

THE COMPANIES ACT, NO. 71 OF 2008
(AS AMENDED)

MEMORANDUM OF INCORPORATION

OF

CAPITEC BANK LIMITED

A PUBLIC COMPANY

REGISTRATION NUMBER: 1980/003695/06

REGISTRATION DATE: 28 MAY 1980

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1 INTERPRETATION

1.1 In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

1.1.1 "**Act**" means the Companies Act, 2008, including all schedules to such Act;

1.1.2 "**Banks Act**" means the Banks Act, 1990;

1.1.3 "**Basel III Accord**" means the documents entitled "*Basel Committee on Banking Supervision – Basel III: A global regulatory framework for more resilient banks and banking systems – December 2010 (rev June 2011)*" and "*Basel Committee on Banking Supervision – Basel III: International Framework for liquidity risk measurements, standards and monitoring – December 2010 [(rev June 2011)]*" published by the Basel Committee on Banking Supervision on 16 December 2010, as supplemented and/or amended from time to time;

1.1.4 "**Board**" or "**Directors**" means the board of Directors from time to time of the Company;

1.1.5 "**Capital Securities**" means the instruments and/or shares contemplated in Regulation 38(11) and Regulation 38(12) of the Regulations Relating to Banks, the proceeds of the issue of which instruments and/or shares rank (or are intended to rank) as Regulatory Capital;

1.1.6 "**Capital Regulations**" means, at any time, any (i) legislation (including the Banks Act and/or any statutory bail-in option under South African law) then in effect in South Africa, (ii) regulations (including the Regulations Relating to Banks) then in effect in South Africa, (iii) the circulars (including, without limitation, Circular C6/2014), guidance notes (including, without limitation, Guidance Note 07/2013) and, directives then in effect in South Africa issued by the Relevant Authority, which legislation, regulations, circulars, guidance notes and directives relate to and/or provide for the implementation of the Basel III Accord in South

Africa;

- 1.1.7 **"Certificated Securities"** means Securities issued by the Company that are not Uncertificated Securities;
- 1.1.8 **"Central Securities Depository"** has the meaning set out in section 1 of the Financial Markets Act;
- 1.1.9 **"Circular C6/2014"** means Circular C6/2014 headed "*Interpretation of specified conditions for the issuing of instruments or shares which rank as additional tier 1 capital and tier 2 capital*", dated 2 June 2014, issued by the Relevant Authority in terms of section 6 of the Banks Act, as updated amended and/or replaced from time to time;
- 1.1.10 **"Commission"** means the Companies and Intellectual Property Commission established by section 185;
- 1.1.11 **"Companies Tribunal"** means the Companies Tribunal established by section 193;
- 1.1.12 **"Company"** means the company named on the first page of this document, duly incorporated under the registration number endorsed thereon;
- 1.1.13 **"Debt Securities"** means secured or unsecured Securities which are "debt securities" as defined in the JSE Debt Listings Requirements (including, without limitation, bonds, notes and debentures);
- 1.1.14 **"Director"** means a member of the Board as contemplated in section 66, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.1.15 **"Electronic Communication"** has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;
- 1.1.16 **"Financial Markets Act"** means the Financial Markets Act, 2012;
- 1.1.17 **"Guidance Note 07/2013"** means Guidance Note 07/2013 headed "*Loss absorbency requirements for Additional Tier 1 and Tier 2 capital*

instruments", dated 18 October 2013, issued by the Relevant Authority in terms of section 6 of the Banks Act, as updated amended and/or replaced from time to time;

- 1.1.18 **"IFRS"** means the International Financial Reporting Standards, as adopted from time to time by the Board of the International Accounting Standards Committee, or its successor body, and approved for use in South Africa from time to time by the Financial Reporting Standards Council established in terms of section 203;
- 1.1.19 **"Interest Rate Market of the JSE"** means the separate platform of sub-market of the JSE designated as the "*Interest Rate Market*" and on which Debt Securities may be listed, or such other separate platform or sub-market of the JSE as is selected by the Company, subject to all applicable laws;
- 1.1.20 **"JSE Debt Listings Requirements"** means the JSE Debt Listings Requirements applicable to the Interest Rate Market of the JSE, as amended and/or supplemented from time to time by the JSE;
- 1.1.21 **"Participant"** has the meaning set out in section 1 of the Financial Markets Act;
- 1.1.22 **"Prescribed Officer"** has the meaning attributable thereto in section 1;
- 1.1.23 **"Regulations"** means the regulations published in terms of the Act from time to time;
- 1.1.24 **"Regulations Relating to Banks"** means the Regulations Relating to Banks promulgated under the Banks Act published as Government Notice No. 297 of 2016 published in *Government Gazette* No. 40002, dated 20 May 2016 (which came into effect on 1 July 2016), as further supplemented and/or amended from time to time;
- 1.1.25 **"Regulatory Capital"** means, as applicable, "*tier 2 capital*" or "*additional tier 1 capital*" or "*common equity tier 1 capital*" each as defined in the Banks Act;
- 1.1.26 **"Relevant Authority"** means the Registrar of Banks or such other

governmental authority in South Africa (if any) as will have the responsibility of making decisions relating to the declaration of a bank as being non-viable, with the effect (as contemplated in the Regulations Relating to Banks) of triggering loss absorption within the relevant Capital Securities;

- 1.1.27 **"Securities"** means -
- 1.1.27.1 any shares, notes, bonds, debentures or other instruments, irrespective of their form or title, issued, or authorised to be issued, by the Company; or
- 1.1.27.2 anything falling within the meaning of "securities" as set out in section 1 of the Financial Markets Act;
- 1.1.28 **"Securities Register"** means the register of issued Securities of the Company required to be established in terms of sections 50(1) and referred to in clause 8 hereof;
- 1.1.29 **"Share"** means one of the units into which the proprietary interest in the Company is divided;
- 1.1.30 **"Shareholder"** means the holder of a Share who is entered as such in the Securities Register, subject to the provisions of section 57;
- 1.1.31 **"Solvency and Liquidity Test"** has the meaning attributed thereto in section 4;
- 1.1.32 **"South Africa"** means the Republic of South Africa;
- 1.1.33 **"Sub-register"** means the record of Uncertificated Securities administered and maintained by a Participant, which forms part of the Securities Register in terms of the Act;
- 1.1.34 **"Uncertificated Securities"** means any "uncertificated securities" defined as such in the Financial Markets Act; and
- 1.1.35 **"Uncertificated Securities Register"** means the record of Uncertificated Securities administered and maintained by a Participant

or the Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository, and which forms part of the Securities Register.

- 1.2 In this Memorandum of Incorporation, unless the context clearly indicates otherwise –
- 1.2.1 words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act;
 - 1.2.2 a reference to the Act shall include reference to the Regulations;
 - 1.2.3 a reference to a section by number refers to the corresponding section of the Act;
 - 1.2.4 a reference to a clause by number refers to a corresponding provision of this Memorandum of Incorporation;
 - 1.2.5 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and –
 - 1.2.5.1 a provision of any agreement entered into between Shareholders as contemplated in section 15(7), the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
 - 1.2.5.2 an alterable provision of the Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and
 - 1.2.5.3 an unalterable provision of the Act, subject to the provisions of clause 1.2.5.4, the unalterable provision of the Act shall prevail to the extent of the conflict unless the Memorandum of Incorporation imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
 - 1.2.5.4 an unalterable provision of the Act amended after the date of adoption of this Memorandum of Incorporation or any amendment of the relevant provision of this Memorandum of Incorporation, the

- amended unalterable provision of the Act shall prevail to the extent of the conflict;
- 1.2.5.5 an exemption granted by the Companies Tribunal to the Company in terms of section 6(2) from any prohibition or requirement established by or in terms of an unalterable provision of the Act, the exemption shall prevail to the extent of the conflict;
- 1.2.6 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.7 an expression which denotes -
- 1.2.7.1 any gender includes the other genders;
- 1.2.7.2 a natural person includes a juristic person and *vice versa*; and
- 1.2.7.3 the singular includes the plural and *vice versa*;
- 1.2.8 if the due date for performance of any obligation in terms of this Memorandum of Incorporation is a day which is not a business day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding business day;
- 1.2.9 any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this Memorandum of Incorporation;
- 1.2.10 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.3 A reference to any statutory enactment (including the Regulations Relating to Banks, other regulations, Circulars, Guidance Notes, the Basel III Accord) and the JSE Debt Listings Requirements shall be construed as a reference to that enactment as at the date of adoption of this Memorandum of Incorporation and as amended, updated, supplemented, substituted, replaced, re-enacted, re-stated or re-interpreted from time to time.

- 1.4 Any reference in this Memorandum of Incorporation to –
- 1.4.1 "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of South Africa from time to time;
- 1.4.2 "**law**" means any law of general application, as amended and re-enacted from time to time, and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law; and
- 1.4.3 "**writing**" means legible writing and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and a form permitted in terms of the Act and/or the Regulations.
- 1.5 The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.6 Unless otherwise provided, defined terms appearing in this Memorandum of Incorporation in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.7 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.8 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

- 1.9 Any reference herein to "**this Memorandum of Incorporation**" shall be construed as a reference to this Memorandum of Incorporation as amended from time to time.

2 **JURISTIC PERSONALITY**

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

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

2.2.1 the unalterable provisions of the Act, save to the extent that this Memorandum of Incorporation imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement;

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

2.2.3 the other provisions of this Memorandum of Incorporation.

- 2.3 The Company is registered in terms of the Banks Act as a bank.

- 2.4 For the avoidance of doubt, for as long as the Company is registered as a bank in terms of the Banks Act, all the provisions of this Memorandum of Incorporation and any authority granted in terms thereof, are subject to the requirements of the Banks Act.

3 **LIMITATION OF LIABILITY**

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

4 POWERS OF THE COMPANY

- 4.1 The Company has all of the legal powers and capacity contemplated in the Act, and no provision contained in this Memorandum of Incorporation should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.
- 4.2 The legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii).

5 RESTRICTIVE CONDITIONS

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

6 ISSUE OF SHARES AND VARIATION OF RIGHTS

- 6.1 The Company is authorised to issue –
- 6.1.1 such number of ordinary Shares, of the same class, as set out in Schedule 1 hereto, each of which ranks *pari passu* in respect of all rights and entitles the holder to –
- 6.1.1.1 vote at any annual general meeting or general meeting, or as contemplated in clause 26, in person or by proxy, on any matter to be decided by the Shareholders of the Company and to 1 (one) vote in respect of each ordinary Share in the case of a vote by means of a poll;
- 6.1.1.2 participate proportionally in any distribution made by the Company; and
- 6.1.1.3 receive proportionally the net assets of the Company upon its liquidation;
- 6.1.2 such number of each of such further classes of Shares, if any, as are set out in Schedule 1 hereto subject to the preferences, rights, limitations and other terms associated with each such class set out therein.

- 6.2 The Company may from time to time by special resolution as contemplated in clause 6.3, subject to the prior written approval of the Relevant Authority where applicable –
- 6.2.1 create any class of Shares (including, without limitation, but subject to the Capital Regulations, Shares which comprise Capital Securities);
 - 6.2.2 increase or decrease the number of authorised Shares of any class of the Company's Shares;
 - 6.2.3 consolidate and reduce the number of the Company's issued and authorised Shares of any class;
 - 6.2.4 subdivide its Shares of any class by increasing the number of its issued and authorised Shares of that class without an increase of its capital;
 - 6.2.5 cancel Shares not taken up by anyone or undertaken to be taken up;
 - 6.2.6 reclassify any classified Shares that have been authorised but not issued;
 - 6.2.7 classify any unclassified Shares that have been authorised but not issued; or
 - 6.2.8 determine the preferences, rights, limitations or other terms of any Shares.

Such powers shall only be capable of being exercised by the Shareholders of the relevant class of Shares by way of a special resolution of those Shareholders, and is subject to the prior written approval of the Relevant Authority where applicable.

- 6.3 The creation, authorisation and classification of Shares, the subdivision or consolidation of Shares, amendments to the numbers of authorised Shares of each class, the conversion of one class of Shares into one or more other classes of Shares, the conversion of Shares from par value to no par value and variations to the preferences, rights, limitations and other terms associated with any class of Shares as set out in this Memorandum of Incorporation may be changed only by an amendment of this Memorandum

of Incorporation by special resolution, subject to the prior written approval of the Relevant Authority where applicable.

- 6.4 If a fraction of a Share comes into being as a result of any consolidation, the Board may, to the extent applicable, round all allocations of Shares down to the nearest whole number (resulting in allocations of whole securities) and make a cash payment for any fractional entitlement.
- 6.5 Each Share issued by the Company has associated with it an irrevocable right of the Shareholder to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share as contemplated in clause 23.2. If any amendment to this Memorandum of Incorporation relates to the variation of any preferences, rights, limitation and other terms associated with any class of Shares already in issue, such amendments shall not be implemented without a special resolution adopted by the holders of Shares of that class at a separate meeting subject to clause 23.2. The holders of Shares of that class will, subject to the further provisions of clause 23.2, also be entitled to vote at the meeting of ordinary Shareholders where the amendment is tabled for approval subject to clause 23.2.
- 6.6 No Shares may be authorised in respect of which the preferences, rights, limitations or any other terms of any class of Shares may be varied in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7) of the Act (i) except, in the case of Shares which comprise Capital Securities, if required by the Capital Regulations and (ii) except if authorised in terms of the Banks Act.
- 6.7 The Board may, subject to the Banks Act, where applicable, and subject to clauses 6.9, 6.10 and 6.11 and the further provisions of this clause 6.7, resolve to issue Shares (including, without limitation, Shares which comprise Capital Securities) and/or grant options to subscribe for Shares of the Company at any time, but only –
- 6.7.1 within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation; and

- 6.7.2 to the extent that such issue has been approved by the Shareholders in general meeting, either by way of a general authority (which may be either conditional or unconditional) to issue Shares in its discretion or a specific authority in respect of any particular issue of Shares, provided that, if such approval is in the form of a general authority to the Directors, it shall be valid only until the next annual general meeting of the Company and it may be varied or revoked by any general meeting of the Shareholders prior to such annual general meeting.
- 6.7.3 Notwithstanding the provisions of this clause 6.7 above and for the avoidance of doubt, no approval is required (i) from Shareholders in general meeting to issue any further ordinary Shares, to the extent that such Shares have first been offered to existing ordinary Shareholders in proportion to their shareholding on such terms and in accordance with such procedures as the Board may determine, or (ii) from Shareholders in general meeting to issue any further ordinary Shares, to the extent that such Shares are issued for the acquisition of assets by the Company, whether by means of an acquisition issue or a vendor consideration placement.
- 6.8 For the avoidance of doubt, no approval is required from the holders of any class of preference shares to issue any further preference shares ranking *pari passu* with such class of preference shares.
- 6.9 Subject to what may be authorised by the Act, and at meetings of Shareholders in accordance with clause 6.11, and subject to clause 6.10, the Board may only issue unissued Shares if such Shares have first been offered to existing ordinary Shareholders in proportion to their shareholding on such terms and in accordance with such procedures as the Board may determine, unless such Shares comprise Capital Securities or are issued for the acquisition of assets by the Company.
- 6.10 Notwithstanding the provisions of clause 6.9, the Shareholders may at a general meeting authorise the Directors to issue Shares of the Company at any time and/or grant options to subscribe for Shares as the Directors in their discretion think fit.

- 6.11 Notwithstanding the provisions of clauses 6.7, 6.9 and 6.10, any issue of Shares, Securities convertible into Shares, or rights exercisable for Shares in a transaction, or a series of integrated transactions shall, in accordance with the provisions of section 41(3), require the approval of the Shareholders by special resolution if the voting power of the class of Shares that are issued or are issuable as a result of the transaction or series of integrated transactions will be equal to or exceed 30% (thirty percent) of the voting power of all the Shares of that class held by Shareholders immediately before that transaction or series of integrated transactions.
- 6.12 Except to the extent that any such right is specifically included as one of the rights, preferences or other terms upon which any class of Shares is issued or as may otherwise be provided in this Memorandum of Incorporation, no Shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional Shares issued by the Company.

7 CERTIFICATED AND UNCERTIFICATED SECURITIES

- 7.1 Securities of the Company are to be issued in certificated or uncertificated form, as shall be determined by the Board from time to time. Except to the extent otherwise provided in the Act, the rights and obligations of Security holders shall not be different solely on the basis of their Securities being Certificated Securities or Uncertificated Securities and each provision of this Memorandum of Incorporation applies with respect to any Uncertificated Securities in the same manner as it applies to Certificated Securities, unless otherwise stated or indicated by the context.
- 7.2 Any Certificated Securities may cease to be evidenced by certificates and thereafter become Uncertificated Securities.
- 7.3 Any Uncertificated Securities may be withdrawn from the Uncertificated Securities Register, and certificates issued evidencing those Securities at the election of the holder of those Uncertificated Securities. A holder of Uncertificated Securities who elects to withdraw all or part of the Uncertificated Securities held by it in an Uncertificated Securities Register,

and obtain a certificate in respect of those withdrawn Securities, may so notify the relevant Participant or Central Securities Depository as required by the rules of the Central Securities Depository.

7.4 After receiving notice from a Participant or the Central Securities Depository, as the case may be, that the holder of Uncertificated Securities wishes to withdraw all or part of the Uncertificated Securities held by it in an Uncertificated Securities Register, and obtain a certificate in respect thereof, the Company shall, in accordance with the provisions of the Act –

7.4.1 enter the relevant Security holder's name and details of its holding of Securities in the Securities Register and indicate on the Securities Register that the securities so withdrawn are no longer held in uncertificated form; and

7.4.2 within the time periods specified in the Act, prepare and deliver to the relevant person a certificate in respect of the Securities and notify the Central Securities Depository that the Securities are no longer held in uncertificated form.

7.5 The Company may charge a holder of its Securities a reasonable fee to cover the actual cost of issuing any certificate as contemplated in this clause.

8 SECURITIES REGISTER

8.1 The Company must establish or cause to be established a Securities Register in the form prescribed by the Act and the Regulations and maintain the Securities Register in accordance with the prescribed standards.

8.2 As soon as practicable after issuing any Securities, the Company must enter or cause to be entered in the Securities Register, in respect of every class of Securities it has issued –

8.2.1 the total number of Uncertificated Securities;

8.2.2 with respect to Certificated Securities –

- 8.2.2.1 the names and addresses of the persons to whom the Certificated Securities were issued;
 - 8.2.2.2 the number of Certificated Securities issued to each of them;
 - 8.2.2.3 the number of, and prescribed circumstances relating to, any Securities that have been placed in trust as contemplated in section 40(6)(d) or whose transfer has been restricted;
 - 8.2.2.4 in the case of Securities other than Shares as contemplated in section 43, the number of those Securities issued and outstanding and the names and addresses of the registered holders of the Securities and any holders of beneficial interests therein; and
 - 8.2.2.5 any other prescribed information.
- 8.3 If the Company has issued Uncertificated Securities, or has issued Securities that have ceased to be Certificated Securities as contemplated in clause 7.2, a record must be administered and maintained by a Participant or the Central Securities Depository, as the case may be, in the prescribed form, as the Uncertificated Securities Register, which –
- 8.3.1 forms part of the Securities Register; and
 - 8.3.2 must contain, with respect to all Uncertificated Securities contemplated in this clause 8, any details referred to in clause 8.2.2, read with the changes required by the context or as determined by the rules of the Central Securities Depository.
- 8.4 The Securities Register or Uncertificated Securities Register maintained in accordance with the Act shall be sufficient proof of the facts recorded in it, in the absence of evidence to the contrary.
- 8.5 Unless all the Shares rank equally for all purposes, the Shares, or each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.
- 8.6 A certificate evidencing any Certificated Securities of the Company –

- 8.6.1 must state on its face –
 - 8.6.1.1 the name of the Company;
 - 8.6.1.2 the name of the person to whom the Securities were issued; and
 - 8.6.1.3 the number and class of Shares and designation of the series, if any, evidenced by that certificate;
- 8.6.2 must be signed by 2 (two) persons authorised by the Board, which signatures may be affixed or placed on the certificate by autographic, mechanical or electronic means; and
- 8.6.3 is proof that the named Security holder owns the Securities, in the absence of evidence to the contrary.
- 8.7 A certificate remains valid despite the subsequent departure from office of any person who signed it.
- 8.8 If, as contemplated in clause 8.5, all of the Shares rank equally for all purposes, and are therefore not distinguished by a numbering system –
 - 8.8.1.1 each certificate issued in respect of those Shares must be distinguished by a numbering system; and
 - 8.8.1.2 if the Share has been transferred, the certificate must be endorsed with a reference number or similar device that will enable each preceding holder of the Share in succession to be identified,

provided that in terms of Schedule 5 of the Act, if the Company is a pre-existing company (as defined in the Act), the failure of any Share certificate to satisfy the provisions of clauses 8.6 to 8.8 is not a contravention of the Act and does not invalidate that certificate.
- 8.9 If a Share certificate is defaced, lost or destroyed, it may be replaced -
 - 8.9.1 free of charge by the Company; and
 - 8.9.2 in case of defacement, on delivery of the old certificate to the Company.

