

# Notice of extraordinary general meeting



BRAIT SE

(Registered address: 4th Floor, Avantech Building, St Julian's Road, San Gwann, SGN, 2805, Malta)

(Registration Number:SE1) ISIN:LU0011857645

Share code: BAT Bond code: WKN: A25BSU ISIN: XS2088760157 LEIcode: 549300VB8GBX4UO7WG59

("Brait" or the "Company")

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**Notice is hereby given to all the holders of ordinary shares ("Ordinary Shareholders"), directors and auditors of Brait of the extraordinary general meeting ("EGM") of the Company to be held at 08h30CET on Friday, 30 October 2020 at 4th Floor, Avantech Building, St. Julian's Road, San Gwann SGN 2805, Malta to consider and, if deemed fit approve the resolutions set out in the Agenda**

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## AGENDA

### 1. Proposed Conversion

#### Principal purpose of proposed Extraordinary Resolution

Pursuant to the stated objective of reducing costs, as well as simplifying processes, the board of directors (the “**Board**”) proposes that the Company’s registered office be transferred from Malta to Mauritius, where the Company’s main investment subsidiary, Brait Mauritius Limited is domiciled (the “**Redomiciliation**”).

The Redomiciliation is conditional upon the Company being converted into a public limited company under the laws of Malta in accordance with the provisions of Article 66 of Council Regulation (EC) No. 2157/2001 of 8 October 2001 (the “**Conversion**”).

The key principles of the above are summarised in Annex 1 to this Notice of EGM.

The Conversion requires *inter alia* the approval by the EGM of the Draft Terms of Conversion (“**Draft Terms**”) required by Article 66(3) of the Regulation and as published by the Maltese Business Registry (“**MBR**”) on Thursday, 30 July 2020 (as defined in Annex 1 to this Notice of EGM), and of the New Memorandum and Articles of Association (as defined in Annex 1 to this Notice of EGM and as summarised in Annex 2 to this Notice of EGM).

#### Proposed Extraordinary Resolution 1

That:

- a. the Draft Terms be and are hereby approved;
- b. the Conversion, on the terms set out in the Draft Terms, be and is hereby approved;
- c. the amendments to the existing memorandum and articles of association of the Company, in accordance with the details set out in Annex 2 to this Notice of EGM be and are hereby approved and accordingly, the New Memorandum and Articles of Association be adopted as the memorandum and articles of association of the Company in substitution for, and to the exclusion of, the existing memorandum and articles of association of the Company.

### 2. Proposed Redomiciliation

#### Principal purpose of proposed Extraordinary Resolution

That, subject to Resolution 1 being passed by the requisite majority, the Board proposes that the Redomiciliation be approved in accordance with the Continuation of Companies Regulations (SL 386.05) (the “**Redomiciliation Regulations**”) issued in terms of the Act (as defined in Annex 1 to this Notice of EGM).

#### Proposed Extraordinary Resolution 2

That, subject to Resolution 1 being passed by the requisite majority, the Redomiciliation be and is hereby approved.

### 3. Adoption of the New Constitution

#### Principal purpose of proposed Extraordinary Resolution

In connection with the Redomiciliation, and subject to Resolution 1 and Resolution 2 being passed by the requisite majority, the Board proposes the New Constitution (as defined in Annex 1 to this Notice of EGM, summarised in Annex 3 of this Notice of EGM and set out in full in Annex 4 of the Notice of EGM) to reflect the new registered office of the Company and to comply with Mauritian law. It is proposed that the Company adopts the New Constitution to replace the New Memorandum and Articles of Association upon the Redomiciliation becoming effective. In terms of the Redomiciliation Regulations, the Redomiciliation may only become effective after three months from publication of the notice relating to the approval of the Redomiciliation, provided *inter alia* that there is no creditor objection.

#### Proposed Extraordinary Resolution 3

That, subject to Resolution 1 and Resolution 2, being passed by the requisite majority, the amendments to the New Memorandum and Articles of Association of the Company, in accordance with the details set out in Annex 3 to this Notice of EGM, be and are hereby approved and accordingly, the New Constitution be adopted as the memorandum and articles of association of the Company in substitution for, and to the exclusion of, the New Memorandum and Articles of Association, with such substitution to take effect upon the Redomiciliation becoming effective.

### 4. Long-Term Incentive Plan

#### Principal purpose of proposed Ordinary Resolution

Further to the announcements at the time of Brait’s recapitalisation transaction concluded in February 2020 and the appointment of Ethos Private Equity (“**Ethos**”) as the advisor to Brait (“**Advisor**”), it was communicated to Shareholders that the new Brait Board (“**Board**”) would consider the structure for a new Long-Term Incentive Plan (“**LTIP**”) for Ethos and its employees working on the Brait portfolio. The LTIP is a five-year structure which has been designed to align the interests of the Advisor with those of Shareholders in delivering on Brait’s revised strategy of realising value from the portfolio over the medium term, whilst minimising dilution to Shareholders. The principal features of the LTIP are summarised in Annex 5 to this Notice of EGM.

Although not required under applicable law or stock exchange requirements, the Board is voluntarily seeking Shareholder approval for the LTIP.

#### Proposed Ordinary Resolution 4

That the LTIP be and is hereby approved.

### 5. Board authority

#### Principal purpose of proposed Ordinary Resolution

Subject to the approval of Resolution 1 and/or Resolution number 2 and/or Resolution 3 and/or Resolution 4 by the requisite majority, the Board proposes that the Company authorise the Board to take all such steps as are necessary or desirable in connection with the same.

#### Proposed Ordinary Resolution 5

That, subject to the approval of Resolution 1 and/or Resolution number 2 and/or Resolution 3 and/or Resolution 4 by the requisite majority, the Board be hereby authorised to do all acts and things necessary to adopt and effect the transactions pursuant to such resolutions, including making such modifications as the Board reasonably considers appropriate, necessary or desirable to complete, implement and give effect to the same.

## NOTES

Any Ordinary Shareholder may, in writing, appoint a proxy, who need not be an Ordinary Shareholder, to represent him/her at the EGM.

Any company, being an Ordinary Shareholder, may execute a form of proxy under the hand of a duly authorised officer. The instrument appointing a proxy together with evidence of the authority of the person by whom the proxy is signed (except in the case of a proxy signed by the Ordinary Shareholder), shall be deposited at the registered office of the Company, 24 hours before the time for the holding of the EGM or its adjournment (as the case may be) at which the person named in such instrument proposes to vote. No instrument appointing a proxy shall be valid after the expiration of 12 months from the date of its execution. Any Ordinary Shareholder may, instead of sending the proxy form to the registered office, send the proxy form (completed in accordance with its instructions) to the appropriate transfer agent 48 hours prior to the EGM in order that the transfer agents may be able to send the proxy form on his/her behalf to the registered office 24 hours before the time for holding of the meeting.

A form of proxy is enclosed within this notice, the completion of which will not preclude an Ordinary Shareholder from attending and voting at the EGM in person to the exclusion of any proxy appointed.

Resolutions 1, 2 and 3 are to be proposed as extraordinary resolutions and resolutions 4 and 5 are to be proposed as ordinary resolutions.

Ordinary resolutions may be passed at the EGM by a simple majority representing more than 50 per cent. of the voting rights attached to shares represented and entitled to vote at the EGM. Extraordinary resolutions require a 75 per cent. majority by nominal value of shares represented at the EGM and entitled to vote and at least 51 per cent. in nominal value of all the shares entitled to vote at the EGM.

The quorum requirement in relation to both ordinary resolutions and extraordinary resolutions is at least two members holding shares granting the right to vote in the Company who are present or represented at the EGM.

By order of the Board,



**Anjelica Camilleri deMarco**

*Company Secretary*

Date: 9 October 2020

Registrar and Transfer Agent  
Luxembourg  
Maitland Luxembourg S.A.  
58, rue Charles Martel,  
Luxembourg  
L-2134

Registrar and Transfer Agent  
South Africa  
S.A. Computershare Investor Services (Proprietary) Limited  
Rosebank Towers  
15 Biermann Avenue  
Rosebank, 2096  
(Private Bax X9000, Saxonwold, 2132)

## ANNEX1: OVERVIEW OF THE REDOMICILIATION

As previously announced by the Company on 13 May 2020 and 24 June 2020, pursuant to the stated objective of reducing costs and simplifying processes, the Board proposed that the Company be redomiciled under the laws of Mauritius, where the Company's main investment subsidiary, Brait Mauritius Limited, is domiciled.

The Redomiciliation and required processes as set out below will not impact the Company's primary listing on the Euro MTF Market of the LuxSE or its secondary listing on the JSE. No amendments will be required to the terms and conditions of the GBP 150 million 6.5% convertible bonds due 4 December 2024 ("**2024 Bonds**"). In addition, the share capital of the Company will not be affected.

### Conversion

- In view of Maltese legal requirements whereby a company may only request the consent of the Registrar of Companies for it to be continued under the laws of another country or jurisdiction, if such company is registered as a Maltese company under the Companies Act (Chapter 386 of the Laws of Malta) (the "**Act**"), the conversion of the Company as a public limited company under the Act is a necessary and a critical step in the process leading to its redomiciliation under the laws of Mauritius.
- It is therefore being proposed that the Company be converted into a public limited company under the laws of Malta in accordance with the provisions of Article 66 of Council Regulation (EC) No. 2157/2001 of 8 October 2001 (the "**Regulation**"). In accordance with Article 66(2) of the Regulation, the Conversion will not result in the winding up of the Company or in the creation of a new legal person.
- The Board is of the opinion that the Conversion is not expected to cause any significant adverse economic impact for the Company and its Shareholders.
- Following the Conversion, the Company will exist as a Maltese-registered public limited company, subject to the laws applicable to public limited companies, particularly the Act. It will continue its current activities in the form of a public limited company registered under the Act.
- The Board has drawn up the Draft Terms of Conversion ("**Draft Terms**") required by Article 66(3) of the Regulation. The Draft Terms were published by the Maltese Business Registry ("**MBR**") on 30 July 2020. Together with an explanatory report also drawn up by the Board in terms of Article 66(3) of the Regulation as well as an independent expert's report drawn up by PricewaterhouseCoopers in terms of Article 66(5) of the Regulation, the Draft Terms are available for inspection at the registered office of the Company during normal business hours (Saturdays, Sundays and official public holidays excepted) until the date of the EGM.

