

This is the new memorandum of incorporation laid before the meeting and signed by the chair of the Board on \_\_\_\_\_ 20\_\_ for identification purposes to be adopted.

Chairman \_\_\_\_\_

**THE COMPANIES ACT, NO. 71 OF 2008**

(AS AMENDED)

**MEMORANDUM OF INCORPORATION  
OF  
MAIN STREET 1646 (RF) LIMITED**

**A PUBLIC COMPANY**

**REGISTRATION NUMBER: 2018/546305/06**

This Memorandum of Incorporation takes effect (in terms of section 14(4) of the Companies Act) on the date when the Company is incorporated, being the date stated in the registration certificate issued by the CIPC.

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## PART A – INTRODUCTORY

### 1. INTERPRETATION

1.1 In this MOI, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

1.1.1 "**Approved Nominee**" means the Custodian and/or any Nominee Holder who is permitted to hold Shares on behalf of a Beneficial Holder pursuant to the B-BBEE Listings Terms and Conditions;

1.1.2 "**Available Cash**" means the cash resources available to the Company derived from the lease and/or Disposal of the Khula Sizwe Properties after the deduction of:

1.1.2.1 taxation payable by the Company;

1.1.2.2 all reasonable current and budgeted expenditure required by the Company in the ordinary course of its business and in accordance with past practice (as applicable); and

1.1.2.3 the repayment of any debt (including interest thereon), including for the avoidance of doubt any additional amounts required under the Finance Agreements to be utilised to effect payments other than scheduled payments to funders;

1.1.3 "**B-BBEE**" means broad-based black economic empowerment as defined in the B-BBEE Act;

1.1.4 "**B-BBEE Act**" means the Broad-Based Black Economic Empowerment Act 53 of 2003, as amended from time to time;

1.1.5 "**B-BBEE Controlled Company**" has the meaning ascribed to it in the Codes;

1.1.6 "**B-BBEE Laws**" means the B-BBEE Act and the Codes;

1.1.7 "**B-BBEE Listing**" mean the admission to listing of the Ordinary Shares as B-BBEE Securities on the B-BBEE Segment of the Main Board of the JSE or such other

licensed Exchange as the Company may approve in accordance with the provisions of this MOI;

- 1.1.8           **"B-BBEE Listing Period"** means the period commencing on the date upon which the B-BBEE Listing takes place (if applicable) and ending on the date on which the B-BBEE Listing terminates for any reason;
- 1.1.9           **"B-BBEE Listing Terms and Conditions"** means the terms and conditions applicable to the acquisition, holding and/or transfer of the Ordinary Shares (and beneficial interests therein) pursuant to the B-BBEE Listing, as set out in this MOI read with any B-BBEE Market Notice in respect of the B-BBEE Listing and any other terms and conditions notified to a person by or on behalf of the Company from time to time;
- 1.1.10          **"B-BBEE Market Notice"** means a market notice published by the relevant Exchange in respect of the B-BBEE Listing, as amended from time to time, which sets out particulars in respect of the restrictions, limitations and requirements applicable to the listing and transfer of the Ordinary Shares (and/or Beneficial Interests therein) as B-BBEE Securities, including as regards the various mandates and other contractual arrangements which a Verified Propco Shareholder is required to conclude with Persons acceptable to the Company;
- 1.1.11          **"B-BBEE Owned Company"** has the meaning ascribed to it in the Codes;
- 1.1.12          **"B-BBEE Restrictions"** means the restrictions imposed on the Company and/or the Shareholders, as set out in this MOI and the Framework Agreement;
- 1.1.13          **"B-BBEE Securities"** means securities listed on the B-BBEE Segment;
- 1.1.14          **"B-BBEE Segment"** means:
- 1.1.14.1               the **"BEE Segment"** referred to in section 4 of the JSE Listings Requirements;  
or
- 1.1.14.2               any equivalent segment contemplated in any other Listing Requirements for the listing of B-BBEE Securities;

- 1.1.15            "**B-BBEE Status**" means in relation to a Black Group, the Black Group's percentage voting rights and percentage economic interest held by Black People (by shareholding, membership, beneficiary interest and/or other comparable interest, as the case may be, having regard to the juristic nature of the relevant Black Group), and in relation to a natural person, whether or not that person qualifies as a Black Person;
- 1.1.16            "**B-BBEE Verification**" means the verification of a Person, which verification must include, *inter alia*, that:
- 1.1.16.1                the Person is an Eligible Shareholder;
- 1.1.16.2                such Eligible Shareholder has been notified of the restrictions, limitations and requirements applicable to the Ordinary Shares from time to time as set out in this MOI (read with the B-BBEE Market Notice, if any); and
- 1.1.16.3                if applicable, such Eligible Shareholder has accepted the restrictions, limitations and requirements applicable to the Ordinary Shares, the Verification Terms and Conditions and has signed all documents and contracts required in terms of the Verification Terms and Conditions;
- 1.1.17            "**B-BBEE Verification Agent**" means the Company or a service provider appointed by the Company to conduct the B-BBEE Verification;
- 1.1.18            "**Barloworld**" means Barloworld Limited, a public company with limited liability established in accordance with the laws of the Republic with registration number 1918/000095/06;
- 1.1.19            "**Barloworld Dividends**" means the dividends declared by Barloworld in respect of the Barloworld Shares held by the Company from time to time;
- 1.1.20            "**Barloworld Group**" means

- 1.1.20.1 Barloworld; and
- 1.1.20.2 Barloworld's South African subsidiaries (as defined in the Companies Act) from time to time;
- 1.1.21 "**Barloworld Shares**" means ordinary shares in the issued share capital of Barloworld with a par value of R0,05, having the rights, privileges, restrictions and terms set out in the memorandum of incorporation of Barloworld, which shares are listed on the main board of the JSE;
- 1.1.22 "**Beneficial Holder**" means, in relation to any uncertificated shares, the person who from time to time holds a Beneficial Interest in such uncertificated shares, regardless of whether they are registered in the uncertificated securities register of the company concerned in the name of such person directly by way of "own name" registration or in the name of a Nominee Holder;
- 1.1.23 "**Beneficial Interest**" shall bear the meaning assigned to such term in the Companies Act;
- 1.1.24 "**Black Company**" means a company or close corporation incorporated and registered in accordance with the laws of the Republic and which is both:
- 1.1.24.1 a B-BBEE Owned Company; and
- 1.1.24.2 a B-BBEE Controlled Company,
- and "**Black Companies**" shall have a corresponding meaning;
- 1.1.25 "**Black Entity**" means a trust, partnership, joint venture, "stokvel", Broad-Based Ownership Scheme (as contemplated in the Codes), Employee Share Ownership Programmes (as contemplated in the Codes), or other such unincorporated entity or association, which has as the majority of its beneficiaries and trustees or other such representative of its governing body (as the case may be), Black People and/or Black Companies;
- 1.1.26 "**Black Groups**" means Black Companies and Black Entities;



- 1.1.27        "**Black People**" or "**Black Person**" means those persons who fall within the definition of "black people" (or any comparable term) contained in the B-BBEE Act and the Codes;
- 1.1.28        "**Black Public**" means collectively, Black Groups and Black People;
- 1.1.29        "**Board**" means the board of Directors of the Company from time to time;
- 1.1.30        "**Business Day**" means any day other than a Saturday, Sunday or official public holiday in the Republic;
- 1.1.31        "**Call Event**" has the meaning set out in clause 25.1;
- 1.1.32        "**Certificated Securities**" means Securities issued by the Company that are not Uncertificated Securities;
- 1.1.33        "**Certificated Share**" means a Share which is evidenced by way of a certificate, and which is recorded as such in the Company's securities register (maintained by the Company, or by the Transfer Secretaries on behalf of the Company, from time to time);
- 1.1.34        "**CIPC**" means the Companies and Intellectual Property Commission established by section 185 of the Companies Act;
- 1.1.35        "**Codes**" means the Broad-Based Black Economic Empowerment Codes of Good Practice, and/or any applicable sector code gazetted under section 9 of the B-BBEE Act, as they may exist or be amended from time to time;
- 1.1.36        "**Companies Act**" means the Companies Act 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all schedules to such Companies Act;
- 1.1.37        "**Company**" means the company named on the first page of this document, duly incorporated in the Republic under the registration number endorsed thereon;
- 1.1.38        "**CSD**" means the Central Securities Depository as defined in section 1 of the Financial Markets Act;

- 1.1.39        "**CSD Participant**" means a depository institution accepted by a CSD as a "participant" in terms of section 31 of the Financial Markets Act;
- 1.1.40        "**Custodian**" means a Person appointed by the Company to hold any Securities, or take custody of any certificates evidencing Securities, under this MOI;
- 1.1.41        "**Director**" means a member of the Board as contemplated in section 66 of the Companies Act, or an alternate director, and includes any Person occupying the position of a director or alternate director, by whatever name designated;
- 1.1.42        "**Dispose**" means:
- 1.1.42.1        to sell, transfer, cede, swap, surrender, gift or otherwise dispose of (including but not limited *eiusdem generis* by way of donation or distribution *in specie*), deal with or Encumber, any interest in a Share or other asset;
- 1.1.42.2        to do anything which has the effect of placing a person in substantially the same position as that person would have been in, had any of the things mentioned in clause 1.1.42.1 been done; or
- 1.1.42.3        to authorise, agree to (whether conditional or not) or attempt to do any of the things mentioned in clause 1.1.42.1 or 1.1.42.2,
- and the terms "**Disposal**" and "**Disposing**" have corresponding meanings;
- 1.1.43        "**Distribution**" shall have the meaning ascribed to that term in section 1 of the Companies Act;
- 1.1.44        "**Electronic Communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002;
- 1.1.45        "**Eligible Shareholder**" means any member of the Black Public who is accepted to become a Shareholder (whether pursuant to the Public Offer, the Management Trust Subscription Agreement, the Employee Trust Subscription Agreement, or otherwise), (i) in the Company's (or its nominee's, delegate's or agent's) sole discretion, such acceptance to be recorded in writing, and (ii) pursuant to the B-BBEE Verification, and if applicable, through the B-BBEE Listing and its related processes (including the B-BBEE Verification), and such other persons as are permitted from time to time (and

for the period so permitted) under this MOI to hold, or have Beneficial Interests in, Ordinary Shares;

- 1.1.46 "**Employee Trust**" means the trustees for the time being of the Barloworld Employee Trust (to be renamed "the Khula Sizwe Employee Trust"), in whose names the Master of the High Court issued Letters of Authority under Master's Reference number: IT002612/2018(T);
- 1.1.47 "**Employee Trust Contribution Agreement**" means the contribution agreement between Barloworld and the Employee Trust in terms of which Barloworld makes a capital contribution to the Employee Trust to enable the Employee Trust to pay the subscription price for the Ordinary Shares it subscribes for under the Employee Trust Subscription Agreement;
- 1.1.48 "**Employee Trust Deed**" means the trust deed between Barloworld and the trustees for the time being of the Employee Trust, constituting the Employee Trust, as amended from time to time;
- 1.1.49 "**Employee Trust Subscription Agreement**" means the subscription agreement entered into or to be entered into between the Company and the Employee Trust, in terms of which the Employee Trust subscribes for Ordinary Shares constituting approximately 32% of the Ordinary Shares after their issue;
- 1.1.50 "**Empowerment Period**" means the period commencing on the Implementation Date and expiring on the 15th anniversary of the Implementation Date;
- 1.1.51 "**Empowerment Requirements**" means in relation to a Person, the requirements, obligations, commitments and/or measurement methodologies applicable from time to time to such Person or its business or assets, relating to ownership of (and/or economic interest in) and control, by Black People, of the Person or its business or assets under the B-BBEE Laws;
- 1.1.52 "**Encumber**" means any mortgage, charge, pledge, hypothecation, lien, cession or assignment by way of security, option, right to acquire, right of pre-emption, preferential right or arrangement, right of retention or agreement to confer security or any restriction or other arrangement (whether conditional or not) whatsoever which has the same or similar effect to the granting of security;

- 1.1.53        "**Exchange**" shall bear the meaning assigned to such term in the Financial Markets Act;
- 1.1.54        "**File**" or "**Filed**" when used as a verb, means to deliver a document to the CIPC in the manner and form, if any, prescribed for that document;
- 1.1.55        "**Finance Agreements**" means such agreements as may be entered into between the Company and its funders, in order to enable the Company to pay a portion of the acquisition price in respect of the Khula Sizwe Properties;
- 1.1.56        "**Financial Markets Act**" means the Financial Markets Act 19 of 2012, including any amendments, consolidations or re-enactments thereof;
- 1.1.57        "**Foundation**" means the trustees for the time being of the Barloworld Empowerment Foundation, in whose names the Master of the High Court issued Letters of Authority under Master's Reference number: IT002613/2018(T);
- 1.1.58        "**Foundation Subscription Agreement**" means the subscription agreement between Barloworld and the Foundation, in terms of which the Foundation subscribes for Barloworld Shares constituting (after issue thereof) approximately 3% of the issued Barloworld Shares;
- 1.1.59        "**Foundation Trust Deed**" means the trust deed between Barloworld and the trustees for the time being of the Foundation, constituting the Foundation, as amended from time to time;
- 1.1.60        "**Framework Agreement**" means the framework agreement between the Company, Barloworld, Barloworld South Africa Proprietary Limited, Barloworld Logistics Africa Proprietary Limited, the Employee Trust, the Management Trust, and the Foundation;
- 1.1.61        "**Gross Income**" has the meaning set out in section 1 of the Income Tax Act;
- 1.1.62        "**IFRS**" means the International Financial Reporting Standards, as adopted from time to time by the International Accounting Standards Board, or its successor body, and approved for use in the Republic from time to time by the Financial Reporting Standards Council established in terms of section 203 of the Companies Act;
- 1.1.63        "**Implementation Date**" has the meaning ascribed in the Framework Agreement;

- 1.1.64 **"Income Tax Act"** means the Income Tax Act, No. 58 of 1962, as amended, re-enacted or replaced from time to time;
- 1.1.65 **"Initial Empowerment Period"** means the period commencing on the Implementation Date and expiring on the 10<sup>th</sup> anniversary of the Implementation Date;
- 1.1.66 **"JSE"** means the Exchange, licensed under the Financial Markets Act, operated by JSE Limited (registration number 2005/022939/06), a public company duly incorporated in the Republic;
- 1.1.67 **"JSE Listings Requirements"** means the Listing Requirements of the JSE;
- 1.1.68 **"Khula Sizwe Properties"** means the immoveable properties to be acquired by the Company from Barloworld in terms of the Property Sale Agreement;
- 1.1.69 **"Listing Requirements"** shall bear the meaning assigned to such term in the Financial Markets Act;
- 1.1.70 **"Lock In Period"** means the period commencing on the Implementation Date and expiring on the 5<sup>th</sup> anniversary of the Implementation Date;
- 1.1.71 **"Management Trust"** means the trustees for the time being of the Khula Sonke Management Trust (to be renamed "the Khula Sizwe Management Trust"), in whose names the Master of the High Court issued Letters of Authority under Master's Reference number: IT002614/2018(T);
- 1.1.72 **"Management Trust Deed"** means the trust deed between Barloworld, and the Trustees for the time being of the Management Trust, constituting the Management Trust, as amended from time to time;
- 1.1.73 **"Management Trust Loan Agreement"** means the loan agreement between Barloworld and the Management Trust in terms of which Barloworld advances a loan to the Management Trust to enable the Management Trust to pay the subscription price for the Ordinary Shares it subscribes for under the Management Trust Subscription Agreement;
- 1.1.74 **"Management Trust Subscription Agreement"** means the subscription agreement between the Company and the Management Trust, in terms of which the Management

Trust subscribes for Ordinary Shares constituting approximately 38% of the Ordinary Shares (after their issue) which may be increased up to approximately 68% of the issued Ordinary Shares in accordance with the Framework Agreement;

- 1.1.75 "MOI" means this memorandum of incorporation and any schedules and/or annexures hereto;
- 1.1.76 "**Nominee**" shall bear the meaning assigned to such term in the Financial Markets Act;
- 1.1.77 "**Nominee Holder**" means, in relation to any uncertificated securities, the Person in whose name such shares are registered from time to time as a Nominee;
- 1.1.78 "**Ordinary Shareholder**" means the holder of Ordinary Shares;
- 1.1.79 "**Ordinary Shares**" means the ordinary shares in the authorised share capital of the Company, having the rights, privileges and restrictions as set out in Annexure 1;
- 1.1.80 "**Person**" means a natural person or juristic person (whether or not incorporated);
- 1.1.81 "**Prescribed Officer**" means a Person who, within the Company, performs any function that has been designated by the Minister in terms of section 66(10) of the Companies Act, as defined in section 1 of the Companies Act;
- 1.1.82 "**Propco Subscription Agreement**" means the subscription agreement between the Company and Barloworld in terms of which the Company subscribes for Barloworld Shares from time to time;
- 1.1.83 "**Property Lease Agreements**" means the lease agreements between the Company (as lessor) and Barloworld South Africa Proprietary Limited and Barloworld Logistics Africa Proprietary Limited (as lessees) in terms of which the Company leases the Khula Sizwe Properties to such lessees;
- 1.1.84 "**Property Sale Agreement**" means the sale of properties and rental enterprises agreement between the Company and Barloworld in terms of which Barloworld will Dispose of the Khula Sizwe Properties to the Company;

- 1.1.85            "**Public Offer**" means a public offering in terms of which the Black Public are invited to subscribe for and beneficially own Ordinary Shares, subject to the qualifying criteria of such offer as set out in the prospectus published in respect of the offer;
- 1.1.86            "**Regulations**" means the regulations published in terms of the Companies Act from time to time;
- 1.1.87            "**REIT**" shall bear the meaning assigned to such term in the Income Tax Act;
- 1.1.88            "**Rental Income**" has the meaning set out in section 25BB of the Income Tax Act;
- 1.1.89            "**Republic**" or "**South Africa**" means the Republic of South Africa;
- 1.1.90            "**Securities**" means:
- 1.1.90.1            any shares, notes, bonds, debentures or other instruments irrespective of their form or title, issued, or authorised to be issued by the Company; or
- 1.1.90.2            anything falling within the meaning of "securities" as set out in section 1 of the Financial Markets Act, and includes shares held in a private company; or
- 1.1.90.3            securities in each class for which application is made for listing on the JSE which shall rank *pari passu* in respect of all rights;
- 1.1.91            "**Securities Register**" means the register of issued Securities (including Shares and Uncertificated Securities or Certificated Securities, if applicable) of the Company required to be established in terms of section 50(1) of the Companies Act and referred to in clause 12 hereof;
- 1.1.92            "**SENS**" means the Stock Exchange News Service established and operated by the Issuer Regulation Division of the JSE;
- 1.1.93            "**Share**" means one of the units into which the proprietary interest in the Company is divided, which at the date of adoption of this MOI comprises the Ordinary Shares;
- 1.1.94            "**Shareholder**" means the holder of a Share who is entered as such in the Securities Register, subject to the provisions of section 57 of the Companies Act or the Beneficial Holder of Shares, as applicable;

- 1.1.95            **"Solvency and Liquidity Test"** has the meaning attributed thereto in section 4 of the Companies Act;
- 1.1.96            **"Special Resolution"** a shareholders resolution which must be supported by the holders of at least 75% of the voting rights exercised on the resolution, as provided in section 65(9) of the Companies Act;
- 1.1.97            **"Strate"**
- 1.1.97.1            in respect of the JSE, the share settlement and clearing system utilised by the JSE for all share transactions concluded on the JSE;
- 1.1.97.2            in respect of another Exchange, the equivalent share settlement and clearing system used by such Exchange for all share transactions concluded on the Exchange;
- 1.1.98            **"Strate Rules and Directives"** means:
- 1.1.98.1            in respect of the JSE, the depository rules of Strate made or amended from time to time in accordance with section 35 of the Financial Markets Act, and any depository directive issued or amended by Strate in accordance with such depository rules from time to time;
- 1.1.98.2            in respect of another Exchange, the equivalent depository rules and depository directives;
- 1.1.99            **"Transaction Documents"** means collectively this MOI, the Framework Agreement, Propco Subscription Agreement, the Employee Trust Deed, the Employee Trust Subscription Agreement, the Employee Trust Contribution Agreement, the Management Trust Deed, the Management Trust Subscription Agreement, the Management Trust Loan Agreement, the Foundation Trust Deed, the Foundation Subscription Agreement, the Property Sale Agreement, the Property Lease Agreements (including the Rental Guarantee (as defined in the Framework Agreement)), and any other agreement the Company may become bound to or in terms of which it may acquire rights pursuant to the B-BBEE Listing;



- 1.1.100        "**Transfer Secretaries**" means a Person appointed from time to time by the Company to fulfil the function of maintaining the Company's Securities Register and providing related services;
- 1.1.101        "**Uncertificated Securities**" means any "securities" defined as such in section 1 of the Financial Markets Act;
- 1.1.102        "**Uncertificated Securities Register**" means the record of Uncertificated Securities administered and maintained by a CSD Participant or CSD, as determined in accordance with the rules of the CSD;
- 1.1.103        "**Uncertificated Share**" means a Share which is dematerialised and which is recorded as such in the Company's uncertificated securities register (as administered and maintained by a CSD Participant);
- 1.1.104        "**Verification Terms and Conditions**" means the terms, conditions, restrictions and limitations applicable to each Shareholder and acknowledged and accepted by such Shareholder during the B-BBEE Verification process;
- 1.1.105        "**Verified Propco Shareholder**" means any Eligible Shareholder which the Company (or its nominee, delegate or agent) has notified that it has successfully completed a B-BBEE Verification, and whose B-BBEE Verification status has not expired or been withdrawn in accordance with the Verification Terms and Conditions or the MOI; and
- 1.1.106        "**Year of Assessment**" has the meaning set out in section 1 of the Income Tax Act.
- 1.2            In this MOI, unless the context clearly indicates otherwise:
- 1.2.1           words and expressions defined in the Companies Act and which are not defined herein shall have the meanings given to them in the Companies Act;
- 1.2.2           reference to the Companies Act shall include reference to the Regulations;
- 1.2.3           reference to a section by number refers to the corresponding section of the Companies Act;
- 1.2.4           a reference to a clause by number refers to a corresponding provision of this MOI;

- 1.2.5 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this MOI and –
- 1.2.5.1 an alterable or elective provision of the Companies Act, the provision of this MOI shall prevail to the extent of the conflict; and
- 1.2.5.2 an unalterable or non-elective provision of the Companies Act, the unalterable or non-elective provision of the Companies Act shall prevail to the extent of the conflict unless the MOI imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provisions of this MOI shall prevail to the extent of the conflict;
- 1.2.6 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.7 an expression which denotes:
- 1.2.7.1 any gender includes the other genders;
- 1.2.7.2 a natural person includes a juristic person and *vice versa*; and
- 1.2.7.3 the singular includes the plural and *vice versa*;
- 1.2.7.4 if the due date for the performance of any obligation in terms of this MOI is a day which is not a Business Day then (unless otherwise stipulated), the due date for the performance of the relevant obligation shall be the immediately succeeding Business Day;
- 1.2.8 any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this MOI; and
- 1.2.9 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Companies Act and/or the Regulations.
- 1.3 Any reference in this MOI to:
- 1.3.1 "**days**" shall be construed as calendar days;

- 1.3.2 "law" means any law of general application, as amended and re-enacted from time to time, and includes the common law and statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law; and
- 1.3.3 "writing" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any Electronic Communication in a manner and a form permitted in terms of the Companies Act and/or Regulations.
- 1.4 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words 'include' and 'including' followed by a specific example or examples shall not be construed as limiting the meaning of the general wording proceeding it.
- 1.5 Unless otherwise provided, defined terms appearing in this MOI in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.6 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the day from which such number of days is expressed to run and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.
- 1.7 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.8 Any reference herein to the "**MOI**" shall be construed as a reference to this MOI as amended from time to time.

