

FINAL APPROVED BY THE JSE

COMPANIES ACT, 2008

**MEMORANDUM OF INCORPORATION
OF A PROFIT COMPANY**

(PUBLIC COMPANY)

NAME OF COMPANY:

PHUMELELA GAMING AND LEISURE LIMITED

("Company")

REGISTRATION NUMBER:

1997/16610/06

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SCHEDULE 1 – AUTHORISED SHARES

1. INTRODUCTION

1.1 The Memorandum of Incorporation in the prescribed form as contemplated in section 13(1)(a)(i) of the Act shall not apply to the Company.

1.2 The Company is incorporated as a public company in terms of the Act and, accordingly:

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

1.2.2 the transfer of the Company's securities is unrestricted, save as set out in article 5. **[Section 8(2)(d)]**

1.3 This Memorandum does not contain any restrictive conditions contemplated in section 15(2)(b) of the Act and does not contain any requirement for the amendment of any such condition, in addition to the requirements of the Act. This Memorandum does not prohibit the amendment of any particular provision of this Memorandum. **[Sections 15(2)(b) and 15(2)(c)]**

1.4 The main business of the Company shall be that of betting and gambling on horseracing, other sports and other outcomes. The Company shall not cease to carry on, as a material and sustainable part of its main business, the business of horseracing and betting thereon. The main business of the Company as set out in this article 1.4 shall in no way be construed as limiting or restricting the Company's capacity and/or the powers granted to it by the Act.

2. INTERPRETATION

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

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

2.2 the singular shall include the plural and vice versa;

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

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

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

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

2.6.1 “the Act” the Companies Act, 2008 together with the Companies Regulations, 2011, as amended or substituted from time to time;

2.6.2 “Board” the board of directors of the Company from time to time;

2.6.3 “the BE Group” Gride, Vela and Dihla and includes any successor in title to any of them;

2.6.4 “Deemed Transfer Notice” a Transfer Notice deemed to be given in terms of article 5.4 of this Memorandum;

2.6.5 “Dihla” Dihla Investment Holdings (Proprietary) Limited, a company incorporated in accordance with the laws of the Republic of South Africa under registration number 98/04750/07);

2.6.6 “Gride” Gride Investments (Proprietary) Limited, a company incorporated in accordance with the laws of the Republic of South Africa under registration number 98/03478/07);

2.6.7	“JSE”	the JSE Limited, registration number 2005/022939/06, or any other successor body licensed as an exchange under the Shares Services Act, 2004, as amended or substituted from time to time;
2.6.8	“Listings Requirements”	the Listings Requirements of the JSE, as amended or substituted from time to time;
2.6.9	“this Memorandum”	this Memorandum of Incorporation and includes its Schedule;
2.6.10	“Racing Association”	the Racing Association, an association incorporated under section 21 of the Companies Act under registration number 97/19092/08;
2.6.11	“the Republic”	the Republic of South Africa;
2.6.12	“Restricted Shareholders”	includes the members of the BE Group, the Racing Association and the Trust;
2.6.13	“Transfer Notice”	has the meaning attributed to it in article 5.1 and includes, where the context admits, a Deemed Transfer Notice;
2.6.14	“Trust”	the Trustees of the Thoroughbred Horse Tracing Trust, an inter vivos trust established under the amended Deed of Trust dated December 1998, and registered in terms of the Trust Property Control Act, 1998 under registration number IT 1400/98; and
2.6.15	“Vela”	Vela Phumelela Investments (Proprietary)

Limited, a company incorporated in accordance with the laws of the Republic of South Africa under registration number 95/00303/07).

3. GENERAL

3.1 Liability of incorporators, shareholders and directors

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

3.2 Powers of the Company

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

3.3 Ratification of *ultra vires* acts

Any resolution for the ratification of any action by the Company or the directors as contemplated in sections 20(2) and 20(6) of the Act shall be prohibited if such ratification is of an action which is contrary to the Listings Requirements, unless otherwise agreed with the JSE. **[Item 10.3 of Schedule 10 to the Listings Requirements]**

3.4 Memorandum of Incorporation and rules

3.4.1 The requirements set out in section 16(1)(c)(i) of the Act regarding proposals for amendments to this Memorandum apply without amendment. **[Section 16(2)]**

3.4.2 The board shall not have the power, in accordance with the provisions of sections 15(3) to 15(5) of the Act, to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or

this Memorandum. **[Sections 15(3), 15(4), 15(5) and 15(5A)] [Item 10.4 of Schedule 10 to the Listings Requirements]**

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

3.5 **Financial assistance to related persons**

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

3.6 **Solvency and liquidity test**

This Memorandum does not alter the application of the solvency and liquidity test provided in section 4 of the Act. **[Section 4(2)(c)]**

4. **SHARES OF THE COMPANY**

4.1 ***Pari Passu***

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

4.2 **Authorisation for shares**

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

4.2.1.1 unissued shares to shareholders of a particular class of shares, pro rata to the shareholders' existing shareholding,

unless any such shares are issued for an acquisition of assets;

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

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

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

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

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

4.2.2.3 classify any unclassified shares that have been authorised but not issued;

4.2.2.4 determine the preferences, rights, limitations or other terms of any class of authorised shares or amend any preferences, rights, limitations or other terms so determined;

4.2.2.5 consolidate any shares or class of shares;

4.2.2.6 sub-divide any shares or class of shares;

4.2.2.7 change the name of the company;

4.2.2.8 convert shares from par value to no par value,

must be approved by special resolution of shareholders, save where

such an amendment is ordered by a court in terms of section 16(1)(a) and 16(4) of the Act. **[Sections 36(2)(b) and 36(3)] [Item 10.5(d) and 10.9(c)of Schedule 10 to the Listings Requirements]**

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

This Memorandum does not limit, restrict or qualify the authority of the board to authorise the Company to provide financial assistance to any person for the purpose of, or in connection with:

4.3.1 the subscription of any option, or any shares, issued or to be issued by the Company or a related or inter-related company; or

4.3.2 for the purchase of any shares of the Company or any related or inter-related company, in accordance with the Act. **[Section 44(2)]**

4.4 **Capitalisation shares**

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

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

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

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

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

Any acquisition by the Company or a subsidiary company of the Company's

shares and any distributions to shareholders will be subject to the provisions of the Act and the Listings Requirements, if applicable. **[Sections 46 and 48]** **[Item 10.9(b) of Schedule 10 to the Listings Requirements]**

4.6 **Debt instruments**

This Memorandum does not limit, restrict or qualify the authority of the board to authorise the Company to issue secured or unsecured debt instruments; provided that the board may not grant special privileges regarding the attending and voting at general meetings of the Company or the appointment of directors in respect of such debt instruments. **[Sections 43(2)(a) and 43(3)] [Paragraph 10.10 of Schedule 10 to the Listings Requirements]**

4.7 **Registration of beneficial interests**

This Memorandum does not limit or restrict the holding of the Company's issued securities by, or the registration of the Company's issued securities in the name of, one person for the beneficial interest of another. **[Section 56(1)]**

4.8 **Commission**

The Company may pay commission to any person in consideration for such person subscribing, or agreeing to subscribe, for any securities of the Company or for such person procuring, or agreeing to procure, whether absolutely or conditionally, subscriptions for securities of the Company; provided that such commission shall not exceed 10% or such other percentage required by the Listings Requirements from time to time. **[Item 10.14 of Schedule 10 to the Listings Requirements]**

4.9 **Authority to sign transfer deeds**

All authorities to sign transfer deeds granted by holders of shares for the purpose of transferring shares that may be lodged, produced or exhibited with or to the Company at any of its transfer offices shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the

revocation of the same shall have been given and lodged at the Company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices, the Company shall be entitled to give effect to any instruments signed under the authority to sign, and certified by any officer of the Company, as being in order before the giving and lodging of such notice. **[Item 10.2(b) of Schedule 10 of the Listings Requirements]**

