

**Companies and Intellectual Property Commission**

**Republic of South Africa**

**Memorandum of Incorporation ("MOI") of**

**Capevin Holdings Proprietary Limited**

**Registration Number 1997/020857/07**

which is a private company and is referred to in the rest of this MOI as "**the Company**".

Neither the short nor the long standard form of MOI for a Profit Company Forms CoR.15.1.A and respectively CoR15.1.B, as amended from time to time, shall apply to the Company.

This MOI is in a form unique to the Company, as contemplated in section 13(1)(a)(ii) of the Companies Act 2008, as amended.

**Adoption of MOI**

This MOI was adopted by special resolution of the shareholders passed on [●] and in substitution for the memorandum of incorporation of the Company adopted on 24 May 2012 (as amended subsequently).

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## 1. Definitions and interpretation

In this MOI:

- 1.1 **"Act"** means the Companies Act No 71 of 2008, as amended from time to time, and any regulations published thereunder from time to time;
- 1.2 **"Affiliate"** means, in respect of any person, any other person who, directly or indirectly Controls or is Controlled by, or is under common Control with such person;
- 1.3 **"Annual Budget"** means in relation to any financial year of the Company, the budget (as amended from time to time) for the Group in respect of that financial year (or part thereof);
- 1.4 **"B Shares"** means the non-convertible, redeemable, no par value "B" Shares in the Company, as set out in Article 3.1.1.1 and having the rights, preferences, limitations and other terms as set out in Schedule 1;
- 1.5 **"Board"** means the board of directors of the Company from time to time;
- 1.6 **"Business Day"** means any day other than a Saturday, Sunday or gazetted national public holiday in South Africa;
- 1.7 **"Capevin Offer"** means the offer by Heineken to Shareholders who acquire Ordinary Shares pursuant to the DGHL Distribution, to acquire their Ordinary Shares on the Scheme Implementation Date, which offer shall be implemented pursuant to the Scheme;
- 1.8 **"Change of Control"** means, in relation to any body corporate:
  - 1.8.1 any person who Controls that body corporate ceasing to do so and ceasing to be an Affiliate of that body corporate; or
  - 1.8.2 the acquisition by any person of Control of the body corporate where such person was not an Affiliate of that body corporate prior to its acquisition of Control over it,

provided that, in the case of a Significant Shareholder or Controlling Shareholder that is Controlled by a single individual, a Change of Control shall be deemed not to have occurred as a result only of the shares in, and Control of, the Shareholder being transferred from that individual to (i) his/her spouse or descendants or (ii) any trust, juristic person or combination of natural or juristic persons co-operating pursuant to an agreement, arrangement or understanding over which such individual, his/her spouse or descendants have Control, provided that such spouse or descendants continue to have Control;

- 1.9        "**Control**" means, in relation to a person: (i) the direct or indirect beneficial ownership of over 50% of the equity interest of that person; (ii) the ability to exercise, directly or indirectly, over 50% of the voting rights exercisable by equity holders of that person; or (iii) the entitlement to appoint, directly or indirectly, a majority of members to the board or similar governing body of that person, or to appoint or remove such members having a majority of the votes exercisable at meetings of the board or similar governing body of that person;
- 1.10       "**Controlling Shareholder**" means a person holding more than 50% of the issued Shares of the Company;
- 1.11       "**DGHL**" means Distell Group Holdings Limited, registration number 2016/394974/06, a public company as defined in the Act;
- 1.12       "**DGHL Distribution**" means the distribution by DGHL of all the Ordinary Shares held by it to the DGHL Ordinary Shareholders on the Scheme Implementation Date as a distribution *in specie*, which distribution shall be implemented pursuant to the Scheme;
- 1.13       "**DGHL Ordinary Share**" means an ordinary share of no par value in the capital of DGHL;
- 1.14       "**DGHL Ordinary Shareholder**" means the registered holder of a DGHL Ordinary Share, from time to time;
- 1.15       "**DI**" means Distell International Limited, a company incorporated in accordance with the laws of Scotland under company number SC109881;
- 1.16       "**EBITDA**" refers to the Group's earnings before interest, taxes, depreciation and amortisation, calculated on a consolidated basis, as set out in the Company's most recent audited consolidated annual financial statements;

- 1.17 **"Electronic Communication"** has the meaning set out in section 1 of the Electronic Communications and Transactions Act No 25 of 2002, as amended from time to time, and any regulations published thereunder from time to time;
- 1.18 **"Group"** means the Company and its Subsidiaries from time to time;
- 1.19 **"Heineken"** means Heineken International B.V., registration number 33103545, a company incorporated under laws of the Netherlands;
- 1.20 **"IFRS"** means the International Financial Reporting Standards as issued from time to time by the International Accounting Standards Board or its successor body;
- 1.21 **"Implementation Agreement"** means the written implementation agreement entered into between Heineken, Sunside Acquisitions Proprietary Limited (registration number 2020/811071/07), DGHL, Namibia Breweries Limited (registration number 1920/0002), NBL Investment Holdings (Proprietary) Limited (registration number 1998/0546) and Ohlthaver & List Beverage Company (Proprietary) Limited (registration number 1933/0142) on [●] November 2021;
- 1.22 **"Material Subsidiary"** means a Subsidiary of the Company whose assets or revenue represents 10% or more of the total consolidated assets or total revenue of the Group, calculated on a consolidated basis, as set out in the Company's most recent audited consolidated annual financial statements;
- 1.23 **"Ordinary Shareholder"** means the registered holder of Ordinary Shares;
- 1.24 **"Ordinary Shares"** means ordinary no par value Shares in the Company, as set out in Article 3.1.1.1 and having the rights, preferences, limitations and other terms set out in Article 3.1.2;
- 1.25 **"Rand"** or **"R"** means South African Rand, being the official currency of South Africa;
- 1.26 **"Related Party Transaction"** means any transaction between the Company or a Subsidiary of the Company (on the one hand) and a Shareholder or any person related or inter-related to a Shareholder (on the other hand) (excluding, for the avoidance of doubt, any transaction between the Company and a Subsidiary of the Company);

- 1.27        "**Scheme**" means the scheme of arrangement in terms of which, *inter alia*, the DGHL Distribution and the Capevin Offer are effected, as described in the Implementation Agreement;
- 1.28        "**Scheme Implementation Date**" means the Business Day on which the Scheme will become operative and be implemented, as contemplated in the Implementation Agreement;
- 1.29        "**Share**" means any share in the authorised capital of the Company of whatever class, including all rights and interests in and to such shares;
- 1.30        "**Shareholders**" collectively refers to all the shareholders holding Shares in the Company;
- 1.31        "**Significant Shareholder**" means:
- 1.31.1        any person, excluding the Controlling Shareholder, holding at least 10% of the issued Ordinary Shares; and
- 1.31.2        Heineken, if it did not acquire at least 10% of the issued Ordinary Shares pursuant to the Capevin Offer, as long as it retains all the issued Ordinary Shares it acquired pursuant to the Capevin Offer;
- 1.32        "**South Africa**" means the Republic of South Africa;
- 1.33        "**Subsidiary**" means "subsidiary" as defined in the Act and also includes a person incorporated outside of South Africa which would, if incorporated in South Africa, be a "subsidiary" as defined in the Act;
- 1.34        a reference to a section by number refers to the corresponding section of the Act;
- 1.35        words and expressions defined in the Act shall, when used in this MOI, have the meanings given to them in the Act, unless this MOI provides otherwise;
- 1.36        words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and *vice versa*;
- 1.37        references to a "**person**" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;



1.38 a reference to "amended" in this MOI, refers to a provision of the type contemplated in section 15(2)(a);

1.39 the Schedules attached to this MOI are part of the MOI.

## **2. Incorporation and nature of the Company**

### **2.1 Incorporation**

2.1.1 The Company is a private company and, as such:

2.1.1.1 the Company is prohibited from offering any of its securities to the public, as contemplated in section 8(2)(b)(ii)(aa); and

2.1.1.2 the transferability of the securities of the Company is restricted, as contemplated in section 8(2)(b)(ii)(bb), as set out in Schedule 2.

2.1.2 The Company is constituted in terms of section 19(1)(c) in accordance with and governed by:

2.1.2.1 the unalterable provisions of the Act (subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with section 15(2)(a)(iii)); and

2.1.2.2 the alterable provisions of the Act (subject to any negation, restriction, limitation, qualification, extension or other alteration set out in this MOI in accordance with section 1 read with 15(2)(a)(ii)); and

2.1.2.3 the provisions of this MOI (subject to and in accordance with section 15(2)).

### **2.2 Powers of the Company**

2.2.1 The Company is not subject to any restrictive conditions or prohibitions contemplated in section 15(2)(b) or (c).

2.2.2 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).

## 2.3 **Amendment of MOI and Company rules**

2.3.1 Subject to Article 6.6, this MOI may be altered or amended only in the manner set out in section 16, 17 or 152(6)(b).

2.3.2 The Board may not make, amend or repeal any necessary or incidental rules relating to the governance of the Company as contemplated in sections 15(3) to 15(5).

## 2.4 **Domicile and place of effective management**

The Company shall have its place of effective management, and shall be domiciled, in South Africa.

## 3. **Securities of the Company**

### 3.1 **Shares**

3.1.1 The Company is authorised to issue up to the maximum number of:

3.1.1.1 20 000 000 000 Ordinary Shares, each of which shall rank *pari passu* in all respects; and

3.1.1.2 300 000 000 B Shares, each of which shall rank *pari passu* in all respects.

3.1.2 Each Ordinary Share shall entitle the holder thereof to the right to:

3.1.2.1 be entered in the securities register of the Company as the registered holder of that Ordinary Share;

3.1.2.2 exercise voting rights on all matters submitted for a decision to Shareholders;

3.1.2.3 attend, participate in, speak at and vote on any matter to be considered at, any meeting of Shareholders;

3.1.2.4 exercise one vote per Ordinary Share held;

3.1.2.5 participate proportionally in any distributions made by the Company in respect of Ordinary Shares;

- 3.1.2.6 receive, proportionally, the total net assets of the Company remaining upon its liquidation, and
- any other rights attaching to the Ordinary Share in terms of the Act or any other law.
- 3.1.3 The B Shares shall have rights, preferences, limitations and other terms as set out in Schedule 1.
- 3.1.4 Subject to Article 6.6, the Board shall have the power to amend the authorisation (including increasing or decreasing the number of authorised Shares) and classification of Shares (including determining rights and preferences) as contemplated in section 36(3) read with 36(2)(b).
- 3.1.5 The provisions of section 39(2) shall not apply to any proposed issue of Shares by the Company. If the Board proposes to issue any authorised but unissued Shares in the Share capital of the Company by way of a pro rata offer to Shareholders, ~~the pre-emptive rights of the Company's Shareholders to be offered and to subscribe for additional shares, as set out in section 39(2) read with sections 39(3) and 39(4) do not apply and instead, in the case of a proposed issue of Ordinary Shares,~~ such Shares shall ~~first~~ be offered for subscription to existing Ordinary Shareholders, and may be issued by the Board, in accordance with Article ~~78~~, and in the case of a proposed issue of B Shares, such Shares ~~may be issued by the Board~~ in accordance with Schedule 1. ~~Any other issue of authorised but unissued Shares shall require approval in terms of Article 6.6.1.~~
- 3.1.6 The authority of the Board to authorise the Company to provide financial assistance in relation to the subscription of any option or securities, or for the purchase of any securities, of the Company or of a related or inter-related company, as set out in section 44 is not amended by this MOI.
- 3.1.7 The authority of the Board to approve the issuing of any authorised Shares of the Company as capitalisation Shares, to issue shares of one class as capitalisation Shares in respect of Shares of another class, and to resolve to permit Shareholders to elect to receive a cash payment *in lieu* of a capitalisation share, as set out in section 47(1), is not amended by this MOI.
- 3.1.8 The Shares are subject to the further terms set out in Schedule 2 and any transfer of Shares by a Shareholder must comply with the requirements, and

will be subject to the restrictions, in Schedule 1 and/or Schedule 2 (as applicable).

### **3.2 Debt instruments**

3.2.1 The authority of the Board to authorise the company to issue secured or unsecured debt instruments, as set out in section 43(2) is not amended by this MOI.

3.2.2 The authority of the Board to grant special privileges associated with any debt instruments to be issued by the Company, as set out in section 43(3) is amended such that a debt instrument issued by the Company may not grant any special privileges regarding voting at Shareholder meetings or in respect of written Shareholder resolutions.

### **3.3 Registration of beneficial interests**

The Company's issued securities may not be held by, and registered in the name of, one person for the beneficial interest of another person.

### **3.4 Securities register**

3.4.1 Any person who is entitled to have his name entered into the securities register of the Company shall provide to the Company all the information it may require from time to time for purposes of establishing and maintaining the securities register, including the name, business address, residential address, postal address and available e-mail address of that person.

3.4.2 In the case of any security registered in the names of two or more persons as joint holders, the person first-named in the securities register shall, save as is provided in this MOI, be the only person recognised by the Company as having any title to such security and to the related certificate of title.

3.4.3 Upon the death, insolvency or placing under curatorship by reason of insanity or prodigality of any joint holder of any security, the sole remaining holder or the first-named of two or more remaining joint holders, as the case may be, shall be the only person recognised by the Company as having any title to such security.

### 3.5 **Share certificates**

- 3.5.1 Securities of the Company are to be issued in certificated form, as contemplated in section 49(2)(a).
- 3.5.2 Every person to whom securities are issued and whose name is entered in the securities register shall be entitled to one certificate for all the securities in any class registered in his name, or to several certificates, each for a part of such securities.
- 3.5.3 If a certificate is defaced, lost or destroyed, it may be replaced with a duplicate certificate endorsed "**Duplicate Certificate**" on payment of such reasonable fee, if any, and on such terms, if any, as to evidence and indemnity as the Board may think fit.
- 3.5.4 A certificate registered in the names of two or more persons shall be delivered to the person first-named in the securities register as a holder thereof, and delivery of a certificate to that person shall be a sufficient delivery to all joint holders of that security.

