

Memorandum of Incorporation

Of

MERCEDES-BENZ SOUTH AFRICA LIMITED

a public company

Memorandum of incorporation

of

Mercedes-Benz South Africa Limited

1 Definitions and interpretation

1.1 In this Memorandum of Incorporation:

- (1) a reference to a section number refers to a section of the Act;
- (2) unless inconsistent with the context, words that are defined in the Act bear the same meaning in this Memorandum of Incorporation;
- (3) the headings to the clauses reference purposes only and do not affect the terms of this Memorandum of Incorporation.

1.2 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

- (1) **Act** means the *Companies Act, 2008*, as amended, together with any regulations published in terms thereof;
- (2) **Director** means a member of the board of the Company and the alternate Directors thereof;
- (3) **Shareholder** means the holder of a share issued by the Company and who is registered as such in the Company's share register;
- (4) **Shares** means one of the units into which the proprietary interests of the Company is divided as contemplated in clause 3.1;

1.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Memorandum of Incorporation.

1.4 Unless inconsistent with the context, an expression which denotes:

- (1) any gender includes the other genders;
- (2) a natural person includes an artificial person (including a trust) and vice versa;
- (3) the singular includes the plural and vice versa.

1.5 The schedules to this Memorandum of Incorporation, if any, form an integral part hereof and words and expressions defined in this Memorandum of Incorporation shall bear, unless the context otherwise requires, the same meaning in such schedules.

1.6 When, in this Memorandum of Incorporation, a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by:

- (1) excluding the day on which the first such event occurs;

- (2) including the day on or by which the second event is to occur; and
- (3) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 1.6(1) and 1.6(2), respectively.

[s 5(3)]

- 1.7 Where any term is defined within the context of any particular clause in this Memorandum of Incorporation, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning ascribed to it for all purposes in terms of this Memorandum of Incorporation, notwithstanding that that term has not been defined in this interpretation clause.

2 Substitution of Articles and Memorandum of Association and nature of the company

2.1 Nature of Company

- (1) This Memorandum of Incorporation substitutes and replaces in their entirety the Articles and Memorandum of Association of the Company.
- (2) The effect of such substitution and replacement will result in the Company, as from 1 May 2013, ceasing to be a private company and being incorporated as a public company and is a profit company.
- (3) The primary object and business of the Company shall relate, but not be limited to, the manufacture, distribution, export, import, sale, the maintenance and service of motor vehicles of all kinds and components, spare parts and accessories related thereto as well as the sale and provision of warranties and other ancillary activities and services relating thereto.

The secondary object and business of the Company shall include the leasing, buying, development of property and the funding of its subsidiaries in the furtherance and support of its primary business objective.

- (4) The Company is constituted subject to:
 - (a) the unalterable provisions of the Act;
 - (b) the alterable provisions of the Act, subject to the limitations, extensions, restrictions, variations or substitutions set out in this Memorandum of Incorporation; and
 - (c) the provisions of this Memorandum of Incorporation.

2.2 Powers of the Company [s 15(2)(b) or (c); s 19(1)(b)(ii)]

- (1) This Memorandum of Incorporation does not:
 - (a) contain any restrictive conditions applicable to the Company and any requirement, in addition to the requirements set out in clause 2.3, for the amendment of any such conditions; and
 - (b) prohibit the amendment of any particular provision hereof.
- (2) Where this Memorandum of Incorporation limits, restricts or qualifies the purposes, powers or activities of the Company or limits the authority of the directors to

perform such an act on behalf of the Company, the Shareholders may, by special resolution ratify any action by the Company or the directors that is inconsistent with any such limit, restriction, or qualification, subject to section 20(3) of the Act, in that no such action may be ratified if it is in contravention of the Act.

- (3) The Company has all of the legal powers and capacity of an individual, to the extent possible, subject to any restrictions, limitations or qualifications arising from this Memorandum of Incorporation.

2.3 Memorandum of Incorporation and Company rules [s 16(1); s 16(5); s 16(7); s 16(9); s 15(3); s 15(5)]

- (1) This Memorandum of Incorporation of the Company may be altered or amended:
 - (a) in compliance with a court order effected by a resolution of the Company's board;
 - (b) by the board increasing or decreasing the number of authorised Shares of any class, reclassifying any classified Shares that have been authorised but not issued, classifying any unclassified Shares that have been authorised but not issued, or determining the preferences, rights, limitations or other terms of a class of Shares, provided that any such amendment may only be effected with:
 - (i) the prior approval of an ordinary resolution of the Shareholders; and
 - (ii) a Notice of Amendment being filed with the Commission;
 - (c) by a special resolution of the shareholders but subject to that special resolution having been proposed by (i) the board, or (ii) by Shareholders entitled to exercise at least 10% of the voting rights that may be exercised on such a resolution.
- (2) An amendment contemplated in clause 2.3(1)(c) may take the form of:
 - (a) a new Memorandum of Incorporation in substitution for the existing Memorandum of Incorporation; or
 - (b) one or more alterations to the existing Memorandum of Incorporation by:
 - (i) changing the name of the Company;
 - (ii) deleting, altering or replacing any of its provisions;
 - (iii) inserting any new provisions; or
 - (iv) making any combination of such alterations.
- (3) After amending its Memorandum of Incorporation, the Company must file a Notice of Amendment with the Commission in accordance with the requirements contemplated in sections 16(7) and (8).
- (4) An amendment to this Memorandum of Incorporation takes effect:
 - (a) in the case of an amendment that changes the name of the Company, on the date set out in the amended registration certificate issued by the Commission; or