4.10 **Fully paid up shares not subject to lien**

It is recorded that fully paid shares shall not be subject to any lien in favour of the Company and shall be freely transferable. **[Item 10.12 of Schedule 10 to the Listings Requirements]**

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

4.11.1 No securities registered in the name of a deceased or insolvent holder shall be forfeited if the executor fails to register them in his own name or in the name of the heir(s) or legatees when called upon by the directors to do so. **[Item 10.13 of Schedule 10 to the Listings Requirements]**

4.11.2 The Company must hold all monies due to shareholders in trust indefinitely, but subject to the laws of prescription. **[Item 10.17(c) of Schedule 10 to the Listings Requirements]**

4.12 **Limitation of voting rights**

The holders of any securities other than ordinary shares shall not be entitled to vote on any resolution taken by the Company save as expressly provided for in this Memorandum. For so long as this is required by the Listings Requirements, in instances where shareholders other than ordinary shareholders are allowed to vote at shareholders meetings or annual general meetings, their votes may not carry any special rights or privileges and they shall not be entitled to one vote for each share that they hold, provided their total voting right at a shareholders meeting or annual general meeting may not exceed 24.99% (twenty four point ninety nine percent) of the total voting

rights of all shareholders at such meeting. **Item 10.5(c) of Schedule 10 to the Listings Requirements]**

5. TRANSFER OF SHARES

5.1 Transfers of shares by the Shareholders in the BE Group

No Shareholder in the BE Group shall dispose of or transfer or enter into any agreement for the disposal or transfer of all or any of its shares at any time, unless and until the following requirements are complied with:

5.1.1 Any Shareholder in the BE Group proposing to transfer a share ('the **proposing transferor**') shall give notice in writing ('**Transfer Notice**') to the Board and to all the other Restricted Shareholders that the proposing transferor desires to transfer such share. In the Transfer Notice the proposing transferor shall specify:

5.1.1.1 the number of shares which the proposing transferor wishes to transfer ('the **Transfer Shares**') (which may be all or part only of the shares then held by the proposing transferor);

5.1.1.2 the price at which the proposing transferor wishes to sell the Transfer Shares and the identity of any person who has indicated a willingness to purchase the Transfer Shares at such price.

5.1.2 A Transfer Notice shall also state whether the proposing transferor wishes to impose a Total Transfer Condition (meaning a condition that unless all of the Transfer Shares are sold pursuant to the following provisions of this article 5.1 none shall be so sold), but in the absence of such a statement the Transfer Notice shall be deemed not to contain a Total Transfer Condition. Any two or more shareholders in the BE Group shall be entitled to serve a joint Transfer Notice (meaning a notice signed by each of them specifying the shares which they wish together to transfer) containing a Total Transfer Condition related to all the shares which are the subject of the joint Transfer Notice, but the obligations of those shareholders in the BE Group

thereunder or in respect thereof shall be joint only (and not joint and several) in proportion to the number of Transfer Shares which they hold respectively;

5.1.3 The Transfer Notice shall constitute the Company (by its Board) as the agent of the proposing transferor empowered to sell the Transfer Shares (together with all rights attaching to them at the date of the Transfer Notice or at any time thereafter) at the Transfer Price (as hereinafter defined) to the other shareholders in the BE Group (in terms of article 5.1.8), and, if applicable, to the Racing Association (in terms of article 5.1.11) (all of whom are the “the **offerees**”) on the terms of this article 5.1. Once given a Transfer Notice may not be revoked save with the prior written consent of all the offerees. If a proposing transferor revokes a Transfer Notice with such consent he may not subsequently transfer the shares which are the subject of the Transfer Notice (or any interest therein) otherwise than in accordance with this article 5.

5.1.4 Within 1 (one) Business Day after the receipt of any Transfer Notice by the Board it shall serve a copy of that Transfer Notice on all the Restricted Shareholders other than the proposing transferor and shall notify the proposing transferor in writing that it has done so. In the case of a Deemed Transfer Notice the Board shall similarly serve notice on all the Restricted Shareholders (including the proposing transferor), notifying them that the notice has been deemed to have been given, within 7 (seven) days after (a) the date of the event giving rise to the Deemed Transfer Notice or (b) (if later) the date on which the Board (as a whole) actually became aware of that event.

5.1.5 Save as provided otherwise in this Memorandum, the Transfer Shares shall be offered for purchase (as hereinafter provided) at a price per Transfer Share (‘the **Transfer Price**’) which:

5.1.5.1 if the Transfer Notice is not a Deemed Transfer Notice the Transfer Price shall be the price specified by the proposing transferor in the Transfer Notice; or

- 5.1.5.2 if the Transfer Notice is a Deemed Transfer Notice, may be agreed in writing between the proposing transferor and the offeree, or in the absence of such agreement (whether by reason of disagreement, absence, or otherwise) the Transfer Price shall be the weighted average price per share at which the shares will have been traded on the JSE during the 5 (five) effective days (meaning trading days on that Exchange on which any of the shares are actually traded under one or more recorded transactions) preceding the date on which the Board receives the Transfer Notice, as certified by the Company's brokers (whose certificate shall be prima facie evidence of that price) less 20% (twenty percent) of that price.
- 5.1.6 The date of the determination of the Transfer Price ("the **Determination Date**") shall be :
- 5.1.6.1 if the Transfer Price is determined pursuant to article 5.1.5.1, the date on which the directors receive the Transfer Notice;
- 5.1.6.2 if the Transfer Price is determined by agreement between the proposing transferor and the offerees, the date the agreement is made;
- 5.1.6.3 if it is determined in accordance with article 5.1.5.2, the date on which the directors receive the certificate of the Company's brokers certifying the price.
- 5.1.7 The costs and expenses of any valuer who determines the Transfer Price in terms of article 5.5 or of any broker who determines it in terms of article 5.1.5.2 shall be borne as to one half by the proposing transferor and as to the other half by the purchasers (as hereinafter defined) pro rata according to the number of Transfer Shares purchased by them unless none of the Transfer Shares are purchased pursuant to articles 5.1.8, 5.1.9 and 5.1.10, in which event the proposing transferor shall pay all of those costs and expenses. In the case of default by a person in paying his due proportion of such costs and expenses any of the other contributors or (if the proposing

transferor is solely responsible for such costs and expenses) the Company may pay such sum in his stead and any payment made in so doing shall be recoverable from the defaulter as a debt payable on demand.

5.1.8 Within 1 (one) day after the Determination Date the Transfer Shares shall be offered for purchase at the Transfer Price by the Board to the other shareholders of the BE Group in proportion to the number of shares then held by them respectively. Every such offer shall be made in writing and shall specify (a) the total number of Transfer Shares; (b) the number of Transfer Shares offered to each Shareholder of the BE Group (its '**Pro-Rata Entitlement**'); (c) whether or not the Transfer Notice contained a Total Transfer Condition; and (d) a period being not less than 1 (one) day and not more than 2 (two) days within which the offer must be accepted or shall lapse, and shall be accompanied by a form of application for use by the Shareholder of the BE Group in applying for its Pro-Rata Entitlement and for any shares in excess of such entitlement which it wishes to purchase.

5.1.9 Upon the expiry of the offer period specified pursuant to article 5.1.9, the Board shall allocate the Transfer Shares offered to the other Shareholders of the BE Group in the following manner :

5.1.9.1 to each Shareholder of the BE Group who has agreed to purchase shares, its Pro-Rata Entitlement or such lesser number of Transfer Shares for which it may have applied;

5.1.9.2 if any Shareholder of the BE Group has applied for less than its Pro-Rata Entitlement, the excess shall be allocated to the Shareholders of the BE Group who have applied for any part of such excess in proportion to the number of Shares then held by them respectively (but without allocating to any Shareholder of the BE Group a greater number of Transfer Shares than the maximum number applied for by it) and any remaining excess shall be apportioned by applying this article 5.1.9.2 without taking account of any shareholder of the BE Group whose application has already been satisfied in full.