## 4. **Shareholders**

### 4.1 **Shareholders' right to additional information**

- 4.1.1 In addition to the rights to access information set out in sections 26(1) and 31:
- 4.1.1.1 every Shareholder has the further rights to information, set out below:
- 4.1.1.1.1 the Board may, from time to time, in its discretion, grant a Shareholder the right to access any information pertaining to the Company in addition to that to which he is entitled in terms of section 26(1) or otherwise in terms of this MOI; and
- 4.1.1.1.2 the grant of any additional information right(s) shall be on such terms and subject to such conditions and for such period(s) as the Board may determine in writing, provided that the confidential information of the Company is adequately protected;
- 4.1.1.2 the Controlling Shareholder and each Significant Shareholder shall be provided with a copy of any notice convening any meeting of the Board, any resolution proposed to be adopted by the Board, including any

materials provided to the Directors in connection with any such meeting or resolution, as well as any other notice or formal communication by the Company to the Directors, at the same time that they are provided to the Directors;

- 4.1.1.3 the Controlling Shareholder and each Significant Shareholder shall be entitled to be provided with any information pertaining to the Company (including such business plans as may exist and information required for purposes of financial reporting by a listed Controlling Shareholder or Significant Shareholder, which may require the company to undertake additional accounting procedures as may be reasonably required), which is reasonably requested by such Shareholder;
- 4.1.1.4 the Controlling Shareholder and each Significant Shareholder shall be entitled, without any charge, to inspect and copy the Annual Budget in respect of each financial year (or part thereof);
- 4.1.1.5 the Group shall at all times maintain accurate and complete accounting and other financial records in accordance with the requirements of all applicable laws and IFRS, as the case may be;
- 4.1.1.6 the Company will prepare and deliver to the Controlling Shareholder and each Significant Shareholder (in a form determined by the Board):
- 4.1.1.6.1 within 10 Business Days after the end of the month in question, monthly management accounts including a profit and loss account, balance sheet and cash flow statement for the Group;
- 4.1.1.6.2 within 20 Business Days after the end of each calendar quarter a report by the Board on the financial position and affairs of the Group (including a report on Related Party Transactions and costs) for that quarter;
- 4.1.1.6.3 as soon as practicable and by no later than ~~two~~three months after the end of the financial year to which they relate, copies of the Group's annual audited accounts; and
- 4.1.1.6.4 as soon as they are available, full details of any actual or prospective material change in the Group's business or the financial position or affairs of the Group;

4.1.1.7 the Company shall provide to the Controlling Shareholder and each Significant Shareholder reasonable access to the auditors of the Company.

4.1.2 A director shall be entitled to pass to the Shareholder that appointed the director or nominated the director for appointment (and Affiliates of such Shareholder) any information in relation to the Company that may come into the director's possession while acting in that capacity, but a Shareholder shall not and shall procure that its Affiliates shall not (unless it is under a legal or regulatory obligation to do so) use such information to the detriment of the Group.

#### 4.2 **Shareholders' authority to act**

4.2.1 If, at any time, there is only one Shareholder of the Company, the authority of that Shareholder to act without notice or compliance with any other internal formalities, is as set out in section 57(2), provided that copies of all Shareholder resolutions are maintained.

4.2.2 If, at any time, every Shareholder of the Company is also a director of the Company as contemplated in section 57(4), the authority of the Shareholders to act without notice or compliance with any other internal formalities as set out in that section, is not amended by this MOI.

#### 4.3 **Representation by concurrent proxies**

The right of a Shareholder of the Company to appoint persons concurrently as proxies, as set out in section 58(3)(a), is not amended by this MOI.

#### 4.4 **Authority of proxy to delegate**

The authority of a Shareholder's proxy to delegate the proxy's powers to another person, as set out in section 58(3)(b), is amended such that a proxy may not delegate his authority to act on behalf of a Shareholder appointing him as proxy to another person.

#### 4.5 **Requirement to deliver proxy instrument to the Company**

The requirement that a Shareholder must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the Shareholder's

rights at a Shareholders meeting, as set out in section 58(3)(c), is amended such that a copy of the instrument appointing a proxy must be delivered to the Company, or to any other person specified to receive such instrument in the notice convening the meeting, before the scheduled time for commencement of the relevant meeting.

#### 4.6 **Deliberative authority of proxy**

The authority of a Shareholder's proxy to decide whether to exercise or abstain from exercising any voting rights of the Shareholder without direction, as set out in section 58(7) is amended such that the authority of a Shareholder's proxy to decide to vote in favour of, against, or to abstain from exercising any voting rights shall be determined by the instrument appointing the proxy.

#### 4.7 **Record date for determining Shareholder rights**

If, at any time, the Board fails to determine a record date, as contemplated in section 59, the record date for the relevant matter shall be:

4.7.1 in the case of a meeting, the latest date by which the Company is required to deliver to the Shareholders notice of that meeting; or

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

### 5. **Shareholders' meetings**

#### 5.1 **Right to call meeting**

5.1.1 A Shareholders' meeting may be called at any time by any of (i) the Board; (ii) the company secretary of the Company; (iii) a Significant Shareholder or (iv) the Controlling Shareholder.

5.1.2 The Company authorises any Shareholder to call a Shareholders' meeting for the purposes of section 61(11).

#### 5.2 **Requirement to hold meetings**

5.2.1 The Company is not required to hold any shareholders' meeting other than those specifically required by the Act.

5.2.2 The Company must convene an annual general meeting ("**AGM**") not more than 15 months after the date of the previous AGM of the Company.



### 5.3 **Shareholders' right to requisition a meeting**

The Shareholders may requisition a meeting in accordance with section 61(3).

### 5.4 **Location of Shareholders' meetings**

The authority of the Board to determine the location of any Shareholders' meeting, and the authority of the Company to hold any such meeting in South Africa or in any foreign country, as set out in section 61(9) is amended by this MOI such that any Shareholders' meeting must be held in South Africa.

### 5.5 **Notice of Shareholders' meetings**

The minimum number of days for the Company to deliver a notice of a Shareholders' meeting to the Shareholders, as required by section 62(1)(a) is 15 Business Days before the meeting is to begin, subject to section 62(2A).

### 5.6 **Electronic participation in Shareholders' meetings**

5.6.1 The authority of the Company to conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 63(2) is not limited or restricted by this MOI.

5.6.2 Within 10 Business Days after the adoption or failing of a resolution at a meeting contemplated in Article 5.6.1, the Company shall:

5.6.2.1 deliver to each Shareholder a copy of the resolution with a statement describing the results of the vote, consent process or election as the case may be; and

5.6.2.2 insert a copy of the resolution and statement referred to in Article 5.6.2.1 into the Company's minute book.

### 5.7 **Quorum for Shareholders' meetings**

5.7.1 The quorum requirement for a Shareholders' meeting to begin shall be such that:

5.7.1.1 a Shareholders' meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 50% of the

voting rights that are to be entitled to be exercised in respect of at least one matter to be decided at the meeting; and

5.7.1.2 a matter to be decided at a Shareholders' meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate 50% 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,

provided that, in addition, a meeting may not begin, or a matter may not be considered (i) unless the Controlling Shareholder and all Significant Shareholders are present at the meeting in person or by proxy, and (ii) if the Company has more than two Shareholders, unless at least three Shareholders entitled to attend and vote, are present at the meeting in person or by proxy.

5.7.2 If within 30 minutes of the appointed time for a meeting to begin, a quorum is not present, the meeting will automatically (without any further action or formalities being required, unless the location of the meeting is different) be postponed for one week.

5.7.3 If a quorum is not present when a matter is called on the agenda, if there is other business on the agenda, consideration of that matter may be postponed to a later time in the meeting (without further action or formalities being required). If there is no further business on the agenda, the meeting will automatically be adjourned (without any further action or formalities being required, unless the location of the meeting is different) for one week.

5.7.4 The chairperson of the meeting shall be entitled to extend the 30 minute time period referred to in Article 5.7.2 in the circumstances contemplated in section 64(5).

5.7.5 If at the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements are not met, those Shareholders who are entitled to exercise voting rights in relation to the Company present in person or by proxy will be deemed to constitute a quorum.

## 5.8 Shareholders' resolutions

5.8.1 For an ordinary resolution to be adopted, it must be supported by more than 50% of the voting rights exercised on the resolution, as provided in section 65(7).

5.8.2 For a special resolution to be adopted, it must be supported by the holders of at least 75% of the voting rights exercised on the resolution, as provided in section 65(9).

5.8.3 A special resolution is not required for any matter to be determined by the Company, except those matters set out in section 65(11) or elsewhere in the Act.

## 5.9 Chairperson

The chairperson of the Board shall act as the chairperson of each Shareholders meeting, provided that if, at any meeting, the chairperson has notified his inability to attend or is not present within 30 minutes of the time appointed for the meeting, the Shareholders present shall choose another director or, if no director is present and willing to act, one of the Shareholders present, to be the chairperson of that meeting.

## 6. Directors and officers

### 6.1 Composition of the Board

6.1.1 The Board consists of not less than three directors.

6.1.2 The Shareholders shall be entitled, by giving written notice to that effect to the Company, to appoint or nominate directors and alternate directors for election as set out below:

6.1.2.1 the Controlling Shareholder, together with all its Affiliates who are Shareholders, shall be entitled to nominate such number of persons as constitutes the majority of the total number of persons on the Board, taking into account Articles 6.1.2.2 to 6.1.2.4 below, for election as directors and to remove and replace such directors (and their alternates);

- 6.1.2.2 each Significant Shareholder as contemplated in clause 1.31.1, together with all its Affiliates who are Shareholders, shall, for each complete 10% of the issued Ordinary Share capital in the Company held by that Significant Shareholder and its Affiliates, be entitled to appoint one person as a director (and his/her alternate) and to remove and replace such director (and his/her alternate), as contemplated in section 66(4)(a)(i);
- 6.1.2.3 Heineken shall, for as long as it is a Significant Shareholder as contemplated in clause 1.31.2, be entitled to appoint one person as a director (and his/her alternate) and to remove and replace such director (and his/her alternate), as contemplated in section 66(4)(a)(i);
- 6.1.2.4 the Significant Shareholders as contemplated in clause 1.31.1, together with all their Affiliates who are Shareholders, shall, collectively, be entitled to appoint one person as a director (and his/her alternate) and to remove and replace such director (and his/her alternate), as contemplated in section 66(4)(a)(i) for each complete 10% of the aggregate issued ordinary share capital in the Company collectively held by all the Significant Shareholders and their Affiliates, not taking into account any shareholding for which the Significant Shareholders, and their Affiliates, are entitled to appoint directors in terms of Article 6.1.2.2.

For example, and by way of illustration only, if Significant Shareholders, together with their Affiliates who are Shareholders, may in aggregate appoint two persons in terms of Articles 6.1.2.2 to 6.1.2.4, then the Controlling Shareholder may nominate three persons in terms of Article 6.1.2.1, and if such Significant Shareholders, together with their Affiliates who are Shareholders, may in aggregate appoint three persons in terms of Articles 6.1.2.2 to 6.1.2.4, then the Controlling Shareholder may nominate four persons in terms of Article 6.1.2.1.

- 6.1.3 Each Significant Shareholder irrevocably and unconditionally agrees to vote all of its Shares in favour of any resolution to elect any director/s nominated by the Controlling Shareholder in terms of Article 6.1.2.1, and appoints the Controlling Shareholder as its proxy and agent *in rem suam* to represent it at any meeting for purposes of passing any resolution electing any one or more

of the director/s (and/or their alternate/s concerned), and to sign and execute any document (including any proxy or written resolution) necessary or desirable to give effect to the provisions of this Article.

- 6.1.4 If any Shareholder ceases to be entitled to appoint or nominate a director (including an alternate director) in terms of Article 6.1.2, then that Shareholder:
- 6.1.4.1 shall be obliged to procure at its cost and expense the resignation of each director and alternate director appointed or nominated for election by that Shareholder; and
  - 6.1.4.2 indemnifies the Company and each of the Shareholders (and their respective directors, officers, managers and employees) in respect of any claims, losses, costs or expenses whatsoever (including indirect and consequential damages) which may be suffered or incurred by any of them arising out of or in connection with:
    - 6.1.4.2.1 any such director (or his/her alternate) refusing to resign with immediate effect for any reason;
    - 6.1.4.2.2 any contract between the director (or his alternate) concerned and the Company; or
    - 6.1.4.2.3 any claim for wrongful or unfair dismissal or redundancy or any other claim for compensation arising out of such removal or loss of office.
- 6.1.5 At least 50% of the directors (and at least 50% of any alternates) must be elected by holders of the Company's securities entitled to exercise voting rights, as contemplated in section 68 read with section 66(4)(b).
- 6.1.6 Each alternate director is entitled to act as a director in the absence of the director for whom he is an alternate.
- 6.1.7 In addition to the appointed directors as contemplated in Articles 6.1.2.2 to 6.1.2.4 and the elected directors there are no other appointed directors or any *ex officio* directors, as contemplated in sections 66(4)(a)(i) and 66(4)(a)(ii).

6.1.8 A person does not need to satisfy any eligibility requirements or qualifications in addition to the qualification and eligibility requirements set out in section 69, to be entitled to become or remain serving as a director or a prescribed officer of the Company.

6.1.9 Each appointed or elected director of the Company serves for an indefinite term, as contemplated in section 68(1).

6.1.10 The manner of electing directors of the Company is as set out in section 68(2).

6.1.11 The authority of the Board to fill any vacancy on the Board on a temporary basis, as set out in section 68(3), is not amended by this MOI.

## 6.2 **Authority of the Board**

6.2.1 Except to the extent contemplated in Article 6.6, the authority of the Board to manage and direct the business and affairs of the Company, as set out in section 66(1), is not amended by this MOI.

6.2.2 If the number of directors falls below the minimum number of directors required, the remaining director(s) shall, as soon as possible and in any event not later than three months from the date that the number of directors fell below the minimum, fill the vacancies or call a general meeting for the purpose of filling the vacancies.

6.2.3 The failure by the Company to have the minimum number of directors during the three month period referred to in Article 6.2.2 does not limit or negate the authority of the Board.

6.2.4 After the expiry of the three month period referred to Article 6.2.2, the remaining directors may act only to:

6.2.4.1 increase the number of directors to the required minimum; or

6.2.4.2 summon a general meeting for that purpose, provided that if there is no director able or willing to act, then any Shareholder may convene a general meeting for that purpose.

### 6.3 **Round robin resolutions**

6.3.1 The authority of the Board to consider a matter other than at a meeting, as set out in section 74, is amended such that a decision that could be voted on at a meeting of the Board may instead be adopted by written consent of all the directors, given in person, or by Electronic Communication.

6.3.2 A resolution passed in terms of section 74, read with Article 6.3.1, may consist of several documents and shall be deemed to have been passed on the date on which it was signed by the last director (or his/her alternate) required to achieve the requisite approval, unless the resolution states otherwise.

6.3.3 Article 6.4.4 shall apply *mutatis mutandis* to round robin resolutions.

### 6.4 **Board meetings**

6.4.1 The right of the Company's directors to requisition a meeting of the Board, as set out in section 73(1)(b), may be exercised in terms of section 73(2), by any director nominated for appointment by the Controlling Shareholder and/or appointed by a Significant Shareholder.

6.4.2 Subject to Article 6.4.3, any Board meeting must be held in South Africa.

6.4.3 The authority of the Board to conduct a meeting entirely by Electronic Communication where directors can participate from outside South Africa, or to provide for participation in such a meeting by Electronic Communication, as set out in section 73(3) is not limited or restricted by this MOI.

6.4.4 Within 10 Business Days after the adoption or failing of a resolution at a meeting contemplated in Article 6.4.3, the Company shall:

6.4.4.1 deliver to each director a copy of the resolution with a statement describing the results; and

6.4.4.2 insert a copy of the resolution and statement referred to in Article 6.4.4.1 into the Company's minute book.