- (b) in any other case, on the later of:
 - (i) the date on, and time at, which the Commission accepts the filing of the Notice of Amendment; or
 - (ii) the date, if any, set out in the Notice of Amendment.
- (5) The board has authority 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 this Memorandum of Incorporation or the Act, by:
 - (a) delivering a copy of those rules, or any amendment or repeal thereof, to every Shareholder by hand, by ordinary mail (at such Shareholder's registered address) or by publishing in the press in a newspaper circulating in the area in which the Company's registered office is located. Alternatively, delivery may be by email, provided that the Shareholder has given the Company an email address for the purposes of receiving communications; and
 - (b) filing a copy of those rules, or any amendment or repeal thereof, with the Commission.
- (6) Any necessary or incidental rules made, amended or repealed as contemplated in clause 2.3(5):
 - (a) take effect on the later of:
 - (i) ten business days after the rule is filed with the Commission; or
 - (ii) the date, if any, specified in the rule; and
 - (b) are binding:
 - (i) on an interim basis from the time it takes effect until it is put to a vote at the next general Shareholders meeting of the company; and
 - (ii) on a permanent basis only if it has been ratified by an ordinary resolution at the meeting contemplated in clause 2.3(6)(b)(i).

2.4 Alterations of Memorandum of Incorporation and Company rules, translations and consolidations of Memorandum of Incorporation [s 17(1); s 17(3); s 17 (6); s 152(6)(b)]

- (1) The Company's board, or an individual authorised by the board, may alter the Company's rules, or its Memorandum of Incorporation, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by:
 - (a) delivering a notice of the alteration in the manner contemplated in clause 2.3(5)(a); and
 - (b) filing a notice of the alteration with the Commission.
- (2) At any time after having filed its Memorandum of Incorporation with the Commission, the Company may file one or more translations of it, in any official language or languages of the Republic, provided that every such translation must be accompanied by a sworn statement by the person who made the translation,

stating that it is a true, accurate and complete representation of the Memorandum of Incorporation.

- (3) At any time after having filed its Memorandum of Incorporation with the Commission, and having subsequently filed one or more alterations or amendments to it, the Company may (or if the Commission requires it to, must) file a consolidated revision of its Memorandum of Incorporation, as so altered or amended, provided that every such consolidated revision filed with the Commission in terms of clause 2.4(3) must be accompanied by:

- (a) a sworn statement by a Director; or
- (b) a statement by an attorney or notary public,

stating that it is a true, accurate and complete representation of the Company's Memorandum of Incorporation, as altered or amended up to the date of the statement.

- (4) To the extent necessary to implement an adopted business rescue plan and provided that the business rescue plan was approved by the Shareholders, as contemplated in section 152(3)(c), the Practitioner may in terms of section 152(6)(b) amend this Memorandum of Incorporation to authorise, and determine the preferences, rights, limitations and other terms of, any securities that are not otherwise authorised, but are contemplated to be issued in terms of the business rescue plan, despite any provision of this Memorandum of Incorporation or of sections 16, 36 or 37, to the contrary.

2.5 Public company provisions [s 8(2)]

- (1) The Company is a public company; and
- (a) there is no restriction on the transferability of any securities of the Company; and
 - (b) it is not prohibited from offering any securities to the public.
- (2) The Company, being a public company:
- (a) must comply with all of the extended accountability requirements contained in Chapter 3 of the Act; and
 - (b) will be and have its securities subject to Part B and Part C of the Act, including the Takeover Regulations.

3 Securities of the company

3.1 Shares [s 36(2); s 38(1); s 36(3); s 39; s 41; s 44(2); s 47; s 49; s 51]

- (1) The authorised share capital of the Company is R46 840,000.00 (forty six million eight hundred and forty thousand rands) comprising of 46 840 000 ordinary shares of R1.00 each.

The issued share capital of the Company is R46 810,000.00 (forty six million eight hundred and ten thousand rands) comprising of 46 810 000 ordinary shares of R1.00 each.

- (2) Each share entitles the holder to the rights attaching to the particular class of share set out in this clause 3.1(2).
- (a) Each ordinary share entitles the holder to:
- (i) vote on any matter to be decided by a vote of the ordinary Shareholders on the basis contemplated in clause 4.3(1);
 - (ii) participate in any distribution to the ordinary Shareholders; and
 - (iii) participate in the distribution of the residual value of the Company upon its dissolution.
- (3) Subject always to the prior approval of:
- (a) a special resolution of the Shareholders of the Company in the circumstances contemplated in section 41;
- the Company's board is authorised to issue Shares at any time, but only within the classes, and only to the extent that the Shares have been authorised by or in terms of this Memorandum of Incorporation.
- (4) The authority of the board to increase or decrease the number of authorised Shares of any class, to reclassify any classified Shares that have been authorised but not issued, to classify any unclassified Shares that have been authorised but not issued, or to determine the preferences, rights, limitations or other terms of any class of Shares, is restricted or varied in the manner contemplated in clause 2.3(1)(b).
- (5) The pre-emptive right of the Shareholders to be offered and to subscribe for additional Shares set out in section 39, does not apply with respect to any Shares that the Company proposes to issue.
- (6) The authority of the board to authorise the Company to provide financial assistance by way of a loan, guarantee, the provision of security or otherwise to any person in relation to the purchase of any securities or the subscription of any option or security of the Company or a related or inter-related company, subject to the provisions of section 44(3), is not restricted or varied by this Memorandum of Incorporation.
- (7) Subject to clause 3.1(3) and the provisions of section 47, the board may approve the issuing of any authorised Shares of the Company as capitalisation Shares or the issuing of Shares of one class as capitalisation Shares in respect of Shares of another class and may permit Shareholders to elect to receive a cash payment in lieu of a capitalisation share.
- (8) Securities of the Company are to be issued in uncertificated form.