- 5.1.10 If any of the Transfer Shares shall not be capable of being offered or allocated as provided for in articles 5.1.8 and 5.1.9, without involving fractions, they shall be offered to or allocated amongst the accepting offerees, or some of them, in such proportions as may be determined by lots drawn in such manner as the directors shall think fit.
- 5.1.11 If after following the provisions of articles 5.1.8 and 5.1.9 the other Shareholders of the BE Group have declined to purchase all or part of the Transfer Shares, and if the Transfer Notice is a Deemed Transfer Notice, then the Transfer Shares not so purchased by them shall be offered for purchase at the Transfer Price to the Trust. The offer shall be made in writing and shall specify (a) the number of Transfer Shares (b) whether or not the Transfer Notice contained a Total Transfer Condition and (c) a period being not less than 1 (one) day and not more than 2 (two) days within which the offer must be accepted or shall lapse, and shall be accompanied by a form of application for use by the Trust in applying for the shares which it wishes to purchase.
- 5.1.12 If the Trust applies for any Shares in terms of article 5.1.11, the Board shall allocate the Transfer Shares to the Trust subject to the provisions of article 5.1.10, above.
- 5.1.13 If the Transfer Notice in question contained a Total Transfer Condition then the following provisions shall apply -
- 5.1.13.1 no offer of Transfer Shares made by the Board pursuant to this article 5.1 shall be capable of acceptance until all of the Transfer Shares shall have been accepted by the offerees (or any of them);
- 5.1.13.2 if by the foregoing procedure the Board shall not receive acceptances in respect of all the Transfer Shares within the period of the aforesaid offer they shall forthwith give notice in writing of the fact to the proposing transferor and the following provisions shall then apply: the proposing transferor may sell all (and not fewer than all) of the Transfer Shares to any

person (including any Shareholder), provided that all (and not fewer than all) of the Transfer Shares are sold within the period of 30 (thirty) days after the date of the Board's written notice so given at any price which is not less than the Transfer Price (after deducting, where appropriate, any net dividend or other distribution to be retained by the proposing transferor).

5.1.13.3 if, by the foregoing procedure, the Board shall receive acceptances in respect of all of the Transfer Shares the Board shall forthwith give notice in writing as hereinafter mentioned to the proposing transferor and to the offeree or offerees who has or have agreed to purchase those Shares (the 'purchaser' or 'purchasers'); and the proposing transferor shall thereupon become bound upon payment of the Transfer Price to the proposing transferor (whose receipt shall be a good discharge to the purchaser(s), the Company and the Board for the payment and none of whom shall be bound to see to the application of the payment) to transfer to each purchaser the Transfer Shares accepted by it;

5.1.13.4 every such notice shall state the name and address of each purchaser, the number of Transfer Shares agreed to be purchased by it and the place and time appointed by the Board for the completion of the purchase (being no less than 7 (seven) days nor more than 14 (fourteen) days after the date of the notice and not being at a place outside South Africa);

5.1.13.5 subject to the giving of such notice the purchase shall be completed at the place and time appointed by the Board.

5.1.14 If the Transfer Notice in question did not contain a Total Transfer Condition and if by the foregoing procedure the Board shall receive acceptances in respect of none or part only of the Transfer Shares within the period of the aforesaid offer they shall forthwith give notice in writing of that fact to the proposing transferor, and thereupon the proposing transferor shall become bound upon payment of the Transfer Price to transfer to each purchaser (if any) those Transfer

Shares accepted by the purchaser, and the provisions of articles 5.1.13.3, 5.1.13.4 and 5.1.13.5 shall apply mutatis mutandis;

5.1.15 The proposing transferor may sell all or any part of the Transfer Shares, for which acceptances were not received, to any person (including any Shareholder) provided that such Transfer Shares are sold within the period of 30 (thirty) days after the date of the Board's written notice so given at any price which is not less than the Transfer Price (after deducting, where appropriate, any net dividend or other distribution to be retained by the proposing transferor).

5.1.16 If a proposing transferor, having become bound to transfer any Transfer Shares pursuant to this article 5.1, makes default in transferring those Shares, the Board may authorise some person (who is as security for the performance of the proposing transferor's obligations hereby irrevocably and unconditionally appointed in rem suam as the agent of the proposing transferor for the purposes of this article 5.1.16) to execute the necessary instrument of transfer for the transfer of those Transfer Shares and may deliver it on his behalf, and the Company may receive the purchase money and shall thereupon (subject to the instrument being duly stamped) cause the transferee to be registered as the holder of the Transfer Shares in question and shall hold the purchase money on behalf of the proposing transferor. The Company shall not be bound to earn or pay interest on any money so held and shall not pay any of it to the proposing transferor until he shall have delivered his share certificates (or an appropriate indemnity for any lost certificates) to the Company. The receipt of the Company for the purchase money shall be a good discharge to the transferee who shall not be bound to see to its application, and after the name of the transferee has been entered in the register of members in purported exercise of the aforesaid power the validity of the proceedings shall not be questioned by any person.

5.1.17 An obligation to transfer a share under the provisions of this article 5.1 shall be deemed to be an obligation to transfer the ownership in such Share free from any hypothecation or other encumbrance.

5.1.18 If a purchase of any shares is for any reason not completed pursuant to articles 5.1.13.4 and 5.1.13.5, then the provisions of articles 5.1.8 or 5.1.11 (as the case may be) shall be re-applied in respect of those Transfer Shares, mutatis mutandis.

5.1.19 Where the Board shall have received acceptances for the Transfer shares from the offerees in terms of this article 5 which are, or are expressed to be, conditional upon the obtaining of any regulatory consents that are needed to:

5.1.19.1 enable the sale and purchase of the Transfer Shares to be completed; or

5.1.19.2 ensure that the Company's licences, permissions or other consents required for the carrying on its business are not revoked,

then the proposing transferor and the offerees concerned shall each use its reasonable endeavours to obtain those regulatory consents; and notwithstanding anything to the contrary, the offer period specified in article 5.1.8 shall not lapse until such consents are refused, or until a period of 90 (ninety) days has elapsed after receipt by the Board of such conditional acceptances, whichever occurs first.

5.1.20 Where any shares are sold by the proposing transferor to any offerees in terms of this article 5.1, the proposing transferor and the offerees concerned shall each use its reasonable endeavours to obtain any regulatory consents that are needed to enable the sale and purchase of the Transfer Shares to remain in force; and if any such consent is refused the purchase and sale shall become void and the proposing transferor and the offerees concerned shall be released from their obligations under the sale and purchase in question, but shall negotiate with each other in good faith with a view to achieving an alternative solution.

5.2 Transfers of shares by the Trust

The Trust shall not dispose of or transfer or enter into any agreement for the disposal or transfer of all or any of its shares unless and until the following requirements are complied with:

5.2.1 The Trust shall give notice in writing (**'Transfer Notice'**) to the Board and to all the other Restricted Shareholders that it desires to transfer such share. In the Transfer Notice the Trust shall specify :

5.2.1.1 the number of shares which it wishes to transfer (**'the Transfer Shares'**) (which may be all or part only of the shares then held by the Trust);

5.2.1.2 the price at which the Trust wishes to sell the Transfer Shares and the identity of any person who has indicated a willingness to purchase the Transfer Shares at such price.