- 8.10 The Directors may, as they deem fit, determine such terms (if any) as to evidence and indemnity and payment of the out-of-pocket expenses of the Company of investigating such evidence and, in the case of loss or destruction, of advertising the same.

9 TRANSFER OF SECURITIES

- 9.1 The instrument of transfer of any Certificated Securities shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of such Certificated Securities until the name of the transferee is entered in the Securities Register. The Directors may, however, in their discretion in such cases as they deem fit, dispense with requiring the signature of the transferee on the instrument of transfer.
- 9.2 Subject to such restrictions as may be applicable, (whether by virtue of the preferences, rights, limitations or other terms associated with the Securities in question), any Shareholder or holder of other Securities may transfer all or any of its Certificated Securities by instrument in writing in any usual or common form or any other form which the Directors may approve.
- 9.3 Every instrument of transfer shall be delivered to the principal place of business of the Company, accompanied by –
- 9.3.1 the certificate issued in respect of the Certificated Securities to be transferred; and/or
- 9.3.2 such other evidence as the Company may require to prove the title of the transferor, or his or her right to transfer the Certificated Securities.
- 9.4 All authorities to sign transfer deeds or other instruments of transfer granted by holders of Securities for the purpose of transferring Certificated Securities which may be lodged, produced or exhibited with or to the Company at its registered office or at its transfer office shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Company's registered office or transfer office at which the authority was

first lodged, produced or exhibited. Even after the giving and lodging of such notice, the Company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the Company as being in order before the giving and lodging of such notice.

- 9.5 All instruments of transfer, when registered, shall either be retained by the Company or disposed of in such manner as the Directors shall from time to time decide.
- 9.6 The transfer of Uncertificated Securities may be effected only –
- 9.6.1 by a Participant or the Central Securities Depository;
- 9.6.2 on receipt of an instruction to transfer sent and properly authenticated in terms of the rules of a Central Securities Depository or an order of a Court; and
- 9.6.3 in accordance with section 53 and the rules of the Central Securities Depository.
- 9.7 Transfer of ownership in any Uncertificated Securities must be effected by debiting the account in the Uncertificated Securities Register from which the transfer is effected and crediting the account in the Uncertificated Securities Register to which the transfer is effected, in accordance with the rules of the Central Securities Depository.
- 9.8 Securities transfer tax and other legal costs payable in respect of any transfer of Securities pursuant to this Memorandum of Incorporation will be paid by the Company to the extent that the Company is liable therefor in law, but shall, to that extent, be recoverable from the person acquiring such Securities.
- 9.9 The Securities Register (or any part thereof relating to holders of any class of Shares) may, in the discretion of the Directors upon notice being given by advertisement in the Government Gazette of South Africa and a newspaper circulating in the district in which the registered office of the Company is situated be closed during such time as the Directors may think fit, not exceeding in the aggregate 60 (sixty) days in any year.

10 NO LIEN

It is recorded for the avoidance of doubt that fully paid Securities shall not be subject to any lien in favour of the Company and shall be freely transferable.

11 TRANSMISSION OF SECURITIES

- 11.1 The executor of the estate of a deceased sole holder of a Security shall be the only person recognised by the Company as having any title to such Security. In the case of a Security registered in the names of 2 (two) or more holders, the survivor or survivors, and/or the executor of the estate of any deceased Shareholder, as determined by the Board, shall be the only person recognised by the Company as having any title to the Security. Any person who submits proof of his appointment as the executor, administrator, trustee, curator, or guardian in respect of the estate of a deceased Shareholder or holder of other Securities ("**Security Holder**") of the Company, or of a Security Holder whose estate has been sequestered or of a Security Holder who is otherwise under a disability or as the liquidator of a body corporate which is a Security Holder of the Company, shall be entered in the Securities Register *nomine officii*, and shall thereafter, for all purposes, be deemed to be a Securities Holder.
- 11.2 Subject to the provisions of clause 11.1, any person becoming entitled to any Security by virtue of the death of a Security Holder shall, upon producing such evidence that he has such title or rights as the Directors think sufficient, have the right either to have such Security transferred to himself or to make such other transfer of the Security as such Security Holder could have made, provided that in respect of a transfer other than to himself –
- 11.2.1 the Directors shall have the same right to refuse or suspend registration as they would have had in the case of a proposed transfer of such Security by such Security Holder before his death; and
- 11.2.2 a person becoming entitled to any Security shall not, unless and until he is himself registered as a Security Holder in respect of such Security, be entitled to exercise any voting or other right attaching to such Security or

any other right relating to meetings of the Company.

12 **SHARE WARRANTS**

The Company shall not issue Share warrants or bearer Shares.

13 **DEBT SECURITIES**

The Board may authorise the Company to issue secured or unsecured Debt Securities or, subject to the Capital Regulations, unsecured Debt Securities which comprise Capital Securities, as set out in section 43(2) of the Act, but no special privileges associated with any such Debt Securities as contemplated in section 43(3)(a) of the Act may be granted, and the authority of the Board in such regard is limited by this Memorandum of Incorporation provided however that, in the case of unsecured Debt Securities which comprise Capital Securities, such special privileges may be authorised if mandated in terms of the Capital Regulations.

14 **CAPITALISATION SHARES**

14.1 Subject to the provisions of clauses 6.10 and 6.11 and the Banks Act (where applicable), the Board shall have the power and authority to –

14.1.1 approve the issuing of any authorised Shares as capitalisation Shares;

14.1.2 to issue Shares of one class as capitalisation Shares in respect of Shares of another class; and/or

14.1.3 subject to the provisions of clause 14.2, to resolve to permit Shareholders to elect to receive a cash payment in lieu of a capitalisation Share.

14.2 The Board may not resolve to offer a cash payment in lieu of awarding a capitalisation Share, as contemplated in clause 14.1.3, unless the Board –

14.2.1 has considered the Solvency and Liquidity Test as required by section 46, on the assumption that every such Shareholder would elect to receive cash; and

14.2.2 is satisfied that the Company would satisfy the Solvency and Liquidity

Test immediately upon the completion of the distribution.

15 **BENEFICIAL INTERESTS IN SECURITIES**

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

16 **FINANCIAL ASSISTANCE**

Subject to compliance with the further requirements of the Act (and the Banks Act and the Capital Regulations, where applicable), the Board may authorise the Company to provide financial assistance by way of loan, guarantee, the provision of security or otherwise to any person for the purpose of, or in connection with, the subscription of any option, or any Securities, issued or to be issued by the Company or a related or inter-related company, or for the purchase of any such Securities, as set out in section 44, and the authority of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

17 **ACQUISITION BY THE COMPANY OF ITS OWN SHARES**

17.1 Subject to the Banks Act and the prior written approval of the Relevant Authority where applicable, the provisions of the Act and the further provisions of this clause 17 –

17.1.1 the Board may determine that the Company acquires a number of its own Shares; and

17.1.2 the board of any subsidiary of the Company may determine that such subsidiary acquires Shares of the Company, but –

17.1.2.1 not more than 10% (ten percent), in aggregate, of the number of issued Shares of any class may be held by, or for the benefit of, all of the subsidiaries of the Company, taken together; and

17.1.2.2 no voting rights attached to those Shares may be exercised while the Shares are held by that subsidiary and it remains a subsidiary of the Company.

- 17.2 Any decision by the Company to acquire its own Shares shall be subject to the requirements of the Banks Act, where applicable, and the requirements of the Act.

18 ODD-LOT OFFERS

- 18.1 If, upon implementation of any odd-lot offer made by the Company there are holders of Shares holding in aggregate less than 100 (one hundred) Shares ("**odd-lots**") in the Company ("**odd-lot holders**"), then the Company shall, save in respect of odd-lot holders who have elected to retain their odd-lots or to increase their odd-lots to holdings of 100 (one hundred) Shares in the Company -

- 18.1.1 cause the odd-lots to be sold in such manner as the Directors may direct; and

- 18.1.2 procure that the proceeds of such sales are paid to such odd-lot holders.

- 18.2 All unclaimed proceeds (of such sales) may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed, provided that such proceeds unclaimed may, in accordance with the laws of prescription, be declared forfeited by the Directors for the benefit of the Company.

19 SINGLE SHAREHOLDER'S AUTHORITY TO ACT

- 19.1 If, at any time, as contemplated in section 57(2), the Company has only 1 (one) Shareholder –

- 19.1.1 that Shareholder may exercise any and all of the voting rights pertaining to the Company, at any time, without notice or compliance with any other internal formalities as set out in that section, and such power is not limited or restricted by this Memorandum of Incorporation; and

- 19.1.2 the provisions of clauses 20 (*Record Date for Exercise of Shareholder Rights*), 21 (*Shareholders' Meetings*), save, as long as the company is a public company, for clauses 21.2.1, 21.2.4.2 and 21.2.4.3, 22 (*Shareholders' Meetings by Electronic Communication*), 23 (*Votes of Shareholders*), 25 (*Shareholders' Resolutions*) and 26 (*Shareholders*)

Acting Other Than at a Meeting) shall not apply to the Company.

- 19.2 If at any time every Shareholder is also a Director -
- 19.2.1 any matter that is required to be referred by the Board to the Shareholders for decision may be decided by the Shareholders at any time after being referred by the Board, without notice or compliance with any other internal formalities, provided that –
- 19.2.1.1 every such person was present at the Board meeting when the matter was referred to them in their capacity as Shareholders;
- 19.2.1.2 sufficient persons are present in their capacity as Shareholders to satisfy the quorum requirements set out in clause 21.4;
- 19.2.1.3 a resolution adopted by those persons in their capacity as Shareholders has at least the support that would have been required for it to be adopted as an ordinary resolution or special resolution, as the case may be, at a properly constituted Shareholders' meeting; and
- 19.2.2 when acting in their capacity as Shareholders, those persons are not subject to the provisions of sections 73 to 78 relating to the duties, obligations, liabilities and indemnification of Directors.

20 RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS

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

- 20.1 receive notice of a Shareholders' meeting;
- 20.2 participate in and vote at a Shareholders' meeting;
- 20.3 decide any matter by written consent or by Electronic Communication;
- 20.4 receive a distribution;
- 20.5 be allotted or exercise other rights; or

20.6 participate in any other transaction,

shall be determined by the Board.

21 **SHAREHOLDERS' MEETINGS**

21.1 **Calling of Shareholders' meetings**

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

21.1.2 Subject to the provisions of section 60 dealing with the passing of resolutions of Shareholders otherwise than at a meeting of Shareholders, the Company shall hold a Shareholders' meeting –

21.1.2.1 at any time that the Board is required by the Act, or this Memorandum of Incorporation to refer a matter to Shareholders for decision; or

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

21.1.2.3 when required in terms of clause 21.1.3 or by any other provision of this Memorandum of Incorporation.

21.1.3 The Board shall call a meeting of Shareholders if 1 (one) or more written and signed demands by Shareholders calling for such a meeting are delivered to the Company and –

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

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

21.2 Annual general meetings

- 21.2.1 In addition to other meetings of the Company that may be convened from time to time, the Company shall convene an annual general meeting of its Shareholders once in each calendar year, but no more than 15 (fifteen) months after the date of the previous annual general meeting.
- 21.2.2 The Company shall deliver notices of meetings to each Shareholder entitled to vote at such meeting who has elected to receive such documents.
- 21.2.3 For as long as required in terms of the provisions of the Act, any such annual general meeting –
- 21.2.3.1 shall be capable of being held by Electronic Communication in accordance with the further provisions of this Memorandum of Incorporation; and
- 21.2.3.2 shall not be capable of being held in accordance with the provisions of clause 26.
- 21.2.4 Each annual general meeting of the Company contemplated in clause 21.1.3.2 shall provide for at least the following business to be transacted –
- 21.2.4.1 the presentation of the directors' report, audited financial statements for the immediately preceding financial year of the Company and an audit committee report;
- 21.2.4.2 the election of Directors, to the extent required by the Act and by clause 27.3.2;
- 21.2.4.3 the appointment of an auditor for the following financial year; and
- 21.2.4.4 any matters raised by the Shareholders, with or without advance notice to the Company.

21.2.5 Save as otherwise provided herein, the Company is not required to hold any other Shareholders' meetings other than those specifically required by the Act.

21.3 **Location of and notices of meetings**

21.3.1 The Board may determine the location of any Shareholders' meeting, and the Company may hold any such meeting in South Africa or in any foreign country, and the authority of the Board and the Company in this regard is not limited or restricted by this Memorandum of Incorporation.

21.3.2 To the extent required by the Act, every Shareholders' meeting shall be reasonably accessible within South Africa for electronic participation by Shareholders, irrespective of whether the meeting is held in South Africa or elsewhere.

21.3.3 All meetings (whether called for the passing of special or ordinary resolutions) shall be called on not less than 15 (fifteen) business days' notice.

21.4 **Quorum and adjournment of meetings**

21.4.1 The quorum for a Shareholders' meeting to begin or for a matter to be begin to be considered, shall, if the Company has more than 2 (two) Shareholders, be at least 3 (three) Shareholders entitled to attend and vote and be present at the meeting of whom one shall be the representative of the Company's holding company, if any, or, if the only Shareholder of the Company is its holding company, be the representative of its holding company. In addition –

21.4.1.1 a Shareholders' meeting may not begin until sufficient persons are present or represented at the meeting to exercise, in aggregate, at least 25% (twenty five percent) of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and

21.4.1.2 a matter to be decided at a Shareholders' meeting may not begin to be considered unless sufficient persons are present or represented at

the meeting to exercise, in aggregate, at least 25% (twenty five percent) of all of the voting rights that are entitled to be exercised in respect of that matter at the time the matter is called on the agenda.

21.4.2 The time periods specified in sections 64(4) and (5) apply to the Company without variation and, accordingly, if within 1 (one) hour after the appointed time for a meeting to begin, the requirements of clause 21.4 –

21.4.2.1 for that meeting to begin have not been satisfied, the meeting shall be postponed, without any motion, vote or further notice, for 1 (one) week;

21.4.2.2 for consideration of a particular matter to begin have not been satisfied –

21.4.2.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; or

21.4.2.2.2 if there is no other business on the agenda of the meeting, the meeting shall be adjourned, without any motion or vote, for 1 (one) week,

provided that the person intended to chair a meeting that cannot begin due to the operation of clause 21.4 may extend the 1 (one) hour limit allowed in clause 21.4.2 for a reasonable period on the grounds that –

21.4.2.3 exceptional circumstances affecting weather, transportation or Electronic Communication have generally impeded or are generally impeding the ability of Shareholders to be present at the meeting; or

21.4.2.4 one or more particular Shareholders, having been delayed, have communicated an intention to attend the meeting, and those Shareholders, together with others in attendance, would satisfy the requirements of clause 21.4.

21.4.3 The accidental omission to give notice of any meeting to any particular Shareholder or Shareholders shall not invalidate any resolution passed

at any such meeting.

21.4.4 The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 21.4.2 unless the location for the meeting is different from –

21.4.4.1 the location of the postponed or adjourned meeting; or

21.4.4.2 the location announced at the time of adjournment, in the case of an adjourned meeting.

21.4.5 If at the time appointed in terms of clause 21.4.2 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 21.4.1 have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.

21.4.6 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least 1 (one) Shareholder with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting, and the provisions of section 64(9) are not limited or restricted by this Memorandum of Incorporation.

21.4.7 The chairperson of a meeting may with the consent of a meeting at which a quorum is present (and must if the meeting resolves thus) adjourn the meeting from time to time and from place to place, but an adjourned meeting may only deal with matters which could legally be dealt with at the meeting on which the adjournment took place.

21.4.8 The maximum period allowable for an adjournment of a Shareholders' meeting is as set out in section 64(12), without variation.

21.5 **Conduct of meetings**

21.5.1 The chairperson, or in his or her absence, the deputy chairperson, if any, of the Board shall preside as chairperson at every Shareholders' meeting.

21.5.2 If there is no such chairperson or deputy chairperson, or if at any

meeting he or she is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Directors present shall choose 1 (one) of their number to be chairperson. If no Director is willing to act as chairperson or if no Director is present within 15 (fifteen) minutes after the time appointed for commencement of the meeting, the Shareholders present shall choose one of their number to be chairperson of the meeting.

- 21.5.3 The chairperson of a Shareholders' meeting may –
- 21.5.3.1 appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney received and for counting the votes at the meeting;
- 21.5.3.2 act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.
- 21.5.4 If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution, unless -
- 21.5.4.1 it is brought to the attention of the chairperson at the meeting; and
- 21.5.4.2 in the opinion of the chairperson of the meeting, it is of sufficient magnitude to vitiate the resolution.
- 21.5.5 Any objection to the admissibility of any vote (whether on a show of hands or on a poll) shall be raised -
- 21.5.5.1 at the meeting or adjourned meeting at which the vote objected to was recorded; or
- 21.5.5.2 at the meeting or adjourned meeting at which the result of the poll was announced,

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

21.5.6 Even if he is not a Shareholder -

21.5.6.1 any Director; or

21.5.6.2 the company's attorney (or where the company's attorneys are a firm, any partner or director thereof),

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

22 **SHAREHOLDERS' MEETINGS BY ELECTRONIC COMMUNICATION**

22.1 The Company may conduct a Shareholders' meeting entirely by Electronic Communication or provide for participation in a meeting by Electronic Communication, as set out in section 63, and the power of the Company to do so is not limited or restricted by this Memorandum of Incorporation. Accordingly –

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

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

so long as the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting. Voting in such event must be authorized by proxy or such other means as the Board may approve from time to time.