3.2 Debt Instruments [s 43]

- (1) The authority of the Company's board to authorise the Company to issue secured or unsecured debt instruments at any time, is not restricted or varied by this Memorandum of Incorporation.
- (2) The board may grant special privileges associated with any debt instruments to be issued by the Company regarding:
 - (a) attending and voting at general meetings;
 - (b) the appointment of Directors;
 - (c) allotment of securities that have been authorised;
 - (d) redemption of debt instruments by the Company; or
 - (e) substitution of the debt instrument by securities that have been authorised,provided that any such authority may only be exercised with the prior approval of an ordinary resolution of the Shareholders.

3.3 Registration of Beneficial Interests [s 56(1)]

The authority of the Company's board to allow the Company's issued securities to be held by, and registered in the name of, one person for the beneficial interest of another person, is not restricted or varied by this Memorandum of Incorporation.

4 Shareholders

4.1 Shareholders' right to information [s 26]

Other than the rights to access information set out in section 26, a Shareholder has no additional rights to information pertaining to the Company.

4.2 Shareholders' authority to act [s 57(2)(a); s 57(4); s 60]

- (1) If the Company has only one Shareholder, the ability of that Shareholder to exercise any or all of the voting rights pertaining to the Company on any matter, at any time, without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation.
- (2) If, at any time, every Shareholder is also a Director, the authority of the Shareholders to act on any matter that is required to be referred by the Company's board to the Shareholders for decision at any time after being referred by the board, without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation.
- (3) A resolution which could be voted on at a Shareholders meeting may instead be adopted by written consent of the Shareholders, given in person or by electronic communication, provided that the resolution was submitted for consideration to the Shareholders entitled to exercise voting rights in relation to the resolution and the resolution is voted on in writing or by electronic communication by the requisite majority of Shareholders within 20 business days after the resolution was submitted to them.
- (4) An election of a Director that could be conducted at a Shareholders meeting may instead be conducted by written polling of all the Shareholders entitled to exercise

voting rights in relation to the election of that Director, as set out in clause 4.2(3) above.

- (5) Within ten business days after adopting a resolution or conducting a written poll to elect a Director, in terms of clauses 4.2(3) or 4.2(4), 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, or vote in the election of the Director, as the case may be.

4.3 Votes of Shareholders [s 63(4), (5), (6) and (7); s 57(5) and (6)]

- (1) Subject to the Act and subject to any special terms as to voting upon which any share may be issued or may for the time being be held, if voting on a particular matter is:
 - (a) by a show of hands, any person present and entitled to exercise voting rights has one vote, irrespective of the number of voting rights that person would otherwise be entitled to exercise; and
 - (b) by polling, any person who is present at the meeting, whether in person or by proxy, and is entitled to exercise voting rights has one vote per ordinary share.
- (2) A polled vote must be held on any particular matter to be voted on at a meeting if a demand for such a vote is made by:
 - (a) at least five persons having the right to vote on that matter, either as a Shareholder or a proxy;
 - (b) a person who is, or persons who together are, entitled, as a Shareholder or proxy, to exercise at least 10% of the voting rights entitled to be voted on that matter; or
 - (c) the chairperson of the meeting.
- (3) In the case of joint holders of a share, only the vote of the senior holder shall be accepted, whether in person or by proxy. For the purpose of this clause, seniority shall be determined by the order in which the names appear in the register or, in the case of persons entitled to a share by transmission, the order in which their names were given in the notice to the Company of that transmission.
- (4) Any entity holding Shares conferring the right to vote may, by resolution of the Directors or other governing body of that entity, authorise one person to act as its representative at any Shareholders meeting. The representative shall be entitled to exercise the same powers as that entity could exercise if it were an individual Shareholder. The board may require proof to their satisfaction of the appointment or authority of a representative to act.

4.4 Proxies and voting under power of attorney [s 58]

- (1) A Shareholder may, at any time, appoint any individual, including an individual who is not a Shareholder, as a proxy to:
 - (a) participate in, and speak and vote at, a Shareholders meeting on behalf of the Shareholder; or
 - (b) give or withhold written consent on behalf of the Shareholder to a decision by Shareholders acting other than at a meeting.