## 2. JURISTIC PERSONALITY

- 2.1 The Company is a public company in terms of section 8(2)(d) of the Companies Act. This MOI replaces and supersedes the memorandum of incorporation of the Company applicable immediately prior to the filing hereof.

- 2.2 The Company is incorporated in accordance with and governed by:
- 2.2.1 the unalterable provisions of the Companies Act, save to the extent that this MOI imposes on the Company higher standard, greater restriction, longer period of time or similarly more onerous requirement;
  - 2.2.2 the alterable provisions of the Companies Act, subject to the limitations, extensions, variations or substitutions set out in the MOI;
  - 2.2.3 subject to clause 4, the Listing Requirements; and
  - 2.2.4 the other provisions of this MOI.
- 2.3 The Company is entitled to offer its securities to the public, subject to compliance with this MOI and the Companies Act.
- 2.4 The Company is accordingly classified as a public company in terms of section 8(2)(d) of the Companies Act.

### 3. **CONFLICTS WITH THE COMPANIES ACT**

- 3.1 Any Shareholder, Director or Prescribed Officer, or any member of a committee of the Board, including the audit committee, who considers that any provision of this MOI contravenes or is inconsistent with any provision of the Companies Act, whether or not such provision could be declared void by a court in terms of section 218(1) or a person could incur personal liability in terms of section 218(2), shall within five Business Days of forming that view inform the Board in writing setting out reasons for such view.
- 3.2 If any provision of the Companies Act is amended, or the Board is aware of or informed of any inconsistency or contravention in terms of clause 3.1, or otherwise, then in addition to and without limiting the rights or remedies of any other person, the Board shall be responsible for expeditiously assessing that amendment to the Companies Act or that inconsistency or contravention and, if an amendment to the MOI is required, proposing such amendment for consideration in terms of clause 62.

#### 4. LISTING OF THE COMPANY

- 4.1 It is anticipated that the Shares may be listed on the JSE (or any other licensed Exchange) as a REIT (or otherwise) in accordance with the provisions of the Listing Requirements after the expiry of the Lock In Period.
- 4.2 For these purposes, the Directors shall meet before the expiry of the Lock In Period to consider the listing of the Shares as contemplated above.
- 4.3 The references in this MOI to the provisions of the Listing Requirements and the REIT regime contemplated in the Income Tax Act shall only apply once the Shares are listed on a licensed securities Exchange and, if the Company so decides, the Company acquires a REIT status.

#### 5. OBJECT AND BUSINESS

- 5.1 Subject to clause 6.1, the main object of the Company shall be to:
- 5.1.1 acquire, own, hold and lease immoveable fixed properties (including, without limitation, the Khula Sizwe Properties), initially as part of a B-BBEE transaction in respect of Barloworld, and to manage such properties (including without limitation receiving rental therefrom) for the benefit of Black People, and to engage in capital raising from time to time for these purposes (whether through debt or equity);
- 5.1.2 acquire, own and hold the Barloworld Shares (and receive and distribute dividends and other distributions from Barloworld in respect of the Barloworld Shares) utilising, the Available Cash and to manage such for the benefit of Black People;
- 5.1.3 implement the B-BBEE Listing, and matters ancillary and related thereto (including on-going compliance requirements related to the B-BBEE Listing); and
- 5.1.4 negotiate, conclude, implement and exercise its rights and perform its obligations in terms of the Transaction Documents and such other agreements as may be necessary to establish the business of the Company as a Black Company, and fund the acquisition of the Barloworld Shares from time to time.
- 5.2 The Company may also acquire, lease and manage such other properties as may be determined by the Company from time to time.

5.3 The ancillary objectives of the Company shall be unlimited and shall include, but not be limited to, the conclusion of the Finance Agreements and such other agreements as may be necessary to fund the business of the Company, and the acquisition of the Barloworld Shares from time to time.

5.4 The Company shall conduct the business of owning and leasing properties and such other business as the Company may determine from time to time. For this purpose the Company may, from time to time, establish or hold interests in subsidiaries.

## 6. RESTRICTIONS

6.1 The Company has all of the legal powers and capacity as an individual as contemplated in the Companies Act, save as expressly otherwise provided in this MOI.

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

6.3 This MOI contains restrictive conditions as contemplated in section 15(2)(b) of the Companies Act.

6.4 In particular and without limitation:

6.4.1 subject to the terms of the Finance Agreements, clause 19.4 places restrictions on the ability of the Company to Dispose or Encumber the Khula Sizwe Properties;

6.4.2 clause 13.6 restricts the ability of the Company to register the transfer of ownership of Ordinary Shares during the Lock In Period;

6.4.3 clause 62 restricts the ability of the Company to amend this MOI during the Empowerment Period;

6.4.4 Annexure 1 restricts the ability of the Company to register ownership of the Shares in the names of persons who are not Black People or Black Groups, with exceptions in certain instances; and

6.4.5 the Company shall be bound by the restrictions, limitations and undertakings provided for in the Framework Agreement and the Finance Agreements.

6.5 Clause 62 prescribes additional requirements for the amendment of this MOI.

## **7. EXTENDED ACCOUNTABILITY REQUIREMENTS IN CHAPTER THREE OF THE COMPANIES ACT**

### **7.1 application of Chapter 3 to the Company**

7.1.1 The Company, being a public company, is required in terms of section 34(1) to comply with the provisions of Chapter 3 of the Companies Act.

7.1.2 The Company must:

7.1.2.1 appoint a Person to serve as company secretary in the manner and for the purposes set out in clause 7.3;

7.1.2.2 appoint a Person to serve as an auditor, in the manner and for the purposes set out in clause 7.4; and

7.1.2.3 establish a statutory audit committee, in the manner and for the purposes set out in clause 7.5,

provided that no person who is ineligible (other than by virtue of being a juristic person) or disqualified from serving as a Director in terms of section 69(7) or (8) shall be appointed as the company secretary, auditor or a member of the statutory audit committee.

7.1.3 In terms of section 72(4) read with regulation 43, the Company must, unless exempted, appoint a social and ethics committee which complies with the Companies Act and the Regulations.

### **7.2 register of company secretary and auditor**

7.2.1 The Company shall, in accordance with section 85, establish or cause to be established, and maintain, a register of its company secretary and auditor.

7.2.2 Within 10 Business Days of appointing a company secretary and/or auditor, or of termination of such an appointment, the Company must file with the CIPC a notice of the appointment or termination, as the case may be.

### 7.3 **company secretary**

7.3.1 The Directors must appoint a Person to serve as company secretary.

7.3.2 The Person appointed as company secretary shall be appointed on such terms, at such remuneration and subject to such conditions and for such period(s) as the Board in its discretion deems fit, provided that such Person:

7.3.2.1 has the requisite knowledge of, or is experienced with, relevant laws; and

7.3.2.2 is a permanent resident of South Africa, and remains so while serving in that capacity.

7.3.3 Without in any way limiting or excluding any other grounds for removing a Person as the company secretary, any Person who is the company secretary for the time being who:

7.3.3.1 does not, in the reasonable opinion of the Board, have the requisite knowledge of, or experience with, relevant laws;

7.3.3.2 ceases to be a permanent resident of South Africa; or

7.3.3.3 ceases to be a person eligible or qualified to serve as a Director as contemplated in the proviso in clause 7.1,

shall cease to be the company secretary on delivery to him of a notice by the Board terminating his appointment.

7.3.4 A juristic person or partnership complying with the requirements set out in section 87 may be appointed by the Board to hold the office of company secretary.

7.3.5 The company secretary shall be accountable to the Board.

7.3.6 The duties of the company secretary shall be the duties as specified in writing by the Board from time to time, and shall include as a minimum the statutory duties set out in section 88(2).



7.3.7 If the office of company secretary becomes vacant for any reason, the Board must fill that vacancy by appointing a person whom the Directors consider to have the requisite knowledge and experience within 60 Business Days after the vacancy arises.

#### 7.4 **auditors**

7.4.1 Each year at its annual general meeting, the Company must appoint an auditor.

7.4.2 The auditor shall be appointed subject to and in compliance with the requirements and criteria as to auditors set out in sections 90 and 92.

7.4.3 A retiring auditor may be automatically reappointed at an annual general meeting without any resolutions being passed, subject to the restrictions set out in sections 90(6) and 92.

7.4.4 If the annual general meeting of the Company does not appoint or reappoint an auditor, the Board must fill the vacancy in the office in terms of the procedure set out in clause 7.4.5 within 40 Business Days after the date of the annual general meeting.

7.4.5 If a vacancy arises in the office of auditor of the Company at any time, the Board:

7.4.5.1 must appoint a new auditor within 40 Business Days, if there was only one incumbent auditor of the Company; and

7.4.5.2 may appoint a new auditor at any time, if there was more than one incumbent auditor, but while any such vacancy continues, the surviving or continuing auditor may act as auditor of the Company.

7.4.6 Before making an appointment in terms of clause 7.4.4 or clause 7.4.5:

7.4.6.1 the Board must propose to the Company's audit committee, within 15 Business Days after the vacancy occurs, the name of at least one registered auditor to be considered for appointment as the new auditor; and

7.4.6.2 the Board may proceed to make an appointment of a Person proposed in terms of clause 7.4.6.1 if, within five Business Days after delivering the proposal, the audit committee does not give notice in writing to the Board rejecting the proposed auditor.

- 7.4.7 If the Company appoints a firm as its auditor, a change in more than one half of the composition of the members of that firm will constitute the resignation of the firm as auditor of the Company, giving rise to a vacancy.
- 7.4.8 Any auditors of the Company for the time being shall have the rights and restricted functions set out in section 93.
- 7.5 **audit committee**
- 7.5.1 The Company must establish an audit committee comprising at least three members, all of whom shall be non-executive independent Directors. All members of the audit committee must be independent as envisaged in the Companies Act and the JSE Listings Requirements.
- 7.5.2 The members of the audit committee must be elected at each annual general meeting of the Company, in accordance with and subject to the requirements and criteria as to the members and composition of such a committee as set out in section 94.
- 7.5.3 If a vacancy arises on the audit committee, the Board must fill such vacancy within 40 Business Days, and the appointment must be ratified at the next annual general meeting.
- 7.5.4 Neither the appointment nor the duties of the audit committee of the Company reduce the functions and duties of the Board.
- 7.5.5 The Company shall pay all expenses reasonably incurred by its audit committee, including, if the audit committee considers it appropriate, the fees of any consultant or specialist engaged by the audit committee to assist it in the performance of its functions, subject to any Board approved budgetary constraints with respect thereto having regard to, amongst other financial constraints, the Solvency and Liquidity Test as applied to the Company.
- 7.5.6 At least one third of the members of the Company's audit committee at any particular time must have academic qualifications, or experience, in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management.

## **PART B – SHARES AND SHAREHOLDING**

### **8. CLASSES OF SHARES**

- 8.1 All the Shares of the Company shall rank *pari passu* in all respects, save to the extent provided for in terms of the preferences, rights, limitations and other terms associated with a specific class of Shares, if applicable.
- 8.2 For purposes of this clause 8, *pari passu* shall have the meaning attributed thereto in terms of the JSE Listings Requirements.
- 8.3 Shares in each class for which application is made for listing on the JSE, shall rank *pari passu* in all respects.
- 8.4 The Company has 1,000,000,000 authorised Ordinary Shares (having the preferences, rights, limitations and other terms set out in Annexure 1) available for issue.
- 8.5 Subject to Annexure 1, the Ordinary Shares may only be issued to the Employee Trust, the Management Trust and the Black Public (pursuant to the Public Offer or as trading on the B-BBEE Segment pursuant to the B-BBEE Listing, or any subsequent offer to the Black Public).

### **9. ISSUE OF SHARES AND VARIATION OF RIGHTS**

- 9.1 The Board shall not have the powers contained in section 36(3) of the Companies Act.
- 9.2 Each Share issued by the Company has associated with it an irrevocable right of the Shareholder to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share. The variation of any preferences, rights, limitations and other terms associated with any class of Shares as set out in this MOI may be enacted only by an amendment of this MOI approved by a Special Resolution. If any amendment of the MOI relates to the variation of any preferences, rights, limitation and other Share terms attaching to any other class of Shares already in issue, that amendment may not be implemented without a Special Resolution, taken by the holders of the Shares in that class at a separate meeting.
- 9.3 The authorisation and classification of Securities, the creation of any class of Securities , the conversion of one class of Securities into one or more other classes, the reclassification

of Securities or classification of unclassified Securities, the consolidation of Securities, the sub-division of Securities, the change of the name of the Company, the increase or decrease of the number of Securities, and, subject to clause 9.2, the variation of any preferences, rights, limitations and other terms associated with each class of Shares as set out in this MOI may be changed only by an amendment of this MOI by Special Resolution and in accordance with the Listing Requirements, if applicable, save if such an amendment is ordered by a court in terms of section 16(1)(a) and 16(4) of the Companies Act, subject to the provisions of clause 62.

- 9.4 No Shares may be authorised in respect of which the preferences, rights, limitations or any other terms of any class of Shares may be varied in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) of the Companies Act.
- 9.5 The Company may only issue Shares which are fully paid up and freely transferrable (subject to the provisions of this MOI (including Annexure 1)) and only within the classes and to the extent that those Shares have been authorised by or in terms of this MOI.
- 9.6 The Board may, subject to clause 9.11 and the further provisions of this clause 9.6, resolve to issue Shares of the Company at any time, but:
- 9.6.1 only within the classes and to the extent that those Shares have been authorised by or in terms of this MOI; and
- 9.6.2 only to the extent that such issue has been approved by the Shareholders in a general meeting, either by way of a general authority (which may be either conditional or unconditional) to issue Shares in its discretion or a specific authority in respect of any particular issue of Shares, in accordance with the Listing Requirements (if applicable) provided that, if such approval is in the form of a general authority to the Board, it shall be valid only until the next annual general meeting of the Company or for 15 months from the date of the shareholder resolution, whichever is the earlier, and may be varied or revoked by the Shareholders at any general meeting of the Shareholders prior to such annual general meeting.
- 9.7 Alterations of share capital, authorised shares and rights attaching to a class/es of Shares, all issues of Shares for cash and all issues of options and convertible Securities granted or

issued for cash, and repurchases of securities must, in addition to the foregoing provisions, be in accordance with the Listing Requirements (if applicable).

- 9.8 All Securities of the Company for which a listing is sought on the JSE and all Securities of the same class as the Securities of the Company which are listed on the JSE must, notwithstanding the provisions of section 40(5) of the Companies Act, but unless otherwise required by the Companies Act, only be issued after the Company has received the consideration approved by the Board for the issuance of such Securities.
- 9.9 Subject to section 40(5) to (7) of the Companies Act, when the Company has received the consideration approved by the Board for the issuance of any Shares:
- 9.9.1 those Shares are fully paid up; and
- 9.9.2 the Company must issue those Shares and cause the name of the holder to be entered into the Company's Securities Register in accordance with sections 49 to 56 of the Companies Act.
- 9.10 Subject to what may be authorised by the Companies Act, the Listing Requirements (if applicable) and at meetings of Shareholders in accordance with clause 9.12, and subject to clause 9.13, the Board may only issue unissued Shares if such Shares have first been offered to existing Shareholders in proportion to their shareholdings in the Company on such terms and in accordance with such procedures as the Board may determine, unless such Shares are issued for the acquisition of assets by the Company.
- 9.11 Notwithstanding the provisions of clauses 9.1, 9.7, 9.12 and 9.13, any issue of Shares, Securities convertible into Shares, or rights exercisable for Shares in a transaction or a series of integrated transactions shall, in accordance with the provisions of section 41(3) of the Companies Act, require the approval of the Shareholders by Special Resolution if the voting power of the class of Shares that are issued or are issuable as a result of the transaction or series of integrated transactions will be equal to or exceed 30% of the voting power of all the Shares of that class held by the Shareholders immediately before that transaction or series of integrated transactions.
- 9.12 Notwithstanding the provisions of clause 9.10 the Shareholders may at a general meeting authorise the Board to issue Shares at any time and/or grant options to subscribe for Shares as the Board in its discretion thinks fit, provided that such transaction(s) has/have been

approved by the JSE (if applicable), if so required under the Listing Requirements, and comply with the Listing Requirements (if applicable).

9.13 Except to the extent that any such right is specifically included as one of the rights, preferences, limitations or other terms upon which any class of Shares (including the Ordinary Shares) is issued or as may otherwise be provided in this MOI (as set out in clause 9.10), no Shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional Shares issued by the Company.

9.14 If there are listed cumulative and/or listed non-cumulative preference shares in the capital of the Company, the following right must attach to such shares:

"No further securities ranking in priority to, or *pari passu* with, existing preference shares, of any class, shall be created without a Special Resolution at a separate general meeting of such preference shareholders."

## 10. SHARE INCENTIVE SCHEMES

If the Shareholders at any time approve the establishment of a Share incentive scheme, that approval constitutes authority given to the Board to issue Shares pursuant to such scheme, subject to any maximum ceiling on the number of Shares to be issued imposed by the Shareholders in approving the scheme and subject to the provisions of the Listing Requirements, if applicable.

## 11. CERTIFICATED AND UNCERTIFICATED SECURITIES

### 11.1 Evidence of Uncertificated Securities

11.1.1 In terms of section 52(4), the CSD Participant or CSD (and not the Company), must provide a regular statement to each Person for whom any Uncertificated Securities are held in an Uncertificated Securities Register. The Company shall not issue certificates or statements evidencing or purporting to evidence title to Uncertificated Securities.

11.1.2 A Person who is entitled to and wishes to inspect an Uncertificated Securities Register may do so only through the Company in terms of section 52(2) read with section 26 and clause 54.