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

23 VOTES OF SHAREHOLDERS

- 23.1 Subject to any special rights or restrictions as to voting attached to any Shares by or in accordance with this Memorandum of Incorporation, at a meeting of the Company –
- 23.1.1 every person present and entitled to exercise voting rights shall be entitled to 1 (one) vote on a show of hands, irrespective of the number of voting rights that person would otherwise be entitled to exercise;
- 23.1.2 on a poll any person who is present at the meeting, whether as a Shareholder or as proxy for a Shareholder, has the number of votes determined in accordance with the voting rights associated with the number of Securities held by that Shareholder; and
- 23.1.3 the holders of Securities other than ordinary Shares shall not be entitled to vote on any resolution at a meeting of Shareholders, except as provided in clause 23.2.
- 23.2 If any resolution is proposed as contemplated in clause 6.6, the holders of such Shares ("**Affected Shareholders**") shall be entitled to vote at the meeting of ordinary Shareholders as contemplated in clause 23.1, provided that –
- 23.2.1 the votes of the Shares of that class held by the Affected Shareholders ("**Affected Shares**") shall not carry any special rights or privileges and each Affected Shareholder shall be entitled to 1 (one) vote for every Affected Share held; and
- 23.2.2 the total voting rights of the Affected Shareholders in respect of the Affected Shares shall not be more than 24.99% (twenty four point nine nine percent) of the total votes (including the votes of the ordinary Shareholders) exercisable at that meeting (with any cumulative fraction of a vote in respect of any Affected Shares held by an Affected Shareholder rounded down to the nearest whole number).
- 23.3 Voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of Shareholders if a demand is made for

such a vote by –

- 23.3.1 at least 5 (five) persons having the right to vote on that matter, either as Shareholders or as proxies representing Shareholders; or
 - 23.3.2 a Shareholder who is, or Shareholders who together are, entitled, as Shareholders or proxies representing Shareholders, to exercise at least 10% (ten percent) of the voting rights entitled to be voted on that matter; or
 - 23.3.3 the chairperson of the meeting.
- 23.4 At any meeting of the Company a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of clause 23.3, and unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry is made to that effect in the book containing the minutes of the proceedings 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. The demand for a poll may be withdrawn.
- 23.5 If a poll is duly demanded, it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. In computing the majority on the poll, regard shall be had to the number of votes to which each Shareholder is entitled.
- 23.6 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 23.7 A poll demanded on the election of a chairperson (as contemplated in clause 21.5.2) or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent

the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

- 23.8 A person who is entitled to more than 1 (one) vote, does not have to exercise all his or her votes and does not have to exercise all his or her votes in the same manner.
- 23.9 Where there are joint registered holders of any Share, any 1 (one) of such persons may exercise all of the voting rights attached to that Share at any meeting, either personally or by proxy, as if he or she were solely entitled thereto. If more than 1 (one) of such joint holders are present at any meeting, personally or by proxy, the person so present whose name stands first in the Securities Register in respect of such Share shall alone be entitled to vote in respect thereof.
- 23.10 The board of any company or the controlling body of any other entity or person that holds any Shares of the Company may authorise any person to act as its representative at any meeting of Shareholders of the Company, in which event the following provisions will apply –
- 23.10.1 the person so authorised may exercise the same powers of the authorising company, entity or person as it could have exercised if it were an individual holder of Shares; and
- 23.10.2 the authorising company, entity or person shall lodge a resolution of the directors of such company or controlling body of such other entity or person confirming the granting of such authority, and certified under the hand of the chairperson or secretary thereof, with the Company before the commencement of any Shareholders' meeting at which such person intends to exercise any rights of such Shareholder, unless excused from doing so by the chairperson of such meeting.

24 PROXIES AND REPRESENTATIVES

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

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

24.1.2 give or withhold written consent on behalf of that Shareholder to a decision contemplated in section 60,

provided that a Shareholder may appoint more than 1 (one) proxy to exercise voting rights attached to different Securities held by the Shareholder.

24.2 A proxy appointment –

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

24.2.2 remains valid for –

24.2.2.1 1 (one) year after the date on which it was signed; or

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

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

24.3 The holder of a power of attorney or other written authority from a Shareholder may, if so authorised thereby, represent such Shareholder at any meeting of the Company and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the Company before such holder exercises any rights of the Shareholder at a Shareholders' meeting. A Shareholder so represented at a meeting of the Company shall be deemed for purposes of this Memorandum of Incorporation to be a Shareholder who is present at the meeting.

24.4 All of the remaining provisions of the Act relating to the appointment and revocation of proxies and the rights of proxies generally shall apply and, in particular –

24.4.1 a Shareholder has the right to appoint 2 (two) or more persons concurrently as proxies as set out in section 58(3)(a);

24.4.2 a Shareholder's proxy may delegate the proxy's powers to another

person as set out in section 58(3)(b);

24.4.3 a Shareholder or his proxy must deliver to the Company a copy of the instrument appointing a proxy not later than 48 (forty eight) hours before the commencement of the meeting at which the proxy intends to exercise that Shareholder’s rights, provided that the chairperson of the meeting may, in his discretion, accept proxies that have been delivered after the expiry of the aforementioned period up until the time of commencement of the meeting; and

24.4.4 unless the instrument appointing a proxy provides otherwise, a Shareholder’s proxy may decide, without direction from the Shareholder, whether to exercise or abstain from exercising any voting right of the Shareholder, as set out in section 58(7),

and none of such rights or powers are limited, restricted or varied by this Memorandum of Incorporation.

24.5 Every instrument of proxy shall, as far as circumstances permit, be substantially in the following form, or in such other form as the Directors may approve from time to time –

"I/We _____

being a shareholder of _____ Limited do hereby appoint

or failing him/her

or failing him/her, the chairperson of the meeting as my/our proxy to vote or abstain from voting on my/our behalf at the meeting of the Company to be held at _____ on _____ and at any adjournment thereof as follows:-

	In favour of	Against	
<u>Abstain</u>			
Special Resolution 1
Ordinary Resolution 1

(Indicate instruction to proxy by way of a cross in space provided above). Except as instructed above or if no instructions are inserted above, my/our proxy may vote as he/she thinks fit.

SIGNED this day of in the year of .

SHAREHOLDER'S SIGNATURE

(Note: A shareholder entitled to attend, speak and vote is entitled to appoint a proxy to attend, speak and vote in his/her stead, and such proxy need not be a shareholder of the Company)."

25 **SHAREHOLDERS' RESOLUTIONS**

- 25.1 For an ordinary resolution to be approved it must be supported by more than 50% (fifty percent) of the voting rights of Shareholders exercised on the resolution, as provided in section 65(7).
- 25.2 For a special resolution to be approved it must be supported by the holders of at least 75% (seventy five percent) of the voting rights exercised on the resolution, as provided in section 65(9).
- 25.3 No matters require a special resolution adopted at a Shareholders' meeting of the Company, other than –
- 25.3.1 those matters set out in section 65(11); or
- 25.3.2 any other matter required by the Act to be resolved by means of a special resolution;
- 25.4 In the event that any Shareholder abstains from voting in respect of any resolution, such Shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.

26 **SHAREHOLDERS ACTING OTHER THAN AT A MEETING**

- 26.1 In accordance with the provisions of section 60, but subject to clause 26.4, a resolution that could be voted on at a Shareholders' meeting may instead be –

- 26.1.1 submitted by the Board for consideration to the Shareholders entitled to exercise the voting rights in relation to the resolution; and
- 26.1.2 voted on in writing by such Shareholders within a period of 20 (twenty) business days after the resolution was submitted to them.
- 26.2 A resolution contemplated in clause 26.1 –
 - 26.2.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted Shareholders' meeting; and
 - 26.2.2 if adopted, will have the same effect as if it had been approved by voting at a meeting.
- 26.3 Within the period prescribed by the Act after adopting a resolution in accordance with the procedures provided in this clause 26, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Shareholder who was entitled to vote on or consent to the resolution.
- 26.4 The provisions of this clause 26 shall not apply to any annual general meeting of the Company.

27 COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS

27.1 Number of Directors

- 27.1.1 In addition to the minimum number of Directors, if any, that the Company must have to satisfy any requirement in terms of the Act to appoint an audit committee and a social and ethics committee, the Board must comprise at least 4 (four) Directors and the Shareholders shall be entitled, by ordinary resolution, to determine such maximum number of Directors as they from time to time shall consider appropriate.
- 27.1.2 All Directors shall be elected by an ordinary resolution of the Shareholders at a general or annual general meeting of the Company and no appointment of a Director in accordance with a resolution passed

in terms of section 60 of the Act shall be competent.

27.1.3 Every person holding office as a Director, Prescribed Officer, company secretary or auditor of the Company immediately before the effective date of the Act will, as contemplated in item 7(1) of Schedule 5 to the Act, continue to hold that office.

27.1.4 The appointment or election of any person as a director or executive officer of the Company is subject to the requirements of the Banks Act.

27.2 **Appointment and nomination of Directors**

27.2.1 In any election of Directors –

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

27.2.1.2 in each vote to fill a vacancy –

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

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

27.2.2 Subject to the provisions of clauses 27.4.1.1 and 30, the Company shall only have elected Directors and there shall be no appointed or *ex officio* Directors as contemplated in section 66(4).

27.2.3 In the event that the Company only has 1 (one) Shareholder, the provisions of this clause 27.2 will not apply and the election of Directors shall take place in such manner as the Shareholder shall determine.

27.3 **Eligibility, resignation and retirement of Directors**

27.3.1 Apart from satisfying the qualification and eligibility requirements set out in section 69, a person need not satisfy any eligibility requirements or qualifications to become or remain a Director or a Prescribed Officer of the Company.

- 27.3.2 No Director shall be appointed for life or for an indefinite period and the Directors shall rotate in accordance with the following provisions of this clause 27.3.2 –
- 27.3.2.1 at each annual general meeting referred to in clause 21.2.1, 1/3 (one third) of the Directors for the time being, or if their number is not 3 (three) or a multiple of 3 (three), the number nearest to 1/3 (one third), but not less than 1/3 (one third), shall retire from office, provided that if a Director is appointed as an executive Director or as an employee of the Company in any other capacity, he or she shall not, while he or she continues to hold that position or office, be subject to retirement by rotation and he or she shall not, in such case, be taken into account in determining the rotation or retirement of Directors;
- 27.3.2.2 the Directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who were elected as Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot;
- 27.3.2.3 a retiring Director shall be eligible for re-election;
- 27.3.2.4 the Company, at the general meeting at which a Director retires in the above manner, or at any other general meeting, may fill the vacancy by electing a person thereto;
- 27.3.2.5 if at any meeting at which an election of Directors ought to take place the offices of the retiring Directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the further provisions of this Memorandum of Incorporation, including clauses 21.4.2 to 21.4.5 (inclusive) will apply *mutatis mutandis* to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring Directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned meeting.

- 27.3.3 Subject to clause 19, the Board shall, through its nomination committee (if such nomination committee has been constituted in terms of clause 33), provide the Shareholders with a recommendation in the notice of the meeting at which the re-election of a retiring Director is proposed, as to which retiring Directors are eligible for re-election, taking into account that Director's past performance and contribution. Sufficient time shall be allowed between the date of such notice and the date of the general meeting or annual general meeting at which the re-election of the Director is to be proposed and the date of such meeting to allow nominations to reach the Company's office from any part in South Africa.
- 27.3.4 Any Director may be removed from office if a majority of his co-directors sign and deposit at the Company's office a written notice wherein he is requested to vacate his office (which shall become operative on deposit at the Company's office) but without prejudice to any claim for damages.

27.4 **Powers of the Directors**

- 27.4.1 The Board has the power to –
- 27.4.1.1 appoint or co-opt any person as Director, whether to fill any vacancy on the Board on a temporary basis, as set out in section 68(3) of the Act, or as an additional Director subject to clause 27.1.4 and provided that such appointment must be confirmed by the Shareholders, in accordance with clause 27.1.2, at the next annual general meeting of the Company, as required in terms of section 70(3)(b)(i); and
- 27.4.1.2 exercise all of the powers and perform any of the functions of the Company, as set out in section 66(1),
- and the powers of the Board in this regard are only limited and restricted as contemplated in this clause 27.
- 27.4.2 The Directors may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this Memorandum of Incorporation) and for

such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any company, the shareholders, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Directors think fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.

- 27.4.3 Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine.
- 27.4.4 All acts performed by the Directors or by a committee of Directors or by any person acting as a Director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some non-fraudulent defect in the appointment of the Directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.
- 27.4.5 If the number of Directors falls below the minimum number fixed in accordance with this Memorandum of Incorporation, the remaining Directors must as soon as possible and in any event not later than 3 (three) months from the date that the number falls below such minimum, fill the vacancy/ies in accordance with clause 27.4.1.1 or convene a general meeting for the purpose of filling the vacancies, and the failure by the Company to have the minimum number of Directors during the said 3 (three) month period does not limit or negate the authority of the Board or invalidate anything done by the Board while their number is

below the minimum number fixed in accordance with this Memorandum of Incorporation.

27.4.6 The Directors in office may act notwithstanding any vacancy in their body, but if after the expiry of the 3 (three) month period contemplated in clause 27.4.5, their number remains below the minimum number fixed in accordance with this Memorandum of Incorporation, they may, for as long as their number is reduced below such minimum, act only for the purpose of filling vacancies in their body in terms of section 68(3) or of summoning general meetings of the Company, but not for any other purpose.

27.5 **Directors' interests**

27.5.1 A Director may hold any other office or place of profit under the Company (except that of auditor or the Company Secretary) or any subsidiary of the Company in conjunction with the office of Director, for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a Director) and otherwise as a disinterested quorum of the Directors may determine.

27.5.2 A Director of the Company may be or become a director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, provided that the appointment and remuneration in respect of such other office must be determined by a disinterested quorum of Directors.

27.5.3 Each Director and each alternate Director, Prescribed Officer and member of any committee of the Board (whether or not such latter persons are also members of the Board) shall, subject to the exemptions contained in section 75(2) and the qualifications contained in section 75(3), comply with all of the provisions of section 75 in the event that they (or any person who is a related person to them) have a personal financial interest in any matter to be considered by the Board.

28 **DIRECTORS' MEETINGS**

28.1 Save as may be provided otherwise herein, the Directors may meet for the

despatch of business, adjourn and otherwise regulate their meetings as they think fit.

- 28.2 The Directors may elect a chairperson and a deputy chairperson and determine the period for which each is to hold office. The chairperson, or in his absence the deputy chairperson, shall be entitled to preside over all meetings of Directors. If no chairperson or deputy chairperson is elected, or if at any meeting neither is present or willing to act as chairperson thereof within 10 (ten) minutes of the time appointed for holding the meeting, the Directors present shall choose 1 (one) of their number to be chairperson of such meeting.
- 28.3 In addition to the provisions of section 73(1), any Director or the Company Secretary shall at any time be entitled to call a meeting of the Directors.
- 28.4 The Board has the power –
- 28.4.1 as contemplated in section 74, to consider any matter and/or adopt any resolution other than at a meeting and, accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the written consent of a majority of the Directors, given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided;
- 28.4.2 to conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3), provided that, as required by such section, the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting;
- 28.4.3 to determine the manner and form of providing notice of its meetings contemplated in section 73(4), provided that –
- 28.4.3.1 the notice period for the convening of any meeting of the Board will be at least 2 (two) days unless the decision of the Directors is required within a shorter period of notice, in which event the meeting

may be called on shorter notice. The decision of the chairperson of the Board, or failing the chairperson for any reason, the decision of the majority of the Directors as to whether a shorter period of notice may be given, shall be final and binding on the directors. To the extent that a Director votes or indicates that he will abstain from voting on any matter in respect of which such shorter notice period has been given, such Director will be regarded, at the same time, as having approved the shorter notice period unless such Director expressly states that he is voting against the shorter notice period;

28.4.3.2 an agenda of the matters to be discussed at the meeting shall be given to each Director, together with the notice referred to in clause 28.4.3.1; and

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

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

28.5 The quorum requirement for a Directors' meeting (including an adjourned meeting) to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5), subject to clause 28.5.1 and clause 28.5.5, and accordingly –

28.5.1 if all of the Directors of the Company –

28.5.1.1 were notified of a meeting; or

28.5.1.2 are present at a meeting; or

28.5.1.3 waive notice of a meeting,

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

28.5.2 a majority of the Directors must be present at a meeting before a vote

may be called at any meeting of the Directors;

- 28.5.3 each Director has 1 (one) vote on a matter before the Board;
- 28.5.4 a majority of the votes cast in favour of a resolution is sufficient to approve that resolution;
- 28.5.5 in the case of a tied vote –
 - 28.5.5.1 the chairperson may not cast a deciding vote in addition to any deliberative vote; or
 - 28.5.5.2 the matter being voted on fails.
- 28.6 Resolutions adopted by the Board –
 - 28.6.1 must be dated and sequentially numbered; and
 - 28.6.2 are effective as of the date of the resolution, unless any resolution states otherwise.
- 28.7 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board or by the Company Secretary , are evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.

29 DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE

- 29.1 The Company may pay remuneration to the Directors for their services as Directors in accordance with a special resolution approved by the Shareholders within the previous 2 (two) years, as set out in section 66(8) and (9), and the power of the Company in this regard is not limited or restricted by this Memorandum of Incorporation.
- 29.2 Any Director who -
 - 29.2.1 serves on any executive or other committee; or
 - 29.2.2 devotes special attention to the business of the Company; or
 - 29.2.3 goes or resides outside South Africa for the purpose of the Company; or

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

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

29.3 The Directors may also be paid all their travelling and other expenses necessarily incurred by them in connection with -

29.3.1 the business of the Company; and

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

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

30 EXECUTIVE DIRECTORS

30.1 The Directors shall, in accordance with the Banks Act, appoint at least 2 (two) executive Directors for such term and at such remuneration as they may think fit, and may revoke such appointment subject to the terms of any agreement entered into in any particular case. A Director so appointed shall not be subject to retirement in the same manner as the other Directors and shall not, during the currency of such appointment, be taken into account in determining the rotation of retirement of directors, but his or her appointment shall terminate if he or she ceases for any reason to be an employee of the Company.

30.2 Subject to the provisions of any contract between himself or herself and the Company, an executive Director shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.

30.3 The Directors may from time to time entrust to and confer upon an

executive Director for the time being such of the powers exercisable in terms of this Memorandum of Incorporation by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient; and they may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

31 INDEMNIFICATION OF DIRECTORS

31.1 The Company may –

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

31.1.2 indemnify a Director in respect of liability as set out in section 78(5); and/or

31.1.3 purchase insurance to protect the Company or a Director as set out in section 78(7),

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

31.2 The provisions of clause 31.1 shall apply *mutatis mutandis* in respect of any Prescribed Officer or member of any committee of the Board, including the audit committee, or any former Director, former Prescribed Officer or former member of any committee of the Board.

32 BORROWING POWERS

Subject to the Banks Act and the other provisions of this Memorandum of Incorporation, the Directors may from time to time –

32.1 borrow for the purposes of the Company such sums as they think fit; and

32.2 secure the payment or repayment of any such sums, or any other sum, as

they think fit, whether by the creation and issue of Securities, mortgage or charge upon all or any of the property or assets of the Company; and

- 32.3 authorise the Company to issue secured or unsecured Debt Securities or, subject to the Capital Regulations, unsecured Debt Securities which comprise Capital Securities, on such terms and conditions as they think fit (but subject, in the case of unsecured Debt Securities which comprise Capital Securities, to the Capital Regulations).

33 COMMITTEES OF THE BOARD

- 33.1 The Board may –

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

33.1.2 include in any such committee persons who are not Directors, as contemplated in section 72(2)(a) of the Act subject, in the case of an audit committee, for as long as the Company is subject to the provisions of the Banks Act and the audit committee is appointed by the Board in terms of the Banks Act, the applicable requirements of the Banks Act,

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

33.2 The authority of a committee appointed by the Board as contemplated in section 72(2)(b) and (c) is not limited or restricted by this Memorandum of Incorporation.

33.3 The Board shall further appoint such committees as it is obliged to do in terms of the Act and the Banks Act, having such functions and powers as are prescribed by the Act and the Banks Act

34 ANNUAL FINANCIAL STATEMENTS

34.1 The Company shall keep all such accurate and complete accounting records as are necessary to enable the Company to satisfy its obligations in terms of –

- 34.1.1 the Act;
 - 34.1.2 any other law with respect to the preparation of financial statements to which the Company may be subject; and
 - 34.1.3 this Memorandum of Incorporation.
- 34.2 The Company shall each year, after the end of its financial year, prepare annual financial statements within the period prescribed by the Act, or such shorter period as may be appropriate to provide the required notice, subject to clause 19, of an annual general meeting in terms of section 61(7).
- 34.3 The Company shall, subject to clause 19, appoint an auditor each year at its annual general meeting. If the Company appoints a firm as its auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of auditor.
- 34.4 The annual financial statements of the Company must be prepared and audited in accordance with the provisions of section 30 of the Act.
- 34.5 A copy of the annual financial statements or a summarised version thereof, must be delivered to Shareholders at least 15 (fifteen) business days before the date of the annual general meeting of the Company at which such annual financial statements will be considered.
- 34.6 The annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable provision of the Act and shall –
- 34.6.1 satisfy, as to form and content, the financial reporting standards of IFRS; and
 - 34.6.2 subject to and in accordance with IFRS –
 - 34.6.2.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
 - 34.6.2.2 show the Company's assets, liabilities and equity, as well as its income and expenses;

- 34.6.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and
- 34.6.2.4 bear on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared or supervised the preparation of them.

