Incorporation.



### **3 POWERS OF THE COMPANY**

3.1 The Company has all of the legal powers and capacity contemplated in the Act, and no provision contained in this Memorandum of Incorporation should be interpreted or construed as negating, limiting or restricting those powers in any way whatsoever.

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

### **4 SPECIAL CONDITIONS**

This Memorandum of Incorporation does not contain any special conditions applicable to the Company, as contemplated in sections 15(2) (b) or (c) of the Act.

### **5 ISSUE OF SHARES AND VARIATION OF RIGHTS**

5.1 The Company is authorised to issue -

5.1.1 800 000 000 (eight hundred million) Shares of the same class, each of which rank *pari passu* in respect of all rights and shall entitle the holder thereof to the following rights -

5.1.1.1 to vote on any matter to be decided by the shareholders at any shareholders meeting of the Company on the basis of 1 (one) vote per Share held;

5.1.1.2 to participate proportionally in any distribution made by the Company;

5.1.1.3 to receive proportionally the net assets of the Company upon its liquidation; and

5.1.1.4 to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share.

5.2 The Board shall not have the power to -

5.2.1 create any class of authorised Shares as provided for in article 42.1.2.1;

5.2.2 increase or decrease the number of the Company's authorised Shares;

5.2.3 consolidate and reduce the number of the Company's issued and authorised Shares;

5.2.4 subdivide its Shares by increasing the number of its issued and authorised Shares without an increase of its capital;

5.2.5 reclassify any classified Shares that have been authorised but not issued; or

5.2.6 classify any unclassified Shares that have been authorised but not issued;

and such powers shall only be capable of being exercised by shareholders by way of a special resolution.

5.3 All or any of the preferences, rights, limitations or other terms of any Shares (unless otherwise provided by the terms of issue of the Shares), whether or not the Company is being wound up, may only be varied with the consent by the shareholders by way of a special resolution at a General Meeting of the shareholders, and in compliance with the provisions of article 5.11.

5.4 The preferences, rights, limitations or other terms of any Shares will not be varied in response to any objectively ascertainable fact or facts.

- 5.5 The Company may only issue Shares which are fully paid up and freely transferable and only within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation.
- 5.6 Subject to the provisions of the Act and this Memorandum of Incorporation, authorised but unissued Shares in the Share capital of the Company shall be offered for subscription to existing shareholders of the Company in proportion to their existing shareholding, on such terms and in accordance with such procedures as the Board may determine, except where such Shares are issued -
- 5.6.1 in consideration for the acquisition of assets, or for cash as contemplated in and in accordance with the provisions of the Listings Requirements;  
or
- 5.6.2 pursuant to an approved share based incentive scheme for executive directors or employees of Sun International, in accordance with the provisions of the Listings Requirements.
- 5.7 Shareholders in General Meeting may authorise the Board to issue unissued Securities or grant options to subscribe for unissued Securities as the Board deems fit, provided that such transaction/s have been approved by the JSE and are subject to the Listings Requirements.
- 5.8 The Board may resolve to issue Shares or grant options to subscribe for unissued Shares at any time, but -
- 5.8.1 only within the classes, and to the extent that those Shares have been authorised by, or in terms of, this Memorandum of Incorporation; and
- 5.8.2 only to the extent that such issue has been approved by the Shareholders in General Meeting, either by way of a general authority (which may be either conditional or unconditional) to issue Shares in its discretion, or a specific authority in respect of any particular issue of

Shares, provided that, if such approval is in the form of a general authority to the Board, it shall be valid only until the next annual general meeting of the Company and it may be varied or revoked by any General Meeting of the shareholders, prior to such annual general meeting.

- 5.9 All issues of Shares for cash and options and convertible securities for cash must, at a minimum, be in accordance with the Listings Requirements, or any additional or greater requirement imposed by this Memorandum of Incorporation.
- 5.10 All Securities of the Company for which a listing is sought on the JSE and all Securities of the same class as Securities of the Company which are listed on the JSE must, notwithstanding the provisions of section 40(5) of the Act, but unless otherwise required by statute, only be issued after the Company has received the consideration (in cash or in kind) approved by the Board for the issuance of such Securities.
- 5.11 Subject to any preferences, rights or limitations under which any Securities are held, the preferences, rights or limitations attached to all or any Securities of any class may be amended, varied, cancelled or expanded by a special resolution of shareholders at a General Meeting. Without limiting the generality of the foregoing, the rights attaching to Shares (unless the terms attaching to the Shares specifically provide otherwise) shall be deemed to be amended by the creation or issue of any other shares ranking *pari passu* or in priority to any Shares already authorised by the Company. No such amendment, variation, cancellation or expansion, which directly or indirectly adversely affects those special rights or restrictions, shall be effected without a special resolution, taken by the holders of Shares in that class, at a separate meeting. No resolution of shareholders of the Company shall be proposed or passed, unless a special resolution of the holders of the Shares of that class, approved the amendment.

## **6 CERTIFICATED AND UNCERTIFICATED SECURITIES**

- 6.1 Securities of the Company are to be issued in certificated or uncertificated form, as the Board may determine from time to time, subject to the rules as defined in the Strate Regulations, in respect of Shares in uncertificated form.
- 6.2 If a Share certificate is lost or destroyed, it may be replaced on such terms as the Board may determine.
- 6.3 Except to the extent otherwise provided in the Act or in this Memorandum of Incorporation, the rights and obligations of Securities holders shall not be different solely on the basis of their Securities being Certificated Securities or Uncertificated Securities and each provision of this Memorandum of Incorporation applies with respect to any Uncertificated Securities in the same manner as it applies to Certificated Securities, unless otherwise stated or indicated by the context.
- 6.4 Any Certificated Securities may cease to be evidenced by certificates and thereafter become Uncertificated Securities.
- 6.5 Any Uncertificated Securities may be withdrawn from the Uncertificated Securities Register, and certificates issued evidencing those Securities at the election of the holder of those Uncertificated Securities. A holder of Uncertificated Securities, who elects to withdraw all or part of the Uncertificated Securities held by it in an Uncertificated Securities Register, and obtain a certificate in respect of those withdrawn Securities, may so notify the relevant Participant or Central Securities Depository as required by the rules of the Central Securities Depository.
- 6.6 After receiving notice from a Participant or Central Securities Depository, as the case may be, that the holder of Uncertificated Securities wishes to withdraw all or part of the Uncertificated Securities held by it in an

Uncertificated Securities Register, and obtain a certificate in respect thereof, the Company shall –

- 6.6.1 immediately enter the relevant Security holder's name and details of its 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; and
- 6.6.2 within 10 (ten) business days (or 20 (twenty) business days in the case of a holder of Securities who is not resident within the Republic) prepare and deliver to the relevant person, a certificate in respect of the Securities and notify the Central Securities Depository that the Securities are no longer held in uncertificated form.
- 6.7 The Company may charge a shareholder of its Securities a reasonable fee to cover the actual cost of issuing any certificate as contemplated in this article 6.

## **7 TRANSFER OF SECURITIES**

- 7.1 The instrument of transfer of any Certificated Securities shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of such Certificated Securities until the name of the transferee is entered in the Securities Register. The Board may, however, in their discretion in such cases as they deem fit, dispense with requiring the signature of the transferee on the instrument of transfer.
- 7.2 The transfer of Uncertificated Securities may be effected only -
  - 7.2.1 by a Participant or Central Securities Depository;
  - 7.2.2 on receipt of an instruction to transfer, sent and properly authenticated in terms of the rules of a Central Securities Depository or an order of court; and

- 7.2.3 in accordance with section 53 of the Act and the rules of the Central Securities Depository.
- 7.3 Transfer of ownership in any Uncertificated Securities must be effected by debiting the account in the Uncertificated Securities Register from which the transfer is effected and crediting the account in the Uncertificated Securities Register to which the transfer is effected, in accordance with the rules of the Central Securities Depository.
- 7.4 Securities transfer tax and other legal costs payable in respect of any transfer of Securities pursuant to this Memorandum of Incorporation will be paid by the Company to the extent that the Company is liable therefor in law, but shall, to that extent, be recoverable from the person acquiring such Securities.
- 7.5 Subject to such restrictions as may be applicable, (whether by virtue of the preferences, rights, limitations or other terms associated with the Securities in question, including as set out in article 5), any shareholder or holder of other Securities may transfer all or any of its Certificated Securities by instrument in writing in any usual or common form or any other form which the Board may approve.
- 7.6 Every instrument of transfer of a Share shall be left at the offices of the transfer secretaries of the Company or such other place as the Company may designate from time to time.
- 7.7 Every instrument of transfer of a Security shall be accompanied by -
- 7.7.1 the certificate issued in respect of the Certificated Securities to be transferred; and/or
- 7.7.2 such other proof as the Company may require to evidence the title of the transferor of his right to transfer the Securities.