- 11.2 Subject to clause 11.3, during the Empowerment Period, unless the Company consents otherwise in writing:
- 11.2.1 all the Ordinary Shares shall be held as Uncertificated Securities in the name of the Custodian to act as the registered Nominee Holder, holding such Uncertificated Securities for and on behalf of each Ordinary Shareholder who will be the Beneficial Holder thereof. Each Ordinary Shareholder shall be bound by the provisions of the Strate Rules and Directives, as well as any applicable custody/mandate arrangement with the Custodian (to the extent that they relate to them (save that they shall not be liable for the fees of the Custodian in respect of the custodial role during the Empowerment Period in respect of their Ordinary Shares));
- 11.2.2 if and to the extent that, for whatever reason, any Ordinary Share is at any time held as either: (a) Certificated Securities; or (b) Uncertificated Securities with the registered holder being someone other than the Custodian, and the Company has not consented in writing that the Ordinary Shares may be held otherwise than as Uncertificated Securities with the Custodian, then each relevant Ordinary Shareholder unconditionally undertakes to the Company and agrees that:
- 11.2.2.1 the Ordinary Shareholder shall, at the Company's election, either:
- 11.2.2.1.1 allow any Certificated Securities to be dematerialised into Uncertificated Securities within 14 (fourteen) days of receipt of a written notice from the Company requesting that such Ordinary Share be so dematerialised, and the relevant Ordinary Shareholder hereby unconditionally and irrevocably consents to, and authorises and instructs the Company to procure such dematerialisation, with such Uncertificated Securities to be held in the name of a Nominee Holder appointed by the Company to act as the registered holder; or
- 11.2.2.1.2 deposit the share certificate in respect of any Certificated Securities with the Custodian within 14 (fourteen) days of receipt of a written notice from the Company requesting that the share certificate for such Ordinary Share be so deposited with the Custodian, who will retain such Certificated Securities for so long as it is held in such form;

- 11.2.2.2 for so long as such Ordinary Share is held in certificated form other than in the name of the Custodian, it shall only be deposited with a CSD Participant approved by the Company, it being recorded that the Company shall require that such Shareholder's mandate agreement with the relevant CSD Participant recognises the relevant terms and restrictions in respect of such Ordinary Share as contained in this MOI;
- 11.2.2.3 it shall not give any instructions to its CSD Participant which would constitute or result in a contravention of this MOI; and
- 11.2.3 an Ordinary Shareholder will, subject to clause 11.3, be entitled to rematerialize such Ordinary Shareholder's Uncertificated Securities in accordance with section 49(6) read with section 54 of the Companies Act, whereupon such Ordinary Shareholder's Ordinary Shares will be held in certificated form subject to the principles recorded in clause 11.2.2.1.2.
- 11.3 During the B-BBEE Listing Period, the Ordinary Shares shall be held as Uncertificated Securities, provided that:
- 11.3.1 if an Ordinary Share is held as Certificated Securities, the share certificate in respect thereof shall be deposited with and retained by the Custodian for so long as it is held in such form, provided that the Directors shall be entitled to require all Shares to be held as Uncertificated Securities, subject to any applicable regulatory requirements; and
- 11.3.2 if an Ordinary Share is held as Uncertificated Securities:
- 11.3.2.1 the relevant Ordinary Shareholder's mandate agreement with the Person providing custody and administration services in respect of such Uncertificated Securities (including any nominee or intermediary of such service provider) must be an Approved Nominee and shall accordingly be required to recognise the restrictions imposed upon the holding and/or transfer of such Ordinary Share as contained in the Verification Terms and Conditions; and
- 11.3.2.2 the relevant Ordinary Shareholder shall not give any instruction to its broker or CSD Participant (or any nominee or intermediary thereof or Nominee Holder)



which would constitute or result in a contravention of the provisions of the B-BBEE Listing Terms and Conditions and B-BBEE Market Notice.

11.3.3 should the B-BBEE Listing be terminated for whatsoever reason at any time during the Empowerment Period, the provisions of clauses 11.3.1 and 11.3.2 shall cease to apply and the provisions of clause 11.1 shall thereupon again apply for the remainder of the Empowerment Period.

## 12. SECURITIES REGISTER

12.1 The Company has established a Securities Register in the form prescribed by the Companies Act and the Regulations and shall continue to maintain the Securities Register, which shall reflect:

12.1.1 the number of Securities authorised and the number available to be issued and the date of authorisation;

12.1.2 the total number of Securities of a class that have been issued, re-acquired or surrendered to the Company; and

12.1.3 the number of Securities of that class that are the subject of options or conversion rights which, if exercised, would require Securities of that class to be issued.

12.2 As soon as practicable after:

12.2.1 issuing any Securities the Company must enter or cause to be entered in the Securities Register, in respect of every class of Securities it has issued:

12.2.1.1 the names and addresses of the Persons to whom the Securities were issued;

12.2.1.2 the electronic addresses of Persons who have furnished the same;

12.2.1.3 the number and class of Securities issued to each of them, distinguishing numbers and the consideration;

12.2.1.4 the total number of Securities of a class held by any Person;

- 12.2.1.5 the date on which any such Securities were transferred by the holder or by operation of law to another Person or re-acquired by or surrendered to the Company;
- 12.2.1.6 the number of, and prescribed circumstances relating to, any Securities:
  - 12.2.1.6.1 that have been placed in trust as contemplated in section 40(5)(b)(ii) of the Companies Act by reason of not having been fully paid for; or
  - 12.2.1.6.2 whose transfer has been restricted;
- 12.2.1.7 as regards debt instruments as contemplated in section 43 of the Companies Act:
  - 12.2.1.7.1 the number of those Securities still in issue; and
  - 12.2.1.7.2 the names and addresses of the holders of the Securities;
- 12.2.2 the re-acquisition or surrender of any Securities, the Company must enter or cause to be entered in its Securities Register, in respect of Securities re-acquired or surrendered:
  - 12.2.2.1 the date on which the Securities were re-acquired or surrendered to the Company;
  - 12.2.2.2 the distinguishing number or numbers of any certificated Securities re-acquired or surrendered to the Company;
  - 12.2.2.3 the consideration for which the Securities were re-acquired by, or surrendered to the Company; and
  - 12.2.2.4 the name of the Person from or by whom the Securities were re-acquired or surrendered, as the case may be;
- 12.2.3 transferring any Securities, the Company must enter or cause to be entered in its Securities Register, in respect of Securities evidenced by certificates that it has transferred:
  - 12.2.3.1 the name and address of the transferee;

- 12.2.3.2 the description of the Securities, or interest transferred;
- 12.2.3.3 the date of the transfer;
- 12.2.3.4 the value of any consideration still to be received by the Company on each Security or interest, in the case of a transfer of Securities the subscription price for which has not been fully paid; and
- 12.2.3.5 any other information contemplated in clause 12.2.1, any reference to issue being read as a reference to transfer,

provided that such entry may only be made where to do so is in compliance with section 51(6) of the Companies Act and the provisions of this MOI.

- 12.3 Securities certificates shall be issued in such manner and form as the Directors shall from time to time prescribe save that they must, if and to the extent so required under the Companies Act:

- 12.3.1 state on the face:
  - 12.3.1.1 the name of the Company;
  - 12.3.1.2 the name of the Person to whom the Securities were issued;
  - 12.3.1.3 the number and class of Securities and the designation of the series, if any, evidenced by that certificate; and
  - 12.3.1.4 any restriction on the transfer of the Securities evidenced by that certificate;
- 12.3.2 be signed by two Persons authorised by the Board by autographic, mechanical or electronic means.

- 12.4 Each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.

- 12.5 Each Security holder shall be entitled to 1 (one) certificate for all the Securities of a particular class registered in his name, or to several certificates, each for a part of such Securities.

- 12.6 A certificate for Securities registered in the names of 2 (two) or more Persons shall be delivered to the Person first named in the Securities Register and delivery of a certificate for Securities to that Person shall be a sufficient delivery to all joint holders.
- 12.7 If a certificate for Securities is defaced, lost or destroyed, it may be renewed, on such terms, as to evidence and indemnity and payment of such fee as the Directors deem fit, and (in case of defacement) on delivery of the old certificate to the Company.
- 12.8 A Person:
- 12.8.1 acquires the rights associated with any particular Securities of the Company when that Person's name is entered in the Company's Securities Register as a Person to whom those Securities have been issued or transferred; and
- 12.8.2 ceases to have the rights associated with any particular Securities of the Company when the transfer to another Person, re-acquisition by the Company, or surrender to the Company of those Securities has been entered in the Company's Securities Register.

### 13. TRANSFER OF SECURITIES

- 13.1 The instrument of transfer of any Certificated Securities shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of such Certificated Securities until the name of the transferee is entered in the Securities Register.
- 13.2 All authorities to sign transfer deeds or other instruments of transfer granted by holders of Securities for the purpose of transferring Securities which may be lodged, produced or exhibited with or to the Company at its registered office 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 a time as express notice in writing of the revocation of the same shall have been given and lodged at such of the Company's offices at which the authority was first lodged, produced or exhibited. Even after the giving and lodging of such notice, 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 the lodging of such notice.

- 13.3 The Directors may, however, in their discretion in such cases as they deem fit, dispense with requiring the signature of the transferee on the instrument of transfer.
- 13.4 The Directors may suspend the registration of transfers of Shares (including the Ordinary Shares) during the period up to 14 (fourteen) Business Days immediately preceding any general meeting of the Company and at any other times, provided that the periods of suspension at such other times shall not in any 1 (one) year exceed 60 (sixty) Business Days. During the B-BBEE Listing Period, the provisions of this clause 13.4 shall be subject to the Listing Requirements.
- 13.5 The Directors may decline to register any transfer unless:
- 13.5.1 the instrument of transfer, duly stamped, is lodged with the Company, accompanied (unless the Directors either generally or in any particular case otherwise resolve) by the certificate of the Shares to which it relates, and such other evidence as the Company may reasonably require to show the right or capacity of the transferor to make the transfer and of the transferee to accept it;
- 13.5.2 the Securities transfer tax (if any) thereon has been paid;
- 13.5.3 the instrument of transfer is in respect of only one class of Share;
- 13.5.4 the provisions of any law affecting transfer have been complied with; and
- 13.5.5 (where applicable) the provisions of clause 13.6 have been complied with.
- 13.6 In addition to clause 13.5:
- 13.6.1 during the Lock In Period, no transfer of the Ordinary Shares may be effected, and the Directors shall decline to register any such transfer; and
- 13.6.2 during the Empowerment Period (excluding the Lock In Period), no transfer of the Ordinary Shares may be effected, and the Directors shall decline to register any such transfer, unless the transfer is to Black Persons (other than in respect of transfers by the Management Trust and the Employee Trust to beneficiaries who are not Black Persons as set out in Annexure 1) or as otherwise expressly permitted by this MOI,
- unless Barloworld provides its prior written consent to such transfer.

- 13.7 If the Directors refuse to register a transfer they shall within 30 (thirty) Business Days after the date on which the instrument of transfer was lodged, send to the transferee notice of the refusal.
- 13.8 Nothing contained in this MOI (but for the avoidance of doubt subject to clause 19) shall preclude the Company from recognising a renunciation of the allotment of any Share by the allottee in favour of some other Person.
- 13.9 A transfer of Uncertificated Securities shall be effected in terms of section 53 of the Companies Act read with the rules of the relevant CSD.
- 13.10 As regards any Uncertificated Securities issued by the Company at any time, the Company shall comply with the provisions of sections 52 to 55 (both sections inclusive) of the Companies Act.

#### 14. **NO LIEN**

It is recorded for the avoidance of doubt that fully paid Securities shall not be subject to any lien in favour of the Company and shall be freely transferable, save as otherwise provided for in this MOI (including Annexure 1).

#### 15. **TRANSMISSION OF SECURITIES**

- 15.1 Subject to Annexure 1 the executor of the estate of the deceased sole holder of a Security shall be the only Person recognised by the Company as having any title to such Security. In the case of a Security registered in the names of two or more holders, the survivor or survivors, or the executor of the estate of any deceased Shareholder, as determined by the Board, shall be the only Person recognised by the Company as having any title to the Security. Any Person who submits proof of his appointment as the executor, administrator, trustee, curator, or guardian in respect to the estate of a deceased Shareholder or holder of other Securities ("**Security Holder**") of the Company, or of a Security Holder whose estate has been sequestrated or of a Security Holder who is otherwise under a disability or as a liquidator of any body-corporate which is a Security holder of the Company, shall be entered in the Securities Register *nomine officii*, and shall therefor, for all purposes be deemed to be a Security Holder.

- 15.2 If when called upon by the Directors to do so the executor fails to register the deceased's Securities in its name or the names of the heir or legatees, the Securities shall not be capable of forfeiture, but shall continue to be registered in the names of the deceased or the executor's name *nomine officio*.
- 15.3 Any Person becoming entitled to any Security by virtue of the death of a Security Holder shall, upon producing such evidence that he has such title or rights as the Directors think sufficient, has the right to either have such Security transferred to himself or to make such other transfer of the Security as such Security Holder could have made, provided that in respect of a transfer other than to himself:
- 15.3.1 the Directors shall have the same right to refuse or suspend registration as they would have had in the case of a proposed transfer of such Security by such Security Holder before his death; and
- 15.3.2 a Person becoming entitled to any Security shall not, unless and until he is himself registered as a Security Holder in respect of such Security, be entitled to exercise any voting or other right attaching to such Security or any other right relating to meetings of the Company and shall continue to remain bound by this MOI.

## 16. DEBT INSTRUMENTS

The Board may authorise the Company to issue secured and unsecured debt instruments as set out in section 43(2) of the Companies Act, but no special privileges associated with any such debt instruments as contemplated in section 43(3) of the Companies Act may be granted, and the authority of the Board in such regard is limited by this MOI.

## 17. CAPITALISATION SHARES

- 17.1 The Board shall, in accordance with section 47 of the Companies Act (and in compliance with the requirements of Listing Requirements, if applicable), have the power and authority to:
- 17.1.1 approve the issue of any authorised Shares, as capitalisation Shares, on a *pro rata* basis to the Shareholders of one or more classes of Shares; or

- 17.1.2 to issue Shares of one class as capitalisation Shares in respect of Shares of another class; or
- 17.1.3 to resolve to permit Shareholders, that are entitled, to elect to receive a cash payment in lieu of a capitalisation Share.
- 17.2 The Board may not resolve to offer a cash payment in lieu of awarding capitalisation Shares, as contemplated in clause 17.1.3, unless the Board:
- 17.2.1 has considered the Solvency and Liquidity Test as required by section 46 of the Companies Act, on the assumption that every such Shareholder would elect to receive cash; and
- 17.2.2 is satisfied that the Company would satisfy the Solvency and Liquidity Test immediately upon the completion of the distribution.
- 17.3 If, on any capitalisation issue, or in respect of any corporate action undertaken in accordance with the provisions of the Listing Requirements (if applicable) in terms of which Shareholders would, but for the provisions of this clause 17.3, become entitled to fractions of shares, such entitlement to a fraction will be administered in accordance with the provisions of the Listing Requirements.

## 18. **BENEFICIAL INTERESTS IN SECURITIES**

- 18.1 The Company's issued Securities may be held by, and registered in the name of, one Person for the Beneficial Interest of another Person as set out in section 56(1) of the Companies Act, provided that:
- 18.1.1 subject to clause 18.1.2, during the Empowerment Period, Securities shall not be held for the Beneficial Interest of another Person who is not a Black Person or Black Entity without the prior written consent of the Company; and
- 18.1.2 during the B-BBEE Listing Period, the prohibition contemplated in clause 18.1.1 shall cease to apply, provided however that the Person who holds any Ordinary Shares for the Beneficial Interest of another as a condition to such holding recognises the terms and restrictions on transfer in respect of such as contained in this MOI and the Verification Terms and Conditions, and the relevant Ordinary Shareholder shall



procure that the registered holder shall not give any instructions in respect of such Ordinary Shares which would constitute or result in a contravention of this MOI and the Verification Terms and Conditions.

- 18.2 Save as set out in the specific terms and conditions of any documents in terms of which Securities other than Shares are to be issued, the Company shall not permit Securities to be voted upon by the holder of a Beneficial Interest who does not hold a proxy appointment from the registered holder, notwithstanding any agreement permitting the holder of the Beneficial Interest to vote the Securities to the exclusion of the registered holder between the registered holder and the holder of the Beneficial Interest.
- 18.3 If any Securities of the Company are registered in the name of a Person who is not the holder of the Beneficial Interests in all such Securities of the Company, that registered holder of Securities must disclose:
- 18.3.1 the identity of the Person on whose behalf the Securities are held; and
- 18.3.2 the identity of each Person with a Beneficial Interest in the Securities so held, the number and class of Securities held for each such Person with a Beneficial Interest, and the extent of each such Beneficial Interest, in accordance with the time periods as stipulated in section 56(4) of the Companies Act.

**19. RESTRICTIONS ON THE SALE OR ENCUMBRANCE AND TRANSMISSION OF ORDINARY SHARES AND KHULA SIZWE PROPERTIES**

- 19.1 No Shareholders shall, during the Lock In Period, Dispose or Encumber the Ordinary Shares such Shareholder holds.
- 19.2 The Company shall, at all times during the Empowerment Period be, and remain, a Black Company.
- 19.3 Save as contemplated in the Annexure 1 and the Transaction Documents, all the Ordinary Shares will be subject to the following restrictions that, with effect from the Implementation Date and for the duration of the Empowerment Period:
- 19.3.1 the Ordinary Shares shall be transferred only to Black Groups and/or Black People;

- 19.3.2 during the B-BBEE Listing Period, the Ordinary Shares shall be traded solely on the B-BBEE Segment;
- 19.3.3 Black Groups must maintain the same or a higher B-BBEE status than they had at the time of their B-BBEE Verification.
- 19.4 Save as contemplated in the Transaction Documents, the Company shall not Dispose and/or Encumber the Khula Sizwe Properties, during the 3-year period from the Implementation Date in order to preserve the B-BBEE treatment of the Khula Sizwe Properties under Statement 102 of the Codes. Thereafter and for the remainder of the Empowerment Period, the Company shall Dispose and/or Encumber the Khula Sizwe Properties, respectively, only if authorised by way of a Special Resolution.

## 20. SANCTIONS

- 20.1 In this clause 20:
- 20.1.1 “**OFAC**” means the Office of Foreign Assets Control of the US Department of Treasury;
- 20.1.2 “**Restricted Person**” means a person that is:
- 20.1.2.1 listed on, or owned or controlled by a person listed on, or acting on behalf of a person listed on, any Sanctions List;
- 20.1.2.2 located in, incorporated under the laws of, or owned or (directly or indirectly) controlled by, or acting on behalf of, a person located in or organized under the laws of a country or territory that is the target of country-wide or territory-wide Sanctions; or
- 20.1.2.3 otherwise a Target of Sanctions;
- 20.1.3 “**Sanctions**” means the economic, financial or trade sanctions laws, regulations, embargoes or restrictive measures administered, enacted, imposed or enforced by any of the Sanctions Authorities;
- 20.1.4 “**Sanctions Authorities**” means each of:

- 20.1.4.1 the United States of America;
- 20.1.4.2 the United Nations;
- 20.1.4.3 the United Kingdom;
- 20.1.4.4 the European Union;
- 20.1.4.5 the Republic of France;
- 20.1.4.6 the Council of Europe (founded under the Treaty of London, 1946); or
- 20.1.4.7 the respective governmental institutions and agencies of any of the foregoing, including, without limitation, OFAC, the United States Department of Commerce, the United States Department of State, the United States Department of the Treasury, Her Majesty's Treasury (“**HMT**”) and the French Ministry of Finance;
- 20.1.5 “**Sanctions List**” means any sanctions list maintained by, or public announcement of Sanctions designation made by, any of the Sanctions Authorities, in each case as amended, supplemented or substituted from time to time, including:
- 20.1.5.1 in the case of Her Majesty’s Treasury of the United Kingdom, the “Consolidated List of Financial Sanctions Targets and the Investment Ban List”;
- 20.1.5.2 in the case of OFAC, the “Specially Designated Nationals and Blocked Persons” list or the “Foreign Sanctions Evaders” list;
- 20.1.5.3 the Consolidated List of Financial Sanctions Targets and the Investments Ban List maintained by HMT; or
- 20.1.5.4 by the United Nations Security Council and the European Union; and
- 20.1.6 “**Target of Sanctions**” means a country, territory, person or entity prohibited or restricted by a Sanctions Authority from engaging in trade, business or other activities.
- 20.2 The Ordinary Shares (including any beneficial interest therein) shall not be Disposed of to, or Encumbered in favour of, a Restricted Person.

- 20.3 The Directors shall refuse to register, or otherwise recognise or give effect to, the transfer of any Ordinary Shares (including any Beneficial Interest therein) in violation of clause 20.2.
- 20.4 The Company shall not enter into any transaction which involves a Restricted Person to the extent that to do so is prohibited by, or would cause any breach of, any Sanctions.