5.2.2 A Transfer Notice shall also state whether the Trust wishes to impose a Total Transfer Condition (meaning a condition that unless all of the Transfer Shares are sold pursuant to the following provisions of this article 5.2 none shall be so sold), but in the absence of such a statement the Transfer Notice shall be deemed not to contain a Total Transfer Condition;

5.2.3 The Transfer Notice shall constitute the Company (by its Board) as the agent of the Trust empowered to sell the Transfer Shares (together with all rights attaching to them at the date of the Transfer Notice or at any time thereafter) at the Transfer Price (as hereinafter defined) to the Shareholders in the BE Group (all of whom are the "the offerees") on the terms of this article 5.2. Once given a Transfer Notice may not be revoked save with the prior written consent of all the offerees. If the Trust revokes a Transfer Notice with such consent it may not subsequently transfer the Shares which are the subject of the Transfer Notice (or any interest therein) otherwise than in accordance with this article 5.2.

5.2.4 Within 1 (one) day after the receipt of any Transfer Notice the Board shall serve a copy of that Transfer Notice on all the Restricted Shareholders other than the Trust and shall notify the Trust in writing that it has done so. In the case of a Deemed Transfer Notice the Board shall similarly serve notice on all the Restricted Shareholders (including the Trust), notifying them that the notice has been deemed to have been given, within 7 (seven) days after (a) the date of the event giving rise to the Deemed Transfer Notice or (b) (if later) the date on which the Board (as a whole) actually became aware of that event.

5.2.5 Save as provided otherwise in this Memorandum, the Transfer Shares shall be offered for purchase (as hereinafter provided) at a price per Transfer Share ('the Transfer Price') which:

5.2.5.1 if the Transfer Notice is not a Deemed Transfer Notice the Transfer Price shall be the price specified by the Trust in the Transfer Notice; or

5.2.5.2 if the Transfer Notice is a Deemed Transfer Notice, may be agreed in writing between the Trust and the offeree, or in the absence of such agreement (whether by reason of disagreement, absence, or otherwise) shall be the weighted average price per share at which the shares will have been traded on the JSE during the 5 (five) effective days (meaning trading days on that Exchange on which any of the shares are actually traded under one or more recorded transactions) preceding the date on which the Board receives the Transfer Notice pursuant to article 5.2.1, as certified by the Company's brokers whose certificate shall be prima facie evidence of that price, less 20% (twenty percent) of that price.

5.2.6 The date of the determination of the Transfer Price ("the **Determination Date**") shall be :

(i) if the Transfer Price is determined pursuant to article 5.2.5.1, the date on which the directors receive the

Transfer Notice;

- (ii) if the Transfer Price is determined by agreement between the Trust and the offerees, the date the agreement is made;
- (iii) if it is determined in accordance with article 5.2.5.2, the date on which the directors receive the certificate of the Company's brokers certifying the price.

5.2.7 The costs and expenses of any valuer who determines the Transfer Price in terms of article 5.5 or of any broker who determines it in terms of article 5.2.5.2 shall be borne as to one half by the Trust and as to the other half by the purchasers (as hereinafter defined) pro rata according to the number of Transfer Shares purchased by them unless none of the Transfer Shares are purchased pursuant to articles 5.2.8, 5.2.9 and 5.2.10, in which event the Trust shall pay all of those costs and expenses. In the case of default by a person in paying his due proportion of such costs and expenses any of the other contributors or (if the Trusts is solely responsible for such costs and expenses) the Company may pay such sum in his stead and any payment made in so doing shall be recoverable from the defaulter as a debt payable on demand.

5.2.8 Within 1 (one) day after the Determination Date the Transfer Shares shall be offered for purchase at the Transfer Price by the Board to the offerees in proportion to the number of shares then held by them respectively. Every such offer shall be made in writing and shall specify (a) the total number of Transfer Shares; (b) the number of Transfer Shares offered to each offeree (its 'Pro-Rata Entitlement'); (c) whether or not the Transfer Notice contained a Total Transfer Condition; and (d) a period being not less than 1 (one) day and not more than 2 (two) days within which the offer must be accepted or shall lapse, and shall be accompanied by a form of application for use by each offeree in applying for its Pro-Rata Entitlement and for any shares in excess of such entitlement which it wishes to purchase.

- 5.2.9 Upon the expiry of the offer period specified pursuant to article 5.2.8, the Board shall allocate the Transfer Shares offered to the offerees in the following manner :
- 5.2.9.1 to each offeree who has agreed to purchase shares, its Pro-Rata Entitlement or such lesser number of Transfer Shares for which it may have applied;
- 5.2.9.2 if any offeree has applied for less than its Pro-Rata Entitlement, the excess shall be allocated to the Restricted Shareholders who have applied for any part of such excess in proportion to the number of shares then held by them respectively (but without allocating to any offeree a greater number of Transfer Shares than the maximum number applied for by it) and any remaining excess shall be apportioned by applying this article 5.2.9.2 without taking account of any offeree whose application has already been satisfied in full.
- 5.2.10 If any of the Transfer Shares shall not be capable of being offered or allocated as provided for in articles 5.2.8 and 5.2.9, without involving fractions, they shall be offered to or allocated amongst the accepting offerees, or some of them, in such proportions as may be determined by lots drawn in such manner as the directors shall think fit.
- 5.2.11 If the Transfer Notice in question contained a Total Transfer Condition then the following provisions shall apply -
- 5.2.11.1 no offer of Transfer Shares made by the Board pursuant to this article 5.2 shall be capable of acceptance until all of the Transfer Shares shall have been accepted by the offerees (or any of them);
- 5.2.11.2 if by the foregoing procedure the Board shall not receive acceptances in respect of all the Transfer Shares within the period of the aforesaid offer they shall forthwith give notice in writing of the fact to the Trust and the Trust may sell all (and not fewer than all) of the Transfer Shares to any person

(including any Restricted Shareholder), provided that :

- (i) the Trust may within the period of 30 (thirty) days after the date of the Board's written notice so given, sell all (and not fewer than all) of the Transfer Shares to any person (including any Restricted Shareholder) at any price which is not less than the Transfer Price (after deducting, where appropriate, any net dividend or other distribution to be retained by the Trust);

and

- (ii) the Company shall not register any such person that is not already a Restricted Shareholder as the holder of any share unless the person will have first agreed in writing to become a party to and be bound together with the Restricted Shareholders by all the terms and conditions of any agreements that may be in force between the Restricted Shareholders from time to time.

5.2.12 If, by the foregoing procedure, the Board shall receive acceptances in respect of all of the Transfer Shares the Board shall forthwith give notice in writing as hereinafter mentioned to the Trust and to the offeree or offerees who has or have agreed to purchase those Shares (the 'purchaser' or 'purchasers'); and the Trust shall thereupon become bound upon payment of the Transfer Price to the Trust (whose receipt shall be a good discharge to the purchaser(s), the Company and the Board for the payment and none of whom shall be bound to see to the application of the payment) to transfer to each purchaser the Transfer Shares accepted by it;

5.2.13 Every such notice shall state the name and address of each purchaser, the number of Transfer Shares agreed to be purchased by it and the place and time appointed by the Board for the completion of the purchase (being no less than 7 (seven) days nor more than 14 (fourteen) days after the date of the notice and not being at a place outside South Africa);

5.2.14 Subject to the giving of such notice the purchase shall be completed at the place and time appointed by the Board.