- 7.8 Any authority to sign transfer deeds or other instruments of transfer granted by a shareholder for the purpose of transferring Securities, when lodged, produced or exhibited to or with the Company, shall be deemed to remain in full force and effect, and the Company may allow it to be acted upon, until such time as written notice of the revocation thereof is lodged at the offices of the transfer secretaries of the Company. Even after the lodging of such notice of revocation, the Company may give effect to any instrument of transfer signed under the authority to sign and certified (before the lodging of such notice) by any officer of the Company, as being in order.
- 7.9 All instruments of transfer, when registered, shall either be retained by the Company or disposed of in such manner as the Board shall from time to time decide. Any instrument of transfer which the Board may decline to register shall (unless the Board shall resolve otherwise) be returned on demand to the person who lodged it.
- 7.10 The transferor shall be deemed to remain the holder of the Share until the name of the transferee is entered in the Securities Register in respect thereof.
- 7.11 The Board, upon evidence of good cause, may, in its sole discretion, record in the Securities Register that any Share is held in trust or by a nominee, and the name of the beneficial shareholder.
- 7.12 The Board may decline to register any transfer of Securities to a minor or to a person of unsound mind or to any trustee, curator, administrator, or other person in any representative capacity of any Securities.
- 7.13 The Company shall not be bound to allow the exercise of any act or matter by any agent of a shareholder unless a duly certified copy of such agent's authority is produced to and filed with the transfer secretaries of the Company.



## 8 TRANSMISSION OF SECURITIES

- 8.1 The executor of the estate of a deceased holder of a Security, or the trustee of an insolvent estate, or the curator of any insane or prodigal shareholder, or any person appointed by a competent authority to represent or act on behalf of a shareholder, shall be the only person recognised by the Company as having title to such Security. In the case of a Security registered in the names of 2 (two) or more holders, the survivor or survivors, or the executor of the estate of any deceased shareholders, as determined by the Board, shall be the person recognised by the Company as having title to the Security.
- 8.2 Any person who submits proof of his appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a deceased shareholder or holder of other Securities ("**Security Holder**") of the Company, or of a Security Holder whose estate has been sequestrated or of a Security Holder who is otherwise under a disability, or as the liquidator of anybody corporate which is a Security Holder, shall be entered in the Securities Register *nomine officii*, and shall thereafter, for all purposes, be deemed to be a Security Holder.
- 8.3 Subject to the provisions of articles 8.1 and 8.2, any person becoming entitled to any Security by virtue of death of a Security Holder shall, upon producing such evidence that he has such title or rights as the Board thinks sufficient, have the right either to have such Security transferred to himself or to make such other transfer of the Security as such Security Holder could have made, provided that in respect of a transfer other than to himself -
- 8.3.1 the Board shall have the same right to refuse or suspend registration as they would have had in the case of a proposed transfer of such Security by such Security Holder before his death; and
- 8.3.2 a person becoming entitled to any Security shall not, unless and until he is himself registered as a Security Holder in respect of such Security, be

entitled to exercise any voting or other right attaching to such Security or any other right relating to dividends and/or General Meetings of the Company.

## **9 FRACTIONS OF SHARES AND OTHER SECURITIES**

To the extent that a fractional entitlement arises, all allocations of Shares and other Securities will be rounded down to the nearest whole number resulting in allocations of whole Shares and/or Securities and a cash payment for the fraction where the cash value is determined with reference to the method of determination as may be prescribed in the Listings Requirements from time to time and for the time being.

## **10 JOINT HOLDERS OF SHARES**

Where 2 (two) or more persons are registered as the holders of any Shares, they shall be deemed to hold those Shares jointly, and -

- 10.1 notwithstanding anything to the contrary in this Memorandum of Incorporation, on the death, sequestration, liquidation or legal disability of any one of such joint holders, the remaining joint holders may be recognised, at the discretion of the Board, as the only person/s having title to such Shares;
- 10.2 any one of such joint holders may give effectual receipts for any dividends, bonuses or returns of Share capital or other accruals or distributions payable to such joint holders;
- 10.3 only the joint holder whose name has been entered first into the Securities Register shall be entitled to delivery of the Share certificate relating to that Share, or to receive any notices from the Company (and each notice shall be deemed to be notice to all such joint holders); and

10.4 any one of the joint holders of any Share conferring a right to vote may vote either personally or by proxy at any General Meeting in respect of such Shares as if he were solely entitled thereto, and if more than 1 (one) of such joint holders are present at the General Meeting, either personally or by proxy, the joint holder who tenders a vote and whose name has been entered in the Securities Register before the other joint holders who are present in person or by proxy, shall be entitled to vote in respect of that Share.

## 11 **NO LIEN**

The Company does not have the power to claim a lien upon any of its issued Securities which shall be freely transferable.

## 12 **BENEFICIAL INTERESTS IN SECURITIES**

The Company's issued Securities may be held by, and registered in the name of, one or several persons for the beneficial interest of another person, as set out in section 56(1) of the Act.

## 13 **FINANCIAL ASSISTANCE**

The Board may authorise the Company to provide financial assistance including, without limitation, by way of loan, guarantee, the provision of security, or otherwise 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 such Securities of the Company, as set out in section 44 of the Act, and the authority of the Board in this regard, is not limited or restricted by this Memorandum of Incorporation.

## 14 **CAPITALISATION SHARES**

14.1 The Board shall have the power and authority, in terms of section 47 of the Act, to -

- 14.1.1 approve the issuing of any authorised Shares, as capitalisation Shares on a *pro rata* basis to the shareholders of one or more classes of Shares;
- 14.1.2 issue Shares of one class as capitalisation Shares in respect of Shares of another class; or
- 14.1.3 resolve to permit shareholders to elect to receive a cash payment *in lieu* of a capitalisation Share,

provided that -

- 14.1.4 such power or authority has been authorised by the shareholders by means of an ordinary resolution; and
  - 14.1.5 such transaction(s), to the extent necessary, has/have been approved by the JSE (and the Listings Requirements have been complied with).
- 14.2 The Board may not resolve to offer a cash payment *in lieu* of a capitalisation Share, unless the Board -
- 14.2.1 has considered the Solvency and Liquidity Test, as required by section 46 of the Act, on the assumption the every shareholder would elect to receive cash; and
  - 14.2.2 is satisfied that the Company would satisfy the Solvency and Liquidity Test immediately upon the completion of the distribution.

## 15 DEBT INSTRUMENTS

- 15.1 The authority of the Board to authorise the Company to issue secured or unsecured debt instruments, as set out in section 43(2) of the Act is not limited or restricted by this Memorandum of Incorporation.

15.2 The Board shall not be entitled to issue debt instruments that grant the holders thereof any specific rights or privileges regarding attending and voting at General Meetings and the appointment of directors.

15.3 The debt instrument may not confer on the holder thereof any right to receive any Shares or other Securities of the Company (whether by way of redemption or substitution of the debt instrument) without the approval of an ordinary resolution. The authority of the Board to authorise the Company to issue secured or unsecured debt instruments, as set out in section 43 (2) of the Act, is accordingly limited and restricted by this Memorandum of Incorporation as aforesaid.

## 16 RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS

16.1 The record date for the purpose of determining which shareholders are entitled to -

16.1.1 receive notice of a General Meeting;

16.1.2 participate and vote at a General Meeting;

16.1.3 decide any matter by written consent or by Electronic Communication;

16.1.4 receive a distribution; or

16.1.5 be allotted or exercise other rights,

shall be determined by the Board in accordance with the Act, provided that, for as long as the Listings Requirements apply to the Company, such record date shall be the record date as required by the Listings Requirements, to the extent determined by the Listings Requirements.