- (2) the instrument that appoints a proxy must:
- (a) be in writing, dated and signed by the Shareholder;
 - (b) be given by the person appointing such proxy or by their attorney duly authorised in writing or, if the appointor is a corporation, given by a representative so authorised.
- (3) The holder of a power of attorney from a Shareholder may, if so authorised by the power of attorney, vote for and represent such Shareholder at any meeting of the Company.
- (4) Every instrument of proxy, whether for a specified meeting or otherwise, must comply with section 58 of the Act and subject thereto be in following format, or in such other form as the Company's board may approve, and the board may, if they think fit, send out with the notice of any meeting proxy forms for use at the meeting:

"I/We

.....

of

.....

being a Shareholder/Shareholders of the Company appoint

.....of or failing him or her
of or failing him the
 chairman of the Company or failing him or her the chairman of the meeting as my /
 our proxy to:

[participate in, and speak and vote for me / us at a Shareholders meeting of the
 Company to be held at on
 20..... at (time appointed) and at any adjournment thereof.] /

[give or withhold written consent on my / our behalf to the written resolutions to
 which this form of proxy is attached, as contemplated in section 60 of the Act.] /

[participate in, and speak and vote for me / us at any Shareholders meeting held by
 the Company, or give or withhold written consent on my / our behalf in respect of
 any decision contemplated in section 60 of the Act, between the date of this proxy
 instrument and 20.....]*

Dated this day of 20.....

Name (in full)

Address

.....

signature

* Delete as applicable

I / We desire to vote as follows:

	For	Against	Abstain
Resolution No. 1			
Resolution No. 2			

(Set out the numbers of the resolutions if more than 1)

Indicate voting preference by placing a mark (either a tick or a cross) in the appropriate block."

4.5 Representation by concurrent proxies [s 58(3)(a)]

The right of a Shareholder to appoint two or more persons concurrently as proxies, and to appoint more than one proxy to exercise voting rights attached to different securities held by the Shareholder is not restricted or varied by this Memorandum of Incorporation.

4.6 Authority of proxy to delegate [s 58(3)(b)]

The authority of a Shareholder's proxy to delegate that proxy's authority to act on behalf of the Shareholder, subject to any restriction set out in the instrument appointing that proxy, is not restricted or varied by this Memorandum of Incorporation.

4.7 Requirement to deliver proxy instrument to the Company [s 58(3)(c)]

The requirement that a Shareholder must deliver to the Company, or any other person on behalf of the Company, a copy of the instrument appointing a proxy before that proxy may exercise any of the Shareholder's rights at a Shareholders meeting, is not restricted or varied by this Memorandum of Incorporation.

4.8 Deliberative authority of proxy [s 58(7)]

The authority of a Shareholder's proxy to decide without direction from the Shareholder whether to exercise, or abstain from exercising, any voting right of the Shareholder, except to the extent that the instrument appointing that proxy provides otherwise, is not restricted or varied by this Memorandum of Incorporation.

4.9 Validity of appointment

- (1) The proxy appointment remains valid only for its intended purpose, provided that it may be revoked at any time by cancellation in writing, or the making of a later inconsistent appointment of another proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company.
- (2) The appointment of a proxy is suspended at any time and to the extent that the Shareholder chooses to act directly and in person in the exercise of any rights as a Shareholder.
- (3) A vote given in accordance with the terms of an instrument of proxy or power of attorney appointing a proxy shall be valid notwithstanding the legal incapacity of the Shareholder or revocation of the instrument or power of attorney or of the transfer of the securities in respect of which the vote is given, unless notice in writing of such legal incapacity, revocation or transfer is received by or on behalf of the Company not less than twenty four hours (or such greater or lesser period as

the board may determine in relation to any particular meeting) before the time appointed for holding the meeting.

4.10 Record date for exercise of Shareholder rights [s 59(3)]

- (1) If, at any time, the Company's board fails to determine a record date for any action or event, the record date for the relevant matter is:
 - (a) in the case of a meeting, the latest date by which the Company is required to give Shareholders notice of that meeting; or
 - (b) in any other case, the date of the action or event.

5 Shareholders Meetings

5.1 Requirement to hold meetings [s 61]

The Company is not required to hold any Shareholders meetings other than those specifically required by section 61 and this clause 5, but may do so.

5.2 Shareholders' right to requisition a meeting [s 61(1); s 61(3)]

- (1) The right of Shareholders to requisition the Company's board to call a Shareholders meeting may be exercised if, in aggregate, written and signed demands for a meeting with substantially the same purpose are made by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, provided that each such demand describes the specific purpose for which the meeting is proposed.
- (2) In addition, any general meeting may be called by one or more Shareholders holding not less than 10% of the Company's issued Shares.

5.3 Location of Shareholders meetings [s 61(9)]

The authority of the Company's board to determine the location of any Shareholders meeting and the authority of the Company to hold any such meeting in the Republic or in any foreign country, is not restricted or varied by this Memorandum of Incorporation.

5.4 Calling a Shareholders meeting [s 61(11)]

If the Company is unable to convene a Shareholders meeting because it has no Directors or because all of its Directors are incapacitated, any Shareholder, or any person designated by a Shareholder may convene a meeting.

5.5 Notice of Shareholders meetings [s 62(1)(a); s 62(3) and s 63(3)]

- (1) The minimum number of days for the Company to deliver a notice of a Shareholders meeting to the Shareholders is ten business days before the meeting is to begin or twenty four hours if agreed on in writing by Shareholders holding not less than 90% of the votes exercisable at such meeting.
- (2) A notice of a meeting must be in writing and include the information set out in sections 62(3) and 63(3).

5.6 Electronic participation in Shareholders meeting [s 63(2); s 61(10)]

- (1) Every Shareholders meeting of the Company must be reasonably accessible within the Republic for electronic participation by Shareholders, irrespective of whether the meeting is held in the Republic or elsewhere.
- (2) The authority of the Company to conduct a Shareholders meeting entirely by electronic communication is not restricted or varied by this Memorandum of Incorporation.
- (3) The electronic communication employed at a Shareholders meeting shall ordinarily enable all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.

