

## Annexure to AGM Notice

**To: JSE Shareholder**

**From: JSE Board**

**Date: 28 March 2013**

**Subject: Special Resolution number 2 – New JSE Limited Memorandum of Incorporation**

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**Special Resolution number 2 proposes the substitution of the JSE's existing Memorandum of Incorporation (formerly the Company's Memorandum and Articles of Association) with a new Memorandum of Incorporation ("new MOI").**

Set out below is a summary of the salient features of the new MOI that is proposed to be adopted at the annual general meeting of the Company on 25 April 2013. The new MOI incorporates changes necessitated by the coming into force of the Companies Act and the Companies Regulations, 2011 promulgated in terms of the Companies Act, 2008 (Act No.71 of 2008) ("the Companies Act") which replaced the previous Companies Act, 1973 (Act No. 61 of 1973) ("previous Companies Act"). The Company's existing MOI (formerly the Company's Memorandum and Articles of Association) ("existing MOI") remains in force and effect for a period of two years from 1 May 2011, being the date on which the Companies Act came into effect. Thereafter, if the Company has not adopted a new MOI that has been harmonised with the Companies Act, any provision of the existing MOI which contravenes or is inconsistent with the Companies Act shall be void. Accordingly, before 30 April 2013, the Company is required to adopt a new MOI that conforms to the Companies Act. The new MOI is also drafted to comply with the JSE Listings Requirements. Where provisions were not required to be amended for purposes of the Companies Act or the JSE Listings Requirements, the provisions of the existing MOI have been retained as far as reasonably possible.

The salient features of the new MOI, including the most important changes and new provisions, are as follows:

### 1. Definitions

The definitions and other terminology used in the new MOI reflect the terminology used in the Companies Act.

### 2. Amendment of MOI

- 2.1 The new MOI may be amended by the adoption of a special resolution by shareholders. A resolution for the amendment of the MOI may be proposed by the board of directors or by shareholders entitled to exercise at least 10% of the voting rights that may be exercised on such resolution.
- 2.2 If any proposed amendment to the MOI relates to the variation of any preferences, rights, limitations or other terms attaching to any class of shares in issue (other than ordinary shares), such amendment must also be approved by a special resolution of the holder of that class of shares.

### 3. Alteration of MOI

The board of directors has the power to alter the MOI to correct patent errors in spelling, punctuation, reference, grammar or similar defect on the face of the document.

### 4. Rules

The new MOI restricts the power of the board of directors to make rules for the Company as contemplated in the Companies Act, in accordance with the JSE Listings Requirements.

### 5. Company records accounting records

The new MOI contains provisions incorporating the principles of sections 24, 28 and 30 of the Companies Act relating to the records that the Company is required to keep and shareholders' right of access to Company records.

### 6. Extended accountability requirements

The Company is required, in terms of the Companies Act, to appoint a company secretary, an auditor and an audit committee, and, unless exempted, a social and ethics committee.



JSE Limited Registration Number: 2005/022939/06

One Exchange Square, Gwen Lane, Sandown, South Africa.  
Private Bag X991174, Sandton, 2146, South Africa. Telephone:  
+27 11 520 7000, Facsimile: +27 11 520 8584, www.jse.co.za

Member of the World Federation of Exchanges

Executive Director: NF Newton-King (CEO)

Non-Executive Directors: HJ Borkum (Chairman), AD Botha,  
MR Johnston, DM Lawrence, A Mazwai, NS Nematswerani,  
N Nyembezi-Heita, N Payne, Dr. MA Matooane, NP Mnxasana

Alternate Directors: JH Burke, LV Parsons

Company Secretary: GC Clarke

## **7. Authority to alter authorised shares**

The new MOI restricts the board of directors' powers contained in section 36(3) of the Companies Act, relating to, amongst other things, changes to the number of authorised shares of the Company and determining the preferences, rights, limitations and other terms attaching to a class of shares. Any such changes to the Company's authorised share classes will require the approval of a special resolution of the shareholders.

## **8. Issue of securities**

The shareholders may, by way of an ordinary resolution, authorise the Company to issue shares.

If the Company proposes to issue any shares or options other than (i) in terms of options or conversion rights, (ii) for purposes of a share option scheme or share incentive scheme complying with Schedule 14 of the JSE Listings Requirements, (iii) capitalisation shares, (iv) shares issued as consideration for assets acquired or services rendered, or (v) shares issued pursuant to a general or specific approval of shareholders, such issue may only be made *pro rata* to the holdings of the shareholders of the class of shares to be issued.