16.2 Such record date must be published to the shareholders in a manner that satisfies the JSE Listings Requirements and any other prescribed requirements.

## 17 DISTRIBUTIONS

17.1 Subject to the provisions of the Act, and this Memorandum of Incorporation, and particularly section 46 of the Act, the Company may make a proposed distribution if such distribution –

17.1.1 is pursuant to an existing legal obligation of the Company or a court order; or

17.1.2 is authorised by resolution of the Board, in compliance with the Listings Requirements.

17.2 No distribution shall bear interest against the Company, except as otherwise provided under the conditions of issue of the Shares in respect of which such distribution is payable.

17.3 Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the Company may be chargeable.

17.4 The Board may from time to time declare and pay to the shareholders such dividends as the Board considers to be appropriate.

17.5 No larger distribution shall be declared by the Company in General Meeting than is recommended by the Board, but the Company in General Meeting may declare a smaller dividend.

17.6 All unclaimed monies, including but not limited to dividends, that are due to any shareholder/s shall be held by the Company in trust subject to the laws of prescription, whereafter such unclaimed monies may be declared forfeited by

the Board for the benefit of the Company. The Board may at any time annul such forfeiture upon such conditions (if any) as it thinks fit.

- 17.7 Notwithstanding anything to the contrary contained herein, if any shareholder is entitled to an aggregate dividend of R30.00 (thirty rand) or less in respect of all Certificated Securities held by such shareholder on the record date, then the Board shall be entitled to direct that such shareholder's dividend (unless such shareholder delivers a written notice to the contrary prior to the date of payment of the dividend) be paid to a charitable organisation nominated by the Board from time to time.
- 17.8 Subject to articles 17.6 and 17.7, any dividend, distribution, interest or other sum payable in cash to the holder of a Share shall be paid by EFT and unless otherwise requested by a shareholder in writing, shall not be paid by cheque. Any unclaimed dividends or distributions shall be suppressed and be retained in the Company's unclaimed dividend account, whereafter it may be claimed by a shareholder upon written request to the Company in a form prescribed by the Board from time to time.
- 17.9 Every cheque or EFT shall be paid at the risk of the shareholder or joint holders.
- 17.10 A holder or any one of two or more joint holders, or his or their agent duly appointed in writing, may give valid receipts for any distributions or other moneys paid in respect of a Share held by such holder or joint holders.
- 17.11 When such EFT is paid, it shall discharge the Company of any further liability in respect of the amount concerned.
- 17.12 A distribution may also be paid in any other way determined by the Board, and if the directives of the Board in that regard are complied with, the Company shall not be liable for any loss or damage which a shareholder may suffer as a result thereof.

- 17.13 Without detracting from the ability of the Company to issue capitalisation Shares, any distribution may be paid wholly or in part –
- 17.13.1 by the distribution of specific assets; or
  - 17.13.2 by the issue of Securities or of Shares, debentures or securities of any other company; or
  - 17.13.3 in cash; or
  - 17.13.4 in any other way which the Board or the Company in General Meeting may at the time of declaring the distribution determines.
- 17.14 Where any difficulty arises in regard to such distribution, the Board may settle that difficulty as it thinks expedient, and in particular may fix the value which shall be placed on such specific assets on distribution.
- 17.15 The Board may -
- 17.15.1 determine that cash payments shall be made to any shareholder on the basis of the value so fixed in order to secure equality of distribution; and
  - 17.15.2 vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the distribution as the Board deems expedient.
- 17.16 Any distribution must be made payable to shareholders registered as at a record date subsequent to the date of declaration thereof or the date of confirmation thereof, whichever is the later date.

## 18 PAYMENTS TO SECURITIES HOLDERS

Payments to Securities holders shall be effected in accordance with the Listings Requirements.



## 19 ACCESS TO COMPANY RECORDS

- 19.1 Each person who holds or has a beneficial interest in any Securities issued by the Company is entitled to inspect and copy, without any charge for such inspection or upon payment of no more than the prescribed minimum charge for any such copy, the information contained in section 26(1) of the Act, being -
- 19.1.1 this Memorandum of Incorporation, and any amendments or alterations thereof;
- 19.1.2 a record of the directors, including the details of any person who has served as a director for a period of 7 (seven) years after that person has ceased to serve as a director, and any information relating to such persons referred to in section 24(5) of the Act;
- 19.1.3 all -
- 19.1.3.1 reports presented at the annual general meeting of the Company, for a period of 7 (seven) years after the date of any such annual general meeting; and
- 19.1.3.2 Financial Statements required by the Act, for a period of 7 (seven) years after the date on which each particular statements were issued;
- 19.1.4 notices and minutes of General Meetings, including -
- 19.1.4.1 all resolutions adopted by them, for 7 (seven) years after the date each such resolution was adopted; and
- 19.1.4.2 any document that was made available by the Company to the holders of Securities in relation to each such resolution;

- 19.1.5 any written communications sent generally by the Company to all holders of any class of the Company's Securities, for a period of 7 (seven) years after the date on which each of such communications were issued; and
- 19.1.6 the Securities Register.

## 20 GENERAL MEETINGS OF SHAREHOLDERS

- 20.1 The Company is not required to hold any General Meetings other than those specifically required by the Act and the Listings Requirements.
- 20.2 The right of shareholders to requisition a General Meeting, as set out in section 61(3) of the Act, may be exercised by the holders of at least 10% (ten per cent) of the voting rights in relation to the matter to be considered at the General Meeting, as provided for in section 61(3) of the Act.
- 20.3 Subject to the provisions of section 60 of the Act dealing with the passing of resolutions of shareholders otherwise than at a General Meeting of the Company, the Company shall hold a General Meeting -
- 20.3.1 at any time that the Board is required by the Act, the Listings Requirements or this Memorandum of Incorporation to refer a matter to shareholders for decision;
- 20.3.2 whenever required in terms of the Act to fill a vacancy on the Board; or
- 20.3.3 when required in terms of article 20.1.
- 20.4 The authority of the Board to determine the location of any General Meeting, and the authority of the Company to hold any such General Meeting in the Republic or in any foreign country, as set out in section 61(9) of the Act is not limited or restricted by this Memorandum of Incorporation.

- 20.5 The minimum number of days for the Company to deliver a notice of a General Meeting to shareholders as required by section 62 of the Act is as provided for in section 62(1) of the Act, being 15 (fifteen) business days before the General Meeting is to begin.
- 20.6 Every General Meeting shall be reasonably accessible within the Republic for electronic participation by shareholders, irrespective of whether the General Meeting itself is held in the Republic or elsewhere.
- 20.7 The quorum for a General Meeting to begin or for a matter to be considered, shall be at least 3 (three) shareholders entitled to attend and vote and present in person or represented by proxy. In addition -
- 20.7.1 a General Meeting may not begin until sufficient persons are present at the General Meeting in person or represented by proxy to exercise, in aggregate, at least 25% (twenty five per cent) of the voting rights that are to be entitled to be exercised in respect of at least one matter to be decided at the General Meeting; and
- 20.7.2 a matter to be decided at a General Meeting may not begin to be considered unless sufficient persons are present at the General Meeting in person or represented by proxy to exercise, in aggregate 25% (twenty five per cent) of all of the voting rights that are entitled to be exercised in respect of that matter at the time the matter is called on the agenda.
- 20.8 The time periods allowed in section 64(4) of the Act and section 64(5) of the Act apply to the Company without variation.
- 20.9 The Company shall not be required to give further notice of a General Meeting that has been postponed or adjourned unless the location for the General Meeting is different from -
- 20.9.1 the location of the postponed or adjourned General Meeting; or

