

Republic of South Africa Companies Act, 2008

MEMORANDUM OF INCORPORATION

Sasol Khanyisa FundCo (RF) Limited

Registration No: 2017/662953/06

This MOI was adopted by Special Resolution passed on 22 March 2018 in substitution for the existing memorandum of incorporation of the Company.

1. INTERPRETATION

In this MOI, -

- 1.1. words that are defined in the Companies Act (which are contained in **Schedule 1** for easy reference but which do not form part of this MOI for purposes of interpretation) but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act. For ease of reading, defined terms have been capitalised in this MOI;
- 1.2. unless the context otherwise requires:-
 - 1.2.1. "**A Ordinary Share**" means an A ordinary Share of no par value in the share capital of the Company;
 - 1.2.2. "**Automatic Share Exchange**" means the automatic exchange to occur if Sasol has at the relevant time elected to issue SOLBE1 Shares to the Company, in exchange for its SSA Khanyisa Shares and, if Sasol elects, for other assets of the Company other than cash, on the basis of the Share Exchange Ratio as contemplated in clause 31, but subject to clause 32;
 - 1.2.3. "**B Ordinary Share**" means a B ordinary Share of no par value in the share capital of the Company;
 - 1.2.4. "**B-BBEE**" means broad-based black economic empowerment, as contemplated or defined in the B-BBEE Act;
 - 1.2.5. "**B-BBEE Act**" means the Broad-Based Black Economic Empowerment Act, 2003 and any regulations promulgated thereunder including the Codes;
 - 1.2.6. "**B-BBEE Controlled Company**" means the definition from time to time ascribed to it in the Codes;
 - 1.2.7. "**B-BBEE Owned Company**" means the definition from time to time ascribed to it in the Codes;
 - 1.2.8. "**BEE Standards**" means each and all of (a) the B-BBEE Act, (b) the Codes, (c) any Charter and (d) any other law, codes or license condition applicable to the SSA Group and/or Sasol (or relevant parts thereof) pursuant to which the ownership and/or control and/or economic or other interest of Black People is measured or a requirement relating to Black People (or B-BBEE) is imposed, or

the rights, interests and/or obligations of an entity are affected thereby directly; each as enacted, amended, interpreted and applied from time to time;

1.2.9. "**Black Company**" means a company incorporated and registered in accordance with the laws of South Africa and which is both:

1.2.9.1. a B-BBEE Owned Company; and

1.2.9.2. a B-BBEE Controlled Company,

and, for the purposes hereof, a reference to a **company** shall include a reference to a **close corporation** and **Black Companies** shall have a corresponding meaning;

1.2.10. "**Black Entity**" means a trust, partnership, joint venture, "stokvel", Broad-Based Ownership Scheme (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;

1.2.11. "**Black Groups**" means Black Companies and Black Entities;

1.2.12. "**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, which currently means Africans, Coloureds and Indians who are South African citizens by (a) birth or descent or (b) who became citizens of South Africa by naturalisation occurring (i) before 27 April 1994; (ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date;

1.2.13. "**Board**" means the board of Directors of the Company from time to time;

1.2.14. "**Business Day**" means any day which is not a Saturday, Sunday or an official public holiday in South Africa;

1.2.15. "**Chairman**" means the chairman of the Board appointed in terms of clause 21.4;

1.2.16. "**Charter**" means any transformation charters issued under sections 9 and/or 12 of the B-BBEE Act or other charter of general application to the SSA Group and/or Sasol (or relevant parts thereof);

- 1.2.17. "**Codes**" means the Broad-Based Black Economic Empowerment Codes of Good Practice gazetted under the B-BBEE Act as they may exist or amended from time to time;
- 1.2.18. "**Companies Act**" means the Companies Act 71 of 2008, as amended, or any legislation which replaces it;
- 1.2.19. "**Company**" means Sasol Khanyisa FundCo (RF) Limited, a public company with limited liability registered in accordance with the laws of South Africa with registration number 2017/662953/06;
- 1.2.20. "**Deliver**" means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 19.12, the Companies Act and the Regulations;
- 1.2.21. "**Dispose**" means, in relation to any Share:-
- 1.2.21.1. 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 the Share;
 - 1.2.21.2. 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 1.2.21.1 been done; or
 - 1.2.21.3. to authorise, agree to or attempt to do any of the things mentioned in clause 1.2.21.1 or 1.2.21.2 above,
- and the term **Disposal** has a corresponding meaning;
- 1.2.22. "**Effective Date**" means 1 June 2018 or such other date as Sasol in its sole discretion may determine;
- 1.2.23. "**Electronic Address**" means in regard to Electronic Communication, any email or other electronic address furnished to the Company by a Shareholder or Director;
- 1.2.24. "**Empowerment Period**" means a period expiring on the earlier of:
- 1.2.24.1. the 10th (tenth) anniversary of the Effective Date; and

1.2.24.2. the later of the settlement in full of the Notional Vendor Finance and the redemption in full of the FundCo Preference Shares, unless the Holder of the B Ordinary Share otherwise determines that this clause 1.2.24.2 shall not apply or determines to extend the period beyond the settlement of the Notional Vendor Finance and the redemption in full of the Preference Shares to a date selected by the Holder of the B Ordinary Share but which date shall not be after the date set out in clause 1.2.24.1,

or such shorter period as may be determined by the Holder of the B Ordinary Share in its sole discretion;

- 1.2.25. "**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 whatsoever which has the same or similar effect to the granting of security;
- 1.2.26. "**Financial Markets Act**" means the Financial Markets Act, 2012;
- 1.2.27. "**Finance Documents**" means any document designated as a "Finance Document" under the Preference Share Subscription Agreement;
- 1.2.28. "**Holder/s**" or "**Shareholder/s**" means the registered holders of Shares who are entered as such in the Securities Register of the Company;
- 1.2.29. "**Holder of the RF Preference Share**" means Sasol Financing Proprietary Limited, a private company with limited liability registered in accordance with the laws of South Africa with registration number 1998/019838/07;
- 1.2.30. "**Ineligible or Disqualified**" means, as regards Directors, members of Board committees and Prescribed Officers, those persons who are ineligible or disqualified as contemplated in the Companies Act (a list of which is in **Schedule 2** for ease of reference but which does not form part of this MOI for purposes of interpretation);
- 1.2.31. "**JSE**" means the stock exchange operated by JSE Limited, a company duly registered and incorporated under the company laws of South Africa with registration number 2005/022939/06, licensed as an exchange under the Financial Markets Act or its successor in title;

- 1.2.32. "**JSE Listings Requirements**" means the listings requirements of the JSE, as amended from time to time;
- 1.2.33. "**MOI**" means this Memorandum of Incorporation as amended from time to time;
- 1.2.34. "**Notional Vendor Finance**" means the notional vendor finance contemplated in the trust deed constituting the Sasol Khanyisa employee share ownership plan so as to enable the trustees of the trust to subscribe for SSA Ordinary Shares on the Effective Date;
- 1.2.35. "**Ordinary Shareholder**" means the Holder of an Ordinary Share from time to time (other than the A Ordinary Share and the B Ordinary Share), which shall for the duration of the Empowerment Period be Sasol Khanyisa;
- 1.2.36. "**Ordinary Share**" means an ordinary Share of no par value in the share capital of the Company;
- 1.2.37. "**Preference Share Funding**" means the funding provided by Sasol to the Company through the subscription by Sasol for the Preference Shares in terms of the Preference Share Subscription Agreement;
- 1.2.38. "**Preference Shares**" means the preference shares of no par value in the capital of the Company to be allotted and issued by the Company to Sasol in accordance with the terms set out in the Preference Share Subscription Agreement;
- 1.2.39. "**Preference Share Subscription Agreement**" means the preference share subscription agreement to be concluded between Sasol and the Company pursuant to which Sasol will subscribe for the Preference Shares, the proceeds of which the Company will apply to subscribe for the SSA Khanyisa Shares in terms of the SSA Subscription Agreement;
- 1.2.40. "**Regulations**" means regulations published pursuant to the Companies Act from time to time;
- 1.2.41. "**Relationship Agreement**" means the relationship agreement to be concluded *inter alia* between the Company, Sasol, SSA and Sasol Khanyisa;

- 1.2.42. "**Restrictive Conditions**" means the restrictive conditions applicable to the Company (as contemplated in section 15(2)(b) of the Companies Act) details of which are more fully set out in clause 5 of this MOI;
- 1.2.43. "**Required BEE Status**" means the B-BBEE credentials that an Ordinary Shareholder is required to maintain for the duration of the Empowerment Period as contemplated in clause 33.1.1;
- 1.2.44. "**RF Preference Share**" means the preference Share of no par value in the capital of the Company having the rights, privileges and conditions set forth in clause 39;
- 1.2.45. "**Round Robin Resolution**" means:
- 1.2.45.1. as regards resolutions of Shareholders, a resolution passed or election conducted in accordance with section 60, including a resolution signed in counterparts;
- 1.2.45.2. as regards resolutions of Directors, a resolution passed in accordance with clause 27.4.5;
- 1.2.46. "**Sasol**" means Sasol Limited, a public company with limited liability registered and incorporated in accordance with the laws of South Africa with registration number 1979/003231/06;
- 1.2.47. "**Sasol Group**" means Sasol and all of its direct and indirect Subsidiaries, from time to time, and other entities determined by the Sasol board from time to time as forming part of the Sasol Group and **Member of the Sasol Group** means any one of them;
- 1.2.48. "**Sasol Khanyisa**" means Sasol Khanyisa Public (RF) Limited, a public company with limited liability registered in accordance with the laws of South Africa with registration number 2017/663901/06;
- 1.2.49. "**Sasol Khanyisa Ordinary Shares**" means ordinary shares of no par value in the share capital of Sasol Khanyisa;
- 1.2.50. "**Sasol Khanyisa Shareholders**" means the Holders of Sasol Khanyisa Ordinary Shares;
- 1.2.51. "**Share**" means a share in the Company, including an Ordinary Share;

- 1.2.52. **"Share Exchange Expert"** means:
- 1.2.52.1. one of Sizwe Ntsaluba Gobodo Inc, PricewaterhouseCoopers Inc, Ernst & Young or Deloitte & Touche (or its respective successors-in-title), or any other audit firm; or
 - 1.2.52.2. if so approved by Sasol shareholders during 2018, any corporate finance firm or investment bank,
- as selected by Sasol in its sole discretion, provided that the firm or investment bank is independent of Sasol;
- 1.2.53. **"Share Exchange Ratio"** means taking account, to the extent considered necessary by the Share Exchange Expert the effects which may be brought about by any corporate actions, the ratio in which all the SSA Khanyisa Shares and, if applicable, any other assets contemplated in clause 31.2.2.3 will automatically be exchanged by the Company with the Holder of the B Ordinary Share for an issue of SOLBE1 Shares in terms of the Automatic Share Exchange, which ratio will be determined by the Share Exchange Expert in accordance with clause 31;
- 1.2.54. **"SOLBE1 Shares"** means Sasol BEE ordinary shares of no par value in the share capital of Sasol listed on the JSE under JSE stock code SOLBE1 and ISIN code ZAE000151817;
- 1.2.55. **"SSA"** means Sasol South Africa Limited, registration number: 1968/013914/06, a public company with limited liability duly registered and incorporated in accordance with the laws of South Africa;
- 1.2.56. **"SSA Group"** means SSA and its Subsidiaries, from time to time and other entities determined by the SSA board from time to time as forming part of the SSA Group;
- 1.2.57. **"SSA Khanyisa Shares"** means the same number of SSA Ordinary Shares as the number of Sasol Khanyisa Ordinary Shares to be issued to the Sasol Khanyisa Shareholders on the Effective Date, to be subscribed for by the Company in terms of the SSA Subscription Agreement as well as any other SSA Ordinary Shares acquired by the Company by reason of holding those SSA Khanyisa Shares;

- 1.2.58. **"SSA Ordinary Shares"** means ordinary shares of no par value in the issued share capital of SSA;
- 1.2.59. **"SSA Subscription Agreement"** means the subscription agreement to be concluded, between the Company and SSA in terms of which, *inter alia*, the Company will subscribe for, and SSA will allot and issue to the Company the SSA Khanyisa Shares on the Effective Date;
- 1.2.60. **"Transaction Documents"** means:-
- 1.2.60.1. the Finance Documents;
 - 1.2.60.2. the SSA Subscription Agreement;
 - 1.2.60.3. the Relationship Agreement;
 - 1.2.60.4. such other document approved by the Holder of the RF Preference Share as a transaction document;
- 1.2.61. **"Writing"** includes Electronic Communication but as regards any Holder entitled to vote, only to the extent that such Holder has notified the Company of an Electronic Address;
- 1.3. any reference to an enactment is to that enactment as at the date on which this MOI is adopted and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the date on which this MOI is adopted, and as amended or re-enacted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this MOI are changed, the relevant provision of this MOI shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 1.4. references to Holders represented by proxy shall include Holders entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.5. references to Holders entitled to vote Present at a Meeting or acting in person shall include Juristic Persons represented by duly authorised representative or acting in the manner prescribed in the Companies Act;

- 1.6. all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.7. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.8. words in the singular shall include the plural, and words in the plural shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);
- 1.9. if any term is defined within the context of any particular clause in this MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;
- 1.10. if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act;
- 1.11. to the extent that any provisions of this MOI are based on any Unalterable Provisions or mandatory provisions of the Companies Act or the Regulations and any of those provisions is amended in such a way that the provisions of this MOI would contravene the Companies Act or the Regulations, the Board is authorised, subject to clause 5, to amend this MOI to reflect such amendments and in so doing eliminate the risk that if there is a conflict between any provision of this MOI and the Unalterable Provisions or mandatory provisions of the Companies Act or the Regulations as amended, the relevant provision of this MOI will be void to the extent that it contravenes, or is inconsistent with the amended Unalterable Provisions or mandatory provisions of the Companies Act or the Regulations, as the case may be;
- 1.12. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.

2. **CALCULATION OF BUSINESS DAYS**

When a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by:-

- 2.1. excluding the day on which the first such event occurs;

- 2.2. including the day on or by which the second event is to occur; and
- 2.3. excluding any public holiday (as contemplated in section 1 of the Public Holidays Act, 1994), Saturday or Sunday that falls on or between the days contemplated in clauses 2.1 and 2.2 respectively.

3. **PUBLIC COMPANY**

The Company is a Public Company as it is not a Private Company or a State-Owned Company or a Personal Liability Company.

4. **POWERS AND CAPACITY OF THE COMPANY**

- 4.1. The Company has the powers and capacity of an Individual, subject to the limitations set out in clauses 5 and 6.
- 4.2. Notwithstanding the omission from this MOI of any provision to that effect, the Company may, subject to any limitation contemplated in clauses 5 and 6, do anything which the Companies Act empowers a company to do if so authorised by this MOI.