5.2.15 If the Transfer Notice in question did not contain a Total Transfer Condition and if by the foregoing procedure the Board shall receive acceptances in respect of none or part only of the Transfer Shares within the period(s) of the aforesaid offer(s) they shall forthwith give notice in writing of that fact to the Trust, and thereupon:

5.2.15.1 the Trust shall become bound upon payment of the Transfer Price to transfer to each purchaser (if any) those Transfer Shares accepted by the purchaser, and the provisions of articles 5.2.12, 5.2.13 and 5.2.14 shall apply mutatis mutandis;

5.2.15.2 the Trust may sell all or any part of the Transfer Shares, for which acceptances were not received, to any person (including any Shareholder) provided that :

(i) the Trust may within the period of 30 (thirty) days after the date of the Board's written notice so given, sell all (or any part) of the Transfer Shares to any person (including any Shareholder) at any price which is not less than the Transfer Price after deducting, where appropriate, any net dividend or other distribution to be retained by the Trust;

and

(ii) the Company shall not register any such person that is not already a Shareholder as the holder of any Share unless the person will have first agreed in writing to become a party to and be bound together with the Restricted Shareholders by all the terms and conditions of any agreements that may be in force between the Restricted Shareholders from time to time.

5.2.16 If the Trust, having become bound to transfer any Transfer Shares pursuant to this article 5.2, makes default in transferring those Shares, the provisions of article 5.1.18 shall apply.

5.2.17 An obligation to transfer a Share under the provisions of this article 5.2 shall be deemed to be an obligation to transfer the ownership in such Share free from any hypothecation or other encumbrance.

5.2.18 If a purchase of any Shares is for any reason not completed pursuant to articles 5.2.13 and 5.2.14, then the provisions of articles 5.1.8 or 5.1.11 (as the case may be) shall be re-applied in respect of those Transfer Shares, mutatis mutandis.

5.2.19 Where the Board shall have received acceptances for the Transfer Shares from the offerees in terms of this article 5.2 which are expressed to be conditional upon the obtaining of any regulatory consents that are needed to:

5.2.19.1 enable the sale and purchase of the Transfer Shares to be completed; or

5.2.19.2 ensure that the Company's licences, permissions or other consents required for the carrying on its business are not revoked,

then the Trust and the offerees concerned shall each use its reasonable endeavours to obtain those regulatory consents; and notwithstanding anything to the contrary, the offer period specified in article 5.2.8(d) shall not lapse until such consents are refused, or until a period of 90 (ninety) days has elapsed after receipt by the Board of such conditional acceptances, whichever occurs first.

5.2.20 Where any Shares are sold by the Trust to any offerees in terms of this article 5.2, the Trust and the offerees concerned shall each use its reasonable endeavours to obtain any regulatory consents that are needed to enable the sale and purchase of the Transfer Shares to remain in force; and if any such consent is refused the purchase and

sale shall become void and the Trust and the offerees concerned shall be released from their obligations under the sale and purchase in question, but shall negotiate with each other in good faith with a view to achieving an alternative solution.

5.2.21 Notwithstanding anything else in this article 5.2, it shall not apply to and therefore not preclude any transfer of any Shares by the Trust to the Racing Association or to any other company, society, association or trust with objects similar to those of the Trust or objects similar to those of the Racing Association; provided that:

5.2.21.1 the Trust shall have advised the other Restricted Shareholders of the intended transfer not less than 7 (seven) days before such transfer takes effect (stating the identity of the prospective transferee);

5.2.21.2 the prospective transferee continues to have those objects for as long as it holds any shares;

5.2.21.3 no transfer may be effected unless and until the prospective transferee will have first agreed in writing to become a party to and be bound together as a Restricted Shareholder by all the terms and conditions of any agreements that may be in force between the Restricted Shareholders from time to time;

5.2.21.4 if after any such transfer the Trust remains in existence, it shall continue to be bound by any agreement that may be in force between the Restricted Shareholders from time to time and undertakes that if the prospective transferee, after having taken transfer of the shares in question, ceases to have such objects, it will prior to that cessation transfer all shares which it may then be holding, back to the Trust itself or any other company, society, association or trust in accordance with the requirements of this article 5.2.21;

5.2.21.5 any regulatory consents contemplated in article 5.2.19.1 have been obtained prior to any such transfer taking effect.

5.3 **Transfer of Shares by the Racing Association**

The provisions of article 5.2 shall apply mutatis mutandis to the disposal or transfer of any shares held by the Racing Association.

5.4 **Deemed Transfer Notices**

5.4.1 For the purposes of this article 5.4 a compulsory transfer event, in relation to a Restricted Shareholder means:

5.4.1.1 if the Restricted Shareholder commits a material breach of this Memorandum or any agreement in place between the Restricted Shareholders from to time and fails to remedy that breach within 30 (thirty) days after receiving written notice to do so from the Company or any one or more of the other Restricted Shareholders;

5.4.1.2 if the Restricted Shareholder becomes disqualified under any law from holding all or any of the shares owned by it from time to time;

5.4.1.3 in the case of a Restricted Shareholder other than the Trust, if it is placed under any provisional or final order of winding-up or is placed in business rescue proceedings or enters into any voluntary winding-up other than a voluntary winding-up for a bona fide scheme of solvent amalgamation or reconstruction;

5.4.1.4 if the Restricted Shareholder is the Trust, it is placed under any provisional or final order of winding-up or is placed in business rescue proceedings or enters into any voluntary winding-up other than a voluntary winding-up for a bona fide scheme of solvent amalgamation or reconstruction, and the shares, upon the distribution of the assets of the Trust's estate, are not transferred to the Racing Association or to any other company, society, association or trust with object similar to those of the Trust or objects similar to those of the Racing Association.

5.4.2 Upon the occurrence of a compulsory transfer event the Shareholder shall be deemed immediately to have given a Transfer Notice (which will be a “**Deemed Transfer Notice**”) in accordance with the provisions of article 5.1.1 or 5.2.1 (as applicable) in respect of all the shares as shall then be owned by it, and all those provisions shall accordingly apply, provided that if that event is a disqualification contemplated in article 5.4.1.2 and if the disqualification can be cured by a disposal of some of the Shares owned by it, then the Transfer Notice shall be deemed to have been given for those particular Shares only;

5.4.3 For the purposes of this article 5.4 the expression “**material breach**” means a breach of any of the terms of any agreement in place between the Restricted Shareholders from time to time, or this Memorandum which is material having regard to all relevant circumstances including, without being limited to, the nature of the relationship between the Shareholders and the need for each Shareholder to maintain the confidence of the other, the nature of the breach (and in particular whether it is intentional, negligent or neither) and the consequences of the breach.

5.5 Fair Market Value of any shares

5.5.1 Whenever the purchase price of any shares is required to be determined in terms of this article 5.5 for the purposes of articles 5.1 to 5.3 (all inclusive), then (subject to anything to the contrary in articles 5.1 to 5.3 (all inclusive)) that purchase price shall be determined in accordance with the following provisions, unless otherwise agreed in writing by the proposing transferor and the offerees concerned (the “relevant Shareholders”):

5.5.1.1 it shall be determined by an independent merchant bank (“the valuer”) who shall act as an expert and not as an arbitrator and whose written determination shall be final and binding on the relevant Shareholders in the absence of any clerical or manifest error appearing within 30 (thirty) days from the date

the Board receives the determination;

5.5.1.2 the valuer will be appointed by agreement between all the relevant Shareholders or, failing agreement by all of them within 10 (ten) days, on the application of any one of them, by the President for the time being of The South African Institute of Chartered Accountants;

5.5.1.3 the valuer will determine and certify the fair market value of the Shares in question as at the effective date of the purchase on the following assumptions and bases :

5.5.1.3.1 valuing the shares as on an arms-length sale between a willing seller and a willing purchaser;

5.5.1.3.2 if the Company is then carrying on business as a going concern on a sustainable basis, on the assumption that it will continue to do so;

5.5.1.3.3 that the Shares are capable of being transferred without restriction;