- 20.9.2 the location announced at the time of adjournment, in the case in an adjourned General Meeting.
- 20.10 A General Meeting may not be adjourned beyond the earlier of -
- 20.10.1 the date that is 120 (one hundred and twenty) days after the record date determined in accordance with section 59 of the Act or the Listings Requirements to the extent that the Listings Requirements prescribe a record date; or
- 20.10.2 the date that is 60 (sixty) business days after the date on which the adjournment occurred.
- 20.11 The accidental omission to give notice of any General Meeting to any particular shareholder or shareholders shall not invalidate any resolution passed at any such General Meeting.
- 20.12 After a quorum has been established for a General Meeting, or for a matter to be considered at a General Meeting, all the shareholders forming part of the quorum must be present at the General Meeting for the matter to be considered at the General Meeting.
- 20.13 The chairman of the Board shall act as the chairman of each General Meeting, provided that if no chairman is present and willing to act or he/she is not present within 15 (fifteen) minutes after the time appointed for the General Meeting, the shareholders present shall elect one of the non-executive directors or, if no non-executive director is present and/or willing to act, or if such non-executive director is not present within 15 (fifteen) minutes after the time appointed for the General Meeting, one of the shareholders present, to be the chairman of that General Meeting.
- 20.14 The chairman of the General Meeting may -

- 20.14.1 appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney received and for counting the votes at the General Meeting;
- 20.14.2 act on a certificate given by any such scrutineers without requiring production at the General Meeting of the forms of proxy or himself counting the votes.
- 20.15 Each annual general meeting of the Company shall provide for at least the following business to be transacted -
- 20.15.1 the presentation of the directors' report, audited annual financial statements for the immediately preceding financial year of the Company and an audit committee report;
- 20.15.2 the election or re-election of directors as the case may be, to the extent required by the Act and this Memorandum of Incorporation;
- 20.15.3 the appointment of an external auditor and an audit committee for the Company for the following year; and
- 20.15.4 any other matter required from time to time by the Act and/or the Listings Requirements.
- 20.16 The business of a General Meeting may include the power to sanction or declare dividends.
- 20.17 No business shall be transacted at the resumption of any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place.
- 20.18 Subject to any special rights or restrictions as to voting attached to any Security by or in accordance with this Memorandum of Incorporation, at a General Meeting -

- 20.18.1 every shareholder who is present at the General Meeting, whether as a shareholder or as proxy for a shareholder, has the number of votes determined in accordance with the voting rights associated with the Securities held by that shareholder; and
- 20.18.2 the holders of any Securities, other than Shares, shall not be entitled to vote on any resolution at a General Meeting.
- 20.19 At any General Meeting, a resolution put to vote shall be decided by a poll in accordance with the provisions of the Act.
- 20.20 At a General Meeting -
- 20.20.1 the voting, if for the election or re-election of a chairman, as the case may be, or an adjournment, shall take place immediately and in such manner as the General Meeting determines and, if for any other matter, shall take place at such time and in such manner as the chairman of the General Meeting directs;
- 20.20.2 only votes exercised by shareholders shall be counted and abstentions shall be ignored for the purposes of determining the result of the poll; and
- 20.20.3 the chairman shall appoint scrutineers to count the votes and shall himself declare the result of the poll and such declaration shall be deemed to be the resolution of the General Meeting.
- 20.21 If any votes were counted which ought to not have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution, unless -
- 20.21.1 it is brought to the attention of the chairman at the General Meeting; and

20.21.2 in the opinion of the chairman of the General Meeting, it is of sufficient magnitude to vitiate the resolution.

20.22 Any objection to the admissibility of any vote shall be raised -

20.22.1 at the General Meeting or adjourned General Meeting at which the vote objected to was recorded; or

20.22.2 at the General Meeting or adjourned General Meeting at which the result of the poll was announced,

and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the chairman of the General Meeting, whose decision shall be final and conclusive.

20.23 Any person entitled to a Share in terms of article 8 by virtue of being an executor of a deceased holder of a Security, or the trustee of an insolvent estate, or the curator of any insane or prodigal shareholder or any person appointed by a competent authority to represent or act on behalf of a shareholder, may vote at any General Meeting in respect thereof in the same manner as if he were the registered holder of such Share, provided that (save where the directors have already accepted his right to vote in respect of that Share) at least 48 (forty eight) hours prior to the holding of the General Meeting at which he proposes to vote, he shall have satisfied the Board that he is entitled to exercise the right referred to in article 8.

20.24 Any notice of any General Meeting shall inform shareholders of the ability to participate by way of Electronic Communication and shall provide the necessary information to enable shareholders or their proxies to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Company. If a shareholder/s wishes to participate in a General Meeting by way of Electronic Communication, then the shareholder/s concerned shall notify the Company thereof in writing in the

manner provided for in the notice convening a meeting, provided that the Company receives such notice by not later than 48 (forty eight) hours prior to the date of the General Meeting in question. If the Company receives no notice at least 48 (forty eight) hours prior to the date of the General Meeting in question, then access to the medium or means of Electronic Communication for purposes of participating in the General Meeting shall not be made available to the shareholder/s or its/their proxies.

## 21 **PROXIES**

21.1 The right of a shareholder of the Company to appoint persons concurrently as proxies, as set out in section 58(3) (a) of the Act is not limited, restricted or varied by this Memorandum of Incorporation.

21.2 A proxy may not delegate its authority to act on behalf of the shareholder on whose behalf such proxy is held to another person, other than to the chairman of the General Meeting.

21.3 A proxy is not entitled to exercise, or abstain from exercising, any voting right of the shareholder on whose behalf such proxy is held, without direction from the shareholder, unless the appointed proxy is the chairman of the General Meeting.

21.4 The requirement that a shareholder must deliver to the Company, a copy of the instrument appointing a proxy before that proxy may exercise the shareholder's rights at a General Meeting, as set out in section 58(3)(c) of the Act is not limited or restricted by this Memorandum of Incorporation. Subject to the provisions of the Act, a proxy form shall be handed in at the offices of the transfer secretaries and/or any other designated party appointed to administer a General Meeting on behalf of the Company, at any time before the time (excluding Saturdays, Sundays and public holidays) appointed for the holding of the General Meeting or resumption of an adjourned General Meeting at which the person named therein proposes to vote, provided,



however and for administrative purposes only, the Company shall be entitled to call for a proxy form to be handed in at the offices of the transfer secretaries and/or any other designated party appointed to administer a General Meeting on behalf of the Company by no later than 24 (twenty four) hours before the time (excluding Saturdays, Sundays and public holidays) appointed for the holding of the General Meeting or resumption of an adjourned General Meeting at which the person named therein proposes to vote.

## 22 NOTICES AND ELECTRONIC COMMUNICATION

22.1 For the purposes of this article 22 "**delivered**" shall have the meaning ascribed thereto in the Act.

22.2 All notices and other documentation which are required to be delivered to a holder of Securities in terms of the Act and/or the Listings Requirements shall be delivered by the Company, in accordance with any one of the delivery mechanisms authorised by the Act, to each beneficial shareholder of the Company holding Certificated Securities and also to each beneficial shareholder holding Uncertificated Securities ("**Uncertificated Shareholder**"), but only if such Uncertificated Shareholder has elected to receive notices and documents in terms of a custody agreement with a broker or Participant, as at the record date and reflected in the Securities Register or Uncertificated Securities Register, and simultaneously to the JSE. All notices shall, in addition to the above, be released through SENS where required by the Listings Requirements provided that, in the event that any Securities are not listed on the JSE, all provisions of this Memorandum of Incorporation relating to the publication of notices via SENS shall no longer apply and such notices shall thereafter only be published in accordance with the provisions of the Act.