5. **RESTRICTIVE CONDITIONS**

- 5.1. Until the end of the Empowerment Period, the Directors and the Ordinary Shareholder shall not, without the prior written consent of the Holder of the RF Preference Share and the Holder of the Preference Shares, undertake or have any authority to undertake any transactions, actions or activities of any nature whatsoever not contemplated in this MOI, including but not limited *eiusdem generis* to:–
 - 5.1.1. issuing any Ordinary Share or awarding any capitalisation shares or granting any options to subscribe for an Ordinary Share or issuing any other class of Securities or granting any options to subscribe for any other class of Securities other than as contemplated in this MOI;
 - 5.1.2. Disposing of the SSA Khanyisa Shares or Disposing of other assets (apart from the SSA Khanyisa Shares) held by the Company, or doing anything else which would result in the Company ceasing to hold its interest in SSA or the Company ceasing to hold its interest in other asset/s held by the Company (apart from the SSA Khanyisa Shares), or doing or omitting to do anything else which is calculated to have that effect;

- 5.1.3. Disposing of any SOLBE1 Shares which are issued to the Company by Sasol as contemplated in clauses 31 and/or 32;
 - 5.1.4. doing or omitting to do anything, in whatever capacity, which would have the effect of or result in the Company being wound up, whether voluntarily or compulsorily, or of being deregistered, or being placed under business rescue, or which is calculated to have that effect;
 - 5.1.5. registering the transfer of any Securities other than as expressly permitted in terms of this MOI;
 - 5.1.6. borrowing any funds other than as expressly permitted in terms of this MOI;
 - 5.1.7. incurring any liabilities save as contemplated in this MOI;
 - 5.1.8. forming any Subsidiaries and including any companies incorporated outside South Africa, which had they been incorporated in the South Africa, would have been Subsidiaries;
 - 5.1.9. doing anything which would result in the Company ceasing to be 100% (one hundred percent) owned by Sasol Khanyisa, in its capacity as Ordinary Shareholder;
 - 5.1.10. omitting to do anything as regards achieving majority board and board committee representation by Black People in the Company;
 - 5.1.11. amending the authorisation (including increasing or decreasing the number) and classification of Shares (including determining rights, limitations, other terms and preferences) as contemplated in sections 36(2)(b) or 36(3);
 - 5.1.12. deciding whether the Company should be a party to any litigation against any Shareholder and/or any Person (other than as contemplated in clause 34),
 - 5.1.13. repurchasing the issued Ordinary Share;
- save for:-
- 5.1.14. subscribing for and holding the SSA Khanyisa Shares and exercising any rights associated with such SSA Khanyisa Shares;

- 5.1.15. Encumbering the SSA Khanyisa Shares as contemplated in the Finance Documents;
 - 5.1.16. concluding any agreements with Sasol and any Member of the Sasol Group;
 - 5.1.17. concluding the Transaction Documents but not any amendments thereto;
 - 5.1.18. issuing the Preference Shares in accordance with the terms of the Preference Share Subscription Agreement;
 - 5.1.19. issuing the B Ordinary Share to Sasol and issuing the shares contemplated in clause 8.1.1.6 to the Holder of the RF Preference Share as contemplated in clause 9.1;
 - 5.1.20. implementing the provisions of, exercising its rights and performing its obligations under the documents contemplated in clauses 5.1.15, 5.1.16, 5.1.17, 5.1.18 and this MOI but not incurring any legal costs;
 - 5.1.21. complying with its statutory and common law obligations (including the incurring of any statutory and/or secretarial fees associated therewith and/or any administrative costs contemplated in clause 18) but not incurring any legal costs; and
 - 5.1.22. opening and operating a bank account with a banking institution approved by the Holder of the Preference Shares as contemplated in the Finance Documents.
- 5.2. After the Empowerment Period, neither the Directors nor the Ordinary Shareholder shall, without the prior written consent of the Holder of the RF Preference Share, have any authority to cause the Company to distribute its SSA Khanyisa Shares and/or other assets (apart from the SSA Khanyisa Shares) held by the Company to the Ordinary Shareholder, whether, without limitation *eiusdem generis*, by way of a dividend, other distribution *in specie* or otherwise. The Ordinary Shareholder agrees in favour of the Holder of the RF Preference Share not to accept any such distribution of SSA Khanyisa Shares and/or other assets (apart from the SSA Khanyisa Shares) held by the Company.
- 5.3. In order to draw the attention of third parties to the provisions of this clause 5 made solely for the benefit of the Holder of the RF Preference Share and the Holder of the Preference Shares, the Directors shall be obliged to procure that the name of the Company includes

“(RF)”, including, without limitation *ejusdem generis*, in all contracts concluded by the Company.

- 5.4. The Directors shall be obliged, for the benefit of the Holder of the RF Preference Share and the Holder of the Preference Shares, to notify any third party with which the Company intends to contract of the provisions of this clause 5 and also whether or not the required approval of the Holder of the RF Preference Share and the Holder of the Preference Shares have been obtained, and if so required by the third party, shall furnish a copy of any such approval which has been obtained.
- 5.5. No resolution may be put to the Ordinary Shareholder to ratify any action by the Company or the Directors that is inconsistent with or contrary to the Restrictive Conditions, unless otherwise agreed in Writing with the Holder of the RF Preference Share and the Holder of the Preference Shares. Notwithstanding the provisions of section 20(2) (if it is applicable to the provisions of this clause 5), the Ordinary Shareholder shall not be entitled to ratify any action by the Directors in breach of this clause 5.
- 5.6. The provisions of clauses 5.1 to 5.5 (all inclusive) shall be capable of amendment only by way of the passing of a Special Resolution which shall be of no force and effect unless the prior Written approval of the Holder of the RF Preference Share and the Holder of the Preference Shares has been obtained.
- 5.7. If the provisions of the Companies Act as regards Restrictive Conditions are altered so as to permit the capacity of the Company to be restricted without section 20 of the Companies Act becoming applicable, this MOI shall be amended in such a manner as the Holder of the RF Preference Share and the Holder of the Preference Shares reasonably consider appropriate to limit the capacity of the Company as well as the authority of the Directors.
- 5.8. If there is any conflict between the provisions of this clause 5 and any other provision of this MOI the provisions of this clause 5 shall prevail.
- 5.9. The Holder of the RF Preference Share and the Holder of the Preference Shares shall be entitled at any reasonable time whilst the provisions of this clause 5 are still of full force and effect to inspect and take copies of the books and records of the Company.
- 5.10. Whilst the provisions of this clause 5 are still of full force and effect, the Holder of the RF Preference Share and/or the Holder of the Preference Shares shall be entitled in the exercise of its/their sole discretion to require a forensic audit to be undertaken in respect of the Company from time to time for any reason whatsoever, by persons selected by it/them,

at the cost of the Holder of the RF Preference Share and/or the Holder of the Preference Shares, as the case may be.

- 5.11. If the Restrictive Conditions are breached the Holder of the RF Preference Share shall be entitled to all the common law remedies available to it or to exercise any of its rights available to it under the Companies Act.

6. **AMENDMENTS TO THE MOI**

- 6.1. Save for correcting errors substantiated as such from objective evidence or which are self evident errors (including, but without limitation *ejusdem generis*, spelling, punctuation, reference, grammar or similar defects) in this MOI, which the Board is empowered to do, all other amendments of this MOI shall be effected in accordance with section 16(1) and 16(4) and a Special Resolution passed by the Shareholders but shall not take effect unless the prior Written approval/s have been obtained of the Holder of the RF Preference Share and the Holder of the Preference Shares, if such amendment is intended to be made operative whilst the provisions of clause 5 are still of full force and effect.
- 6.2. If errors in the MOI are corrected as referred to in clause 6.1, the Board shall either publish a copy of any such correction effected by the Board on the Company's web site or furnish Shareholders with Written notice of such correction effected by the Board, within 14 (fourteen) days of filing the notice of correction with the Commission.
- 6.3. To the extent that any Restrictive Condition is found by a court to be unenforceable or void the Ordinary Shareholder shall be obliged to pass the necessary resolutions to amend or replace any such Restrictive Condition in the manner determined by the Holder of the RF Preference Share.

7. **THE MAKING OF RULES**

The Board is not entitled to make, amend or repeal any Rules.

8. **AUTHORISED SECURITIES, PREFERENCES, RIGHTS AND OTHER SHARE TERMS**

8.1. Authorised Shares:

8.1.1. The Company is authorised to issue the following numbers and classes of Shares (which includes Shares already issued at any time):-

- 8.1.1.1. 1 (one) A Ordinary Share of no par value having the rights and limitations set out in clause 8.4;

- 8.1.1.2. 1 (one) B Ordinary Share of no par value having the rights and limitations set out in clause 8.5;
- 8.1.1.3. 100 000 (one hundred thousand) Ordinary Shares of no par value having the rights and limitations set out in clause 8.3;
- 8.1.1.4. 1 (one) non-participating RF Preference Share of no par value having the rights and limitations set forth in clause 39;
- 8.1.1.5. 11 000 000 000 (eleven billion) Preference Shares having the preferences, rights, limitations or other terms, as determined by the Board, as contemplated in section 36(1)(d)(ii); and
- 8.1.1.6. 10 000 (ten thousand) unclassified shares for which the Board will determine the associated preferences, rights, limitations or other terms as contemplated in section 36(1)(d) of the Companies Act.

8.2. Issued Shares

- 8.2.1. Immediately after this MOI becomes effective, 1 (one) A Ordinary Share and 1 (one) RF Preference Share will be in issue.
- 8.2.2. By not later than the Effective Date 1 (one) B Ordinary Share will be issued for R1.00 (one Rand) to Sasol.
- 8.2.3. On the Effective Date:-
 - 8.2.3.1. subject to the B Ordinary Share in clause 8.2.2 or the Ordinary Share in clause 8.2.3.2 being issued, the 1 (one) A Ordinary Share referred to in clause 8.2.1 will, subject to compliance with the Companies Act, be repurchased by the Company for a nominal amount of R0,01 (one cent). The Ordinary Shareholder agrees that if the provisions of section 48(8)(b) of the Companies Act apply to this repurchase this provision constitutes the requisite approval;
 - 8.2.3.2. 1 (one) Ordinary Share will be issued for R1.00 (one Rand) to the Ordinary Shareholder; and
 - 8.2.3.3. such number of Preference Shares will be issued to Sasol in accordance with the terms of the Preference Share Subscription Agreement.

8.3. Rights and limitations attaching to each Ordinary Share

8.3.1. Each Ordinary Share (other than the B Ordinary Share) shall not be capable of being registered in the name of a Holder which is not the Ordinary Shareholder provided that the Ordinary Shareholder is:

8.3.1.1. both the registered Holder and beneficial owner of such Ordinary Share; and

8.3.1.2. a Black Group.

8.3.2. Each Ordinary Share in the Company ranks *pari passu* with all other Ordinary Shares in respect of all rights, and entitles its Holder to:-

8.3.2.1. attend, participate, speak at and vote on any matter to be decided by Holders of Ordinary Shares;

8.3.2.2. exercise one vote on any matter to be decided by the Holders of Ordinary Shares (other than matters which are, in terms of this MOI or the Companies Act, to be decided solely by the Holders of any other class/es of Share(s));

8.3.2.3. participate on a *pro rata* basis with every other Ordinary Share in any Distribution to Holders of Ordinary Shares;

8.3.2.4. receive a *pro rata* portion of the net assets of the Company upon its dissolution.

8.4. Rights and limitations attaching to the A Ordinary Share

The A Ordinary Share will have the same rights and limitations as the Ordinary Shares save for the limitation in clause 8.3.1.2.

8.5. Rights and limitations attaching to the B Ordinary Share

The B Ordinary Share shall entitle its Holder to:

8.5.1. attend, participate, speak at and vote on any matter to be decided by the Ordinary Shareholder;

- 8.5.2. exercise one vote on any matter to be decided by the Ordinary Shareholder (other than matters which are, in terms of this MOI or the Companies Act, to be decided solely by the Holders of any other class/es of Share(s));
 - 8.5.3. receive a dividend of R1,00 (one rand) when any Distribution to the Ordinary Shareholder is made;
 - 8.5.4. receive a return of capital of R1,00 (one rand) upon the Company's dissolution.
- 8.6. All Securities of a class shall rank *pari passu* in all respects.
- 8.7. No rights, privileges or conditions for the time being attached to any class of Securities of the Company, nor any interests of that class of Securities may (unless otherwise provided by the terms of issue of the Securities of that class) whether or not the Company is being wound up, be varied in any manner adverse to the Holders of that class of Securities, nor may any variations be made to the rights, privileges or conditions of any class of Securities, such that the interests of another class of Securities is adversely affected, unless the consent in Writing of the Holders of not less than 75% (seventy five per cent) of the issued Securities of that adversely affected class has been obtained, or a Special Resolution has been passed by the Holders of that adversely affected class of Securities with the support of more than 75% (seventy five per cent) of the Voting Rights Exercised on the Special Resolution at a separate meeting of the Holders of that class. The provisions of this MOI relating to Shareholders Meetings shall *mutatis mutandis* apply to any such separate meeting except that:-
- 8.7.1. the necessary quorum shall be sufficient Persons Present at the Meeting to Exercise, in aggregate, at least 51% (fifty one per cent) of the Voting Rights that are entitled to be Exercised on that matter at the time the matter is called on the agenda;
 - 8.7.2. if at any adjourned meeting of such Shareholders, the required quorum contemplated in clause 8.7.1 is not present, those Persons entitled to vote who are Present at the Shareholders Meeting shall be a quorum; and
 - 8.7.3. any Holder of Shares of the class present in Person or represented by proxy may demand a poll and, on a poll, shall have 1 (one) vote for each Share of the class of which he is the Holder.

The provisions of this clause 8.7 shall not apply to the RF Preference Share and the Preference Shares.

8.8. Notwithstanding any implication in this MOI to the contrary, the Board may not authorise any financial assistance by the Company in connection with the subscription for or purchase of its Securities or those of a Related or Inter-Related company without complying with section 44(3) and any other provision in this MOI.

9. **ISSUE AND TRANSFER OF SHARES**

9.1. The Board shall not have the power to issue authorised Shares nor to grant any options relating to such Shares nor to grant any other rights exercisable for such Shares (other than as contemplated in clause 9.3) without the prior approval of Shareholders by way of an Ordinary Resolution, unless the Companies Act requires a Special Resolution, and without complying with clause 5. Notwithstanding the foregoing, the Board shall:

9.1.1. after receiving a direction from the Holder of the RF Preference Share to that effect, classify any of the Shares contemplated in clause 8.1.1.6 and determine the rights, limitations or other terms applicable to any such Shares as directed by the Holder of the RF Preference Share; and

9.1.2. without obtaining the prior approval of the Ordinary Shareholder, have the power to issue to the Holder of the RF Preference Share any of the Shares contemplated in clause 9.1.1 whenever the Company is obliged to issue any Shares to the Holder of the RF Preference Share so as to give effect to the rights of the Holder of the RF Preference Share under any of the Transaction Documents.

9.2. The Company must not issue any Shares or register the transfer of any Shares unless the issue or transfer is made in accordance with the Companies Act and this MOI.

9.3. Subject to clause 5, the Board may issue capitalisation Shares or offer a cash payment in lieu of awarding a capitalisation Share in accordance with section 47.