35 **COMPANY SECRETARY**

- 35.1 The Company must appoint a company secretary.
- 35.2 The company secretary must have the requisite knowledge of, or experience with, relevant laws and be a permanent resident of South Africa.
- 35.3 The Board must fill any vacancy in the office of company secretary within the period prescribed by the Act after such vacancy arises by a person whom the Directors consider to have the requisite knowledge and experience.

36 **AUTHENTICATION OF DOCUMENTS**

Any Director or the company secretary or any person appointed by the Board for that purpose shall have the power to authenticate –

- 36.1 this Memorandum of Incorporation;
- 36.2 any resolution taken by the Company in general meeting or the Board; and
- 36.3 any book, charter, certificate, document or account with regard to the matters of the Company,

and to certify copies thereof as true copies and excerpts.

37 **DISTRIBUTIONS**

- 37.1 The Directors may from time to time declare and pay to the Shareholders such distributions as the Directors consider to be appropriate.

- 37.2 Subject to the provisions of the Act, and particularly section 46 and this Memorandum of Incorporation, the Company may make any proposed distribution, as defined and contemplated in the Act, if such distribution –
- 37.2.1 is pursuant to an existing legal obligation of the Company, or a court order; or
- 37.2.2 is authorised by resolution of the Board.
- 37.3 No distribution shall bear interest against the Company, except as otherwise provided under the conditions of issue of the Shares in respect of which such distribution is payable.
- 37.4 Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the Company may be chargeable.
- 37.5 All unclaimed dividends may be invested by the Company in trust for the benefit of the Company until claimed, and dividends that remain unclaimed may in accordance with the laws of prescription be declared by the Directors to be forfeited for the benefit of the Company. The Directors may at any time annul such forfeiture upon such conditions (if any) as they think fit. Subject to the provisions of clause 18.2, all unclaimed monies, other than dividends, that are due to Shareholders shall be held by the Company in trust for an indefinite period until lawfully claimed by such Shareholders.
- 37.6 Any distribution, interest or other sum payable in cash to the holder of a Share may be paid by cheque or warrant sent by post and addressed to -
- 37.6.1 the holder at his registered address; or
- 37.6.2 in the case of joint holders, the holder whose name appears first in the Securities Register in respect of the Share, at his registered address; or
- 37.6.3 such person and at such address as the holder or joint holders may in writing direct.
- 37.7 Every such cheque or warrant shall -

- 37.7.1 be made payable to the order of the person to whom it is addressed; and
- 37.7.2 be sent at the risk of the holder or joint holders.
- 37.8 The Company shall not be responsible for the loss in transmission of any cheque or warrant or of any document (whether similar to a cheque or warrant or not) sent by post as aforesaid.
- 37.9 A holder or any one of two or more joint holders, or his or their agent duly appointed in writing, may give valid receipts for any distributions or other moneys paid in respect of a Share held by such holder or joint holders.
- 37.10 When such cheque or warrant is paid, it shall discharge the Company of any further liability in respect of the amount concerned.
- 37.11 A distribution may also be paid in any other way determined by the Directors, and if the directives of the Directors in that regard are complied with, the Company shall not be liable for any loss or damage that a Shareholder may suffer as a result thereof.
- 37.12 Without detracting from the ability of the Company to issue capitalisation Shares, any distribution may be paid wholly or in part -
 - 37.12.1 by the distribution of specific assets; or
 - 37.12.2 by the issue of Shares, debentures or securities of the Company or of any other company; or
 - 37.12.3 in cash; or
 - 37.12.4 in any other way which the Directors or the Company in general meeting may at the time of declaring the distribution determine.
- 37.13 Where any difficulty arises in regard to such distribution, the Directors may settle that difficulty as they think expedient, and in particular may fix the value which shall be placed on such specific assets on distribution.
- 37.14 The Directors may -
 - 37.14.1 determine that cash payments shall be made to any Shareholder on the

basis of the value so fixed in order to secure equality of distribution; and

- 37.14.2 vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the distribution as the Directors deem expedient.

38 RESERVES

- 38.1 The Board may, before recommending any preference or other dividend or other distribution, set aside such amounts from the profits of the Company as reserves as it deems fit.

- 38.2 Such reserves may in the discretion of the Board be used for any admissible purpose and pending such use, the Board may in its discretion –

- 38.2.1 use them for the business of the Company without them being separated from the other assets of the Company; or

- 38.2.2 invest it.

- 38.3 The Board may in its discretion transfer any profits which should not be distributed in its opinion, without putting them to reserve.

- 38.4 The Board may –

- 38.4.1 distribute any such reserve funds as it deems fit;

- 38.4.2 consolidate such funds or any part thereof in one fund.

39 ACCESS TO COMPANY RECORDS

- 39.1 Each person who holds or has a beneficial interest in any Securities issued by the Company is entitled to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the records of the Company referred to in section 26(1), being –

- 39.1.1 this Memorandum of Incorporation, and any amendments or alterations thereof;

- 39.1.2 a record of the Directors, including the details of any person who has

served as a Director, for the period as prescribed by the Act after that person has ceased to serve as a Director, and any information relating to such persons referred to in section 24(5);

- 39.1.3 all –
 - 39.1.3.1 reports presented at an annual general meeting of the Company for the period as prescribed by the Act after the date of any such meeting; and
 - 39.1.3.2 annual financial statements required by the Act for the period as prescribed by the Act after the date on which each such particular statements were issued;
 - 39.1.4 notice and minutes of all Shareholders' meetings, including –
 - 39.1.4.1 all resolutions adopted by them, for the period as prescribed by the Act after the date each such resolution was adopted; and
 - 39.1.4.2 any document that was made available by the Company to the holders of Securities in relation to each such resolution;
 - 39.1.5 any written communications sent generally by the Company to all holders of any class of the Company's Shares, for the period as prescribed by the Act after the date on which each of such communications was issued; and
 - 39.1.6 the Securities Register.
- 39.2 A person not contemplated in clause 39.1 has a right to inspect the Securities Register and the register of Directors of the Company upon payment of an amount not exceeding the prescribed maximum fee for any such inspection.
- 39.3 A person who wishes to inspect the Uncertificated Securities Register may do so only through the Company in terms of section 26, and in accordance with the rules of the Central Securities Depository. Within the period as prescribed by the Act after the date of a request for inspection, the Company must produce a record of the Uncertificated Securities Register,

which record must reflect at least the details referred to in section 50(3)(b) at the close of business on the last business day of the week following the week during which the request for inspection was made.

40 PAYMENT OF COMMISSION

- 40.1 The Company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities of the Company or for procuring or agreeing to procure, whether absolutely or conditionally, subscriptions for any Securities of the Company.
- 40.2 Commission may be paid out of capital or profits, whether current or accumulated, or partly out of the one and partly out of the other.
- 40.3 Such commission may be paid in cash or, if authorised by the Shareholders by ordinary resolution, by the allotment of Securities, or partly in one way and partly in the other.
- 40.4 The Company may, on any issue of Securities, pay such brokerage as may be lawful.

41 NOTICES

- 41.1 Subject to clause 19, all notices shall be given by the Company to each Shareholder of the Company who has elected to receive such notices and simultaneously to the Relevant Authority, and shall be given in writing in any manner authorised by the Act.
- 41.2 Each Shareholder of the Company –
- 41.2.1 shall notify in writing to the Company an address, which address shall be his registered address for the purposes of receiving written notices from the Company by post; and
- 41.2.2 may notify in writing to the Company an email address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication,

provided that a Shareholder who fails to notify the Company of an address as set out in this clause 41.2, may obtain an electronic copy from the Company by –

- 41.2.3 down loading same from the Company's website; or
 - 41.2.4 requesting same from the Company Secretary.
- 41.3 Subject to clause 19, any Shareholder whose address in the Securities Register is an address not within South Africa, shall be entitled to have notices served upon him at such address.
- 41.4 In the case of joint holders of a Share, all notices shall, unless such holders otherwise in writing request and the Directors agree, be given to that Shareholder whose name appears first in the Securities Register and a notice so given shall be deemed sufficient notice to all the joint holders.
- 41.5 Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Share, shall be bound by every notice in respect of that Share which, previously to his name and address being entered in the Securities Register, was given to the person from whom he derives his title to such Share.
- 41.6 Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in pursuance of this Memorandum of Incorporation shall, notwithstanding that such Shareholder was then deceased, and whether or not the Company has notice of his death, be deemed to have been duly served in respect of any Shares, whether held solely or jointly with other persons by such Shareholder, until some other person be registered in his stead as the sole or joint holder thereof, and such service shall for all purposes of this Memorandum of Incorporation be deemed a sufficient service of such notice or document on his heirs, executors or administrators, and all persons (if any) jointly interested with him in any such Shares.

42 WINDING-UP

- 42.1 Subject to the applicable provisions of the Banks Act, if the Company is

wound-up the liquidator may, with the sanction of a special resolution of the Shareholders, divide among the Shareholders *in specie* or kind the whole or any part of the assets of the Company and may for such purpose -

- 42.1.1 set a value which he deems fair upon any asset; and
- 42.1.2 determine how the division shall be carried out as between the Shareholders or holders of different classes of Shares.
- 42.2 Subject to the applicable provisions of the Banks Act, the liquidator may, with the sanction of a special resolution of the Shareholders, vest the whole or any part of the assets in trustees upon trusts for the benefit of the Shareholders or any of them.
- 42.3 Subject to the applicable provisions of the Banks Act, any such resolution may provide for and sanction a distribution of specific assets amongst the holders of different classes of Shares contrary to their existing rights, but each Shareholder shall in that event have a right of dissent and other ancillary rights in the same manner as if such resolution were a special resolution passed pursuant to the provisions of the Act.

43 PRE-ACQUISITION PROFITS

- 43.1 Where any asset, business or property is purchased by the Company with effect from an expired date on condition that the Company shall be entitled to the profits as from that date and shall be liable for the losses thereof, such profits or losses (according to the case) shall -
 - 43.1.1 in the discretion of the Board; and
 - 43.1.2 within the limits of the law,

be credited or debited entirely or partially against the income account.
- 43.2 The amount so credited or debited shall, for the purposes of ascertaining the amount available for dividends, be treated as a profit or loss arising from the business of the Company and the amount available for dividends shall be adjusted accordingly.

44 **AMENDMENT OF MEMORANDUM OF INCORPORATION**

- 44.1 This Memorandum of Incorporation may only be altered or amended (including, without limitation, an amendment that changes the name of the Company) subject (other than in the case of an amendment that changes the name of the Company) to the prior written approval of the Relevant Authority given prior to the filing of such amendment with the Commission and in accordance with section 16(1) of the Act.
- 44.2 An amendment of this Memorandum of Incorporation (other than an amendment that changes the name of the Company) will take effect from the date specified in the certificate of registration of such amendment issued by the Relevant Authority in terms of section 56(5)(a) (as read with section 56(6)) of the Banks Act.
- 44.3 An amendment of this Memorandum of Incorporation which changes the name of the Company will take effect from the date set out in the amended registration certificate issued by the Commission.

45 **COMPANY RULES**

The Board is prohibited from making any rules in respect of the Company as contemplated in sections 15(3) to 15(5), and the Board's capacity to make such rules is hereby excluded.

ADOPTION

This Memorandum of Incorporation was adopted by special resolution of the Shareholders on [●] 2016.

SCHEDULE "1"**CLASSES OF SHARES****DEFINITIONS**

The expressions defined in the Memorandum of Incorporation of the Company ("**Memorandum of Incorporation**") shall, save where otherwise defined in this Schedule "1", have the same meanings in this Schedule "1" and shall form part of this Schedule "1"

"**Additional Tier 1 Capital**" means "*additional tier 1 capital*" as defined in the Banks Act;

"**Additional Tier 1 Capital Regulations**" means Regulation 38(11)(b) of the Regulations Relating to Banks (as read with Guidance Note 07/2013) and/or such other provisions of the Capital Regulations with which the instruments and/or shares contemplated in that Regulation 38(11)(b) must comply In order for the proceeds of the issue of such instruments and/or shares to rank as Additional Tier 1 Capital;

"**Additional Tier 1 Capital Securities**" means Securities issued by the Company (Including the Loss Absorbent Preference Shares (Conversion) and the Loss Absorbent Preference Shares (Write-Off)) which comply with the Additional Tier 1 Capital Regulations and the proceeds of which rank as Additional Tier 1 Capital;

"**Capitec**" means Capitec Bank Holdings Limited (incorporated with limited liability in South Africa under registration number 1999/025903/06);

"**Capitec Ordinary Shares**" means ordinary shares in the share capital of Capitec;

"**CET 1 Ratio**" means the Common Equity Tier 1 ratio of the Company, determined in accordance with the Banks Act and the Regulations Relating to Banks;

"**Company**" means Capitec Bank Limited (incorporated with limited liability in South Africa under registration number 1980/003695/06);

"**Existing Preference Shares**" means 100 000 000 (one hundred million) preference shares described in Schedule "2" to the Memorandum of Incorporation as "*Non-Redeemable, Non-Cumulative, Non-Participating Preference Shares*" with a

par value of R0,01 (one cent) each, having the rights and privileges set out in Schedule "2" to the Memorandum of Incorporation;

"Loss Absorbent Capital Securities" means Additional Tier 1 Capital Securities (including the Loss Absorbent Preference Shares (Conversion) and the Loss Absorbent Preference Shares (Write-Off)) and Tier 2 Capital Securities;

"Loss Absorbent Preference Shares (Conversion)" means non-redeemable non-cumulative preference shares having a par value of R0,01 each in the share capital of the Company (the proceeds of the issue of which will rank as Additional Tier 1 Capital under the Banks Act) the terms and conditions of which are set out in Schedule "3" to the Memorandum of Incorporation and which terms and conditions allow for Conversion into Capitec Ordinary Shares (at the Discretion of the Relevant Authority) at the occurrence of the relevant Trigger Event;

"Loss Absorbent Preference Shares (Write-Off)" means non-redeemable non-cumulative preference shares having a par value of R0,01 each in the share capital of the Company (the proceeds of the issue of which will rank as Additional Tier 1 Capital under the Banks Act) the terms and conditions of which are set out in Schedule "4" to the Memorandum of Incorporation and which terms and conditions allow for Write-Off (at the Discretion of the Relevant Authority) at the occurrence of the relevant Trigger Event;

"Ordinary Shares" means ordinary Shares in the share capital of the Company;

"Tier 2 Capital" means *"tier 2 capital"* as defined in the Banks Act;

"Tier 2 Capital Regulations" means Regulation 38(12) of the Regulations Relating to Banks (as read with Guidance Note 07/2013) and/or such other provisions of the Capital Regulations with which the instruments and/or shares contemplated in that Regulation 38(12) must comply in order for the proceeds of the issue of such instruments and/or shares to rank as Tier 2 Capital;

"Tier 2 Capital Securities" means Securities issued by the Company which comply with the Tier 2 Capital Regulations and the proceeds of which rank as Tier 2 Capital;

"Trigger Event" means, in relation to Additional Tier 1 Capital Securities which are accounted as equity and Tier 2 Capital Securities, the "trigger event" set out in

paragraph 2 under "RECORDAL" below and, in relation to Additional Tier 1 Capital Securities which are accounted as liabilities, the "trigger event" set out in paragraph 3 under "RECORDAL" below.

RECORDAL

1. Regulations 38(11)(b)(i), 38(11)(b)(iv)(H) and 38(12)(a)(i) of the Regulations Relating to Banks (as read with Guidance Note 07/2013) prescribe that the terms and conditions of Loss Absorbent Capital Securities must contain a provision that requires the Loss Absorbent Capital Securities, at the occurrence of the relevant Trigger Event (at the discretion of the Relevant Authority ("**Discretion**")), to either (i) be written off ("**Write-Off**", and "**Written Off**" shall be construed accordingly) or (ii) be converted to the most subordinated form of equity ("**Conversion**", and "**Converted**" shall be construed accordingly).

2. The "trigger event" for Additional Tier 1 Capital Securities which are accounted as equity and Tier 2 Capital Securities, respectively, will be the occurrence of the "trigger event" specified in writing by the Relevant Authority (as contemplated in Regulation 38(11)(b)(i) and Regulation 38(12)(a)(i), respectively, of the Regulations Relating to Banks); provided that, as a minimum, the aforesaid "trigger event" shall be the earlier of:
 - a) a decision that a write-off, without which the Company would become non-viable, is necessary, as determined by the Relevant Authority; or
 - b) the decision to make a public sector injection of capital, or equivalent support, without which the Company would have become non-viable, as determined by the Relevant Authority,

as contemplated in sub-paragraph (iii) of the proviso to Regulation 38(11)(b)(i) and sub-paragraph (iii) of the proviso to Regulation 38(12)(a)(i), respectively, of the Regulations Relating to Banks.

3. The "trigger event" for Additional Tier 1 Capital Securities which are accounted as liabilities will be the first to occur of the following events:

- A. the occurrence of the "trigger event" specified in writing by the Relevant Authority (as contemplated in Regulation 38(11)(b)(i) of the Regulations Relating to Banks); provided that, as a minimum, the aforesaid "trigger event" shall be the earlier of:
- a) a decision that a write-off, without which the Company would become non-viable, is necessary, as determined by the Relevant Authority; or
 - b) the decision to make a public sector injection of capital, or equivalent support, without which the Company would have become non-viable, as determined by the Relevant Authority,
- as contemplated in sub-paragraph (iii) of the proviso to Regulation 38(11)(b)(i) of the Regulations Relating to Banks; or
- B. the CET 1 Ratio of the Company is equal to or falls below 5.875% of risk-weighted exposures.

CLASSES OF SHARES

The Company is authorised to issue –

1. 5 000 000 000 (five billion) Ordinary Shares with a par value of R0,01 (one cent) each;
2. 100 000 000 (one hundred million) Existing Preference Shares with a par value of R0,01 (one cent) each, having the rights and privileges set out in Schedule "2";
3. 100 000 000 (one hundred million) Loss Absorbent Preference Shares (Conversion) with a par value of R0,01 (one cent) each, having the rights and privileges set out in Schedule "3"; and
4. 100 000 000 (one hundred million) Loss Absorbent Preference Shares (Write-Off) with a par value of R0,01 (one cent) each, having the rights and privileges set out in Schedule "4".