22.3 Each shareholder of the Company -

- 22.3.1 shall notify the Company in writing of an address, which address may be a physical, postal, facsimile or e-mail address ("**Address**"), which Address shall be his registered address for the purposes of delivery of notices and other documentation and, if he has not named such an Address, he shall be deemed to have waived his right to be so served with notices and other documentation until such time as he provides an Address; and
- 22.3.2 accepts and acknowledges, pursuant to the provisions of the Act, that when the Company is obliged to publish or provide or deliver any document, record or statement to the shareholder, the Company may do so by:
- 22.3.2.1 providing or publishing an electronic original or reproduction of that document, record or statement by Electronic Communication in a manner and form such that the document, record or statement can conveniently be printed by the recipient within reasonable time and at a reasonable cost; or
- 22.3.2.2 delivering a notice of the availability of that document, record or statement, summarising its content and satisfying any prescribed requirements, to each intended recipient of the document, record of statement, together with instructions for receiving the complete document, record or statement;
- 22.3.3 if the address elected by the shareholder is an e-mail address or facsimile number, then, having done so, the shareholder shall be deemed to have agreed to receiving by Electronic Communication, notices and other documents from the Company at his e-mail address or facsimile number and the Company may satisfy its obligation to send him any notice or other document by –
- 22.3.3.1 publishing such notice or other document on a website; and

- 22.3.3.2 notifying him by e-mail or fax to that e-mail or facsimile address that such notice or document has been so published, specifying the address of the website on which it has been published, the place on the website where such notice may be accessed, how it may be accessed and, if the notice relates to a General Meeting, stating –
- 22.3.3.2.1 that the notice concerns a notice of General Meeting served in accordance with the Act
- 22.3.3.2.2 the place, date and time of the General Meeting
- 22.3.3.2.3 whether the meeting is to be an annual or General Meeting; and
- 22.3.3.2.4 such other information as the Act may prescribe;
- 22.4 Any amendment of the shareholder’s address referred to in article 22.3 shall only take effect if notified to the Company in writing, signed by the shareholder and on actual receipt by the transfer secretaries of the Company thereof.
- 22.5 An Electronic Communication shall not be treated as received by the Company if it is rejected by computer virus protection arrangements.
- 22.6 A document is treated as having been sent to a shareholder not less than 15 (fifteen) business days before the date of a General Meeting if the documents have been published on a website throughout the period commencing 15 (fifteen) business days before the General Meeting and ending with the conclusion of the General Meeting and notification of that publication on the website has been sent to the shareholder not less than 15 (fifteen) business days before the date of the General Meeting. The provisions of this article 22 shall apply, *mutatis mutandis*, to any other time period specified in the Act.
- 22.7 Proceedings at a General Meeting will not be invalidated if documents have not been published for the entire period stated in article 22.6 and where failure to publish the documents throughout the entire period is attributable to

circumstances which it would have been unreasonable to have expected the Company to avoid.

- 22.8 A shareholder may give notice to the Company of the appointment of a proxy by Electronic Communication sent to such Address as notified by the Company for that purpose, provided that, notwithstanding anything to the contrary contained herein, no proxy forms shall be sent or accepted by Electronic Communication, without the prior approval of the Board, which approval, the Board may at any time, in its sole discretion withdraw.
- 22.9 Notice of annual and General Meetings shall be delivered to each shareholder in accordance with article 22.1.
- 22.10 Shareholders may register with the Company an Address in the Republic or anywhere in the world. Any shareholder whose Address in the Securities Register, is an Address not within the Republic, shall be entitled to have notices delivered to him at such Address.
- 22.11 In the case of joint holders of Securities, all notice shall, unless such holders request otherwise in writing, and the Board agrees, be given to that shareholder whose name appears first in the Securities Register and a notice so given shall be deemed sufficient notice to all the joint holders.
- 22.12 Any notice sent by any means permitted in the Act or Table CR3 annexed to the Regulations, shall be deemed to have been delivered as provided for in that method of delivery in such Table.
- 22.13 Every person, who by operation of law, transfer or other means whatsoever, becomes entitled to any Security, shall be bound by every notice in respect of that Security which, previous to his name and Address being entered in the Securities Register, was given to the person from which he derives his title to such Security.

22.14 Any notice or document delivered or sent by Electronic Communication, post to, or left at, the registered address of any shareholder in pursuance of this Memorandum of Incorporation shall, notwithstanding that such shareholder was then deceased, and whether or not the Company has notice of his death, be deemed to have been duly delivered in respect of any Securities, whether held solely or jointly with other persons by such shareholder, until some other person is registered in his stead as the sole or joint holder of such Security, and such delivery shall, for all purposes of this Memorandum of Incorporation, be deemed a sufficient delivery of such notice or document on his heirs, executors or administrators and all persons (if any) jointly interested with him in any such Securities.

## **23 SHAREHOLDERS' RESOLUTIONS**

23.1 Save for where the Listings Requirements require a 75% (seventy five per cent) majority, for an ordinary resolution to be adopted at a General Meeting, it must be supported by the holders of more than 50% (fifty per cent) of the voting rights exercised on the resolution, as provided for in section 65(7) of the Act.

23.2 For a special resolution to be adopted at a General Meeting, it must be supported by the holders of at least 75% (seventy five per cent) of the voting rights exercised on the resolution, as provided for in section 65(9) of the Act.

## **24 SHAREHOLDERS ACTING OTHER THAN AT A MEETING**

24.1 In accordance with the provisions of section 60 of the Act, but subject to article 24.5, a resolution that could be voted on at a General Meeting may instead be -

24.1.1 submitted by the Board for consideration to the shareholders entitled to exercise the voting rights in relation to the resolution; and

- 24.1.2 voted on in writing by such shareholders within a period of 20 (twenty) business days after the resolution was submitted to them,
- 24.2 If the Company elects to follow the procedure in article 24.1, then notice of the proposed written resolutions must, in addition to being delivered to shareholders in terms of article 22, be released through SENS in accordance with the provisions of the Listings Requirements.
- 24.3 A resolution contemplated in article 24.1 -
- 24.3.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted General Meeting; and
- 24.3.2 if adopted, will have the same effect as if it had been approved by voting at a General Meeting.
- 24.4 In accordance with the provisions of the Listings Requirements, the Company must release an announcement on SENS providing details of the voting results in respect of the resolutions passed by written resolution. Within 10 (ten) business days after adopting a resolution in accordance with the procedures provided for in this article 24, the Company shall deliver a statement describing the results of the vote, consent process or election to every shareholder who was entitled to vote on or consent to the resolution.
- 24.5 The provisions of this article 24 shall not apply to any General Meetings that are called for in terms of the Listings Requirements (save in respect of those matters set out below) or the passing of any resolution for the election or re-election of directors or as provided for in this Memorandum of Incorporation or to any annual general meeting of the Company. The following matters which require a General Meeting to be convened in terms of the Listings Requirements may, that fact notwithstanding and notwithstanding anything

contained in this Memorandum of Incorporation to the contrary, be proposed as written resolutions, namely -

- 24.5.1 a change of name of the Company;
- 24.5.2 odd lot offers;
- 24.5.3 an increase in the authorised Share capital of the Company;
- 24.5.4 the approval of amendments to the Memorandum of Incorporation.

## **25 COMPOSITION AND POWERS OF THE BOARD**

- 25.1 The Board shall comprise of not less than 4 (four) directors, to be elected by the shareholders, as contemplated in section 68 of the Act.
- 25.2 In addition to the elected directors, there are no shareholder appointed directors of the Company, as contemplated in section 66(4) of the Act.
- 25.3 Subject to the provisions of article 25.4, any shareholder of the Company is entitled to nominate 1 (one) or more directors, provided that no such shareholder is entitled to appoint or remove any director/s other than as provided for in the Act. If a shareholder intends to nominate a director/s, then such shareholder must notify the Company in writing of the nomination by no later than 90 (ninety) days before the date of the annual general meeting of the Company and such nomination will be referred to the nomination committee for consideration. If the nomination committee regards the nominated director to be appropriate, then it may recommend such person to the Board, subject to the approval of the shareholders as provided in article 25.4.
- 25.4 The manner of electing directors is as set out in section 68(2) of the Act. All directors shall be elected by ordinary resolutions of the shareholders at a General Meeting or annual general meeting of the Company and no

appointment by shareholders of a director in accordance with a resolution passed by way of a round robin resolution in terms of section 60 of the Act shall be competent.

25.5 The authority of the Board to fill a vacancy on the Board on a temporary basis, as set out in section 68(3) of the Act is not limited or restricted by this Memorandum of Incorporation provided that such directors must be elected by the shareholders at the next annual general meeting of the Company.

25.6 In any election or re-election of directors -

25.6.1 the election or re-election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with a series of votes continuing until all vacancies on the Board have been filled; and

25.6.2 in each vote to fill a vacancy -

25.6.2.1 each vote entitled to be exercised may be exercised once; and

25.6.2.2 the vacancy is filled only if a majority of votes exercised support the candidate.