In terms of section 41 of the Companies Act, a special resolution of shareholders shall be required to authorise share or option issues (i) to directors, prescribed officers, persons related or inter-related to directors or prescribed officers, or their nominees or (ii) if the voting power of the class of shares that are issued or issuable as a result thereof will be equal to or more than 30% of the voting power of all the shares of that class held by shareholders immediately before such issue..

While the shares of the Company are listed, the Company will not be allowed to issue shares in terms of section 40(5) to (7) of the Companies Act (i.e. to issue shares that are not fully paid up).

## **9. Provisions of information by holders of Company's securities**

A person who acquires shares or other securities in the Company is obliged to provide the Company with the necessary information required to administer and maintain the Company's securities register.

If shares or other securities of the Company are registered in the name of a person who is not the sole holder of the beneficial interest in such shares or other securities, the registered holder must disclose information to the Company regarding the identity of the holders of such beneficial interest, as required in terms of section 56 of the Companies Act.

## **10. Odd-lot offers**

The new MOI includes provisions in accordance with the JSE Listings Requirements relating to the right of the Company to implement odd-lot offers.

## **11. Capitalisation shares**

The board of directors have the authority to issue capitalisation shares, on the basis set out in section 47 of the Companies Act.

## **12. Issue of debt instruments**

The board of directors is authorised to issue secured or unsecured debt instruments in terms of section 43 of the Companies Act, provided that debt instruments may not be issued with any special privileges.

## **13. Financial assistance**

The Company may provide financial assistance to any person for the purpose of, or in connection with, the acquisition (whether by way of subscription or purchase) of any option or shares or other securities of the Company or of any company related or inter-related to the Company, subject to the requirements of section 44 of the Companies Act (which requires, amongst other things, the approval of such financial assistance by way of a special resolution of shareholders, unless the financial assistance is pursuant to an employee share scheme that satisfies the requirements of section 97 of the Companies Act).

The Company may provide financial assistance to (i) directors or prescribed officers of the Company or related or inter-related companies, (ii) related or inter-related companies or corporations, (iii) members of related or inter-related corporations or (iv) persons related to any such company, corporation, director, prescribed officer or member, subject to the requirements of section 45 of the Companies Act (which requires, amongst other things, the approval of such financial assistance by way of a special resolution of shareholders, unless the financial assistance is pursuant to an employee share scheme that satisfies the requirements of section 97 of the Companies Act).

## **14. Distributions**

The Companies Act deals with the concept of "distributions", which encompasses dividends and payments to shareholders as contemplated in the previous Companies Act. The concept of a "distribution" is wide and includes, amongst other things, the incurrence of a debt or other obligation by the Company for the benefit of one or more of its shareholders as well as the forgiveness or waiver by the Company of a debt or other obligation owing by one or more shareholders to the Company.

The new MOI regulates that declaration and payment of distributions by the Company, subject to section 46 of the Companies Act and the JSE Listings Requirements.

The board of directors may at any time declare a distribution to be paid to shareholders of any class in proportion to the number of shares held by them in that class.

Distributions will be declared payable or distributable to shareholders registered as such in the Company's securities register on the record date with respect to such distribution, which must be a date subsequent to the date of declaration of the distribution.

All cash distributions will be paid by electronic funds transfer or in such other manner as the board of directors may determine.

No distribution will carry interest as against the Company, unless otherwise resolved by the board of directors.

Any unclaimed distributions payable or distributable to a shareholder may be invested or otherwise made use of by the board of directors for the benefit of the Company until claimed by the person entitled thereto.

Any cash distributions made by the Company will be held by the Company in trust indefinitely until lawfully claimed, but subject to the laws of prescription applicable from time to time.

#### **15. Acquisitions by the Company or its subsidiaries of the Company's shares**

The new MOI makes provision for the repurchase by the Company of its own shares as well as the acquisition by subsidiaries of the Company of shares in the Company, subject to the requirements of the Companies Act and the JSE Listings Requirements, which include shareholder approval by way of a special resolution.

#### **16. Proceedings at shareholders' meetings**

The new MOI includes provisions that regulate shareholders' meetings and shareholders' interactions with the Company.