5.5.1.3.4 by valuing 100% (one hundred percent) of the shares in the issued capital of the Company and apportioning such value proportionately to all the shares in question and taking no account of the rights and any restrictions attached to the shares whether the shares do or do not (taken as a whole) confer any right of control over the Company;

5.5.1.3.5 if any difficulty shall arise in applying any of the foregoing assumptions or bases then the difficulty shall be resolved by the valuer in such manner as it in its absolute discretion thinks fit;

5.5.1.3.6 the valuer may call upon any professional advisers of the Company, including its auditors or any of their

predecessors, for such documents and information as the valuer may reasonably require for the purposes of this determination and the Restricted Shareholders shall give or, so far as they are able, procure that appropriate authority is given to those advisers to make the disclosures required of them and that they as far as they are able, give the valuer all such facilities and information as the valuer may reasonably require for the purposes of his determination;

5.5.1.3.7 for the purposes of his determination the valuer shall be entitled to consult any other valuers and take account of any valuations obtained from any other valuer, but not necessarily be bound by them;

5.5.1.3.8 the valuer shall afford the Restricted Shareholders the opportunity to make such written and, at his discretion, oral representations as they or any of them wish, subject to such reasonable time and other limits as it may prescribe, and it shall have regard to any such representations but not be bound by them;

5.5.1.3.9 the Restricted Shareholders and the Company will use their best endeavours to procure that the valuer will determine the purchase price within 30 (thirty) days of being requested to do so.

5.5.2 The costs and expenses of a valuer appointed in terms of this clause 5.5 in determining the purchase price and its appointment shall be borne in accordance with the provisions of articles 5.1.7 or 5.2.7(as applicable).

5.6 The directors may decline to register any transfer of securities where –

5.6.1 the instrument of transfer has not been duly stamped and lodged at the transfer office;

5.6.2 the provisions of any law or this Memorandum affecting transfer have not been complied with; or

5.6.3 the instrument of transfer is not in respect of only one class of security.

6. SHAREHOLDER RIGHTS AND PROXY FORMS

6.1 Information rights of persons holding a beneficial interest in shares

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

6.2 Representation by concurrent proxies

6.2.1 This Memorandum does not limit or restrict the right of a shareholder to appoint two or more persons concurrently as proxies (“**concurrent proxies**”); provided that the instrument appointing the concurrent proxies clearly states the order in which the concurrent proxies’ votes are to take precedence in the event that both or all of the concurrent proxies are present, and vote, at the relevant meeting.

6.2.2 This Memorandum does not limit or restrict the right of a shareholder, to appoint more than one proxy to exercise voting rights attached to different shares held by that shareholder. **[Section 58(3)(a)]**

6.3 Authority of proxy to delegate

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

6.4 Requirement to deliver proxy instrument to the Company

A copy of the instrument appointing a proxy must be delivered to the registered office of the Company, or to any other person specified by the Company, not less than 48 hours (or such lesser period as the directors may

determine in relation to a particular meeting) before the time appointed for the holding of that meeting (including an adjourned meeting) at which the person(s) named in the proxy form proposes to vote and if the instrument of proxy is not so delivered, the form of proxy shall not be treated as valid.

[Section 58(3)(c)]

6.5 **Proxy without direction**

This Memorandum does not limit or restrict the right of a proxy to exercise, or abstain from exercising, any voting right of the shareholder appointing him without direction, except to the extent that the instrument of proxy provides otherwise. **[Section 58(7)]**

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

A record date for any action or event shall be determined in accordance with the Act and the Listings Requirements. **[Section 59(1)] [Item 10.15 of Schedule 10 to the Listings Requirements]**

7. **SHAREHOLDERS' MEETINGS**

7.1 **Convening of shareholders' meetings**

This Memorandum does not specify any person other than the board who may call a shareholders' meeting. **[Sections 61(1) and 61(3)]**

7.2 **Shareholders' right to requisition a meeting**

This Memorandum does not alter the percentage of voting rights for the requisition by shareholders of a shareholders' meeting specified in section 61(3) of the Act. **[Section 61(3)]**

7.3 **Location of shareholders' meetings**

This Memorandum does not limit, restrict or qualify the authority of the board to determine the location of any shareholders' meeting, which may be held in the Republic. **[Section 61(9)]**

7.4 **Notice of shareholders' meetings**

7.4.1 This Memorandum does not provide a different period of notice of shareholders' meetings from the period prescribed by the Act. **[Sections 62(1) and 61(2)]**

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

7.5 **Quorum for shareholders' meetings**

7.5.1 This Memorandum does not specify a different percentage of voting rights in terms of section 64(1) of the Act for:

7.5.1.1 a shareholders' meeting to begin; and

7.5.1.2 the consideration of any matter to be decided at any shareholders' meeting. **[Sections 64(1) and 64(2)] [Item 10.24 of Schedule 10 to the Listings Requirements.]**

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

7.5.3 This Memorandum specifies 30 minutes (or such longer or shorter

period as the chairperson of the shareholders meeting may determine), in substitution for the time period specified in sections 64(4) and 64(5) of the Act, for a quorum to be established before a shareholders' meeting may be adjourned. **[Sections 64(4), 64(5) and 64(6)]**

7.5.4 Unless the chairperson of the shareholders meeting determines otherwise, this Memorandum does not specify a different period than the period provided in section 64(4) of the Act for the adjournment of a shareholders meeting. **[Sections 64(4) and 64(6)]**

7.5.5 Once a quorum for a particular meeting has been established, unless all the shareholders constituting that quorum are and remain present, this Memorandum prohibits:

7.5.5.1 the continuation of that shareholders' meeting; and

7.5.5.2 the consideration of any matter to be considered at that shareholders' meeting. **[Section 64(9)] [Item 10.11(h) of Schedule 10 to the Listings Requirements]**

7.6 **Adjournment of shareholders' meetings**

7.6.1 This Memorandum does not provide different maximum periods for the adjournment of shareholders' meetings to those periods specified in sections 64(12) of the Act.

7.6.2 The chairperson may, subject to the provisions in section 64(10) of the Act, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting, except such business as may lawfully have been transacted at the meeting which was adjourned.

7.7 **Shareholders' resolutions**

7.7.1 This Memorandum does not require a higher percentage of voting rights to approve an ordinary resolution than the percentage voting

rights specified in the Act, provided that resolutions required to be approved by an increased majority in terms of the Listing Requirements must be approved by such increased majority. **[Sections 65(7) and 65(8)]**

7.7.2 Subject to article 1.3, this Memorandum does not require a different percentage of voting rights to approve a special resolution than the percentage voting rights specified in the Act. **[Section 65(9) and 65(10)] [Item 10.11(a) of Schedule 10 to the Listings Requirements]**

7.7.3 This Memorandum does not require a special resolution for any other matter not contemplated in section 65(11) of the Act. **[Section 65(12)]**

7.8 **Shareholders' meetings in terms of the Listings Requirements**

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

7.9 **Notice of shareholders' meetings to the JSE**

7.9.1 A copy of all notices of shareholders' meetings must be sent to the JSE at the same time as notices are sent to shareholders, if required in terms of the Listings Requirements.