25.7 In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Act, in order to become or remain a director or a prescribed officer of the Company, unless the Board otherwise resolves, a person must be, and remain, independent from any competitor of the Company as determined by the Board from time to time.

25.8 The Company, at the annual general meeting at which the director retires, or at any other General Meeting, may fill the vacancy by electing a person thereto, provided that the Company shall not be entitled to fill the vacancy by means of a resolution passed in accordance with article 24.



- 25.9 If the number of directors falls below the minimum number of directors required, the remaining director(s) shall, as soon as possible and in any event not later than 3 (three) months from the date that the number of directors fell below the minimum, fill the vacancies, provided that such director are elected by the shareholders at the next annual general meeting or call a General Meeting for the purpose of filling the vacancy/ies.
- 25.10 The failure by the Company to have the minimum number of directors during the 3 (three) month period referred to in article 25.9 does not limit or negate the authority of the Board.
- 25.11 After the expiry of the 3 (three) month period referred to in article 25.9, the remaining directors may act only to -
- 25.11.1 increase the number of directors to the required minimum in terms of article 25.9; or
- 25.11.2 summon a General Meeting for that purpose, provided that if there is no director able or willing to act, then any shareholder may convene a General Meeting for that purpose.
- 25.12 The authority of the Board to consider a matter other than at a Board meeting, as set out in section 74 of the Act is not limited or restricted by this Memorandum of Incorporation, provided that each director has received notice of the matter to be decided, and any such resolution signed by the majority of the directors and inserted in the minute book shall be as valid and effective as if it had been passed at a Board meeting. Any such resolution may consist of several documents and shall be deemed to have been passed on the date appearing on such resolution.
- 25.13 In addition to the right of the company secretary to convene Board and committee meetings as contemplated in article 35.4, the right of the directors to requisition a Board meeting, as set out in section 73(1) of the Act may be

exercised by any director, the chairman of the Board or the chief executive of the Company, despite the provisions of that section of the Act.

- 25.14 The Board may appoint a chairman and a lead independent director who are non-executive directors of the Board and determine the period for which each is to hold office. At any Board meeting the chairman of the Board, or if he is not present or willing to act as such, the lead independent director or other most senior independent non-executive director present and willing to act as such, shall act as chairman. If no chairman or lead independent director has been elected or if the most senior independent non-executive director is present and willing to act as such, the directors present at any Board meeting shall choose one of their number to be chairman of the Board meeting.
- 25.15 In the case of a tied vote the chairman may not have a second or deciding vote, and the resolution being voted on fails.
- 25.16 No director, in terms of their or any contracts of service, shall be appointed for life or for an indefinite period.
- 25.17 With effect from the annual general meeting of the Company and subject to the provisions relating to the disqualification of directors, at least  $\frac{1}{3}$  (one-third) of the directors or, if their number is not 3 (three) or a multiple of 3 (three), the number nearest to  $\frac{1}{3}$  (one-third), but not less than  $\frac{1}{3}$  (one-third) then holding that position, shall retire, provided that if a director is appointed as an executive director or is an employee of the Company in any other capacity, he shall not while he continues to hold that position or office be subject to retirement by rotation and he shall not in such case, be taken into account in determining the rotation or retirement of directors. The directors who are to retire are, firstly those who have been appointed to fill a casual vacancy or as an addition to the Board, and secondly, those who have held their position for the longest period since their last election, but as between persons who became directors on the same day, the determination shall be made by ballot, unless otherwise agreed amongst themselves, provided that, notwithstanding

the foregoing, if, at the date of any annual general meeting, any director will have -

- 25.17.1 held office for a period of 3 (three) years since his last election or appointment;
- 25.17.2 reached the age of 70 (seventy) years or older; and/or
- 25.17.3 held office for an aggregate period of 9 (nine) years since his first election or appointment,

then such director shall retire at such annual general meeting, either as one of the directors to retire in pursuance of the foregoing or additionally thereto. The provisions of articles 25.17.1 and 25.17.3 shall not apply to any director employed by the Company in an executive position;

- 25.18 A retiring director shall act as a director throughout the annual general meeting at which he retires.
- 25.19 The length of time a director has been in office shall, save in respect of directors appointed or elected in terms of the provisions of articles 25.5 and 25.33, be computed from the date of his last election or appointment.
- 25.20 If at any General Meeting at which an election of directors ought to take place, the offices of the retiring directors are not filled, unless it is expressly resolved not to fill such vacancies, the General Meeting shall stand adjourned and the further provisions of this Memorandum of Incorporation and the Act will apply, *mutatis mutandis*, to such adjournment, and if at such adjourned General Meeting the vacancies are not filled, the retiring directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned General Meeting.

- 25.21 A retiring director shall be eligible for election or re-election if nominated by the Company's nomination committee. If elected or re-elected he shall be deemed not to have vacated his office.
- 25.22 The Board shall, through its nomination committee, provide the shareholders with a recommendation in the notice of the General Meeting (which notice shall be delivered in accordance with the provisions of article 20.5) or the explanatory notes at which the election or re-election of a retiring director is proposed, as to which retiring directors are eligible for election or re-election, taking into account that director's past performance and contribution. Directors may be elected or re-elected at a General Meeting, provided such General Meeting is not conducted in terms of section 60 of the Act.
- 25.23 The Board may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board in terms of this Memorandum of Incorporation) and for such period and subject to such conditions as the Board may from time to time think fit. Any such appointment may, if the Board thinks fit, be made in favour of the Company, the shareholders, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Board. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Board thinks fit. Any such attorneys or agents as aforesaid may be authorised by the Board to sub-delegate all or any of the powers, authorities and discretions for the time being vested in it.
- 25.24 All acts performed by the Board or by a committee of the Board or by any person acting as a director or a member of a committee, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the directors or persons acting as aforesaid, or that any one of them were disqualified from or had vacated office, be as valid as if every

such person had been duly appointed and was qualified and had continued to be a director or member of such committee.

- 25.25 The proposal of any resolution to shareholders in terms of sections 20(2) and 20(6) of the Act which would lead to the ratification of an act that is contrary to the Listings Requirements is prohibited, unless otherwise agreed with the JSE.
- 25.26 A director may hold any other employment, office or place of profit under the Company or any subsidiary of the Company (except that of auditor) in conjunction with the office of director, for such period and on such remuneration (in addition to the remuneration to which he may be entitled as a director) and otherwise as the remuneration committee or a disinterested quorum of the Board may determine from time to time.
- 25.27 Each director and each alternate director, prescribed officer and member of any committee of the Board (whether or not such latter persons are also members of the Board) shall, subject to the exemptions contained in section 75(2) of the Act and the qualifications contained in section 75(3) of the Act, comply with all of the provisions of section 75 of the Act in the event that they (or any person who is a related person to them) has a personal financial interest in any matter to be considered by the Board.
- 25.28 A director may not vote on any resolution pertaining to any matter in which he has a personal financial interest as contemplated by section 75 of the Act. However, notwithstanding his interest in any matter, such director may be counted for purposes of determining a quorum for a Board meeting.
- 25.29 The Board may authorise the payment of such donations by the Company to such religious, charitable, public or other bodies, clubs, funds, associations or persons as may seem desirable in the interests of the Company, provided that any donations to any political parties or associations shall require the prior approval of shareholders in General Meeting.

25.30 The authority of the Board to -

25.30.1 manage and direct the business and affairs of the Company, as set out in section 66(1) of the Act;

25.30.2 conduct a Board meeting entirely by Electronic Communication, or to provide for participation in a Board meeting by Electronic Communication, as set out in section 73(3) of the Act;

25.30.3 determine the manner and form of providing notice of its Board meetings, as set out in section 73(4) of the Act; and

25.30.4 proceed with a Board meeting despite failure or defect in giving notice of the Board meeting, as set out in section 73(5) of the Act,

is not limited or restricted by this Memorandum of Incorporation.