6.4.5 The authority of the Board to determine the manner and form of providing notice of its meetings, as set out in section 73(4), is amended by this MOI such that:

- 6.4.5.1 directors shall be given notice of a Board meeting at least 10 Business Days before the date of the meeting or such shorter period approved by all of the directors;
- 6.4.5.2 such notice of a Board meeting may be in any form determined by the Board but must at a minimum include:
- 6.4.5.2.1 the date, time and place for the meeting;
- 6.4.5.2.2 an agenda for the meeting; and
- 6.4.5.2.3 information with respect to the availability of participation in the meeting (and in the postponement or adjournment of the meeting) by Electronic Communication and the necessary information to enable directors (including their alternates) to access the available medium or means of communication;
- 6.4.5.3 unless agreed otherwise by all of the directors, only the matters listed on the agenda for the meeting (as contemplated in Article 6.4.5.2.2) may be considered at the meeting.
- 6.4.6 The authority of the Board to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5), is not amended by this MOI.
- 6.4.7 **Quorum for Board meetings**
- The quorum requirement for a Board 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), without variation, except that a quorum shall (unless otherwise agreed in writing by all Directors in relation to a particular meeting) not be established unless all the directors nominated for appointment by the Controlling Shareholder and all the directors appointed by each of the Significant Shareholders are present at the meeting.
- 6.4.7.1 **automatic postponement of a meeting**
- 6.4.7.1.1 If within 30 minutes of the appointed time for a Board meeting to begin a quorum is not present, then the meeting is automatically



postponed (without any motion, vote or further notice) for one week.

6.4.7.1.2 The 30 minute limit may be extended for a reasonable period not exceeding two hours by the chairperson of the meeting.

6.4.7.2 **automatic adjournment of a meeting**

If at the time a matter is to be considered at a Board meeting, a quorum is not present and there is no other business on the agenda which can be dealt with, the meeting is automatically adjourned (without any motion or vote) for one week.

6.4.7.3 **voluntary postponement of a particular matter to later in the Board meeting**

If at the time a particular matter is to be considered at the Board meeting, a quorum is not present, but there is other business remaining on the agenda, consideration of that matter may be postponed (without motion or vote) to the end of the Board meeting.

6.4.7.4 **further notice required for postponed or adjourned meeting**

Further notice of a Board meeting that is postponed or adjourned is not required unless the location for the meeting is different from:

6.4.7.4.1 the location of the postponed or adjourned meeting; or

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

or it is necessary to inform directors of the availability of participation in the postponed or adjourned meeting by Electronic Communication.

6.4.7.5 **deemed quorum at a postponed or adjourned meeting**

If at the appointed time for a postponed meeting to begin or an adjourned meeting to resume, the quorum requirements are not met, then those directors present in person at the Board meeting including those participating electronically, will be deemed to constitute a quorum.

#### 6.4.7.6 **continuing quorum during meeting**

After a quorum has been established for a Board meeting or for a matter to be considered at a Board meeting, the Board meeting may continue or the matter may be considered, so long as at least one director nominated for appointment by the Controlling Shareholder and each director appointed by a Significant Shareholder is present at the meeting.

#### 6.4.7.7 **adjournment by directors**

A Board meeting may otherwise be adjourned by majority vote of the directors present at the meeting.

### 6.5 **Voting**

6.5.1 Each director has one vote on a matter before the Board.

6.5.2 Subject to Article 6.6, a Board resolution shall be approved by the majority of the votes cast on that resolution.

### 6.6 **Board reserved matters**

Notwithstanding anything to the contrary contained in this MOI, for as long as there are Significant Shareholders, the Company shall not undertake, and (to the extent applicable) shall procure that no Subsidiary of the Company undertakes, any of the following matters without approval by at least one director appointed by each Significant Shareholder in terms of Articles 6.1.2.2 to 6.1.2.4:

6.6.1 alterations to the Company or a Material Subsidiary's share capital or any restructuring of the Group involving a Material Subsidiary, including:

6.6.1.1 amending the authorisation and classification of Shares as contemplated in Article 3.1.3; and

6.6.1.2 the issue of shares or securities convertible into shares, the granting of options to subscribe for shares or securities convertible into shares, or entering into any agreement do to any of the aforesaid,

other than an issue of Shares [by way of a pro rata offer to Shareholders](#) in compliance with Article 3.1.5. For the avoidance of doubt, "alterations to the Company or a Material Subsidiary's

- share capital" do not include the transfer of issued shares, except where such a transfer requires approval in terms of paragraph 2.2 of Schedule 2;
- 6.6.2 the liquidation, winding-up or business rescue of the Company or any Material Subsidiary;
- 6.6.3 any amendment of the MOI;
- 6.6.4 any acquisition, disposal, merger, joint venture, or listing on a securities exchange involving the Company, any Subsidiary of the Company or their respective shares, the aggregate value of which exceeds R1 000 000 000, other than a disposal of shares in accordance with Schedule 1 or 2 or a disposal, merger or joint venture relating to the business conducted as at the Scheme Implementation Date by Castle Wine and E K Green Limited;
- 6.6.5 the Group incurring debt or borrowings, granting any security or issuing debentures or preference Shares to the extent that this would result in the Group having an EBITDA to interest ratio (measured on a consolidated basis, over a rolling 12-month period) of less than 4:1;
- 6.6.6 the Company or any Subsidiary of the Company entering into, amending or terminating any Related Party Transaction;
- 6.6.7 the Company or any Subsidiary of the Company entering into, amending or terminating any agreement (other than a Related Party Transaction) or licence, other than (i) in the ordinary course of business or (ii) a termination of the supply agreement between Castle Wine and E K Green Limited and United Distillers Southern Africa Proprietary Limited;
- 6.6.8 the declaration or payment of a dividend or other distribution by the Company, other than in accordance with Article 13.1.1;
- 6.6.9 any change to the financial year end of the Company or any Subsidiary of the Company;
- 6.6.10 the approval of the Group's accounting policies and any change in the Group's basis of accounting or accounting policies, except to the extent required by IFRS; and
- 6.6.11 a decision contemplated in clause 7.2.

## 6.7 **Tied votes**

In the case of a tied vote, the chairperson shall not have a casting or deciding vote and the matter being voted shall fail.

## 6.8 **Chairperson**

6.8.1 The chairperson of the Board shall be appointed and removed by the Controlling Shareholder.

6.8.2 If the chairperson is absent from a meeting for any reason, the directors nominated by the Controlling Shareholder as contemplated in Article 6.1.2.1 shall elect one of their number to be the chairperson of that meeting.

## 6.9 **Directors' remuneration and financial assistance**

6.9.1 The authority of the Company to pay remuneration to the directors, in accordance with a special resolution approved by the Company's Shareholders within the previous two years, as set out in section 66(8) and (9) is not limited or restricted by this MOI.

6.9.2 The authority of the Board, as set out in section 45, to authorise the Company to provide financial assistance to a director, prescribed officer or other person referred to in section 45(2) is not limited or restricted by this MOI.

## 6.10 **Indemnification of directors**

6.10.1 The authority of the Company to advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, as set out in section 78(4) is not amended by this MOI.

6.10.2 The authority of the Company to indemnify a director in respect of liability, as set out in section 78(5) is not amended by this MOI.

6.10.3 The authority of the Company to purchase insurance to protect the Company, or a director, as set out in section 78(7) is not amended by this MOI.

## 6.11 **Committees of the Board**

6.11.1 The Board may:

- 6.11.1.1 appoint committees of directors and delegate to any such committee any of the authority of the Board, to the extent that the Board has authority, as set out in section 72(1); and
- 6.11.1.2 include in any such committee persons who are not directors, as set out in section 72(2)(a).
- 6.11.2 The Board shall appoint such committees as are required to be appointed in terms of applicable law.
- 6.11.3 The authority of a committee appointed by the Board, as set out in section 72(2)(b) and (c), is not amended by this MOI.

## 7. Funding

### 7.1 Responsibility of the Board

Subject to the provisions of this MOI, the Board will be responsible for determining the future financial requirements from time to time of the Group.

### 7.2 Sources of future funding

Unless and to the extent otherwise decided by the Board in accordance with Article 6.6.11, the Company will use its reasonable commercial endeavours to procure that such future financial requirements of the Group are met as far as is practicable from:

- 7.2.1 the Group's own resources; or
- 7.2.2 borrowings from banks and other third party sources on the most favourable terms reasonably obtainable as to interest, repayments and security (but without allowing any prospective lender a right to participate in the equity share capital of the Company or any Subsidiary as a condition of any loan).

### 7.3 Shareholders' future financial commitments

If the Board determines that the Group requires funding which will not be provided from the sources referred to in Article 7.2, then the Board may (i) request the Shareholders ~~may be requested~~ to provide such funding in proportion to their existing shareholding in accordance with Articles 3.1.5 and 8 or (ii) subject to approval in accordance with Article 6, raise such funding by the issue of additional Shares.

## 8. Process in respect of rights of pre-emption on issue

- 8.1 If the Board proposes to issue any Ordinary Shares by way of a pro rata offer to Shareholders as contemplated in Article 3.1.5, then the Board shall notify the Ordinary Shareholders in writing (an "**Issue Notice**") and shall set out in the Issue Notice the total number of shares proposed to be issued, the subscription price per share (which must be calculated on the basis of the fair market value of the Company as at the date on which the Issue Notice is provided, as determined by the Board) and the number and class of shares for which the Shareholder is entitled to subscribe.
- 8.2 A Shareholder may elect by way of a written notice to the Board delivered within 20 Business Days of the Board providing the Issue Notice, to subscribe for its *pro rata* portion of the Ordinary Shares of the proposed issue (being the proportion that each Ordinary Shareholder's shareholding bears to the total issued Ordinary Shares) or a greater (but not smaller) proportion than its *pro rata* portion, provided that:
- 8.2.1 such election in respect of a greater proportion than its *pro rata* portion will only be effective in respect of the excess if and to the extent that other Ordinary Shareholders do not elect to subscribe for their full respective *pro rata* entitlement within the 20 Business Day period contemplated above in this Article 8.2: and
- 8.2.2 if elections made within the 20 Business Day period contemplated above in this Article 8.2 together constitute elections to subscribe for more than the aggregate number of Ordinary Shares of the proposed issue, then the aggregate number of Ordinary Shares of the proposed issue as set out in the Issue Notice shall be apportioned amongst the Ordinary Shareholders who have elected to subscribe for at least their respective *pro rata* entitlement within the 20 Business Day period contemplated above in this Article 8.2, in the proportions as near as may be to their existing holdings of Ordinary Shares in the Company on the date on which the Board provided the Issue/Funding Notice (each rounded to the nearest whole number), but on the basis that no Ordinary Shareholder shall be obliged to subscribe for more than the Ordinary Shares in respect of which it made an election.
- 8.3 As soon as reasonably possible after expiry of the 20 Business Day period contemplated in Article 8.2, the Board shall notify the Ordinary Shareholders who have elected to subscribe for at least their respective *pro rata* entitlement of the

exact number of Ordinary Shares for which they must subscribe and the subscription amount of those Shares (calculated with reference to the subscription price per Ordinary Share indicated in the Issue Notice) or the exact amount of funding which they must provide, as applicable, which number of Ordinary Shares or amount of funding shall be calculated by applying the principles set out in Article 8.2 ("**Issue Calculation Notice**").

8.4 Each relevant Ordinary Shareholder shall within five Business Days of the date on which the Board provides the Issue Calculation Notice, pay to the Company in cash the subscription price for the Ordinary Shares or the amount of the funding, as applicable, set out in the Issue Calculation Notice, failing which it shall cease to be entitled to subscribe for the relevant shares or to provide the relevant funding, as applicable.

8.5 Upon receipt by the Company of the subscription price of the Ordinary Shares as contemplated in the Issue Calculation Notice (if applicable), the Company shall procure the issue of the relevant Ordinary Shares to the relevant Ordinary Shareholder.

8.6 Notwithstanding anything to the contrary in this MOI, the Board may in its discretion exclude from any proposed issue of Ordinary Shares by way of a pro rata offer to Shareholders as contemplated in Article 3.1.5 any category of holders of the Company's Ordinary Shares who are not resident within South Africa (other than a Significant Shareholder).

## 9. **Senior management team**

9.1 The Board shall appoint a company secretary.

9.2 The Board shall appoint the senior management team of the Group (including the Chief Executive Officer and Chief Financial Officer) with effect from the Scheme Implementation Date and thereafter from time to time, after having consulted with the Significant Shareholders, on the basis of the best suitability for the position.

## 10. **Financial matters**

### 10.1 **Financial year of the Company**

The financial year of the Company shall end on 30 June of each year.

## 10.2 **Audited annual financial accounts**

10.2.1 The Board shall prepare, or cause to be prepared, and approve, financial statements of the Company in respect of each financial year of the Company in accordance with IFRS.

10.2.2 The Board shall cause such financial statements to be audited by the auditors of the Company within ~~two~~three months after the end of the financial year.

## 11. **Significant Shareholders' right to participate**

Significant Shareholders shall, prior to the adoption of the Annual Budget, have the right to participate fully in any discussions relating to the Annual Budget and to be provided with any information pertaining to the Annual Budget, which is reasonably requested by the Significant Shareholder to be able to participate in such discussions. In the case of a disagreement between any Significant Shareholders and the Controlling Shareholder in relation to the Annual Budget, such disagreement shall be escalated to the chief executive officers (or equivalent officers) of the relevant Significant Shareholders and Controlling Shareholder for resolution. If the disagreement cannot be resolved within 10 Business Days, the Controlling Shareholder retains the ultimate right to determine the matter. Significant Shareholders shall not enjoy the right to veto matters relating to the Annual Budget.

## 12. **Disposal of DI**

As long as Heineken is a Significant Shareholder, the Company shall use its best endeavours to dispose of all of its shares in DI or the entire business and/or assets of DI at a consideration agreed in writing with Heineken as soon as possible after the Scheme Implementation Date and the net after tax proceeds from such disposal shall, after settling or providing for any liabilities associated with the relevant assets or business, be distributed to the Ordinary Shareholders in accordance with Article 13.1.1.4. For purposes of this Article 12, "best endeavours" means that the Company must do all such things as are or may be necessary or desirable to achieve the disposal contemplated in this clause 12, but this does not include undertaking actions or omissions that would give rise to a breach of any Law and, for the avoidance of doubt, shall not be construed as imposing an obligation on the Company to procure absolutely that the result is achieved. Each of the Controlling Shareholder and the Significant Shareholders shall have the right to participate in any disposal process contemplated in this clause alongside other prospective buyers.