### New Memorandum and Articles of Association (amendments overview provided in Annex 2)

- As a public limited company registered under the laws of Malta, the Company is required to adopt an amended statute, compliant with the Act (the "**New Memorandum and Articles of Association**").
- The Board of Directors confirms that the New Memorandum and Articles of Association are substantially in the same form as the existing Memorandum and Articles of Association, save for such amendments made to bring the document in line with the requirements of Maltese law.
- The amendments incorporated in the New Memorandum and Articles of Association are attached per Annex 2 and a copy of the full New Memorandum and Articles of Association will be available for inspection at the registered office of the Company during normal business hours (Saturdays, Sundays and official public holidays excepted) from the date of issue of this notice of meeting, as well as on the Company's website.

### Redomiciliation

- The Redomiciliation requires the approval of the Shareholders, and also remains subject to certain other regulatory and third-party approvals. If the requisite approvals are obtained, the Company will be relocated to Mauritius whilst retaining its legal identity, by written consent from the Maltese Registrar of Companies. Such consent shall permit the Company to continue as a company outside Malta and for the Company's domicile to be transferred under the laws of Mauritius.

### New Constitution of the Company (overview provided in Annex 3)

- As a public limited company registered under the laws of Mauritius, the Company will adopt an amended statute, compliant with the Companies Act 2001 of Mauritius (the "**New Constitution**").
- The Board confirms that the New Constitution is substantially in the same form as the New Memorandum and Articles of Association, save for such amendments made to bring the document in line with the requirements of Mauritian law.
- The key amendments incorporated in the New Constitution are attached per Annex 3 and a copy of the full New Constitution is attached per Annex 4 and is available for inspection at the registered office of the Company during normal business hours (Saturdays, Sundays and official public holidays excepted) from the date of issue of this notice of meeting, as well as on the Company's website.

## ANNEX 2: AMENDMENTS INCORPORATED IN THE NEW MEMORANDUM AND ARTICLES OF ASSOCIATION

The Company's Memorandum and Articles of Association will be amended to cater for the conversion of Brait SE, a European public limited liability company registered in Malta, to Brait p.l.c., a public limited company registered in Malta.

The amendments to the Company's Memorandum and Articles of Association incorporated in the New Memorandum and Articles of Association are:

- The change in the Company's name from Brait SE to Brait p.l.c. will require amendments to:
  - the Memorandum of Association heading, whereby 'Brait SE' will be replaced by 'Brait p.l.c.';
  - the Memorandum of Association clause 1 ("Name"), whereby 'Brait SE' will be replaced by 'Brait p.l.c.';
  - the Articles of Association heading, whereby 'Brait SE' will be replaced by 'Brait p.l.c.', and
  - the Articles of Association clause 12(o) ("Proceedings at General Meetings"), whereby the template proxy form will refer to 'Brait p.l.c.' instead of 'Brait SE'.
- The change to the Company's legal form from a European public limited liability company to a Maltese public limited liability company requires the following amendments:
  - the Memorandum of Association clause 2 ("European Public Company"), whereby the clause title will refer to 'Public Company' instead of 'European Public Company' and 'European public limited liability company (Societas Europaea)' will be replaced by 'public limited liability company';
  - the Articles of Association clause 1 ("Preliminary"), whereby the reference to the Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE) as the 'Regulation' will be removed;
  - the Articles of Association clause 13(e)(ii) ("The Board of Directors"), whereby reference to the 'Regulation' will be removed, and
  - the Articles of Association clause 14(a) ("Proceedings at Board of Directors"), whereby reference to the 'Regulation' will be removed.
- An amendment to the frequency of board meetings (whereby the number of board meetings to be held every year will be revised from every 3 months to three times per annum) and accordingly in clause 14 ("Proceedings at Board of Directors") of the Articles of Association the words "once every three months" will be replaced by "three times a year".
- Updates to the Company's previously recorded capital (Clause 7 ("Capital") of the Memorandum of Association, shareholders (Clause 10 ("Shareholders") of the Memorandum of Association) and directors (Clause 11 ("Directors") of the Memorandum of Association) will also be included in the New Memorandum and Articles of Association.

The New Memorandum and Articles of Association will be available for inspection at the registered office of the Company during normal business hours from the date of issue of this notice of meeting, as well as on the Company's website.

## ANNEX 3: OVERVIEW OF THE NEW CONSTITUTION

The Company's New Memorandum and Articles of Association will be amended to cater for the redomiciliation of Brait p.l.c. from a public limited liability company registered in Malta, to a Global Business ("GB") public limited company in Mauritius. In accordance with Mauritian law, the Company's New Memorandum and Articles of Association will be replaced by the New Constitution.

The key amendments to the Company's New Memorandum and Articles of Association included in the New Constitution are:

- Incorporation of the Company's Memorandum of Association and Articles of Association into the New Constitution: References to "Constitution" have resulted in amendments to the Heading, clause 10 ("Preference shares"), clause 12 ("Secretary"), clause 14 ("Share capital and variation of Rights"), clause 16 ("Transfer"), clause 17 ("Forfeiture or surrender of shares"), clause 19 ("Registers"), clause 24 ("Proceedings at General Meetings"), clause 25 ("The Board of Directors"), clause 26 ("Proceedings at Board of Directors"), clause 27 ("Representation and Delegation"), clause 29 ("Dividends and Reserves"), clause 32 ("Special Resolutions"), clause 34 ("Notices"), clause 38 ("Arbitration").
- The Company will seek dispensation from the Mauritian Registrar of Companies to retain the name Brait PLC. If the requisite approval is not granted, the Company's name will be changed from Brait p.l.c. to Brait Limited in terms of the Mauritian company naming conventions. A change in the Company's name to Brait Limited will result in amendments to the Heading, clause 1 ("Name") and signature block.
- The Company's conversion to a Mauritian GB company with a Mauritian registration and domicile has resulted in amendments to clause 2 ("Public Company"), clause 3 ("Registered Office") and clause 10 ("Preference shares"). The applicability of Mauritian laws to the Company have resulted in amendments to clause 4 ("Interpretation"), clause 5 ("Objects"), clause 6 ("Powers of the Company"), clause 8 ("Capital"), clause 10 ("Preference shares"), the removal of the clause "Shareholders General Public", clause 11 ("Directors"), clause 12 ("Secretary"), clause 13 ("Resolutions"), clause 14 ("Share Capital and Variation of Rights"), clause 16 ("Transfers"), clause 17 ("Forfeiture or Surrender of Shares") and clause 26 ("Proceedings at Board of Directors"). The GB license requirements require the appointment of an Administrator which impacts on clause 4 ("Interpretation") and the insertion of a new clause 28 ("Administrator"). New clauses 38 ("Arbitration") and 39 ("Data Protection") have also been included as required in terms of Mauritian company requirements.
- The naming conventions for shareholder meetings have been updated in terms of Mauritian law to refer to Annual and Special Meetings (General and Extraordinary meetings having been applicable under Maltese legislation). As a result, all references to "general" meetings have required amendment in clauses 9 ("Ordinary Shares"), 10 ("Preference Shares"), 12 ("Secretary"), 14 ("Share Capital and Variation of Rights"), 15 ("Call on Shares"), 20 ("Meetings"), 21 ("Annual Meeting"), 22 ("Special Meeting"), 23 ("Notice of Meetings"), 24 ("Proceedings at General Meetings"), 25 ("The Board of Directors"), 26 ("Proceedings at Board of Directors"), 29 ("Dividends and Reserves"), 30 ("Accounts"), 33 ("Capitalisation of Reserves"), and 35 ("Meetings by Telephone"). Consequent amendments to references to "extraordinary resolutions" have resulted in amendments to clauses 10 ("Preference Shares"), 14 ("Share Capital and Variation of Rights"), 32 ("Special Resolutions") and 33 ("Winding Up").
- A special resolution means a resolution approved by a majority of 75 per cent of the votes of those shareholders entitled to vote and voting on the question in terms of Mauritius company law. In terms of Mauritian statute, an ordinary resolution shall be a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the matter which is the subject of the resolution. A resolution in writing, signed by shareholders, shall be valid as if it has been passed at a meeting of those shareholders, where the resolution is signed by shareholders who are entitled to vote on that resolution at a meeting of shareholders and hold not less than 75 per cent of the votes entitled to be cast on that resolution, in terms of Mauritian law. The incorporation of the Mauritian voting requirements has resulted in amendments to clause 10 ("Preference Shares") and clause 32 ("Special Resolutions").

The New Constitution will be available for inspection at the registered office of the Company during normal business hours from the date of issue of this notice of meeting, as well as attached per Annex 4.

### CONSTITUTION OF BRAIT PLC

#### 1 NAME

The name of the Company is BRAIT PLC.

#### 2 PUBLIC COMPANY

The Company shall be a public limited liability company, holding a Global Business Licence issued by the Financial Services Commission under section 72(6) of the Financial Services Act 2007.

#### 3 REGISTERED OFFICE

The registered office of the Company shall be situated at Suite 420, 4th Floor, Barkly Wharf, Le Caudan Waterfront, Port Louis, Mauritius or at such other address as may be determined by the board of Directors of the Company.

#### 4 INTERPRETATION:

The terms of the Act are negated, modified, adopted and extended as provided for by this Constitution.

“**Act**” means the Companies Act 2001 of Mauritius;

“**Administrator**” means the Management Company appointed to act as administrator of the Company under Article 28;

“**Central Securities Depository**” means a person authorised to carry on one or more of the following functions:

- (a) provision of custody or depository facilities in respect of financial instruments;
- (b) maintenance of registers of members and holders of financial instruments and recording of transactions and holdings in financial instruments;
- (c) provision, management and administration of a securities clearing and settlement system in respect of financial instruments, including the provision of access and interoperable links between such a system and other securities clearing and settlement systems;
- (d) central securities depositories, central counterparties and clearing houses; and
- (e) authentication of register of members or holders of designated financial instruments or of any extract thereof.