25.31 The quorum requirement for a Board meeting to begin, the voting rights at such a Board meeting and the requirements for approval of a resolution at such a Board meeting shall be the majority of the directors present at such Board meeting in person or by proxy, provided that at least  $\frac{1}{2}$  (half) of such aforesaid quorum shall constitute non-executive directors.

25.32 A director shall cease to hold office as such -

25.32.1 if he becomes insolvent, or assigns his estate for the benefit of his creditors, or files a petition for the liquidation of his affairs, or compounds generally with his creditors; or

25.32.2 if he becomes of unsound mind; or

25.32.3 if his employment relationship with the Company is terminated for whatsoever reason, including but not limited to, resignation, retirement, misconduct or otherwise; or

- 25.32.4 if he is absent from 2 (two) consecutive Board meetings or 3 (three) Board meetings in the aggregate during any 1 (one) calendar year and has failed to obtain the prior leave of absence from the chairman of the Board; or
- 25.32.5 if he is removed under article 25.33; or
- 25.32.6 if he has been given notice, signed by shareholders holding in aggregate more than 50% (fifty per cent) of the total voting rights of all shareholders entitled to vote at a General Meeting, of the termination of his appointment; or
- 25.32.7 if he resigns his office by notice in writing to the Company; or
- 25.32.8 if he is required to do so in terms of section 69 of the Act;
- 25.32.9 if he Board resolves to remove him in accordance with section 71(3) of the Act; and/or
- 25.32.10 if he is required to do so in terms of the Listings Requirements.
- 25.33 The Company may by ordinary resolution in accordance with article 25.32.6 remove any director before the expiration of his period of office and by an ordinary resolution elect another person in his stead. The person so elected shall hold office until the next following annual general meeting of the Company and shall then retire and be eligible for re-election.
- 25.34 For the avoidance of doubt, the powers of the Board contained in this article 25 are in addition to any other powers conferred on the Board in this Memorandum of Incorporation or the Act.

## 26 ALTERNATE DIRECTORS

26.1 Every director may, by notice to the Company -

26.1.1 nominate any person or persons (including any of his co-directors) to be his alternate director to act in his place and stead subject to the approval by the majority of the other directors of that alternate director;

26.1.2 at any time terminate any such appointment.

26.2 The appointment of an alternate director shall terminate when the director to whom he is an alternate director -

26.2.1.1 ceases to be a director; or

26.2.1.2 terminates his appointment.

26.3 An alternate director shall be entitled to vote at any Board Meeting if the director to whom he is an alternate director is not present, provided that -

26.3.1 he may attend a Board meeting at which the director to whom he is an alternate is present;

26.3.2 any person attending any Board meeting as a director in his own right and/or as an alternate director for one or more directors shall have one vote in respect of each director whom he represents, over and above his vote if he is a director;

26.3.3 he may sign a resolution passed otherwise than at a Board meeting if the director to whom he is an alternate is then absent from the country in which the registered office of the Company is situate, or incapacitated;



26.3.4 subject to the foregoing, the alternate director is generally entitled to exercise all the rights of the director to whom he is alternate in the absence or incapacity of that director;

26.3.5 in all respects be subject to the terms and conditions attached to the appointment, rights, duties and the holding of office of the director to whom he is an alternate, but shall not have any claim of any nature whatever against the Company for any remuneration of any nature whatsoever.

## 27 **MANAGING DIRECTOR AND EXECUTIVE DIRECTORS**

27.1 The Board may from time to time appoint one or more of the directors as executive directors or the managing director of the Company, on such terms and conditions as to remuneration and otherwise as may be determined from time to time by the remuneration committee or the Board.

27.2 Any executive or managing director appointed in terms of article 27.1 is subject to the same provisions regarding dismissal as any other director of the Company and, should he cease to be an employee, he shall *ipso facto* cease to be a managing director or executive director without prejudice to any claim he may have for damages as a result thereof.

27.3 The remuneration payable to an executive or managing director appointed in terms of article 27.1 for services as a director -

27.3.1 shall be determined by the shareholders in General Meeting on recommendation by the remuneration committee of the Company;

27.3.2 accrues to him, over and above or *in lieu* of the normal remuneration he may receive as an employee of the Company, as the Board may determine; and/or

27.3.3 his remuneration as an employee of the Company may consist of salary or a commission calculated on the profits or dividends of the Company, or both as the Board may determine.

27.4 The Board may -

27.4.1 grant from time to time to an executive or managing director appointed in terms of article 27.1 all or any of the powers which in terms of this Memorandum of Incorporation and the Sun International board charter in force from time to time, may be exercised by the Board;

27.4.2 grant such powers for such period to be exercised for such purposes and subject to such conditions and restrictions as the Board may deem fit;

27.4.3 grant such powers with retention of or with the exclusion of or *in lieu* of any of the powers of the Board; and

27.4.4 from time to time revoke, withdraw or amend any of such powers as they deem fit.

## 28 DIRECTORS' REMUNERATION AND FINANCIAL ASSISTANCE

28.1 The authority of the Company to pay remuneration to the directors for their services as directors, in accordance with a special resolution approved by the shareholders within the previous 2 (two) years, as set out in sections 66(9) and (10) of the Act is not limited or restricted by this Memorandum of Incorporation.

28.2 The directors shall be paid all their travelling and other expenses properly and necessarily incurred by them in and about the business of the Company, (including in relation to attending Board meeting or of committees thereof). If any director is required to perform extra services or to reside abroad or shall be specifically occupied about the Company's business, he shall be entitled to receive such remuneration, which may be either in addition to or in

substitution for any other remuneration, as is determined by a disinterested quorum of the Board.

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

## 29 QUALIFYING SHARES

No director shall be obliged to hold any qualifying Shares.

## 30 INDEMNIFICATION OF DIRECTORS

- 30.1 The Company may -

30.1.1 advance expenses to a director or directly or indirectly indemnify a director in respect of the defence of legal proceedings, as set out in section 78(4) of the Act;

30.1.2 indemnify a director in respect of liability as set out in section 78(5) of the Act; and/or

30.1.3 purchase insurance to protect the Company or a director as set out in section 78(7) of the Act,

and the power of the Company in this regard is not limited, restricted or extended by this Memorandum of Incorporation.

- 30.2 The provisions of article 30.1 shall apply *mutatis mutandis* in respect of any former director, prescribed officer, manager, company secretary or member of any committee of the Board, including without limitation, the audit committee.

## **31 BORROWING POWERS**

- 31.1 The Board may from time to time and in accordance with the Act exercise all of the powers of the Company, to -
- 31.1.1 borrow for the purposes of the Company and/or any member company of Sun International, such sums as they think fit; and/or
- 31.1.2 enter into any credit or like agreement for the Company and/or any member company of Sun International; and/or
- 31.1.3 secure the payment or repayment of any such sums or any other sum, as they think fit, whether by the creation and issue of Securities, the conclusion of letters of comfort, guarantees, the creation of a mortgage or charge upon all or any of the property or assets of the Company and/or any member company of Sun International.
- 31.2 For the purposes of article 31.1, the borrowing powers of the Company shall be unlimited both as to quantum and as to instrument used.

## **32 COMMISSION**

The Company may pay commission at a rate not exceeding 10% (ten per cent) of the issue price of a Security to any person in consideration for his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities of the Company or for procuring or agreeing to procure, whether absolutely or conditionally, subscriptions for any Securities of the Company.

## **33 COMMITTEES OF THE BOARD**

- 33.1 If and for so long as it is required to do so in terms of the Act and, unless the Company is exempted from doing so by the Tribunal in terms of section 72(5) of the Act, the Shareholders of the Company, on recommendation of the Board, must appoint a social and ethics committee and an audit committee,

having the powers and functions prescribed in sections 72 and 94 of the Act respectively, it being recorded that at least 1/3 (one third) of the members of the audit committee at any particular time must have academic qualifications or experience in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resources management.

33.2 If and for so long as any of the Company's Securities are listed on the JSE, the Board shall appoint such Board committees as are required by the Listings Requirements having regard to such functions and powers as are prescribed by or in terms of the Listings Requirements. In addition, the Board may appoint any number of committees and delegate to such committees any authority of the Board as provided for in section 72(1) of the Act.