5.7 Quorum for Shareholders meetings [s 64(1); s 64(2); s 64(3); s 64(4); s 64(5); s 64(8); s 64(9)]

- (1) Subject to the provisions of clause 5.7(2) to clause 5.7(6) (both inclusive), the quorum for:
 - (a) a Shareholders meeting to begin is sufficient persons present at the meeting to exercise, in aggregate, 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; and
 - (b) a matter to begin to be considered at the meeting is sufficient persons present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda.
- (2) Notwithstanding clause 5.7(1), where the Company has more than two Shareholders, a meeting may not begin, or a matter begin to be considered, unless at least three Shareholders are present at the meeting and the requirements of clause 5.7(1) are satisfied.
- (3) If, within thirty minutes after the appointed time for a meeting to begin, the requirements of clauses 5.7(1), or 5.7(2) if applicable:
 - (a) for that meeting to begin have not been satisfied, the meeting is postponed without motion, vote or further notice, for one week; and
 - (b) for consideration of a particular matter to begin have not been satisfied:
 - (i) if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or
 - (ii) if there is no other business on the agenda of the meeting, the meeting is adjourned for one week, without motion or vote.
- (4) The person intended to preside at a meeting, where the quorum requirements in clause 5.7(1), or clause 5.7(2) if applicable, are not satisfied, may extend the 30 minute limit allowed for a reasonable period on the grounds that:
 - (a) exceptional circumstances affecting weather, transportation or electronic communication have impeded, or are impeding, the ability of Shareholders to be present at the meeting; or

- (b) one or more delayed Shareholders have communicated an intention to attend the meeting, and those Shareholders, together with others in attendance, would satisfy the quorum requirements; or
 - (c) any other reason such person considers appropriate.
- (5) After a quorum has been established for a meeting, or for a particular matter, the meeting may continue, or the matter may be considered, so long as at least one Shareholder with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting.
 - (6) If the quorum requirements in clause 5.7(1), or clause 5.7(2), if applicable, have not been satisfied at the time appointed for a postponed meeting to begin, or for an adjourned meeting to resume, the Shareholders present in person or by proxy will be deemed to constitute a quorum.

5.8 Adjournment of Shareholders meetings [s 64(10); s 64(11); s 64(12)]

- (1) Subject to clauses 5.7, 5.8(2) and 5.8(3), a Shareholders meeting or the consideration of any matter at the meeting, may be adjourned from time to time, on a motion supported by persons entitled to exercise, in aggregate, a majority of the voting rights held by all of the persons who are present at the meeting at the time and that are entitled to be exercised on at least one matter remaining on the agenda of the meeting, or on the matter under consideration, as the case may be.
- (2) An adjournment of a meeting, or the consideration of a matter at the meeting, in terms clause 5.8(1), may be either to a fixed time and place or until further notice, as agreed at the meeting.
- (3) A meeting may not be adjourned beyond the earlier of:
 - (a) 120 business days after the record date determined in accordance with clause 4.10; or
 - (b) 60 business days after the date on which the adjournment occurred.

5.9 Shareholders resolutions [s 65(7); s 65(9)]

- (1) For an ordinary resolution to be approved by Shareholders, it must be supported by the holders of more than 50% of the voting rights exercised on that resolution.
- (2) For a special resolution to be approved by Shareholders, it must be supported by the holders of at least 75% of the voting rights exercised on that resolution.

5.10 Annual General Meeting [s 61(7) and (8)]

- (1) The Company must hold an annual general meeting:
 - (a) initially, no more than 18 months after its date of incorporation; and
 - (b) thereafter, once in every calendar year, but no more than 15 months after the date of the previous annual general meeting.
- (2) In addition to the requirements of clause 5.5, the notice calling an annual general meeting must include:
 - (a) the financial statements to be presented, or a summarised form thereof; and

- (b) directions for obtaining a copy of the complete annual financial statements for the preceding financial year.
- (3) The agenda at an annual general meeting shall include but shall not be limited to:
 - (a) presentation of the Directors' report, audited financial statements for the immediately preceding financial year and, if required, an audit committee report;
 - (b) election of Directors, to the extent required by the Act or this Memorandum of Incorporation;
 - (c) appointment of an auditor for the ensuing financial year, and, if required, an audit committee; and
 - (d) any matters raised by Shareholders, with or without advance notice to the Company.

6 Directors and officers

6.1 Composition of the board [s 66(2); s 67(1); s 68(1); s 68(2)(a); s 68(2)(b); s 66(4)(a)(ii); s 68(3); s 69(3) and (4); s 69(7); s 69(8)(a); s 69(8)(b) s 71 (1)]

- (1) The Company's board must comprise not less than [7] Directors, elected by the Shareholders.
- (2) Subject to clause 6.1(5), each Director, other than the first Directors and any Directors appointed in this Memorandum of Incorporation, must be elected by the persons entitled to exercise voting rights in such an election.
- (3) In any election of Directors, the 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.
- (4) In each vote to fill a vacancy, each voting right entitled to be exercised may be exercised once and the vacancy is filled only if a majority of the voting rights exercised support the candidate.
- (5) The authority of the board to fill any vacancy on the board on a temporary basis is not restricted or varied by this Memorandum of Incorporation. A Director appointed on a temporary basis must be a person who satisfies the requirements for election as a Director and has all the powers, functions and duties, and is subject to all the liabilities, of any other Director.
- (6) Term of Non-Executive Directors
 - (a) Non-Executive Directors that are not prescribed officers or full-time employees of any inter-related company nor have been such an officer or employee at any time during the previous three (3) financial years shall be appointed for a term of two (2) years.
 - (b) The Shareholders may elect to renew the term of the Non-Executive Director as specified in 6.1 (6)(a) upon expiry of the term.
- (7) To become or to continue to act as a Director or a prescribed officer of the Company, a person must not be:
 - (a) a juristic person;