## 13. General provisions

### 13.1 Distributions

- 13.1.1 The Company shall declare and pay to the Ordinary Shareholders at least 80% of the Group's profit after tax for each financial year, calculated on a consolidated basis:
- 13.1.1.1 taking into account the working capital and capital expenditure requirements of the Company;
- 13.1.1.2 subject to section 46;
- 13.1.1.3 provided that such distribution does not result in the Company incurring, or requiring to incur (i) foreign debt or borrowings and/or (ii) local debt or borrowings on terms unreasonable to the Board, and/or (iii) debt or borrowings of which interest costs associated with same are not tax deductible for the Company; and
- 13.1.1.4 provided further that the entire net after tax proceeds from any disposal of the whole or a portion of any business or assets of the Company as contemplated in Article 12 shall, after settling or providing for any liabilities associated with the relevant assets or business, be declared and paid to the Ordinary Shareholders as a distribution within one month of receipt of such proceeds, subject to Articles 13.1.1.2 and 13.1.1.3.
- 13.1.2 Subject to Articles 6.6 and 13.1.1, the Board may from time to time declare and pay to the Ordinary Shareholders such interim distributions as the Board considers to be appropriate.
- 13.1.3 Any dividends in relation to any financial year of the Company that have not been declared and paid to Ordinary Shareholders as interim distributions (as contemplated in Article 13.1.2) shall be declared and paid as soon as reasonably possible after the end of the relevant financial year to which they relate, but in any event within six months of the end of the relevant financial year (subject to the finalisation of the audit of the Company's annual financial statements with respect to such financial year).

- 13.1.4 All dividends declared in respect of the Ordinary Shares, will be allocated and paid in accordance with the proportionate shareholding of the Ordinary Shareholders in the Company (being the proportion that each Ordinary Shareholder's shareholding bears to the total issued Ordinary Shares).
- 13.1.5 Distributions payable in monetary form shall be declared in the currency of South Africa.
- 13.1.6 No distribution shall bear interest as against the Company.
- 13.1.7 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.
- 13.1.8 All cash distributions, interest or other moneys payable to an Ordinary Shareholder may be paid by electronic funds transfer or otherwise, in such manner as the Board may from time to time determine. The payment by electronic transfer into the bank account recorded in the bank account register of the Company (if any) nominated by the Ordinary Shareholder, or in the case of joint Ordinary Shareholders, into the bank account nominated by the Ordinary Shareholder whose name stands first in the securities register in respect of the Share, shall be a good discharge by the Company in respect thereof.
- 13.1.9 Every payment of a distribution made by electronic funds transfer shall be made at the risk of the Ordinary Shareholders or joint Ordinary Shareholders. The Company shall not be responsible for the loss in transmission or misdirection of any electronic transfer.
- 13.1.10 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.
- 13.1.11 When such electronic funds transfer is paid, it shall discharge the Company of any further liability in respect of the amount concerned.
- 13.1.12 Any distribution declared may be paid and satisfied either wholly or in part by the distribution of specific assets or in cash or in one or more of such ways, subject to the provisions of the Act, as the Board may at the time of authorising the distribution determine and direct.

13.1.13 If as a result of the declaration of a distribution any Ordinary Shareholders become entitled to fractions of any specific assets of the Company, the Board may sell the assets represented by such fractions and after deducting the expenses of such sale distribute the balance of the proceeds of the sale amongst the Ordinary Shareholders entitled to the fractions in proportion to their entitlement.

13.1.14 For the purpose of this Article 13.1, any notice of new bank account details or a change of bank account details or any instruction as to payment being made into any other bank account, not reflected in the securities register or the bank account register of the Company (if any) at the time of declaration of the distribution, which is received by the Company between the time of declaration of the distribution and the applicable time of payment of the distribution, shall become effective only after such time of payment.

13.1.15 Any unclaimed distributions payable or distributable to an Ordinary Shareholder shall be held in trust by the Company for a period of three years from the date on which they were declared, whereafter such unclaimed distributions may be declared forfeited by the Board for the benefit of the Company. Board may at any time annul such forfeiture upon such conditions (if any) as it thinks fit. All unclaimed monies, other than distributions, that are due to any Ordinary Shareholder/s shall be held by the Company in trust for an indefinite period until lawfully claimed by such Ordinary Shareholder/s.

## 13.2 **Access to Company records and accounting records**

13.2.1 The Board may from time to time in its discretion grant any person the right to access any information pertaining to the Company as contemplated in section 26(3), provided that the confidential information of the Company is adequately protected and subject to Article 13.2.3 below. No such right if conferred, may negate or diminish any mandatory protection of any record, required by or in terms of Part 3 of the Promotion of Access to Information Act, No. 2 of 2000, as amended.

13.2.2 The granting of the right of access referred to in Article 13.2.1 by the Board shall be on such terms and subject to such conditions and for such period/s as the Board may from time to time determine in writing.

13.2.3 For the purposes of section 26(1), Shareholders may be treated by the Company as constituting persons who hold or have a beneficial interest in securities issued by the Company, or to the extent necessary, Shareholders, will be treated as being entitled in terms of section 26(3) to access to the Company records on the same basis provided for in, and subject to section 26(1).

### 13.3 **Winding up**

13.3.1 If the Company is wound up, the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall be applied as follows:

13.3.1.1 to repay to the Shareholders the amount paid up on the Shares held by each of them; and

13.3.1.2 the balance (if any) shall be distributed among the Ordinary Shareholders in proportion to the number of Ordinary Shares held by each of them;

subject to the rights of the holders of Shares (if any) issued upon special conditions.

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

### 13.4 **Delivery and publication of notices and certain documents**

13.4.1 Subject to Article 13.4.2, all notices and documents required to be published as contemplated in section 17(1)(a) shall be delivered by the Company in accordance with sections 6(9), 6(10) and 6(11), to each Shareholder to any of its/his/her registered addresses recorded in the securities register.

13.4.2 Each Shareholder must provide the Company with an e-mail address, which address shall be such Shareholder's address for the purposes of receiving notices by way of Electronic Communication and, having done so shall be

deemed to have agreed to receiving by Electronic Communication, notices and other documents from the Company at such e-mail address.

13.4.3 All notices with respect to any Shares to which persons are jointly entitled may be given to whichever of such persons is recognised by the Company as having any title to such Shares in terms of Article 3.4.2, as the case may be, and notice so given shall be sufficient notice to all the holders of such Shares.

13.4.4 The notice may be given by the Company to the persons entitled to a Share in consequence of the death or insolvency of a Shareholder, or by sending it through an internationally recognised courier service addressed to them by name, or by the title of representatives of the deceased, or trustees of the insolvent or by any like description, at the address (if any) supplied for the purpose by the persons claiming to be so entitled, or (until such address has been supplied) by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred.

13.4.5 Where a notice is sent by courier, the courier service shall be the agent for the Shareholder and the Shareholder shall, from the time and date of delivery of the notice to the courier service, bear all risks associated with that notice including of non-delivery or late delivery of the notice.

13.4.6 A notice given to any Shareholder shall be binding on all persons claiming on his death or on any transmission of his interests.

13.4.7 The signature to any notice given by the Company may be written or printed, or partly written and partly printed.

### 13.5 **Good faith**

13.5.1 The Controlling Shareholder, the Significant Shareholders and the Company shall at all times observe the principles of good faith towards one another in the performance of their obligations in terms of this MOI and, without limiting the generality of the foregoing, they shall:

13.5.1.1 at all times act reasonably, honestly and in good faith;

13.5.1.2 perform their obligations arising from this MOI diligently and with reasonable care; and

- 13.5.1.3                    make full disclosure to each other of any matter that may affect the implementation of this MOI.
- 13.5.2                    It is recognised that the continued growth of the Company will be for the benefit of all Shareholders and accordingly the Controlling Shareholder and the Significant Shareholders undertake at all times to act in their mutual interests and in the best interests of the Company and in good faith to one another.
- 13.5.3                    The Controlling Shareholder and the Significant Shareholders shall at all times do all such things, perform all such actions and take all such steps (including in particular the exercise of their respective voting rights in the Company) and procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect and maintenance of the terms, conditions and import of this MOI.

13.6                    **Confidentiality**

- 13.6.1                    Save as set out below, the Shareholders shall keep confidential and not disclose (and procure that their Affiliates keep confidential and do not disclose) to any person any information relating to the business or the operations and affairs of the Company or the other Shareholders (together "**Confidential Information**") unless the disclosing party has received the prior written consent of the relevant other parties, which consent may not be unreasonably withheld or delayed.
- 13.6.2                    This clause shall not prevent a Shareholder from disclosing Confidential Information to its Affiliates, shareholders, and the Shareholder and its Affiliates' officers, directors, employees, consultants and professional advisers who:
- 13.6.2.1                    have a need to know (and then only to the extent that each such person has a need to know);
- 13.6.2.2                    are aware that the Confidential Information should be kept confidential;
- 13.6.2.3                    are aware of the disclosing Shareholder's obligation in relation to such information in terms of this Agreement; and

13.6.2.4 have been directed by the disclosing Shareholder to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.

13.6.3 The obligations of non-disclosure under this Article do not extend to information that:

13.6.3.1 is disclosed to a receiving Shareholder in terms of this MOI but at the time of such disclosure, such information is in the lawful possession or control of that Shareholder and not subject to an obligation of confidentiality;

13.6.3.2 is or becomes public knowledge, otherwise than pursuant to a breach of this MOI by the Shareholder who disclosed such Confidential Information; or

13.6.3.3 is required by the provisions of any law, or regulation, or during any proceedings, or by the rules or regulations of any stock exchange to be disclosed, and the Shareholder required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure and has consulted with the other Shareholders and the Company prior to making such disclosure.

## 13.7 **Dispute resolution**

### 13.7.1 **Separate, divisible agreement**

This clause is a separate, divisible agreement from the rest of this MOI and shall:

13.7.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the MOI and not to this clause. Any such disputes, including the issues set forth above, shall at all times be and remain subject to arbitration in terms of this Article; and

13.7.1.2 remain in effect even if the MOI terminates for any reason whatsoever.

### 13.7.2 **Disputes subject to mediation and arbitration**

Save as may be expressly provided for elsewhere in this MOI for the resolution of particular disputes, any other dispute arising out of or in connection with this MOI or the subject matter of the MOI, including without limitation, any dispute concerning:

- 13.7.2.1 the interpretation, application and effect of any provisions in the MOI;
- 13.7.2.2 the Parties' respective rights or obligations under the MOI;
- 13.7.2.3 the rectification of the MOI;
- 13.7.2.4 breach of the MOI or any matter arising out of the breach;
- 13.7.2.5 any claims in delict, compensation for unjust enrichment or any other claim;
- 13.7.2.6 any claims relating to intentional misconduct, including fraud or fraudulent misrepresentation; or
- 13.7.2.7 any claim relating to the enforceability and enforcement of the MOI,

whether or not the rest of the MOI apart from this clause is valid and enforceable, shall be referred, in the first instance, to mediation as set out in Article 13.7.3, and if the parties to the dispute fail to resolve the dispute by way of mediation, to arbitration as set out in Article 13.7.4.

### 13.7.3 **Mediation**

If the parties to a dispute are unable to agree on a mediator or to resolve the dispute by way of mediation within 10 Business Days of any party in writing requesting that the dispute be resolved by mediation, then the dispute shall be submitted to and decided by arbitration as set out in Article 13.7.4.

### 13.7.4 **Arbitration**

- 13.7.4.1 All disputes which cannot be settled by mediation as described in Article 13.7.3 shall be finally determined in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa ("**AFSA**") without recourse to the ordinary courts of law, except as provided in Article 13.12.



13.7.4.2 Any party to a dispute may, either separately or together with any other Shareholder or the Company, initiate arbitration proceedings pursuant to this Article by sending a request for arbitration to the Company and the other Shareholders and to AFSA.

### 13.8 **Appointment of arbitrators**

13.8.1 The Parties to the dispute shall agree on the appointment of a panel of arbitrators who shall be either retired judges, attorneys or senior advocates (with the latter two categories of which shall have at least 20 years' experience in commercial legal practice).

13.8.2 If agreement is not reached within 10 Business Days after any Party calls in writing for such agreement, the panel of arbitrators, all of whom must comply with the requirements of clause 13.8.1 above nominated by the Chairperson of AFSA for the time being.

13.8.3 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment of the panel of arbitrators, and a copy shall be furnished to the other Parties who may, within 7 days, submit written comments on the request to the addressee of the request with a copy to the first Party.

13.8.4 The panel of arbitrators shall appoint one amongst their number to serve as the presiding arbitrator. The presiding arbitrator shall officiate the arbitration and its proceedings.

### 13.9 **Decisions of the Arbitrators**

13.9.1 The panel of arbitrators shall make their decisions by a majority. In the event that no majority is present, the presiding arbitrator may make the decision(s) as if acting as a sole arbitrator.

13.9.2 The costs of the arbitration shall be in the discretion of the arbitrators. The parties to the dispute shall, pending the final determination of the arbitrators as to which party shall ultimately be liable for the costs of the arbitration, fund the costs (such as the costs of any venue, arbitrators' remuneration, recording, transcription and other costs and expenses ancillary to the arbitration) which need to be paid in the interim, equally. If at any time a

party to the dispute does not pay its portion of the costs when required in the interim, that party will be excluded from participating in the arbitration and the other party/ies to the dispute shall be entitled to request a final award from the arbitrators as regards that party. Within 10 Business Days of the making by the arbitrators of a final determination as to which party shall bear the costs of arbitration, the party against which such determination has been made shall reimburse the other party/ies the costs borne by such other party/ies in the interim together with interest thereof, if the arbitrators so direct.

### 13.10 **Confidentiality of arbitration proceedings**

The existence and content of arbitration proceedings as well as any ruling, award or outcome shall be treated as confidential by the Company and the Shareholders as well as the members of the arbitral tribunal. This will apply unless:

- 13.10.1 the Company or any Shareholder will require disclosure to the extent that it is required to fulfil a legal duty, protect or pursue a legal right, or enforce or challenge an award in *bona fide* legal proceedings before a court, forum or tribunal;
- 13.10.2 the parties to the dispute consent in writing to the disclosure of certain information;
- 13.10.3 the information is needed for the preparation or presentation of a claim or defence in the arbitration;
- 13.10.4 the information is already in the public domain without any party breaching this clause; or
- 13.10.5 the panel of arbitrators has ordered that it be disclosed upon application by a party to the dispute.

### 13.11 **Venue and period for completion of arbitration**

The arbitration shall be held in Cape Town and the Board shall endeavour to ensure that it is completed within as expeditiously as possible after notice requiring the claim to be referred to arbitration is given.

### 13.12 **Settlement of Dispute**

If a dispute is settled, the settlement agreement shall only be binding on the Company and any Shareholders to the extent that it is written and signed by such parties. A party to the dispute may apply to court to enforce a settlement agreement.

### 13.13 **Binding nature of arbitration**

Any majority decisions and awards of the panel of arbitrators:

13.13.1 shall be final and binding on them;

13.13.2 shall be carried into effect; and

13.13.3 may be made an order of court of competent jurisdiction by any party to the arbitration,

and no party shall be entitled to appeal such decision of the arbitrators in the absence of manifest error or fraud.

### 13.14 **Powers of the arbitrators**

In addition to any other powers that the arbitrators might have, the arbitrators shall have the powers to:

13.14.1 grant any remedy or relief permissible in law, whether provisional or final, including but not limited to conservatory relief and injunctive relief; and

13.14.2 rule on their own jurisdiction, including any objections with regard to the existence, validity or effectiveness of the arbitration agreement. The arbitrators may make such ruling in a separate award on jurisdiction or in an award on the merits as they consider appropriate in the circumstances.