“**Company**” means this company;

“**Debt Securities**” means debentures, loan stock, bonds or other securities creating or otherwise acknowledging indebtedness, but excluding such securities that are issued as debt securities but have an option or right to be converted into share capital of the Company;

“**Directors**” means the Directors of the Company;

“**Equity Securities**” means shares in the Company of whatever class or any other securities that can be converted into or exchanged for, or which carry the right to subscribe for, share/s of whatever class in the Company;

“**Listed Security/ies**” means Debt or Equity Securities of the Company that have been admitted to trading on a Securities Exchange;

“**Management Company**” means a company holding a management license issued under section 77 of the Financial Services Act 2007;

“**Member**” means a holder of shares in the Company, alternatively, a shareholder;

“**Securities Exchange**” means a market, exchange, place or facility, including an organised over the counter market, that provides for bringing together, on a regular basis, buyers and sellers of securities to negotiate or conclude purchases or sales of securities in accordance with the rules of securities exchange;

“**Securities**” means Debt and/or Equity Securities.

#### 5 OBJECTS

5.1 The objects of the Company are:

- 5.1.1 to subscribe for, take, purchase, sell, dispose of, invest in, exchange or otherwise acquire, hold, manage, develop, deal with and turn into account any bonds, debentures, shares (whether fully paid or not), stocks, options or securities of governments, states, municipalities, public authorities, or public or private, limited or unlimited companies, and whether on a cash or margin basis and including short sales and to lend or borrow money against the security of such bonds, debentures, shares, stocks, options or other securities;
- 5.1.2 to purchase, acquire, own, hold, manage, lease, administer, sell or otherwise dispose of property of any kind, whether immovable or movable, personal or real, and whether or not belonging to the Company;
- 5.1.3 to lend and advance money or give credit to companies which are not banks or financial institutions and which belong to the same group of companies as the Company to the extent permitted by law;
- 5.1.4 to obtain loans, overdrafts, credits and other financial and monetary facilities without limit and otherwise borrow or raise money in such manner as the Company shall think fit (including through the issuance of notes, bonds and debentures of any kind of debt and/or equity securities), whether as sole borrower or jointly with other persons and/or severally, and to provide by way of security for the repayment of the principal and interest thereon and/or the fulfilment of any of the Company's obligations, a hypothec, pledge, privilege, lien, mortgage or other charge or encumbrance over the assets of the Company;
- 5.1.5 to guarantee the obligations and/or the repayment of indebtedness of any person although not in furtherance of the Company's corporate purpose and irrespective of whether or not the Company receives any consideration or derives any direct or indirect benefit therefrom, and to secure such guarantee by means of a hypothec, privilege, lien, mortgage, pledge or other charge or encumbrance over the assets of the Company;
- 5.1.6 to enter into any transaction or agreement which is subject to, governed by or part of (or capable of being entered into under) any capital markets master agreement (including under an ISDA Master Agreement) (the “**Master Agreement**”) and to execute and deliver any such Master Agreement or any confirmation or other confirming evidence of any such transaction under such Master Agreement;
- 5.1.7 to perform any obligations under any such transaction as referred to in Article 5.1.5 or Master Agreement and to so enter into, execute and deliver and perform any swaps, futures, forwards, derivatives, options, repurchase and similar transactions or transactions in the context hereof or combinations of any of the foregoing. The Company may generally employ any techniques and instruments relating to investments for the purpose of their efficient management, including techniques and instruments designed to protect it against credit, currency exchange, interest rate risks and other risks;

- 5.1.8 to carry out such activities as may be ancillary to the above or as may be necessary or desirable to achieve the above objects.
- 5.2 Nothing in the foregoing shall be construed as empowering or enabling the Company to carry out any activity or service which requires a licence or other authorisation under any law in force in Mauritius without such a licence or other appropriate authorisation from the relevant competent authority.
- 5.3 The foregoing objects shall be construed consistently with and subject to the provisions of the Companies Act, 2001.

## **6 POWERS OF THE COMPANY**

- 6.1 In attaining its objects, the Company shall have the following powers:
- 6.1.1 To purchase, and acquire and to sell and transfer, take on or grant on lease, exchange, any asset and to carry out such amelioration, upgrading or reconstruction work on such assets as may be necessary for the development of the Company.
- 6.1.2 To sell, manage, improve, process, manufacture, exchange, insure, let on lease or otherwise, mortgage, dispose of, turn to account, grant rights and privileges in respect of, or otherwise deal with all or any part of the property and rights of the Company for such consideration as the Company may think fit.
- 6.1.3 To appoint agents of the Company in any part of the world.
- 6.1.4 To enter into any arrangements with any governments or authorities, municipal, local or otherwise, in any part of the world, and to obtain from any such government or authority all rights, concessions and privileges that may seem conducive to the Company's objects, or any of them.
- 6.1.5 To enter into partnership, joint venture or into any arrangement for sharing profits, union of interests, reciprocal concession, or co-operation with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which the company is authorised to carry on or engage in, and to take or otherwise acquire and hold shares or stock in or securities of any such company, and to subsidise or otherwise assist any such person or company.
- 6.1.6 To acquire and undertake the whole or any part of the business, goodwill and assets of any person, firm or company carrying on or proposing to carry on any of the businesses which this Company is authorised to carry on, and as part of the consideration for such acquisition to undertake all or any of the liabilities of such person, firm or company, or to acquire an interest in, amalgamate with or enter into any arrangement for sharing profits, or for co-operation, or for limiting competition, or for mutual assistance with any such person, firm or Company, and to give or accept, by way of consideration for any of the acts or things aforesaid or property acquired, any shares, debentures, debenture stock or securities that may be agreed upon, and to hold and retain or sell, mortgage and deal with any shares, debentures, debenture stock or securities so received.
- 6.1.7 To lend and advance money or give credit to such persons and on such terms as may seem expedient to the Company, only where necessary and in relation to the business of the Company, and to the extent permitted by law.
- 6.1.8 To draw, make, accept, endorse, negotiate, discount, execute or issue promissory notes, bills of exchange and other negotiable or transferable instruments.
- 6.1.9 To receive dividends, capital gains, royalties and similar income, rents, interest, any other income or gains derived from investments (including income or gains on the disposal of such investments), and profits or gains attributable to a permanent establishment (including a branch).
- 6.1.10 To employ any number of workers for the purposes for which the Company is established and to remunerate any person, firm or company rendering services to the Company, whether by cash payment or by the allotment to him or them of shares or securities of the Company credited as paid up in full or in part or otherwise.
- 6.1.11 To pay all or any expenses incurred in connection with the formation, promotion and incorporation of the Company, or to contract with any person, firm or company to pay the same, and to pay commissions to brokers and others for underwriting, placing, selling or guaranteeing the subscription of any shares, debentures, debenture stock or securities of this Company.
- 6.1.12 To grant pensions, allowances, gratuities and bonuses to Directors, ex-Directors, officers, ex-officers, employees or ex-employees of the Company or the dependants or relatives of such persons.
- 6.1.13 To promote any other company for the purpose of acquiring all or any of the property or undertaking any of the liabilities of the Company, or of undertaking any business or operations which may appear likely to assist or benefit the Company or to enhance the value of any property or business of the Company, and to subscribe for or otherwise acquire all or any part of the shares or securities of any such company as aforesaid.
- 6.1.14 To amalgamate with any other company whose objects are similar to those of this Company, whether by sale or purchase (for fully or partly paid-up shares or otherwise) of the undertaking subject to the liabilities of this undertaking and / or any such other company as aforesaid, with or without winding-up, or by sale or purchase (for fully or partly paid shares or otherwise) of all or a controlling interest in the shares or stock of this or any such other company as aforesaid, or by partnership, or any arrangement of the nature of partnership or in any other manner.
- 6.1.15 To distribute among the Members in specie any property of the Company or any proceeds of sale or disposal of any property of the Company, but so that no distribution amounting to a reduction of capital be made except with the sanction (if any) for the time being required by law.
- 6.1.16 To sell or dispose of the undertaking, property and assets of the Company or any part thereof in such manner and for such consideration as the Company may think fit.
- 6.1.17 To apply for, register, purchase, or by other means acquire, hold, develop, exploit, protect and renew any patents, patent rights, brevets inventions, licenses, secret processes, trademarks, designs, royalties, copyrights, grants, options, protection and concessions and other exclusive and non-exclusive rights, and to grant licenses or rights in respect thereof, and to disclaim, alter, modify, use and turn to account, and to manufacture under or grant licenses or privileges in respect of the same, and to expend money in experimenting upon testing and improving any patents, inventions or rights which the Company may acquire or propose to acquire.
- 6.1.18 To do all or any of the things referred to in this Article 6 in any part of the world, and either as principals, agents, contractors or otherwise, and either alone or in conjunction with others, and either by or through agents, sub-contractors, or otherwise.
- 6.1.19 Where the laws of an approved country or jurisdiction so allow, and upon obtaining the consent of the Registrar of Companies in Mauritius, to apply to the proper authority of such country or jurisdiction to have the Company registered as continued as if it had been incorporated or registered under the laws of that other country or jurisdiction.

## 7 LIMITED LIABILITY

The liability of the Members of the Company is limited to the amount, if any, unpaid on the issued shares respectively held by them.

## 8 CAPITAL

8.1 The authorised share capital shall be €1,100,200,000 (one billion, one hundred million and two hundred thousand Euro) divided into:

8.1.1 5,000,000,000 (five billion) Ordinary listed shares of €0.22 each; and

8.1.2 20,000,000 (twenty million) cumulative, non-participating Preference shares of €0.01 each.

## 9 ORDINARY SHARES

Ordinary shares shall rank *pari passu* in all respects as regards dividends and participations in assets on a winding up of the Company.

The holders of the Ordinary Shares shall have the right to receive notice of, attend and vote at meetings. Each ordinary share shall entitle the holder to one (1) vote.