- (b) an unemancipated minor, or a person under a similar legal disability;
- (c) a person who has been declared a delinquent or placed under probation by a court in terms of section 162 or section 47 of the *Close Corporations Act, 1984*, except to the extent permitted by the order of probation;
- (d) an unrehabilitated insolvent;
- (e) prohibited in terms of any public regulation to be a Director;
- (f) removed from an office of trust, on the grounds of misconduct involving dishonesty;
- (g) a person who has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence:
 - (i) involving fraud, misrepresentation or dishonesty;
 - (ii) in connection with the promotion, formation or management of a company;
 - (iii) in connection with having been appointed or elected as a Director or acting as a Director whilst ineligible or disqualified, or whilst having been placed under probation by a court; or
 - (iv) under the Act, the *Insolvency Act, 1936*, the *Close Corporations Act, 1984*, the *Competition Act, 1998*, the *Financial Intelligence Centre Act, 2001*, the *Securities Services Act, 2004*, or Chapter 2 of the *Prevention and Combating of Corruption Activities Act, 2004*.
- (8) A person need not satisfy any further eligibility requirements or qualifications.
- (9) A Director may, in accordance with s71 of Act, be removed by an ordinary resolution adopted at a shareholders meeting by the persons entitled to exercise voting rights in an election of that Director.

6.2 **Alternate Directors [s 66(4)(a)(iii)]**

- (1) An alternate Director may be elected or removed by the shareholders entitled to exercise voting rights in such an election to act as an alternate Director in a Director's place as the occasion arises and during that Director's absence, provided that such person has been approved for that purpose by a resolution of the Company's board.
- (2) An alternate Director shall, except as regards the power to appoint an alternate (if applicable) and to receive remuneration, be subject in all respects to the terms and conditions applicable to the Director appointing them, and each alternate Director shall be entitled:
 - (a) to receive notice of all meetings of the Directors or of any committee of the Directors of which the alternate's appointor is a member;
 - (b) to attend and vote at any such meetings at which the alternate's appointor is not personally present;
 - (c) to furnish written consent to adopt a decision which could be voted on at a board meeting;

- (d) to be appointed as an alternate to more than one Director and shall have a vote for each Director for whom such alternate acts, in addition to their own vote as Director, if any; and
 - (e) generally, to exercise and discharge all the functions, powers and duties of the alternate's appointor in such appointor's absence as if such alternate were a Director.
- (3) An alternate Director shall cease to be an alternate Director if the alternate's appointor ceases for any reason to be a Director, but if any Director retires and is re-elected at the same meeting, any appointment made by such Director shall remain in force as though the Director had not retired.

6.3 Authority of the board [s 66(1); s 57(3)]

- (1) The authority of the Company's board to exercise all of the powers and perform any of the functions of the Company and to manage and direct the business and affairs of the Company, is not restricted or varied by this Memorandum of Incorporation.
- (2) If, at any time, the Company has only one Director, the authority of that Director to act without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation.

6.4 Directors' meetings [s 73(1); s 73(3); s 73(4); s 73(5)(a); s 73(5)(b); s 73(5)(c) and (d); s 73(5) (e); s 74]

- (1) A Director authorised by the board of the Company:
 - (a) may call a meeting of the board at any time; and
 - (b) must call such a meeting if required to do so by at least:
 - (i) 25% of the Directors, in the case of a board that has at least 12 members; or
 - (ii) two Directors, in any other case.
- (2) Notwithstanding clause 6.4(1), any Director may call a meeting of Directors if such Director considers there is good reason to do so.
- (3) The authority of the board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting, is not restricted or varied by this Memorandum of Incorporation.
- (4) The authority of the board to adopt a decision, that could be voted on at a board meeting, by way of written consent of a majority of the Directors, given in person or by electronic communication, provided that each Director has received notice of the matter to be decided, is not restricted or varied by this Memorandum of Incorporation. Any decision made in the manner contemplated in this clause 6.4(4) has the same effect as if it had been approved by voting at a meeting.
- (5) The board may determine the form and time for giving notice of its meetings but such a determination must comply with any requirements set out in this Memorandum of Incorporation or the Company's rules, provided that no meeting of

the board shall be convened without notice to all of the Directors subject, however, to the provisions of clause 6.4(6).

- (6) The authority of the board to proceed with a meeting even if there was a failure to give the required notice or there was a defect in the giving of such notice, provided that all of the Directors acknowledge actual receipt of the notice or are present at the meeting or waive notice of the meeting, is not restricted or varied by this Memorandum of Incorporation.
- (7) The quorum requirement for a meeting is a majority of Directors.
- (8) Each Director has one vote on a matter and a majority of votes cast on a resolution is sufficient to approve that resolution.
- (9) In the case of a tied vote the chair will not have a deciding vote and the resolution will fail.

6.5 Directors' power to affect borrowing

The Company's board may raise or borrow from time to time for the purposes of the Company, or secure the payment, of such sums as they think fit and may secure the repayment or payment of any such sums by guarantee, bond or mortgage upon all or any of the property or assets of the Company or by the issue of debt instruments or otherwise as they may think fit.