## 21. PROPCO SHAREHOLDER UNDERTAKINGS

- 21.1 The provisions of this clause 21 shall apply for the duration of the Empowerment Period and fall away after the Empowerment Period.
- 21.2 Each Shareholder irrevocably and unconditionally undertakes that (save with the Company's prior written consent):
- 21.2.1 it shall not Dispose of any of its Shares or any Beneficial Interest therein other than as is consistent with or permitted under clauses 22, 23, 24 and otherwise in terms of this MOI;
  - 21.2.2 in respect of any permitted transfer of Shares or any Beneficial Interest therein, it shall, save in respect of any transfer effected in accordance with the B-BBEE Listing Terms and Conditions on the Exchange in respect of which a B-BBEE Listing occurs:
    - 21.2.2.1 co-operate fully with the Board, the Transfer Secretaries or the B-BBEE Verification Agent (as applicable) in respect of such transfer;
    - 21.2.2.2 thoroughly check that the transferee Beneficial Holder is, and at the time of transfer will be, an Eligible Shareholder;
    - 21.2.2.3 ensure that the relevant transferee Beneficial Holder has agreed to be bound by this MOI in a form and on terms to the reasonable satisfaction of the Company; and
    - 21.2.2.4 where applicable, that any transferee's Nominee Holder is an Approved Nominee;
  - 21.2.3 if it is a Black Group, then during the Empowerment Period in respect of Shares acquired by it under the Transaction Documents, it shall remain a Black Group and

shall maintain its B-BBEE Status at not less than the level it had at the time it acquired the Shares in question;

- 21.2.4 it will immediately notify the Company of any Call Event in respect of itself (or of any matter, fact, event or circumstances which, following the giving of notice and no further steps being taken by the recipient of the notice, will give rise to a Call Event in respect of itself);
- 21.2.5 it will not (i) perform any act (of commission or omission) within its power or control or of which it is capable, or (ii) attempt to procure or propose (other than where it is specifically required by law or by a court of law to so procure or propose) any resolution, or (iii) exercise any right as Shareholder in any way, or (iv) enter into any arrangement, transaction or agreement, or (v) otherwise take any action whatsoever or procure the taking of any actions, which (alone or taken together with the acts, omissions or votes of any other Person) will or is reasonably likely (or which, following the giving of notice and no further steps being taken by the recipient of the notice, will or is reasonably likely) to result in the B-BBEE Status of the Company diminishing or reducing; and
- 21.2.6 it will, where so requested by the Company, exercise such rights as it has as a Shareholder to vote in favour of any resolution or take such other action as will itself (or with such other affirmative votes and/or actions by other Shareholders) as may be necessary or reasonably required to procure that the Company complies with its obligations as set out in the Transaction Documents.
- 21.3 Each Shareholder agrees in favour of Barloworld and the Company that Barloworld (and each member of the Barloworld Group) and/or the Company shall be entitled from time to time (and at least once in every calendar year) in their sole discretion to:
- 21.3.1 request in writing any Shareholder to provide it with all information and documents reasonably required by the Company and/or Barloworld (or other member of the Barloworld Group) pertaining to such Shareholder to enable it to determine and officially obtain and/or maintain its B-BBEE Status under the B-BBEE Laws (and the Empowerment Requirements); and/or

- 21.3.2 request in writing each Shareholder to confirm, formally in writing, its continuing compliance with its obligations under this MOI; and/or
- 21.3.3 request in writing the preparation and issue by an accredited or approved B-BBEE rating agency (or another suitable Person) nominated by Barloworld or the Company, from time to time, of a certificate ("B-BBEE Ownership Certificate of Compliance") recording any or all of the following (as may be requested):
- 21.3.3.1 the identity and composition of the Black Groups and/or Black People in such Shareholder and the composition of its board of directors, board of trustees or analogous body; and/or
- 21.3.3.2 whether or not the Shareholder qualifies as Black Group or Black Person; and/or
- 21.3.3.3 the B-BBEE Status of the Shareholder; and/or
- 21.3.3.4 any other matter pertaining to such Shareholder relevant to an assessment by the Company and/or Barloworld and/or other member of the Barloworld Group of its or their compliance with the Empowerment Requirements,
- and undertakes to comply fully with such request within 20 Business Days thereof.
- 21.4 The Shareholders shall vote in favour of the election of directors nominated to be a Director or alternate Director of the Company by any Person in accordance with the nomination rights granted to it under any of the Transaction Documents, provided such nominee meets the requirements set out in this MOI with regards to Directors.
- 21.5 For the avoidance of doubt, the costs to a Shareholder of complying with its obligations under this clause 21 shall be for its own account.

## **22. RESTRICTION ON DISPOSAL OR ENCUMBRANCE OF SHARES FOR THE DURATION OF THE EMPOWERMENT PERIOD**

### **22.1 General**

- 22.1.1 Subject to clause 22.1.2, and for the duration of the Empowerment Period, unless otherwise agreed between Barloworld and the Company, and subject to the Listing Requirements of any relevant Exchange (where applicable):

- 22.1.1.1 the Company shall issue the Shares to Eligible Shareholders in uncertificated form, to be held in accordance with the provisions of this clause 22.1;
- 22.1.1.2 all Shares shall be held as Uncertificated Shares in the name of a Custodian to act as the registered Nominee Holder, holding such Uncertificated Shares for and on behalf of each Shareholder who will be the Beneficial Holder thereof. Each Shareholder agrees to be bound by the provisions of the Strate Rules and Directives (if the Shares are listed on the JSE or equivalent rules if listed on another Exchange) as well as any applicable custody/mandate arrangement with the Custodian (to the extent that they relate to them save that they shall not be liable for the fees of the Custodian in respect of the custodial role during the Lock In Period), in respect of his/her/its Shares;
- 22.1.1.3 if and to the extent that, for whatever reason, any Share is at any time held as either (i) a Certificated Share; or (ii) an Uncertificated Share with the registered holder being someone other than the Custodian, and Barloworld and the Company have not agreed that Shares may be held otherwise than as Uncertificated Shares with the Custodian, then the relevant Shareholder unconditionally undertakes and agrees that it shall, at the Company's election, either:
- 22.1.1.3.1 allow any Certificated Share to be dematerialised into an Uncertificated Share within 14 days of receipt of a written notice from the Company requesting that such Share be so dematerialised, and the relevant Shareholder hereby unconditionally and irrevocably consents to, and authorises and instructs the Company to procure the dematerialisation of such Uncertificated Share to be held in the name of a Nominee Holder appointed by the Company to act as the registered holder; or
- 22.1.1.3.2 deposit the share certificate in respect of any Certificated Share with the Custodian within 10 Business Days of receipt of a written notice from the Company requesting that the share certificate for such Share be so deposited with the Custodian, who will retain such certificate in respect of the Certificated Share for so long as it is held in such form;

- 22.1.1.4 for so long as such Share is held in uncertificated form other than in the name of the Custodian, it shall only be deposited with a CSD Participant approved by the Company, it being recorded that the Company shall require that such Shareholder's mandate agreement with the relevant CSD Participant recognises the relevant terms and restrictions in respect of such Share as contained in this MOI;
- 22.1.1.5 it shall not give any instructions to its CSD Participant which would constitute or result in a contravention of the MOI; and
- 22.1.1.6 a Shareholder will, subject to clause 22.1.2 be entitled to rematerialize his/her/its Uncertificated Shares in accordance with section 49(6) read with section 54 of the Companies Act, whereupon his/her/its Shares will be held in certificated form subject to the principles recorded in clause 22.1.1.3.2.
- 22.1.2 During the B-BBEE Listing Period, the Shares may be held as Certificated Shares or Uncertificated Shares; provided that:
- 22.1.2.1 the Company may require the Shares to be held as Uncertificated Shares, subject to the applicable Listing Requirements (if any);
- 22.1.2.2 if a Share is held as a Certificated Share, the share certificate in respect thereof shall be deposited with and retained by the Custodian for so long as it is held in such form;
- 22.1.2.3 if a Share is held as an Uncertificated Share:
- 22.1.2.3.1 the relevant Shareholder's mandate agreement with the Person providing custody and administration services in respect of such Uncertificated Share (including any nominee or intermediary of such service provider) must be with an Approved Nominee and shall accordingly be required to recognise the restrictions imposed upon the holding and/or transfer of such Share as contained in the Verification Terms and Conditions; and
- 22.1.2.3.2 the relevant Shareholder shall not give any instruction to its broker or CSD Participant (or any nominee or intermediary thereof or Nominee Holder)



which would constitute or result in a contravention of the provisions of the B-BBEE Listing Terms and Conditions.

22.1.3 For the avoidance of doubt, should the B-BBEE Listing be terminated for whatsoever reason, the provisions of clause 22.1.2 shall cease to apply and the provisions of clause 22.1.1 shall thereupon again apply.

22.1.4 For the avoidance of doubt, this clause 22 applies for the duration of the Empowerment Period and falls away at the end of the Empowerment Period.

## 22.2 **Lock-in Period**

22.2.1 Save and only to the limited extent permitted under clauses 22, 23, 24 and 25, no Shareholder shall at any time during the Lock In Period, Dispose of any Share held by it or any Beneficial Interest therein, or otherwise cease to be the Beneficial Holder thereof.

## 22.3 **After the Lock In Period until the Expiry of the Empowerment period**

22.3.1 In order to promote Barloworld's imperative to procure and maintain an optimal B-BBEE rating under the B-BBEE Laws, each of the Shareholders agree and undertake in favour of Barloworld and the Company that, upon the expiry of the Lock In Period, save and only to the limited extent permitted under clauses 23, 24 and 25, (i) for the remainder of the Empowerment Period that it shall not Encumber any Share (or Beneficial Interest therein) held by it, and (ii) it shall not Dispose of any Shares (or Beneficial Interest therein) other than to Eligible Shareholders in accordance with the provisions of this clause 22.3, and the Company undertakes not to accept and register the transfer of any Shares (or Beneficial Interest therein) in contravention of any provision of this clause 22.3.

22.3.2 After the Lock In Period and for the duration of the Empowerment Period, subject to clauses 23, 24 and 25:

22.3.2.1 and further subject to clause 22.3.2.2, only Eligible Shareholders may be Beneficial Holders of Shares and only Nominees approved by the Company may be Nominee Holders of Shares, and no transfer of any Beneficial Interest or nominee holding shall be permitted unless such transfer has first been

approved in writing by the Board (which approval shall not be unreasonably withheld or delayed) pursuant to its consideration of any proposed transfer and subject to its verification of the B-BBEE Status of the proposed transferee;

22.3.2.2 during the B-BBEE Listing Period, only Verified Shareholders may be Beneficial Holders of Shares (and any holding in conflict with this will accordingly breach this provision) and only Nominees approved by the Company may be Nominee Holders of Shares, and no Disposal may be effected, if such Disposal is inconsistent with this provision.

22.3.3 Subject to clause 22.3.4:

22.3.3.1 the Board shall consider and approve or decline (in accordance with this clause 22.3.3) any proposed transfer pursuant to a Disposal of Shares (or Beneficial Interests therein), and shall accordingly regulate, or procure the regulation of, the registration of any such transfer;

22.3.3.2 the Board shall be entitled to appoint a committee, agent or outsourced third party for these purposes;

22.3.3.3 all proposed transfers of Shares (including a change in Beneficial Interests), must therefore be submitted to the Board for consideration together with such supporting documentation in respect of the proposed transferee as is reasonably required by the Board from time to time, and which initially includes the following:

22.3.3.3.1 in respect of individuals, a copy of the proposed transferee's identity document, proof of residence and an affidavit signed by the proposed transferee confirming that the proposed transferee is a Black Person, and any other such document as may reasonably be required by the Board;

22.3.3.3.2 in respect of Black Companies, a certified copy of their latest B-BBEE Status certification being not older than 12 months (issued by a B-BBEE rating or verification agency acceptable to the Company in its sole and absolute discretion) or, where applicable, an affidavit complying with the requirements set out in the Codes, a certified copy of their memorandum

of incorporation, a certified copy of their securities register, and any other such document as may reasonably be required by the Board;

22.3.3.3.3 in respect of Black Entities, a certified copy of any applicable constitutional or other such document, a certified copy of any rules or regulations governing the operations and management of such entity, certified copies of the identity documents of the trustees or representatives of the governing body of such entity (if any), a certified copy of their beneficiaries' register and any other such documents as may reasonably be required by the Board;

22.3.3.4 in considering any proposed transfer of Shares (including a change in Beneficial Interests), the Board shall, for the purposes of ascertaining the B-BBEE Status of any proposed transferee (and/or its impact thereon on the compliance with the Empowerment Requirements) or other relevant matter under this MOI, be entitled in addition to requesting any such additional documents as may be necessary to ascertain such B-BBEE Status, to request that such transferee (at its own expense) provide a B-BBEE Ownership Certificate of Compliance (*mutatis mutandis* as contemplated in clause 21.3.3);

22.3.3.5 all proposed transfers of Shares (including a change in Beneficial Interests) shall be considered by the Board as soon as reasonably possible in the circumstances subsequent to being lodged with the Board;

22.3.3.6 the Board may make any further requirements and stipulations from time to time in respect of the consideration and verification of the transfer of Shares (including a change in Beneficial Interests), and associated approvals process, as it reasonably deems fit. Without derogating from the Board's general discretion to regulate the approval process and to amend the requirements and stipulations from time to time, and/or to call for and require additional information, whether generally or in relation to a specific transfer or class of transfers, the Board will take reasonable steps to make the relevant requirements available for inspection by Shareholders at the registered offices of the Company or such other location/s in South Africa as the Board may determine from time to time) and electronically on a website designated for such

purpose by the Board. Notwithstanding the foregoing, Shareholders remain responsible for ascertaining the requirements and stipulations which apply to them and to any proposed transfer by them;

22.3.3.7 if the Board is satisfied that the provisions of this MOI have been complied with, it shall approve the transfer;

22.3.3.8 an Eligible Shareholder who becomes a Verified Shareholder in terms of the above mentioned B-BBEE Verification process shall be entitled to hold and, subject to the B-BBEE Restrictions, trade (where applicable) in Shares and shall furthermore be entitled to take transfer of further Shares without the need for further verification, unless in the case of a Black Group there has been a change in circumstances that adversely affect its B-BBEE Status; and

22.3.3.9 the Board may in its sole and absolute discretion determine any dispute regarding the status of any Person as a Black Person, and any such determination by the Board shall be final and binding.

22.3.4 During the B-BBEE Listing Period:

22.3.4.1 the Company shall provide:

22.3.4.1.1 the JSE with such indemnities as may be required under section 4.32B of the Listing Requirements of the JSE; or

22.3.4.1.2 any other relevant Exchange with such indemnities as may be required under the Listing Requirements of that Exchange;

22.3.4.2 the Disposal of Shares (and Beneficial Interests therein) shall be subject to the provisions of this MOI and the Verification Terms and Conditions. The B-BBEE Verification Agent shall accordingly conduct B-BBEE Verification in respect of each Beneficial Holder (and proposed Beneficial Holder) of Shares;

22.3.4.3 in conducting B-BBEE Verification, the B-BBEE Verification Agent shall, for the purposes of ascertaining the B-BBEE Status of any proposed transferee (and/or its impact thereon on the compliance by the members of the Barloworld Group with the Empowerment Requirements) or other relevant matter under this MOI,

be entitled in addition to requesting any such additional documents as may be necessary to ascertain such B-BBEE Status, to request that such transferee (at its own expense) provide a B-BBEE Ownership Certificate of Compliance (*mutatis mutandis* as contemplated in clause 21.3.3). The B-BBEE Verification Agent may make any further requirements and stipulations from time to time in respect of the B-BBEE Verification process and/or any Verified Shareholder. The B-BBEE Verification Agent will take reasonable steps to make the relevant requirements for B-BBEE Verification available for inspection at the registered offices of the Company (or such other location/s in South Africa as the Board may determine from time to time) and electronically on a website designated for such purpose by the Board. Notwithstanding the foregoing, Shareholders (and proposed Shareholders) remain responsible for ascertaining the requirements and stipulations which apply to them under this MOI and the Verification Terms and Conditions, and to any proposed transfer by them (including the requirements for B-BBEE Verification); and

- 22.3.4.4 the B-BBEE Verification Agent may in its sole and absolute discretion determine any dispute regarding the status of any Person as a Black Person, and any such determination by the B-BBEE Verification Agent shall be final and binding.
- 22.3.5 No Shares (or Beneficial Interest therein) shall be approved for transfer or transferred where, in the good faith opinion of the Company (and Barloworld to the extent relevant to the achievement of Barloworld's empowerment objectives), such transfer will or might or is reasonably likely to result in a breach of any of the provisions of this MOI, the Framework Agreement and/or the Verification Terms and Conditions (where applicable).
- 22.3.6 To the maximum extent permitted in law, neither Barloworld nor the Board, nor any of its or their directors, officers, employees, nominees, delegates and or agents, shall be liable to the Company and/or any of the Shareholders for any direct, indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever or howsoever caused, arising as a result of any act or omission (including any negligent act or omission) on the part of Barloworld or the Board (or, as the case may be, its or their directors, officers, employees, nominees, delegates and/or agents), and any such claims are hereby waived.

- 22.3.7 To the extent that at any time, and for whatever reason (whether intentionally, negligently or accidentally), and for so long as any Share (or Beneficial Interest therein) is transferred to or held by any Person as Beneficial Holder who is not an Eligible Shareholder or a Verified Shareholder (as the case may be) and/or to any Nominee Holder who is not an Approved Nominee ("**Non-qualifying Holder**"), a Call Event shall be deemed to have arisen in respect of such Share if it has not been transferred to an Eligible Shareholder within 5 Business Days of written notice from the Company and clause 25 shall apply.
- 22.3.8 The reasonable costs and disbursements of the B-BBEE Verification Agent shall be borne by the Company. Where the Board appoints a third party other than a member of the Barloworld Group or committee or sub-committee appointed by such member for the purposes of performing any function of the Board under this clause 22, the Company shall consult with Barloworld prior to making the appointment.

## 23. DEATH

### 23.1 During the Empowerment Period

#### 23.1.1 Death of a Shareholder

- 23.1.1.1 Subject to Annexure 1, in the event of the death of a Shareholder, the executor of the deceased Shareholder's estate shall be entitled to transfer the relevant Shares to such Shareholder's heir, provided that such heir is an Eligible Shareholder (as approved by the Board *mutatis mutandis* under clause 22.3) or a Verified Shareholder (as the case may be).
- 23.1.1.2 If the deceased Shareholder is an employee of a member of the Barloworld Group and the heir is not an Eligible Shareholder or a Verified Shareholder (as the case may be), the heir and/or the executor shall be permitted (and obligated) to:
- 23.1.1.2.1 transfer the relevant Shares to an Eligible Shareholder (as approved by the Board *mutatis mutandis* under clause 22.3) or a Verified Shareholder (as the case may be) within a period of 120 days from the date of death;  
or

23.1.1.2.2 transfer the relevant Shares to such Shareholder's heir who shall be deemed to be an Eligible Shareholder, provided that this clause 23.1.1.2.2 shall apply only once.

23.1.1.3 In the event that the deceased Shareholder's executor fails to comply with the provisions of clause 23.1.1, a Call Event shall arise and the provisions of clause 25 shall apply.

## 23.1.2 **Death of a Member of a Black Group**

23.1.2.1 In the event of the death of a shareholder, member, participant and/or beneficiary of a Shareholder which held Shares as a Black Group, as a result of which the Shareholder fails to maintain its B-BBEE Status or no longer qualifies as a Black Group, then the Shareholder shall have a period of 120 days to remedy the breach caused by such death or to transfer the Shares held by it to an Eligible Shareholder (as approved by the Board *mutatis mutandis* under clause 22.3) or a Verified Shareholder (as the case may be).

23.1.2.2 In the event that the Shareholder fails to comply with the provisions of clause 23.1.2.1 or the breach caused by the death has not otherwise been remedied within 120 days from the date of the death in question, a Call Event shall arise and the provisions of clause 25 shall apply.

## 23.2 **After the Empowerment Period**

23.2.1 After the Empowerment Period, the restrictions set out in this clause 23 shall fall away.

## 24. **SEQUESTRATION OR LIQUIDATION**

### 24.1 **During the Empowerment Period**

#### 24.1.1 **Sequestration of a Shareholder**

24.1.1.1 In the event of a Shareholder being involuntarily sequestered (whether provisionally or finally), the Shares held by such sequestered Shareholder shall be permitted and required to be transferred by the Shareholder and/or the trustee of such Shareholder's estate to an Eligible Shareholder (as approved by the Board *mutatis mutandis* under clause 22.3) or a Verified Shareholder (as

the case may be) within a period of 120 days from the date of provisional or final sequestration (whichever is the earlier), unless the sequestration order is set aside within such 120 day period.