SCHEDULE "2"**TERMS AND CONDITIONS OF THE NON-REDEEMABLE, NON-CUMULATIVE,
NON-PARTICIPATING PREFERENCE SHARES**

1. The following terms shall attach to the 100 000 000 non-redeemable, non-cumulative, non-participating preference shares of R0,01 each in the share capital of the company:
 - 1.1 for purposes of this Schedule 2 –
 - 1.1.1 "**business day**" means any day other than a Saturday, Sunday or statutory public holiday in the Republic of South Africa;
 - 1.1.2 "**deemed value**" means the deemed value of each preference share for purposes of calculating the preference dividend, being an amount determined by the directors at the time of allotment and issue of the first preference shares, notwithstanding the actual issue price of a preference share (that is the nominal value of the preference share plus a premium thereon) which may vary because of a difference in the premium at which the preference shares may be issued from time to time;
 - 1.1.3 "**Income Tax Act**" means the Income Tax Act, 1962 (Act 58 of 1962), as amended or substituted from time to time;
 - 1.1.4 "**issue price**" means the actual issue price of each preference share, being the par value of a preference share plus the premium at which a preference share is allotted and issued;
 - 1.1.5 "**preference dividend**" means a non-cumulative, non-participating, preference cash dividend calculated in accordance with this Schedule 2;
 - 1.1.6 "**preference dividend calculation date**" means the last day of February and 31 August of each year;

- 1.1.7 **"preference dividend payment date"** means a date at least 5 (five) business days prior to the date on which the company pays its ordinary dividend, if any, in respect of the same period, but in any event the preference dividend shall be payable not later than 120 (one hundred and twenty) business days after the last day of February and 31 August, respectively;
- 1.1.8 **"preference dividend rate"** means, subject to clause 1.2.7 below, a rate determined by the directors at the time of allotment and issue of the first preference shares, which will not exceed the prime rate;
- 1.1.9 **"preference shares"** means the non-redeemable, non-cumulative, non-participating preference shares of R0,01 each in the share capital of the company;
- 1.1.10 **"prime rate"** means the publicly quoted basic rate of interest expressed as a percentage per year, compounded monthly in arrear and calculated on a 365 (three hundred and sixty five)-day year factor (irrespective of whether or not the year is a leap year) from time to time quoted by the corporate bankers of the Capitec group as being its prime overdraft rate as certified by any manager of such bank, whose appointment and/or designation need not be proved. A certificate from any manager of the bank concerned as to the prime rate at any time shall constitute prima facie proof thereof.
- 1.2 The following are the rights, privileges, restrictions and conditions which attach to the preference shares:
- 1.2.1 The issue price for each tranche of preference shares to be issued will be determined by the directors at the time of allotment thereof.
- 1.2.2 Each preference share will rank as regards dividends and a repayment of capital on the winding-up of the company prior to the ordinary shares, and any other class of shares in the capital of the company not ranking prior to or *pari passu* with the preference

shares. The preference shares shall confer on the holders, on a per preference share and equal basis, the right to a return of capital on the winding-up of the company of an amount equal to the aggregate of the par value and premium of the preference shares then in issue, divided by the total number of preference shares in issue in priority to any payment in respect of any other class of shares in the capital of the company not ranking prior to or *pari passu* with the preference shares.

1.2.3 Each preference share will confer upon the holder thereof the right to receive out of the profits of the company which it shall determine to distribute, in priority to any payment of dividends to the holders of any other class of shares in the capital of the company not ranking prior to or *pari passu* with the preference shares, the preference dividend calculated in terms of clause 1.2.4 below.

1.2.4 The preference dividend shall be calculated :

1.2.4.1 by multiplying the deemed value of the preference shares by the applicable preference dividend rate applicable on the preference dividend calculation date (determined on a 365-day year factor, irrespective of whether the year is a leap year or not), on a daily basis, in arrear, but never compounded, for the appropriate period referred to in clause 1.2.4.2 below; and

1.2.4.2 from the date following a preference dividend calculation date until and including the preference dividend calculation date immediately following as if the shares have been in issue from the date following the previous preference dividend calculation date, regardless of the date of issue.

1.2.5 The preference dividend shall, if declared:

1.2.5.1 accrue on the preference dividend calculation date, calculated in accordance with clause 1.2.4.2 above;

1.2.5.2 be payable on the preference dividend payment date; and

- 1.2.5.3 failing payment by the relevant preference dividend payment date, considered to be in arrear.
- 1.2.6 If a preference dividend is not declared by the company in respect of the period to which such preference dividend calculation date relates, the preference dividend will not accumulate and will accordingly never become due to the holders of the preference shares and payable by the company whether in preference to payments to any other class of shares in the company or otherwise.
- 1.2.7 If there is an amendment or amendments to the Income Tax Act which results in the preference dividends being taxable in the hands of the preference shareholders, provided such amendment is uniformly applicable to all corporate taxpayers and not only because of the particular circumstances of the company or any preference shareholder, the percentage of the prime rate referred to in clause 1.1.8 above will be increased by the company. Such increase will be calculated to put the shareholder concerned, net after deduction of dividend tax levied, at a deemed rate of 10%, in the position he/she would have been prior to implementation of such tax. The company shall require its auditors to verify whether it is obliged to increase the percentage of the prime rate referred to in clause 1.1.8 above in accordance with this clause 1.2.7. The auditors in deciding whether such increase is required in terms of this clause 1.2.7 shall act as experts and not as arbitrators or quasi-arbitrators and their decision in the absence of manifest error shall be final and binding on the company and all preference shareholders. The costs of such auditors shall be borne and paid by the company. For the avoidance of doubt it is recorded that any increase in a tax rate previously imposed on preference dividends will not oblige the company to take any action.
- 1.2.8 Save as set out in clauses 1.2.2, 1.2.3, 1.2.6 and 1.2.7 above, the preference shares shall not be entitled to any further participation

in the profits or assets of the company nor on a winding-up to any surplus assets of the company.

- 1.2.9 The holders of the preference shares shall be entitled to receive notice of and be present but not to vote, either in person or by proxy, at any meeting of the company, by virtue of or in respect of the preference shares, unless either or both of the following circumstances prevail at the date of the meeting:
- 1.2.9.1 the preference dividend or any part thereof remains in arrear and unpaid as determined in accordance with clause 1.2.5.3 after 6 (six) months from the due date thereof; and
- 1.2.9.2 a resolution of the company is proposed which resolution directly affects the rights attached to the preference shares or the interests of the holders thereof, including a resolution for the winding-up of the company or for the reduction of its capital, in which event the preference shareholders shall be entitled to vote only on such resolution.
- 1.2.10 At every general meeting of the company, at which holders of preference shares as well as other classes of shares are present and entitled to vote, a preference shareholder shall be entitled to that proportion of the total votes in the company which the aggregate amount of the nominal value of the preference shares held by him bears to the aggregate amount of the nominal value of all shares issued by the company.
- 1.2.11 Notwithstanding the provisions of clause 1.2.2, no shares in the capital of the company ranking, as regards rights to dividends or, on a winding-up as regards return of capital, in priority to the preference shares, shall be created or issued, nor will the rights for the time being attached to the preference shares be modified, amended, added or abrogated, without

- 1.2.11.1 the prior sanction of a resolution passed at a separate class meeting of the holders of the preference shares in the same manner mutates mutandis as a special resolution; or
- 1.2.11.2 the consent in writing of the holders of at least 75% (seventy five percent) of the preference shares. At every meeting of the holders of the preference shares, the provisions of these clauses relating to general meetings shall apply, mutatis mutandis, except that a quorum at any such general meeting shall be persons holding or representing by proxy at least one quarter of the issued preference shares provided that if at any adjournment of such meeting a quorum is not so present, the provisions of the clauses relating to adjourned general meetings shall apply, mutatis mutandis.

SCHEDULE "3"**TERMS AND CONDITIONS OF THE LOSS ABSORBENT PREFERENCE SHARES (CONVERSION) THE PROCEEDS OF WHICH WILL RANK AS ADDITIONAL TIER 1 CAPITAL UNDER THE BANKS ACT, 1990****1. General**

The following terms shall attach to the 100 000 000 Loss Absorbent Preference Shares (Conversion) of R0,01 each in the share capital of the Company:

2. Definitions

The expressions defined in the Memorandum of Incorporation of the Company ("**Memorandum of Incorporation**") shall, save where otherwise defined in this Schedule "3", have the same meanings in this Schedule "3" and shall form part of this Schedule "3". For purposes of this Schedule "3":

- 2.1 "**Additional Tier 1 Capital**" means "*additional tier 1 capital*" as defined in the Banks Act;
- 2.2 "**Additional Tier 1 Capital Regulations**" means Regulation 38(11)(b) of the Regulations Relating to Banks (as read with Guidance Note 07/2013) and/or such other provisions of the Capital Regulations with which the instruments and/or shares contemplated in that Regulation 38(11)(b) (including the Loss Absorbent Preference Shares (Conversion)) must comply in order for the proceeds of the issue of such instruments and/or shares to rank as Additional Tier 1 Capital;
- 2.3 "**Additional Tier 1 Capital Securities**" means Securities (including the Loss Absorbent Preference Shares (Conversion) and the Loss Absorbent Preference Shares (Write-Off)) issued by the Company which comply with the Additional Tier 1 Capital Regulations and the proceeds of which rank as Additional Tier 1 Capital;

;

- 2.4 "**Business Day**" means any day other than a Saturday, Sunday or statutory public holiday in the Republic of South Africa;
- 2.5 "**Capitec**" means Capitec Bank Holdings Limited (incorporated with limited liability in South Africa under registration number 1999/025903/06);
- 2.6 "**Capitec Ordinary Shares**" means ordinary shares in the share capital of Capitec;
- 2.7 "**CET 1 Ratio**" means the Common Equity Tier 1 ratio of the Company, determined in accordance with the Banks Act and the Regulations Relating to Banks;
- 2.8 "**Company**" means Capitec Bank Limited (incorporated with limited liability in South Africa under registration number 1980/003695/06);
- 2.9 "**Company Early Redemption Election**" means the election of the Company, in its sole and absolute discretion, to redeem the Loss Absorbent Preference Shares (Conversion) (in whole but not in part) in terms of clause 9.1, subject to the Company complying with the conditions to redemption set out in clause 9.1;
- 2.10 "**Deemed Value**" means, in relation to a Loss Absorbent Preference Share (Conversion), the deemed value of that Loss Absorbent Preference Share (Conversion) for purposes of calculating the Preference Dividend, being an amount determined by the directors of the Company at the time of allotment and issue of that Loss Absorbent Preference Shares (Conversion), notwithstanding the actual Issue Price of that Loss Absorbent Preference Share (Conversion) (that is the nominal value of that Loss Absorbent Preference Share (Conversion) plus a premium thereon) which may vary because of a difference in the premium at which the Loss Absorbent Preference Shares (Conversion) may be issued from time to time;
- 2.11 "**Event of Default**" means any of the events described in clause 10;
- 2.12 "**Existing Preference Shares**" means 100 000 000 (one hundred million) preference shares described in Schedule "2" to the Memorandum of

Incorporation as "*Non-Redeemable, Non-Cumulative, Non-Participating Preference Shares*" with a par value of R0,01 (one cent) each, the terms and conditions of which are set out in Schedule "2" to the Memorandum of Incorporation;

- 2.13 "**Holder**" means, in relation to any Loss Absorbent Preference Share (Conversion), the holder of that Loss Absorbent Preference Share (Conversion) as recorded in the Securities Register;
- 2.14 "**Income Tax Act**" means the Income Tax Act, 1962, as amended or substituted from time to time;
- 2.15 "**Issue Date**" means, in relation to a Loss Absorbent Preference Share (Conversion), the date on which that Loss Absorbent Preference Share (Conversion) is actually issued by the Company to the applicable Holder;
- 2.16 "**Issue Price**" and "**Principal Amount**" means, in relation to a Loss Absorbent Preference Share (Conversion), the actual issue price of that Loss Absorbent Preference Share (Conversion), being the par value of that Loss Absorbent Preference Share (Conversion) plus the premium at which that Loss Absorbent Preference Share (Conversion) is allotted and issued which may vary because of a difference in the premium at which the Loss Absorbent Preference Shares (Conversion) may be issued from time to time;
- 2.17 "**Loss Absorbent Capital Securities**" means Additional Tier 1 Capital Securities (including the Loss Absorbent Preference Shares (Conversion) and the Loss Absorbent Preference Shares (Write-Off)) and Tier 2 Capital Securities;
- 2.18 "**Loss Absorbent Preference Shares (Conversion)**" means the non-redeemable, non-cumulative preference shares having a par value of R0,01 each in the share capital of the Company (the proceeds of the issue of which will rank as Additional Tier 1 Capital) and the terms and conditions of which are set out in this Schedule "3";
- 2.19 "**Loss Absorbent Preference Shares (Write-Off)**" means non-redeemable, non-cumulative preference shares having a par value of R0,01

each in the share capital of the Company (the proceeds of the issue of which will rank as Additional Tier 1 Capital) the terms and conditions of which are set out in Schedule "4" to the Memorandum of Incorporation and which terms and conditions allow for Write-Off (at the Discretion of the Relevant Authority) at the occurrence of the relevant Trigger Event;

- 2.20 "**Ordinary Shares**" means ordinary Shares in the share capital of the Company;
- 2.21 "**Preference Dividend**" means, in relation to a Loss Absorbent Preference Share (Conversion), a non-cumulative preferential cash dividend calculated in accordance with clause 3;
- 2.22 "**Preference Dividend Calculation Date**" means the last day of February and 31 August of each year;
- 2.23 "**Preference Dividend Payment Date**" means a date at least 5 (five) Business Days prior to the date on which the Company pays any dividend to the holders of its Ordinary Shares, but in any event and to the extent that any Preference Dividend is payable in respect of any period, that Preference Dividend shall be payable not later than 120 (one hundred and twenty) Business Days after the most recent Preference Dividend Calculation Date;
- 2.24 "**Preference Dividend Rate**" means the floating rate of interest, linked to the Prime Rate, determined by the directors of the Company at the time of allotment and issue of the Loss Absorbent Preference Shares (Conversion), it being recorded that such floating rate of interest will fluctuate (in accordance with the fluctuation in the then applicable Prime Rate) over the period in respect of which the relevant Preference Dividend is calculated;
- 2.25 "**Preference Share Amount**" means, in relation to a Loss Absorbent Preference Share (Conversion), the Issue Price of that Loss Absorbent Preference Share (Conversion);
- 2.26 "**Prime Rate**" means the publicly quoted basic rate of interest expressed as a percentage per year, compounded monthly in arrear and calculated on a

365 (three hundred and sixty five)-day year factor (irrespective of whether or not the year is a leap year) from time to time quoted by the corporate bankers of the Company as being its prime rate as certified by any manager of such bank, whose appointment and/or designation need not be proved, and a certificate from any manager of such bank as to the Prime Rate at any time shall constitute *prima facie* proof thereof;

- 2.27 **"Regulatory Change"** means (i) a change in or amendment to the Capital Regulations or (ii) any change in the application of or official or generally published guidance or interpretation of the Capital Regulations by the Relevant Authority and/or the South African courts, which change or amendment becomes, or would become, effective on or after the Issue Date;
- 2.28 **"Regulatory Event"** is deemed to have occurred in relation to the Loss Absorbent Preference Shares (Conversion) if, as a result of any Regulatory Change, the whole or any part of the aggregate Principal Amount of the Loss Absorbent Preference Shares (Conversion) is excluded from qualifying as Regulatory Capital of the Company or Capitec on a solo and/or consolidated basis and the Relevant Authority has notified the Company (either specifically or generally in conjunction with other banks and/or controlling companies) in writing of the relevant amendment or change and, for the avoidance of doubt, a Regulatory Event shall be deemed to have occurred in relation to the Loss Absorbent Preference Shares (Conversion) if all or part of the aggregate Principal Amount of the Loss Absorbent Preference Shares (Conversion) is excluded from qualifying as Regulatory Capital by reason of any grandfathering or transitional provisions in the applicable Capital Regulations;
- 2.29 **"Tier 2 Capital"** means "*tier 2 capital*" as defined in the Banks Act;
- 2.30 **"Tier 2 Capital Regulations"** means Regulation 38(12) of the Regulations Relating to Banks (as read with Guidance Note 07/2013) and/or such other provisions of the Capital Regulations with which the instruments and/or shares contemplated in that Regulation 38(12) must comply in order for the proceeds of the issue of such instruments and/or shares to rank as Tier 2 Capital;

- 2.31 **"Tier 2 Capital Securities"** means Securities issued by the Company which comply with the Tier 2 Capital Regulations and the proceeds of which rank as Tier 2 Capital;
- 2.32 **"Trigger Event"** means, in relation to Additional Tier 1 Capital Securities which are accounted as equity and Tier 2 Capital Securities, the "trigger event" set out in clause 4.4 and, in relation to Additional Tier 1 Capital Securities which are accounted as liabilities, the "trigger event" set out in clause 4.5.

3. **Rights, privileges, restrictions and conditions**

The following are the rights, privileges, restrictions and conditions which attach to the Loss Absorbent Preference Shares (Conversion):

- 3.1 The Issue Price of each Loss Absorbent Preference Share (Conversion) to be issued will be determined by the directors of the Company at the time of allotment of that Loss Absorbent Preference Share (Conversion).
- 3.2 Each Loss Absorbent Preference Share (Conversion) will rank as regards dividends and a return of capital on the winding-up of the Company prior to the Ordinary Shares and any other class of Shares in the capital of the Company not ranking prior to or *pari passu* with the Loss Absorbent Preference Shares (Conversion). The Loss Absorbent Preference Shares (Write-Off) rank *pari passu* with the Loss Absorbent Preference Shares (Conversion). The Existing Preference Shares rank prior to the Loss Absorbent Preference Shares (Conversion) and the Loss Absorbent Preference Shares (Write-Off). The Loss Absorbent Preference Shares (Conversion) shall confer on the Holders, on a per Loss Absorbent Preference Share (Conversion) and equal basis, the right to a return of capital on the winding-up of the Company of an amount equal to the aggregate of the par value and premium of the Loss Absorbent Preference Shares (Conversion) then in issue, divided by the total number of Loss Absorbent Preference Shares (Conversion) in issue in priority to any payment in respect of the Ordinary Shares and any other class of shares in the capital of the Company not ranking prior to or *pari passu* with the Loss Absorbent Preference Shares (Conversion).

- 3.3 Each Loss Absorbent Preference Share (Conversion) will confer upon the Holder thereof the right to receive out of the profits of the Company which the board of directors of the Company shall determine is available for distribution, in priority to any payment of dividends to the holders of Ordinary Shares, and any other class of shares in the capital of the Company not ranking prior to or *pari passu* with the Loss Absorbent Preference Shares (Conversion) but after the Existing Preference Shares, the Preference Dividend calculated in terms of clause 3.4.
- 3.4 The Preference Dividend payable in respect of a Loss Absorbent Preference Share (Conversion) for any applicable period shall be calculated:
- 3.4.1 by multiplying the Deemed Value of that Loss Absorbent Preference Share (Conversion) by the Preference Dividend Rate from time to time applicable to the period referred to in clause 3.4.2;
- 3.4.2 from the date following the relevant Preference Dividend Calculation Date until and including the immediately following Preference Dividend Calculation Date as if that Loss Absorbent Preference Share (Conversion) had been in issue from the date following the relevant Preference Dividend Calculation Date, regardless of the date of issue; and
- 3.4.3 on a 365-day year factor, irrespective of whether the relevant year is a leap year or not, on a daily basis, in arrear, but never compounded and for the period referred to in clause 3.4.2.
- 3.5 The Preference Dividend in relation to any Loss Absorbent Preference Share (Conversion) shall, if declared:
- 3.5.1 accrue on the date of declaration of the Preference Dividend, calculated in accordance with clause 3.4.2;
- 3.5.2 be payable on the next Preference Dividend Payment Date; and

- 3.5.3 failing payment by the relevant Preference Dividend Payment Date, considered to be in arrear.
- 3.6 If a Preference Dividend is not declared by the Company in respect of the period to which such Preference Dividend Calculation Date relates, the Preference Dividend will not accumulate and will accordingly never become due to the Holders of the Loss Absorbent Preference Shares (Conversion) nor payable by the Company.
- 3.7 Save as set out in clauses 3.2, 3.3 and 3.5, the Holders of Loss Absorbent Preference Shares (Conversion) shall not be entitled to any further participation in the profits or assets of the Company nor on a winding-up to any surplus assets of the Company.
- 3.8 The Holders of the Loss Absorbent Preference Shares (Conversion) shall be entitled to receive notice of and be present but not to vote, either in person or by proxy, at any meeting of the Company, by virtue of or in respect of the Loss Absorbent Preference Shares (Conversion), unless either or both of the following circumstances prevail at the date of the meeting:
- 3.8.1 the Preference Dividend or any part thereof remains in arrear and unpaid as determined in accordance with clause 3.5.3 after 6 (six) months from the due date for payment thereof; or
- 3.8.2 a resolution of the Company is proposed which directly affects the rights attached to the Loss Absorbent Preference Shares (Conversion) or the interests of the Holders thereof, including a resolution for the winding-up of the Company or for the reduction of its capital (save for any redemption of the Existing Preference Shares), in which event the Holders of the Loss Absorbent Preference Shares (Conversion) shall be entitled to vote only on such resolution.
- 3.9 At every general meeting of the Company, at which Holders of Loss Absorbent Preference Shares (Conversion) as well as other classes of shares are present and entitled to vote, a Holder of Loss Absorbent

Preference Shares (Conversion) shall be entitled to that proportion of the total votes in the Company which the aggregate amount of the nominal value of the Loss Absorbent Preference Shares (Conversion) held by him bears to the aggregate amount of the nominal value of all shares issued by the Company.