9.4. Any approval in terms of this clause 9 by Special Resolution or Ordinary Resolution may be in the form of a general authority to the Board, whether conditional or unconditional, in their sole discretion or in the form of a specific authority in respect of any particular allotment or issue of such Securities. Such authority shall endure for the period provided in the Ordinary Resolution or Special Resolution in question but may be revoked by Ordinary Resolution or Special Resolution, as the case may be, at any time.

10. **CERTIFICATES EVIDENCING ISSUED SECURITIES**

- 10.1. Subject to clause 10.2, the Securities issued by the Company shall either be certificated (that is, evidenced by certificates) or uncertificated in which case the Company must not issue certificates evidencing or purporting to evidence title to those Securities.
- 10.2. The Ordinary Share contemplated in clause 8.2.3.2 shall be issued in certificated form such that the Holder thereof holds such Ordinary Share both as registered Holder and beneficial owner, subject however to the condition that the certificate in respect of that Ordinary Share will be lodged with the Holder of the Preference Shares in accordance with the provisions of the Finance Documents so as to be held by it until the Preference Share Funding has been settled in full and thereafter, if the Empowerment Period has not expired, such share certificate shall be released by the Holder of the Preference Shares to the Holder of the RF Preference Share to be held by it until the end of the Empowerment Period.
- 10.3. Subject to clause 10.2, if the Ordinary Shareholder requires its Ordinary Share to be held in uncertificated form then the Ordinary Shareholder shall still be obliged to hold such Share as both registered Holder and beneficial owner. After receiving a notice from the Ordinary Shareholder that it wishes to withdraw its Ordinary Share held by it in a certificated Securities register, and hold such Ordinary Share in an uncertificated form, the Company must:
- 10.3.1. immediately enter the relevant Person's name and details of that Person's holding of Securities in the Securities Register and indicate on the Securities Register that the Securities so withdrawn are no longer held in certificated form; and
- 10.3.2. within 10 (ten) Business Days:
- 10.3.2.1. prepare and Deliver to the Holder of the Preference Shares under the Finance Documents such documents as may be necessary confirming that the Ordinary Shareholder is both the registered Holder and beneficial owner in respect of that Ordinary Share, and that the pledge of such Ordinary Share in favour of the Holder of the Preference Shares has been duly noted; and
- 10.3.2.2. may charge the Holder a reasonable fee to cover the actual costs of the withdrawal of the certificate and the recordal of the holding of the relevant Securities as being held in an uncertificated form.

10.4. As soon as practicable after:

10.4.1. issuing any Securities the Company must enter or cause to be entered in its Securities Register the total number of those Securities that are held in uncertificated form, and in respect of every class of Securities evidenced by certificates that it has issued:

10.4.1.1. the names and addresses and identity numbers of the Persons to whom the Securities were issued (and note therein any changes to these details forthwith after receipt of Written notice from the Holder of such changes);

10.4.1.2. those Persons' Electronic Addresses who have furnished them;

10.4.1.3. the number and class of Securities issued to each of them, the date of issue, distinguishing numbers and the consideration;

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

10.4.1.5. 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;

10.4.1.6. the number of, and prescribed circumstances relating to, any Securities:

10.4.1.6.1. that have been placed in trust as contemplated in section 40(6)(d) by reason of not having been fully paid for; or

10.4.1.6.2. whose transfer has been restricted;

10.4.2. 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:

10.4.2.1. the date on which the Securities were re-acquired or surrendered to the Company;

10.4.2.2. the distinguishing number or numbers of any certificated Securities re-acquired or surrendered to the Company;

- 10.4.2.3. the consideration for which the Securities were re-acquired by, or surrendered to the Company; and
 - 10.4.2.4. the name of the Person from or by whom the Securities were re-acquired or surrendered, as the case may be;
 - 10.4.3. 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:
 - 10.4.3.1. the name and address of the transferee;
 - 10.4.3.2. the description of the Securities, or interest transferred;
 - 10.4.3.3. the date of the transfer;
 - 10.4.3.4. 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
 - 10.4.3.5. any other information contemplated in clause 10.4.1, any reference to issue being read as a reference to transfer,
provided that such entry may only be made if the transfer:
 - 10.4.3.6. is evidenced by a proper instrument of transfer that has been delivered to the Company; or
 - 10.4.3.7. was effected by operation of law;
 - 10.4.4. any other information prescribed in terms of the Companies Act from time to time.
- 10.5. If the Company has uncertificated Securities at any time it shall comply with the provisions of sections 52 and 53 and in particular shall enter or cause to be entered in its Securities Register the total number of such uncertificated Securities from time to time.
- 10.6. Securities certificates shall be issued in such manner and form as the Board shall from time to time prescribe, save that they must state on the face:-
 - 10.6.1. the name of the Company;

- 10.6.2. the name of the Person to whom the Securities were issued;
 - 10.6.3. the number and class of Shares and the designation of the series, if any, evidenced by that certificate; and
 - 10.6.4. any restriction on the transfer of the Securities evidenced by that certificate.
- 10.7. Every certificate for Securities must be signed by either two Directors or one Director and the company secretary, all such Persons having been authorised by the Board, by autographic, mechanical or electronic means.
- 10.8. Each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.
- 10.9. Each Holder shall be entitled to 1 (one) certificate for all the Securities of a particular class registered in its name, or to several certificates, each for a part of such Securities.
- 10.10. 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 Board thinks fit, and (in case of defacement) on delivery of the old certificate to the Company.

11. **SECURITIES REGISTER**

- 11.1. The Company will maintain a Securities Register and must enter or cause to be entered in its Securities Register all information prescribed in terms of the Companies Act from time to time.
- 11.2. A Person:-
- 11.2.1. 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
 - 11.2.2. 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.

12. **REPURCHASES OF SECURITIES**

Subject to clause 5, the Company is authorised to repurchase Securities subject to compliance with the Companies Act.

13. **TRANSFER OF SECURITIES AND RESTRICTIONS ON DISPOSALS AND ENCUMBRANCES OF ANY SHARES**

13.1. There shall be no pre-emptive rights attaching to any class of Shares on transfers of such Shares.

13.2. Until the expiry of the Empowerment Period:-

13.2.1. the Ordinary Shareholder may not Dispose of its Ordinary Share or any rights or interest therein, without the prior written approval of the Holder of the RF Preference Share and the Holder of the Preference Shares which have not been redeemed;

13.2.2. the Company will not permit a Disposal of an Ordinary Share which is inconsistent with the provisions of this MOI.

13.3. The Holder of the RF Preference Share shall be entitled to freely transfer the RF Preference Share to any person.

13.4. The Holder of the Preference Shares shall be entitled to freely transfer the Preference Shares to any person.

13.5. The holder of the A Ordinary Share shall be entitled to freely transfer the A Ordinary Share to any person.

13.6. The holder of the B Ordinary Share shall be entitled to freely transfer the B Ordinary Share to any person.

13.7. The transferor of any Security shall be deemed to remain the Holder of such Security until the name of the transferee is entered into the Securities Register in respect thereof as contemplated in clause 11.2.

13.8. Subject to clauses 5, 9, 13 and 32, the Company must enter in its Securities Register every transfer of any Securities, including in the entry:-

13.8.1. the name and address of the transferee;

- 13.8.2. the description of the Securities, or interest transferred;
- 13.8.3. the date of the transfer; and
- 13.8.4. 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 it has not been fully paid,

provided that such entry may be made only if the transfer is in accordance with the provisions of this MOI and is evidenced by a proper instrument of transfer that has been delivered to the Company.

- 13.9. Subject to clause 13.2, all authorities to sign transfer deeds granted by Holders for the purpose of transferring Securities that may be lodged, produced or exhibited with or to the Company at any of its transfer offices shall as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in Writing of the revocation of the same shall have been given and lodged at the Company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices the Company shall be entitled to give effect to any instruments signed under the authority to sign, and certified by any officer of the Company, as being in order before the giving and lodging of such notice.

14. **PROHIBITION REGARDING BENEFICIAL INTERESTS**

For as long as the provisions of clause 5 are still of full force and effect the Company shall not permit Securities to be held by one Person for the Beneficial Interest of another.

15. **ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

- 15.1. The Company shall maintain the necessary Accounting Records which shall be kept at its Registered Office.
- 15.2. The Company shall have its annual Financial Statements audited.
- 15.3. For the duration of the Empowerment Period, the Company shall prepare its Financial Statements in accordance with Sasol's accounting policies from time to time and the Companies Act.
- 15.4. The Company shall notify the Holders of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial

Statements. If a Holder demands a copy of the annual Financial Statements, the Company shall make same available to such Holder free of charge. The Company may provide any Person with a summary of any particular Financial Statements in accordance with section 29(3).

15.5. The Board shall from time to time determine at what times and places (save in the case of Accounting Records which shall be kept at the Company's Registered Office) and under what conditions, subject to the requirements of the Companies Act and the Regulations, the Shareholders are entitled to inspect and take copies of the records referred to in section 26(1).

15.6. No Person, including Shareholders, shall be entitled to access any information of the Company, save as contemplated in the Companies Act or other relevant legislation.

16. **AUDITOR**

16.1. The Company shall appoint an Auditor at its Annual General Meeting provided that:

16.1.1. for the duration of the Empowerment Period, the Auditor shall be one of Sasol's auditors;

16.1.2. subject to clause 16.1.1, if an Annual General Meeting does not appoint or reappoint an Auditor, the Board must fill the vacancy in the office in terms of the procedure contemplated in section 91 within 40 (forty) Business Days after the date of the Annual General Meeting. A retiring Auditor may be automatically re-appointed at an Annual General Meeting without any resolution being passed, unless:

16.1.2.1. the retiring Auditor is:

16.1.2.1.1. no longer qualified for appointment;

16.1.2.1.2. no longer willing to accept the appointment, and has so notified the Company; or

16.1.2.1.3. required to cease serving as Auditor, in terms of section 92;

16.1.2.2. the Audit committee objects to the re-appointment; or

- 16.1.2.3. the Company has received notice of an intended resolution to appoint some other Person or Persons in place of the retiring Auditor.
- 16.2. Any firm of auditors appointed by the Company as the Auditor shall ensure that the Individual responsible for performing the Audit must comply with the requirements of section 90(2), provided that:
 - 16.2.1. the same Individual may not serve as the Auditor or designated Auditor for more than 5 (five) consecutive financial years;
 - 16.2.2. if an Individual has served as the Auditor or designated Auditor for 2 (two) or more consecutive financial years and then ceases to be the Auditor or designated Auditor, the Individual may not be appointed again as the Auditor or designated Auditor until after the expiry of at least 2 (two) further financial years.
- 16.3. Subject to clause 16.1.1, nothing precludes the election by the Company at its Annual General Meeting of an Auditor other than one nominated by the Audit committee, but if such an Auditor is elected, the appointment is valid only if the Audit committee is satisfied that the proposed Auditor is independent of the Company.
- 16.4. In considering whether, for the purposes of this clause 16, a Registered Auditor is independent of the Company, the Audit committee must:
 - 16.4.1. ascertain that the Auditor does not receive any direct or indirect remuneration or other benefit from the Company, except:
 - 16.4.1.1. as Auditor; or
 - 16.4.1.2. for rendering other services to the Company, to the extent permitted in terms of the Companies Act;
 - 16.4.2. consider whether the Auditor's independence may have been prejudiced:
 - 16.4.2.1. as a result of any previous appointment as Auditor; or
 - 16.4.2.2. having regard to the extent of any consultancy, advisory or other work undertaken by the Auditor for the Company; and

16.4.2.3. consider compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act,

in relation to the Company, and if the Company is a member of a group of companies, any other company within that group.

16.5. The Auditor:

16.5.1. has the right of access at all times to the accounting records and all books and documents of the Company, and is entitled to require from the Board or Prescribed Officers any information and explanations necessary for the performance of the Auditor's duties;

16.5.2. if the Company is a Holding Company, has the right of access to all current and former financial statements of any Subsidiary and is entitled to require from the Board or Prescribed Officers of the Company or Subsidiary any information and explanations in connection with any such statements and in connection with the Accounting Records, books and documents of the Subsidiary as necessary for the performance of the Auditor's duties; and

16.5.3. is entitled to:

16.5.3.1. attend any Shareholders Meeting;

16.5.3.2. receive all notices of and other communications relating to any Shareholders Meeting; and

16.5.3.3. be heard at any Shareholders Meeting on any part of the business of the meeting that concerns the Auditor's duties or functions;

16.5.3.4. may not perform any services for the Company:

16.5.3.4.1. that would place the Auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act; or

16.5.3.4.2. as may be prescribed by the Audit committee in terms of section 94(7)(d).

- 16.6. If a vacancy arises in the office of Auditor, the Board, subject to clause 16.1.1:
- 16.6.1. must appoint a new Auditor within 40 (forty) Business Days, if there was only 1 (one) incumbent Auditor; and
 - 16.6.2. may appoint a new Auditor at any time, if there was more than 1 (one) incumbent, but while any such vacancy continues, the surviving or continuing Auditor may act as Auditor of the Company.

If, by comparison with the membership of a firm at the time of its latest appointment, less than $\frac{1}{2}$ (one half) of the members remain after a change in the composition of the members, that change constitutes the resignation of the firm as Auditor of the Company, giving rise to a vacancy.

- 16.7. Subject to clause 16.1.1, before making an appointment in terms of clause 21.6 the Board:
- 16.7.1. must propose to the Audit committee, within 15 (fifteen) Business Days after the vacancy occurs, the name of at least one Registered Auditor to be considered for appointment as the new Auditor; and
 - 16.7.2. may proceed to make an appointment of a Person proposed in terms of clause 16.7.1 if, within 5 (five) Business Days after delivering the proposal, the Audit committee does not give notice in Writing to the Board rejecting the proposed auditor.
- 16.8. The Auditor may resign from office by giving the Company 1 (one) month's Written notice or less than that with the prior Written approval of the Board.
- 16.9. If the Auditor is removed from office by the Board, the Auditor may, by giving Written notice to that effect to the Company by not later than the end of the financial year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that financial year, not exceeding a reasonable length, setting out the Auditor's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.

16.10. For as long as the Auditors of Company are appointed in accordance with the provisions of clause 16.1.1, Sasol shall bear the costs of the Auditors.

17. **FINANCIAL YEAR END**

For the duration of the Empowerment Period, the financial year end of the Company shall be the same as that of Sasol. After the end of the Empowerment Period the financial year end of the Company shall be 30 June.

18. **PERFORMANCE BY SASOL OF ADMINISTRATIVE FUNCTIONS**

18.1. It is recorded that Sasol has, in terms of the Relationship Agreement, been appointed as the administrative agent of the Company.

18.2. The Company shall use a portion contemplated in clause 30.2.2 of the Distributions, if any, to pay for its administrative costs. To the extent that any Distributions received by the Company are insufficient to cover such costs, the shortfall, but only to the extent that such costs are reasonable, shall be funded by Sasol but only up to the end of the Empowerment Period. For purposes hereof the Company shall prepare an annual budget and shall be obliged to submit such budget to Sasol within 3 (three) Business Days of such budget being finalised.