24.1.1.2 In the event that the Shareholder and/or the sequestrated Shareholder's trustee fails to comply with the provisions of clause 24.1.1.1, a Call Event shall arise and the provisions of clause 25 shall apply.

24.1.1.3 The application by a Black Person for voluntary sequestration shall be a breach of clause 21.2.5.

#### 24.1.2 **Liquidation of a Black Group**

24.1.2.1 In the event that a Shareholder which held Shares as a Black Group is involuntarily liquidated (whether provisionally or finally) and as a result of which it fails to maintain its B-BBEE Status or no longer qualifies as a Black Group, as the case may be, then the Shareholder (and/or its liquidator) shall have a period of 120 days to remedy the breach caused by such events or to transfer the Shares held by it to an Eligible Shareholder (as approved by the Board *mutatis mutandis* under clause 22.3) or a Verified Shareholder (as the case may be) unless the liquidation order is set aside within such 120 day period.

24.1.2.2 In the event that the Shareholder and/or its liquidator fails to comply with the provisions of clause 24.1.2.1, a Call Event shall arise and the provisions of clause 25 shall apply.

24.1.2.3 The passing of a resolution for the voluntary winding-up or deregistration of a Black Group shall be a breach of clause 21.2.5.

#### 24.2 **After the Empowerment Period**

24.2.1 After the Empowerment Period, the restrictions set out in this clause 24 shall fall away.

### 25. **CALL OPTION**

25.1 A "**Call Event**" shall arise in respect of a Shareholder if the circumstances set out in clauses 22.3.7, 23.1.1.3, 23.1.2.2, 24.1.1.2, 24.1.2.2 or 27.3.2 occur, and/or if the Shareholder during the Empowerment Period:



- 25.1.1 has misrepresented or misstated its B-BBEE Status;
- 25.1.2 has made a fraudulent, untrue or inaccurate statement in the application form submitted to the Company or in any supporting documents, or if any information contained in the application form submitted to the Company cannot be verified to the Company's satisfaction;
- 25.1.3 has made or given a fraudulent, untrue or inaccurate confirmation or representation in connection with the election to acquire Shares or its relevant information (including as to B-BBEE Status) cannot be verified to the Company's satisfaction;
- 25.1.4 has made a fraudulent, untrue or inaccurate statement in respect of any transfer or proposed transfer of Shares (or Beneficial Interest therein), or in any documents supporting such transfer or proposed transfer, or in any information provided to the Board, the B-BBEE Verification Agent and/or any other service provider in respect of any transfer of Shares (or Beneficial Interest therein) to such Shareholder, or any such information cannot thereafter be verified to the Company's satisfaction;
- 25.1.5 has made a fraudulent, untrue or inaccurate statement in respect of any other documentation or information submitted to Barloworld, the Company, the Board, the B-BBEE Verification Agent and/or any other service provider or any such information cannot be verified to the Company's satisfaction; or
- 25.1.6 commits an act, or there arises an event or circumstance (howsoever arising) constituting or resulting in a breach by or in respect of such Shareholder (and/or the Shares and/or Beneficial Interests held by it) of any of clauses 21, 22, 23, 24, 27, 28 and 29 of this MOI, and fails to remedy any such breach within the time period (if any) provided in the relevant clause or, if no such express remedy period is provided, within 20 Business Days of receiving written notice from the Company to do so (or such additional period as the Company may agree in writing).
- 25.2 If and for so long as the Call Event persists, the Company or its nominee (each an "**Option Holder**"), shall be entitled, but not obliged, by giving written notice to the relevant Shareholder (or its Nominee Holder, if applicable) to that effect ("**Call Option Notice**"), to require such Shareholder and/or Nominee Holder to sell to the Option Holder all of its Shares (and/or Beneficial Interests therein, or such number thereof as the Option Holder in

its discretion may elect ("**Call Shares**"), and the Shareholder and/or Nominee Holder shall be obliged to sell the Call Shares to the Option Holder. If for any reason, the Option Holder is unable to exercise or otherwise give effect to the above mentioned right due to a delay in obtaining any relevant regulatory or governance approvals or such approvals not having been obtained, the Option Holder shall be entitled to cede such right to any third person determined by the Option Holder in its discretion.

- 25.3 The sale of the relevant Shares shall be concluded on the following terms and conditions:
- 25.3.1 at the Option Holder's sole election and as recorded in the Call Option Notice, the Call Shares shall be sold and transferred with effect from either the date on which the Call Event occurred or the date of delivery of the Call Option Notice ("**Call Trigger Date**");
- 25.3.2 the Call Shares shall be delivered and transferred (as further envisaged below) on the 2nd Business Day following the later of (a) the date on which the Call Option Notice is delivered to the Shareholder or (b) the date of determination of the price therefor pursuant to clause 25.3.3, read with clause 26, subject always to any applicable regulatory and governance approvals;
- 25.3.3 the purchase price of the Call Shares shall be the Call Reference Price (as defined in clause 26 below) calculated as at or with reference to the Call Trigger Date, discounted by 50%;
- 25.3.4 the purchase price shall be payable against delivery by the Shareholder of the transfer form and share certificates (if applicable) in respect of the Call Shares if such Shares are held as Certificated Shares, or against entry of such transfer being effected in the relevant account of the CSD Participant if such Shares are held as Uncertificated Shares (as applicable), provided that if the Option Holder is not in possession of sufficient cash resources to pay the price, delivery shall nonetheless take place to an escrow agent nominated by the Option Holder and the Option Holder shall effect payment of the purchase price as soon as it is in possession of sufficient cash resources to effect the purchase price. As regards Certificated Shares, for purposes of providing the share certificate/s to the Option Holder, the Shareholder shall, upon delivering a copy of the Call Option Notice to the Custodian, procure the release of its share certificates from the Custodian to the Option Holder. If the Option Holder has not received the requisite transfer form and share certificate/s within 3 days of the

date of the Call Option Notice, or for any other reason the Shareholder fails to effect transfer of the Call Shares to the Option Holder within such 3 day period, the Option Holder is hereby irrevocably and *in rem suam* authorised and appointed as the Shareholder's attorney and agent, to sign the necessary transfer forms and to take all such other steps as may be required to effect the transfer of the Call Shares to the Option Holder. As regards Uncertificated Shares, for purposes of effecting transfer thereof to the Option Holder, the Shareholder shall promptly instruct its Nominee Holder/s, if any, or its CSD Participant (and any other relevant nominee or intermediary) as the case may be, to effect the required transfer. If such instruction has not been issued within 3 days of the date of the Call Option Notice, or for any other reason the Shareholder fails to effect transfer of the Call Shares to the Option Holder within such 3 day period, the Option Holder is hereby irrevocably and *in rem suam* authorised and appointed as the Shareholder's attorney and agent to take all such steps as may be required to effect the transfer of the Call Shares to the Option Holder;

- 25.3.5 the Shareholder represents and warrants to the Option Holder, on transfer of the Call Shares, (i) the Option Holder shall become the sole beneficial and registered owner of the Call Shares; (ii) the Call Shares are not Encumbered; and (iii) no Person has any right of any nature whatsoever to acquire the relevant Call Shares;
- 25.3.6 the Call Shares are transferred together with all rights and benefits attaching to them as from the Call Trigger Date; and
- 25.3.7 the securities transfer tax payable in respect of the registration of the transfer of the Call Shares sold in terms of this clause 25 shall be borne by the Company.
- 25.4 The Company shall be entitled to (i) exercise its rights pursuant to this clause 25 through one or more nominees; and/or (ii) cede to any person all or any part of its rights and/or delegate any of its obligations pursuant to this clause and whether in respect of a specific Call Event or generally from time to time, and in such instances references in this clause 25 to the Company shall be read *mutatis mutandis* to be such nominees and/or cessionary.
- 25.5 Each Shareholder in respect of whom a Call Event arises under clause 25.1 undertakes to the Company not to Dispose of its Shares at any time while such Call Event persists, other than pursuant to an exercise by the Option Holder of the Call Option or with the Company's

prior written permission, and agrees that it shall not be entitled to (and shall account on demand to the Company for) any gain or profit made by it from any Disposal made in breach of this undertaking. If the Shareholder in question Disposes of any Shares in breach of this clause 25.5, the Company shall not be required to, and shall not, register any transfer pursuant to such Disposal and payment of any distributions in respect of such Shares shall be suspended, until the matter is resolved to the satisfaction of the Company.

## 26. CALCULATION OF THE CALL REFERENCE PRICE

26.1 For the purposes of clause 25, "**Call Reference Price**" shall mean (a) if the Shares are listed on an Exchange, the 30-Day volume weighted average price ("**VWAP**") of such shares on the Exchange as at the relevant date on which the Call Reference Price is set, or (b) if the Shares are not listed on an Exchange, the net asset value per Share determined with reference to the most recent audited financial statements of the Company.

## 27. LIMITS ON SHAREHOLDING

27.1 For the purposes of this clause 27:

27.1.1 "**Acquire**" means to purchase, receive by distribution, donation or exchange or in any manner whatsoever acquire, whether voluntarily or involuntarily, or enter into an arrangement or transaction whatsoever which may have the same or a similar effect as any of the aforementioned (including but not limited to any transaction, or series of arrangements or transactions, or the cession of any rights or the granting of any option or any similar transaction/s which would have the same economic effect); and "**Acquisition**" shall be construed accordingly;

27.1.2 "**Acting in Concert**" means co-operation for a common purpose in relation to the direct or indirect exercise of control of or the influence of votes in relation to a company by two or more persons pursuant to an agreement, arrangement or understanding, whether formal or informal, between them;

27.1.3 "**Concert Party**" means in respect of any Person any other Person who is Acting in Concert with such Person;

27.1.4 "**Connected Person**" means any Persons related or inter-related to such Person in terms of section 2 (read with section 3) of the Companies Act, provided that for such

purposes references to a company therein shall be read to include any juristic person, trust or unincorporated association or other legal entity, howsoever formed, foreign or domestic, with expressions appropriate to companies being construed as references to the corresponding persons, officers, documents or agents (as the case may be) appropriate to undertakings of that description; and

27.1.5 **"Shareholding Limit"** means 30% of the issued ordinary share capital of the Company, or such other percentage as the Company may determine in writing from time to time and subject always to the free-float requirements of any applicable Exchange.

## 27.2 **Maximum Shareholding**

27.2.1 Save as may be permitted by the Company in writing, no Shareholder other than the Employee Trust and the Management Trust may at any time hold any Shares (or Beneficial Interest therein) which, when such Shares are aggregated with:

27.2.1.1 the holdings of and/or Beneficial Interests in Shares held by all Connected Persons and Concert Parties of such Person;

27.2.1.2 any Shares held by the Employee Trust and the Management Trust, respectively, in respect of which the relevant Shareholder has been allocated Units (as defined in the Employee Trust Deed or Management Trust Deed, respectively),

exceed the Shareholding Limit.

27.2.2 This prohibition on holding Shares (or Beneficial Interests) in excess of the Shareholding Limit shall apply jointly and severally to each relevant Connected Person and Concert Party, to the extent such Person is, by separate application of the provision with reference to it, also in breach of the Shareholding Limit.

27.2.3 If clause 27.2.1 is breached:

27.2.3.1 the Company may, in its sole discretion, identify those Shares (and/or relevant Beneficial Interests therein) that are held in excess of the Shareholding Limit and the relevant Shareholder and/or Nominee Holder who holds such Shares

or Beneficial Interests ("**Unauthorised Excess Shares**" and "**Relevant Shareholder**"), and notify the Relevant Shareholder in writing accordingly ("**Excess Shares Notice**");

27.2.3.2 while the relevant breach of clause 27.2.1 persists, the Company may withdraw the Excess Shares Notice and if so withdrawn, re-issue it from time to time in its sole discretion.

27.2.4 Once an Excess Shares Notice has been issued to the Relevant Shareholder and until such Excess Shares Notice is withdrawn or the breach is remedied, the Relevant Shareholder shall, unless the Company directs otherwise in writing, be deemed hereby:

27.2.4.1 to have ceded to the Company's or its nominees all rights to any dividend, distribution, or payment or other economic benefit by virtue of the holding of the Unauthorised Excess Shares; and

27.2.4.2 to have ceded to the Company or its nominees any voting rights attaching to the Unauthorised Excess Shares and to have irrevocably appointed the Company or its nominee as its proxy for the exercise of such voting rights; and

27.2.4.3 the Company may require the sale or other outright Disposal of all or any of the Unauthorised Excess Shares in accordance with clause 27.3.

### 27.3 **Disposal of Unauthorised Excess Shares**

27.3.1 If an Excess Shares Notice has been issued, the Company may, at any time while a breach of clause 27.2 persists, by a written transfer notice ("**transfer notice**") to the Relevant Shareholder (or its Nominee Holder, if applicable), require that Relevant Shareholder (or its Nominee Holder, if applicable) to sell or otherwise Dispose outright of all or part of the Unauthorised Excess Shares. The number of Unauthorised Excess Shares required to be Disposed must be specified in the transfer notice.

27.3.2 If the requirements of the transfer notice are not complied with by the Relevant Shareholder (or its Nominee Holder, if applicable) within 20 Business Days of the transfer notice, in the Company's sole discretion (a) a Call Event shall be deemed to have occurred in respect of the Unauthorised Excess Shares (or any part thereof

notified by the Company) or (b) the Company may Dispose of the number of Unauthorised Excess Shares specified in the transfer notice (or any lesser number of those Unauthorised Excess Shares) in such manner and on such terms as the Company may in its absolute discretion determine.

27.3.3 In respect of any Disposal under clause 27.3.2:

27.3.3.1 the Company is authorised to do all things necessary to Dispose those Unauthorised Excess Shares including signing or authorising a transfer of those Unauthorised Excess Shares; and

27.3.3.2 the Company is authorised and obliged, and the Relevant Shareholder (or its Nominee Holder, if applicable) is obliged, to do all things necessary or reasonably required to effect the transfer of those Unauthorised Excess Shares Disposed of by the Company.

27.3.4 The Company may deduct the costs associated with a Disposal of Unauthorised Excess Shares under clause 27.3.2. The Company will then pay the remaining balance of the proceeds of the Disposal to the registered holder of the Unauthorised Excess Shares so Disposed of by transfer to the bank account reflected for such holder in the corporate records of the Company at such time.

## 27.4 **Restriction on Acquisitions**

27.4.1 Save as may be permitted by the Company in writing, no Shareholder may offer to acquire (including by scheme of arrangement) or enter into any agreement (whether conditional or unconditional) to acquire, any Shares if, as a result of that acquisition or upon implementation of the relevant acquisition agreement, the provisions of clause 27.2 would be breached by such Shareholder or by any of its Connected Persons or Concert Parties.

## 27.5 **Provision of information**

27.5.1 Each Shareholder undertakes to the Company to provide it with all information and documents reasonably requested by the Company in order to verify compliance, or establish non-compliance, by that Shareholder and/or any other Shareholder with this clause 27, and to do so within 20 Business Days of receipt of such request.

27.5.2 The Company shall be entitled to make such request at any time and from time to time in its sole discretion.

## 27.6 **Falling away of Restrictions**

27.6.1 This clause 27 ceases to apply after the Empowerment Period.

## 28. **SHARE CERTIFICATES**

28.1 Subject to the provisions of clause 21.2.1, all share certificates issued to Shareholders in respect of Certificated Shares shall:

28.1.1 upon their issue, be endorsed as follows:

"This certificate and the shares represented hereby are transferable only in compliance with the provisions of the memorandum of incorporation (as amended from time to time) of the Company a copy of which is on file with the company secretary of the Company. Restrictions also apply to the transfer of all and any rights in and to the shares and to the granting of any encumbrance over the shares."

28.1.2 be retained and held by the Custodian. Such share certificates shall only be released if necessary, for the purpose of implementing any transfer permitted in terms of this MOI on the basis that once such transfer is implemented, all share certificates resulting from such transfer are retained and held by the Custodian.

28.2 The Custodian will, at the Company's election, post to each Shareholder such Shareholder's share certificate (if any), at the address nominated by such Shareholder from time to time (or such other address as may be provided for in this MOI), at such Shareholders risk or shall retain such share certificate pending collection thereof by the relevant Shareholder, should the Company determine that such retention poses less risk to the Shareholder as opposed to the posting thereof.

28.3 The terms and conditions under which the Custodian will fulfil its obligations contemplated in this MOI shall be regulated by the relevant agreement governing such services concluded between the Company and the Custodian on terms reasonably available or standard in the market for such services, and such terms shall be binding on the Shareholders to the extent that they relate to them (save that they shall not be liable for the fees of the Custodian).



Such terms may provide that neither the Custodian nor any of its directors, officers, employees or agents shall be liable to the Shareholders for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever or howsoever caused, or any loss of value or profit, arising as a result of any act or omission (including any negligent act or omission) on the part of the Custodian (or any of its directors, officers, employees or agents) as regards such Shareholder's Shares.

28.4 This clause 28 ceases to apply after the Empowerment Period.

## 29. OWNERSHIP CERTIFICATE OF COMPLIANCE IN RESPECT OF THE COMPANY

29.1 The Company and each of the Shareholders acknowledge the importance to the members of the Barloworld Group of successfully implementing the Empowerment Arrangements in order that the members of the Barloworld Group may optimise their B-BBEE rating and of demonstrating such successful implementation to stakeholders in Barloworld as well as to the relevant authorities. The Company accordingly acknowledges and accepts that Barloworld (for itself and every member of the Barloworld Group) will from time to time (and at least once every calendar year) be entitled to:

29.1.1 request in writing that the Company provide it with all information and documents reasonably required by Barloworld (or any member of the Barloworld Group) to enable it to determine and officially obtain and/or maintain its B-BBEE Status and/or compliance with the Empowerment Requirements; and/or

29.1.2 request the Company to procure (at its cost) the preparation and issue by an accredited or approved B-BBEE rating agency (or another suitable Person) nominated by Barloworld from time to time of a certificate ("**Ownership Certificate of Compliance**") recording any or all of the following (as may be requested):

29.1.2.1 the identity and composition of the Black Groups and Black People in the Company and the composition of its board of directors;

29.1.2.2 whether the Company qualifies as a Black Company;

29.1.2.3 the B-BBEE Status of the Company; and/or

- 29.1.2.4 any other matter relevant to an assessment by Barloworld of its compliance with the Empowerment Requirements,
- and the Company undertakes to comply fully with such request within 20 Business Days thereof (or such longer period as Barloworld may agree).
- 29.2 The Company shall, for the duration of the Empowerment Period, fully co-operate with and assist Barloworld and its representatives by providing them with access to all information and records which are in its possession or which it may be entitled and/or obliged to keep in its possession or to require to be placed in its possession, within 10 Business Days of a written request therefor from Barloworld or such representatives, for purposes of enabling Barloworld to obtain the Ownership Certificate of Compliance.
- 29.3 Each Shareholder undertakes to Barloworld and the Company, in addition to their obligations under clause 21.3, to do all things reasonably necessary or requested within its power or control or of which it is capable to enable and assist Barloworld to obtain the Ownership Certificate of Compliance.
- 29.4 Upon securing of the Ownership Certificate of Compliance, the Company shall deliver a copy thereof to Barloworld.
- 29.5 This clause 29 ceases to apply after the Empowerment Period.

### 30. **FINANCIAL ASSISTANCE**

#### 30.1 **for the subscription of options or Securities**

The Board may authorise the Company to provide financial assistance for the purpose of, or in connection with, the subscription for any option or Securities, provided, among other things, that the financial assistance is: (i) pursuant to an employee share scheme, which satisfies section 97, or is pursuant to a Special Resolution of the Ordinary Shareholders; (ii) the Board is satisfied that immediately after providing the financial assistance, the Company will pass the Solvency and Liquidity Test; and (iii) is subject to and in accordance with section 44.

#### 30.2 **to directors or Prescribed Officers**

The Board may authorise the Company to provide loans or other financial assistance to:

- 30.2.1 Directors or Prescribed Officers or of related or inter-related companies;
- 30.2.2 related or inter-related companies or corporations;
- 30.2.3 members of related or inter-related corporations; or
- 30.2.4 persons related to any of the aforementioned companies, corporations, Directors, Prescribed Officers or members,

provided, among other things, that the financial assistance is: (i) pursuant to an employee share scheme, which satisfies section 97, or is pursuant to a Special Resolution of the Ordinary Shareholders, (ii) the Board is satisfied that immediately after providing the financial assistance, the Company will pass the Solvency and Liquidity Test, and (iii) is subject to and in accordance with section 45.