### 13.15 **Application to court for urgent interim relief**

13.15.1 Nothing contained in this Article 13.7 shall prohibit a party to a dispute from approaching any court of competent jurisdiction for urgent interim relief pending determination of the dispute by arbitration.

13.15.2            The Company and the Shareholders consent to the non-exclusive jurisdiction of the High Court of South Africa (Western Cape Division, Cape Town) for any proceedings brought in terms of Article 13.15.1.

## Schedule 1

### Rights, preferences, limitations and other terms attaching to B Shares

The B Shares shall carry the following rights, preferences, limitations and other terms and shall be subject to the following conditions:

#### 1. Definitions

- 1.1 In this Schedule 1, unless the context indicates a contrary intention, capitalised terms not defined in this Schedule 1 have the meanings given thereto in the MOI, and the following words and expressions shall bear the meanings assigned to them below and cognate words and expressions shall bear corresponding meanings:
- 1.1.1 "**Act in Concert**" shall bear the meaning ascribed thereto in section 117(b) of the Act construed *mutatis mutandis*, and the phrase "**Acting in Concert**" shall be construed accordingly;
- 1.1.2 "**B Share Holding Ratio**" means, immediately after the Linking of the Initial B Shares to the Initial Linked Ordinary Shares in terms of paragraph 8.2, the ratio of 2.117 B Shares for every 1 Linked Ordinary Share held by the B Shareholder(s), which ratio may change from time to time following (i) a rounding down of the number of B Shares in accordance with paragraphs 8.5 and 8.6 or (ii) an Adjustment Event in terms of paragraph 9;
- 1.1.3 "**B Shareholder**" means the registered holder of a B Share, from time to time;
- 1.1.4 "**Combined Parties**" means, when used in relation to a person (whether such person is a B Shareholder, a Transferor or a Transferee), any person(s) who is/are Related to or who is/are Acting in Concert with such first person;
- 1.1.5 "**Disposal**" or "**Transfer**" means the sale, alienation, transfer, donation or other conveyance of the relevant Share or any part thereof including, without limitation, any rights attaching thereto and shall include any agreement or arrangement howsoever described to give effect to the foregoing, and the expressions "**Dispose**", "**Disposal**", "**Transfer**" or "**Transferred**" shall be construed accordingly;

- 1.1.6            **"Initial B Shares"** means the 124 226 613 B Shares to be issued and allotted by the Company to Remgro Beverages as contemplated in paragraph 8.1;
- 1.1.7            **"Initial Linked Ordinary Shares"** means 58 673 844 of the total number of Ordinary Shares to be distributed to Remgro Beverages pursuant to the DGHL Distribution, by virtue of Remgro Beverages' holding of 69 850 256 DGHL Ordinary Shares immediately prior to the implementation of the DGHL Distribution;
- 1.1.8            **"Link"** means the notional link between a B Share and the corresponding Linked Ordinary Share, and **"Linked"** shall have the corresponding meaning;
- 1.1.9            **"Linked Ordinary Shares"** means those Ordinary Shares which are Linked to B Shares in accordance with the provisions of this Schedule 1, which number of Ordinary Shares may increase or decrease, as the case maybe, following an Adjustment Event and which Ordinary Shares are subject to the restrictions on disposal described in paragraph 6;
- 1.1.10           **"MOI"** means the Memorandum of Incorporation to which this Schedule 1 is attached;
- 1.1.11           **"Nominal Issue Price"** means, in relation to each B Share, an amount of R0.00001;
- 1.1.12           **"Redemption"** means, when used in relation to B Shares, the redemption of such B Shares for a redemption consideration equal to the Nominal Issue Price of the B Shares to be redeemed, which redemption may only be implemented pursuant to (i) the occurrence a Redemption Event or (ii) an Adjustment Redemption, and on and subject to the applicable terms and conditions set out in this Schedule 1;
- 1.1.13           **"Redemption Event"** means, when used in respect of the B Shares (or any of them), any of the following occurrences:
- 1.1.13.1                if there is no B Shareholder that, together with its Combined Parties, holds more than 25% of the Total Voting Rights; or
- 1.1.13.2                if the relevant B Shareholder fails to notify the company secretary of the Company in writing of a Disposal of B Shares, prior to such Disposal, as contemplated in paragraph 6; or

- 1.1.13.3 if the relevant B Shareholder Disposes of any Linked Ordinary Shares without also Disposing of the corresponding number of B Shares Linked to such Linked Ordinary Shares; or
- 1.1.13.4 if the relevant B Shareholder Disposes of any B Shares without also Disposing of the corresponding number of Linked Ordinary Shares as contemplated in paragraph 8.1; or
- 1.1.13.5 if the relevant B Shareholder Disposes of any B Shares, together with the corresponding number of Linked Ordinary Shares, and the Transferee, together with such Transferee's Combined Parties, does not, after the Disposal, hold more than 25% of the Total Voting Rights upon Transfer of such B Shares; or
- 1.1.13.6 if the relevant B Shareholder Disposes of any B Shares, together with the corresponding number of Linked Ordinary Shares, and as a result of such Disposal, such B Shareholder together with its Combined Parties no longer holds more than 25% of the Total Voting Rights upon Transfer of such B Shares; or
- 1.1.13.7 if, as a result of a transaction (or a series of integrated transactions, as contemplated in section 41(4)(b)) relating to the Disposal of B Shares, together with a corresponding number of Linked Ordinary Shares, immediately after implementing such transaction (or the culmination of a "series of integrated transactions", as such phrase is contemplated in section 41(4)(b)):
- 1.1.13.7.1 the combined voting rights of the Transferor together with its Combined Parties comprise more than 25% of the Total Voting Rights; and
- 1.1.13.7.2 the combined voting rights of the Transferee(s), together with its/their Combined Parties, comprise more than 25% of the Total Voting Rights,
- and such Transferee has, at its sole discretion, elected not to make an offer to all of the other holders of the Ordinary Shares *mutatis mutandis* in accordance with section 123;

- 1.1.14            **"Redemption Event B Shares"** has the meaning given thereto in paragraph 7.2;
- 1.1.15            **"Related"** shall have the meaning ascribed thereto in section 2;
- 1.1.16            **"Remgro Beverages"** means Remgro Beverages Proprietary Limited, a company incorporated in accordance with the laws of South Africa, with registration number 2016/394940/07, a wholly owned Subsidiary of Remgro Limited;
- 1.1.17            **"Remgro Limited"** means Remgro Limited, a company incorporated in accordance with the laws of South Africa, with registration number 1968/006415/06, and/or any of its Subsidiaries from time to time;
- 1.1.18            **"Total Voting Rights"** means the aggregate of all voting rights which are exercisable by the Shareholders (including the Ordinary Shareholders and the B Shareholders) in respect of a matter to be decided on by the Company;
- 1.1.19            **"Transferee"** shall mean the person(s) who receives Transfer of the relevant Shares, in the context of the paragraph in which is it used; and
- 1.1.20            **"Transferor"** shall mean the person(s) who Transfers the relevant Shares, in the context of the paragraph in which it is used.

## 2.    **Winding-up and return of capital**

- 2.1            On a winding-up of the Company, the B Shareholder(s) shall be entitled to be paid, before any payment or distribution is made to Ordinary Shareholders, an amount equal to the Nominal Issue Price in respect of each B Share held by such B Shareholder.
- 2.2            Save as contemplated in paragraph 2.1, the B Shares shall not carry the right, on a winding-up of the Company or on any return or reduction of capital, whether in cash or of assets *in specie*, to the payment or repayment of any amount or any assets of the Company.

## 3.    **No participation**

- 3.1            Subject to paragraph 3.2, the B Shares shall not be entitled to any participation in the profits of the Company or any distribution of the assets or capital of the Company, save as provided for in paragraph 2.



3.2 In the event that the Company unbundles the equity securities of any Subsidiary (the "**unbundled company**") by way of a distribution *in specie* to its Ordinary Shareholders (an "**unbundling**"), the Company shall, as far as possible, and unless otherwise agreed with the B Shareholders, procure that prior to implementing the unbundling the capital structure of the unbundled company is amended such that it is substantially the same as the capital structure of the Company at the time of the unbundling. Notwithstanding that the B Shareholders shall not be entitled to participate in the unbundling, the B Shareholders shall be entitled to subscribe for an appropriate number of shares in the unbundled company, for nominal consideration, which shares have equivalent rights, preferences, limitations and other terms to those of the B Shares held by each such B Shareholder at the time of the unbundling.

#### 4. **Voting**

4.1 Subject to paragraphs 4.4, 7.1 and 9.3.2.1, each B Share shall confer on its holder the right to vote, whether at a meeting or by written vote, on each and every matter to be decided on by the Company. Without limiting the generality of the foregoing, each B Share shall be entitled to vote on any resolution of the Company which may be required in terms of section 115(2).

4.2 At every general meeting or AGM of the Company (as adjourned or postponed, if applicable) at which Ordinary Shareholders and B Shareholders are present and entitled to vote on any particular matter, upon a poll, or in respect of any written resolution contemplated in section 60, on which the Ordinary Shareholders and the B Shareholders are entitled to vote, each B Shareholder shall, in respect of that particular matter, be entitled to exercise one vote for every B Share held.

4.3 Any B Shareholder shall, by giving written notice to that effect to the Company at any time, be entitled to require the Company, which shall thereupon be obliged, to call a general meeting of its Shareholders, or any class of them, to consider any matter (including, without limitation, a resolution requiring the Company to comply with its obligations to the B Shareholders) and any such resolution adopted at a meeting of all Shareholders of the Company shall, notwithstanding anything to the contrary contained in the MOI, be binding upon and be given effect to by the Company and the directors.

4.4 Notwithstanding any other provision of the terms set out in this Schedule 1, the voting rights attaching to the Initial B Shares shall become effective against such

Initial B Shares being Linked to the corresponding Initial Linked Ordinary Shares in the manner contemplated in paragraph 8.2. Prior to the DGHL Distribution being implemented and the Initial B Shares being so Linked, the Initial B Shares shall carry no voting rights (save for those which are inalienable in terms of the Act).

## **5. Modification of the terms of the B Shares**

The rights, preferences, limitations and other terms of the B Shares as set out in this Schedule 1, read together with the MOI, may not be modified without a special resolution amending the MOI and approval in accordance with Article 6.6, which special resolution must be approved by Shareholders holding:

- 5.1 at least 75% of the Total Voting Rights; and
- 5.2 at least 75% of the voting rights exercisable at a separate class meeting of the B Shareholders only, or on a written resolution in respect of which only the B Shareholders are entitled to vote.

## **6. Issue and notification of transfer of B Shares**

- 6.1 Notwithstanding anything to the contrary in the MOI, all B Shares shall be issued and held in certificated form.
- 6.2 No B Shareholder shall be entitled to Dispose of, or Transfer, its B Shares or any of them (together with the corresponding number of Linked Ordinary Shares, as determined in accordance with the B Share Holding Ratio), unless and until it has notified the company secretary in writing thereof and complied with paragraph 2.1 of Schedule 2. Any failure by a B Shareholder to timeously notify the company secretary and comply with paragraph 2.1 of Schedule 2, on the date of Transfer or Disposal of such B Shares, (i) constitute a Redemption Event and (ii) result in immediate cancellation of the voting rights attaching to such B Shares in accordance with the provisions of paragraph 7.

## **7. Call option and cessation of B Share voting rights**

- 7.1 On the occurrence of a Redemption Event, the voting rights attaching to the B Shares in respect of which the Redemption Event applies, shall immediately and automatically cease to be of force and effect and the B Shareholders hereby undertake and agree not to exercise or purport to exercise such voting rights which

attach to the B Shares in respect of which the Redemption Event has occurred.

For the avoidance of doubt:

- 7.1.1 the occurrence of the Redemption Event set out in paragraph 1.1.13.1 shall result in the automatic and immediate cessation of the voting rights attaching to all B Shares in issue;
- 7.1.2 the occurrence of the Redemption Events set out in paragraphs 1.1.13.2, 1.1.13.3, 1.1.13.4, 1.1.13.5 or 1.1.13.6 shall result in the automatic and immediate cessation of the voting rights attaching only to those B Shares:
  - 7.1.2.1 the Disposal of which the company secretary was not notified of, in terms of paragraph 6.2, read with clause 1.1.13.2;
  - 7.1.2.2 Linked to the relevant Linked Ordinary Shares which were Disposed of in terms of paragraph 1.1.13.3;
  - 7.1.2.3 which were Disposed of, without the corresponding number of Linked Ordinary Shares also being Disposed of, in terms of paragraph 13.1 read with clause 1.1.13.4; or
  - 7.1.2.4 which were Disposed of to a Transferee who, together with such Transferee's Combined Parties, does not, after such Disposal, hold more than 25% of the Total Voting Rights in accordance with paragraph 1.1.13.5; or
  - 7.1.2.5 which are retained by a B Shareholder in circumstances where such B Shareholder has Disposed of B Shares, together with the corresponding number of Linked Ordinary Shares, and as a result of such Disposal, the relevant Transferring B Shareholder, together with such B Shareholder's Combined Parties, no longer holds more than 25% of the Total Voting Rights, as contemplated in paragraph 1.1.13.6;
- 7.1.3 the occurrence of the Redemption Event set out in paragraph 1.1.13.7 shall, to the extent that Transferee has, at its sole discretion, elected not to make an offer to all other holders of Ordinary Shares on the date of Transfer in accordance with section 123, *mutatis mutandis*, result in the cessation of the voting rights attaching to those B Shares held by the Transferee together with all of the B Shares held by such Transferee's Combined Parties with effect from the date of Transfer.

- 7.2 Notwithstanding anything to the contrary in the MOI, on the occurrence of:
- 7.2.1 the Redemption Event set out in paragraph 1.1.13.1, all of the B Shares in issue;
- 7.2.2 the Redemption Events set out in paragraphs 1.1.13.2, 1.1.13.3, 1.1.13.4, 1.1.13.5 or 1.1.13.6, all of those B Shares:
- 7.2.2.1 the Disposal of which the company secretary was not notified of, in terms of paragraph 6, read with paragraph 1.1.13.2; or
- 7.2.2.2 Linked to the relevant Linked Ordinary Shares which were Disposed of, as contemplated in paragraph 1.1.13.3;
- 7.2.2.3 which were Disposed of, without the corresponding number of Linked Ordinary Shares also being Disposed of, in terms of paragraph 8.1 read with paragraph 1.1.13.4;
- 7.2.2.4 which were Disposed of to a Transferee who, together with such Transferee's Combined Parties, does not, after such Disposal, hold more than 25% of the Total Voting Rights in accordance with paragraph 1.1.13.5; or
- 7.2.2.5 which are retained by a B Shareholder in circumstances where such B Shareholder has Disposed of B Shares, together with the corresponding number of Linked Ordinary Shares, and as a result of such Disposal, such B Shareholder, together with such B Shareholder's Combined Parties, no longer holds more than 25% of the Total Voting Rights, as contemplated in paragraph 1.1.13.6;
- 7.2.3 the Redemption Event set out in paragraph 1.1.13.7, and provided that the Transferee has, at its sole discretion, elected not to make an offer to all other holders of Ordinary Shares on the date of Transfer in accordance with section 123, *mutatis mutandis*, all of those B Shares held by the Transferee, together with such Transferee's Combined Parties in respect of that Redemption Event,

(in each case the "**Redemption Event B Shares**") shall become redeemable by the Company at any time on or after the happening of the relevant Redemption Event and for an amount equal to the Nominal Issue Price per B Share.