18.3. Sasol shall be entitled to use all such information obtained by it in its capacity as administrative agent not only to fulfil its obligations under the Relationship Agreement but also for its own purposes relating to this MOI, unrelated to its functions as administrative agent.

19. **SHAREHOLDERS MEETINGS**

19.1. Convening or Holding of Shareholders Meetings

19.1.1. The Company shall convene an Annual General Meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous Annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted:-

19.1.1.1. presentation of:-

19.1.1.1.1. the Directors' report;

- 19.1.1.1.2. Audited Financial Statements for the immediately preceding financial year;
 - 19.1.1.1.3. an Audit committee report;
 - 19.1.1.2. election of Directors, to the extent required by the Companies Act or this MOI;
 - 19.1.1.3. appointment of:-
 - 19.1.1.3.1. an Auditor for the ensuing year;
 - 19.1.1.3.2. an Audit committee;
 - 19.1.1.4. any matters raised by Holders for debate, with or without advance notice to the Company.
- 19.2. The Company shall, as determined by the Board, either:
 - 19.2.1. hold a Shareholders Meeting in order to consider one or more resolutions; or
 - 19.2.2. as regards such resolution/s that are permitted to be voted on by Round Robin Resolution instead require them to be dealt with by Round Robin Resolution.
- 19.3. Within 10 (ten) Business Days after a Round Robin Resolution is adopted, the Company must Deliver a statement describing the results of the vote to every Holder who was entitled to vote on or consent to the Round Robin Resolution.
- 19.4. The Company must hold a Shareholders Meeting or put the proposed resolution by way of a Round Robin Resolution:-
 - 19.4.1. at any time that the Board is required by the Companies Act or this MOI to refer a matter to Holders entitled to vote for decision;
 - 19.4.2. whenever required to fill a vacancy on the Board other than in accordance with clause 21.3.1.
- 19.5. Each resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information / explanatory material to enable a Person who is entitled to vote on the resolution to determine whether to participate in the Shareholders Meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been

approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing.

- 19.6. The Board or the company secretary or if there are insufficient Directors in South Africa capable of acting to form a quorum, any Director or the Ordinary Shareholder or the Holder of the RF Preference Share or Holder of the B Ordinary Share, may, whenever he/she/it thinks fit, convene a Shareholders Meeting or put the proposed resolution by way of a Round Robin Resolution.
- 19.7. A Shareholders Meeting must be convened or the Board must put the proposed resolution by way of a Round Robin Resolution if:-
 - 19.7.1. one or more Written and signed demands for such a Shareholders Meeting or Round Robin Resolution is/are delivered to the Company, and
 - 19.7.2. each such demand describes the specific purpose for which the Shareholders Meeting or Round Robin Resolution is proposed; and
 - 19.7.3. in aggregate, demands for substantially the same purpose are made and signed by the Holders at the earliest time specified in any of those demands, of at least 10% (ten per cent) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the Shareholders Meeting or Round Robin Resolution.
- 19.8. Round Robin Resolutions will be passed if signed 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.
- 19.9. Every Shareholders Meeting shall be held where the Board determines from time to time. The authority of the Company to conduct a Shareholders Meeting entirely by Electronic Communication, or to provide for participation in a Shareholders Meeting by Electronic Communication so long as the Electronic Communication employed ordinarily enables all Persons participating in that Shareholders Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Shareholders Meeting, as set out in section 63(2), is not limited or restricted.
- 19.10. Shareholders entitled to request that a resolution be proposed shall, unless the Company agrees otherwise in Writing to bear those costs itself, bear the cost of any notice furnished to Shareholders in relation to that resolution as well as the costs of holding a meeting which is specially convened to consider such resolution.

19.11. Notice of Shareholders Meetings

- 19.11.1. A Shareholders Meeting shall be called by at least 15 (fifteen) Business Days' notice Delivered by the Company to all Shareholders entitled to vote or otherwise entitled to receive notice.
- 19.11.2. The Company may call a meeting with less notice than required in clause 19.11.1, but such a meeting may proceed only if every person who is entitled to Exercise Voting Rights in respect of any item on the meeting agenda:-
- 19.11.2.1. is Present at the Shareholders Meeting; and
- 19.11.2.2. votes to waive the required minimum notice of the Shareholders Meeting.
- 19.11.3. A Holder entitled to vote, who is Present at a Shareholders Meeting:-
- 19.11.3.1. is regarded as having received or waived notice of the Shareholders Meeting if at least the required minimum notice was given;
- 19.11.3.2. has a right to:-
- 19.11.3.2.1. allege a Material defect in the form of notice for a particular item on the agenda for the Shareholders Meeting; and
- 19.11.3.2.2. participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice; and
- 19.11.3.3. except to the extent set out in clause 19.11.3.2 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholders Meeting.
- 19.11.4. A notice of a Shareholders Meeting must be in Writing, in plain language and must include:-
- 19.11.4.1. the date, time and place for the Shareholders Meeting, and the Record Date for the Shareholders Meeting;

- 19.11.4.2. the general purpose of the Shareholders Meeting, and any specific purpose contemplated in clause 19.18.2, if applicable;
- 19.11.4.3. in case of an Annual General Meeting a summarised form of the Audited Financial Statements to be presented and directions for obtaining a copy of such complete Audited Financial Statements;
- 19.11.4.4. a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Shareholders Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;
- 19.11.4.5. a reasonably prominent statement that:-
 - 19.11.4.5.1. a Holder entitled to attend and vote at the Shareholders Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Shareholders Meeting in the place of the Holder entitled to vote;
 - 19.11.4.5.2. a proxy need not be a Holder;
 - 19.11.4.5.3. a Holder entitled to vote may only appoint 1 (one) proxy and 1 (one) alternate to that proxy to Exercise Voting Rights attached to different Securities held by that Holder entitled to vote in respect of any Shareholders Meeting and may only appoint 1 (one) proxy and 1 (one) alternate to that proxy to Exercise Voting Rights attached to different Securities held by the Holder which entitle him/it to vote;
 - 19.11.4.5.4. the proxy may delegate the authority granted to him/it as proxy to 1 (one) other person, subject to any restriction in the proxy itself;
 - 19.11.4.5.5. participants in a Shareholders Meeting are required to furnish satisfactory identification in terms of section 63(1) in order to reasonably satisfy the Person presiding at the Shareholders Meeting that

the right of that Person to participate and vote, either as a Shareholder, or as a proxy for a Shareholder has been reasonable verified;

19.11.4.5.6. participation in the Shareholders Meeting by Electronic Communication is available, and provide any necessary information to enable Holders entitled to vote or their proxies to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Holder entitled to vote or proxy, except to the extent that the Company determines otherwise.

19.11.5. A Shareholders Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 19.11.6, only if every Person who is entitled to Exercise Voting Rights in respect of each item on the agenda of the Shareholders Meeting is present at the Shareholders Meeting and votes to approve the ratification of the defective notice.

19.11.6. If a Material defect in the form or manner of giving notice of a Shareholders Meeting relates only to one or more particular matters on the agenda for the Shareholders Meeting:-

19.11.6.1. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and

19.11.6.2. the Shareholders Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified in terms of clause 19.11.5.

19.11.7. An immaterial defect in the form or manner of Delivering notice of a Shareholders Meeting, or an accidental or inadvertent failure in the Delivery of the notice to any particular Holder to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Shareholders Meeting.

19.12. Notices to Holders

- 19.12.1. The Company may give notices, documents, records or statements by personal Delivery to the Holders. The Company must give notice of availability of a document, record or statement to the Holder either to its last known Delivery address or last Electronic Address.
- 19.12.2. Any notice required to be given by the Company to the Holders, and in respect of which the Companies Act does not expressly prohibit the provisions of this clause 19.12.2 from applying, shall be sufficiently given by posting it on the Company's web site until at least the date when the event to which the notice refers occurs, provided that the Company gives a notice similar to a notice of availability in the manner contemplated in clause 19.12.1.
- 19.12.3. Any Holder who/which has furnished an Electronic Address to the Company, by doing so:-
- 19.12.3.1. authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to him/her/it; and
- 19.12.3.2. confirms that same can conveniently be printed by the Holder within a reasonable time and at a reasonable cost.
- 19.12.4. A Holder or Person entitled to Securities shall be bound by every notice in respect of the Securities Delivered to the Person who was, at the date on which that notice was Delivered, shown in the Securities Register or established to the satisfaction of the Board (as the case may be) as the Holder of or Person entitled to the Securities, notwithstanding that the Holder or Person entitled to Securities may then have been or become otherwise incapable of acting in respect of the Securities, and notwithstanding any transfer of the Securities was not registered at that date. The Company shall not be bound to enter any Person in the Securities Register as entitled to any Securities until that Person gives the Company an address for entry on the Securities Register.
- 19.12.5. The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed Delivery, but if the Company does use such a method, the notice,

document, record or statement or notice of availability of the foregoing shall be deemed to be Delivered on the day determined in accordance with the Regulations (which is included as **Schedule 3** for ease of reference but which does not form part of this MOI for purposes of interpretation). In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with clause 2 (*Calculation of Business Days*)), the provisions of clause 2 (*Calculation of Business Days*) shall also be applied.

19.13. Signature of an Electronic Communication by a Holder

As regards the signature of an Electronic Communication by a Holder, it shall be in such form as the Board may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Board, it shall be constituted by the Holder indicating in the Electronic Communication that it is the Holder's intention to use the Electronic Communication as the medium to indicate the Holder's approval of the information in, or the Holder's signature of the document in or attached to, the Electronic Communication which contains the name of the Holder sending it in the body of the Electronic Communication.

19.14. Quorum at Shareholders Meetings

The provisions of section 64 of the Companies Act shall apply for purposes of constituting a quorum for any Shareholders Meetings.

19.15. Postponement / Adjournment

A Shareholders Meeting, or the consideration of any matter being debated at the Shareholders Meeting, may be adjourned from time to time by the Chairman without further notice. Any such adjournment as well as any other adjournment shall be to the next Business Day.

19.16. Chairman of Shareholders Meetings

19.16.1. The Chairman, if any, of the Board shall preside as Chairman at every Shareholders Meeting.

19.16.2. If there is no such Chairman, or if at any Shareholders Meeting the Chairman is not present within 15 (fifteen) minutes after the time appointed for holding the Shareholders Meeting or is unwilling to act as Chairman:-

19.16.2.1. the Directors present shall select a Director present at the Shareholders Meeting; or

19.16.2.2. if no Director is present at the Shareholders Meeting as contemplated in clause 19.16.2.1, or if all the Directors present decline to take the chair, the Persons entitled to vote shall select one of their number which is Present to be Chairman of the Shareholders Meeting.

19.17. Voting

19.17.1. At any Shareholders Meeting a resolution put to the vote may be decided either on a show of hands or by polling. The Chairman of the meeting shall, before voting on a particular matter is to begin, determine whether voting shall be by poll or on a show of hands.

19.17.2. Despite any other provision of this MOI, a poll must be taken if demanded by any Person entitled to vote at the Shareholders Meeting and, unless a poll is so demanded, a declaration by the Chairman that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the Shareholders Meeting or adjourned Shareholders Meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such Shareholders Meeting shall be valid for all purposes. Any such objection shall be referred to the Chairman of the Shareholders Meeting, whose decision shall be final and conclusive.

19.17.3. If a poll is duly demanded it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the Shareholders Meeting at which the poll was demanded. The demand for a poll shall not prevent the continuation of a Shareholders Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn. Scrutineers may be appointed by the Chairman to declare the result of a poll and, if appointed, their decision, which shall be given by the Chairman of the Shareholders Meeting, shall be deemed to be the resolution of the Shareholders Meeting at which the

poll is demanded. If scrutineers are not appointed, the decision by the Chairman shall be deemed to be the resolution of the Shareholders Meeting.

- 19.17.4. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the Shareholders Meeting shall not be entitled to a second or casting vote and the resolution shall fail. Any such failure or deadlock shall not constitute a ground for the winding up of the Company.
- 19.17.5. The demand for a poll shall not prevent the continuation of a Shareholders Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.
- 19.17.6. Every resolution of Shareholders is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of more than 50% (fifty per cent) of the Voting Rights Exercised on the resolution. A Special Resolution, save to the extent expressly provided in respect of any particular matter contemplated in this MOI, shall require to be adopted with the support of at least 75% (seventy five per cent) of the Voting Rights Exercised on the resolution.
- 19.17.7. Subject to any restrictions attaching to any class or classes of Securities on a show of hands a Person entitled to vote Present at the Meeting shall have only 1 (one) vote, irrespective of the number of Voting Rights that Person would otherwise be entitled to Exercise. A proxy shall irrespective of the number of Holders of Securities entitled to vote he represents have only 1 (one) vote on a show of hands. On a poll every Person entitled to vote who is Present at the Meeting shall have the number of votes determined in accordance with the Voting Rights associated with the Securities in question.
- 19.17.8. On a poll every Person entitled to vote who is Present at the Meeting shall have the number of votes determined in accordance with the Voting Rights associated with his/her/its Securities.

19.18. Proxies

- 19.18.1. No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed, unless the proxy itself provides for a longer or shorter duration. The appointment of a proxy is revocable unless the proxy

appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company. The appointment is suspended at any time and to the extent that the Holder entitled to vote chooses to act directly and in person in the Exercise of any Voting Rights.

- 19.18.2. The form appointing a proxy and the power of attorney or other authority under which it is signed, or a notarially certified copy of such power of attorney or authority, shall be delivered to the Company or any Person which it has identified in the notice of meeting as being a Person to whom proxies may be Delivered on behalf of the Company at least 24 (twenty four) hours prior to the time scheduled for the commencement of the Shareholders Meeting, excluding Saturdays, Sundays and public holidays, or before the relevant resolution on which the proxy is to vote, is considered at the Shareholders Meeting (including an adjourned Shareholders Meeting).
- 19.18.3. A vote given in accordance with the terms of a proxy shall be valid notwithstanding the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Securities in respect of which the proxy is given, provided that no intimation in writing of such revocation or transfer as aforesaid shall have been received by the Company at its Registered Office before the commencement of the Shareholders Meeting or adjourned Shareholders Meeting at which the proxy was used.
- 19.18.4. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any form permitted by the Companies Act. The Company may supply a generally available standard form of proxy upon request by a Holder entitled to vote in which case the Holder shall be obliged to use such form of proxy.
- 19.18.5. If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any resolution, the proxy may vote or abstain from voting as he/she/it sees fit.

20. **RECORD DATE**

- 20.1. The Board shall determine the Record Date in accordance with the applicable provisions of the Companies Act.

20.2. If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is:

20.2.1. in the case of a Shareholders Meeting, the latest date by which the Company is required to Deliver to Holders entitled to vote, notice of that Shareholders Meeting; or

20.2.2. in the case of dividends a date subsequent to the declaration date or confirmation of the dividend, whichever is the later;

20.2.3. the date of the action or event, in any other case.