6.6 Directors' compensation and financial assistance [s 66(8) and (9); s 44(2); s 45(2)]

- (1) The authority of the Company to pay remuneration to the Directors, in accordance with a special resolution approved by the Shareholders within the previous two years, is not restricted or varied by this Memorandum of Incorporation. Alternate Directors may only be paid out of the remuneration payable to the Director for whom they are appointed as an alternate.]
- (2) The authority of the Company's board to authorise the Company to provide financial assistance by way of a 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 any securities of the Company or a related or inter-related company, subject to the provisions of sections 44(3) and 44(4), is not restricted or varied by this Memorandum of Incorporation.
- (3) The authority of the Company's board to authorise the Company to provide financial assistance to a Director or prescribed officer of the Company or a related or inter-related company, or to a related or inter-related company or corporation or to a member of a related or inter-related company or corporation, or to a person related to any such person or entity, subject to the provisions of sections 45(3) and 45(4), is not restricted or varied by this Memorandum of Incorporation.

6.7 Indemnification of Directors [s 78(1); s 78(3); s 78(4); s 78(5); s 78(7); s 78(8)]

- (1) For purposes of this clause 6.7, **Director** includes a former Director, an alternate Director, a prescribed officer or a person who is a member of a committee of a board of the Company, or of the audit committee of the Company, irrespective of whether or not the person is also a member of the board.
- (2) The authority of the Company to advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company and to directly or indirectly indemnify a Director for such expenses if those proceedings are abandoned or exculpate the Director or arise in respect of any

liability for which the Company may indemnify the Director, is not restricted or varied by this Memorandum of Incorporation.

- (3) The authority of the Company to indemnify a Director in respect of any liability for which the Company may indemnify a Director, is not restricted or varied by this Memorandum of Incorporation.
- (4) The authority of the Company to purchase insurance to protect:
 - (a) a Director against any liability or expenses for which the Company may indemnify a Director as contemplated in clause 6.7(2) or clause 6.7(3); or
 - (b) the Company against any contingency including but not limited to any expenses that the Company is permitted to advance or for which the Company is permitted to indemnify a Director as contemplated in clause 6.7(2) or any liability for which the Company is permitted to indemnify a Director as contemplated in clause 6.7(3),

is not restricted or varied by this Memorandum of Incorporation.

- (5) The Company shall be entitled to claim restitution from a Director or a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with this clause 6.7 or the Act.

6.8 Committees of the board [s 72(1)(a); s 72(1)(b)]

- (1) The authority of the Company's board to appoint any number of committees of Directors for managing any of the affairs of the Company and to delegate to any such committee any authority of the board, is not restricted or varied by this Memorandum of Incorporation
- (2) Subject to the powers and authorities granted by the board to any such committee, the authority of:
 - (a) the board to include persons who are not Directors of the Company, provided that such persons are not ineligible or disqualified from being a Director as contemplated in clause 6.1(7) and the Act and that no such person shall vote on a matter to be decided by the committee;
 - (b) the committee to consult with or receive advice from any other person; and
 - (c) the committee to exercise the full authority of the board in respect of a matter referred to it,

is not restricted or varied by this Memorandum of Incorporation.

6.9 Authentication of documents

- (1) Any Director or any person appointed by the Directors for this purpose shall have power to authenticate any resolutions passed by the Shareholders or the Directors, and any books, records, accounts and other documents relating to the Company, and to certify copies or extracts from those documents as true copies or extracts and where any books, records, documents or accounts are elsewhere than at the registered office, the local manager or other officer of the Company having the custody of the documents at such other place shall be deemed to be the person so appointed.

- (2) A document purporting to be a copy of a resolution of the Directors or Shareholders or an extract from the minutes of a meeting of the Directors or Shareholders which is certified in accordance with clause 6.9(1) is *prima facie* evidence in favour of all persons dealing with the Company that such resolution has been duly passed or, as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the Directors or Shareholders.

6.10 Audit committee [s 94]

- (1) If required in terms of the Act, the Company must, at each annual general meeting of the Company, elect an audit committee comprising at least three members, each of which member must:
- (a) be a director of the Company, who satisfies any applicable requirements prescribed in terms of section 94(5) of the Act;
 - (b) not be:
 - (i) involved in the day-to-day management of the Company's business or have been so involved at any time during the previous financial year;
 - (ii) a prescribed officer, or full-time employee, of the Company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years; or
 - (iii) a material supplier or customer of the Company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that director is compromised by that relationship; and
 - (c) not be related to any person who falls within any of the criteria set out in clause 6.10(1)(b).
- (2) The audit committee shall be appointed in accordance with, and its duties regulated by, section 94.

6.11 Social and Ethics Committee [s 72 (4)]

- (1) If required in terms of the Act, the Company must, at each annual general meeting of the Company, elect a social and ethics committee comprising at least three directors or prescribed officers of the Company, at least one of whom must be a director who is not involved in the day-to-day management of the Company's business, and must not have been so involved within the previous three financial years.

6.12 Company Secretary [s 86; s 87]

- (1) The Board shall appoint a company secretary in accordance with sections 86 and 87 of the Act.
- (2) Should any vacancy arise in the office of company secretary, the board shall, within sixty business days after a vacancy arises, fill such vacancy.