- 7.3 In the event that the Transferee elects to make an offer as provided for in paragraph 1.1.13.7 read with paragraph 7.2.3 (or where the Transferee is obliged to do so under section 123), the full consideration payable by the Transferee to the Transferor under the transaction which triggers the offer in question shall be attributable to the Ordinary Shares forming the subject matter of such offer and no consideration shall be attributable to the B Shares.
- 7.4 The Company shall, subject to the passing of the requisite Shareholders' resolutions and the fulfilment of any and all other legal requirements (if any), be entitled to redeem the Redemption Event B Shares at any time after the occurrence of a Redemption Event and redeem all of the relevant Redemption Event B Shares for the Nominal Issue Price in terms thereof.
- 7.5 Immediately following fulfilment of all legal requirements (if any) required to authorise the exercise of the redemption of the Redemption Event B Shares, the Company shall be entitled to implement the redemption of the Redemption Event B Shares by giving written notice to that effect to the relevant B Shareholder(s). Any implementation of such redemption by the Company shall be subject to all legally necessary consents and approvals being obtained. The Company shall pay the relevant B Shareholder an amount equal to the Nominal Issue Price for each B Share redeemed against implementation of the redemption. The relevant amount shall be paid in cash by way of electronic funds transfer into such bank account as may be recorded by the Company in its records in respect of that B Shareholder. The B Shareholder shall be obliged to surrender to the Company the share certificate/s for the B Shares (or, if such certificate/s has/have been lost or destroyed, proof of such loss or destruction) upon receipt of payment of the relevant amount in relation to any B Shares.
- 7.6 The company secretary may from time to time require a B Shareholder to furnish the Company with documentary proof, to the company secretary's reasonable satisfaction, of the relationship between the relevant B Shareholder and other Shareholder(s) who are such B Shareholder's Combined Parties, and the onus of proving such a relationship(s) (as Combined Parties) shall rest on the relevant B Shareholder.

## 8. General

- 8.1 In anticipation of the DGHL Distribution, the Initial B Shares shall be issued and allotted by the Company to Remgro Beverages for the Nominal Issue Price. In the

event that the DGHL Distribution has not occurred within 18 months of the date on which the Initial B Shares are issued, then such Initial B Shares shall be redeemable at the instance of the Company (in its discretion) for a redemption consideration equal to the Nominal Issue Price of such Initial B Shares. The Company shall be entitled (but not obliged) to redeem the Initial B Shares for the Nominal Issue Price of such Initial B Shares as contemplated in this paragraph 8.1 (i) by giving written notice to the B Shareholder of its intention to redeem the Initial B Shares and (ii) against payment in cash of the Nominal Issue Price of such Initial B Shares.

- 8.2 Following the implementation of the DGHL Distribution, Remgro Beverages will hold the Initial B Shares and 69 850 256 Ordinary Shares, of which 58 673 844 Ordinary Shares will be Linked to the aforesaid B Shares with the result each Initial Linked Ordinary Share will be Linked to 2.117 B Shares.
- 8.3 The Board shall resolve to issue and allot the Initial B Shares only to Remgro Beverages in accordance with paragraph 8.1 and thereafter from time to time only to the B Shareholders pursuant to an Adjustment Issue or in such circumstances as may be expressly contemplated and provided for in this Schedule 1. For the avoidance of doubt, the Board does not have any authority to issue and allot B Shares in circumstances not expressly contemplated herein.
- 8.4 A B Shareholder may only dispose of B Shares if, in the same transaction, the applicable number of Linked Ordinary Shares held by that B Shareholder (determined in accordance with the B Share Holding Ratio at the relevant time) are also disposed of to the same Transferee. Each B Shareholder must at all times following implementation of the DGHL Distribution maintain the B Share Holding Ratio in respect of such B Shareholder's Linked Ordinary Shares to B Shares.
- 8.5 If the requirement to apply the B Share Holding Ratio to any Disposal of B Shares and/or Linked Ordinary Shares, or the occurrence of any Adjustment Event, results in a situation where a fraction of a B Share is to be Disposed of, issued or redeemed, as the case may be, then the aggregate number of B Shares to be Disposed of, issued or redeemed as the case may be, will be rounded down to the nearest whole B Share.
- 8.6 For the avoidance of doubt, it is recorded that the application of paragraph 8.5 may impact the B Share Holding Ratio in a manner similar to that contemplated in paragraph 9.2 in which event the ratio of Linked Ordinary Shares to B Shares after

the application of the rounding down mechanism in paragraph 8.5 shall be determined and such ratio shall, thereafter, be the B Share Holding Ratio.

8.7 In the event that:

8.7.1 the voting rights attaching to all of the issued B Shares have ceased to be of force and effect, in terms of paragraph 7.1; or

8.7.2 all of the issued B Shares have been repurchased or redeemed by the Company in terms of paragraph 7.2 (such that no B Shares are any longer in issue),

then, for the avoidance of doubt, the Company shall thereafter no longer issue and allot B Shares, notwithstanding the number of authorised but unissued B Shares.

## 9. Adjustment

9.1 For the purpose of this paragraph 9:

9.1.1 **"Adjustment"** means an adjustment effected in terms of this paragraph 9 by way of an Adjustment Issue or an Adjustment Redemption, as applicable, in order to give effect to the principle of restoration of a B Shareholder's Pre-Event Proportionate Voting Rights as contemplated in paragraph 9.2;

9.1.2 **"Adjustment Event"**, subject to paragraph 9.4.2, includes but is not limited to:

9.1.2.1 a restructure of the Ordinary Share capital of the Company;

9.1.2.2 any corporate action or event howsoever described:

9.1.2.2.1 pursuant to which further Ordinary Shares are issued to all or any holders of Ordinary Shares (including, without limitation, B Shareholders in respect of their Linked Ordinary Shares); or

9.1.2.2.2 in which all holders of Ordinary Shares have a right or entitlement to participate in a further issue of Ordinary Shares, to the extent that B Shareholders have exercised such right or entitlement in respect of their Linked Ordinary Shares as contemplated in paragraph 9.5; or

- 9.1.2.2.3 pursuant to which Ordinary Shares are repurchased from all holders of Ordinary Shares (including, without limitation, the Linked Ordinary Shares held by B Shareholders); or
- 9.1.2.2.4 in which all holders of Ordinary Shares have a right or entitlement to participate in a repurchase of some or all of their Ordinary Shares, to the extent that B Shareholders have exercised such right or entitlement in respect of their Linked Ordinary Shares; and
- 9.1.2.3 a combination of any one or more of the events referred to in paragraph 9.1.2.1 or 9.1.2.2;
- 9.1.3 "**Adjustment Issue**" has the meaning given thereto in paragraph 9.3.1;
- 9.1.4 "**Adjustment Redemption**" has the meaning given thereto in paragraph 9.3.2;
- 9.1.5 "**Adjustment Redemption Shares**" has the meaning given thereto in paragraph 9.3.2;
- 9.1.6 "**Independent Auditors**" means an independent auditor with not less than 10 years' experience in one of the 4 largest (based on number of partners) independent firms of auditors in South Africa as nominated by the Board, provided that if any B Shareholder disputes the auditor so nominated then the Board shall be required to procure that the president of the South African Institute of Chartered Accountants or its successor-in-title, appoints an independent auditor, which must be either a auditor with not less than 10 years' experience in one of the 4 largest (based on number of partners) independent firms of auditors in South Africa at the time;
- 9.1.7 "**Pre-Event Proportionate Voting Rights**" means, in respect of a B Shareholder, the Proportionate Voting Rights exercisable by a B Shareholder immediately prior to the occurrence of an Adjustment Event; and
- 9.1.8 "**Proportionate Voting Rights**" means, in relation to a B Shareholder, the proportion of the Total Voting Rights which are exercisable by the B Shareholder by virtue of the B Shares and Linked Ordinary Shares held by such B Shareholder at the applicable time.



- 9.2 The intention of this paragraph 9 is to ensure that, following the occurrence of an Adjustment Event, each B Shareholder is able to exercise the same Proportionate Voting Rights after the occurrence of such Adjustment Event as immediately before the occurrence of the Adjustment Event, i.e. that there is no unwarranted dilution or concentration of Proportionate Voting Rights of the B Shareholder. Accordingly, in the event of a corporate action, alteration of the capital of the Company or similar event which has the effect of increasing or decreasing the Proportionate Voting Rights exercisable by any B Shareholder when compared to the B Shareholder's Pre-Event Proportionate Voting Rights, the number of B Shares held by such B Shareholder shall, (i) where there has been an unwarranted dilution of the B Shareholder's Proportionate Voting Rights, be increased by way of an Adjustment Issue; or (ii) where there has been an unwarranted concentration of the B Shareholder's Proportionate Voting Rights, be decreased by way of an Adjustment Redemption, each in terms of paragraph 9.3 in order to restore the B Shareholder to having the Pre-Event Proportionate Voting Rights. Following such Adjustment, the ratio of Linked Ordinary Shares to B Shares shall be determined and such ratio shall, thereafter, be the B Share Holding Ratio for the purposes of determining the number of Ordinary Shares which are Linked to the B Shares held by such B Shareholder.
- 9.3 Subject to paragraph 9.5 and 9.6, having regard to paragraph 9.2 and notwithstanding any other provision of the MOI, if an Adjustment Event occurs and such Adjustment Event results in:
- 9.3.1 a dilution of the Proportionate Voting Rights of a B Shareholder when compared to the B Shareholder's Pre-Event Proportionate Voting Rights, then such number of new B Shares as will result in the B Shareholder being capable of exercising the Pre-Event Proportionate Voting Rights, when considered together with any other Adjustments required to be made to the holdings of other B Shareholders as a consequence of the applicable Adjustment Event (if any), will be allotted and issued to the B Shareholder against payment of a subscription price equal to the Nominal Issue Price per B Share issued in terms of this paragraph 9.3.1 (such issue an "**Adjustment Issue**"); or
- 9.3.2 a concentration of the Proportionate Voting Rights of a B Shareholder when compared to the B Shareholder's Pre-Event Proportionate Voting Rights, then such number of B Shares held by the B Shareholder as would be

required to be redeemed by the Company in order to result in the B Shareholder being capable of exercising the Pre-Event Proportionate Voting Rights, when considered together with any other Adjustments required to be made to the holdings of other B Shareholders as a consequence of the Adjustment Event (if any), will become redeemable (such B Shares the "**Adjustment Redemption Shares**") by the Company for a price equal to the Nominal Issuer Price of the B Shares to be redeemed (such redemption an "**Adjustment Redemption**") and:

- 9.3.2.1 with effect from the occurrence of the relevant Adjustment Event, the Adjustment Redemption Shares shall immediately and automatically cease to carry any voting rights, in accordance with paragraph 7.1, which shall apply *mutatis mutandis*; and
- 9.3.2.2 against redemption by the Company of the Adjustment Redemption Shares, the corresponding Linked Ordinary Shares shall cease to be Linked to those Adjustment Redemption Shares.
- 9.4 For the avoidance of doubt, it is recorded that:
  - 9.4.1 without limiting the meaning of Adjustment Event as defined in paragraph 9.1.2, the following capital restructures or corporate actions and events shall constitute an Adjustment Event, namely:
    - 9.4.1.1 a sub-division or consolidation of Ordinary Shares;
    - 9.4.1.2 a rights issue or similar issue in respect of Ordinary Shares, to the extent that a B Shareholder follows its rights in respect of any of its Linked Ordinary Shares;
    - 9.4.1.3 a scrip dividend or capitalisation issue in respect of the Ordinary Shares;
  - 9.4.2 the following corporate actions and events shall not constitute an Adjustment Event:
    - 9.4.2.1 any issue of Ordinary Shares in which all Ordinary Shareholders would not be entitled to participate including, without limitation, any issue of Ordinary Shares under any employee incentive scheme;

- 9.4.2.2 any acquisition issue of Ordinary Shares;
- 9.4.2.3 any vendor consideration placing of Ordinary Shares;
- 9.4.2.4 any issue of Ordinary Shares for cash or to settle any indebtedness, liability, obligation, commitment, expense or the like;
- 9.4.2.5 any amalgamation or merger in accordance with section 113;or
- 9.4.2.6 any rights issue to the extent that the applicable B Shareholder does not follow its rights in respect of its Linked Ordinary Shares.

9.5 In the event that an Adjustment Event contemplated in:

9.5.1 paragraph 9.1.2.2.2, 9.4.1.2 or 9.4.1.3 occurs and a B Shareholder's Proportionate Voting Rights after the completion of such event are greater than its Pre-Event Proportionate Voting Rights by virtue of the B Shareholder having followed its rights (in respect of the Adjustment Events contemplated paragraph 9.1.2.2.2 or 9.4.1.2) or having received Ordinary Shares (in respect of the Adjustment Event contemplated paragraph 9.4.1.3); or

9.5.2 paragraph 9.1.2.2.4 occurs and a B Shareholder's Proportionate Voting Rights after the completion of such event are greater than its Pre-Event Proportionate Voting Rights by virtue of the B Shareholder having not participated in the proposed repurchase in respect of all of its Linked Ordinary Shares,

no Adjustment shall be effected in respect of that B Shareholder's B Share holdings.

9.6 In the event that an Adjustment Event occurs in terms of paragraph 9.1.2.2.2, 9.1.2.2.4 or 9.4.1.2 and a B Shareholder exercises its rights or entitlements in respect of some (and not all) of its Linked Ordinary Shares (the percentage of the Linked Ordinary Shares in respect of which the B Shareholder exercised its rights being the "**Participation Percentage**"), then the relevant corporate action or event shall only constitute an Adjustment Event in respect of those Linked Ordinary Shares in respect of which the rights or entitlements were exercised. In case of a partial exercise of a right or entitlement, as contemplated in this paragraph 9.6, in order to effect the Adjustment contemplated in paragraph 9.3, subject to paragraph 9.5:

- 9.6.1 if an Adjustment Issue is required to be effected in order to restore the B Shareholder's Pre-Event Proportionate Voting Rights, then only the Participation Percentage of the number of B Shares as would be required to be issued to restore the B Shareholder's Pre-Event Proportionate Voting Rights shall be issued and allotted to the B Shareholder on the terms contemplated in paragraph 9.3.1, mutatis mutandis; or
- 9.6.2 if an Adjustment Redemption is to be effected in order to restore the B Shareholder's Pre-Event Proportionate Voting Rights, then only the Participation Percentage of the number of B Shares as would be required to be redeemed to restore the B Shareholder's Pre-Event Proportionate Voting Rights shall be redeemed by the Company on the terms contemplated in paragraph 9.3.2, mutatis mutandis.
- 9.7 Pursuant to the occurrence of any Adjustment Event, the Board shall give written notice to the B Shareholders setting out the details of the Adjustment to be effected in respect of that Adjustment Event ("**Adjustment Notice**"). A B Shareholder shall be entitled, by written notice to the Board within 5 Business Days of receipt of the Adjustment Notice ("**Dispute Notice**"), to register its dispute in relation to the proposed Adjustment as contemplated in such Adjustment Notice. Pursuant to receipt of the Dispute Notice, the matter shall (unless resolved between the Company and the B Shareholder within 5 Business Days of the date of the Dispute Notice) be referred to the Independent Auditors in to require that the matter be referred to the Independent Auditors, acting as expert and not as arbitrator, for determination provided that the Independent Auditors shall be requested to make its determination within 10 Business Days of such referral.
- 9.8 Notwithstanding any other provision of this paragraph 9, pursuant to the occurrence of an Adjustment Event, no Adjustment shall be effected in terms of this paragraph prior to:
- 9.8.1 if no dispute by a B Shareholder has been registered in accordance with paragraph 9.7 by the final date for delivering a Dispute Notice, the first Business Day following the final date for delivering the Dispute Notice; or
- 9.8.2 if a dispute by a B Shareholder has been registered in accordance with paragraph 9.7, the first Business Day following (i) the resolution of the dispute between the Company and the applicable B shareholder/s or (ii) the receipt of the Independent Auditors' determination, as applicable.