20.3. The Company must publish a notice of a Record Date by:

20.3.1. Delivering a copy to each Holder;

20.3.2. posting a conspicuous copy of the notice:

20.3.2.1. at its principal office; and

20.3.2.2. on its web-site, if it has one.

21. **DIRECTORS, ELECTION AND VACANCIES**

21.1. Number of Directors

The minimum number of Directors shall be 3 (three) and the maximum number of Directors shall be 7 (seven). Any failure by the Company at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.

21.2. Election of Directors

21.2.1. Save for the first Directors of the Company, during the Empowerment Period:

21.2.1.1. the majority of the Directors shall be Black People;

21.2.1.2. at least 40% (forty per cent) of the Directors shall be Black women;

21.2.1.3. all the Directors shall be independent of Sasol and non-executive Directors.

- 21.2.2. During the Empowerment Period the Ordinary Shareholder shall be obliged to elect as Directors of the Company the same Persons who are members of the board of directors of Sasol Khanyisa.
- 21.2.3. Those Directors of the Company who are also directors of Sasol Khanyisa and who retire as directors of Sasol Khanyisa shall be deemed to have also retired as Directors of the Company at the same time as they retire as directors of Sasol Khanyisa.
- 21.2.4. A retiring Director shall act as a Director throughout the Meeting at which he retires. The length of time a Director has been in office shall be computed from the date of his last election. Retiring Directors shall be automatically re-elected as Directors of the Company if they are re-elected as directors of Sasol Khanyisa.
- 21.2.5. The Holder of the RF Preference Share, the Holder of the Preference Shares and the Holder of the B Ordinary Share shall each be entitled, by giving Written notice thereof to the Company, to each nominate 1 (one) observer to the Board. The observer/s shall be entitled to:
- 21.2.5.1. receive notice, including all documentation, sent to the Board, of all meetings of the Board;
 - 21.2.5.2. attend at all meetings of the Board;
 - 21.2.5.3. receive Written notice, including all documentation, sent to the Board, of all Round Robin Resolutions proposed,
- but shall not be entitled to vote at any such Board meetings or in respect of Round Robin Resolutions. The observer/s shall be entitled to report to the Holder of the RF Preference Share, the Holder of the Preference Shares and the Holder of the B Ordinary Share that nominated him/her.
- 21.2.6. Subject to clause 21.2.1, there are no general qualifications prescribed by the Company for a Person to serve as a Director in addition to the requirements of the Companies Act.
- 21.2.7. There shall be no Alternate Directors.

- 21.2.8. No Person shall be appointed or elected as a Director, if he is Ineligible or Disqualified and any such appointment or election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected as a Director nor act as a Director. A Person placed under probation by a court must not serve as a Director unless the order of court so permits.
- 21.2.9. No appointment or election of a Director shall take effect until he/she has delivered to the Company a Written consent to serve as a Director.
- 21.2.10. All acts performed by a meeting of the Board or Board committee, or by a Person acting as a Director, shall, notwithstanding the fact that it shall afterwards be discovered that there was some defect in the election of such Directors or Person acting as Director be as valid as if every such Person had been duly elected as a Director.

21.3. Vacancies on the Board

- 21.3.1. Any vacancy occurring on the Board by reason of any Director ceasing to be a director of Sasol Khanyisa may be filled on a temporary basis by the Board as contemplated in section 68(3) with the same person who is filling the vacancy on the Sasol Khanyisa board.
- 21.3.2. Such person shall have all of the powers, functions and duties and is subject to all of the liabilities of any other Director.
- 21.3.3. The continuing Directors (or sole continuing Director) may act notwithstanding any vacancy on the Board, but, if and so long as their number is reduced below the minimum number provided in this MOI, the continuing Directors or Director may act for the purpose of summoning a Shareholders Meeting.
- 21.3.4. If there is no Director able and willing to act, then any Shareholder entitled to Exercise Voting Rights in the election of a Director or the Holder of the RF Preference Share or the Holder of the Preference Shares may convene a Shareholders Meeting for the purpose of electing Directors.

21.4. Chairman

- 21.4.1. The chairman of the board of Sasol Khanyisa will be the Chairman of the Board, but if at any meeting the Chairman is not present within 30 (thirty) minutes after

the time appointed for holding it, the Directors present may choose one of their number to be Chairman of the meeting.

- 21.4.2. The Chairman of a Board meeting shall, subject to the Companies Act and this MOI and any decision of the Board, determine the procedure to be followed at that meeting. Notwithstanding the provisions of section 73(5)(e) of the Companies Act, the Chairman shall not have a second or casting vote in addition to his deliberative vote (if any) at such a Board meeting.

22. **DIRECTOR CEASING TO HOLD OFFICE**

22.1. A Director shall cease (without any claims against the Company) to hold office as such:

- 22.1.1. in accordance with the Companies Act;
- 22.1.2. if he/she ceases to be a director of Sasol Khanyisa;
- 22.1.3. if he/she causes the Company to breach the Restrictive Conditions and/or does or omits to do anything which would result in the Company breaching any of the Restrictive Conditions;
- 22.1.4. when he/she resigns by Written notice to the Company;
- 22.1.5. he/she files a petition for the surrender of his/her estate or an application for an administration order, or if he/she commits an act of insolvency as defined in the insolvency law for the time being in force, or if he/she makes any arrangement or composition with his/her creditors generally;
- 22.1.6. he/she is absent from two consecutive meetings of the Board, without leave of the Board and the Board resolves that the office be vacated.

22.2. Pending the date upon which the cessation of office as a Director takes effect and during the period of his/her suspension, if applicable:

- 22.2.1. he/she will not be entitled to receive notices of meetings of the Directors, nor to attend any meetings of the Directors and shall not have authority to act as a Director;
- 22.2.2. the requirement for a quorum set out in clause 27.3 shall be reduced by 1 (one) Director.

23. **REMUNERATION OF DIRECTORS AND MEMBERS OF BOARD AND STATUTORY COMMITTEES**

23.1. The Directors or members of Board or statutory committees shall not be entitled to be paid by the Company remuneration for their services as Directors or members of Board or statutory committees.

23.2. In addition, the Directors or members of Board committees or statutory committees shall not be entitled to be reimbursed by the Company for any expenses incurred in travelling to and from meetings of the Board, the Shareholders meetings and meetings of Board committees or statutory committees, as the case may be.

24. **GENERAL POWERS AND DUTIES OF DIRECTORS**

24.1. The powers of management granted to the Board in terms of section 66(1) are limited in terms of clause 5.

24.2. A Director may not appoint a proxy.

25. **COMMITTEES**

25.1. Audit committee

25.1.1. For as long the Company is a Subsidiary of the Ordinary Shareholder, the Audit committee of the Ordinary Shareholder will be the Audit committee of the Company and perform the functions required in terms of the Companies Act on behalf of the Company.

25.1.2. The Holder of the RF Preference Share, the Holder of the Preference Shares and the Holder of the B Ordinary Share shall each be entitled, by giving Written notice thereof to the Company, to send 1 (one) observer to the Audit committee. The observer/s shall be entitled to:

25.1.2.1. receive notice, including all documentation, sent to all members of the Audit committee;

25.1.2.2. attend at all meetings of the Audit committee; and

25.1.2.3. report to the Holder of the RF Preference Share, the Holder of the Preference Shares and the Holder of the B Ordinary Share that nominated him/her on the proceedings of the Audit committee.

25.2. Social and Ethics Committee

The social and ethics committee of the Ordinary Shareholder will be the social and ethics committee of the Company and perform the functions required in terms of the Companies Act on behalf of the Company.

25.3. Other committees:

Other than the social and ethics committee, the Board may not appoint any other Board committees.

26. **PERSONAL FINANCIAL INTERESTS OF DIRECTORS**

26.1. For the purposes of this clause:-

26.1.1. "Director" includes a Prescribed Officer, and a person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board.

26.1.2. "Related Person" when used in reference to a Director, has the meaning set out in section 1 but also includes a second company of which the Director or a Related Person is also a director, or a close corporation of which the Director or a Related Person is also a member;

26.2. This clause shall not apply to a Director in respect of a decision that may generally affect:-

26.2.1. all of the Directors in their capacity as Directors, but in that case all the Directors shall act in accordance with and as if section 75(3) were applicable unless the Directors are acting pursuant to an authorisation given by the Holders for the Directors to make a decision within certain thresholds, relating to their capacity as Directors; or

26.2.2. a class of Persons, despite the fact that the Director is one member of that class of Persons, unless the only members of the class are the Director or Persons Related or Inter-Related to the Director. In such event the Director shall be treated as not having a Personal Financial Interest, unless the class is predominantly made up of Directors and Persons Related or Inter-Related to such Directors and in the circumstances the conflict of the Director requires the provisions of this clause 26.2 to apply.

26.3. If a Person is the only Director, but does not hold all of the issued Securities of the Company, that Person may not:-

26.3.1. approve or enter into any agreement in which the Person or a Related Person has a Personal Financial Interest; or

26.3.2. as a Director, determine any other matter in which the Person or a Related Person has a Personal Financial Interest,

unless the agreement or determination is approved by an Ordinary Resolution after the Director has disclosed the nature and extent of that Personal Financial Interest to those entitled to vote on such Ordinary Resolution.

26.4. At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board, or Holders (while the circumstances contemplated in clause 26.3 prevail), a notice in Writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.

26.5. If, in the reasonable view of the other non conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.

26.6. If a Director (while the circumstances contemplated in clause 26.3 are not applicable), has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board, or Knows that a Related Person has a Personal Financial Interest in the matter, the Director must comply with the requirements set out in section 75(5).

26.7. If a Director acquires a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, or Knows that a Related Person has acquired a Personal Financial Interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board, or to the Shareholders (if the circumstances contemplated in clause 26.3 are not applicable), the nature and extent of that Personal Financial Interest, and the Material circumstances relating to the Director or Related Person's acquisition of that Personal Financial Interest.

26.8. A decision by the Board, or a transaction or agreement approved by the Board, or by the Shareholders, is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if:-

26.8.1. it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 26 (*Personal Financial Interest of Directors*); or

26.8.2. despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or has been declared to be valid by a court.

27. **PROCEEDINGS OF THE BOARD**

27.1. Convening or Holding of Board Meetings

27.1.1. A Director authorised by the Board (or the company secretary on the request of a Director authorised by the Board):-

27.1.1.1. may, at any time, summon a meeting of the Board;

27.1.1.2. must call a meeting of the Board if required to do so by at least 2 (two) Directors, or in the event that the number of Directors exceeds 20 (twenty) Directors, 10% (ten percent) of the Directors.

27.1.2. The Board may meet to conduct business, adjourn and otherwise regulate its meetings as it thinks fit.

27.1.3. All meetings shall be held at a venue in Johannesburg.

27.1.4. A meeting of the Board may be conducted by Electronic Communication and any of the Directors may participate in a meeting by Electronic Communication provided that the Electronic Communication facility employed ordinarily enables all Persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

27.2. Notice of Board Meetings

27.2.1. Notice of Board meetings shall be given to all Directors at least 24 (twenty four) hours before the Board meeting takes place in any form which may include telephone, fax or Electronic Communication.

27.2.2. If all of the Directors:-

27.2.2.1. acknowledge actual receipt of the notice;

27.2.2.2. are present at a meeting of the Board; or

27.2.2.3. waive notice of the 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.

27.3. Quorum

27.3.1. The quorum for a Board meeting shall be the majority of the Directors Present for the duration of the meeting.

27.3.2. If within 30 (thirty) minutes from the time appointed for the Directors' meeting to commence, a quorum is not present, the Directors' meeting shall be postponed, without motion, vote or further notice to the same time on the :

27.3.2.1. next Business Day if the business to be dealt with by the meeting is in the opinion of the Chairman of such an urgent nature that the period in clause 27.3.2.2 results in too lengthy a delay; or

27.3.2.2. same day in the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday,

and if at such adjourned Directors' meeting a quorum is not present within 30 (thirty) minutes from the time appointed for the Directors' meeting then, the Individual/s entitled to vote who are present shall be deemed to be the requisite quorum. No further notice is required to be Delivered by the Company of a Directors' meeting that is postponed, unless the location or time for the Directors' meeting is different.

27.4. Voting

27.4.1. Each Director has 1 (one) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution.

27.4.2. The Company must keep minutes of all Board and Board committee meetings and resolutions as prescribed in sections 24(3)(f) and 73(6).

- 27.4.3. Resolutions adopted by the Board are effective as of the date of the resolution, unless the resolution states otherwise.
- 27.4.4. Any minutes of a meeting, or a resolution, signed by the Chairman of the meeting, or by the Chairman of the next meeting of the Board, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be without the necessity for further proof of the facts stated. The company secretary may sign an extract from the minutes of a Board meeting, or a resolution, which shall constitute evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be without the necessity for further proof of the facts stated.
- 27.4.5. A decision that could be voted on at a Board meeting, may be adopted by Written consent of a majority of the Directors, given in Person or in any other form including counterparts and transmitting such consent to the Company by Electronic Communication, provided that each Director has received notice of the matter to be decided upon. For the purposes of this clause a resolution shall be deemed to have been signed if consent thereto has been given in a message transmitted by Electronic Communication and purporting to emanate from the person whose signature to such resolution is required.
- 27.4.6. Meetings of the Board shall be conducted and minutes shall be recorded in English.

28. **PRESCRIBED OFFICERS**

- 28.1. No Person shall hold office as a Prescribed Officer, if he/she is Ineligible or Disqualified. A Person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in him/her being a Prescribed Officer nor act in such office nor undertake any such functions. A Person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in him/her being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.
- 28.2. A Prescribed Officer shall cease to hold office as such immediately after he/she becomes Ineligible or Disqualified or ineligible or disqualified in terms of the Companies Act.

29. **APPOINTMENT OF COMPANY SECRETARY**

For the duration of the Empowerment Period, the Company must appoint SSA as its company secretary.

30. **DISTRIBUTIONS**

30.1. The Company may make Distributions from time to time, provided that:-

- 30.1.1. any such Distribution is pursuant to an existing legal obligation of the Company or a court order or the Board, by resolution, has authorised the Distribution;
- 30.1.2. it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed Distribution; and
- 30.1.3. 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 Distribution.

30.2. Subject to clause 30.1 and clause 31, the Company shall only be entitled to make Distributions to the Ordinary Shareholder from Ordinary Course Distributions received by the Company from SSA.

30.3. For as long as the Preference Share Funding has not been settled:

- 30.3.1. Distributions to the Ordinary Shareholder shall be limited to 2,5% (two comma five percent) (or such higher percentage as determined by the Holder of the Preference Shares in its sole discretion) of Ordinary Course Distributions;
- 30.3.2. the balance of the Ordinary Course Distributions as well as any other cash Distributions, after deducting from the balance such amounts as may be necessary to enable the Company to comply with its tax and statutory obligations and to cover its administrative costs for the 12 (twelve) month period following the date on which the Ordinary Course Distribution is received, will be applied towards settlement of the Preference Share Funding in accordance with the terms of the Preference Share Subscription Agreement;
- 30.3.3. the Company shall not be entitled to distribute its SSA Khanyisa Shares and/or other assets (apart from the SSA Khanyisa Shares) held by the Company to the Ordinary Shareholder, whether, without limitation *eiusdem generis*, by way of a

dividend, other Distribution *in specie* or otherwise, even if such assets are not encumbered in favour of the Holder of the Preference Shares without the prior written consent of the Holder of the B Ordinary Share.