### **31. ACQUISITION BY THE COMPANY OF ITS OWN SHARES**

- 31.1 Subject to the Listing Requirements (if applicable) the provisions of section 48 of the Companies Act and the further provisions of this clause 31:
  - 31.1.1 the Board may determine that the Company acquire a number of its own Shares; and
  - 31.1.2 the board of any subsidiary of the Company may determine that such subsidiary acquire Shares of the Company, but:
    - 31.1.2.1 not more than 10%, in aggregate, of the number of issued Shares of any class may be held by, or for the benefit of, all of the subsidiaries of the Company taken together; and
    - 31.1.2.2 no voting rights attached to those Shares may be exercised while the Shares are held by that subsidiary and it remains a subsidiary of the Company.
- 31.2 Any decision by the Company to acquire its own Shares must satisfy the Listing Requirements (if applicable) and the requirements of section 46 of the Companies Act and, accordingly, the Company may not acquire its own Shares unless:
  - 31.2.1 for as long as it is required in terms of the Listing Requirements, the acquisition has been approved by Special Resolution in terms of the Listing Requirements, whether

in respect of a particular repurchase or generally approved by the Shareholders and unless such acquisition otherwise complies with the Listing Requirements (if applicable) (or such other sections as may be applicable from time to time);

31.2.2 the acquisition:

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

31.2.2.2 has been authorised by the Board, by resolution;

31.2.3 it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed acquisition; and

31.2.4 the Board by resolution, has acknowledged that it has applied the Solvency and Liquidity Test and reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed acquisition.

31.3 A decision of the Board referred to in clause 31.1.1:

31.3.1 must be approved by Special Resolution if any Shares are to be acquired by the Company from a Director or Prescribed Officer of the Company, or a person related to a Director or Prescribed Officer of the Company; and

31.3.2 is subject to the requirements of sections 114 and 115 of the Companies Act if considered alone, or together with other transactions in an integrated series of transactions, it involves the acquisition by the Company of more than 5% of the issued Shares of any particular class of the Company's Shares.

31.4 Notwithstanding any other provision of this MOI, the Company may not acquire its own Shares, and no subsidiary of the Company may acquire Shares of the Company if, as a result of that acquisition, there would longer be any Shares of the Company in issue other than:

31.4.1 Shares held by one or more subsidiaries of the Company; or

31.4.2 convertible or redeemable Shares.

31.5 The Company may, in accordance with the Listing Requirements (if applicable) and subject to the necessary Shareholders' resolution approving the odd-lot offer being approved by the requisite majority of Shareholders at a general meeting, make an odd-lot offer to Shareholders holding less than such number of Shares as the Directors may determine, subject to the JSE having approved such number of Shares, in terms of which the offeree Shareholders are given the right to elect to retain their shareholding or sell their Shares, and such odd-lot offer may provide that if any offeree Shareholder fails to exercise such right of election, his shareholding will be compulsorily sold as if he had elected to sell such shareholding.

## 32. **BARLOWORLD SHARES**

32.1 Subject to the provisions of the Finance Agreements, the Companies Act and the Listing Requirements insofar as applicable to each of the Company and Barloworld, the Company is authorised to give effect to any subscription made (or to be made) under the Propco Subscription Agreement.

32.2 As soon as possible after receiving payment of any Barloworld Dividend, the Company shall declare and pay a dividend (in an amount equal to the amount of such Barloworld Dividend) to the Ordinary Shareholders, subject to the Company satisfying the Solvency and Liquidity Test, the requirements of the Finance Agreements and any necessary regulatory and shareholder approvals. The Company is authorised to give effect to any Distribution required to be made under this clause 32.2.

32.3 After the Initial Empowerment Period, the Board shall engage with Barloworld and the Management Trust on the manner in which the Company, in its discretion, may facilitate the settlement of outstanding amounts owed by the Management Trust to Barloworld. The Company is authorised to give effect to any buy back of Ordinary Shares as may be required to give effect to any agreement in respect of the subject matter of this clause 32.3, subject to any regulatory and shareholder approvals required at the relevant point in time.

32.4 The provisions of clause 33 shall *mutatis mutandis* apply to the Distributions referred to in clauses 32.2 and 32.3.

## 33. **DISTRIBUTIONS**

33.1 In the event that the Company is listed as a REIT, the Company must:

- 33.1.1 conduct its business in such a way that more than 75% of the Gross Income received by or accrued to the Company in each Year of Assessment will consist of Rental Income;
- 33.1.2 comply with any applicable requirements for a REIT as set out in the Income Tax Act, the Listing Requirements and any other applicable laws,
- provided that if the Company is listed as a property entity (but not a REIT) it shall comply with the applicable provisions of section 13 of the Listing Requirements of the JSE.
- 33.2 Notwithstanding anything to the contrary in this MOI, the provisions of clause 33.1 can only be amended by a resolution of the Shareholders approved by 90% (ninety per cent) of the voting rights entitled to be exercised and voting for as long as the REIT regime as contemplated in the Income Tax Act and the Listing Requirements are in existence and apply to the Company.
- 33.3 Subject to the provisions of the Companies Act, and particularly section 46, the Company may propose a Distribution if such Distribution (in the form of a dividend or otherwise) is:
- 33.3.1 pursuant to clauses 32.1 and 32.3 or an existing legal obligation of the Company or a court order; or
- 33.3.2 authorised by resolution of the Board; and
- 33.3.3 in compliance with the Listing Requirements (if applicable).
- 33.4 No Distribution shall bear interest against the Company, except as otherwise provided under the conditions of issue of the Shares in respect of which such Distribution is payable.
- 33.5 Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the Company may be chargeable.
- 33.6 Distributions shall be paid to Shareholders registered as such as at a record date subsequent to the date of declaration or, if applicable, date of confirmation of the Distribution, whichever is the later date.
- 33.7 All unclaimed monies due to Shareholders will be held by or on behalf of the Company for the benefit of the Shareholder concerned until claimed, provided that, subject to the JSE

Listings Requirements (if applicable), the provisions of the Prescription Act 68 of 1969, as amended from time to time, and any other applicable laws of prescription, monies unclaimed for a period of three years from the date on which they were declared (or such longer period as may be required under the laws of prescription) may be declared forfeited by the Board for the benefit of the Company. The Directors may at any time annul such forfeiture upon such conditions (if any) as they think fit.

- 33.8 All unclaimed monies due to Shareholders shall not bear interest against the Company, and the Board shall, for the purpose of facilitating the winding up or deregistration of the Company before the date of any such forfeiture, be entitled to delegate to any bank, registered as such in accordance with the laws of the Republic, the liability for payment of any such Distribution or other money, payment of which has not been forfeited in terms of the foregoing.
- 33.9 The Company shall transmit any Distribution or amount payable in respect of a Share by electronic bank transfer to such bank account as the registered holder thereof may have notified the Company in writing for this purpose, and the Company shall not be responsible for any loss in transmission. In the case of joint holders, the bank account of the first named in the Securities Register (or sub register, as the case may be) in respect of such joint holdings, the details of which bank account were furnished to the Company by such Person, and the electronic transfer of the Distribution or amount payable into such bank account shall be a good discharge by the Company in respect thereof. For the purposes of this clause 33.9, no notice of change of bank account or instructions as to payment being made into any other bank account which is received by the Company after the date on which a holder must be registered in order to qualify for a Distribution or other amount payable or which would have the effect of changing the currency in which such payment would be made, shall be effective in respect of such payment. A Shareholder who is a South African resident shall only be entitled to supply a Rand denominated bank account of a bank registered to operate such account in the Republic. In the event that a Shareholder has failed to furnish the Company with a valid bank account as envisaged in this clause 33.9, the Distribution or other amount payable shall be deemed unclaimed Distributions in accordance with clause 33.7.

- 33.10 The Company shall not be responsible for a Shareholder's loss arising from any fraudulent, diverted or incorrect electronic funds transfer of Distributions or other amounts payable to a Shareholder unless such loss was due to the Company's gross negligence or willful default.
- 33.11 Without detracting from the ability of the Company to issue capitalisation Shares, any Distribution may be paid wholly or in part:
- 33.11.1 by the Distribution of specific assets; and/or
  - 33.11.2 by the issue of Shares, debentures or Securities of the Company or of any other company; and/or
  - 33.11.3 in cash; and/or
  - 33.11.4 in any way which the Directors of the Company in a general meeting may at the time of declaring the Distribution determine.
- 33.12 Where any difficulty arises in regard to such Distribution, the Directors may settle that difficulty as they think expedient, and in particular may fix the value which shall be placed on such specific assets on Distribution.
- 33.13 The Directors may:
- 33.13.1 determine that cash payments shall be made to any Shareholder on the basis of the value so fixed in order to secure equality of Distribution; and
  - 33.13.2 vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the Distribution as the Directors deem expedient.
- 33.14 For the avoidance of any doubt, the grant of the right of script dividend and cash dividend elections is not prohibited by any provision contained in this MOI.
- 33.15 All payments to Shareholders must be provided for in accordance with the Listing Requirements and must not provide that capital shall be repaid upon the basis that it may be called up again.



## 34. RESERVES

- 34.1 Prior to authorising any dividends, the Board may set aside out of the amount available for Distribution as dividends such sum as it deems proper as a reserve fund or as an addition thereto.
- 34.2 The Board may divide reserve funds into special funds as it deems fit, with the full power to employ the assets constituting such reserve funds in the business of the Company, or may invest the assets upon such investments as they deem fit (other than Shares in the Company) without being liable to the Company for any loss or depreciation as a consequence of such investment whether the same be usual or authorised investments for trust funds or not.
- 34.3 The reserve funds contemplated in this clause 34 shall, at the discretion of the Board, be available for the equalisation of dividends, making provision for exceptional losses, expenses or contingencies, the extension or development of the Company's business, writing down the value of any assets of the Company, repairing, maintaining or improving any buildings, plant or equipment connected with the business of the Company, or to cover any loss or depreciation in the value of any property owned by the Company as a result of fair wear and tear or any other reasonable depreciation, or any other purpose for which the profits of the business of the Company may reasonably be applied. The Board may at any time divide among the Shareholders any part of the reserve funds which, in its discretion, is not required for such purposes, by way of bonus, special dividends and/or Distributions.

## 35. BORROWING POWERS

- 35.1 Subject to this MOI, the Listing Requirements (if applicable) and the Income Tax Act, the Directors may from time to time exercise all of the powers of the Company to:
- 35.1.1 borrow for the purposes of the Company such sums as they think fit;
- 35.1.2 secure the payment or repayment of any such sums, or any other sum, as they think fit, whether by the creation and issue of Securities, mortgage or charge upon all or any of the property or assets of the Company.
- 35.2 For purposes of clause 35, the borrowing powers of the Company shall be unlimited both as to quantum and as to instrument used.

## **PART C – CORPORATE GOVERNANCE**

### **36. SHAREHOLDERS' MEETINGS**

36.1 The Board, or any Prescribed Officer of the Company authorised by the Board, is entitled to call a Shareholders' meeting at any time.

36.2 Subject to the provisions of section 60 of the Companies Act, dealing with the passing of resolutions of Shareholders otherwise than at a meeting of Shareholders, and clause 42.4 of this MOI, the Company shall hold a Shareholders' meeting:

36.2.1 at any time, that the Board is required by:

36.2.1.1 the Companies Act, to hold a meeting;

36.2.1.2 the Listing Requirements (if applicable) to refer a matter to Shareholders for decision and accordingly nothing in this MOI shall be construed as prohibiting or restricting the Company from calling any meeting for the purposes of adhering to the Listing Requirements; or

36.2.1.3 this MOI, to hold a meeting; or

36.2.2 whenever required in terms of the Companies Act to fill a vacancy on the Board; or

36.2.3 whenever required in terms of clause 36.3 or by any other provision of this MOI.

36.3 The Board shall call a meeting of Shareholders if at least 3 written and signed demands by Shareholders calling for such meeting are delivered to the Company and:

36.3.1 each such demand describes the specific purpose for which the meeting is proposed; and

36.3.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

36.4 In addition to other meetings of the Company that may be convened from time to time, the Company shall convene an annual general meeting of its Shareholders once in each

calendar year, but no more than 15 months after the date of the previous annual general meeting.

36.5 Subject to the provisions of the Listing Requirements (if applicable) any such annual general meeting:

36.5.1 shall be capable of being held by Electronic Communication in accordance with the further provisions of this MOI; and

36.5.2 shall not be capable of being held in accordance with the provisions of section 60 of the Companies Act, as set out in clause 42.

36.6 Each annual general meeting of the Company contemplated in clause 36.4 shall provide for at least the following business to be transacted:

36.6.1 the presentation of the directors' report, audited financial statements for the immediately preceding financial year of the Company and an audit committee report;

36.6.2 the election of Directors, to the extent required by the Companies Act and by clause 43.10 of this MOI;

36.6.3 the appointment of an auditor and audit committee for the following year;

36.6.4 any matters raised by the Shareholders, with or without advance notice to the Company.

36.7 Each annual general meeting of the Company contemplated in clause 36.4 or any special general meeting of the Company may provide for the passing and adoption of Special Resolutions relating to the following business:

36.7.1 the settling of Directors' remuneration for the two year period following the annual general meeting or special general meeting at which the resolution is approved;

36.7.2 the granting of financial assistance in terms of section 44 or section 45 of the Companies Act;

36.7.3 the repurchase by the Company of its Shares; and

36.7.4 the issuing of shares for cash.

- 36.8 Save as otherwise provided herein, the Company is not required to hold any other Shareholders' meetings other than those specifically required by the Companies Act and the Listing Requirements (if applicable).
- 36.9 The Board may determine the location of any Shareholders' meeting, provided such meetings are held in the Republic, and the authority of the Board and the Company in this regard is not limited or restricted by this MOI.
- 36.10 Every Shareholders' meeting shall be reasonably accessible within the Republic for electronic participation by Shareholders, irrespective of whether the meeting is held in the Republic or elsewhere.
- 36.11 All meetings (whether called for the passing of special or ordinary resolutions) shall be called on not less than 15 Business Days' notice.
- 36.12 The quorum for a Shareholders' meeting to begin or for a matter to be considered, shall be at least 3 Shareholders (including a representative from each of the Employee Trust and the Management Trust) entitled to attend and vote and who are present in person or able to participate in the meeting by Electronic Communication, or represented by a proxy who is present in person or able to participate in the meeting by Electronic Communication. In addition:
- 36.12.1 a Shareholders' meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting;
- 36.12.2 a matter to be decided at a Shareholders' meeting may not begin to be considered unless sufficient persons are 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 that matter at the time the matter is called on the agenda.
- 36.13 The time periods specified in sections 64(4) and (5) of the Companies Act apply to the Company without variation and, accordingly, if within one hour after the appointed time for a meeting to begin, the requirements of clause 36.12:
- 36.13.1 for that meeting to begin have not been satisfied, the meeting may be postponed, without any motion, vote or further notice, for one week;

- 36.13.2 for consideration of a particular matter to begin have not been satisfied:
- 36.13.2.1 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 any motion or vote; or
- 36.13.2.2 if there is no other business on the agenda of the meeting, the meeting may be adjourned, without any motion or vote, for one week,
- provided that the person intended to chair a meeting that cannot begin due to the operation of clause 36.12 may extend the one hour limit allowed in clause 36.13 for a reasonable period on grounds that:
- 36.13.2.3 exceptional circumstances affecting the weather, transportation or Electronic Communication have generally impeded or are generally impeding the ability of Shareholders to be present at the meeting; or
- 36.13.2.4 one or more particular Shareholders, having been delayed, have communicated an intention to attend the meeting, and those Shareholders, together with others in attendance, would satisfy the requirement of clause 36.12.
- 36.14 The accidental omission to give notice of any meeting to any particular Shareholder or Shareholders shall not invalidate any resolution passed at any such meeting.
- 36.15 The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 36.13 unless the location for the meeting is different from:
- 36.15.1 the location of the postponed or adjourned meeting; or
- 36.15.2 the location announced at the time of adjournment, in case of an adjourned meeting.
- 36.16 If at the time appointed in terms of clause 36.13 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 36.12 have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.

- 36.17 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, all the Shareholders forming part of the quorum must be present at the meeting for the matter to be considered at the meeting.
- 36.18 The maximum period allowable for an adjournment of a Shareholders' meeting is set out in section 64(12) of the Companies Act, without variation.
- 36.19 The chairperson, if any, of the Board shall preside as chairperson at every Shareholders' meeting.
- 36.20 If there is no such chairperson, or if at any meeting he or she is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Directors present shall choose one of their number to be chairperson. If no Director is willing to act as chairperson or if no Director is present within 15 minutes after the time appointed for commencement of the meeting, the Shareholders present shall choose one of their number to be chairperson of the meeting.
- 36.21 The chairperson of a Shareholders' meeting may:
- 36.21.1 appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney or proxy from received and for counting the votes at the meeting;
  - 36.21.2 act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.
  - 36.21.3 If any votes were counted which ought to have not been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution, unless:
    - 36.21.4 it is brought to the attention of the chairperson at the meeting; and
    - 36.21.5 in the opinion of the chairperson of the meeting, it is of sufficient magnitude to vitiate the resolution.
- 36.22 Any objection to the admissibility of any vote (whether on a show of hands or on a poll) shall be raised:
- 36.22.1 at the meeting or adjourned meeting at which the vote objected to was recorded; or

36.22.2 at the meeting or adjourned meeting at which the result of the poll was announced, and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

36.23 Even if he is not a Shareholder:

36.23.1 any Director; or

36.23.2 the company's attorney and/or advisors (or where the Company's attorneys and/or advisors are a firm, any partner or director thereof),

may attend and speak at any Shareholders' meeting but may not vote, unless he is a Shareholder or the proxy or representative of a Shareholder.

36.24 Every Shareholder shall be entitled to vote at every general meeting or annual general meeting in person or by proxy.

### **37. SHAREHOLDERS' MEETING BY ELECTRONIC COMMUNICATION**

37.1 Subject to the provisions of the Listing Requirements (if applicable) and without derogating from the generality of the provisions of clause 36.24, the Company may conduct a Shareholders' meeting entirely by Electronic Communication but must provide for participation in the meeting by Electronic Communication, as set out in section 63 of the Companies Act, and the power of the Company to do so is not limited or restricted by this MOI. Accordingly:

37.1.1 any Shareholders' meeting may be conducted entirely by Electronic Communication; or

37.1.2 one or more Shareholders, or proxies for Shareholders, may participate by Electronic Communication in all or part of any Shareholders' meeting that is being held in person,

so long as the Electronic Communication employed ordinarily enables all persons participation in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

37.2 Any notice of any meeting of Shareholders at which it will be possible for Shareholders to participate by way of Electronic Communication shall inform Shareholders of the ability to so participate and shall provide any necessary information to enable Shareholders or their proxies to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Shareholder or proxy concerned.

### 38. **RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS**

38.1 The record date for the purpose of determining which Shareholders are entitled to:

38.1.1 receive notice of a Shareholder's meeting;

38.1.2 participate in and vote at a Shareholders' meeting;

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

38.1.4 receive a Distribution; or

38.1.5 be allotted or exercise other rights,

shall be determined by the Board, provided that, for as long as the Listing Requirements apply to the Company, such record date shall be the record date as required by the Listing Requirements.

38.2 Such record date must be published to the Shareholders in a manner that satisfies the Listing Requirements and any other prescribed requirements.

### 39. **VOTES OF SHAREHOLDERS**

39.1 Subject to any special rights or restrictions as to voting attached to any Shares by or in accordance with this MOI, at a meeting of the Company:

39.1.1 every person present and entitled to exercise voting rights shall be entitled to one vote on a show of hands, irrespective of the number of voting rights that person would otherwise be entitled to exercise;

39.1.2 on a poll, a person who is present at the meeting, whether as a Shareholder or as a proxy for a Shareholder, has the number of votes determined in accordance with the voting rights associated with Securities held by that Shareholder; and



- 39.1.3 the holders of Shares other than Ordinary Shares (and any special shares created for the purposes of B-BBEE in terms of the B-BBEE Act and the Codes) shall not be entitled to vote on any resolution at a meeting of Shareholders, except as provided in clause 39.2.
- 39.2 If any resolution is proposed as contemplated in clause 9.2, the holders of such Shares ("**Affected Shareholders**") shall be entitled to vote at the meeting of the Ordinary Shareholders as contemplated in clause 39.1, provided that:
- 39.2.1 the votes of the Ordinary Shares held by the Affected Shareholders ("**Affected Shares**") shall not carry any special rights or privileges and the Affected Shareholder shall be entitled to one vote for every Affected Share held in the event of a polled vote, and in the event that voting takes place by a show of hands, the provisions of clause 39.1.1 shall apply to votes cast by Affected Shareholders; and
- 39.2.2 the total voting rights of the Affected Shareholders in respect of the Affected Shares shall not be more than 24,99% of the total votes (including the votes of the remaining Ordinary Shareholders) exercisable at that meeting (with any cumulative fraction of a vote in respect of any Affected Shares held by an Affected Shareholder rounded down to the nearest whole number).
- 39.3 Voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of Shareholders.
- 39.4 In the case of an equality of votes, the chairperson of the meeting shall not be entitled to a second or casting vote.
- 39.5 A poll demanded on the election of a chairperson (as contemplated in clause 36.20) or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 39.6 Where there are joint registered holders of any Security, any one of such persons may exercise all of the voting rights attached to that Security at any meeting, either personally or by proxy, as if he or she were solely entitled thereto. If more than one of such joint holders is present at any meeting, personally or by proxy, the person so present whose

name stands first in the Securities Register in respect of such Security shall alone be entitled to vote in respect thereof.