## 10. Issue of capitalisation shares and pre-emption on issue

- 10.1 For purposes of Article 7 of the MOI, any B Shares held by a Shareholder shall be excluded and shall not be taken into account when determining the number of Ordinary Shares to be issued to each Ordinary Shareholder, if the Board elects to issue Ordinary Shares on a proportional basis to Shareholders or to offer a cash payment *in lieu* of awarding such proportional capitalisation Shares. For the avoidance of doubt, the issue of Ordinary Shares as aforesaid may constitute an Adjustment Event for purposes of paragraph 9.
- 10.2 Notwithstanding anything to the contrary, the provisions of Article 7 of the MOI shall not apply in respect of the issue of B Shares. For the avoidance of doubt, this means that the Ordinary Shareholders shall not have, and accordingly shall not be entitled to exercise, any pre-emptive rights in respect of the issue of B Shares.

## Schedule 2

### Transfer of Shares, Odd-lot Offers and Forced Sale

#### 1. Definitions

For purposes of this Schedule 2:

- 1.1 **"Fair Market Value"** or **"FMV"** means the fair market value, as calculated in terms of paragraph 10;
- 1.2 **"Forced Sale Offer"** has the meaning given thereto in paragraph 9;
- 1.3 **"Insolvency Event"** in respect of a person, means:
- 1.3.1 it is dissolved, terminated or deregistered, unless reinstated or re-registered within 10 Business Days after the date of a dissolution, termination or deregistration;
- 1.3.2 a final order or declaration is made, or a resolution is passed, for the sequestration, curatorship, administration, custodianship, bankruptcy, business rescue, liquidation, winding-up, receivership, trusteeship or re-organisation of that person, or of a material part of its assets or undertaking, in each case, whether by way of voluntary arrangement, scheme of arrangement or otherwise;
- 1.3.3 a curator, sequestrator, administrator, liquidator, conservator, receiver, administrative receiver, business rescue practitioner, compulsory manager, trustee, custodian or other similar official appointed for it or for any material part of its assets or undertaking;
- 1.3.4 it is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent;
- 1.3.5 it proposes or seeks to make or makes a general assignment or any arrangement or composition or compromise with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting its indebtedness, or it is or is deemed by any Law to be "financially distressed";  
or

- 1.3.6 it is the subject of, or is subjected to, any event which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs 1.3.1 to 1.3.5 (all inclusive);
- 1.4 **"Offering Shareholder"** means, for purposes of paragraphs 3 and 9, the Controlling Shareholder or a Significant Shareholder;
- 1.5 **"Remaining Shareholders"** means, for purposes of paragraphs 3 and 9 (i) in the case of a notice by the Controlling Shareholder, the Significant Shareholders (if any) and, (ii) in the case of a notice by a Significant Shareholder, the Controlling Shareholder and any other Significant Shareholders.

## 2. **Restrictions on the transferability of Shares**

The following provisions restricting the transferability of Shares shall apply:

- 2.1 No Shareholder shall sell, transfer or grant any security interest over or otherwise dispose of any Share or grant any interest in any Share other than in accordance with this MOI.
- 2.2 Until the earlier of (i) the date on which Heineken is no longer a Significant Shareholder or (ii) the third anniversary of the Scheme Implementation Date, the Controlling Shareholder may not transfer any of its Shares to any person without approval in terms of Article 6.6.1 if such a transfer would result in the Controlling Shareholder ceasing to Control the Company.
- 2.3 Except in the case of transfers permitted under paragraphs 2.4, 8 and 9, the Controlling Shareholder and the Significant Shareholders may not transfer any of their Shares other than in the circumstances contemplated in, and without having complied with the provisions of, paragraph 3 (and subject to paragraph 2.2, to the extent applicable).
- 2.4 A Controlling Shareholder and a Significant Shareholder may at any time transfer any or all of its Shares to any Affiliate of that Shareholder without having to comply with the provisions of paragraph 3, provided that it has, prior to such transfer, given notice to the Board of such transfer.

### 3. Process in respect of rights of pre-emption on transfer

- 3.1 An Offering Shareholder may sell all or a portion of its Shares in ("**Offered Shares**") and loan claims against ("**Offered Loan Claims**") the Company in accordance with this paragraph 3.
- 3.2 If an Offering Shareholder receives an offer from a *bona fide* third party (which may include any other Shareholder) (the "**Third Party**") to purchase its Offered Shares and Offered Loan Claims, which offer it wishes to accept, then the Offering Shareholder shall notify the Remaining Shareholders in writing (an "**Offer Notice**") and offer the Offered Shares and Offered Loan Claims to the Remaining Shareholders in the relative proportions in which the Remaining Shareholders at the time hold shares in the issued share capital of the Company, provided that the Offered Shares and Offered Loan Claims shall be rounded to the nearest whole number (the "**Offer**"). The Offer Notice must set out the aggregate number of Offered Shares and the amount of the Offered Loan Claims (if any) to be sold, the purchase price therefor (which must be the same as that offered by the Third Party, be denominated in Rand and be payable in cash), the name of the Third Party and such other information as may be required to establish the identity of the Third Party, the Acceptance Threshold (as defined in paragraph 3.7), the number of Offered Shares and the amount of the Offered Loan Claims (if any) which that Remaining Shareholder will be entitled to purchase, and set out all the terms and conditions of the offer by the Third Party.
- 3.3 The Offer shall be open for acceptance for a period of two months after the date of the Offer Notice.
- 3.4 If an Offer is accepted, such acceptance must be in writing and any of the Remaining Shareholders may accept the Offer in respect of their *pro rata* share or a greater (but not smaller) proportion of the Offered Shares and Offered Loan Claims than its *pro rata* share thereof, provided that:
- 3.4.1 any acceptance in respect of a greater proportion of the Offered Shares and Offered Loan Claims than its *pro rata* share thereof will only be effective if and to the extent that the other Remaining Shareholders do not accept the Offer in respect of their respective *pro rata* entitlement; and
- 3.4.2 no Remaining Shareholder shall be obliged to purchase more Offered Shares and Offered Loan Claims than the number of Offered Shares



accepted by it and the proportion of Offered Loan Claims corresponding to the Offered Shares thus acquired by it.

- 3.5 The Offering Shareholder shall give the warranties set out in paragraph 9.9 to and in favour of each accepting Remaining Shareholder, *mutatis mutandis*, on the acceptance of the Offer and the date on which the sale of the Offered Shares and Offered Loan Claims is implemented.
- 3.6 Any acceptance of the Offer shall be subject to the suspensive conditions in paragraph 9.6 *mutatis mutandis*.
- 3.7 If the Offer is not accepted by the Remaining Shareholders in respect of all the Offered Shares and Offered Loan Claims or such lower threshold specified by the Offering Shareholder in the Offer Notice (the "**Acceptance Threshold**"), as applicable, within the required period, then the Offer shall lapse and the Offering Shareholder shall be entitled, within a period of three months thereafter, to sell the Offered Shares and Offered Loan Claims (or the balance thereof in the event that an Acceptance Threshold of less than 100% was stipulated and the Offer was accepted in respect of less than all of the Offered Shares and Offered Loan Claims but in respect of more than the Acceptance Threshold) to the Third Party on terms not more favourable to a purchaser than those that were offered to the Remaining Shareholders in terms of the Offer.

#### 4. **Proper instrument of transfer**

For purposes of section 51(6)(a), a "proper instrument of transfer" means an instrument in writing, in any form, specifying: (a) the full name of the transferor (being the name of a person entered in the securities register as the registered holder of the securities being transferred); (b) the full name of the transferee; and (c) the number of the class of Shares being transferred; which has been signed by or on behalf of the registered securities holder as transferor and signed by or on behalf of the transferee.

#### 5. **Documents required for registration of transfer**

- 5.1 Any person wishing the Company to register the transfer of any Shares shall:
- 5.1.1 notify the Company in writing of an e-mail address, which address shall be such Shareholder's address for the purposes of receiving notices by way of Electronic Communication; and

- 5.1.2 deliver to the Company:
- 5.1.2.1 a copy of a proper instrument of transfer certified as a true copy of the original; and
- 5.1.2.2 the original certificate (or a duplicate certificate issued pursuant to Article 3.5.3) of the Shares being transferred or, in the absence of such original or duplicate certificate, such other evidence as the Company may require to prove the title of the transferor or his rights to transfer the Shares.
- 5.2 Where an instrument of transfer is signed by a person other than the relevant Shareholder, a copy of the authority granted by the Shareholder for the purpose of transferring Shares, certified as a true copy of the original authority, shall be lodged, produced or exhibited with or to the Company if the Company so requests.
- 5.3 Such authorities shall, as between the Company and the grantor of such authorities be deemed to continue and remain in full force and effect, and the Board may allow such instruments of transfer signed for the Shareholder as transferor pursuant to such authority to be acted upon, until express written notice of its revocation signed by or on behalf of the Shareholder is lodged at the Company's registered office. Even after the lodging of such notice of revocation, the Company shall be entitled to give effect to any instrument of transfer signed under the authority to sign and certified by any officer of the Company as being in order before the lodging of such written notice of revocation.
- 5.4 The copy of the instrument of transfer, original or duplicate Share certificate, other documentary evidence and a copy of any authority to transfer the Shares shall remain in the custody of the Company at its registered office.

## 6. **Recognition of title**

The parent or guardian of a Shareholder who is a minor, the executor or administrator of a Shareholder who is deceased, the trustee of a Shareholder who is an insolvent or the *curator bonis* of any registered Shareholder who is mentally incapacitated or prodigal or any person duly appointed by competent authority to represent or act for any registered Shareholder shall, subject to the provisions of Articles 3.4.2 and 3.4.3, be the only person recognised by the Company as having any title to any Shares registered in the name of such Shareholder, including for voting purposes.

## 7. Transmission of Shares

The following provisions relating to the transmission of Shares shall apply:

- 7.1 Subject to section 51(6)(b) and any laws for the time being in force relating to taxation or duty upon the estates of deceased persons, any person recognised by the Company in terms of Articles 3.4.2 and 3.4.3 or paragraph 3.1.3 of Schedule 2 as having any title to any Shares (and also the legal guardian of any minor Shareholder and any person who obtains title to any Shares by operation of law in any other manner) may, upon producing such evidence as the Board deems sufficient as to the capacity in which he claims to act under this paragraph or as to his or her title to any Shares, and subject to the transfer provisions in this MOI transfer such Shares to himself or to any other person.
- 7.2 A person who submits proof of his appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a registered Shareholder who is deceased or the estate of a Shareholder whose estate has been sequestrated or who is otherwise under a disability or of his appointment as the liquidator of any body corporate which is a Shareholder, shall be entered in the securities register *nominee officii*, and shall thereafter, for all purposes, be deemed to be a Shareholder.

## 8. Odd-lot Offers

- 8.1 In accordance with this paragraph 8, the Company shall be entitled to propose and implement offers to Shareholders (each an "**Odd-lot Offer**") on the basis that each Odd-lot Offer:
- 8.1.1 must be extended to every Shareholder whose total individual shareholding in the Company, at the time that the Odd-lot Offer is made, constitutes an Odd-lot (as defined in paragraph 8.2.1) (each an "**Odd-lot Holder**");
- 8.1.2 shall be an offer to (i) repurchase all the Shares held by each Odd-lot Holder (each an "**Odd-lot Share**"); or (ii) procure the purchase of such Odd-lot Shares by a Subsidiary of the Company (as the Board may determine) for the Odd-lot Consideration; and
- 8.1.3 must entitle the recipient Odd-lot Holders to elect to (i) accept the Odd-lot Offer and dispose of their Odd-lot Shares for the Odd-lot Consideration; or (ii) reject the Odd-lot Offer and retain their Odd-lot Shares, provided that

where any Odd-lot Holder has failed to accept or reject the Odd-lot Offer by the final date therefor in the manner specified in the Offer Letter (as defined in paragraph 8.4), such Odd-lot Holder shall be deemed to have accepted the Odd-lot Offer in respect of all of such Odd-lot Holder's Shares.