33.3 The authority of a committee appointed by the Board, as set out in sections 72(2) (b) and (c) of the Act is not limited or restricted by this Memorandum of Incorporation.

#### **34 COMPANY RULES**

The Board is prohibited from making any rules as contemplated in section 15(3) of the Act and the Board's capacity to make such rules is hereby excluded.

#### **35 COMPANY SECRETARY**

35.1 The Board must appoint a company secretary and shall be the sole body in whom is vested the power to remove and/or replace such company secretary by giving written notice to such effect to the company secretary. The company secretary may not be a director of the Company and shall at all times maintain an arm's length relationship with the Board as required by the Listings Requirements.

35.2 The company secretary must have the requisite knowledge of, and experience with, relevant laws and be a permanent resident of the Republic and remain so while serving in that capacity.

35.3 The Board must fill any vacancy in the office of company secretary within 60 (sixty) business days after such vacancy arises.

35.4 The company secretary shall have such obligations as placed on the company secretary by the Act and the Listings Requirements. Specifically and without limiting the foregoing, the company secretary shall be entitled to convene such Board and committee meetings as agreed annually in advance with the chairman and managing director of the Company.

## 36 **BRANCH REGISTER**

The Company shall be entitled to cause a branch Securities Register to be kept in any foreign country and the Board may make such provisions as they see fit in respect of such branch Securities Register.

## 37 **REGULATORY APPROVAL**

In the event that the lawful implementation of the sale of any equity ("**Affected Equity**") in terms of this Memorandum of Incorporation requires the approval of the Competition Commission, the Competition Tribunal or the Competition Appeal Court, whichever has jurisdiction for the purposes of such sale, in terms of the Competition Act, No. 89 of 1998, as amended, or requires the approval of the Takeover Regulation Panel (established by section 196 of the Act) any other regulator or regulatory authority (such approvals being referred to as "**Regulatory Approval**"), then, notwithstanding anything to the contrary contained or implied herein, the entire sale in respect of the Affected Equity shall be subject to the fulfilment of the suspensive condition that the requisite Regulatory Approval is granted, either unconditionally, or on terms and conditions acceptable to the seller and purchaser of the Affected Equity, which suspensive condition must be fulfilled within such period as may be agreed between all the parties to the sale. A party shall act reasonably in deciding whether or not such terms and conditions are acceptable to it.

**38 COPIES OF FINANCIAL STATEMENTS AND REPORTS TO BE SENT TO THE JSE AND OTHER STOCK EXCHANGES**

The Board shall, to the extent required, send the requisite number of copies of the Financial Statements of the Company, and if the Company has subsidiaries, of Sun International Financial Statements, together with the external auditor's reports, as is required for proper submission to a General Meeting, to the shareholders simultaneously with the notice of the General Meeting at which the Financial Statements and reports are to be considered, as well as to the JSE and any other recognised stock exchange on which the Shares of the Company are listed from time to time, in accordance with the requirements of the JSE and such stock exchange.

**39 SHARE TRANSACTIONS TOTALLY ELECTRONIC (S.T.R.A.T.E.)**

Notwithstanding anything contained to the contrary in the aforementioned provisions of this Memorandum of Incorporation, but subject to the Act and the Listings Requirements and any other exchange on which the Shares of the Company are quoted or listed from time to time, all Share transactions may be concluded totally electronically.

**40 ACQUISITION BY THE COMPANY OR ITS SUBSIDIARIES OF THE COMPANY'S SHARES**

40.1 Subject to the Listings Requirements, the provisions of section 48 of the Act and the further provisions of this article 40 -

40.1.1 the Board may determine that the Company acquire a number of its own Shares; and

40.1.2 the board of any subsidiary of the Company may determine that such subsidiary acquire Shares of the Company, but -

- 40.1.2.1 not more than 10% (ten per cent), in aggregate, of the number of issued Shares of any class may be held by, or for the benefit of, all the subsidiaries of the Company taken together; and
- 40.1.2.2 no voting rights attached to those Shares acquired in terms of article 40.1.2.1 may be exercised while the Shares are held by that subsidiary and it remains a subsidiary of the Company.
- 40.2 Any decision by the Company or its subsidiaries to acquire its or its holding company's Shares must satisfy the Listings Requirements and the requirements of section 48 of the Act and, accordingly, the Company or its subsidiaries may not acquire the aforesaid Shares unless -
  - 40.2.1 for as long as it is required in terms of the Listings Requirements, the acquisition has been approved by a special resolution of the shareholders, whether in respect of a particular repurchase or generally approved by shareholders and unless such acquisition otherwise complies with paragraphs 5.67 to 5.69 of the Listings Requirements (or such other paragraphs as may be applicable from time to time);
  - 40.2.2 the acquisition -
    - 40.2.2.1 is pursuant to an existing legal obligation of the Company or a court order; or
    - 40.2.2.2 has been authorised by the Board;
  - 40.2.3 it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed acquisition; and



- 40.2.4 the Board, by resolution, has acknowledged that it has applied the Solvency and Liquidity Test and reasonably concluded that the Company will satisfy the Solvency and Liquidity Test for a period of 12 (twelve) months immediately after completing the proposed acquisition.
- 40.3 A decision of the Board referred to in article 40.1.1 -
- 40.3.1 must be approved by a special resolution of the shareholders if any Shares are to be acquired by the Company from a director or prescribed officer of the Company, or a person related to a director or prescribed officer of the Company; or
- 40.3.2 is subject to the requirements of sections 114 and 115 of the Act if considered alone, or together with other transactions in an integrated series of transactions, it involves the acquisition by the Company of more than 5% (five per cent) of the issued Shares of the Company.
- 40.4 Notwithstanding any other provision of this Memorandum of Incorporation, the Company may not acquire its own Shares, and no subsidiary of the Company may acquire Shares of the Company if, as a result of that acquisition, there would no longer be any Shares of the Company in issue other than -
- 40.4.1 Shares held by one or more subsidiaries of the Company; or
- 40.4.2 convertible or redeemable Shares.

#### 41 **ODD-LOT OFFER**

In implementing any odd-lot offer made by the Company in accordance with the Listings Requirements, the Company shall, in respect of shareholders holding less than 100 (one hundred) Shares in the issued Share capital of the Company or such higher number of Shares as determined and/or agreed by the JSE as amounting to an odd-lot in the Company ("**Odd-Lots**") and who did not elect to retain their Odd-Lots or increase their Odd-Lot holdings, cause the Odd-Lots to be sold on such

terms as the Board may determine and the Company shall account to the shareholders concerned for the proceeds attributable to the sales, provided that the Odd-Lot offer has been approved by shareholders in a General Meeting or by a written resolution of the shareholders adopted in terms of section 60 of the Act as contemplated in article 24 of this Memorandum of Incorporation.

## **42 AMENDMENT OF MEMORANDUM OF INCORPORATION**

42.1 This Memorandum of Incorporation may be altered or amended in the manner set out in sections 16, 17 or 152(6)(b) of the Act, subject to the provisions contemplated in section 16(1)(c) of the Act, provided that -

42.1.1 any amendment must be submitted to the JSE for approval before such amendments are submitted to all the shareholders for approval; and

42.1.2 any amendment to this Memorandum of Incorporation must be approved by a special resolution of all the shareholders, save if such an amendment is ordered by a court in terms of section 16(1) (a) of the Act. Amendment, for the avoidance of doubt shall include, but not be limited to -

42.1.2.1 the creation of any new class of shares;

42.1.2.2 the variation of any preferences, rights, limitation and other share terms attaching to the Shares;

42.1.2.3 the conversion of the Shares into one or more other classes;

42.1.2.4 the increase of the number of authorised Shares;

42.1.2.5 consolidation of Securities;

42.1.2.6 sub-division of Securities; or

42.1.2.7 the change of the name of the Company.

42.2 An amendment of this Memorandum of Incorporation will take effect from the later of -

42.2.1 the date on, and time at, which the Commission accepts the filing of the notice of amendment contemplated in section 16(7) of the Act; or

42.2.2 the date, if any, set out in the said notice of amendment,

save in the case of an amendment that changes the name of the Company which will take effect from the date set out in the amended registration certificate issued by the Commission.