## 10 PREFERENCE SHARES

10.1 In this Article 10, unless inconsistent with or otherwise indicated by the context:

10.1.1 **"Accumulated Dividends"** means, in respect of each Preference Share and on any day, the aggregate of:

10.1.1.1 any Scheduled Dividend for any Dividend Period which ended prior to that day, to the extent to which that Scheduled Dividend has not been paid by the Company by the Dividend Payment Date in respect of that Dividend Period; plus

10.1.1.2 any Additional Dividends which the Company should have paid in terms of Article 10.3.8, but which the Company has failed to pay as of such day;

10.1.2 **"Acquisition of Control"** means, in relation to the Company, that a person who held less than 30% (thirty per cent) of the issued Ordinary Shares on the Tax Reference Date, acquires such a number of Ordinary Shares as brings its holdings of the Ordinary Shares to 51% (fifty one per cent) or more of the issued Ordinary Shares;

10.1.3 **"Actual Issue Date"** means, in relation to each Preference Share, the date on which the Company issues that Preference Share to its first Holder;

10.1.4 **"Actual Redemption Date"** means, in relation to each Preference Share, the date (if any) on which the Company redeems that Preference Share in accordance with the Company Redemption Provisions;

10.1.5 **"Additional Dividend"** means, in respect of each Preference Share, the dividends (over and above the Scheduled Dividend in respect of that Preference Share) envisaged in Article 10.3.10 of this Constitution;

10.1.6 **"Adjustment Event"** means a Tax Change Event or a Rate Event;

10.1.7 **"Adjustment Notice"** means an Adjustment Notice as defined in Article 10.3.7.3 of this Constitution;

10.1.8 **"Applicable Rate"** means the Dividend Rate or the Default Dividend Rate;

10.1.9 **"Beneficiary"** means, in relation to a Preference Share, the beneficial owner of that Preference Share as reflected in the records of the applicable Programme Participant;

10.1.10 **"Business Day"** means any day other than a Saturday, Sunday or statutory public holiday in any of the Republic of Mauritius, the Grand-Duchy of Luxembourg or the Republic of South Africa;

10.1.11 **"Calculation Dates"** means 31 March and 30 September of each year;

10.1.12 **"Company NAV"** means, at any applicable time, the Company's net asset value as determined in accordance with the provisions of Article 10.8.1 of this Constitution;

10.1.13 **"Company Redemption Provisions"** means Articles 10.4.2 to 10.4.4 of this Constitution;

10.1.14 **"Deemed Issue Price"** means, in respect of each Preference Share and irrespective of the Subscription Price actually obtained by the Company for the issue of that Preference Share, an amount of ZAR100.00 (one hundred Rand);

10.1.15 **"Default Dividend Rate"** means, subject to adjustment in accordance with the Rate Adjustment Clauses, a rate equal to 144% (one hundred and forty four per cent) of the Prime Rate;

10.1.16 **"Distribution"** means any distribution of profits or capital which the Company makes in respect of any classes of shares in its issued share capital, other than the Preference Shares, irrespective of the manner in which that distribution is made (and includes, without limitation, the declaration and payment of any dividends, the repurchase of any shares and the redemption of any redeemable shares);

10.1.17 **"Dividend Default"** means any failure by the Company to pay:

10.1.17.1 the Scheduled Dividends (in respect of all the Outstanding Preference Shares for any Dividend Period by the applicable Dividend Payment Date; and/or

10.1.17.2 any Additional Dividends by the date determined in accordance with Article 10.3.8 of this Constitution;

10.1.18 **"Dividend Payment Date"** means, in relation to each Dividend Period, (i) any day up to the date 90 (ninety) days after the first Calculation Date which occurs after the last day of that Dividend Period, or (ii) if applicable and earlier than the date in sub-Article (i), any day up to the date 5 (five) days prior to the day on which the Company makes any Distribution in respect of its Ordinary Shares;

10.1.19 **"Dividend Period"** means each period which commences on a Calculation Date and which ends on the day before the next Calculation Date provided that:

10.1.19.1 the first Dividend Period in respect of any particular Preference Share shall (i) commence on the Actual Issue Date on which the Company issues that Preference Share to its first Holder, and (ii) end on the day before the first Calculation Date which occurs after that Actual Issue Date; and

10.1.19.2 the last Dividend Period in respect of any particular Preference Share shall be the period which (i) commences on the last Calculation Date which occurs prior to the Actual Redemption Date on which the Company redeems that Preference Share, and (ii) ends on the day before that Actual Redemption Date;

10.1.20 **"Dividend Rate"** means, subject to adjustment in accordance with the Rate Adjustment Clauses, a rate equal to 104% (one hundred and four per cent) of the Prime Rate;

- 10.1.21 **“Dividends Tax”** means the withholding tax on dividends imposed under Part VIII of Chapter II of the SA Tax Act;
- 10.1.22 **“Dividends Tax Rate”** means the rate at which the Dividends Tax is levied under the SA Tax Act from time to time;
- 10.1.23 **“Euro”** means the single European currency of majority of the member states of the European Union;
- 10.1.24 **“Exchange Information Services”** means the JSE’s service known as the “Securities Exchange News Service” and the communication service of the LuxSE;
- 10.1.25 **“Holder”** means, in relation to a Preference Share, its registered holder as reflected in the Company’s share register;
- 10.1.26 **“JSE”** means the securities exchange known as the JSE, which has been licensed as an exchange under the South African Securities Services Act, 2004;
- 10.1.27 **“LuxSE”** means the Luxembourg Stock Exchange;
- 10.1.28 **“Market Price”** means, in relation to each Preference Share and on any day, the VWAP of 1 (one) Preference Share on that day after deducting the aggregate of:
- 10.1.28.1 any Accumulated Dividends in respect of one Preference Share on the first day of the Dividend Period during which the Market Price is determined; and
- 10.1.28.2 the Scheduled Dividend in respect of one Preference Share for the period which commences on the first day of the Dividend Period during which the Market Price is determined and which ends on the day prior to the date on which the Market Price is determined (calculated as if the aforesaid period were a Dividend Period);
- 10.1.29 **“Ordinary Share”** means an ordinary share with a nominal value of Euro 0.22 (zero point two two) in the Company’s issued share capital;
- 10.1.30 **“Outstanding Preference Share”** means a Preference Share which has been issued by the Company, and which has neither been redeemed nor repurchased by the Company;
- 10.1.31 **“Participant”** means a central securities depository as defined in Article 4 of this Constitution or a participant as defined in section 1 of the South African Securities Services Act, 2004;
- 10.1.32 **“Preference Share”** means a cumulative, non-participating Preference Share in the Company’s share capital which has a nominal value of Euro 0.01 (zero point zero one Euro) and which confers, on its Holder, the rights, obligations and privileges set out in this Article 10;
- 10.1.33 **“Preference Dividends”** means, in respect of each Preference Share, the applicable Scheduled Dividends and Additional Dividends;
- 10.1.34 **“Preference Share Issue Programme”** means a programme pursuant to which the Company, as a means of raising permanent capital, could, subject to various terms and conditions:
- 10.1.34.1 issue a maximum number of 20 000 000 (twenty million) Preference Shares; and
- 10.1.34.2 list the Preference Shares on the LuxSE (as a primary listing) and on the JSE (as a secondary listing);
- 10.1.35 **“Prime Rate”** means the publicly quoted basic rate of interest levied by FirstRand Bank Limited (**“FirstRand”**) from time to time on overdraft, calculated on a 365 (three hundred and sixty five) day year, irrespective of whether the applicable year is a leap year, and proved, prima facie, in the event of a dispute and in the absence of manifest error, by a certificate under the hand of any director or manager of FirstRand, whose appointment and authority need not be proved;
- 10.1.36 **“Programme Participant”** means each Participant who holds any Preference Share in custody for the Beneficiary of such Preference Share;
- 10.1.37 **“Rate Adjustment Clauses”** means Articles 10.3.11 and 10.3.12 of this Constitution;
- 10.1.38 **“Rate Event”** means any increase in the Dividends Tax Rate above 15% (fifteen per cent) (which is the rate at which the Dividends Tax was levied on the Tax Reference Date);
- 10.1.39 **“Redemption Amount”** means, for the purposes of a redemption pursuant to Articles 10.4.2.1 to 10.4.2.4 and for the purposes of Article 10.7.1, in respect of a Preference Share and without double counting, the aggregate of:
- 10.1.39.1 the higher of (i) the Deemed Issue Price of that Preference Share, or (ii) the Market Price of that Preference Share on the date 5 (five) Business Days prior to the publication of the applicable Redemption Announcement in terms of Article 10.4.4.1 of this Constitution; plus
- 10.1.39.2 for the purposes of a redemption pursuant to Article 10.4.2.5 in respect of a Preference Shares and without double counting, the aggregate of:
- 10.1.39.2.1 the Deemed Issue Price of that Preference Share; plus
- 10.1.39.2.2 the Scheduled Dividend for the Dividend Period, as calculated in terms of Article 10.1.19.2, which period ends on the day before the Actual Redemption Date of that Preference Share; plus
- 10.1.39.2.3 any Accumulated Dividends in respect of that Preference Share on its Actual Redemption Date;
- 10.1.40 **“Regulatory Event”** means any change in:
- 10.1.40.1 the listing requirements of the LuxSE or the JSE;
- 10.1.40.2 the exchange control regulations of the Republic of South Africa or Mauritius;
- 10.1.40.3 the SA Tax Act or any other legislation which imposes any taxation of any nature whatsoever on the Company, in relation to the Preference Shares, in Malta, Luxembourg, South Africa, and/or Mauritius; or
- 10.1.40.4 the South African Companies Act, 2008, the Mauritius Companies Act 2001 and any other legislation, whether Mauritius or South African, which deals with companies generally;
- 10.1.41 **“Resident Beneficiary”** means any Beneficiary of a Preference Share if that Beneficiary is a “resident” (of South Africa) as defined in the SA Tax Act;