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

8. **DIRECTORS AND OFFICERS**

8.1 **Composition of the board of directors**

- 8.1.1 This Memorandum specifies 4 directors, other than directors appointed to any position or executive office in terms of article 8.3.1 as the minimum number of directors of the Company, which number is higher than the minimum number of directors required in terms of section 66(2) of the Act, and 12 as the maximum number of directors. **[Item 10.16(a) of Schedule 10 to the Listings Requirements]**
- 8.1.2 Subject to article 8.2 and the Listings Requirements, the shareholders shall elect the directors, and shall be entitled to elect one or more alternate directors, in accordance with the provisions of section 68(1) of the Act, provided that, for so long as this is required by the Listings Requirements, the election of directors may not be conducted in terms of section 60 of the Act. **[Sections 68(1)] [Item 10.16(b) of Schedule 10 to the Listings Requirements]**
- 8.1.3 This Memorandum does not provide for:
- 8.1.3.1 the direct appointment or removal of any director or alternate director by any particular person; or **[Section 66(4)(a)(i) and (iii)]**
- 8.1.3.2 the appointment of any person as an *ex officio* director of the Company; and **[Section 66(4)(a)(ii)]**
- 8.1.3.3 life directorships or directorships for an indefinite period. **[Item 10.16(k) of Schedule 10 to the Listings Requirements]**
- 8.1.4 This Memorandum does not stipulate any additional qualifications or eligibility requirements than those set out in the Act for a person to become or remain a director or a prescribed officer of the Company; provided that, for as long as the Listings Requirements require it, the board, through its nominations committee, should recommend eligibility of directors, taking into account past performance and contributions. **[Section 69(6)] [Item 10.16(g) of Schedule 10 to the Listings Requirements]**
- 8.1.5 Subject to the Act and this Memorandum, at every annual general

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

- 8.1.5.1 if at the date of any annual general meeting any non-executive director shall have held office for a period of three years since his last election or appointment (computed from his last election, appointment or date upon which he was deemed re-elected), he shall retire at such meeting either as one of the non-executive directors to retire in terms of this article 8.1.5.1 or in addition to the directors who retire in terms of this article 8.1.5.1;
- 8.1.5.2 a non-executive director who intends to retire voluntarily at the annual general meeting may be taken into account in determining the one third of the non-executive directors to retire at such meeting;
- 8.1.5.3 the identity of the non-executive directors to retire at such annual general meeting shall be determined as at the date of the notice convening such meeting; and
- 8.1.5.4 a director retiring at an annual general meeting shall retain office until the close or adjournment of such meeting. **[Section 68(1)] [Item 10.16(g) of Schedule 10 of the Listings Requirements]**

8.1.6 Retiring directors are eligible for re-election to the office of director at any shareholders meeting upon the recommendation of the board.
[Item 10.16(g) of Schedule 10 of the Listings Requirements]

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

8.1.7.1 if a majority of his co-directors sign and deposit at the registered office a written notice wherein he is requested to vacate his office (which shall become operative on deposit at the registered office) but without prejudice to any claim for damages;

8.1.7.2 if he be removed by a resolution of the Company of which proper notice has been given in terms of the Act (but without prejudice to any claim for damages);

8.1.7.3 if he resigns his office by notice in writing to the Company;

8.1.7.4 if

8.1.7.4.1 he is absent from meetings of the directors for 6 (six) consecutive months without leave of the directors otherwise than on the business of the company;

8.1.7.4.2 he is not represented at any such meetings during such 6 (six) consecutive months by an alternative director;

8.1.7.4.3 the directors resolve that his office be, by reason of absence referred to in articles 8.1.7.4.1 and 8.1.7.4.2 above, vacated,

provided that the directors shall have power to grant to any director leave of absence for a definite or indefinite period.

8.2 **Vacancies**

8.2.1 The board may appoint any person who satisfies the requirements for election as a director to fill any vacancy and serve as a director on a temporary basis until the vacancy is filled by election in accordance with section 68(1) of the Act. **[Section 68(3)]**

8.2.2 If the number of directors falls below the minimum provided for in this Memorandum, the remaining directors must as soon as possible and in any event not later than 3 (three) months from the date that the number of directors falls below the minimum, fill the vacancies or call a shareholders' meeting for the purpose of filling the vacancies. If required by the Listings Requirements:

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

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

8.3 **Executive Directors**

8.3.1 The Chairperson, with the approval of the board may from time to time designate -

8.3.1.1 managing and other executive directors (with or without specific designation) of the Company;

8.3.1.2 any director to any other executive office with the Company,

as the directors shall think fit, for a period not exceeding 5 (five) years, and may from time to time remove or dismiss such persons from office and appoint another or others in his or their place or places.

8.3.2 Any director appointed in terms of article 8.3.1-

- 8.3.2.1 shall not (subject to the provisions of the contract under which he is appointed) whilst he continues to hold that position or office, be subject to retirement by rotation; and
- 8.3.2.2 shall not, during the currency of such appointment, be taken into account in determining the rotation of retirement of directors; and
- 8.3.2.3 shall be subject to the same provisions as to removal as the other directors of the Company, and if he ceases to hold office as a director, his appointment to such position or executive office shall *ipso facto* terminate, without prejudice to any claims for damages which may accrue to him as a result of such termination.
- 8.3.3 Only a minority of the directors may be so appointed on the basis that they shall not be subject to retirement by rotation.
- 8.3.4 The remuneration of a director appointed to any position or executive office in terms of article 8.3.1 -
- 8.3.4.1 shall be determined by a disinterested quorum of the directors;
- 8.3.4.2 shall be in addition to or in substitution of any ordinary remuneration as a director of the company as the directors may determine;
- 8.3.4.3 may consist of a salary or a commission on profits or dividends or both, as the directors may direct.
- 8.3.5 The directors may -
- 8.3.5.1 from time to time confer upon a director appointed to any position or executive office in terms of article 8.3.1 any or all powers exercisable by the directors;
- 8.3.5.2 confer such powers for such time and to be exercised for such

objects and purposes and upon such terms and conditions and with such restrictions, as they think expedient;

8.3.5.3 confer such powers with or to the exclusion of or in substitution for any powers of the directors;

8.3.5.4 from time to time revoke, withdraw or vary such powers.

8.4 **Authority of the board of directors**

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

8.5 **Directors' meetings**

8.5.1 This Memorandum does not restrict the directors from acting otherwise than at a meeting, as contemplated in section 74(1) of the Act and, for so long as it is required by the Listings Requirements, any resolution passed in terms of this article 8.5.1 must be inserted in the minute book of the Company. **[Section 74(1)] [Item 10.16(j) of Schedule 10 to the Listings Requirements]**

8.5.2 This Memorandum does not specify a different percentage or number of directors upon whose request a meeting of the board must be called in terms of section 73(1) of the Act. **[Section 73(1) and 73(2)]**

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

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

8.5.5 This Memorandum does not limit, restrict or qualify the authority of the

Board to proceed with a board meeting in accordance with the requirements of section 73(5)(a) of the Act, despite a failure or defect in giving notice of the meeting. **[Section 73(5)(a)]**

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

8.6 **Chairperson**

8.6.1 The directors may after consulting with the Restricted Shareholders –

8.6.1.1 elect a chairperson and a deputy or vice chairperson (to act in the absence of the chairperson) of their meetings;

8.6.1.2 determine the period for which they are to hold office.

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

8.6.3 If no chairperson or deputy or vice chairperson is elected, or if at any meeting the chairperson or deputy or vice chairperson is not present within 5 (five) minutes after the time appointed for holding the meeting, the directors present shall choose one of their number to be chairperson at such meeting.

8.6.4 Subject to the Listings Requirements, in the case of an equality of votes at any meeting of the directors, the chairperson shall have a second or casting vote, provided that there are more than two directors at the meeting. **[Item 10.16(i) of Schedule 10 of the Listings Requirements]**

8.7 **Directors compensation and financial assistance to directors**

8.7.1 This Memorandum does not limit, restrict or qualify the ability of the Company to pay remuneration to its directors for their service as directors in accordance with section 66(9) of the Act. **[Section 66(8)]**

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

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

8.8 **Director may be employed in the Company or a subsidiary**

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

8.9 **Indemnification of directors**

8.9.1 For the purposes of this article 8.9, 'director' shall have the meaning ascribed to that term in section 78(1) of the Act.