3.10 Notwithstanding the provisions of clause 3.2, except for the Existing Preference Shares, no Shares in the capital of the Company ranking, as regards rights to dividends and a return of capital on the winding-up of the Company, in priority to the Loss Absorbent Preference Shares (Conversion), shall be created or issued, nor will the rights for the time being attached to the Loss Absorbent Preference Shares (Conversion) be modified, amended, added or abrogated, without:

3.10.1 the prior sanction of a resolution passed at a separate class meeting of the Holders of the Loss Absorbent Preference Shares (Conversion) in the same manner, *mutatis mutandis*, as a special resolution; or

3.10.2 the consent in writing of the Holders of at least 75% (seventy five percent) of the Loss Absorbent Preference Shares (Conversion).

3.11 At every meeting of the Holders of the Loss Absorbent Preference Shares (Conversion), the provisions of these clauses relating to general meetings shall apply, *mutatis mutandis*, except that a quorum at any such general meeting shall be persons holding or representing by proxy at least one quarter of the issued Loss Absorbent Preference Shares (Conversion) provided that if at any adjournment of such meeting a quorum is not so present, the provisions of the clauses relating to adjourned general meetings shall apply, *mutatis mutandis*.

4. **Regulations 38(11)(b) and 38(12)(a) (as read with Guidance Note 07/2013)**

4.1 Regulations 38(11) and 38(12) of the Regulations Relating to Banks (as read with Guidance Note 07/2013) prescribe that the terms and conditions of Loss Absorbent Capital Securities (including the Loss Absorbent Preference Shares (Conversion)) must contain a provision that requires the

Loss Absorbent Capital Securities, at the occurrence of the relevant Trigger Event (at the discretion of the Relevant Authority ("**Discretion**")) to either (i) be written off ("**Write-Off**", and "**Written Off**" shall be construed accordingly) or (ii) be converted to the most subordinated form of equity ("**Conversion**", and "**Converted**" shall be construed accordingly).

- 4.2 In terms of Guidance Note 07/2013, where Conversion is applicable to any Loss Absorbent Capital Securities then, if the Ordinary Shares are not listed on an exchange and the Company is a wholly owned subsidiary of Capitec (the Company's "*controlling company*" as defined in the Banks Act), those Loss Absorbent Capital Securities must, at the occurrence of the relevant Trigger Event (at the Discretion of the Relevant Authority), be Converted into Capitec Ordinary Shares.
- 4.3 The Ordinary Shares are not listed on any exchange, the Company is a wholly owned subsidiary of Capitec (the Company's "*controlling company*" as defined in the Banks Act) and the Capitec Ordinary Shares are listed on the JSE. Accordingly, at the occurrence of the Trigger Event (at the Discretion of the Relevant Authority), the Loss Absorbent Preference Shares (Conversion) must be Converted into Capitec Ordinary Shares, subject to and in accordance with clause 6.
- 4.4 The "trigger event" for Additional Tier 1 Capital Securities which are accounted as equity will be the occurrence of the "trigger event" specified in writing by the Relevant Authority (as contemplated in Regulation 38(11)(b)(i) of the Regulations Relating to Banks); provided that, as a minimum, the aforesaid "trigger event" shall be the earlier of:
- 4.4.1 a decision that a write-off, without which the Company would become non-viable, is necessary, as determined by the Relevant Authority; or
- 4.4.2 the decision to make a public sector injection of capital, or equivalent support, without which the Company would have become non-viable, as determined by the Relevant Authority,
- as contemplated in sub-paragraph (iii) of the proviso to Regulation 38(11)(b)(i) of the Regulations Relating to Banks.

- 4.5 The "trigger event" for Additional Tier 1 Capital Securities which are accounted as liabilities will be the first to occur of the following events:
- 4.5.1 the occurrence of the "trigger event" specified in writing by the Relevant Authority (as contemplated in Regulation 38(11)(b)(i) of the Regulations Relating to Banks); provided that, as a minimum, the aforesaid "trigger event" shall be the earlier of:
- 4.5.1.1 a decision that a write-off, without which the Company would become non-viable, is necessary, as determined by the Relevant Authority; or
- 4.5.1.2 the decision to make a public sector injection of capital, or equivalent support, without which the Company would have become non-viable, as determined by the Relevant Authority,
- as contemplated in sub-paragraph (iii) of the proviso to Regulation 38(11)(b)(i) of the Regulations Relating to Banks; or
- 4.5.2 the CET 1 Ratio of the Company is equal to or falls below 5.875% of risk-weighted exposures.
- 4.6 The Relevant Authority will notify the Company in writing once the Relevant Authority determines that the Trigger Event has occurred.
- 4.7 Notwithstanding the occurrence of the Trigger Event, the Relevant Authority has a Discretion to (i) take action and allow the Conversion (or Write-Off, if applicable) to occur in order to effect an increase in the CET1 Ratio such that the Company will be deemed by the Relevant Authority to be viable again or (ii) take no action and not require the Conversion (or Write- Off, if applicable) to occur.
- 4.8 Conversion (or Write-Off, if applicable) of Loss Absorbent Capital Securities (including Conversion of the Loss Absorbent Preference Shares (Conversion)) need only occur up until the point where the Company is deemed by the Relevant Authority to be viable again, as specified in writing by the Relevant Authority.

- 4.9 In terms of statutory ranking, Additional Tier 1 Capital Securities are likely to be Converted (or Written Off, if applicable) prior to any Conversion (or Write-Off, if applicable) of Tier 2 Capital Securities. The Loss Absorbent Capital Securities to be Converted (or Written Off, if applicable) at the occurrence of the Trigger Event (at the Discretion of the Relevant Authority) will be determined by the Relevant Authority.
- 4.10 The Relevant Authority will also determine whether, at the occurrence of the Trigger Event (at the Discretion of the Relevant Authority), the entire aggregate Principal Amount of the Loss Absorbent Capital Securities or a portion of such Principal Amount will be Converted (or Written Off, if applicable), such determination to be based on the book value of the Loss Absorbent Capital Securities as reflected in the Company's financial statements or management accounts at the relevant time (with reference to the amount required to increase the CET1 Ratio such that the Company will be deemed by the Relevant Authority to be viable again).
- 4.11 If the Company has both Loss Absorbent Preference Shares (Conversion) and other Additional Tier 1 Capital Securities in issue which are subject to Conversion (or Write-Off, if applicable) , the Loss Absorbent Preference Shares (Conversion) and the other Additional Tier 1 Capital Securities will be treated *pari passu*, and a partial Conversion (or Write-Off, if applicable) may occur at the occurrence of the Trigger Event (at the Discretion of the Relevant Authority), up to the point where the Company is deemed by the Relevant Authority to be viable again, as specified in writing by the Relevant Authority.
- 4.12 Where the Conversion option is selected in respect of any Loss Absorbent Capital Securities and, at the occurrence of the Trigger Event, the Conversion of the Loss Absorbent Capital Securities (i) cannot be undertaken for any reason or (ii) is not irrevocable or (iii) will not result in an immediate increase in the CET 1 Ratio, then the Loss Absorbent Capital Securities must, instead of being Converted, be Written Off in order to effect an increase in the CET1 Ratio such that the Company will be deemed by the Relevant Authority to be viable again.

5. **Occurrence of the Trigger Event**
- 5.1 The Relevant Authority will determine whether, at the occurrence of the Trigger Event (at the Discretion of the Relevant Authority), the entire aggregate Principal Amount of the Loss Absorbent Preference Shares (Conversion) ("**Total Principal Amount**") or a portion of the Total Principal Amount ("**Relevant Portion of the Principal Amount**") will be Converted.
- 5.2 The Company will notify the Holders in writing of (i) the occurrence of the Trigger Event and (ii) the Unpaid Amount, as soon as may be practicable after the Company has been notified by the Relevant Authority of the occurrence of the Trigger Event.
- 5.3 The "**Unpaid Amount**" will be the sum of the Total Principal Amount or the Relevant Portion of the Principal Amount, as the case may be, plus all accrued but unpaid Preference Dividend on the Total Principal Amount or the Relevant Portion of the Principal Amount, as the case may be, as at the occurrence of the Trigger Event. The "**Relevant Portion of the Unpaid Amount**", in relation to a Holder of Loss Absorbent Preference Share/s (Conversion), will be the Unpaid Amount multiplied by the number of Loss Absorbent Preference Share/s (Conversion) held by that Holder divided by the total number of Loss Absorbent Preference Shares (Conversion).
- 5.4 Where the Unpaid Amount is determined with reference to the Total Principal Amount, "**all of the Loss Absorbent Preference Shares (Conversion)**" means the whole of each Loss Absorbent Preference Share (Conversion) (and 100% of the entire Principal Amount of each Loss Absorbent Preference Share (Conversion)). Where the Unpaid Amount is determined with reference to the Relevant Portion of the Principal Amount, the "**Relevant Portion of the Loss Absorbent Preference Shares (Conversion)**" means that portion of each Loss Absorbent Preference Share (Conversion) (and that percentage of the Principal Amount of each Loss Absorbent Preference Share (Conversion)) as is equivalent to the proportion (expressed as a percentage) which the Relevant Portion of the Principal Amount bears to the Total Principal Amount.

6. **Conversion and default Write-Off (redemption of the Loss Absorbent Preference Shares (Conversion))**

- 6.1 As at the Issue Date, the Ordinary Shares are not listed on any exchange, the Company is a wholly owned subsidiary of Capitec (the Company's "*controlling company*" as defined in the Banks Act) and the Capitec Ordinary Shares are listed on the Main Board of JSE.
- 6.2 At the occurrence of the Trigger Event (at the Discretion of the Relevant Authority), all of the Loss Absorbent Preference Shares (Conversion) or the Relevant Portion of the Loss Absorbent Preference Shares (Conversion), as applicable, shall be Converted into Capitec Ordinary Shares in accordance with the provisions of this clause 6.
- 6.3 For purposes of determining the number of Capitec Ordinary Shares to be received by each Holder of Loss Absorbent Preference Share/s (Conversion) at the occurrence of the Trigger Event (at the Discretion of the Relevant Authority), the conversion price of the Capitec Ordinary Shares shall be the greater of:
- 6.3.1 the arithmetic mean (that is, the volume weighted average price) of the Capitec Ordinary Shares for the 5 (five) consecutive dealing days immediately prior to the occurrence of the Trigger Event, as published by the JSE; or
- 6.3.2 20% of the closing value of the Capitec Ordinary Shares, as at the Issue Date, as published by the JSE.
- 6.4 The number of Capitec Ordinary Shares into which all the Loss Absorbent Preference Share/s (Conversion) or the Relevant Portion of the Loss Absorbent Preference Share/s (Conversion), as applicable, held by a Holder are to be Converted at the occurrence of the Trigger Event (at the Discretion of the Relevant Authority) ("**Relevant Number of Capitec Ordinary Shares**") shall be determined with reference to the formula set out in clause 6.3, and then rounding the resultant figure downward to the nearest whole number.

- 6.5 At the occurrence of the Trigger Event (at the Discretion of the Relevant Authority), each Holder shall be deemed to have subscribed for (and shall be deemed to have been issued with) the Relevant Number of Capitec Ordinary Shares.
- 6.6 The Relevant Number of Capitec Ordinary Shares shall be credited as fully paid and shall have the same rights as, and rank *pari passu* in all respects with, all of the Capitec Ordinary Shares as at the occurrence of the Trigger Event. The Company will, if the Capitec Ordinary Shares are issued in registered certificated form, procure that the certificate/s evidencing the Relevant Number of Capitec Ordinary Shares is/are delivered to each Holder.
- 6.7 The subscription price of the Relevant Number of Capitec Ordinary Shares subscribed for by each Holder in terms of clause 6.5 shall be an amount which is equal to the Relevant Portion of the Unpaid Amount ("**Capitec Subscription Price**").
- 6.8 Payment of the Capitec Subscription Price by each Holder shall be effected by that Holder transferring (and having been deemed to have transferred) all of the Loss Absorbent Preference Share/s (Conversion) or the Relevant Portion of the Loss Absorbent Preference Share/s (Conversion), as applicable, held by that Holder to Capitec.
- 6.9 The transfer of all of the Loss Absorbent Preference Share/s (Conversion) or the Relevant Portion of the Loss Absorbent Preference Share/s (Conversion), as applicable, to Capitec in terms of clause 6.8 will attract securities transfer tax under the Securities Transfer Tax Act, 2007. Capitec shall be liable for the payment of such securities transfer tax.
- 6.10 In consequence of the transfer referred to in clause 6.8, Capitec will be the Holder of all of the Loss Absorbent Preference Shares (Conversion) or the Relevant Portion of the Loss Absorbent Preference Shares (Conversion), as applicable.
- 6.11 Forthwith after each Holder shall have been deemed to have been issued with the Relevant Number of Capitec Ordinary Shares pursuant to clause

- 6.5, Capitec shall subscribe for the Relevant Number of Ordinary Shares (as defined in clause 6.12) at a subscription price which is equal to the Unpaid Amount ("**Company Subscription Price**").
- 6.12 For purposes of determining the number of Ordinary Shares to be issued to Capitec pursuant to the subscription referred to in clause 6.11 ("**Relevant Number of Ordinary Shares**"), the Company Subscription Price shall be divided by the market value of the Ordinary Shares as at the day of such subscription (determined by the auditors of the Company in accordance with clause 6.13) the resultant figure being rounded downward to the nearest whole number.
- 6.13 The Company shall procure that the market value of the Ordinary Shares as at the day of the subscription referred to in clause 6.11 is determined by the auditors of the Company. In the absence of manifest error, the market value so determined by the auditors of the Company shall be binding on Capitec and the Company.
- 6.14 Capitec shall pay the Company Subscription Price to the Company, in cash, at the time that Capitec subscribes for the Relevant Number of Ordinary Shares in terms of clause 6.11.
- 6.15 Against payment of the Company Subscription Price to the Company, the Company shall issue the Relevant Number of Ordinary Shares to Capitec. The Relevant Number of Ordinary Shares shall have the same rights as, and rank *pari passu* in all respects with, all of the Ordinary Shares as at the occurrence of the Trigger Event. If the Ordinary Shares are issued in registered certificated form, the Company will procure that the certificate/s evidencing the Relevant Number of Ordinary Shares is/are delivered to Capitec.
- 6.16 Forthwith following receipt of the Company Subscription Price, the Company shall redeem all of the Loss Absorbent Preference Shares (Conversion) or the Relevant Portion of the Loss Absorbent Preference Shares (Conversion), as applicable, at an amount which is equal to the Unpaid Amount (that is, the sum of the Total Principal Amount or the Relevant Portion of the Principal Amount, as the case may be, plus accrued

Preference Dividend (if any) or the relevant portion of such Preference Dividend, as the case may be, as at the occurrence of the Trigger Event).

- 6.17 The Company shall use the proceeds of the Company Subscription Price in order to redeem all of the Loss Absorbent Preference Shares (Conversion) or the Relevant Portion of the Loss Absorbent Preference Shares (Conversion), as applicable, at the Unpaid Amount.
- 6.18 The Loss Absorbent Preference Shares (Conversion) are Shares. Where the Conversion option is applicable to Shares, the structure set out in clauses 6.3 to 6.17 inclusive above is, under South African law, necessary to comply with Regulation 38(11)(b)(i) of the Regulations Relating to Banks which "*requires [the Loss Absorbent Preference Shares (Conversion)], at the option of the [Relevant Authority], to either be ... or **converted into the most subordinated form of equity** upon the occurrence of the trigger event specified in writing by the [Relevant Authority]*".
- 6.19 The Company will (and the Company will procure that Capitec will) at all times (to the extent that it is within the Company's and/or Capitec's control and/or power to do so) obtain and maintain all prior authorisations and consents necessary to ensure the Conversion of all of the Loss Absorbent Preference Shares (Conversion) or the Relevant Portion of the Loss Absorbent Preference Shares (Conversion), as applicable, pursuant to clauses 6.3 to 6.17 inclusive above.
- 6.20 The Company and Capitec have (or will have) agreed, prior to the Issue Date of the first Loss Absorbent Preference Shares (Conversion) to be issued, in terms of a written agreement entered into (or to be entered into) between the Company and Capitec ("**Conversion Agreement**"), that the arrangements contemplated in clauses 6.3 to 6.17 inclusive above shall be binding on each of the Company, Capitec and, as a stipulation in favour of the Holders of the Loss Absorbent Preference Shares (Conversion), those Holders. A copy of the Conversion Agreement will be made available to those Holders prior to the Issue Date of the Loss Absorbent Preference Shares (Conversion).

- 6.21 The obligations of Capitec under the Conversion Agreement and clauses 6.3 to 6.17 inclusive above are enforceable by the Holders of the relevant Loss Absorbent Preference Shares (Conversion) pursuant to the Conversion Agreement and clause 6.22.
- 6.22 The provisions of the Conversion Agreement which confer benefits on the Holder of Loss Absorbent Preference Share/s, constitute stipulations for the benefit of that Holder, and that Holder, upon its subscription for such Loss Absorbent Preference Share/s and the issue of such Loss Absorbent Preference Share/s to it, or upon the transfer of any of such Loss Absorbent Preference Share/s to it, as the case may be, shall be deemed to have notice of the Conversion Agreement and shall be deemed to have accepted such benefits, and shall accordingly have the benefit of all those provisions of the Conversion Agreement which confer rights on that Holder and be bound by all those provisions (if any) of the Conversion Agreement which impose obligations and/or restrictions on that Holder.
- 6.23 Where, at the occurrence of the Trigger Event, the Conversion of all of the Loss Absorbent Preference Shares (Conversion) or the Relevant Portion of the Loss Absorbent Preference Shares (Conversion), as applicable, pursuant to clause 6 above:
- 6.23.1 cannot be undertaken for any reason; or
- 6.23.2 is not irrevocable; or
- 6.23.3 will not result in an immediate increase in the CET 1 Ratio,
- then all of the Loss Absorbent Preference Shares (Conversion) or the Relevant Portion of the Loss Absorbent Preference Shares (Conversion), as applicable, shall, instead of being Converted, be Written Off, as contemplated in paragraph 3.2 of Guidance Note 07/2013. In order to effect the Write-Off, all of the Loss Absorbent Preference Shares (Conversion) or the Relevant Portion of the Loss Absorbent Preference Shares (Conversion), as applicable, shall be redeemed by the Company at a redemption amount which is equal to ZAR0.01 (one cent), without further action on the part of the Company, any Holder or any other person.

6.24 The Loss Absorbent Preference Shares (Conversion) are Shares. Under South African law it is not possible to Write-Off Shares. Where Write-Off becomes applicable to the Loss Absorbent Preference Shares (Conversion) in the circumstances set out in clause 6.23, the redemption structure set out in clause 6.23 is necessary under South African law to achieve the "write off" contemplated in Regulation 38(11)(b)(i) of the Regulations Relating to Banks as read with paragraph 3.2 of Guidance Note 07/2013 which requires that all of the Loss Absorbent Preference Shares (Conversion) or the Relevant Portion of the Loss Absorbent Preference Shares (Conversion), as applicable, "*shall, instead of being converted into the most subordinated form of equity, be written off*".

7. Failure to pay the Unpaid Amount not an Event of Default

Neither the Conversion (nor, if applicable, the Write-Off) of all of the Loss Absorbent Preference Shares (Conversion) or the Relevant Portion of the Loss Absorbent Preference Shares (Conversion), as applicable, nor the failure to pay the Unpaid Amount to the Holders shall constitute an Event of Default or any other breach of the Company's obligations under the Loss Absorbent Preference Shares (Conversion) or this Schedule "3" and the Holders will have no claims of whatsoever nature against the Company as a result of the Conversion (or, if applicable, the Write-Off).