- 10.1.42 “**SA Corporate**” means a Resident Beneficiary of a Preference Share which is a company, other than a small business corporation, an employment company, a gold mining company, a long term insurance company or a tax holiday company;
- 10.1.43 “**SA Tax**” means any Tax imposed by any tier of the government of the Republic of South Africa;
- 10.1.44 “**SA Tax Act**” means the South African Income Tax Act, 1962;
- 10.1.45 “**Scheduled Dividend**” means, in respect of each Preference Share and for each Dividend Period, the Preference Dividend calculated in accordance with the formula contained in Article 10.3.5;
- 10.1.46 “**Subscription Price**” means, in relation to each Preference Share, the price, including the nominal value and any premium, obtained by the Company for the allotment and issue of that Preference Share to its first Holder;
- 10.1.47 “**Tax**” means any tax, levy, impost, duty or other charge or withholding of a similar nature, levied in accordance with any law and includes any additional tax, penalties and/or interest levied on any such Tax, levy, impost, duty or other charge or withholding;
- 10.1.48 “**Tax Change Event**” means that, as a result of:
- 10.1.48.1 any amendment in the SA Tax Act (including, without limitation, the replacement of SA Tax Act with different legislation), which occurs after the Tax Reference Date, the Preference Dividends become subject to any SA Tax, other than the Dividends Tax or any other withholding Tax imposed under any law of the Republic of South Africa, in the hands of all the SA Corporates who are Resident Beneficiaries of any Outstanding Preference Shares; or
- 10.1.48.2 any amendment in any law of the Republic of Malta, the Grand-Duchy of Luxembourg or the Republic of Mauritius (including, without limitation, the replacement of any such a law with different legislation) which occurs after the Tax Reference Date, the Preference Dividends become subject to Tax, imposed by any one of the Republic of Malta, the Grand-Duchy of Luxembourg or the Republic of Mauritius, in the hands of all the SA Corporates who are the Resident Beneficiaries of any Outstanding Preference Shares; and, for clarity, it is specifically recorded that no Tax Change Event shall occur if
- 10.1.40.2.1 any amendment envisaged in Article 10.1.48.1 or Article 10.1.48.2 of this Constitution occurs, but
- 10.1.40.2.2 the effect of such amendment is to subject Resident Beneficiaries who are not SA Corporates to the applicable Tax;
- 10.1.49 “**Tax Reference Date**” means 1 July 2012;
- 10.1.50 “**Voting Resolution**” means the resolutions (by the Company) envisaged in Article 10.9.2 of this Constitution;
- 10.1.51 “**VWAP**” means, on any particular day, the volume weighted average traded price at which the Preference Shares traded on the JSE for the 15 (fifteen) most recent trading days, provided that in determining such volume weighted average traded price trades which (i) are effected other than through the normal trading systems of the JSE, but (ii) are nevertheless settled through the settlement systems of the JSE, shall be disregarded;
- 10.1.52 “**ZAR**” or “**Rand**” means South African Rand, the lawful currency of the Republic of South Africa.

## 10.2 APPLICABILITY

- 10.2.1 This Article 10 shall apply to each Preference Share which the Company issues as part of the Preference Share Issue Programme.
- 10.2.2 No issue of any shares of any class in the Company’s share capital after the Actual Issue Date on which the Company issues any Preference Share under the Preference Share Issue Program, shall in any manner detract from or vary the rights which attach to the Preference Shares except if the Holders have otherwise approved by the majorities set out in Article 10.9.1.

## 10.3 DIVIDENDS

### Entitlement

- 10.3.1 Each Preference Share shall entitle its Holder (for onward payment to the relevant Beneficiary in accordance with the agreement between the Beneficiary and Holder) to the Preference Dividends calculated in accordance with the provisions of this Article 10.3.
- 10.3.2 The Company shall pay the Preference Dividends only if it has sufficient distributable profits and if a final or interim dividend declaration is made in accordance with Article 29.
- 10.3.3 The Preference Dividends shall rank prior to the dividend rights of any other classes of shares in the Company’s share capital (including, but without limitation, the Ordinary Shares).
- 10.3.4 After the payment of the Preference Dividends, the Preference Shares shall not be entitled to participate in the remaining profits of the Company.

### Scheduled Dividends

- 10.3.5 For each Dividend Period and subject to Article 10.3.6 of this Constitution, each Preference Share shall be entitled to a Scheduled Dividend in an amount equal to the aggregate of the amounts calculated in respect of each day during that Dividend Period in accordance with the following formula:
- $$a = (b + c) \times d$$
- in which formula:
- a = the amount for the applicable day;
- b = the Deemed Issue Price;
- c = the Accumulated Dividends in respect of that Preference Share at 17:00, Johannesburg time, on the calendar day immediately preceding the applicable day;
- d = if a Dividend Default (i) has not occurred, the Dividend Rate divided by 365 (three hundred and sixty-five), or (ii) has occurred, the Default Dividend Rate divided by 365 (three hundred and sixty-five).
- 10.3.6 If (i) the Scheduled Dividend for a Dividend Period is calculated in accordance with the formula contained in Article 10.3.5 of this Constitution for any Dividend Period, and (ii) at the time of that calculation no Dividend Default has occurred, but (iii) a Dividend Default occurs after such calculation, the Scheduled Dividend for the applicable Dividend Period shall be recalculated at the Default Rate.

### **Adjustment Events**

- 10.3.7 If an Adjustment Event occurs the Company shall:
- 10.3.7.1 determine whether, as a result of such occurrence (i) Additional Dividends must be declared and paid by the Company in respect of the Outstanding Preference Shares, or (ii) the Applicable Rates must be adjusted;
  - 10.3.7.2 calculate the amount of the Additional Dividends or the adjusted Applicable Rates (as the case may be);
  - 10.3.7.3 publish an announcement (an Adjustment Notice) on each Exchange Information Service which sets out (i) the details and date of the Adjustment Event which has occurred, and (ii) whether, as a result of such occurrence, it will pay Additional Dividends or whether the Applicable Rates will be adjusted, and (iii) the amount of the Additional Dividends or the adjusted Applicable Rates (as the case may be).
- 10.3.8 If the Company becomes obliged to pay Additional Dividends as a result of the occurrence of any Adjustment Event, the Company shall pay those dividends on the later of (i) the next Dividend Payment Date, or (ii) within 30 (thirty) calendar days after the date on which the applicable Adjustment Event occurs.
- 10.3.9 If the Applicable Rates must be adjusted as a result of the occurrence of an Adjustment Event, that adjustment shall take effect on the date reasonably determined by the Company (which date may be prior to the date on which the Company publishes the applicable Adjustment Notice).

### **Tax Change Events**

- 10.3.10 If a Tax Change Event occurs in relation to any Scheduled Dividend which the Company has already paid in respect of any Outstanding Preference Share, the Company shall pay, in respect of each Outstanding Preference Share, an Additional Dividend calculated in accordance with the following formula:
- $$a = [b / (1 - c)] - b$$
- in which formula:
- a = the Additional Dividend per Preference Share;
  - b = the amount of the Scheduled Dividends (in respect of one Preference Share) which has become subject to the applicable Tax; and
  - c = the rate at which the applicable Scheduled Dividend has become subject to Tax in the hands of those of the Resident Beneficiaries which are SA Corporates.
- 10.3.11 If a Tax Change Event occurs, and as a result of such occurrence any Scheduled Dividends which have not yet been paid will become subject to Tax other than the Dividend Tax, each Applicable Rate shall be increased to such a percentage of the Prime Rate as is calculated in accordance with the following formula:
- $$a = b / (1 - c)$$
- in which formula:
- a = the increased Applicable Rate, expressed as a percentage of the Prime Rate;
  - b = the Applicable Rate, expressed as a percentage of the Prime Rate, prior to its adjustment in accordance with this Article 10.3.11; and “
  - c = the rate at which the applicable Scheduled Dividends will become subject to Tax in the hands of Resident Beneficiaries which are SA Corporates.
- 10.3.12 If the Applicable Rates are increased in accordance with Article 10.3.11, and after such increase the rate (the “**Adjustment Rate**”) envisaged in the definition of “c” above increases or decreases, the Applicable Rates shall, with effect from the date on which the Adjustment Rate increases or decreases, be the rate calculated in accordance with the formula contained in Article 10.3.11 on the basis that (i) the value of “a” in that formula shall be the Applicable Rates, expressed as a percentage of the Prime Rate, immediately prior to the occurrence of the Tax Change Event, and (ii) the value of “c” in that formula shall be the increased or decreased Adjustment Rate.

### **Rate Event**

- 10.3.13 If a Rate Event occurs, each Applicable Rate shall each be adjusted to such a percentage of the Prime Rate as is determined in accordance with the following formula:
- $$a = b \times (1 - d) / (1 - c)$$
- in which formula:
- a = the Applicable Rate, expressed as a percentage of the Prime Rate, after its adjustment in accordance with this Article 10.3.13;
  - b = the Applicable Rate, expressed as a percentage of the Prime Rate, prior to its adjustment in accordance with this Article 10.3.13;
  - c = the Dividends Tax Rate after the occurrence of the applicable Rate Event; and
  - d = the Dividends Tax Rate prior to the occurrence of the applicable Rate Event.

### **Payment**

- 10.3.14 The Company shall, subject to Article 10.3.2 of this Constitution, pay:
- 10.3.15 the Scheduled Dividend for each Dividend Period on the first Dividend Payment Date which occurs after that Dividend Period;
- 10.3.15.1 any Additional Dividends which it becomes obliged to pay, by the date determined in accordance with Article 10.3.8 of this Constitution; and
  - 10.3.15.2 any Accumulated Dividends which remain as at the Actual Redemption Date on which it redeems any Preference Share, on that Actual Redemption Date.

### **Distributions in respect of Ordinary Shares**

- 10.3.16 The Company shall not make any Distributions in respect of its Ordinary Shares except if it has paid, in full, the Accumulated Dividends (if any) up to the last day of the last Dividend Period which occurs prior to the date on which the Company makes that Distribution.

## 10.4 REDEMPTION AND ACQUISITION OF OWN SHARES

### Non-redemption by Beneficiaries and Holders

- 10.4.1 Neither the Beneficiaries nor the Holders of the Preference Shares shall be entitled to require the Company to redeem the Preference Shares.