7 General Provisions

7.1 Distributions [s 46]

- (1) Subject to the provisions of the Act, and particularly section 46, the Company may from time to time make a proposed distribution if that distribution is:
 - (a) pursuant to an existing legal obligation of the Company, or a court order; or
 - (b) authorised by a resolution of the Company's board,and the solvency and liquidity test is complied with in the manner contemplated in the Act.
- (2) Distributions that are dividends must be paid to the Shareholders according to their respective rights and interest in proportion to the number of Shares held by them in each class in respect of which the dividend is payable. If any share is issued on terms providing that it shall rank for dividends as from a particular date or for all dividends declared after a particular date, such share shall rank for dividends accordingly.
- (3) A dividend may be declared out of the profits or reserves of the Company, whether realised or unrealised, whether of a revenue or a capital nature and whether designated distributions or not, and no dividend carries interest as against the Company, except as otherwise provided under the conditions of issue of the Shares in respect of which such dividend is payable. Dividends may be declared either free of or subject to the deduction of income tax and any other tax or duty for which the Company may be charged.
- (4) All unclaimed distributions may be invested or otherwise made use of by the board for the benefit of the Company until claimed. Distributions unclaimed for a period of three years may be declared forfeited by the board for the benefit of the Company, or if so resolved by the board unclaimed distributions may be settled by the Company upon trustees to be held in trust for the benefit of the relevant Shareholders, whereupon the liability of the Company in relation thereto shall be extinguished.
- (5) Any distribution may be paid and satisfied, either wholly or in part, by the distribution of specific assets, or in Shares or debt instruments of the Company or of any other company, or in cash, or in any one or more of such ways as the board may at the time of declaring the dividend determine and direct.
- (6) The board may before authorising any dividend whether preferential or otherwise, set aside out of the profits of the Company whether realised or unrealised and whether of a revenue or of a capital nature such sum as they think proper as reserves which shall, at the discretion of the board, be applied for any purpose to which the profits of the Company may be properly applied and pending such application may, at the board's discretion, either be employed in the business of the Company or be invested in such investments as the board may from time to time think fit. The board may also without placing the same to reserve, carry forward any profits of the Company which they may think prudent not to declare as a dividend.
- (7) Subject to the provisions of section 47 and any other requirements imposed by the Act, the Shareholders may (if authorised by the board) and the board may resolve that it is desirable to capitalise all or any part of the amount standing to the credit of any of the Company's reserves or of any share premium account or capital redemption reserve fund or to the credit of the income statement or otherwise

available for distribution and not required for the payment of the fixed dividends on any preference Shares of the Company, and accordingly that such amount be set free for distribution among the Shareholders or any class of Shareholders who would be entitled thereto if distributed by way of dividend and in the same proportions on the footing that the same be not paid in cash but be applied in paying up unissued Shares of the Company to be issued to such Shareholders as fully paid capitalisation Shares.

- (8) Without derogating from the provisions of this clause 7.1 and subject to any requirements which may be imposed by the Act, the Shareholders may, upon the authorisation of the board, resolve to distribute or deal with, in any way authorised by the Act, all or any part of the amount standing to the credit of any of the Company's reserves or any share capital of the Company.
- (9) Directors may recommend any appropriate dividend to the Shareholders who shall not be bound thereby.

7.2 Accounts [s 25; s 28; s 30; s 31]

- (1) The Company's board must keep accurate and complete accounting records required or prescribed by the Act.
- (2) The accounting records must be kept at the registered office of the Company or (subject to the provisions of section 25 of the Act) at such other location within the Republic as the board think fit, and shall at all times be accessible and open to inspection by the board. Except as provided by the Act or the authority of the board, no Shareholder (other than a Shareholder who happens to be a Director) has any right to inspect any accounting record or document of the Company.
- (3) The board must, in accordance with sections 30 and 31 of the Act, cause to be prepared and laid before the Company at its annual general meeting those annual financial statements and reports and group annual financial statements and reports, if any.
- (4) Subject to the provisions of the Act, a copy of the annual financial statements and reports referred to in clause 7.2(3) must be delivered or sent by post to the registered address of each shareholder and debt instrument holder at least 10 business days before the annual general meeting. A Shareholder or debt instrument holder may give the Company an address for the purposes of receiving electronic communications, in which case a copy of such documents may be delivered electronically to that Shareholder or debt instrument holder at that address. This clause 7.2(4) does not require the Company to send or deliver a copy of such documents to any person who is not entitled to receive notice of general meetings of the Company or whose address the Company is not aware of, or to more than any one of the joint holders of any securities.

7.3 Auditors [s 90; s 91; s 92; s 93]

If required by the Act, auditors must be appointed, and their duties regulated in accordance with the provisions of sections 90, 91, 92 and 93 of the Act.

7.4 Winding-up

If the Company is wound-up the liquidator may, with the sanction of a special resolution of the Shareholders, distribute among the Shareholders in specie the whole or any part of the assets of the Company and the liquidator may for such purpose set a value that the liquidator deems fair upon any asset and may determine how the distribution will be carried out as between the Shareholders or different classes of Shareholders. The liquidator may, after discharging all liabilities and with like sanction, vest the whole or any part of such

assets upon trustees to be held in trust for the benefit of the Shareholders or any of them as the liquidator deems fit.

Adoption of Memorandum of Incorporation [s 13(1)]

This Memorandum of Incorporation has been adopted by special resolution of the Shareholders on the 19th day of April 2013.