8.9.2 This Memorandum does not limit, restrict or qualify the ability of the

Company to advance expenses to a director to defend any legal proceedings arising from his service to the Company, or to indemnify a director against such expenses if the proceedings are abandoned or exculpate the director or arise in respect of any liability for which the Company may indemnify the director in terms of sections 78(5) and 78(6) of the Act. **[Section 78(4)]**

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

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

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

8.9.5.1 the acts, receipts, neglects or defaults or any other director or officer or servant; or

8.9.5.2 joining in any receipt or other act for conformity or for loss or expense happening to the Company through the insufficiency or deficiency of title to any property acquired by order of the directors for or on behalf of the Company; or

8.9.5.3 the insufficiency or deficiency of any security in or upon which any of the moneys of the Company shall be invested; or

8.9.5.4 any loss or damage arising from the bankruptcy, insolvency or delictual act of any person with whom any moneys, securities or effects shall be deposited; or

8.9.5.5 any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto,

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

8.9.6 This Memorandum does not limit, restrict or qualify the ability of the Company to purchase insurance to protect:

8.9.6.1 a director against any liability or expenses for which the Company is permitted to indemnify a director in terms of the Act and this Memorandum; or

8.9.6.2 the Company against any contingency including, but not limited to:

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

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

8.10 **Committees of the board**

8.10.1 This Memorandum does not limit, restrict or qualify the authority of the board to appoint any number of committees of directors, or to delegate to any such committee any of the authority of the board. **[Section 72(1)]**

8.10.2 Except to the extent that any board resolution establishing a

committee provides otherwise, the members of the committee:

- 8.10.2.1 may include persons who are not directors of the Company but any such person must not be ineligible or disqualified to be a director in terms of section 69 of the Act. Any such persons shall not have a vote on any matter to be decided by the committee;
- 8.10.2.2 may consult with or receive advice from any person;
- 8.10.2.3 may be remunerated for their services as such; and
- 8.10.2.4 provided that the committee is duly constituted, have the full authority of the board in respect of any matter referred to it.
[Section 72(2)]
- 8.10.3 The board may from time to time, where it has appointed a committee in terms of articles 8.10.1 and 8.10.2 above include in any such delegation the power to sub-delegate the powers referred to in articles 8.10.1 and 8.10.2 above to such person or persons as the committee thinks fit, subject to such terms and conditions as the committee thinks fit, and may from time to time revoke, withdraw, alter or vary all or any such powers.
- 8.10.4 The meetings and proceedings of any committee consisting of 2 (two) or more directors shall be governed by the provisions of the Memorandum in regard to meetings and proceedings of the directors so far as the same are applicable thereto and are not superseded by any regulations made by the directors.
- 8.11 All acts performed by the directors or by a committee of directors or by any person acting as a director or a member of a committee shall, 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 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.

9. GENERAL PROVISIONS

9.1 Amendment of class, preferences, rights, limitations or other terms

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

9.1.2 If any amendment is proposed to any preferences, rights, limitations or other terms of any class of shares, such amendment shall be subject to the prior sanction of a resolution passed at a separate class meeting of the holders of that class of shares in the same manner, *mutatis mutandis*, as a special resolution.

9.1.3 At every meeting of the holders of that class of shares, the provisions of this Memorandum relating to meetings of ordinary shareholders shall apply, *mutatis mutandis*, except that a quorum at any such meeting shall be any person or persons holding or representing by proxy at least 2 (two) holders of that class of shares, provided that if at any adjournment of such meeting a quorum is not present, the provisions of this Memorandum relating to adjourned meetings shall apply, *mutatis mutandis*. **[Item 10.5(e) of Schedule 10 to the Listings Requirements]**

9.2 Share certificates

9.2.1 Where shares are registered in the names of 2 (two) or more persons, they shall be treated as 1 (one) member of the purposes of this article.

- 9.2.2 If a share certificate be defaced, lost or destroyed, it shall be replaced, subject however to 9.2.4 and, in the case of defacement, to delivery of the old certificate to the Company.
- 9.2.3 The directors may, as they deem fit, determine such terms (if any) as to evidence and indemnity and payment of the out-of-pocket expenses of the Company for investigating such evidence and, in the case of loss or destruction, of advertising the same.
- 9.2.4 The certificates for shares registered in the names of two or more persons shall be delivered to the person first named in the register in respect thereof, or to his authorised agent, and such delivery shall be a sufficient delivery to all joint holders of the shares.
- 9.2.5 In the case of legal incapacity of any one or more of the joint holders of any shares, the survivor then first named in the register shall be the only person recognised by the company as being entitled to such certificate, or any new certificate, or any new certificate which may be issued in place thereof.

9.3 **Votes of members**

- 9.3.1 Where 2 (two) or more persons are registered as joint holders of a share, any one of them, whether in person or by proxy, may vote as if he is the sole holder thereof.
- 9.3.2 If more than 1 (one) of such joint holders are present at a general meeting in person or by proxy, only that holder who is present whose name appears first in the register in respect of the share, may vote.
- 9.3.3 The parent or guardian of a minor, and the *curator bonis* of an incapacitated member, and also any person entitled under the transmission clause to transfer any shares, may vote at any general meeting in respect thereof in the same manner as if he were the registered holder of those shares, provided that at least 48 (forty-eight) hours before the time of holding the meeting at which he

proposes to vote, he shall satisfy the directors that he is such parent, guardian or curator or that he is entitled under the transmission clause to transfer those shares, or that the directors have previously admitted his right to vote in respect of those shares.

9.3.4 Co-executors of a deceased member in whose name shares stand in the register shall, for the purposes of this article 9, be deemed to be joint holders of those shares.

9.3.5 If the directors refuse to register a transfer of securities, a notice of the refusal shall, within 30 (thirty) days after the date on which the instrument of transfer was lodged, be sent to the transferee and transferor.

9.3.6 Any instrument of transfer which the directors may decline to register shall (unless the directors shall resolve otherwise) be returned on demand to the person who lodged it.

9.4 **Transmission of shares**

9.4.1 Subject to any law relating to estate duty, the executor or administrator of a deceased shareholder (not being one of several joint holders) shall be the only person recognised by the Company as having any right to a security registered in the name of such deceased shareholder.

9.4.2 In the case of the death of any one or more of the joint holders of any share, the survivor or survivors, or the executor or administrator of the deceased joint holder, shall be the only person or persons recognised by the Company as having any title to or interest in such security.

9.4.3 Any person becoming entitled to a security in consequence of the legal incapacity of a member, or by any lawful means otherwise than by transfer in accordance with this Memorandum –

9.4.3.1 may, on production of such evidence of his right, with the consent of the directors (which they shall not be obliged to

give) either be registered himself as a shareholder in respect of such securities or elect to have some person nominated by him registered as the transferee thereof;

9.4.3.2 shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the securities, except that he shall not be entitled in respect thereof to exercise any right conferred by membership in relation to meetings of the Company until he shall have been registered as a shareholder in respect of the securities.

9.4.4 If the person becoming entitled as referred to in article 9.4.3 shall elect to –

9.4.4.1 be registered himself, he shall notify the Company accordingly in writing;

9.4.4.2 have his nominee registered, he shall testify his election by executing a transfer form of such share in favour of his nominee.

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

SCHEDULE 1 – AUTHORISED SHARES

10. Classified shares

10.1 480 000 000 ordinary par value shares of 2.5 cents each, each of which shall entitle the holder, -

10.2 to receive any distribution in accordance with the holder's voting power;

10.3 on a liquidation of the Company, to receive the net assets of the Company in accordance with the holder's voting power;

10.4 to all of the preferences, rights or other terms set out in the Act or this Memorandum;

10.5 to any other rights at common law insofar as such rights are not inconsistent with this Memorandum or the Act.

11. Unclassified shares

11.1 None