#### Company Redemption

- 10.4.2 All (but not some) of the Outstanding Preference Shares may be redeemed at the option of the Company by not later than 31 December 2512 in any of the following circumstances:
- 10.4.2.1 an Adjustment Event occurs and, as a result of such Adjustment Event
  - 10.4.2.2 the Company becomes obliged to pay any Additional Dividends, or
  - 10.4.2.3 the Applicable Rates are increased; or
  - 10.4.2.4 a Regulatory Event occurs and, as a result of such occurrence, the raising of funding by the Company by means of the issue of the Preference Shares become more expensive for the Company or any of its shareholders; or
  - 10.4.2.5 the Preference Shares vote against any Voting Resolution, other than any Voting Resolution envisaged in Article 10.9.3.2.5 of this Constitution;
  - 10.4.2.6 an Acquisition of Control occurs; or
  - 10.4.2.7 the redemption of the Preference Shares is deemed to be, at the discretion of the board of Directors or a duly authorised committee thereof, in the best interests of the Company.
- 10.4.3 If the Company does not redeem the Preference Shares by 31 December 2512, the Preference Shares will automatically become entirely non-redeemable with effect from 1 January 2513.

#### Procedure

- 10.4.4 If the Company wishes to redeem the Outstanding Preference Shares pursuant to the Company Redemption Provisions:
- 10.4.4.1 the Company shall publish, on each Exchange Information Service, an announcement (a “**Redemption Announcement**”) which for the purposes of a redemption pursuant to Articles 10.4.2.1 to 10.4.2.4, sets out:
    - 10.4.4.1.1 the grounds on which the Company is entitled to redeem the Outstanding Preference Shares, and
    - 10.4.4.1.2 the date (the “**Company Redemption Date**”) on which the Company will redeem the Outstanding Preference Shares, the Company Redemption Date to be the first Dividend Payment Date which occurs after the publication of the Redemption Announcement or, if that first Dividend Payment Date will occur within 10 (ten) business days after the publication of the Redemption Announcement, the second Dividend Payment Date which occurs after that publication;
    - 10.4.4.1.3 for the purposes of a redemption pursuant to Article 10.4.2.7, set out:
      - (i) the grounds on which the Company is entitled to redeem the Outstanding Preference Shares; and
      - (ii) the Company Redemption Date, which shall be any day up to sixty (60) calendar days from the Redemption Announcement.
  - 10.4.4.2 the publication of a Redemption Announcement shall be revocable at the instance of the Company and shall not oblige the Company to redeem the Outstanding Preference Shares whether on the Company Redemption Date set out in that Redemption Announcement or on any other date (but the Company shall not redeem some of the Outstanding Preference Shares without at the same time redeeming all the Outstanding Preference Shares); and
  - 10.4.4.3 if the Company publishes a Redemption Announcement and thereafter elects not to redeem the Outstanding Preference Shares the Company shall (i) make an announcement to such effect on each Exchange Information Service prior to the Company Redemption Date set out in the Redemption Announcement, and (ii) not thereafter be entitled to redeem the Outstanding Preference Shares without again publishing a Redemption Announcement.

### 10.5 Actual Redemption Date

If the Company elects to redeem the Outstanding Preference Shares the Company shall, on the applicable Company Redemption Date, pay the Redemption Amount of each Outstanding Preference Share to each Holder (for onward payment to the Beneficiary of that Preference Share).

### 10.6 Acquisition of Own Shares

The Outstanding Preference Shares may be acquired by the Company pursuant to Article 14.4 of this Constitution.

### 10.7 RETURN OF CAPITAL

- 10.7.1 On the liquidation of the Company, each Preference Share shall confer on its Holder (for onward payment to the relevant Beneficiary in accordance with the agreement between the Holder and Beneficiary) a right to a return of capital in an amount equal to the Redemption Amount of that Preference Share calculated up to the day on which that return of capital is paid.
- 10.7.2 The Preference Shares’ rights to a return of capital shall rank prior to the rights to a return of capital of all other classes of shares in the Company share capital including, but without limitation, the Ordinary Shares.
- 10.7.3 Save as envisaged in Article 10.7.1 of this Constitution, the Preference Shares shall not be entitled to participate in the Company’s excess assets on its liquidation.

### 10.8 Company Net Asset Value (“NAV”)

- 10.8.1 The Company NAV shall, if the Company has:
- 10.8.1.1 published its NAV as at the last day of its most recent financial quarter on each Exchange Information Service, be the NAV thus published by the Company; or

- 10.8.1.2 not published its NAV as envisaged in Article 10.8.1.1, be the Company's NAV as determined by the Company with reference to its most recent audited financial information, and if Article 10.8.1.1 applies, the Company shall publish an announcement on each Exchange Information Service which sets out the Company's determination of the Company NAV.

## 10.9 Voting Rights

- 10.9.1 The Holders shall not have the right to attend, vote at or receive notice of meetings of the Company, except in respect of the Voting Resolutions. In relation to the Voting Resolutions other than the Voting Resolution contained in Article 10.9.3.2.5 of this Constitution:
- 10.9.1.1 the Preference Shares shall vote as a separate class;
- 10.9.1.2 in such a vote each Outstanding Preference Share shall carry one vote; and
- 10.9.1.3 no such Voting Resolution shall be carried except if passed by a special resolution pursuant to which at least 75% (seventy five per cent) of the votes exercisable by all the Holders who attend and vote at the meeting convened to consider that Voting Resolution have voted in favour thereof.
- 10.9.2 In relation to any Voting Resolution envisaged in Article 10.9.3.2.5 of this Constitution:
- 10.9.2.1 the Preference Shares shall not vote as a separate class but shall vote together with the other shareholders; and
- 10.9.2.2 each Preference Share shall confer on its Holder such a percentage of the votes exercisable in relation to that resolution as is equal to the ratio, expressed as a percentage, of the nominal value of that Preference Share to the aggregate of the nominal values of all the issued shares of all classes in the Company's share capital.

### Voting Resolutions

- 10.9.3 The Voting Resolutions are any resolution proposed at a meeting of the Company:
- 10.9.3.1 which directly affects the rights of the Preference Shares;
- 10.9.3.2 which is required to approve of (i) the reduction of the Company's share capital of any class, or (ii) the making of a Distribution, if that resolution will have the effect that:
- 10.9.3.2.1 the Company NAV will be less than R10 000 000 000 (ten billion Rand) after the resolution is implemented; or
- 10.9.3.2.2 the ratio of (i) the aggregate of the Deemed Issue Prices of all the Outstanding Preference Share, to (ii) the Company NAV after that resolution has been implemented, is equal to or more than 10% (ten per cent); and
- 10.9.3.2.3 to delist the Company's Ordinary Shares;
- 10.9.3.2.4 after an Acquisition of Control has occurred if that resolution, if implemented, will result in the conclusion of a transaction by the Company, the value of which is equal to or exceeds 25% (twenty five per cent) of the Company NAV;
- 10.9.3.2.5 during any period which (i) commences on the date 90 (ninety) days after the date on which the Company declared any Preference Dividends, and (ii) ends on the date on which those Preference Dividends are paid.

### Non-implementation

- 10.9.4 If (i) the Company proposes a Voting Resolution other than any Voting Resolution envisaged in Article 10.9.3.2.5 of this Constitution, and (ii) the Holders vote against that resolution:
- 10.9.4.1 the Company shall be entitled to elect to redeem the Outstanding Preference Shares in accordance with the Company Redemption Provisions; and
- 10.9.4.2 the Company shall not implement that Voting Resolution until it has redeemed the Outstanding Preference Share in terms of the Company Redemption Provisions.

## 10.10 NON-VARIATION

In accordance with section 114 of the Companies Act, no change of the Preference Shares into another class and no variation of the rights attached to the Preference Share (which variation shall include the issue of any class of shares ranking in priority to the Preference Shares either in relation to dividends or in relation to returns of capital on a liquidation) shall take place unless such change or variation is consented to by means of a special resolution (as described in Article 32 of this Constitution) passed at a separate meeting of the Preference Shares and of any other class of shares affected thereby.

## 11 DIRECTORS

- 11.1 The Company's affairs shall be entrusted to a board of Directors which shall consist of not less than three (3) and not more than fifteen (15) Directors.
- 11.2 The Company shall have at least 2 (two) Directors who shall be ordinarily resident in Mauritius.
- 11.3 A Director is empowered to appoint another person in his stead as an alternate director by means of a written instrument and such person so appointed shall enjoy all the powers and rights of the said Director including the right to attend and vote at meetings of the board of Directors. Such alternate director shall have a vote or votes in addition to his own vote, if any. Written instrument includes a telefax, telex or e-mail message.
- 11.4 The legal and judicial representation of the Company shall be vested in any Director.
- 11.5 Notwithstanding the above and in addition to the aforesaid, the board of Directors may from time to time appoint any one or more Director/s and/or any person or persons to represent the Company for a specific purpose or in a specific case or cases or classes of cases.
- 11.6 Any power of attorney issued by the Company shall be executed by any Director or any person authorised by the board of Directors for this purpose and such power of attorney shall be considered as executed by the Company.

## 12 SECRETARY

- 12.1 The Directors shall appoint one or more secretaries to be the secretary of the Company subject to Article 12.3.
- 12.2 If the office of the secretary is vacant then any of the secretary's functions may be done by any assistant or deputy secretary, or if there is no assistant or deputy secretary capable of acting, by any officer of the Company, subject to Article 12.3.
- 12.3 No person shall be appointed as the secretary of the Company unless that person has consented to be a secretary and has the qualifications specified under section 165 of the Act.
- 12.4 The appointment or replacement of the Company secretary and the remuneration and conditions of holding office shall be determined by the Directors.
- 12.5 The Company secretary shall be responsible for keeping:
- 12.5.1 the minute book of meetings of the Company;
  - 12.5.2 the minute book of meetings of the board of Directors;
  - 12.5.3 the register of members;
  - 12.5.4 the register of Directors
  - 12.5.5 the register of debentures;
  - 12.5.6 such other registers and records as the Company secretary may be required to keep by the Board of Directors; and
  - 12.5.7 such duties as set out in section 166 of the Act.
- 12.6 In the case of Listed Securities, the Company Secretary shall be entitled to rely fully on the information supplied to him by the Central Securities Depository, if any, to whom duties have been delegated by the Directors in accordance with this Constitution.
- 12.7 The Company secretary shall:
- 12.7.1 ensure that proper notices are given of all meetings; and
  - 12.7.2 ensure that all returns and other documents of the Company are prepared and delivered in accordance with the requirements of the Act.