39.7 The board of any company or controlling body of any entity or person that holds any Securities of the Company may authorise any person to act as its representative at any meeting of the Shareholders of the Company, in which event the following provisions will apply:

39.7.1 the person so authorised may exercise the same powers of the authorising company, entity or person as it could have exercised if it were an individual holder of Securities; and

39.7.2 the authorising company, entity or person shall lodge a resolution of the directors of such company or controlling body of such other entity or person confirming the granting of such authority, and certified under the hand of the chairperson or secretary thereof, with the Company before the commencement of any Shareholders' meeting at which such person intends to exercise any rights of such Shareholder,

unless excused from doing so by the chairperson of such meeting.

39.8 Subject to the provisions of clause 39.2, the holders of preference shares shall have the right to vote at any general/annual general meeting of the Company:

39.8.1 during any special period, as provided for in clause 39.8.3, during which any dividend, any part of any dividend on such preference shares or any redemption payment thereon remains in arrears and unpaid; and/or

39.8.2 in regard to any resolution proposed for the winding-up of the company or the reduction of its capital;

39.8.3 the period referred to in paragraph 39.8.1 above shall be the period commencing on a day specified in the MOI, not being more than six months after the due date of the dividend or redemption payment in question or, where no due date is specified, after the end of the financial year of the Company in respect of which such dividend accrued or such redemption payment became due.

#### 40. PROXIES AND REPRESENTATIVES

40.1 Any Shareholder may at any time appoint any natural person (or two or more natural persons concurrently), including a natural person who is not a Shareholder, as a proxy to:

40.1.1 participate in and speak and vote at, a Shareholders' meeting on behalf of the Shareholder; or

40.1.2 give or withhold written consent on behalf of that Shareholder to a decision contemplated in section 60 of the Companies Act,

provided that a Shareholder may appoint more than one proxy to exercise voting rights attached to different Securities held by the Shareholder.

40.2 A proxy appointment:

40.2.1 must be in writing, dated and signed by the Shareholder; and

40.2.2 remains valid for:

40.2.2.1 one year after the date on which it was signed; or

40.2.2.2 any longer or shorter period expressly set out in the appointment,

unless it is revoked in a manner contemplated in the Companies Act or expires earlier as contemplated in the Companies Act.

40.3 The holder of a power of attorney or other written authority from a Shareholder may, if so authorised thereby, represent such Shareholder at any meeting of the Company and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the Company before such holder exercises any rights of the Shareholder at the Shareholders' meeting.

40.4 All of the remaining provisions of the Companies Act relating to the appointment and revocation of proxies and the rights of proxies generally shall apply and, in particular:

40.4.1 a Shareholder's proxy may delegate the proxy's powers to another person as set out in section 58(3)(b) of the Companies Act;

- 40.4.2 a Shareholder or his proxy must deliver to the Company a copy of the instrument appointing a proxy not later than 48 hours, excluding Saturdays, Sundays and statutory public holidays in the Republic, before the commencement of the meeting at which the proxy intends to exercise that Shareholder's rights; and
- 40.4.3 unless the instrument appointing a proxy provides otherwise, a Shareholder's proxy may decide, without direction from the Shareholder, whether to exercise or abstain from exercising any voting right of the Shareholder, as set out in section 58(7) of the Companies Act,
- and none of such rights or powers are limited, restricted or varied by this MOI.
- 40.5 The chairman of any Shareholders' meeting may reject or accept any form of proxy which is contemplated and/or received, other than in compliance with the provisions of clause 40.4, provided that, in respect of acceptances, he is satisfied as to the manner in which the Shareholder(s) concerned wish(es) to vote.
- 40.6 Every instrument of proxy shall, subject to the provisions of the Companies Act and the Listing Requirements, be in such form as the Directors may approve from time to time.

#### **41. SHAREHOLDERS' RESOLUTIONS**

- 41.1 For an ordinary resolution to be approved it must be supported by more than 50% of the voting rights of Shareholders exercised on the resolution, as provided in section 65(7) of the Companies Act. Notwithstanding the foregoing, to the extent that the Listing Requirements is applicable to the Company and requires the support of a higher percentage of voting rights to be exercised in respect of any ordinary resolution, the Company shall not implement such ordinary resolution unless such ordinary resolution is supported by the higher percentage of voting rights of Shareholders required to be exercised on that resolution in terms of the Listing Requirements.
- 41.2 For a special resolution to be approved it must be supported by the holders of at least 75% of the voting rights of Shareholders exercised on the resolution, as provided in section 65(9) of the Companies Act.
- 41.3 No matters except:

- 41.3.1 those matters set out in section 65(11) of the Companies Act; or
  - 41.3.2 any other matter required by the Companies Act or this MOI to be resolved by means of a Special Resolution;
  - 41.3.3 for as long as the Company's Securities are listed on the JSE, any other matter required by the JSE Listings Requirement to be resolved by means of a Special Resolution in terms of the Listing Requirements,
- require a Special Resolution adopted at a Shareholders' meeting of the Company.
- 41.4 In the event that any Shareholder abstains from voting in respect to any resolution, such Shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof (i.e. that Shareholder's votes will neither be included in the aggregate number of votes cast nor in the total number of votes exercised in favour of or against that resolution).

## 42. **SHAREHOLDERS ACTING OTHER THAN AT A MEETING**

- 42.1 In accordance with the provisions of section 60 of the Companies Act, but subject to clauses 36.5.2 and 42.4, a resolution that could be voted on at a Shareholders' meeting (other than in respect of the election of Directors) may instead be:
  - 42.1.1 submitted by the Board for consideration to the Shareholders entitled to exercise the voting rights in relation to the resolution; and
  - 42.1.2 voted on in writing by such Shareholders within a period of 20 Business Days after the resolution was submitted to them.
- 42.2 A resolution contemplated in clause 42.1:
  - 42.2.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted Shareholders' meeting; and
  - 42.2.2 if adopted, will have the same effect as if it had been approved by voting at a meeting.

42.3 Within 10 Business Days after adopting a resolution in accordance with the procedures provided in this clause 42, 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.

42.4 For so long as is required under the Listing Requirements or unless the JSE allows otherwise, the provisions of this clause 42 shall not apply to any Shareholders' meetings that are called for in terms of the Listing Requirements (which for the avoidance of any doubt, must be held "**in person**") or the passing of any resolution in terms of clause 43.3 or to any annual general meeting of the Company.

### 43. COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS

43.1 The Board must comprise of a minimum of 4 and a maximum of 7 Directors (which shall include the minimum number of Directors that the Company must have to satisfy the requirement in terms of the Companies Act, to appoint an audit committee and a social and ethics committee, if applicable), to be elected by the Shareholders as contemplated in section 68 of the Companies Act.

43.2 Furthermore:

43.2.1 the majority of the Directors appointed to the Board shall be independent of Barloworld, the Management Trust and the Employee Trust;

43.2.2 at least 80% of the Directors (and their alternate Directors), who shall be entitled to at least 80% of the voting rights of Directors at meetings of the Board, shall be Black Persons;

43.2.3 at least of 25% of the Directors (and their alternate Directors) (who shall be entitled to at least 25% of the voting rights of Directors at meetings of the Board) shall be Black Persons who are women;

43.2.4 the Management Trust shall, for so long as it is a Shareholder, be entitled by written notice to the Company to nominate two Directors (and their alternate Directors);

43.2.5 the Employee Trust shall, for so long as it is a Shareholder, be entitled to nominate one Director (and the alternate Director) for election,

each of which Directors must:

- 43.2.5.1                be a Black Person; and
- 43.2.5.2                meet the criteria to act as a Director prescribed by law from time to time.
- 43.3                Subject to clause 43.2, there are no Shareholder appointed or *ex officio* Directors of the Company, as contemplated in section 66(4) of the Companies Act.
- 43.4                The manner of electing Directors is as set out in section 68(2) of the Companies Act. All Directors shall be elected by an ordinary resolution of the Shareholders at a general or annual general meeting of the Company and no appointment of a Director in accordance with a resolution passed in terms of section 60 of the Companies Act shall be competent.
- 43.5                The authority of the Board to fill a vacancy on the Board on a temporary basis, as set out in section 68(3) of the Companies Act is not limited or restricted by this MOI provided that such Directors must be elected by the Shareholders at the next annual general meeting of the Company.
- 43.6                The Board shall have the power at any time and from time to time to appoint any person as Director, either to fill a casual vacancy or as an addition to the Board.
- 43.7                In any election of Directors:
  - 43.7.1                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 or to confirm an additional appointment, with the series of votes continuing until all vacancies on the Board have been filled or all additional appointments have been confirmed; and in each vote to fill a vacancy or confirm an additional appointment:
    - 43.7.1.1                each vote entitled to be exercised may be exercised once; and
    - 43.7.1.2                the vacancy is filled or the additional appointment confirmed only if a majority of the votes exercised support the candidate.
- 43.8                Apart from satisfying the qualification and eligibility requirements set out in section 69 of the Companies Act, a person need not satisfy any eligibility requirements or qualifications to become or remain a Director or a Prescribed Officer of the Company.

- 43.9 A Director shall cease to hold office if:
- 43.9.1 he becomes insolvent, or assigns his estate for the benefit of his creditors, or suspends payments and files a petition for the sequestration of his affairs, or compounds generally with his creditors;
  - 43.9.2 he becomes of unsound mind;
  - 43.9.3 his employment relationship with the Company is terminated for whatsoever reason, including but not limited to, resignation, retirement, misconduct or otherwise;
  - 43.9.4 he is prohibited from being, is removed as or is disqualified from acting as a Director of a company in terms of the Companies Act;
  - 43.9.5 he is required to do so in terms of the Listing Requirements;
  - 43.9.6 he absents himself from meetings of the Board for six consecutive months without leave of the other Directors and is not represented at such meetings during such six months by an alternate Director, and the Directors resolve that his office shall be vacated, provided that the Directors shall have the power to grant any Director leave of absence for an indefinite period; or
  - 43.9.7 he has given one month's (or with the permission of the Board, a lesser period) notice in writing of his intention to resign,
  - 43.9.8 he is removed under clause 43.10;
  - 43.9.9 he has been given notice, signed by the Shareholders holding in aggregate more than 50% of the total voting rights of all Shareholders entitled to vote at a general meeting, of the termination of his appointment; or
  - 43.9.10 the Board resolved to remove him in accordance with section 71(3) of the Companies Act.
- 43.10 The Company may by ordinary resolution in accordance with clause 43.9.8 remove any Director before the expiration of his period of office and by an ordinary resolution elect another person in his stead. The person so elected shall hold office until the next annual general meeting of the Company and shall then retire and be eligible for re-election.



- 43.11 No Director shall be appointed for life or for an indefinite period and:
- 43.11.1 the non-executive Directors shall rotate in accordance with the following provisions:
- 43.11.1.1 at each annual general meeting referred to in clause 36.4, 1/3 (one third) of the non-executive Directors for the time being, or if their number is not three or a multiple of three, the number nearest to 1/3 but not less than 1/3, shall retire from office;
- 43.11.1.2 the non-executive Directors to retire every year are, firstly those who have been appointed to fill a casual vacancy or an additional appointment to the Board, and secondly those who have been longest in the office since their last election, but as between persons who were elected as non-executive Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot. Notwithstanding the foregoing, if at the date of any annual general meeting, any Director will have:
- 43.11.1.2.1 held office for a period of three years since his last election or appointment;
- 43.11.1.2.2 reached the age of 70 years or older; and/or
- 43.11.1.2.3 held office for an aggregate period of nine years since his first election or appointment,
- then such a Director shall retire at such annual general meeting, either as one of the Directors to retire in pursuance to the foregoing or additionally thereto;
- 43.11.2 the executive Directors shall rotate in accordance with the following provisions at each annual general meeting referred to in clause 36.4, 1/3 (one third) of the executive Directors for the time being, or if their number is not three or a multiple of three, the number nearest to 1/3 but not less than 1/3, shall retire from office;
- 43.11.3 a retiring Director may be re-elected, provided he is eligible for election. If elected or re-elected he shall be deemed not to have vacated his office;
- 43.11.4 a retiring Director shall act as a Director throughout the annual general meeting at which he retires;

- 43.11.5 the Company, at the annual general meeting at which a Director retires in the above manner, or at any other general meeting, may fill the vacancy by electing a person thereto, provided that the Company shall not be entitled to fill the vacancy by means of a resolution passed in accordance with the provisions of section 60 of the Companies Act as set out in clause 42;
- 43.11.6 if at any meeting at which an election of Directors ought to take place the offices of the retiring Directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the further provisions of this MOI, including clauses 36.13 to 36.16 (inclusive) will apply *mutatis mutandis* to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring Directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned meeting.
- 43.12 The Board shall through its nominations committee (if so constituted in terms of clause 50), provide the Shareholders with a recommendation in the notice of the meeting at which the re-election of the retiring Director is proposed, as to which retiring Directors are eligible for re-election, taking into account that Director's past performance and contribution. Any Shareholder shall have the right to nominate Directors.
- 43.13 The Board has the power to exercise all of the powers and perform any of the functions of the Company, as set out in section 66(1) of the Companies Act, and the powers of the Board in this regard are only limited and restricted as contemplated in this clause 43.
- 43.14 The Directors may at any time and from time to time by power of attorney appoint any Person or Persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this MOI) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any company, the shareholders, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such power of attorney may contain such provisions for the protection or convenience of Persons dealing with such attorneys and agents as the Directors think fit. Any such attorneys or agents as

aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.

- 43.15 Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferrable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such a manner as the Directors shall from time to time determine.
- 43.16 All acts performed by the Directors or by a Board committee or by any person acting as a Director or a member of a Board 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 valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such Board committee.
- 43.17 If the number of Directors falls below the minimum number fixed in accordance with this MOI, the remaining Directors must as soon as possible and in any event not later than three months from the date that the number falls below such minimum, fill the vacancy/ies, provided that such Director/s are elected by the Shareholders at the next annual general meeting or call a general meeting for the purpose of filling the vacancy/ies.
- 43.18 The failure by the Company to have the minimum number of Directors during the said three month period does not limit or negate the authority of the Board of Directors or invalidate anything done by the Board of Directors while their number is below the minimum number fixed in accordance with this MOI.
- 43.19 The Directors in office may act notwithstanding any vacancy in their body, but if after the expiry of the three month period contemplated in clause 43.17, their number remains below the minimum number fixed in accordance with this MOI, they may, for as long as their number is reduced below such minimum, act only for the purpose of:
- 43.19.1 filling in vacancies in their body in terms of section 68(3) of the Companies Act; or
- 43.19.2 summoning general meetings of the Company for that purpose, provided that if there is no Director able or willing to act, then any Shareholder may convene a general meeting for that purpose,

but not for any other purpose.

- 43.20 A Director may hold any other office or place of profit under the Company (except that of auditor) or any subsidiary of the Company in conjunction with the office of Director, for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a Director) and otherwise as a disinterested quorum of the Directors may determine.
- 43.21 A Director of the Company may be or become a Director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, provided that the appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors.
- 43.22 Each Director and each alternate Director, Prescribed Officer and member of any Board committee (whether or not such latter persons are also members of the Board) shall, to the exemptions contained in section 75(2) of the Companies Act and the qualifications contained in section 75(3) of the Companies Act, comply with all the provisions of section 75 of the Companies Act in the event that they (or any person who is a related person to them) have a personal financial interest in any matter to be considered by the Board.
- 43.23 A Director may not vote on any resolution pertaining to any matter in which he has a personal financial interest as contemplated in section 75 of the Companies Act. However, notwithstanding his interest in any matter, such Director may be counted for the purposes of determining a quorum for a Board meeting.
- 43.24 The Board may authorise the payment of such donations by the Company to such religious, charitable, public or other bodies, clubs, funds, associations or persons as may seem desirable in the interests of the Company, provided that any donations to any political parties or associations shall require prior approval of Shareholders in a general or annual general meeting.
- 43.25 The Company must establish and maintain a record of its Directors, including all the details about each Director required in terms of and for the periods stipulated in the Companies Act and the Regulations, in a register of Directors.

- 43.26 No person shall be entitled to serve or act as a Director (including as an alternate Director), or have his name entered in the register of Directors, unless and until that person has been appointed in terms of this clause and has delivered to the Company:
- 43.26.1 all the details about that person which are required to be included in the register of Directors in terms of the Companies Act and the Regulations;
- 43.26.2 a written undertaking signed by that person representing and warranting to the Company that he is not and will not be, at the time of his proposed appointment, ineligible or disqualified in terms of the Companies Act or this MOI from being entitled to serve as a Director;
- 43.26.3 a written undertaking signed by that person undertaking to disclose in writing to the Board any facts, circumstances or events from time to time which might or are likely to result in his being or becoming ineligible or disqualified in terms of the Companies Act or this MOI from being entitled to serve as a Director, within five Business Days of his becoming aware of any such facts, circumstances or events, and indemnifying the Company for any direct or indirect or consequential damages, loss, costs or expenses of whatsoever nature suffered or incurred by the Company at any time arising out of or in connection with a breach of such undertaking or any decision or approval of the Board being reversed;
- 43.26.4 a written undertaking signed by that person, undertaking to disclose in writing to the Board from time to time any facts, circumstances or events from time to time which might or are likely to result in him or a person related to him, having or acquiring a personal financial interest as contemplated in section 75 within five Business Days of his becoming aware of any such facts, circumstances or events, and indemnifying the Company for any direct or indirect or consequential damages, loss, costs or expenses of whatsoever nature suffered or incurred by the Company at any time arising out of or in connection with a breach of such undertaking or any transaction or agreement approved by the Board being invalid as a result thereof as contemplated in section 75(7) or (8); and
- 43.26.5 a written statement signed by that person, confirming that he has read and is familiar with the provisions of this MOI and understands that he will in his capacity as a

Director be bound by the terms of this MOI in terms of section 15(6) and consenting to serve as a Director.

#### **44. ALTERNATE DIRECTORS**

- 44.1 Any Director shall have the power to nominate another person approved by the Board to act as an alternate Director, provided that 50% of all alternate Directors (and Directors) shall be elected by an ordinary resolution of Shareholders at a general or annual general meeting of the Company in accordance with section 66(4)(b) of the Companies Act and at least 50% of all alternate Directors shall be Black Persons. Upon being elected or appointed as an alternate Director, the alternate Director shall, in all respects, be subject to the terms and conditions existing with reference to the other Directors of the Company. A person may be elected or appointed as alternate to more than one Director. Where a person is alternate to more than one Director or where the alternate Director is a Director, he shall have a separate vote, on behalf of each Director he is representing in addition to his own vote, if any.
- 44.2 The alternate Directors, whilst acting in the place of the Directors whom they represent, shall exercise and discharge all the duties and functions of the Directors they represent.
- 44.3 The appointment of an alternate Director shall cease on the happening of any event which, if he was a Director, would cause him to cease to hold office in terms of this MOI or the Companies Act or if the Director whom he represents ceases to be a Director, or gives notice to the company secretary of the Company that the alternate Director representing him shall have ceased to do so. An alternate Director shall look to the Director whom he represents for his remuneration.

#### **45. DIRECTORS' MEETINGS**

- 45.1 Save as may be provided otherwise herein, the Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 45.2 The Directors may elect a chairperson and a deputy chairperson and determine the period for which each is to hold office. The chairperson, or in his absence the deputy chairperson, shall be entitled to preside over all meetings of Directors. If no chairperson or deputy chairperson is elected, or if at any meetings neither is present or willing to act as chairperson

thereof within 10 minutes of the time appointed for holding the meeting, the Directors present shall choose one of their number to be chairperson of such meeting.

45.3 In addition to the provisions of section 73(1) of the Companies Act, any Director shall at any time be entitled to call a meeting of the Directors.