8. Surviving Loss Absorbent Preference Shares (Conversion)

Where the Unpaid Amount is determined with reference to the Relevant Portion of the Principal Amount:

8.1 the balance of the Loss Absorbent Preference Shares (Conversion) not Converted (or, if applicable, Written Off) (such balance being the "**Surviving Loss Absorbent Preference Shares (Conversion)**") shall continue to exist and, after the Conversion (or, if applicable, the Write-Off), all references to "Principal Amount" in this Schedule "3" (including, without limitation, clauses 9 and 10) shall be construed as references to the Total Principal Amount less the Relevant Portion of the Principal Amount, and all references to the "Loss Absorbent Preference Shares (Conversion)" in this Schedule "3" (including, without limitation, clauses 9 and 10) shall be

construed as references to the Surviving Loss Absorbent Preference Shares (Conversion);

- 8.2 without limiting the provisions of clause 8.1 if, after the Conversion (or, if applicable, the Write-Off), the Surviving Loss Absorbent Preference Shares (Conversion) are to be redeemed in terms of clause 9, the Principal Amount and accrued but unpaid Preference Dividend to be paid to the Holders in terms of clause 9 shall be irrevocably reduced by the Unpaid Amount.

9. Redemption

9.1 *Company Early Redemption Election*

- 9.1.1 The Company may at its election and in its sole and absolute discretion, having given not less than 30 nor more than 60 days' written notice to the Holders (which notice shall be revocable), redeem the Loss Absorbent Preference Shares (Conversion) (in whole but not in part) on the date stipulated as the date for redemption in such notice of redemption ("**Early Redemption Date (Call)**"), at the aggregate Principal Amount of the Loss Absorbent Preference Shares (Conversion) plus accrued Preference Dividend (if any) to the Early Redemption Date (Call); provided that:

9.1.1.1 the Early Redemption Date (Call) shall not fall earlier than the date being 5 (five) years and 1 (one) day after the Issue Date;

9.1.1.2 the Company shall obtain the prior written approval of the Relevant Authority before exercising the Company Early Redemption Election;

9.1.1.3 the Company shall not (and does not) create any expectation that the Company Early Redemption Election will be exercised; and

9.1.1.4 the Company shall not exercise the Company Early Redemption Election unless:

- 9.1.1.4.1 the Company concurrently replaces the Loss Absorbent Preference Shares (Conversion) with capital of similar or better quality and the replacement of capital is done at conditions that are sustainable for the income capacity of the Company; or
- 9.1.1.4.2 the Company demonstrates to the satisfaction of the Relevant Authority that the Company's capital position will be well above the relevant specified minimum capital requirements after the Company Early Redemption Election is exercised.
- 9.1.2 For the avoidance of doubt (and notwithstanding anything to the contrary contained in this clause 9.1), the Company shall be under no obligation to redeem the Loss Absorbent Preference Shares (Conversion) as a result of the delivery of the notice of redemption pursuant to clause 9.1.1, and such redemption shall be entirely within the Company's discretion.

9.2 *Redemption for regulatory reasons*

- 9.2.1 If a Regulatory Event has occurred and is continuing, the Loss Absorbent Preference Shares (Conversion) may, subject to the prior written approval of the Relevant Authority, be redeemed (in whole but not in part), at the election of the Company and in its sole and absolute discretion, subject to the Company having given not less than 30 nor more than 60 days' written notice to the Holders (which notice shall be revocable), on the date stipulated as the date for redemption in such notice of redemption ("**Early Redemption Date (Regulatory)**"), at the aggregate Principal Amount of the Loss Absorbent Preference Shares (Conversion) plus accrued Preference Dividend (if any) to the Early Redemption Date (Regulatory).
- 9.2.2 Prior to the publication of any notice of redemption pursuant to clause 9.2.1, the Company shall deliver to the Holders (A) a certificate signed by two authorised officers of the Company stating that the Company is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the election of the Company so to redeem have

occurred and (B) unless the Relevant Authority has confirmed to the Company that the proceeds of the issue of the Loss Absorbent Preference Shares (Conversion) are not eligible to qualify as the relevant class of Regulatory Capital of the Company on a solo and/ or a consolidated basis, an opinion of independent advisers of recognised standing to the effect that a Regulatory Event has occurred.

- 9.2.3 For the avoidance of doubt (and notwithstanding anything to the contrary contained in this clause 9.2), the Company shall be under no obligation to redeem the Loss Absorbent Preference Shares (Conversion) as a result of the delivery of the notice of redemption pursuant to clause 9.2.1, and such redemption shall be entirely within the Company's discretion.

10. Events of Default

- 10.1 *Notwithstanding any of the provisions of this clause 10, the right to institute winding up proceedings is limited to circumstances where amounts under the Loss Absorbent Preference Shares (Conversion) have become due and payable. Payment of any Preference Dividend in respect of the Loss Absorbent Preference Shares (Conversion) will not be due if the Company is not obliged to pay Preference Dividend (or any portion thereof) pursuant to clause 3.*
- 10.2 If default shall be made in the payment of the Principal Amount or any portion thereof or Preference Dividend due on the Loss Absorbent Preference Shares (Conversion) for a period of 7 (seven) days or more after any date on which such Principal Amount or such portion thereof or such Preference Dividend becomes due and payable, each Holder may, at its discretion and without further notice, institute proceedings for the winding-up of the Company and/or prove a claim against the Company in respect of amounts owing as a result of such failure to pay in any winding-up of the Company, but may take no other action in respect of such default.
- 10.3 Without prejudice to clause 10.2, if the Company breaches any of its obligations under the Loss Absorbent Preference Shares (Conversion) (other than any obligation in respect of the payment of the Principal Amount or any portion thereof or Preference Dividend due on the Loss Absorbent

Preference Shares (Conversion)) then each Holder may, at its discretion and without further notice, bring such proceedings as it may think fit to enforce the obligation in question; provided that the Company shall not, as a result of the bringing of any such proceedings, be obliged to pay any sum representing or measured by reference to the Principal Amount or the relevant portion thereof or Preference Dividend due on the Loss Absorbent Preference Shares (Conversion) sooner than the same would otherwise have been payable by the Company.

11. Acquisition of Loss Absorbent Preference Shares (Conversion)

- 11.1 In terms of Regulation 38(11)(b)(iv)(E) of the Regulations Relating to Banks ("**Regulation 38(11)(b)(iv)(E)**"), no "*[Loss Absorbent Capital Securities]* may be held or acquired by the bank or any person related to or associated with the bank, or over which the bank exercises or may exercise control or significant influence".
- 11.2 There is uncertainty regarding the interpretation and ambit of Regulation 38(11)(b)(iv)(E), particularly in light of the fact that, where Conversion applies to Loss Absorbent Capital Securities (which are Debt Securities) issued by the Company upon the occurrence of the Trigger Event, Capitec is obliged to acquire such Loss Absorbent Capital Securities.
- 11.3 Circular C6/2014 clarifies some (but not all) of the uncertainty regarding the interpretation and ambit of Regulation 38(11)(b)(iv)(E) and provides that "associated" "*relates to the relevant bank or controlling company or a related party over which the bank and/or controlling company exercises or may exercise control or significant influence. The term therefore excludes a shareholder of the bank or controlling company itself; as the bank or controlling company has no control or significant influence over such a shareholder*".
- 11.4 No proscribed entity referred to in Regulation 38(11)(b)(iv)(E) (as read with Circular C6/2014) may purchase or acquire or hold any of the Loss Absorbent Preference Shares (Conversion).

12. **Section 20 of the JSE Listings Requirements**

It is recorded that the Loss Absorbent Preference Shares (Conversion) may qualify as "*hybrid financial instruments*" for purposes of Section 20 (*Hybrid Financial Instruments*) of the JSE Listings Requirements ("**Section 20**") where the Loss Absorbent Preference Shares (Conversion) "*portray characteristics of both debt securities and equity securities*". In terms of Section 20.6 (*Compliance with the Listings Requirements*), an issuer seeking a listing of "*hybrid financial instruments*" on the JSE is required to comply with and satisfy all applicable JSE Listings Requirements in addition to the provisions set out in Section 20, including the issue of a pre-listing statement/prospectus or a placing document. Subject to this Schedule "3", the terms of such pre-listing statement/prospectus or placing document will be determined by the directors of the Company.

SCHEDULE "4"**TERMS AND CONDITIONS OF THE LOSS ABSORBENT PREFERENCE SHARES (WRITE-OFF) THE PROCEEDS OF WHICH WILL RANK AS ADDITIONAL TIER 1 CAPITAL UNDER THE BANKS ACT, 1990****1. General**

The following terms shall attach to the 100 000 000 Loss Absorbent Preference Shares (Write-Off) of R0,01 each in the share capital of the Company:

2. Definitions

The expressions defined in the Memorandum of Incorporation of the Company ("**Memorandum of Incorporation**") shall, save where otherwise defined in this Schedule "4", have the same meanings in this Schedule "4" and shall form part of this Schedule "4". For purposes of this Schedule "4":

- 2.1 "**Additional Tier 1 Capital**" means "*additional tier 1 capital*" as defined in the Banks Act;
- 2.2 "**Additional Tier 1 Capital Regulations**" means Regulation 38(11)(b) of the Regulations Relating to Banks (as read with Guidance Note 07/2013) and/or such other provisions of the Capital Regulations with which the instruments and/or shares contemplated in that Regulation 38(11)(b) (including the Loss Absorbent Preference Shares (Write-Off)) must comply in order for the proceeds of the issue of such instruments and/or shares to rank as Additional Tier 1 Capital;
- 2.3 "**Additional Tier 1 Capital Securities**" means Securities (including the Loss Absorbent Preference Shares (Write-Off) and the Loss Absorbent Preference Shares (Conversion)) issued by the Company which comply with the Additional Tier 1 Capital Regulations and the proceeds of which rank as Additional Tier 1 Capital;

- 2.4 "**Business Day**" means any day other than a Saturday, Sunday or statutory public holiday in the Republic of South Africa;
- 2.5 "**Capitec**" means Capitec Bank Holdings Limited (incorporated with limited liability in South Africa under registration number 1999/025903/06);
- 2.6 "**Capitec Ordinary Shares**" means ordinary shares in the share capital of Capitec;
- 2.7 "**CET 1 Ratio**" means the Common Equity Tier 1 ratio of the Company, determined in accordance with the Banks Act and the Regulations Relating to Banks;
- 2.8 "**Company**" means Capitec Bank Limited (incorporated with limited liability in South Africa under registration number 1980/003695/06);
- 2.9 "**Company Early Redemption Election**" means the election of the Company, in its sole and absolute discretion, to redeem the Loss Absorbent Preference Shares (Write-Off) (in whole but not in part) in terms of clause 9.1, subject to the Company complying with the conditions to redemption set out in clause 9.1;
- 2.10 "**Deemed Value**" means, in relation to a Loss Absorbent Preference Share (Write-Off), the deemed value of that Loss Absorbent Preference Share (Write-Off) for purposes of calculating the Preference Dividend, being an amount determined by the directors of the Company at the time of allotment and issue of that Loss Absorbent Preference Shares (Write-Off), notwithstanding the actual Issue Price of that Loss Absorbent Preference Share (Write-Off) (that is the nominal value of that Loss Absorbent Preference Share (Write-Off) plus a premium thereon) which may vary because of a difference in the premium at which the Loss Absorbent Preference Shares (Write-Off) may be issued from time to time;
- 2.11 "**Event of Default**" means any of the events described in clause 10;
- 2.12 "**Existing Preference Shares**" means 100 000 000 (one hundred million) preference shares described in Schedule "2" to the Memorandum of Incorporation as "*Non-Redeemable, Non-Cumulative, Non-Participating*

Preference Shares" with a par value of R0,01 (one cent) each, the terms and conditions of which are set out in Schedule "2" to the Memorandum of Incorporation;

- 2.13 **"Holder"** means, in relation to any Loss Absorbent Preference Share (Write-Off), the holder of that Loss Absorbent Preference Share (Write-Off) as recorded in the Securities Register;
- 2.14 **"Income Tax Act"** means the Income Tax Act, 1962, as amended or substituted from time to time;
- 2.15 **"Issue Date"** means, in relation to a Loss Absorbent Preference Share (Write-Off), the date on which that Loss Absorbent Preference Share (Write-Off) is actually issued by the Company to the applicable Holder;
- 2.16 **"Issue Price"** and **"Principal Amount"** means, in relation to a Loss Absorbent Preference Share (Write-Off), the actual issue price of that Loss Absorbent Preference Share (Write-Off), being the par value of that Loss Absorbent Preference Share (Write-Off) plus the premium at which that Loss Absorbent Preference Share (Write-Off) is allotted and issued, which may vary because of a difference in the premium at which the Loss Absorbent Preference Shares (Write-Off) may be issued from time to time;
- 2.17 **"Loss Absorbent Capital Securities"** means Additional Tier 1 Capital Securities (including the Loss Absorbent Preference Shares (Write-Off) and the Loss Absorbent Preference Shares (Conversion)) and Tier 2 Capital Securities;
- 2.18 **"Loss Absorbent Preference Shares (Conversion)"** means non-redeemable, non-cumulative preference shares having a par value of R0,01 each in the share capital of the Company (the proceeds of the issue of which will rank as Additional Tier 1 Capital under the Banks Act) the terms and conditions of which are set out in Schedule "3" to the Memorandum of Incorporation and which terms and conditions allow for Conversion into Capitec Ordinary Shares (at the Discretion of the Relevant Authority) at the occurrence of the relevant Trigger Event;

- 2.19 "**Loss Absorbent Preference Shares (Write-Off)**" means the non-redeemable, non-cumulative preference shares having a par value of R0,01 each in the share capital of the Company (the proceeds of the issue of which will rank as Additional Tier 1 Capital) and the terms and conditions of which are set out in this Schedule "4";
- 2.20 "**Ordinary Shares**" means ordinary Shares in the share capital of the Company;
- 2.21 "**Preference Dividend**" means, in relation to a Loss Absorbent Preference Share (Write-Off), a non-cumulative preferential cash dividend calculated in accordance with clause 3;
- 2.22 "**Preference Dividend Calculation Date**" means the last day of February and 31 August of each year;
- 2.23 "**Preference Dividend Payment Date**" means a date at least 5 (five) Business Days prior to the date on which the Company pays any dividend to the holders of its Ordinary Shares, but in any event and to the extent that any Preference Dividend is payable in respect of any period, that Preference Dividend shall be payable not later than 120 (one hundred and twenty) Business Days after the most recent Preference Dividend Calculation Date;
- 2.24 "**Preference Dividend Rate**" means the floating rate of interest, linked to the Prime Rate, determined by the directors of the Company at the time of allotment and issue of the Loss Absorbent Preference Shares (Write-Off), it being recorded that such floating rate of interest will fluctuate (in accordance with the fluctuation in the then applicable Prime Rate) over the period in respect of which the relevant Preference Dividend is calculated;
- 2.25 "**Preference Share Amount**" means, in relation to a Loss Absorbent Preference Share (Write- Off), the Issue Price of that Loss Absorbent Preference Share (Write-Off);
- 2.26 "**Prime Rate**" means the publicly quoted basic rate of interest expressed as a percentage per year, compounded monthly in arrear and calculated on a 365 (three hundred and sixty five)-day year factor (irrespective of whether

or not the year is a leap year) from time to time quoted by the corporate bankers of the Company as being its prime rate as certified by any manager of such bank, whose appointment and/or designation need not be proved, and a certificate from any manager of such bank as to the Prime Rate at any time shall constitute *prima facie* proof thereof;

- 2.27 "**Regulatory Change**" means (i) a change in or amendment to the Capital Regulations or (ii) any change in the application of or official or generally published guidance or interpretation of the Capital Regulations by the Relevant Authority and/or the South African courts, which change or amendment becomes, or would become, effective on or after the Issue Date;
- 2.28 "**Regulatory Event**" is deemed to have occurred in relation to the Loss Absorbent Preference Shares (Write-Off) if, as a result of any Regulatory Change, the whole or any part of the aggregate Principal Amount of the Loss Absorbent Preference Shares (Write-Off) is excluded from qualifying as Regulatory Capital of the Company or Capitec on a solo and/or consolidated basis and the Relevant Authority has notified the Company (either specifically or generally in conjunction with other banks and/or controlling companies) in writing of the relevant amendment or change and, for the avoidance of doubt, a Regulatory Event shall be deemed to have occurred in relation to the Loss Absorbent Preference Shares (Write-Off) if all or part of the aggregate Principal Amount of the Loss Absorbent Preference Shares (Write-Off) is excluded from qualifying as Regulatory Capital by reason of any grandfathering or transitional provisions in the applicable Capital Regulations;
- 2.29 "**Tier 2 Capital**" means "*tier 2 capital*" as defined in the Banks Act;
- 2.30 "**Tier 2 Capital Regulations**" means Regulation 38(12) of the Regulations Relating to Banks (as read with Guidance Note 07/2013) and/or such other provisions of the Capital Regulations with which the instruments and/or shares contemplated in that Regulation 38(12) must comply in order for the proceeds of the issue of such instruments and/or shares to rank as Tier 2 Capital;

- 2.31 "**Tier 2 Capital Securities**" means Securities issued by the Company which comply with the Tier 2 Capital Regulations and the proceeds of which rank as Tier 2 Capital;
- 2.32 "**Trigger Event**" means, in relation to Additional Tier 1 Capital Securities which are accounted as equity and Tier 2 Capital Securities, the "trigger event" set out in clause 4.2 and, in relation to Additional Tier 1 Capital Securities which are accounted as liabilities, the "trigger event" set out in clause 4.3.

3. **Rights, privileges, restrictions and conditions**

The following are the rights, privileges, restrictions and conditions which attach to the Loss Absorbent Preference Shares (Write-Off):

- 3.1 The Issue Price of each Loss Absorbent Preference Share (Write-Off) will be determined by the directors of the Company at the time of allotment of that Loss Absorbent Preference Share (Write-Off).
- 3.2 Each Loss Absorbent Preference Share (Write-Off) will rank as regards dividends and a return of capital on the winding-up of the Company prior to the Ordinary Shares and any other class of Shares in the capital of the Company not ranking prior to or *pari passu* with the Loss Absorbent Preference Shares (Write-Off). The Loss Absorbent Preference Shares (Conversion) rank *pari passu* with the Loss Absorbent Preference Shares (Write-Off). The Existing Preference Shares rank prior to the Loss Absorbent Preference Shares (Write-Off) and the Loss Absorbent Preference Shares (Conversion). The Loss Absorbent Preference Shares (Write-Off) shall confer on the Holders, on a per Loss Absorbent Preference Share (Write-Off) and equal basis, the right to a return of capital on the winding-up of the Company of an amount equal to the aggregate of the par value and premium of the Loss Absorbent Preference Shares (Write-Off) then in issue, divided by the total number of Loss Absorbent Preference Shares (Write-Off) in issue in priority to any payment in respect of the Ordinary Shares and any other class of Shares in the capital of the Company not ranking prior to or *pari passu* with the Loss Absorbent Preference Shares (Write-Off).

- 3.3 Each Loss Absorbent Preference Share (Write-Off) will confer upon the Holder thereof the right to receive out of the profits of the Company which the board of directors of the Company shall determine is available for distribution, in priority to any payment of dividends to the holders of Ordinary Shares, and any other class of shares in the capital of the Company not ranking prior to or *pari passu* with the Loss Absorbent Preference Shares (Write-Off) but after the Existing Preference Shares, the Preference Dividend calculated in terms of clause 3.4.
- 3.4 The Preference Dividend payable in respect of a Loss Absorbent Preference Share (Write-Off) for any applicable period shall be calculated:
- 3.4.1 by multiplying the Deemed Value of that Loss Absorbent Preference Share (Write-Off) by the Preference Dividend Rate from time to time applicable to the period referred to in clause 3.4.2; and
- 3.4.2 from the date following the relevant Preference Dividend Calculation Date until and including the immediately following Preference Dividend Calculation Date as if that Loss Absorbent Preference Share (Write-Off) had been in issue from the date following the relevant Preference Dividend Calculation Date, regardless of the date of issue; and
- 3.4.3 on a 365-day year factor, irrespective of whether the relevant year is a leap year or not, on a daily basis, in arrear, but never compounded and for the period referred to in clause 3.4.2.
- 3.5 The Preference Dividend in relation to any Loss Absorbent Preference Share (Write-Off) shall, if declared:
- 3.5.1 accrue on the date of declaration of the Preference Dividend, calculated in accordance with clause 3.4.2;
- 3.5.2 be payable on the next Preference Dividend Payment Date; and
- 3.5.3 failing payment by the relevant Preference Dividend Payment Date, considered to be in arrear.