The material changes from the existing MOI related to the notice period for meetings, the quorum requirement and the procedure for exercising voting rights. Shareholders are advised to consult the new MOI in respect of their rights in relation to shareholders' meetings and the procedure to be followed in respect thereof.

The new MOI provides that a shareholders' meeting may not begin until there are present (or represented) at least three shareholders entitled to vote, and sufficient members entitled to exercise, in aggregate, at least 25% of all voting rights that are entitled to be exercised on a single matter before the meeting. This is a higher requirement than under the existing MOI, which only requires that three shareholders be present or represented.

In terms of the new MOI the following limitations will apply in respect of proxy appointments: (i) a shareholder may not appoint more than one person concurrently as proxies in respect of the same voting rights; (ii) a proxy may not delegate his authority to act on behalf of a shareholder to another person; and (iii) a copy of the instrument appointing a proxy must be delivered to the Company to be received not less than 48 hours before the time appointed for the meeting. Proxy appointments will be valid for a period of one year, unless the instrument appointing the proxy states a shorter period or is revoked.

The board of directors may call a shareholders' meeting at any time. The board of directors will be obliged to call a shareholders' meeting if it is requisitioned by shareholders holding at least 10% of the voting rights entitled to be exercised in respect of the matter for which the meeting is proposed in accordance with the requirements of the Companies Act.

The notice period for meetings is 15 business days.

Voting at shareholders' meetings will take place by way of polling.

The chairperson will not have a casting vote.

Shareholders' meetings may be held electronically and must be reasonably accessible for electronic participation by shareholders.

#### **17. Shareholders acting other than at a meeting**

Shareholders may vote on resolutions in writing in terms of the procedure provided for in section 60 of the Companies Act, provided that such procedure may not be followed in respect of resolutions required by the JSE Listings Requirements, the business of the Company to be conducted at an annual general meeting and the election of directors, which must be considered and voted on at a meeting of shareholders.

#### **18. Record dates**

The record dates by which a shareholder needs to be reflected on the Company's securities register in order to be entitled to rights (e.g. to receive a distribution, to receive notice of meetings, or to participate in and vote at meetings) is to be determined in accordance with the JSE Listings Requirements and the rules of the central securities depository ("CSD"), as long as the Company's shares are listed. If the Company's shares are no longer listed, the board of directors may determine the record date for a particular action or event in accordance with section 59(2) of the

Companies Act. If the board fails to determine a record date for an event or action and the JSE Listings Requirements and CSD rules do not apply, the record date will be the Friday at least three business days before the date of such action or event (or if such Friday is not a business day, the immediately preceding business day).

#### **19. Board of directors**

The board of directors will comprise of at least six directors, the majority of which will be non-executive.

Directors will be elected by the ordinary shareholders of the Company, by a separate ordinary resolution in respect of each director. The board of directors has the power to appoint additional directors and fill vacancies, which appointments will only remain valid until the next annual general meeting of the Company.

The Company will be entitled to pay remuneration to directors for their services as directors, provided that such remuneration is approved by a special resolution of the shareholders. Executive directors will not be entitled to receive any remuneration for their services as directors in addition to the remuneration they receive as employees of the Company.

Directors will be paid all their travelling and other expenses properly and necessarily incurred by them in and about the business of the Company, and in attending board and committee meetings.

At each annual general meeting of the Company one third of all directors (those having been in office the longest) will retire. This changes the current position in the existing MOI which determines that one third of only non-executive directors will retire every year.

Any shareholder is entitled to nominate a person for election to the board of directors of the Company, in accordance with the procedure set out in the new MOI.

The new MOI includes provisions that regulate the board's proceedings.

#### **20. Board committees**

The new MOI contains high-level provisions regarding the establishment of board committees and the regulation of their activities.

#### **21. Interests of directors**

The new MOI reflects the provisions of the Companies Act dealing with personal financial interests of directors and prescribed officers, and the duty to disclose same.

#### **22. Indemnity and directors' insurance**

The new MOI makes provision for the indemnification of, and the procuring of insurance for, directors to the full extent allowed by the Companies Act.

#### **23. Notices**

The new MOI allows for the giving of notice to shareholders and other persons entitled to receive notice in terms of the Companies Act in any manner allowed in terms of the Companies Regulations, 2011, which includes notice by way of fax or e-mail.

By order of the Board

G C Clarke

Group Company Secretary

28 March 2013