45.4 The Board has the power to:

45.4.1 consider any matter and/or adopt any resolution other than at a meeting, as contemplated in section 74 of the Companies Act and, accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the 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. Such resolution, inserted in the minute book, shall be as valid and effective as if it had been passed at a meeting of the Board of Directors. Any such resolution may consist of several documents and shall be deemed to have been passed on the date on which it was signed by the last Director who signed it (unless a statement to the contrary is made in that resolution);

45.4.2 conduct a meeting entirely by Electronic Communication, or provide for participation in a meeting by Electronic Communication, as set out in section 73(3) of the Companies Act, provided that, as required by such section, the Electronic Communications facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting;

45.4.3 determine the manner and form of providing notice of its meetings contemplated in section 73(4) of the Companies Act, provided that:

45.4.3.1 the notice period for the convening of any meeting of the Board will be at least seven Business Days unless the decision of the Directors is required on an urgent basis which justifies a shorter period of notice, in which event the meeting may be called on a shorter notice. The decision of the chairperson of the Board, or failing the chairperson for any reason, the decision of any two Directors as to whether a matter should be decided on an urgent basis, and the period of notice to be given, shall be final and binding on the Directors;

45.4.3.2 an agenda of the matters to be discussed at the meeting shall be given to each Director, together with the notice referred to in clause 45.4.3.1;

45.4.4 proceed with a meeting despite a failure or defect in giving notice of the meeting, as provided in section 73(5) of the Companies Act,

and the powers of the Board in respect of the above matters are not limited or restricted by this MOI.

45.5 The quorum requirement for a Director's meeting (including an adjourned meeting), the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5) of the Companies Act, subject only to clause 45.5.5, and accordingly:

45.5.1 if all of the Directors of the Company:

45.5.1.1 acknowledge actual receipt of the notice convening a meeting; or

45.5.1.2 are present at a meeting; or

45.5.1.3 waive notice of a meeting,

the meeting may proceed even if the Company failed to give the required notice of that meeting or there was a defect in the giving of the notice;

45.5.2 a majority of the Directors must be present at a meeting before a vote may be called at any meeting of the Directors;

45.5.3 each Director has one vote on a matter before the Board;

45.5.4 a majority of the votes cast in favour of a resolution is sufficient to approve that resolution;

45.5.5 in the case of a tied vote:

45.5.5.1 the chairperson may not cast a deciding vote in addition to any deliberative vote;  
and

45.5.5.2 the matter being voted on fails.



45.6 Resolutions adopted by the Board:

45.6.1 must be dated and sequentially numbered; and

45.6.2 are effective as of the date of the resolution, unless any resolution states otherwise.

45.7 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board, are evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.

45.8 Minutes of all Board meetings, resolutions and Directors' declarations shall be kept in accordance with the provisions of section 73(6) of the Companies Act.

#### **46. RATIFICATION OF THE COMPANY'S ACTIONS**

46.1 Until such time as the Shares of the Company are listed on the JSE, the Company's actions may be ratified in accordance with section 20(2) and 20(6) of the Companies Act.

46.2 In the event that the Shares of the Company are listed on the JSE, the ratification of the Company's actions as provided for in sections 20(2) and 20(6) of the Companies Act shall, unless otherwise agreed with the JSE, be prohibited to the extent that such ratification is contrary to the Listing Requirements.

#### **47. DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE**

47.1 The Company may pay remuneration to the Directors for their services as Directors in accordance with a Special Resolution approved by the Shareholders within the previous two years, as set out in sections 66(8) and (9) of the Companies Act, and the power of the Company in this regard is not limited or restricted by this MOI.

47.2 Any Director who:

47.2.1 serves on any executive or other committee; or

47.2.2 devotes special attention to the business of the Company; or

47.2.3 goes or resides outside the Republic for the purpose of the Company; or

47.2.4 otherwise performs or binds himself to perform services which, in the opinion of the Directors, are outside the scope of the ordinary duties of a Director,

may be paid such extra remuneration or allowances in addition to or in substitution of the remuneration to which he may be entitled as a Director, as a disinterested quorum of the Directors may from time to time determine.

47.3 The Directors may also be paid all their travelling and other expenses necessarily incurred by them in the connection with:

47.3.1 the business of the Company; and

47.3.2 attending meetings of the Directors or of committees of the Directors of the Company.

47.4 The Board may, as contemplated in and subject to the requirements of section 45 of the Companies Act, authorise the Company to provide financial assistance to a Director, Prescribed Officer or other Person referred to in section 45(2) of the Companies Act, and the power of the Board in this regard is not limited or restricted by this MOI.

#### 48. **MANAGING DIRECTOR**

48.1 The Directors may from time to time appoint one or more of their body to the office of managing director for such a term and at such remuneration as they may think fit (subject only to the requirements of sections 66(8) and (9) of the Companies Act), and may revoke such appointment subject to the terms of any agreement entered into in any particular case. Such Director's appointment shall terminate if he ceases for any reason to be a Director.

48.2 Subject to the provisions of any contract between himself and the Company, a managing Director shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.

48.3 The Directors may from time to time entrust to and confer upon a managing Director for the time being such of the powers exercisable in terms of this MOI by the Directors as they may think fit, and may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that regard, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

## 49. INDEMNIFICATION OF DIRECTORS

49.1 The Company may:

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

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

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

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

49.2 The provisions of clause 49.1 shall apply *mutatis mutandis* in respect of any former Director, Prescribed Officer or member of any Board committee, including the audit committee.

## 50. COMMITTEES OF THE BOARD

50.1 The Board may:

50.1.1 appoint committees of Directors and delegate to any such committee any of the authority of the Board as contemplated in section 72(1) of the Companies Act; and/or

50.1.2 include in any such committee persons who are not Directors, as contemplated in section 72(2)(a) of the Companies Act,

and the power of the Board in this regard is not limited or restricted by this MOI.

50.2 The authority of a committee appointed by the Board as contemplated in sections 72(2)(b) and (c) of the Companies Act is not limited or restricted by this MOI.

50.3 If and for as long as it is required to do so in terms of the Companies Act or the Regulations and unless the Company is exempted from doing so by the Companies Tribunal in terms of section 72(5) of the Companies Act, the Board must appoint a social and ethics committee having the powers and functions prescribed in terms of section 72 of the Companies Act and the Regulations.

- 50.4 If and for as long as any of the Company's Securities are listed on the JSE, the Board shall appoint such Board committees as are required by the Listing Requirements, having functions and powers as are prescribed by or in terms of the Listing Requirements.
- 50.5 The Company must further appoint an audit committee in the manner and for the purposes set out in Part D of Chapter 3 of the Companies Act.
- 50.6 The audit committee (or a separate risk committee of the Board) must be responsible for: adopting, implementing and reporting on an appropriate risk management policy in accordance with section 13.46(h) of the Listing Requirements, if applicable.

## 51. ANNUAL FINANCIAL STATEMENTS

- 51.1 The Company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of:
- 51.1.1 the Companies Act;
  - 51.1.2 the Regulations;
  - 51.1.3 the Listing Requirements, if applicable;
  - 51.1.4 any other law with respect to the preparation of financial statements to which the Company shall be subject; and
  - 51.1.5 this MOI.
- 51.2 The Company shall each year prepare annual financial statements within six months (or three months, if the Company is listed on an Exchange) after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7) of the Companies Act.
- 51.3 The Company shall appoint an auditor each year at its annual general meeting. If the Company appoints a firm as its auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of the auditor.
- 51.4 The annual financial statements of the Company must be prepared and audited in accordance with the provisions of section 30 of the Companies Act.

- 51.5 A copy of the annual financial statements must be sent to Shareholders, alternatively a notice of the publication of the annual financial statements setting out the required steps to obtain a copy of the annual financial statements may be sent to the Shareholders by Electronic Communication at least 15 Business Days before the date of the annual general meeting of the Company at which such annual financial statements will be considered.
- 51.6 The annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Companies Act and shall:
- 51.6.1 satisfy, as to form and content, the financial reporting standards of IFRS; and
  - 51.6.2 subject to and in accordance with IFRS:
    - 51.6.2.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
    - 51.6.2.2 show the Company's assets, liabilities and equity, as well as its income and expenses;
    - 51.6.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and
    - 51.6.2.4 bare on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name of the professional designation of the person who prepared them.

## 52. **CONSTRUCTIVE NOTICE**

The Board shall be responsible for assessing if and when a person should be provided with a copy of a document relating to the Company notwithstanding that such document has been filed or is made available for inspection at an office of the Company, so that such person must be regarded as having received actual knowledge of the contents of the document.

## 53. **COMPANY AND ACCOUNTING RECORDS**

All records of the Company contemplated in section 24 of the Companies Act and all accounting records contemplated in section 28 of the Companies Act, shall be kept and maintained, and shall be accessible at or from the registered office of the Company.

**54. ACCESS TO COMPANY RECORDS**

- 54.1 Each person who holds or has a beneficial interest in any Securities issued by the Company is entitled to inspect and copy, without any charge for any inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the records of the Company referred to in section 26(1) of the Companies Act being:
- 54.1.1 this MOI, and any amendments or alterations thereof;
  - 54.1.2 a record of the Directors, including the details of any person who has served as a Director, for a period of seven years after that person has ceased to serve as a Director, and any information relating to such persons referred to in section 24(5) of the Companies Act;
  - 54.1.3 all:
    - 54.1.3.1 reports presented at an annual general meeting of the Company for a period of seven years after the date of any such meeting; and
    - 54.1.3.2 annual financial statements required by the Companies Act for a period of seven years after the date on which each particular statements were issued;
  - 54.1.4 notice and minutes of all Shareholders' meetings including:
    - 54.1.4.1 all resolutions adopted by them, for seven years after the date each such resolution was adopted; and
    - 54.1.4.2 any document that was made available by the Company to the holders of Securities in relation to each resolution;
  - 54.1.5 any written communications sent generally by the Company to all holders of any class of the Company's Securities, for a period of seven years after the date on which each of such communications were issued; and
  - 54.1.6 the Securities Register.

54.2 A person not contemplated in clause 54.1 has a right to inspect the Securities Register and the register of Directors of the Company upon payment of an amount not exceeding the prescribed maximum fee, as set out in the Companies Act, for any such inspection.

54.3 A person who wishes to inspect the Uncertificated Securities Register may do so only through the Company in terms of section 52(2) read with 26 of the Companies Act, and in accordance with the rules of the CSD. Within five Business Days after the date of a request for inspection, the Company must produce a record of the Uncertificated Securities Register, which record must reflect at least the details referred to in section 50(3)(b) of the Companies Act at the close of business on the day on which the request for inspection was made.

#### 55. **FINANCIAL YEAR OF THE COMPANY**

The financial year end of the Company shall be 30 September.

#### 56. **PAYMENT OF COMMISSION**

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

56.2 Commission may be paid out of capital profits, whether current or accumulated, or partly out of the one and partly out of the other.

56.3 Such commission may be paid in cash or, if authorised by the Company in the general meeting, by the allotment of fully or partly paid-up Shares, or partly in one way and partly in the other.

56.4 The Company may, subject to the provisions of the Companies Act, pay interest on any Securities issued for the purposes of raising money to defray the expenses of works or buildings or for the provision of a plant.

56.5 The Company may, on any issue of Securities, pay such brokerage as may be lawful.

**PART D – GENERAL****57. DISPUTE RESOLUTION**

Any dispute between any one or more Persons bound by the provisions of this MOI, which cannot be resolved by negotiation and agreement within seven Business Days of any party to the dispute or any other Person bound by this MOI requesting such resolution, may be dealt with by any such party to the dispute in terms of Chapter 7 of the Companies Act. The Persons bound by this MOI shall use their respective reasonable endeavours to negotiate in good faith with each other and any applicable third party for purposes of reaching a resolution of the dispute in question within such seven Business Day period.

**58. CORPORATE ACTIONS REQUIRED TO COMPLY WITH THE JSE LISTINGS REQUIREMENTS**

The Company shall, for so long as it has Ordinary Shares listed on the JSE, ensure that all of the Company's corporate actions comply with the JSE Listings Requirements.

**59. LIMITATION OF LIABILITY**

No person shall, solely by reason of being an incorporator, Shareholder, Director, Prescribed Officer or company secretary of the Company, be liable for any liabilities or obligations of the Company.

**60. NOTICES**

- 60.1 Any notice, document, record and/or statement which the Company is required to give or publish to its Shareholders or which the Company elects to give or publish to its Shareholders may be given or published in any manner authorised by the Companies Act and, if applicable, the JSE Listings Requirements including, without limitation, by being transmitted electronically to Shareholders and shall be simultaneously delivered to the JSE.
- 60.2 To the extent required in terms of the Listing Requirements, whilst the Company's Shares are listed on the JSE, all notices shall be delivered to the JSE and released through SENS.
- 60.3 Any notice of a general meeting shall state the place, day and hour of, and the nature of the business to be transacted at the general meeting.



- 60.4 Notices of general meetings and annual general meetings shall be delivered to all Shareholders in compliance with section 62(1) of the Companies Act.
- 60.5 If a Shareholder does not notify the Company in writing of an address, email address or cell phone number for the purposes of receiving notices from the Company, that Shareholder shall be deemed to have waived his right to be so served with notices until such a time as that Shareholder notifies the Company in writing of an address, email address or cell phone number for the purposes of receiving notices from the Company.
- 60.6 Subject to meeting all minimum requirements imposed by the Companies Act, the Company is authorised to give or publish any notice, circular, document, record and/or statement (collectively a "**notification**") to its Shareholders by any method authorised by the Companies Act including by means of electronic transmission (including, without limitation, by way of email or share message service (SMS)) and irrespective as to whether the address to which the notification is to be transmitted was notified to the Company (or its authorised agent or representative) by the Shareholder or otherwise sourced by the Company.
- 60.7 In the case of joint holders of a Security, all notices shall, unless such holders otherwise in writing request and the Directors agree, be given to that Shareholder whose name appears first in the Securities Register and a notice so given shall be deemed sufficient notice to all the joint holders.
- 60.8 Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Security, shall be bound by every notice in respect of that Security which, previously to his name and address being entered in the Securities Register, was given to the person from whom he derives his title to such Security.
- 60.9 Any notice or document delivered in accordance with the provisions of this MOI shall, notwithstanding that such Shareholder was then deceased, and whether or not the Company has notice of his death, be deemed to have been duly served in respect of any Securities, whether held solely or jointly with other Persons by such Shareholder, until some other Person be registered in his stead as the sole or joint holder thereof, and such service shall for all purposes of this MOI be deemed a sufficient service of such notice or document on his heirs, executors or administrators, and all Persons (if any) jointly interested with him in any such Securities.

## 61. WINDING UP

61.1 While the Company is:

61.1.1 solvent, the Company may be wound-up in terms of Part G of Chapter 2 of the Companies Act; or

61.1.2 insolvent, the Company may be wound-up as an insolvent company in terms of the applicable laws of insolvency prevailing.

61.2 If the Company is to be wound up, whether voluntarily or otherwise, the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall, subject to the sanction of a Special Resolution, be distributed among the Ordinary Shareholders in proportion to the number of Ordinary Shares held by each of them.

61.3 In a winding-up of the Company, any part of the assets of the Company, including any securities of other companies may, with the sanction of a Special Resolution, be paid to the Ordinary Shareholders *in specie*, or may, with the same sanction, be vested in trustees for the benefit of such Ordinary Shareholders, and the liquidation of the Company may be closed and the Company dissolved.

## 62. AMENDMENT OF THE MOI

62.1 During the Empowerment Period and notwithstanding any other provision of this MOI, each Ordinary Shareholder shall not vote in favour of any resolution for the amendment or substitution or other alteration of this MOI unless the amendment, substitution or alteration thereto, as the case may be, has received the prior written approval of Barloworld, if such amendment, substitution or alteration will affect the B-BBEE Status of the Company and/or Barloworld or will remove or amend any B-BBEE Restriction. Any other amendment, substitution or alteration of this MOI shall be approved by a Special Resolution.

62.2 Subject to clause 62.1, every provision of this MOI is capable of amendment in accordance with sections 16, 17 and 15(6)(b) of the Companies Act and the Listing Requirements (if applicable). There is accordingly no provision of this MOI which may not be amended as contemplated in sections 15(2)(b) and (c) of the Companies Act.

62.3 This MOI may only be altered or amended:

- 62.3.1 in compliance with a court order as contemplated in section 16(1)(c) of the Companies Act and in the manner set out in section 16(4) of the Companies Act; or
- 62.3.2 by way of Special Resolution in compliance with the provisions of section 16(1)(c) of the Companies Act, read with the provisions of this MOI and the remaining provisions of the Companies Act.
- 62.4 In the circumstances where the MOI is proposed to be amended to remove or eliminate a specific inconsistency or contravention of the Companies Act, which provision of this MOI is void in terms of section 15(1)(b) or could be declared void by a court of law in terms of section 218(1) the Shareholders undertake not to object to that amendment on the grounds contemplated in section 164(2)(a) or demand that the Company pay the Shareholder fair value for all of the Shares held by that person, in terms of section 164 of the Companies Act.
- 62.5 Save as set out in clause 62.3 above, this MOI is not capable of amendment by any other method. The provisions of section 16(1)(b) shall accordingly not apply to this MOI, nor shall any other alterable provision of the Companies Act which permits a method of altering or amending the MOI not set out in clause 62.3 above, apply to this MOI.
- 62.6 An amendment of this MOI will take effect from the later of:
- 62.6.1 the date on, and time at, which the CIPC accepts the filing of the notice of amendment contemplated in section 16(7) of the Companies Act; and
- 62.6.2 the date, if any, set out in the said notice of amendment,
- save in the case of an amendment that changes the name of the Company, which will take effect from the date set out in the amendment registration certificate issued by the CIPC.
- 62.7 No amendment of this MOI is permitted if it would breach the Listing Requirements of the JSE were the Company to have been listed on the JSE at the relevant time.

### 63. **COMPANY RULES**

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

## TERMS OF ORDINARY SHARES

### Rights, privileges, restrictions and other terms relating to the Ordinary Shares

1. Words and/or phrases not otherwise defined in this Annexure 1 shall bear the meanings assigned in the MOI. For the purposes of this **Annexure 1**, the following words and/or phrases shall have the meanings assigned to them hereunder:
  - 1.1 "**Beneficiaries**" means beneficiaries of the Employee Trust (being certain employees of the Barloworld Group) or the Management Trust (being certain members of the management of the Barloworld Group);
  - 1.2 "**Ordinary Distribution**" means the value per Ordinary Share of a Distribution made by the Company to Ordinary Shareholders, to the exclusion of holders of other shares in the issued Share capital of the Company;
  - 1.3 "**Ordinary Shares**" means the ordinary no par shares in the authorised share capital of the Company, having the rights, privileges and restrictions contained in this **Annexure 1**; and
  - 1.4 "**Ordinary Shareholders**" means the holders of Ordinary Shares.
2. The following rights, privileges and restrictions will attach to an Ordinary Share:
  - 2.1 the right to be entered in the Securities Register of the Company as the registered holder of an Ordinary Share;
  - 2.2 the right to attend, participate in and speak on any matter at any meeting of Ordinary Shareholders, on the basis that each Ordinary Share shall, on a poll, confer one vote on the holder thereof at any meeting of the holders of Ordinary Shares;
  - 2.3 the right to attend, participate in and speak on any matter at any meeting of the Shareholders, on the basis that each Ordinary Share shall, on a poll, confer one vote on the holder thereof at any meeting of the Shareholders;
  - 2.4 the right to participate in Ordinary Distributions by the Company if and when declared;

- 2.5 an irrevocable right to vote on any proposal to amend the rights, privileges and restrictions and other terms associated with the Ordinary Shares;
- 2.6 upon liquidation of the Company, the right to receive a portion of the total net assets of the Company upon its liquidation, calculated by dividing the aggregate of the net asset value of the Company as at the date of liquidation of the Company by the number of Ordinary Shares in the issued share capital of the Company;
- 2.7 the Ordinary Shares may be issued only to Black Companies, Black Entities and/or Black Persons;
- 2.8 an Ordinary Shareholder shall only be entitled to transfer its Ordinary Shares to Black Companies, Black Entities and/or Black Persons, subject to paragraph 2.9;
- 2.9 paragraph 2.8 shall not apply to any transfer of Ordinary Shares by the Management Trust and the Employee Trust to (i) their respective Beneficiaries (including persons who are not Black Companies, Black Entities or Black Persons) in accordance with their respective Trust Deeds, (ii) the non-Black heirs of the beneficiaries of the Management Trust and the Employee Trust, or (iii) to persons who are not Black Companies, Black Entities or Black Persons where such transfer is expressly permitted in terms of this MOI.
- 2.10 After such transfer, paragraph 2.8 shall apply to any subsequent transfers.
3. Notwithstanding the other provisions herein contained:
- 3.1 if any other Shares, other than the Ordinary Shares, are consolidated or sub-divided or in any other way reorganised, the Company, and Shareholders as required, shall procure that a proportionate reorganisation of Ordinary Shares is performed;
- 3.2 the terms and conditions of the Ordinary Shares may not be modified, altered, varied, added to or abrogated other than in accordance with the provisions of the MOI; and
- 3.3 no shares in the capital of the Company, ranking, on a winding-up as regards return of capital, in priority to or *pari passu* with the Ordinary Shares, shall be created or issued without the prior written consent of at least 75% of the voting rights attaching to the Ordinary Shares, voting in respect of such a matter.