- 30.4. After the Preference Share Funding has been settled in full the Company shall:
- 30.4.1. be entitled, after deducting such amounts as may be necessary to enable the Company to comply with its tax and statutory obligations and to cover its administrative costs for the 12 (twelve) month period following the date on which any Ordinary Course Distribution is received, to make Distributions to the Ordinary Shareholder of the remaining balance of the Ordinary Course Distribution; and
 - 30.4.2. not be entitled to distribute its SSA Khanyisa Shares and/or other assets held by the Company (including any Distributions which are not Ordinary Course Distributions received from SSA) to the Ordinary Shareholder, whether, without limitation *eiusdem generis*, by way of a dividend, other Distribution *in specie* or otherwise, without the prior written consent of the Holder of the B Ordinary Share.
- 30.5. For the purposes of this clause 30 “**Ordinary Course Distribution**” means cash Distributions made by SSA in the ordinary course to its shareholders, which for the avoidance of doubt excludes any cash Distributions constituting a return of share capital, any cash Distribution the direct source of which is a realisation of any asset held on capital account by SSA, as well as any other extraordinary cash Distributions by SSA.
- 30.6. The Company must, before incurring any debt or other obligation for the benefit of any Holders, comply with the requirements in clause 30.1.
- 30.7. The Company must complete any such Distribution fully within 120 (one hundred and twenty) Business Days after the acknowledgement referred to in clause 30.1.3, failing which it must again comply with the foregoing.
- 30.8. When applying the Solvency and Liquidity Test in respect of a Distribution contemplated in paragraph (a) of the definition of ‘distribution’ in section 1, a Person is not to include as a liability any amount that would be required, if the Company were to be liquidated at the time of the Distribution, to satisfy the preferential rights upon liquidation of Holders whose preferential rights upon liquidation are superior to the preferential rights upon liquidation of those receiving the Distribution.

- 30.9. Distributions may be paid in any manner determined by the Company, including electronic funds transfer, but excluding cheques.
- 30.10. No notice of change of address or instructions as to payment given after the determination of a dividend or other Distribution by the Company in terms of clause 30.1, shall become effective until after the dividend or other Distribution has been made, unless the Board so determines at the time the dividend or other Distribution is approved.
- 30.11. Subject to clause 30.12, all unclaimed dividends or other Distributions as contemplated in this clause may be invested or otherwise be made use of by the Board for the benefit of the Company until claimed, without the payment of interest, provided that any Distribution remaining unclaimed for a period of not less than 5 (five) years from the date on which it became payable may be retained by resolution of the Board for the benefit of the Company, provided that the Company, prior to the expiry of the 5 (five) year period, has used reasonable endeavours to locate the Holders who have not claimed their Distributions.
- 30.12. The Company shall be entitled at any time to delegate its obligations in respect of unclaimed dividends or other unclaimed Distributions, to any one of the Company's bankers from time to time.
- 30.13. The Company shall be entitled to withhold the amount of dividends tax or any other tax or duties that the Company is required by law to withhold from any dividend declared and paid by the Company, without any obligation to gross up such dividend. For purposes of this MOI, any amount so withheld and paid by the Company to the relevant governmental tax authority in respect of any dividend will be deemed to have been actually paid by the Company to the shareholder owning the Shares to which any distribution relates.

31. **AUTOMATIC SHARE EXCHANGE AND CASH SUBSCRIPTION FOR SOLBE1 SHARES**

- 31.1. To the extent that the Company still holds assets including cash after the Preference Share Funding has been settled and any known liabilities, including tax liabilities, of the Company have been fully discharged or provided for, and that Sasol elects to effect the Automatic Share Exchange with the Company then in such event Sasol shall instruct the Share Exchange Expert to determine the Share Exchange Ratio for the purposes of the Automatic Share Exchange with the Company. If the Company still holds cash and/or assets (other than SSA Khanyisa Shares) after the Preference Share Funding has been settled, and any known liabilities, including tax liabilities, of the Company have been fully discharged or provided for, the Company shall be obliged:

- 31.1.1. to use the cash to subscribe for SOLBE1 Shares which subscription is indivisibly interrelated to the Automatic Share Exchange; and
 - 31.1.2. as regards other assets (other than SSA Khanyisa Shares) if Sasol so exercises an election to that effect to distribute such assets to the Ordinary Shareholder subject to the condition that the Ordinary Shareholder distributes them forthwith to its shareholders, or if Sasol exercises the election to that effect same shall be exchanged by the Company as an integral part of the Automatic Share Exchange as set out below.
- 31.2. The Share Exchange Ratio shall be determined in the following manner:
- 31.2.1. unless clause 31.2.2 or clause 31.2.3 applies, the Share Exchange Expert will be required to determine a ratio which is fair in the circumstances to the Sasol shareholders on the one hand and the Company on the other hand. The Share Exchange Expert will therefore be at large as to the valuation methodologies which he/she will take into account in order to determine such a fair ratio, but for which purpose the Expert shall consider the methodologies current at that time to determine market value, and shall determine whichever of those are deemed appropriate by the Expert, assessed on a quantitative and qualitative basis;
 - 31.2.2. if the shareholders of Sasol resolve during 2018 that the methods contemplated in clause 31.2.1 and clause 31.2.3 shall not apply, the Share Exchange Expert shall be required:
 - 31.2.2.1. as regards SSA Ordinary Shares –
 - 31.2.2.1.1. to use the same methodology to determine the value of the SSA Group and accordingly an SSA Ordinary Share as was used when the Company subscribed for SSA Khanyisa Shares, namely -
 - 31.2.2.1.1.1. a discounted cash flow valuation of the free cash flow generated by the SSA Group, derived from the latest available management accounts and forecasts prepared by management of SSA;

31.2.2.1.1.2. macro-economic assumptions utilised in the discounted cash flow valuation, unless the Share Exchange Expert considers that any of such assumptions was not market related, in which event the Share Exchange Expert will determine what the market related macro-economic assumption used by Sasol, should have been and the Share Exchange Expert's determination shall be used in place thereof;

31.2.2.1.1.3. the discount rate will be determined utilising the same principles as were used at the time the Company subscribed for the SSA Khanyisa Shares, taking the following into account -

31.2.2.1.1.3.1. an appropriate measurement of risk (beta) derived from relevant and comparable peer group company analysis;

31.2.2.1.1.3.2. the prevailing equity market risk premium at the time;

31.2.2.1.1.3.3. an appropriate post tax cost of debt of the SSA Group as determined by applying a market-related lending spread over the long term risk free rate

over South African government bonds;

31.2.2.1.1.3.4. the long term debt to equity ratio for SSA and any subsidiary of SSA, as targeted by the SSA board or board of the subsidiary, as the case may be, (having taken account of the Sasol Group funding policy) that is taken into account when the weighted average cost of capital is calculated;

31.2.2.1.2. sequentially applying a minority discount of 25% (twenty five percent) and liquidity (marketability) discount of 10% (ten percent)(i.e an effective 32.5% (thirty two point five percent) discount), being the percentage discounts applied at the time the Company subscribed for the SSA Khanyisa Shares;

31.2.2.1.3. taking account of any relevant and comparable peer group trading valuation multiples;

Having applied clauses 31.2.2.1.1 to 31.2.2.1.3, the Share Exchange Expert shall consider whether, in order to enable the Automatic Share Exchange to be undertaken pursuant to section 42 of the Income Tax Act, 1962, or any equivalent successor legislation, it is necessary to apply principles in addition to those mentioned above for determining market value current at that time, assessed on a quantitative and qualitative basis, and accordingly, whether it would be appropriate to make an adjustment to the value of SSA determined in accordance with clauses 31.2.2.1.1 to 31.2.2.1.3;

31.2.2.2. as regards SOLBE1 Shares their market value based on an appropriate volume weighted average price or such other

methodology for determining market value as the Share Exchange Expert may determine;

31.2.2.3. as regards any other assets held by the Company (apart from the SSA Khanyisa Shares after the settlement of the Preference Share Funding and cash) which have not at Sasol's election been distributed by the Company to Sasol Khanyisa prior to the Automatic Share Exchange being implemented, to use:

31.2.2.3.1. the same methodology to determine the value of such assets as may have been used when the Company subscribed for SSA Khanyisa Shares;

31.2.2.3.2. in any other case, any valuation method determined by the Share Exchange Expert as being appropriate.

31.2.3. if the shareholders of Sasol resolve during 2018 that the method contemplated in clause 31.2.1 and clause 31.2.2 shall not apply, the Share Exchange Expert shall be required:

31.2.3.1. as regards SSA Ordinary Shares –

31.2.3.1.1. to use the same methodology to determine the value of the SSA Group and accordingly an SSA Ordinary Share as was used when the Company subscribed for SSA Khanyisa Shares, namely -

31.2.3.1.1.1. a discounted cash flow valuation of the free cash flow generated by the SSA Group, derived from the latest available management accounts and forecasts prepared by management of SSA;

31.2.3.1.1.2. macro-economic assumptions utilised in the discounted cash flow valuation, unless the Share Exchange Expert considers that any of such assumptions was not

market related, in which event the Share Exchange Expert will determine what the market related macro-economic assumption used by Sasol, should have been and the Share Exchange Expert's determination shall be used in place thereof;

31.2.3.1.1.3. the discount rate will be determined utilising the same principles as were used at the time the Company subscribed for the SSA Khanyisa Shares, taking the following into account -

31.2.3.1.1.3.1. an appropriate measurement of risk (beta) derived from relevant and comparable peer group company analysis;

31.2.3.1.1.3.2. the prevailing equity market risk premium at the time;

31.2.3.1.1.3.3. an appropriate post tax cost of debt of the SSA Group as determined by applying a market-related lending spread over the long term risk free rate over South African government bonds;

31.2.3.1.1.3.4. the long term debt to equity ratio for SSA and any subsidiary of SSA, as targeted by the SSA board

or board of the subsidiary, as the case may be, (having taken account of the Sasol Group funding policy) that is taken into account when the weighted average cost of capital is calculated;

- 31.2.3.1.2. sequentially applying a minority discount of 25% (twenty five percent) and liquidity (marketability) discount of 10% (ten percent)(i.e an effective 32.5% (thirty two point five percent) discount), being the percentage discounts applied at the time the Company subscribed for the SSA Khanyisa Shares;
- 31.2.3.1.3. taking account of any relevant and comparable peer group trading valuation multiples;
- 31.2.3.2. as regards SOLBE1 Shares their market value based on an appropriate volume weighted average price or such other methodology for determining market value as the Share Exchange Expert may determine;
- 31.2.3.3. as regards any other assets held by the Company (apart from the SSA Khanyisa Shares after the settlement of the Preference Share Funding and cash) which have not at Sasol's election been distributed by the Company to Sasol Khanyisa prior to the Automatic Share Exchange being implemented, to use:
 - 31.2.3.3.1. the same methodology to determine the value of such assets as may have been used when the Company subscribed for SSA Khanyisa Shares;
 - 31.2.3.3.2. in any other case, any valuation method determined by the Share Exchange Expert as being appropriate.

- 31.3. As an indivisibly inter-related transaction with the Automatic Share Exchange, the Company shall on the Exchange Date (as defined in clause 31.5) subscribe for such number of SOLBE1 Shares as results by dividing the cash which the Company has after settling the Preference Share Funding and settling or providing for any known liabilities by the value per SOLBE1 Share determined by the Share Exchange Expert in accordance with the provisions of clause 31.2.1 or clause 31.2.2.2 or clause 31.2.3.2. The Company shall pay the cash to the Holder of the B Ordinary Share or grants the Holder of the B Ordinary Share an irrevocable *in rem suam* power of attorney, with power of substitution, to transfer to itself the monies necessary for the Company to subscribe for the relevant number of SOLBE1 Shares, in the event that the Company fails to do so.
- 31.4. The Share Exchange Expert will act as an expert and not as an arbitrator and his/her decision shall be final and binding on Sasol and the Company (save for manifest arithmetical errors). However, Sasol and the Board will be entitled to make submissions to the Share Exchange Expert. It will be in the sole discretion of the Share Exchange Expert to determine to what extent he/she will take account of any such submissions.
- 31.5. Sasol shall ensure that the required valuations shall be undertaken in sufficient time in order for the Share Exchange Ratio to be known prior to the last day of the Empowerment Period ("**Exchange Date**"). Accordingly, Sasol shall instruct the Share Exchange Expert at least 3 (three) months prior to the Exchange Date. Sasol shall permit the Share Exchange Expert to have full access to all relevant information concerning SSA and the Company shall permit the Share Exchange Expert to have access to all relevant information relating to itself and/or Sasol Khanyisa necessary to undertake the valuation, subject to such Share Exchange Expert signing any confidentiality undertaking and other undertakings required by Sasol, SSA and the Company.
- 31.6. The Share Exchange Expert shall not (without the prior written consent of Sasol) be appointed to act as an arbitrator or as advisor in a dispute related to, or involving the determination of the market value of SSA.
- 31.7. The costs of the Share Exchange Expert shall be borne by Sasol.
- 31.8. Sasol shall, on the Exchange Date, undertake the Automatic Share Exchange and issue the relevant number of SOLBE1 Shares to the Company. Such issue shall be on an own name basis and the Company will be bound to the Sasol MOI and in particular Schedule 6 of the Sasol MOI.

31.9. This clause constitutes an irrevocable instruction by the Company to SSA to effect the necessary entries in SSA's Securities Register reflecting the transfer of the SSA Khanyisa Shares to Sasol immediately after the SOLBE1 Shares have been issued to the Company. The provisions of this clause 31.9 constitute a *stipulatio alteri* in favour of SSA which shall be capable of acceptance by it at any time.

31.10. Costs

31.10.1. All costs, expenses and duties, including securities transfer tax, if any, payable upon the transfer of the SSA Khanyisa Shares and/or other assets (apart from SSA Khanyisa Shares) held by the Company, if any, to Sasol, and in respect of the issue of the SOLBE1 Shares to the Company, shall be borne and paid by Sasol.

31.10.2. Except as contemplated in clause 31.10.1, the Company shall be responsible for settling its own tax obligations without any recourse to SSA or Sasol.

32. OBLIGATION TO DISTRIBUTE SOLBE1 SHARES TO SASOL KHANYISA FOLLOWING THE IMPLEMENTATION OF THE AUTOMATIC SHARE EXCHANGE WITH THE COMPANY, IF APPLICABLE

32.1. To the extent that the Company still holds assets including cash after the Preference Share Funding has been settled and any known liabilities, including tax liabilities, of the Company have been fully discharged or provided for, and Sasol elects to undertake the Automatic Share Exchange with the Company resulting in the Company holding SOLBE1 Shares instead of SSA Khanyisa Shares then in such event the Company shall take such steps as are necessary to distribute such SOLBE1 Shares, after tax, to the Ordinary Shareholder as soon as possible after the Company is issued with SOLBE1 Shares pursuant to the Automatic Share Exchange.