- 8.2 In respect of each Odd-lot Offer to be proposed, the Board shall be entitled, in its discretion, to determine:
- 8.2.1 the maximum number of Shares which shall constitute an "*odd-lot*" ("**Odd-lot**") for the purposes of such Odd-lot Offer. For clarity, the Board's determination of the maximum number of Shares which constitutes an Odd-lot shall be made afresh in respect of each Odd-lot Offer, and the prior determinations of the Board in this regard shall not bind or limit the Board when making its determination in respect of a prospective Odd-lot Offer; and
- 8.2.2 the consideration, which shall be the fair market value of the Odd-lot Shares as determined by the Board in its sole discretion, that shall become payable to the Odd-lot Holders for each Odd-lot Share disposed of pursuant to the Odd-lot Offer ("**Odd-lot Consideration**"), provided that such Odd-lot Consideration must be payable in cash.
- 8.3 The Company shall make an Odd-lot Offer by delivering a written offer letter ("**Offer Letter**") to each Odd-lot Holder, which Offer Letter shall at a minimum state:
- 8.3.1 the quantum, expressed on a per-Share basis, of the Odd-lot Consideration;
- 8.3.2 that the recipient Odd-lot Holder is entitled to elect to (i) accept the Odd-lot Offer and dispose of its Odd-lot Shares for the Odd-lot Consideration or (ii) reject the Odd-lot Offer and retain its Odd-lot Shares, provided that where such Odd-lot Holder fails to timeously accept or reject the Odd-lot Offer in the prescribed manner by the final date therefor, such Odd-lot Holder shall be deemed to have accepted the Odd-lot Offer in respect of all of such Odd-lot Holder's Shares;
- 8.3.3 the final date by which the Odd-lot Holder's acceptance or rejection of the Odd-lot Offer must be delivered to the Company in writing, which date shall be determined by the Board, provided that such date may not be less than 10 Business Days following the date of the Offer Letter; and

- 8.3.4 that the Odd-lot Holder must accept or reject the Odd-lot Offer in respect of all such Odd-lot Holder's Shares, and accordingly the Odd-lot Offer is not capable of partial acceptance (i.e. acceptance in respect of some but not all of the Odd-lot Holder's Shares).
- 8.4 Upon implementation of any Odd-lot Offer, the Company shall, save in respect of Odd-lot Holders who have elected to retain their Odd-lots in the Company:
- 8.4.1 repurchase the Odd-lots or procure the purchase of the Odd-lots by a Subsidiary of the Company (as the Board may determine) in such manner as the Directors may direct; and
- 8.4.2 procure that the proceeds of such sales are paid to such Odd-lot Holders.
- 8.5 All unclaimed proceeds of such sales may be invested, provided that all monies due to Shareholders must be held by the Company in trust. Subject to the laws of prescription, proceeds of such sales which remain unclaimed for a period of three years from the date on which they were declared (or such longer period as may be required under the laws of prescription) may be declared forfeited by the Directors for the benefit of the Company. The Directors may at any time annul such forfeiture upon such conditions (if any) as they think fit.
- 8.6 To the extent that any Shareholder's Shares are to be disposed of pursuant to an Odd-lot Offer, such Shareholder hereby irrevocably appoints any one of the Directors as its attorney and agent to sign all documents and to do all such things on its behalf that may be necessary to register the transfer of any Odd-lot Shares pursuant to an Odd-lot Offer in terms of this paragraph 8.

## 9. **Forced Sale**

- 9.1 The Controlling Shareholder or a Significant Shareholder (the Offering Shareholder) shall notify the Company and the Remaining Shareholders in writing, if the Offering Shareholder:
- 9.1.1 is in material breach of the MOI and either that breach cannot be remedied or has not been remedied within two months after receipt of a notice from a Remaining Shareholder calling upon the Offering Shareholder to remedy its breach or, if any dispute is raised by an Offering Shareholder regarding the relevant breach in accordance with Article 13.7, within two months of final determination of such dispute in terms of Article 13.7;

9.1.2 undergoes a Change of Control; or

9.1.3 is subject to an Insolvency Event,

(each, a "**Forced Sale Trigger Event**").

9.2 Whether or not the notice is given as required in respect of paragraph 9, the Offering Shareholder shall be deemed on the day immediately preceding the date of the occurrence of a Forced Sale Trigger Event to have offered all of its Shares in ("**Offered Shares**") and loan claims against ("**Offered Loan Claims**") the Company to:

9.2.1 the Company; and

9.2.2 to the extent not accepted by the Company, the Remaining Shareholders in:

9.2.2.1 the proportions in which the Remaining Shareholders at the time hold shares in the issued share capital of the Company, provided that the Offered Shares and Offered Loan Claims shall be rounded to the nearest whole number; or

9.2.2.2 if applicable, such other proportions as the Remaining Shareholders may agree in writing, provided that the Offered Shares and Offered Loan Claims shall be rounded to the nearest whole number ("**Agreed Proportions**"),

at the purchase price contemplated in paragraph 9.3 ("**Forced Sale Offer**").

9.3 The purchase price payable by the Company and/or the Remaining Shareholders, as applicable, for the Offered Shares and the Offered Loan Claims shall be as follows:

9.3.1 the FMV of the Offered Shares as at the date upon which the Forced Sale Trigger Event occurred less 15%, in the case of the Forced Sale Trigger Event contemplated in paragraph 9.1.1; or

9.3.2 the FMV of the Offered Shares as at the date upon which the Forced Sale Trigger Event occurred, in the case of the Forced Sale Trigger Event contemplated in paragraph 9.1.2 or the Forced Sale Trigger Event contemplated in paragraph 9.1.3,

in each case plus the face value of the Offered Loan Claims.

9.4 The Forced Sale Offer shall be open for acceptance:

9.4.1 by the Company for a period of 20 Business Days after the date on which the purchase price is determined, subject to section 48 of the Companies Act; and

9.4.2 by the Remaining Shareholders for a period of three months after the date on which the purchase price is determined,

and, failing acceptance thereof in respect of all of the Offered Shares and Offered Loan Claims within the three month period contemplated in paragraph 9.4.2, shall lapse.

9.5 If such Forced Sale Offer is accepted, such acceptance must be in writing and, in the event of a Forced Sale Offer on the terms contemplated in paragraph 9.2.2.1, any of the Remaining Shareholders may accept the Forced Sale Offer in respect of a smaller or a greater proportion of the Offered Shares and Offered Loan Claims than its *pro rata* share thereof, provided that:

9.5.1 any acceptance in respect of a greater proportion of the Offered Shares and Offered Loan Claims than its *pro rata* share thereof will only be effective in respect of the excess if and to the extent that the other Remaining Shareholders accept the Forced Sale Offer in respect of less Offered Shares and Offered Loan Claims than their respective *pro rata* entitlement; and

9.5.2 if acceptances in terms of this paragraph 9.5 together constitute acceptances for more than the Offered Shares and Offered Loan Claims, then the Offered Shares and Offered Loan Claims shall be apportioned amongst the accepting Remaining Shareholders in the proportions as near as may be to their existing shareholdings in the Company on the date of the Forced Sale Offer (each rounded to the nearest whole number), but on the basis that no Remaining Shareholder shall be obliged to purchase more Offered Shares and Offered Loan Claims than the number of Offered Shares accepted by it and the proportion of Offered Loan Claims corresponding to the Offered Shares thus acquired by it ("**Apportioned Offered Equity**").

9.6 Any acceptance of the Forced Sale Offer shall be subject to the following suspensive conditions :

- 9.6.1 all regulatory approvals (if any) which are necessary for the implementation of the resultant transaction, are granted unconditionally, or subject to conditions acceptable to the party upon whom the relevant conditions are imposed and/or will apply, acting reasonably;
- 9.6.2 all approvals required in terms of the JSE Listings Requirements (if any) are granted by the JSE;
- 9.6.3 all internal approvals (including shareholder approvals) (if any) which are required in respect of the resultant transaction are obtained; and
- 9.6.4 all notifications to regulatory authorities (if any) which are necessary pursuant to the implementation of the resultant transaction are made.
- 9.7 The Offering Shareholder and the accepting Remaining Shareholders shall cooperate and provide all reasonable assistance to each other (having regard to their obligations in terms of Article 13.5), in order to obtain the approvals and to make the notifications contemplated in paragraph 9.6. The regulatory approvals as contemplated in paragraph 9.6.1 shall include, without limitation, approval by the following (to the extent applicable):
- 9.7.1 the relevant competition authorities in South Africa, as established by the Competition Act, 89 of 1998, as amended (or equivalent authorities in any relevant jurisdiction);
- 9.7.2 the Financial Surveillance Department of the South African Reserve Bank or an Authorised Dealer (as required);
- 9.7.3 the Takeover Regulation Panel established pursuant to section 196 of the Companies Act, as contemplated in terms of section 118 of the Companies Act (or equivalent approval in any relevant jurisdiction); and
- 9.7.4 any relevant securities exchange.
- 9.8 On the acceptance of a Forced Sale Offer, a sale shall automatically come into existence, in terms of which:
- 9.8.1 if and to the extent that the Forced Sale Offer is accepted by the Company, the Offering Shareholder sells to the Company and the Company purchases the relevant Offered Shares and the Offered Loan Claims; and



9.8.2 if and to the extent that the Forced Sale Offer is accepted by the Remaining Shareholders, the Offering Shareholder sells to the accepting Remaining Shareholders, and each accepting Remaining Shareholder purchases its *pro rata* portion of the Offered Shares and the Offered Loan Claims or such smaller proportion of the Offered Shares and Offered Loan Claims accepted by it or its Agreed Proportion or its Apportioned Offered Equity, as applicable,

(in each case, the relevant "**Forced Sale Equity**") on the following terms and conditions:

9.8.3 on and with effect from the first Business Day after the date on which the suspensive conditions in paragraph 9.6 are fulfilled (the "**Forced Sale Closing Date**"):

9.8.3.1 the Offering Shareholder sells, and the Company and/or the accepting Remaining Shareholder, as applicable, purchases the relevant Forced Sale Equity;

9.8.3.2 to the extent applicable, the risk in and benefit and ownership of the relevant Forced Sale Equity passes to the accepting Remaining Shareholder;

9.8.3.3 the Offering Shareholder shall deliver to the Company and/or the accepting Remaining Shareholder, as applicable:

9.8.3.3.1 the original share certificates in respect of the shares forming part of the relevant Forced Sale Equity;

9.8.3.3.2 to the extent applicable, instruments of transfer in respect of the shares forming part of the relevant Forced Sale Equity, duly completed and signed by the Offering Shareholder, with the accepting Remaining Shareholder stipulated as the transferee;

9.8.3.3.3 to the extent applicable, a cession of the Offered Loan Claims signed by the Offering Shareholder, with the accepting Remaining Shareholder stipulated as the cessionary; and

9.8.3.3.4 resignations of the Director/s appointed or nominated for appointment by the Offering Shareholder and written acknowledgements that they have no claims against the

Company in their capacity as Director/s (save for any amounts due to each in the ordinary and normal course in respect of salary, fees and properly incurred expenses);

- 9.8.4 the Company and/or the accepting Remaining Shareholder, as applicable, shall pay the relevant purchase price to the Offering Shareholder, on the Forced Sale Closing Date, against fulfilment by the Offering Shareholder of its obligations in paragraph 9.1 into such bank account(s) as may be nominated for such purposes in writing by the Offering Shareholder; and
- 9.8.5 the Offering Shareholder gives the warranties set out in paragraph 9.9 to and in favour of the Company and/or the relevant accepting Remaining Shareholder on the acceptance of the Forced Sale Offer, and the Forced Sale Closing Date.
- 9.9 In respect of a sale of Offered Shares and Offered Loan Claims by an Offering Shareholder to an accepting Remaining Shareholder in terms of this paragraph 9, the Offering Shareholder gives the following warranties:
- 9.9.1 the Offering Shareholder is the sole owner of the Offered Shares and has not conferred on any person any interest in or to any of the Offered Shares;
- 9.9.2 the Offering Shareholder is entitled to sell, cede and transfer the Offered Shares to the accepting Remaining Shareholder, free of any encumbrances;
- 9.9.3 upon delivery to the accepting Remaining Shareholder, the Offering Shareholder will have transferred to the accepting Remaining Shareholder the sole beneficial interest in or to any and all of the Offered Shares;
- 9.9.4 the Offering Shareholder has not, in respect of all or any of the Offered Shares, entered into or conferred on any person any pledge, security cession, lien or other preferential right;
- 9.9.5 the Offering Shareholder has not, in respect of all or any of the Offered Shares, granted to any person any right, including any option or right of first refusal or pre-emption or any other right, at any time to acquire any of the Offered Shares or any right in relation to the Offered Shares;
- 9.9.6 the Offering Shareholder is the sole beneficial owner of the Offered Loan Claims and is entitled and able to give free and unencumbered title of the

Offered Loan Claims to the accepting Remaining Shareholder. Upon delivery and/or cession to the accepting Remaining Shareholder, the accepting Remaining Shareholder will be the beneficial owner of the relevant Offered Loan Claims to the exclusion of all others;

9.9.7 the Offering Shareholder has not conferred on any person any right, including any option or right of first refusal or pre-emption or any other right, to at any time acquire any portion of the Offered Loan Claims or any right in relation to the Offered Loan Claims.

9.10 If the Offering Shareholder fails or refuses to:

9.10.1 transfer the Offered Shares, then any Director shall, if so required by an accepting Remaining Shareholder, be entitled to authorise any person to execute transfer of the Offered Shares in favour of the Company and/or the relevant accepting Remaining Shareholder and to:

9.10.1.1 in the case of a transfer to the Company, cancel the relevant Offered Shares in the Company's securities register;

9.10.1.2 in the case of a transfer to accepting Remaining Shareholder, enter the relevant accepting Remaining Shareholder in the Company's securities register as the holders of the relevant Offered Shares;

9.10.2 sign any cession, assignment or other required document provided for in this paragraph 9 and fail to hand any document to the Company or its representatives within five Business Days after being called upon in writing to do so, then the Offering Shareholder irrevocably in *rem suam* appoints any Director, nominated by the Company for that propose, with the power of substitution, as the agent of the Offering Shareholder to sign any cession, assignment or such other required document for and on their behalf.

## 10. **Determination of FMV**

For purposes of determining the FMV as contemplated in paragraph 9, the following procedure shall apply:

10.1 The Controlling Shareholder, on the one hand, and the Significant Shareholders (jointly, if applicable), on the other hand, shall independently undertake their own

respective valuation of the relevant shares or business by applying appropriate valuation methodologies.

- 10.2 The Controlling Shareholder and the Significant Shareholders will present their respective valuations to each other.
- 10.3 If the valuations are within 5% of each other, the average of the two valuations shall be taken. If the valuations are not within 5% of each other, the Controlling Shareholder and the Significant Shareholders will attempt to negotiate an agreed value based on their independent views.
- 10.4 If an agreement is not reached within 20 Business Days, the Controlling Shareholder and the Significant Shareholders shall endeavour to agree on the appointment of a reputable non-conflicted international investment bank (the "**Independent Expert**") to perform an independent valuation of the Offered Shares by applying appropriate valuation methodologies.
- 10.5 If the Controlling Shareholder and the Significant Shareholders cannot agree on the selection of the Independent Expert within five Business Days, a reputable non-conflicted international investment bank will be appointed as the Independent Expert by the President of the South African Institute of Chartered Accountants (or its successor in title) upon request by any of the Controlling Shareholder and/or the Significant Shareholders.
- 10.6 The Independent Expert shall allow the Controlling Shareholder and the Significant Shareholders to make written submissions to the Independent Expert:
- 10.6.1 before the Independent Expert issues the first draft of his/her report on the valuation; and
- 10.6.2 after the Independent Expert has issued the first draft of his/her report on the valuation and before the Independent Expert issues his/her final report on the valuation.
- 10.7 The Controlling Shareholder and the Significant Shareholders undertake to abide by the Independent Expert's view, which shall be final and binding except in the instance of manifest error.
- 10.8 The cost of the Independent Expert shall be borne by the party whose initially proposed valuation deviates most from the valuation of the Independent Expert.

- 10.9 Appropriate valuation methodologies include, but is not limited to, discounted cash flow analysis, comparable company trading multiple analysis and comparable transactions multiple analysis. The Company shall co-operate and provide all reasonable assistance to the Independent Expert to perform the valuation, including by providing detailed cash flow forecasts and business plans reasonably requested by the Independent Expert.
- 10.10 Discounted cash flow analysis shall be done on a country-by-country basis by reference to the cost of capital of the relevant country (or that of a similar country if there is insufficient data).
- 10.11 No discount shall be applied to reflect lack of liquidity or minority shareholdings.