## 13 RESOLUTIONS

- 13.1 A resolution in writing signed by all the Directors appearing as Directors of the Company from time to time in the register of Directors, shall be valid and effectual as if it had been passed at a meeting of the board of Directors of the Company duly convened and held.
- 13.2 Several distinct copies (including fax copies) of the same document or resolution signed by each of the Directors shall when placed together, constitute one writing for the purposes of this Article.

## 14 SHARE CAPITAL AND VARIATION OF RIGHTS

- 14.1.1 Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the Company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise as the Company may from time to time by ordinary resolution determine.
- 14.1.2 Subject to the provisions of section 52 of the Act, the Company in a meeting may authorise by ordinary resolution the board of Directors to issue Equity Securities up to the value of the Company's authorised share-capital.
- 14.1.3 Subject to the provisions of Article 14.1.2 above, all shares from time to time unissued shall be at the disposal of the Directors and they may offer, allot, grant options over or otherwise dispose of them to such persons, at such times and on such terms as they think proper.
- 14.1.4 The Directors may if they so deem fit, cause any or all of the Debt or Equity Securities of the Company, irrespective of their class, whether issued or to be issued pursuant to this Constitution, to be admitted to trading on any Securities Exchange they consider to be appropriate. The Directors may also, if they deem so fit, also seek to admit to trading any or all of Debt or Equity Securities on more than one Securities Exchange.
- 14.1.5 Any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they, or at the option of the Company, are liable to be redeemed on such terms and in such manner as the Company, before the issue of the shares, may by special resolution determine.
- 14.1.6 If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of the issue of shares of that class) may, whether or not the Company is being wound up, be varied with the sanction of a special resolution passed at a separate meeting of the holders of that class of shares and of any other class affected thereby. To every such separate meeting the provisions of this Constitution relating to meetings shall apply.
- 14.1.7 Without prejudice to Articles 16.2 and 16.3 all shares in the Company shall be freely transferable.
- 14.1.8 The Company may exercise the power of paying commissions or of making discounts or allowances. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other.
- 14.1.9 Subject to section 55 of the Act, the Company in issuing and allotting new Equity Securities:
- 14.1.9.1 shall not allot any of them on any terms to any person unless an offer has first been made to each existing Member to allot to him at least on the same terms, a proportion of those Equity Securities which is as nearly as practicable equal to the proportion in nominal value held by him of the aggregate of the Equity Securities in the Company; and
  - 14.1.9.2 shall not allot any of those Equity Securities to any person, unless the Members in a meeting otherwise determine, before the expiration of any period of offer made to existing Members in terms of Article 14.1.9.1 or before a negative or positive reply from all such holders in terms thereof. Any such Equity Securities not subscribed for by the existing Members in terms of their pre-emptive right, may be offered for subscription to the general public under the same or other conditions which however cannot be more favourable than an offer made under Article 14.1.9.1.
- 14.1.10 Provided that the provisions of Article 14.1.9.1 and 14.1.9.2 shall not apply in respect of a particular allotment of Equity Securities where the Company has by special resolution in a meeting resolved that the statutory pre-emption requirements shall be restricted or withdrawn, or where the Company by special resolution in a meeting shall have resolved to authorise the board of Directors to restrict or withdraw the statutory pre-emption requirements if the board of Directors is authorised to issue Securities in accordance with section 52 of the Act and for as long as the board of Directors remains so authorised.

- 14.2 Article 14.1.9 shall not apply to a particular allotment of Equity Securities if these are, or are to be, wholly or partly paid up otherwise than in cash.
- 14.3 Except in so far as the Directors may otherwise determine and as may be permitted by applicable laws or regulations, a Member holding Equity Securities shall have the right to assign in favour of third parties the right competent to him to accept an offer made to him pursuant to the provisions of Article 14.1.9. Any assignee of such a right shall for the purposes of this Article be considered as an existing Member in accepting an offer made in terms of Article 14.1.9.
- 14.4 The Company is authorised to acquire its own shares, including the Preference Shares, in terms of sections 68 to 74, 106, and 108 to 110 of the Act, and may hold the acquired shares as treasury shares in accordance with section 72 of the Act.
- 14.5 In respect of a share held jointly by several persons the name of only one shall be entered in the register of Members. Such person shall be nominated by the joint holders and shall for all intents and purposes be deemed, vis-à-vis the Company, to be the registered holder of the share so held. In the event that the joint holders fail to nominate such a person, then the name of the first person of the joint holders shall for all intents and purposes be deemed, vis-à-vis the Company, to be the registered holder of the share so held.
- 14.6 The Directors shall not be bound by or required to recognise, even when having notice hereof, any trust, nominee, equitable, contingent, future or particular representative interest, in any Securities of the Company, other than an absolute right to the entirety thereof in the registered holder.
- 14.7 Without prejudice to Article 14.8, every person who is the holder of shares in the Company shall be entitled without payment to receive one certificate for all his shares or several certificates each for one or more of his shares. If a share certificate is defaced, lost or destroyed, it may be renewed on application of the Member on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the Company for investigating evidence as the Directors think fit. In the event of joint holders, the Company shall not be bound to issue more than one certificate, and delivery of one certificate for a share to any one of the several joint holders thereof shall be sufficient delivery to all.
- 14.8 In relation to any Listed Securities, the Company may opt not to issue a certificate to its Members. In such a case, a holder of the Listed Securities shall be entitled to receive from the applicable Central Securities Depository a document evidencing his registration as a holder of the Listed Securities of the Company in the number of Listed Securities held, or such other evidence as may from time to time be prescribed by or under any applicable rules or regulations.
- 14.9 If a Member holds any Listed Securities on behalf of or as trustee for a Beneficiary, that Member must, upon written request by the Company, within five days of such request, disclose in writing to the Company:
- 14.9.1 The identity of each Beneficiary; and
- 14.9.2 The number and class of Listed Securities held for each Beneficiary.
- For the purposes of this Article 14.9 the word **'Beneficiary'** means the holder of the beneficial interest in any Listed Securities, including without limitation any person:
- 14.9.2.1 Who is married in community of property to a Beneficiary;
- 14.9.2.2 Who is the parent of a minor child who is a Beneficiary;
- 14.9.2.3 Acts in terms of an agreement with a Beneficiary and the agreement relates to their co-operation for the acquisition, disposal or any other matter relating to a beneficial interest in that Security;
- 14.9.2.4 Being the holding company of a company that is a Beneficiary;
- 14.9.2.5 Who is entitled to exercise or control the exercise of the majority of the voting rights at meetings of a legal person that is a Beneficiary; or
- 14.9.2.6 Who gives directions or instructions to a legal person who is a Beneficiary and where the directors or the trustees of the Beneficiary are accustomed to act in accordance with that person's directions or instructions.

## 15 CALL ON SHARES

- 15.1 The Directors may from time to time make calls upon the Members in respect of any monies unpaid on their shares. Any Member shall be entitled to at least fourteen days written notice specifying the date, time and place of payment. A call may be revoked or postponed as the Directors may determine.
- 15.2 A call shall be deemed to have been made at the time when the resolution of the Directors authorising such call was passed and may be required to be paid by instalments.
- 15.3 The joint holders of a share shall be jointly and severally liable for the payment of calls on their shares.
- 15.4 If a sum called in respect of a share is not paid before or on the date appointed for the payment thereof, the person from whom the sum called is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at such rate, not exceeding the maximum rate allowed by law, as the Directors may from time to time determine. The Directors may, however, be at liberty to waive, whether in whole or in part, the payment of such interest.
- 15.5 Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these regulations be deemed to be a call duly made and payable on the date on which, by the terms of issue, the same becomes payable, and in case of non-payment, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.
- 15.6 The Directors may differentiate between the holders as to the amount of calls to be paid and the times of payment.
- 15.7 The Directors may, if they think fit, receive from any Member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become payable) pay interest at such annual rate not exceeding the maximum rate allowed by law, as may be agreed upon between the Directors and the Members paying such sum in advance.
- 15.8 The entitlement to receive any dividend and/or the right to exercise any privilege as a Member including the right to vote at meetings, shall be suspended until the said Member shall have paid all calls for the time being due and payable on every share held by him, together with interests and expenses, if any.

## 16 TRANSFER

- 16.1 All transfers and transmissions of Listed Securities shall be subject to the rules and regulations of the relevant Securities Exchange as may be in force from time to time. This Constitution shall apply only insofar as it is not inconsistent therewith.