32.2. If Sasol fails to make the election to undertake the Automatic Share Exchange with the Company as contemplated in clause 32.1 it shall be deemed to have elected to undertake the automatic share exchange with the shareholders of the Ordinary Shareholder.

33. UNDERTAKINGS BY THE ORDINARY SHAREHOLDER

33.1. The Ordinary Shareholder undertakes that, until the end of the Empowerment Period, it will:

33.1.1. be a Black Company;

- 33.1.2. not, without the prior consent of the Holder of the RF Preference Share and the Holder of the Preference Shares, do anything which would result in it ceasing to hold its Ordinary Share or ceasing to be the beneficial owner of the Ordinary Share;
- 33.1.3. be both the registered Holder and beneficial owner of its Ordinary Share;
- 33.1.4. not be placed under any compulsory or voluntary liquidation or sequestration or be deregistered or be placed under business rescue;
- 33.1.5. not misrepresent that it has the Required BEE Status;
- 33.1.6. only provide information to the Company and the Holder of the RF Preference Share and the Holder of the Preference Shares which is true and complete;
- 33.1.7. not make any fraudulent or untrue statements in any documents provided by it to the Company and/or the Holder of the RF Preference Share and/or the Holder of the Preference Shares;
- 33.1.8. not Dispose of the Ordinary Share held by it, save as contemplated in the Finance Documents and/or this MOI or where such actions are taken under the direction of the Holder of the RF Preference Share and the Holder of the Preference Shares;
- 33.1.9. not Encumber its Ordinary Share other than as contemplated in the Finance Documents and/or this MOI;
- 33.1.10. deliver to the Company and the Holder of the RF Preference Share by no later than 30 (thirty) days after the end of the Company's Financial Year:
 - 33.1.10.1. a certificate:
 - 33.1.10.1.1. issued by an accredited verification agency which is current and in a form acceptable to the Company and the Holder of the RF Preference Share, verifying that it has the Required BEE Status. The Ordinary Shareholder shall bear the costs of the certificate contemplated herein; and
 - 33.1.10.1.2. duly signed by the Ordinary Shareholder certifying its compliance with the provisions of this MOI and

the Required BEE Status, giving full details of its structure including details of its shareholders, members and/or beneficiaries, as the case may be, certifying that no change has occurred regarding it/them since the last certificate, and that it know/s of no breaches of this MOI; and

33.1.10.2. any other documents reasonably required by the Company, and notified to the Ordinary Shareholder not later than 31 May of each year, to demonstrate whether the Required BEE Status has been achieved and/or maintained;

33.1.11. deliver to the Company and the Holder of the RF Preference Share and/or the Holder of the Preference Shares such information as may be required by:

33.1.11.1. the Company from time to time in order to comply with its obligations under this MOI and/or the Transaction Documents, from time to time;

33.1.11.2. the Holder of the RF Preference Share and/or the Holder of the Preference Shares;

33.1.12. not, without the prior written consent of the Holder of the RF Preference Share do anything which will result in it ceasing to have at least the Required BEE Status; and

33.1.13. permit the Company and the Holder of the RF Preference Share to undertake any inspections and/or due diligence investigations which the Company and the Holder of the RF Preference Share may consider necessary from time to time.

34. BREACH BY THE ORDINARY SHAREHOLDER

34.1. If the Ordinary Shareholder commits any breach of the provisions of clause 33 and fails to remedy any such breach within 14 (fourteen) days after receipt of written notice from the Company (or its nominee) requiring it to do so, the Company (or its nominee) shall, subject to clause 34.2 and the applicable provisions of the Transaction Documents, and without prejudice to any other rights which it may have at law or under this MOI, either apply for an interdict and/or claim for specific performance of the Ordinary Shareholder's obligations under this MOI and/or claim for any damages which it may have suffered as a result of such breach.

- 34.2. If there is a breach of clause 33 that may result in or necessitate litigation against the breaching Ordinary Shareholder being instituted, the Board shall not have the authority to decide whether the Company should litigate against the Ordinary Shareholder and such authority shall vest with the Holder of the RF Preference Share. For purposes hereof, the Directors shall be obliged to immediately inform the Holder of the RF Preference Share as soon as they become aware of a breach of any of the undertakings in clause 33 and the Holder of the RF Preference Share shall be entitled, in the exercise of its sole discretion, to determine whether to enforce the breach or not against the Ordinary Shareholder and/or to institute any litigation proceedings (in the name of the Company).
- 34.3. In the event that the Holder of the RF Preference Share decides that litigation proceedings be instituted against the Ordinary Shareholder, the Holder of the RF Preference Share will be entitled to manage the litigation process on behalf of the Company at the cost of the Company and to the extent that the Company has no funds to institute such legal proceedings the Holder of the RF Preference Share shall be entitled (but not obliged) to advance such money to the Company.

35. **LOSS OF DOCUMENTS**

The Company shall not be responsible for the loss in transmission of any cheque, certificate or (without any limitation *eiusdem generis*) other document sent through the post either to the registered address of any Holder or to any other address requested by the Holder.

36. **INDEMNITY**

- 36.1. For the purposes of this clause 37, "Director" includes a former Director, a Prescribed Officer, a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board.
- 36.2. The Company may:-
- 36.2.1. not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a Related Company, as a consequence of that Director having been convicted of an offence in terms of any national legislation unless the conviction was based on strict liability;
 - 36.2.2. not advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company;
 - 36.2.3. not directly or indirectly indemnify a Director for any liability or any fine;

- 36.3. The Company may not purchase insurance to protect a Director against any liability.
- 36.4. The Company is entitled to claim restitution from a Director or of a Related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78.

37. **WINDING-UP**

Subject to clause 5, if the Company shall be wound up, whether voluntarily (which may occur only after the Empowerment Period), or otherwise, the liquidator may with the sanction of a Special Resolution divide among the Shareholders in specie any part of the assets of the Company, and may with the like sanction vest any part of the assets of the Company in trustees upon such trusts for the benefit of the Shareholders as the liquidator with the like sanction shall think fit, whereafter the liquidation shall be finalised and the Company dissolved.

38. **ARBITRATION**

- 38.1. Save in respect of those provisions of this MOI which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to this MOI or out of or pursuant to this MOI (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), shall be submitted to and decided by arbitration.
- 38.2. That arbitration shall be held with only the parties to the arbitration and their representatives present thereat.
- 38.3. The seat of the arbitration shall be Johannesburg.
- 38.4. Save as expressly provided in this MOI to the contrary, the arbitration shall be subject to the rules of the Arbitration Foundation of Southern Africa in force at the time the arbitration takes place, unless the parties to the arbitration and the arbitrator agree in writing to any departure therefrom. If any provision of this clause 38 is inconsistent with the rules of the Arbitration Foundation of Southern Africa in force at that time, the provisions of this clause shall prevail. If there is any dispute in relation to such inconsistency or alleged inconsistency and/or as to which rules prevail, the arbitrator shall determine such dispute (which determination shall be final and binding on the parties to the arbitration) applying such rules and procedures as the arbitrator considers appropriate.
- 38.5. The arbitrator shall be, if the matter in dispute is principally:-

- 38.5.1. a legal matter, an impartial retired judge, or an impartial practising advocate of not less than 15 (fifteen) years' standing, or an impartial admitted attorney of not less than 15 (fifteen) years' standing;
 - 38.5.2. an accounting matter, an impartial practising chartered accountant of not less than 15 (fifteen) years' standing;
 - 38.5.3. any other matter, an impartial person with not less than 15 (fifteen) years' appropriate expertise.
- 38.6. If the parties to the arbitration fail to agree on an arbitrator within 14 (fourteen) days after the arbitration has been demanded, the arbitrator shall be nominated, at the request of any one of the parties to the arbitration by the Chairman (or the equivalent office no matter what it may be titled) of the Bar Council or instead the voluntary association constituted for the benefit of a majority of attorneys in South Africa who shall take the provisions of clauses 38.5.1 to 38.5.3 into account in nominating the arbitrator, whereupon the parties to the arbitration shall forthwith appoint such person as the arbitrator. If that person fails or refuses to make the nomination or if any such office does not exist, any party to the arbitration may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 38.7. If the parties to the arbitration fail to agree whether the dispute is of a legal, accounting or other nature within 14 (fourteen) days after the arbitration has been demanded, it shall be considered a matter referred to in clause 38.5.1.
- 38.8. Within 14 (fourteen) days after the pleadings have closed, the arbitrator shall determine the period within which the hearing will be concluded, taking into account the particular circumstances of the dispute. Upon making such a determination the arbitrator shall:-
- 38.8.1. provide written notice to the parties to the arbitration in which the arbitrator sets out the period within which the hearing will be concluded, together with a list of all the dates within a 6 (six) month period from the date of such notice on which the arbitrator is available to commence with the hearing;
 - 38.8.2. determine the date on which the hearing will commence, which determination shall be made in accordance with the following procedure:-
 - 38.8.2.1. each party to the arbitration shall, within 3 (three) Business Days after delivery of the notice referred to in clause 38.8.1 provide to the arbitrator and to the other parties to the arbitration a list of at least

5 (five) dates on which that party's legal representative is available provided that, each of those dates:-

- 38.8.2.1.1. must fall on a Business Day;
- 38.8.2.1.2. must fall within a period not exceeding 6 (six) months from the date of delivery of such notice;
- 38.8.2.1.3. must coincide with the dates on which the arbitrator is available;
- 38.8.2.1.4. may not be on consecutive days;
- 38.8.2.1.5. must be proposed in good faith;

38.8.2.2. if:-

- 38.8.2.2.1. any party to the arbitration does not provide a list of at least 5 (five) dates on which that party's legal representative is available in compliance with clause 38.8.2.1, the arbitrator may select a commencement date on a date on which the arbitrator and the other parties to the arbitration that have complied with clause 38.8.2.1 are available;
- 38.8.2.2.2. each party to the arbitration provides a list of at least 5 (five) dates on which that party's legal representative is available in compliance with clause 38.8.2.1, but none of those dates coincide with each other, then the arbitrator must call a meeting between the parties to the arbitration within a period not exceeding 14 (fourteen) days, for the purposes of selecting a date upon which the arbitrator and the parties to the arbitration and their legal representatives are all available. If the parties to the arbitration are unable to reach agreement, the arbitrator shall, in the arbitrator's discretion, determine the commencement date provided that:-

38.8.2.2.2.1. the commencement date must fall within a period not exceeding 6 (six) months from the date of delivery of the notice referred to in clause 38.8.1;

38.8.2.2.2.2. if the period that the arbitrator has determined for the hearing is not more than 5 (five) Business Days, the commencement date must be at least 30 (thirty) days after the date on which the arbitrator makes a determination as to the commencement date;

38.8.2.2.2.3. if the period that the arbitrator has determined for the hearing is more than 5 (five) Business Days, the commencement date must be at least 60 (sixty) days after the date on which the arbitrator makes a determination as to the commencement date;

and the arbitration may commence on that date regardless of the absence of any party to the arbitration or its legal representative;

38.8.3. if the arbitration hearing is not completed within the period determined by the arbitrator, determine the date for recommencement of the hearing in accordance with clause 38.8.1.

38.9. The determination made by the arbitrator as regards the period within which the hearing will be concluded and/or the commencement date and/or the recommencement date shall be final and, provided that there has been compliance with clause 38.8, no party to the arbitration may raise as good and sufficient cause for the absence of that party at the arbitration proceedings, the unavailability of that party's legal representative.

38.10. The arbitrator shall, subject to the provisions of this clause, have the fullest and freest sole discretion with regard to the proceedings save that the arbitrator, shall be obliged to give

his/her award in writing fully supported by reasons and shall adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.

38.11. Furthermore the arbitrator:-

38.11.1. may by notice to the parties to the arbitration within 14 (fourteen) after his/her appointment, dispense wholly or in part with formal submissions or pleadings provided that the parties to the arbitration are given the opportunity to make submissions;

38.11.2. shall not be bound by strict rules of evidence;

38.11.3. shall allow any party to the arbitration to call any witnesses he/she determines and shall permit cross examination of witnesses;

38.11.4. may, in addition to any other award he/she may be able to make:-

38.11.4.1. require specific performance, with an award of damages or without an award of damages, but may not award cancellation of this MOI;

38.11.4.2. take into account the practicality or otherwise of ordering the continuance of any legal relationship between disputants;

38.11.4.3. award interest with effect from any date, and on any other basis, he/she considers appropriate in the circumstances;

38.11.5. shall make such order as to costs as he/she deems just.

38.12. Any party to the arbitration shall be entitled to have the award made an order of court of competent jurisdiction.

38.13. Any dispute shall be deemed to have been referred or subjected to arbitration hereunder when any party gives written notice to the others of the dispute, demands an arbitration and requests agreement on an arbitrator.

38.14. The parties to the arbitration shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.

38.15. The arbitrator shall have the power to give default judgment if any party to the arbitration fails to make submissions on due date and/or fails to appear at the arbitration.

38.16. The arbitrator's award shall be final and binding on the parties to the arbitration. There shall be a right of appeal against any award of the arbitrator provided that:-

38.16.1. the appeal is noted within 14 (fourteen) days of the arbitrator's award;

38.16.2. the appellant delivers the record to the respondent/s within 14 (fourteen) days of the record becoming available to the appellant. The relevant provisions of this arbitration clause shall apply *mutatis mutandis* in regard to the appeal;

38.16.3. the appeal shall be heard before a panel of 3 (three) arbitrators and the provisions of clauses 38.5 and 38.6 shall apply.

38.17. The parties to the arbitration, together with the arbitrator will agree from time to time on the arbitrator's remuneration and when and how it shall be paid in the interim. The parties to the arbitration shall, pending the final determination of the arbitrator as to which of the parties to the arbitration shall ultimately be liable for the costs of the arbitration, fund the costs (such as costs of any venue, arbitrator's remuneration, recording, transcription and other costs and expenses ancillary to the arbitration) which need to be paid in the interim. If at any time a party to the arbitration does not pay his/her/its portion of the costs when required in the interim, that party will be excluded from participating in the arbitration and the other parties to the arbitration shall be entitled to request a final award from the arbitrator as regards that party. Within 10 (ten) days of the making by the arbitrator of a final determination as to which party to the arbitration shall bear the costs of the arbitration, the party against which such determination has been made shall reimburse to the other parties the costs borne by such parties in the interim together with interest thereon, if the arbitrator so awards in terms of clause 38.11.4.3.

38.18. If it is alleged that this MOI was induced by a fraudulent misrepresentation or if this MOI is void or voidable on any other ground, then notwithstanding that the remainder of this MOI may be void or voidable the parties agree that the provisions of this clause are severable from the rest of this MOI and shall remain in effect. In such circumstances any dispute relating to any such fraudulent misrepresentation or relating to whether this MOI is void or voidable shall be submitted to and decided by arbitration in accordance with this clause.