- 3.6 If a Preference Dividend is not declared by the Company in respect of the period to which such Preference Dividend Calculation Date relates, the Preference Dividend will not accumulate and will accordingly never become due to the Holders of the Loss Absorbent Preference Shares (Write-Off) nor payable by the Company.
- 3.7 Save as set out in clauses 3.2, 3.3 and 3.5, the Holders of Loss Absorbent Preference Shares (Write-Off) shall not be entitled to any further participation in the profits or assets of the Company nor on a winding-up to any surplus assets of the Company.
- 3.8 The Holders of the Loss Absorbent Preference Shares (Write-Off) shall be entitled to receive notice of and be present but not to vote, either in person or by proxy, at any meeting of the Company, by virtue of or in respect of the Loss Absorbent Preference Shares (Write-Off), unless either or both of the following circumstances prevail at the date of the meeting:
- 3.8.1 the Preference Dividend or any part thereof remains in arrear and unpaid as determined in accordance with clause 3.5.3 after 6 (six) months from the due date for payment thereof; or
- 3.8.2 a resolution of the Company is proposed which directly affects the rights attached to the Loss Absorbent Preference Shares (Write-Off) or the interests of the Holders thereof, including a resolution for the winding-up of the Company or for the reduction of its capital (save for any redemption of the Existing Preference Shares), in which event the Holders of the Loss Absorbent Preference Shares (Write-Off) shall be entitled to vote only on such resolution.
- 3.9 At every general meeting of the Company, at which Holders of Loss Absorbent Preference Shares (Write-Off) as well as other classes of shares are present and entitled to vote, a Holder of Loss Absorbent Preference Shares (Write-Off) shall be entitled to that proportion of the total votes in the Company which the aggregate amount of the nominal value of the Loss Absorbent Preference Shares (Write- Off) held by him bears to the aggregate amount of the nominal value of all shares issued by the Company.

- 3.10 Notwithstanding the provisions of clause 3.2, except for the Existing Preference Shares, no Shares in the capital of the Company ranking, as regards rights to dividends and a return of capital on the winding-up of the Company, in priority to the Loss Absorbent Preference Shares (Write-Off), shall be created or issued, nor will the rights for the time being attached to the Loss Absorbent Preference Shares (Write-Off) be modified, amended, added or abrogated, without:
- 3.10.1 the prior sanction of a resolution passed at a separate class meeting of the Holders of the Loss Absorbent Preference Shares (Write-Off) in the same manner *mutatis mutandis* as a special resolution; or
- 3.10.2 the consent in writing of the Holders of at least 75% (seventy five percent) of the Loss Absorbent Preference Shares (Write-Off).
- 3.11 At every meeting of the Holders of the Loss Absorbent Preference Shares (Write-Off), the provisions of these clauses relating to general meetings shall apply, *mutatis mutandis*, except that a quorum at any such general meeting shall be persons holding or representing by proxy at least one quarter of the issued Loss Absorbent Preference Shares (Write-Off) provided that if at any adjournment of such meeting a quorum is not so present, the provisions of the clauses relating to adjourned general meetings shall apply, *mutatis mutandis*.

4. **Regulations 38(11)(b) and 38(12)(a) (as read with Guidance Note 07/2013)**

- 4.1 Regulation 38(11) and 38(12) of the Regulations Relating to Banks (as read with Guidance Note 07/2013) prescribe that the terms and conditions of Loss Absorbent Capital Securities (including the Loss Absorbent Preference Shares (Write-Off)) must contain a provision that requires the Loss Absorbent Capital Securities, at the occurrence of the relevant Trigger Event (at the discretion of the Relevant Authority ("**Discretion**")) to either (i) be written off ("**Write-Off**", and "**Written Off**" shall be construed accordingly) or (ii) be converted to the most subordinated form of equity ("**Conversion**", and "**Converted**" shall be construed accordingly).

4.2 The "trigger event" for Additional Tier 1 Capital Securities which are accounted as equity will be the occurrence of the "trigger event" specified in writing by the Relevant Authority (as contemplated in Regulation 38(11)(b)(i) of the Regulations Relating to Banks); provided that, as a minimum, the aforesaid "trigger event" shall be the earlier of:

4.2.1 a decision that a write-off, without which the Company would become non-viable, is necessary, as determined by the Relevant Authority; or

4.2.2 the decision to make a public sector injection of capital, or equivalent support, without which the Company would have become non-viable, as determined by the Relevant Authority,

as contemplated in sub-paragraph (iii) of the proviso to Regulation 38(11)(b)(i) of the Regulations Relating to Banks.

4.3 The "trigger event" for Additional Tier 1 Capital Securities which are accounted as liabilities will be the first to occur of the following events:

4.3.1 the occurrence of the "trigger event" specified in writing by the Relevant Authority (as contemplated in Regulation 38(11)(b)(i) of the Regulations Relating to Banks); provided that, as a minimum, the aforesaid "trigger event" shall be the earlier of:

4.3.1.1 a decision that a write-off, without which the Company would become non-viable, is necessary, as determined by the Relevant Authority; or

4.3.1.2 the decision to make a public sector injection of capital, or equivalent support, without which the Company would have become non-viable, as determined by the Relevant Authority,

as contemplated in sub-paragraph (iii) of the proviso to Regulation 38(11)(b)(i) of the Regulations Relating to Banks; or

- 4.3.2 the CET 1 Ratio of the Company is equal to or falls below 5.875% of risk-weighted exposures.
- 4.4 The Relevant Authority will notify the Company in writing once the Relevant Authority determines that the Trigger Event has occurred.
- 4.5 Notwithstanding the occurrence of the Trigger Event, the Relevant Authority has a Discretion to (i) take action and allow the Write-Off (or Conversion, if applicable) to occur in order to effect an increase in the CET1 Ratio such that the Company will be deemed by the Relevant Authority to be viable again or (ii) take no action and not require the Write-Off (or Conversion, if applicable) to occur.
- 4.6 Write-Off (or Conversion, if applicable) of Loss Absorbent Capital Securities (including Write-Off of the Loss Absorbent Preference Shares (Write-Off)) need only occur up until the point where the Company is deemed by the Relevant Authority to be viable again, as specified in writing by the Relevant Authority.
- 4.7 In terms of statutory ranking, Additional Tier 1 Capital Securities are likely to be Written Off (or Converted, if applicable) prior to any Write-Off (or Conversion, if applicable) of Tier 2 Capital Securities. The Loss Absorbent Capital Securities to be Written Off (or Converted, if applicable) at the occurrence of the Trigger Event (at the Discretion of the Relevant Authority) will be determined by the Relevant Authority.
- 4.8 The Relevant Authority will also determine whether, at the occurrence of the Trigger Event (at the Discretion of the Relevant Authority), the entire aggregate Principal Amount of the Loss Absorbent Capital Securities or a portion of such Principal Amount will be Written Off (or Converted, if applicable), such determination to be based on the book value of the Loss Absorbent Capital Securities as reflected in the Company's financial statements or management accounts at the relevant time (with reference to the amount required to increase the CET1 Ratio such that the Company will be deemed by the Relevant Authority to be viable again).

4.9 If the Company has both Loss Absorbent Preference Shares (Write-Off) and other Additional Tier 1 Capital Securities in issue which are subject to Write-Off (or Conversion, if applicable), the Loss Absorbent Preference Shares (Write-Off) and the other Additional Tier 1 Capital Securities will be treated *pari passu*, and a partial Write-Off (or Conversion, if applicable) may occur at the occurrence of the Trigger Event (at the Discretion of the Relevant Authority), up to the point where the Company is deemed by the Relevant Authority to be viable again, as specified in writing by the Relevant Authority.

5. Occurrence of the Trigger Event

5.1 The Relevant Authority will determine whether, at the occurrence of the Trigger Event (at the Discretion of the Relevant Authority), the entire aggregate Principal Amount of the Loss Absorbent Preference Shares (Write-Off) ("**Total Principal Amount**") or a portion of the Total Principal Amount ("**Relevant Portion of the Principal Amount**") will be Written Off.

5.2 The Company will notify the Holders in writing of (i) the occurrence of the Trigger Event and (ii) the Unpaid Amount, as soon as may be practicable after the Company has been notified by the Relevant Authority of the occurrence of the Trigger Event.

5.3 The "**Unpaid Amount**" will be the sum of the Total Principal Amount or the Relevant Portion of the Principal Amount, as the case may be, plus all accrued but unpaid Preference Dividend on the Total Principal Amount or the Relevant Portion of the Principal Amount, as the case may be, as at the occurrence of the Trigger Event. The "**Relevant Portion of the Unpaid Amount**", in relation to a Holder of Loss Absorbent Preference Share/s (Write-Off) will be the Unpaid Amount multiplied by the number of Loss Absorbent Preference Share/s (Write-Off) held by that Holder divided by the total number of Loss Absorbent Preference Shares (Write-Off).

5.4 Where the Unpaid Amount is determined with reference to the Total Principal Amount, "**all of the Loss Absorbent Preference Shares (Write-Off)**" means the whole of each Loss Absorbent Preference Share (Write-Off) (and 100% of the entire Principal Amount of each Loss Absorbent

Preference Share (Write-Off)). Where the Unpaid Amount is determined with reference to the Relevant Portion of the Principal Amount, the "**Relevant Portion of the Loss Absorbent Preference Shares (Write-Off)**" means that portion of each Loss Absorbent Preference Share (Write-Off) (and that percentage of the Principal Amount of each Loss Absorbent Preference Share (Write-Off)) as is equivalent to the proportion (expressed as a percentage) which the Relevant Portion of the Principal Amount bears to the Total Principal Amount.

6. **Write-Off (redemption of the Loss Absorbent Preference Shares ((Write-Off))**

6.1 At the occurrence of the Trigger Event (at the Discretion of the Relevant Authority), all of the Loss Absorbent Preference Shares (Write-Off) or the Relevant Portion of the Loss Absorbent Preference Shares (Write-Off), as applicable, shall be Written Off. In order to effect the Write-Off, all of the Loss Absorbent Preference Shares (Write-Off) or the Relevant Portion of the Loss Absorbent Preference Shares (Write-Off), as applicable, shall be redeemed by the Company at a redemption amount which is equal to ZAR0.01 (one cent), without further action on the part of the Company, any Holder or any other person.

6.2 The Loss Absorbent Preference Shares (Write-Off) are Shares. Under South African law it is not possible to Write-Off Shares. Where the Write-Off option is applicable to Shares (such as the Loss Absorbent Preference Shares (Write-Off)), the redemption structure set out in clause 6.1 is, necessary under South African law, to achieve the "write-off" contemplated in Regulation 38(11)(b)(i) of the Regulations Relating to Banks which requires that all of the Loss Absorbent Preference Shares ((Write-Off) or the Relevant Portion of the Loss Absorbent Preference Shares (Write-Off), as applicable, "**shall be written off**".

7. **Failure to pay the Unpaid Amount not an Event of Default**

Neither the Write-Off of all of the Loss Absorbent Preference Shares (Write-Off) or the Relevant Portion of the Loss Absorbent Preference Shares (Write-Off), as applicable, nor the failure to pay the Unpaid Amount to the Holders

shall constitute an Event of Default or any other breach of the Company's obligations under the Loss Absorbent Preference Shares (Write-Off) or this Schedule "4" and the Holders will have no claims of whatsoever nature against the Company as a result of the Write-Off.

8. **Surviving Loss Absorbent Preference Shares (Write-Off)**

Where the Unpaid Amount is determined with reference to the Relevant Portion of the Principal Amount:

- 8.1 the balance of the Loss Absorbent Preference Shares (Write-Off) not Written Off (such balance being the "**Surviving Loss Absorbent Preference Shares (Write-Off)**") shall continue to exist and, after the Write-Off, all references to "Principal Amount" in this Schedule "4" (including, without limitation, clauses 9 and 10) shall be construed as references to the Total Principal Amount less the Relevant Portion of the Principal Amount, and all references to the "Loss Absorbent Preference Shares (Write-Off)" in this Schedule "4" (including, without limitation, clauses 9 and 10) shall be construed as references to the Surviving Loss Absorbent Preference Shares (Write-Off); and
- 8.2 without limiting the provisions of clause 8.1 if, after the Write-Off, the Surviving Loss Absorbent Preference Shares (Write-Off) are to be redeemed in terms of clause 9, the Principal Amount and accrued but unpaid Preference Dividend to be paid to the Holders in terms of clause 9 shall be irrevocably reduced by the Unpaid Amount.

9. **Redemption**

9.1 *Company Early Redemption Election*

- 9.1.1 The Company may at its election and in its sole and absolute discretion, having given not less than 30 nor more than 60 days' written notice to the Holders (which notice shall be revocable), redeem the Loss Absorbent Preference Shares (Write-Off) (in whole but not in part) on the date stipulated as the date for redemption in such notice of redemption ("**Early Redemption Date (Call)**"), at the aggregate Principal Amount of the Loss

Absorbent Preference Shares (Write-Off) plus accrued Preference Dividend (if any) to the Early Redemption Date (Call); provided that:

- 9.1.1.1 the Early Redemption Date (Call) shall not fall earlier than the date being 5 (five) years and 1 (one) day after the Issue Date;
- 9.1.1.2 the Company shall obtain the prior written approval of the Relevant Authority before exercising the Company Early Redemption Election;
- 9.1.1.3 the Company shall not (and does not) create any expectation that the Company Early Redemption Election will be exercised; and
- 9.1.1.4 the Company shall not exercise the Company Early Redemption Election unless:
 - 9.1.1.4.1 the Company concurrently replaces the Loss Absorbent Preference Shares (Write- Off) with capital of similar or better quality and the replacement of capital is done at conditions that are sustainable for the income capacity of the Company; or
 - 9.1.1.4.2 the Company demonstrates to the satisfaction of the Relevant Authority that the Company's capital position will be well above the relevant specified minimum capital requirements after the Company Early Redemption Election is exercised.
- 9.1.2 For the avoidance of doubt (and notwithstanding anything to the contrary contained in this clause 9.1), the Company shall be under no obligation to redeem the Loss Absorbent Preference Shares (Write-Off) as a result of the delivery of the notice of redemption pursuant to clause 9.1.1, and such redemption shall be entirely within the Company's discretion.

9.2 *Redemption for regulatory reasons*

- 9.2.1 If a Regulatory Event has occurred and is continuing, the Loss Absorbent Preference Shares (Write-Off) may, subject to the prior written approval of the Relevant Authority, be redeemed (in whole but not in part), at the election of the Company and in its sole and absolute discretion, subject to the Company having given not less than 30 nor more than 60 days' written notice to the Holders (which notice shall be revocable), on the date stipulated as the date for redemption in such notice of redemption ("**Early Redemption Date (Regulatory)**"), at the aggregate Principal Amount of the Loss Absorbent Preference Shares (Write-Off) plus accrued Preference Dividend (if any) to the Early Redemption Date (Regulatory).
- 9.2.2 Prior to the publication of any notice of redemption pursuant to clause 9.2.1, the Company shall deliver to the Holders (A) a certificate signed by two authorised officers of the Company stating that the Company is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the election of the Company so to redeem have occurred and (B) unless the Relevant Authority has confirmed to the Company that the proceeds of the issue of the Loss Absorbent Preference Shares (Write-Off) are not eligible to qualify as the relevant class of Regulatory Capital of the Company on a solo and/or a consolidated basis, an opinion of independent advisers of recognised standing to the effect that a Regulatory Event has occurred.
- 9.2.3 For the avoidance of doubt (and notwithstanding anything to the contrary contained in this clause 9.2), the Company shall be under no obligation to redeem the Loss Absorbent Preference Shares (Write-Off) as a result of the delivery of the notice of redemption pursuant to clause 9.2.1, and such redemption shall be entirely within the Company's discretion.

10. Events of Default

- 10.1 *Notwithstanding any of the provisions of this clause 10, the right to institute winding up proceedings is limited to circumstances where amounts under the Loss Absorbent Preference Shares (Write-Off) have become due and payable. Payment of any Preference Dividend in respect of the Loss Absorbent Preference Shares (Write-Off) will not be due if the Company is not obliged to pay Preference Dividend (or any portion thereof) pursuant to clause 3.*
- 10.2 If default shall be made in the payment of the Principal Amount or any portion thereof or Preference Dividend due on the Loss Absorbent Preference Shares (Write-Off) for a period of 7 (seven) days or more after any date on which such Principal Amount or such portion thereof or such Preference Dividend becomes due and payable, each Holder may, at its discretion and without further notice, institute proceedings for the winding-up of the Company and/or prove a claim against the Company in respect of amounts owing as a result of such failure to pay in any winding-up of the Company, but may take no other action in respect of such default.
- 10.3 Without prejudice to clause 10.2, if the Company breaches any of its obligations under the Loss Absorbent Preference Shares (Write-Off) (other than any obligation in respect of the payment of the Principal Amount or any portion thereof or Preference Dividend due on the Loss Absorbent Preference Shares (Write-Off)) then each Holder may, at its discretion and without further notice, bring such proceedings as it may think fit to enforce the obligation in question; provided that the Company shall not, as a result of the bringing of any such proceedings, be obliged to pay any sum representing or measured by reference to the Principal Amount or the relevant portion thereof or Preference Dividend due on the Loss Absorbent Preference Shares (Write-Off) sooner than the same would otherwise have been payable by the Company.

11. Acquisition of Loss Absorbent Preference Shares (Write-Off)

- 11.1 In terms of Regulation 38(11)(b)(iv)(E) of the Regulations Relating to Banks ("**Regulation 38(11)(b)(iv)(E)**"), no "*[Loss Absorbent Capital Securities] may be held or acquired by the bank or any person related to or associated with the bank, or over which the bank exercises or may exercise control or significant influence*".
- 11.2 There is uncertainty regarding the interpretation and ambit of Regulation 38(11)(b)(iv)(E), particularly in light of the fact that, where Conversion applies to Loss Absorbent Capital Securities (which are Debt Securities) issued by the Company upon the occurrence of the Trigger Event, Capitec is obliged to acquire such Loss Absorbent Capital Securities.
- 11.3 Circular C6/2014 clarifies some (but not all) of the uncertainty regarding the interpretation and ambit of Regulation 38(11)(b)(iv)(E) and provides that "*associated*" "*relates to the relevant bank or controlling company or a related party over which the bank and/or controlling company exercises or may exercise control or significant influence. The term therefore excludes a shareholder of the bank or controlling company itself; as the bank or controlling company has no control or significant influence over such a shareholder*".
- 11.4 No proscribed entity referred to in Regulation 38(11)(b)(iv)(E) (as read with Circular C6/2014) may purchase or acquire or hold any of the Loss Absorbent Preference Shares (Write-Off).

12. Section 20 of the JSE Listings Requirements

It is recorded that the Loss Absorbent Preference Shares (Write-Off) may qualify as "*hybrid financial instruments*" for purposes of Section 20 (*Hybrid Financial Instruments*) of the JSE Listings Requirements ("**Section 20**") where the Loss Absorbent Preference Shares (Write-Off) "*portray characteristics of both debt securities and equity securities*". In terms of Section 20.6 (*Compliance with the Listings Requirements*), an issuer seeking a listing of "*hybrid financial instruments*" on the JSE is required to comply with and satisfy all applicable JSE Listings Requirements in addition to the provisions set out in

Section 20, including the issue of a pre-listing statement/prospectus or a placing document. Subject to this Schedule "4", the terms of such pre-listing statement/prospectus or placing document will be determined by the directors of the Company.