39. **RIGHTS, PREFERENCES AND LIMITATIONS ATTACHING TO THE RF PREFERENCE SHARE**

39.1. The rights, privileges and restrictions attaching to the RF Preference Share shall be the following:

39.1.1. it will rank, as regards return of capital prior to the Ordinary Share;

- 39.1.2. it shall confer the right, prior to the provision for dividends in respect of the Ordinary Share, to receive a preferential dividend immediately prior to redemption, in the aggregate of R1,00 (one rand);
- 39.1.3. the registered Holder of the RF Preference Share shall have the right to receive notice of and to attend any Shareholders' Meeting of the Company or any proposed resolution to be passed other than at a Shareholders' Meeting, but shall not be entitled to vote in respect thereof by virtue of or in respect of the RF Preference Share, unless any one or more of the following circumstances prevail:
 - 39.1.3.1. any change is sought to be made in respect of the Restrictive Conditions;
 - 39.1.3.2. any change is sought to be made in respect of the MOI;
 - 39.1.3.3. any redemption or other payment in respect of the RF Preference Share remains in arrear and unpaid after 90 (ninety) days from the due date thereof;
 - 39.1.3.4. a resolution of the Company is proposed which directly affects the rights attached to the RF Preference Share or the interests of the Holder thereof, which shall include any resolution for the winding-up of the Company;
 - 39.1.3.5. any resolution of the Directors or Shareholders is proposed which would result in the Company breaching any of the Restrictive Conditions, any provision of this MOI and/or the Transaction Documents to which it is a party.
- 39.2. At every meeting of the Company at which the Holder of the RF Preference Share is entitled to exercise voting rights:
 - 39.2.1. all resolutions (be it Ordinary or Special Resolution) put to the meeting shall be voted on by way of a poll;
 - 39.2.2. the Holder of the RF Preference Share shall be entitled to exercise as many votes as are required to pass the Ordinary Resolution and/or Special Resolution; and

- 39.2.3. there shall be no quorum unless the Holder of the RF Preference Share is Present.
- 39.3. There shall be a separate class meeting or Round Robin Resolution for the Holder of the RF Preference Share alone to vote on regarding any resolution which affects the rights attached to the RF Preference Share or the interests of the Holder of the RF Preference Share, including any resolution for the winding up of the Company, and the resolution shall not be passed unless the Holder of the RF Preference Share votes in favour thereof by means of a separate class meeting or by way of Round Robin Resolution.
- 39.4. At all times while the Holder of the RF Preference Share is entitled to exercise Voting Rights at any Shareholders Meeting in accordance with this clause 39, the Holder of the RF Preference Share shall be entitled (on behalf of the Holders) to:
 - 39.4.1. convene a meeting of the Shareholders of the Company in accordance with section 61 of the Companies Act; and
 - 39.4.2. appoint the Chairman of such a Shareholders Meeting of the Company.
- 39.5. The Company shall not be entitled to voluntarily redeem the RF Preference Share whilst the provisions of clause 5 still apply.

Schedule 1 – Definitions in the Companies Act

"accounting records" means information in written or electronic form concerning the financial affairs of a company as required in terms of this Act including, but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements; ¹

"alternate director" means a person elected or appointed to serve, as the occasion requires, as a member of the board of a company in substitution for a particular elected or appointed director of that company;

"amalgamation or merger" means a transaction, or series of transactions, pursuant to an agreement between two or more companies, resulting in—

- (a) the formation of one or more new companies, which together hold all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement, and the dissolution of each of the amalgamating or merging companies; or
- (b) the survival of at least one of the amalgamating or merging companies, with or without the formation of one or more new companies, and the vesting in the surviving company or companies, together with any such new company or companies, of all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement;

"annual general meeting" means the meeting of a public company required by section 61(7);

"audit" has the meaning set out in the Auditing Profession Act, but does not include an "independent review" of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb);

"Auditing Profession Act" means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

"auditor" has the meaning set out in the Auditing Profession Act;

"Banks Act" means the Banks Act, 1990 (Act No. 94 of 1990);

"beneficial interest", when used in relation to a company's securities, means the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to—

- (a) receive or participate in any distribution in respect of the company's securities;
- (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or
- (c) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities,

but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002);

¹ Regulation 25(3) contains requirements as to what the accounting records must include.

"**board**" means the board of directors of a company;

"**business days**" has the meaning determined in accordance with section 5(3);

"**central securities depository**" has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

"**Commission**" means the Companies and Intellectual Property Commission established by section 185;

"**Commissioner**" means the person appointed to or acting in the office of that name, as contemplated in section 189;

"**company**" means a juristic person incorporated in terms of this Act, a domesticated company, or a juristic person that, immediately before the effective date—

- (a) was registered in terms of the—
 - (i) Companies Act, 1973 (Act No. 61 of 1973), other than as an external company as defined in that Act; or
 - (ii) Close Corporations Act, 1984 (Act No. 69 of 1984), if it has subsequently been converted in terms of **Schedule 2**;
- (b) was in existence and recognised as an 'existing company' in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- (c) was deregistered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and has subsequently been re-registered in terms of this Act;

"**Competition Act**", means the Competition Act, 1998 (Act No. 89 of 1998);

"**consideration**" means anything of value given and accepted in exchange for any property, service, act, omission or forbearance or any other thing of value, including—

- (a) any money, property, negotiable instrument, securities, investment credit facility, token or ticket;
- (b) any labour, barter or similar exchange of one thing for another; or
- (c) any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly;

"**Constitution**" means the Constitution of the Republic of South Africa, 1996;

"**convertible**", when used in relation to any securities of a company, means securities that may, by their terms, be converted into other securities of the company, including—

- (a) any non-voting securities issued by the company and which will become voting securities—
 - (i) on the happening of a designated event; or

- (ii) if the holder of those securities so elects at some time after acquiring them; and
- (b) Options to acquire securities to be issued by the company, irrespective of whether those securities may be voting securities, or non-voting securities contemplated in paragraph (a);

"director" means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternative director, by whatever name designated;

"distribution" means a direct or indirect—

- (a) transfer by a company of money or other property of the company, other than its own shares, to or for the benefit of one or more holders of any of the shares or to the holder of a beneficial interest in any such shares, of that company or of another company within the same group of companies, whether—
 - (i) in the form of a dividend;
 - (ii) as a payment in lieu of a capitalisation share, as contemplated in section 47;
 - (iii) as consideration for the acquisition—
 - (aa) by the company of any of its shares, as contemplated in section 48; or
 - (bb) by any company within the same group of companies, of any shares of a company within that group of companies; or
 - (iv) otherwise in respect of any of the shares of that company or of another company within the same group of companies, subject to section 164(19);
- (b) incurrence of a debt or other obligation by a company for the benefit of one or more holders of any of the shares of that company or of another company within the same group of companies; or
- (c) forgiveness or waiver by a company of a debt or other obligation owed to the company by one or more holders of any of the shares of that company or of another company within the same group of companies,

but does not include any such action taken upon the final liquidation of the company;

"effective date", with reference to any particular provision of this Act, means the date on which that provision came into operation in terms of section 225;

"electronic communication" has the meaning set out in section 1 of the Electronic Communications and Transactions Act;

"Electronic Communications and Transactions Act" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

"employee share scheme" has the meaning set out in section 95(1)(c);

"exchange" when used as a noun, has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

"exercise", when used in relation to voting rights, includes voting by proxy, nominee, trustee or other person in a similar capacity;

"ex officio director" means a person who holds office as a director of a particular company solely as a consequence of that person holding some other office, title, designation or similar status specified in the company's Memorandum of Incorporation;

"external company" means a foreign company that is carrying on business, or non-profit activities, as the case may be, within the Republic, subject to section 23(2);

"financial statement" includes—

- (a) annual financial statements and provisional annual financial statements;
- (b) interim or preliminary reports;
- (c) group and consolidated financial statements in the case of a group of companies; and
- (d) financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or holder of the company's securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on;

"group of companies" means a holding company and all of its subsidiaries;

"holding company", in relation to a subsidiary, means a juristic person that controls that subsidiary as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a);

"incorporator", when used—

- (a) with respect to a company incorporated in terms of this Act, means a person who incorporated that company, as contemplated in section 13; or
- (b) with respect to a pre-existing company, means a person who took the relevant actions comparable to those contemplated in section 13 to bring about the incorporation of that company;

"individual" means a natural person;

"inter-related", when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in section 2(1) and one of them is related to the third in any such manner, and so forth in an unbroken series;

"juristic person" includes—

- (a) a foreign company; and
- (b) a trust, irrespective of whether or not it was established within or outside the Republic;

"knowing", "knowingly" or "knows", when used with respect to a person, and in relation to a particular matter, means that the person either—

- (a) had actual knowledge of the matter; or
- (b) was in a position in which the person reasonably ought to have—
 - (i) had actual knowledge;
 - (ii) investigated the matter to an extent that would have provided the person with actual knowledge; or
 - (iii) taken other measures which, if taken, could reasonably be expected to have provided the person with actual knowledge of the matter;

"material", when used as an adjective, means significant in the circumstances of a particular matter, to a degree that is—

- (a) of consequence in determining the matter; or
- (b) might reasonably affect a person's judgment or decision-making in the matter;

"nominee" has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

"ordinary resolution" means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution, or a higher percentage as contemplated in section 65(8)—

- (a) at a shareholders meeting; or
- (b) by holders of the company's securities acting other than at a meeting, as contemplated in section 60;

"person" includes a juristic person;

"personal financial interest", when used with respect to any person—

- (a) means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but
- (b) does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment;

"prescribed officer" means a person who, within a company, performs any function that has been designated by the Minister in terms of section 66(10);

"present at a meeting" means to be present in person, or able to participate in the meeting by electronic communication, or to be represented by a proxy who is present in person or able to participate in the meeting by electronic communication;

"private company" means a profit company that—

- (a) is not a public, personal liability or state-owned company; and

(b) satisfies the criteria set out in section 8(2)(b);

"**profit company**" means a company incorporated for the purpose of financial gain for its shareholders;

"**public company**" means a profit company that is not a state-owned company, a private company or a personal liability company;

"**record date**" means the date established under section 59 on which a company determines the identity of its shareholders and their shareholdings for the purposes of this Act;

"**registered auditor**" has the meaning set out in the Auditing Profession Act;

"**registered office**" means the office of a company, or of an external company, that is registered as required by section 23;

"**related**", when used in respect of two persons, means persons who are connected to one another in any manner contemplated in section 2(1)(a) to (c);

"**rules**" and "**rules of a company**" means any rules made by a company as contemplated in section 15(3) to (5);

"**securities**" means any shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by a profit company;

"**securities register**" means the register required to be established by a profit company in terms of section 50(1);

"**share**" means one of the units into which the proprietary interest in a profit company is divided;

"**shareholder**", subject to section 57(1), means the holder of a share issued by a company and who is entered as such in the certificated or uncertificated securities register, as the case may be;

"**shareholders meeting**", with respect to any particular matter concerning a company, means a meeting of those holders of that company's issued securities who are entitled to Exercise Voting Rights in relation to that matter;

"**solvency and liquidity test**" means the test set out in section 4(1);

"**special resolution**" means—

(a) in the case of a company, a resolution adopted with the support of at least 75% of the voting rights exercised on the resolution, or a different percentage as contemplated in section 65(10) -

- (i) at a shareholders meeting; or
 - (ii) by holders of the company's securities acting other than at a meeting, as contemplated in section 60; or
- (b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised person, that requires the highest level of support in order to be adopted, in terms of the relevant law under which that juristic person was incorporated;

"**subsidiary**" has the meaning determined in accordance with section 3;

"**voting power**", with respect to any matter to be decided by a company, means the voting rights that may be exercised in connection with that matter by a particular person, as a percentage of all such voting rights;

"**voting rights**", with respect to any matter to be decided by a company, means—

- (a) the rights of any holder of the company's securities to vote in connection with that matter, in the case of a profit company; or
- (b) the rights of a member to vote in connection with the matter, in the case of a non-profit company;

"**voting securities**", with respect to any particular matter, means securities that—

- (a) carry voting rights with respect to that matter; or
- (b) are presently convertible to securities that carry voting rights with respect to that matter;

"**wholly-owned subsidiary**" has the meaning determined in accordance with section 3(1)(b).

Schedule 2 – Ineligible / disqualified in terms of section 69(7) and (8) of the Companies Act read with Regulation 39(3)

1. A person is ineligible to be a Director if the Person –
 - 1.1. is a juristic person;
 - 1.2. is an unemancipated minor, or is under a similar legal disability; or
 - 1.3. does not satisfy any qualification set out in the MOI.

2. A person is disqualified to be a Director if –
 - 2.1. a court has prohibited that Person to be a Director, or declared the Person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
 - 2.2. the Person –
 - 2.2.1. is an unrehabilitated insolvent;
 - 2.2.2. is prohibited in terms of any public regulation to be a Director;
 - 2.2.3. has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
 - 2.2.4. has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than R1 000,00 (one thousand rand) amount, for theft, fraud, forgery, perjury or an offence –
 - 2.2.4.1. involving fraud, misrepresentation or dishonesty;
 - 2.2.4.2. in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or
 - 2.2.4.3. under the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).

Schedule 3 – Prescribed Methods of Delivery in the Regulations

Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
Any Person	<p>By faxing the notice or a certified copy of the document to the Person, if the Person has a fax number;</p> <p>By sending the notice or a copy of the document by electronic mail, if the Person has an Electronic Address;</p> <p>By sending the notice or a certified copy of the document by registered post to the Person's last known address;</p> <p>By any other means authorised by the High Court; or</p> <p>By any other method allowed for that Person in terms of the following rows of this Table.</p>	<p>On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time.</p> <p>On the date and at the time recorded by the computer used by the Company, unless there is conclusive evidence that it was delivered on a different date or at a different time.</p> <p>On the 7th (seventh) day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day.</p> <p>In accordance with the order of the High Court.</p> <p>As provided for that method of delivery.</p>
Any natural Person	<p>By handing the notice or a certified copy of the document to the Person, or to any representative authorised in writing to accept service on behalf of the Person;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of residence or business with any other Person who is apparently at least 16 (sixteen) years old and in charge of the premises at the time;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of employment with any Person who is apparently at least 16 (sixteen) years old and apparently in authority.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>

Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
A company or similar body corporate	<p>By handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within South Africa;</p> <p>If there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or place of business.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.</p>
The state or a province	By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.	On the date and at the time recorded on a receipt for the delivery.
A municipality	By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any Person acting on behalf of that Person.	On the date and at the time recorded on a receipt for the delivery.
A trade union	<p>By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union</p> <p>or for the purposes of section 13(2), if there is a union office within the magisterial district of the firm required to notify its employees, in terms of the Regulations at the office.</p> <p>If there is no Person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.</p>
Employees of the Company	By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on

Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
		a different date or at a different time.
A partnership, firm or association	<p>By handing the notice or a certified copy of the document to a Person who is apparently in charge of the premises and apparently at least 16 (sixteen) years of age, at the place of business of the partnership, firm or association;</p> <p>If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>