- 16.2 The Directors may except in the case of a transfer of a share that is the direct result of a judicial sale by auction or bankruptcy proceedings, in their absolute discretion, and without assigning any reason therefor, refuse to register any transfer of a share that is not a fully paid share.
- 16.3 The Directors may, in their absolute discretion, and without assigning any reason therefor, refuse to register any transfer of a Listed Security where the transfer form is not completed in accordance with the requirements of applicable law or where any applicable transfer, stamp or similar duty has not been paid in relation to such transfer.
- 16.4 In the case of Securities other than Listed Securities, the Directors may decline to recognise any instrument of transfer and refuse to register the transfer if:
- 16.4.1 duty in terms of the Registration Duty Act, 1804, if applicable, has not been paid in relation to the instrument of transfer;
  - 16.4.2 the instrument of transfer executed by or on behalf of the transferor and the transferee is not left at the registered office of the Company or at such other place as the Directors may from time to time determine for registration purposes or is not accompanied by the share certificates of the shares to which it relates and/or such other evidence as the Directors may reasonably require as evidence of the right of the transferor to make the transfer (and, if the instrument of transfer is executed by some other person on his behalf, the authority of that person so to do); or
  - 16.4.3 the instrument of transfer is not in respect of only one (1) class of Securities; or
  - 16.4.4 the instrument of transfer is in respect of Securities pledged in terms of a pledge agreement duly notified to the Company; or
  - 16.4.5 the instrument of transfer is in respect of Securities the transfer of which has been prohibited by law or by an order of the court; or
  - 16.4.6 if the instrument of transfer is in respect of a part of a Security.
- 16.5 If the Directors refuse to register a transfer, they shall within 28 days of the date on which the transfer was delivered to it, send to the transferor and to the transferee notice of the refusal and the reasons for the refusal shall be given in the notice. The Company may retain any instrument of transfer or a notarised copy thereof, that is duly registered.
- 16.6 The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine, provided always that such registration shall not be suspended for more than thirty (30) days in any one (1) calendar year.
- 16.7 In the case of the death of a holder of Securities, his Securities shall devolve upon his successors by will or by operation of law as the case may be, but nothing herein contained shall release the person or persons to whom the Securities shall devolve, whether sole or joint, from any liability in respect of any Security solely or jointly held by him/them.
- 16.8 Any person becoming entitled to Securities not admitted to trading on a Securities Exchange in consequence of the death of a Member shall, upon producing satisfactory evidence of his title as the Directors may from time to time require, have the right either:
- 16.8.1 to be registered himself as the holder of the Securities, in which case he shall deliver or send to the Company a notice in writing signed by him stating that he so elects; or
  - 16.8.2 to have another person registered as the holder of the Securities, in which case he shall testify his election by delivering an executed share transfer instrument to the Company. All the provisions relating to the transfer of shares in this Constitution shall be applicable to such transfer;
- 16.9 **PROVIDED** that the Directors in the case of Securities which are not listed, may at any time give notice requiring any such person to elect either to be registered himself or to transfer the shares, and if the notice is not complied with within ninety (90) days, the Directors may thereafter withhold payments of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.
- 16.10 A person becoming entitled to a Security by reason of the death of the holder shall be entitled to the same dividends and other rights and advantages to which he would be entitled if he were the registered holder of the share, except that he shall not before being registered as a Member in respect of the Security be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

## 17 FORFEITURE OR SURRENDER OF SHARES

- 17.1 If a Member fails to pay any call or instalment of a call on the day appointed for payment thereof, the Directors may, at any time thereafter during such time as any call or part thereof remains unpaid, require payment of so much of the call or instalment as is unpaid, together with any interests which may have accrued, by means of a notice which shall also name a further day (not earlier than the expiration of fourteen (14) days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to forfeiture.
- 17.2 If the requirements of such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect, or otherwise be surrendered in favour of the Company by the Member to whom the said notice is addressed, if the Directors of the Company accept such surrender. The Member shall, however, retain the right to all dividends declared before the call was made and which have not been paid.
- 17.3 When any share has been forfeited in accordance with this Constitution, notice of the forfeiture shall forthwith be given to the holder of the share or to the person entitled to the share by transmission, as the case may be, and an entry of such notice having been given and of the forfeiture with the date thereof, shall forthwith be made in the register of Members relating to the share; but the provisions of this Article are directory only and no forfeiture shall be in any manner invalidated by any omission or neglect to give such notice or to make such entry as aforesaid.
- 17.4 A forfeited or surrendered share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and the Company may receive the consideration, if any, given for the share on any sale or disposal thereof and may execute a transfer in favour of the person to whom the share is sold or disposed of, who shall thereupon be registered as a holder of the share. At any time before a sale or disposal, the forfeiture or surrender may be cancelled on such terms as the Directors may deem fit.
- 17.5 **PROVIDED** that while forfeited or surrendered shares remain with, or under the control of, the Company they shall carry no voting rights, and shall be subject to the provisions of section 73 of the Act.
- 17.6 A person whose shares have been forfeited or surrendered shall cease to be a Member in respect of the forfeited or surrendered shares, but shall, notwithstanding, remain liable to pay to the Company all the moneys, which, at the date of the forfeiture, were due and payable by him to the Company in respect of the shares. His liability shall however cease if and when the Company receives payment in full of all such moneys in respect of the shares.

## 18 PLEDGING OF SECURITIES

- 18.1 The Members may enter into any agreement relating to the pledging of their shares or the creation of any rights in connection with the said shares for any reason they may deem fit and with such third parties as they deem appropriate.
- 18.2 The holders of other securities issued by the Company may enter into any agreement relating to the pledging of their securities or the creation of any rights in connection with the said securities for any reason they may deem fit and with such third parties as they deem appropriate.
- 18.3 Upon the Company being notified of such a pledge agreement, the Company shall record that fact in its register of Members or debentures.

## 19 REGISTERS

- 19.1 Any register for Securities shall be kept at the registered office of the Company. Any register may be kept in accordance with the appropriate mechanical or electronic system, provided that legible evidence can be produced therefrom to satisfy the requirements of the applicable law and of this Constitution.
- 19.2 In the case of Securities which have been admitted to trading on a Securities Exchange, the Directors may delegate the duties relating to the maintaining and updating of the register to a Central Securities Depository or any other equivalent entity.

## 20 MEETINGS

All meetings of the board of Directors and any meetings of the Members of the Company shall be held in such place as the Directors may determine from time-to-time.

## 21 ANNUAL MEETING

- 21.1 The board shall call an annual meeting of Members to be held:
  - 21.1.1 not more than once in each year;
  - 21.1.2 not later than 6 months after the balance sheet date of the Company; and
  - 21.1.3 not later than 15 months after the previous annual meeting.
- 21.2 The Company shall hold the meeting on the date on which it is called to be held.
- 21.3 The business to be transacted at an annual meeting shall, unless already dealt with by the Company, include -
  - 21.3.1 the consideration and adoption of the financial statements;
  - 21.3.2 the receiving of any auditor's report;
  - 21.3.3 the consideration of the annual report (if any); and
  - 21.3.4 the appointment of any auditor pursuant to section 200 of the Companies Act.
- 21.4 Where the financial statements are not approved at the annual meeting, they shall be presented at a further special meeting called by the board of Directors; or.

## 22 SPECIAL MEETING

- 22.1 A special meeting of shareholders may be called at any time by:
  - 22.1.1 the board of Directors; or
  - 22.1.2 on the written request of shareholders holding shares carrying together not less than five percent of the voting rights entitled to be exercised on the issue.

## 23 NOTICE OF MEETINGS

- 23.1 Written notice of the time and place of a meeting of shareholders shall be sent to every shareholder entitled to receive notice of the meeting and to every Director, secretary and auditor of the Company not less than 21 days before the meeting.
  - 23.1.1 The notice shall state:
    - 23.1.1.1 the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
    - 23.1.1.2 the text of any special resolution to be submitted to the meeting.
- 23.2 Any irregularity in a notice of a meeting shall be waived where all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or where all such shareholders agree to the waiver.
  - 23.2.1 One or more Members who together hold at least 10% of the Company's issued share capital shall have the right to request that one or more additional items be put on the agenda of any shareholder meeting of the Company. Any such request shall be accompanied by a justification or a draft resolution to be adopted at the meeting.
  - 23.2.2 **PROVIDED** that such a request must be submitted to the Company in hard copy form or in electronic form at least seven (7) days before the date set for the shareholder meeting to which it relates. The Company shall not be obliged to entertain any requests by shareholders after the lapse of the said time-limit.
  - 23.2.3 **PROVIDED FURTHER** that where the exercise of such right requires a modification of the agenda for the shareholder meeting that has already been circulated to the Members, the Company shall make available a revised agenda sufficiently in advance of the date of the meeting so as to enable the Members to appoint a proxy.

## 24 PROCEEDINGS AT MEETINGS

- 24.1 No business shall be transacted at a meeting of the Company unless a quorum of Members is present at the time the meeting proceeds to business.
- 24.2 Any two Members holding shares granting the right to vote in the Company shall form a quorum. Provided that should there not be a quorum within half an hour of the appointed time, the Member or Members present shall constitute a quorum and the meeting can then proceed to transact business.
- 24.3 Except as provided for in Article 10 of this Constitution, each share shall entitle the Member to one (1) vote.
- 24.4 Except as provided in Article 24.1 to Article 24.3 (inclusive), meetings of shareholders shall be conducted in accordance with the Fifth Schedule to the Act.

## 25 THE BOARD OF DIRECTORS

- 25.1 The administration and management of the Company shall be vested in a board of Directors.
- 25.2 Directors, other than the first Directors, shall be appointed by means of an ordinary resolution of the Company in meetings. Provided that the continuing directors may appoint another person in order to fill any vacancy or vacancies arising from the death, resignation, removal or otherwise of one or more directors. A person appointed by the directors to fill a casual vacancy shall hold office until the next following annual meeting.
- 25.3 Without prejudice to the aforementioned powers of the Directors, any casual vacancy may also be filled by the Company in a meeting.
- 25.4 Directors shall hold office up to six years from the date of their appointment, unless they die, resign or are otherwise removed before the expiration of the said period. Provided that a Director retiring from office due to the expiration of the said six year period shall be eligible for re-election.
- 25.5 The remuneration of the Directors shall from time to time be determined by the Company in a meeting. Such remuneration shall be deemed to accrue from day to day. The Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or meetings of the Company or in connection with the business of the Company.
- 25.6 The Directors shall have the powers mentioned in the Constitution as further defined hereafter:
- 25.6.1 The board of Directors may from time to time borrow or raise any sum or sums of money upon any terms as to interest or otherwise as it may deem fit, and for the purpose of securing the same or for any other purpose, grant any mortgage or hypothec on any of the assets of the Company and/or create and issue any perpetual or redeemable debentures or debenture stock or charge on the undertaking or the whole or any part of the assets, present or future, of the Company; and any debentures, debenture stock and other securities may be issued at a discount, premium or otherwise, and with any special privileges as to redemption, surrender, drawing, allotments of shares, attending and voting at meetings of the Company and otherwise.
- 25.6.2 The Directors shall exercise their powers subject to any of this Constitution, to the provisions of the Act and to such regulations being not inconsistent with the aforesaid Articles or provisions, as may be prescribed by the Company in a meeting; but no regulation made by the Company in a meeting shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.
- 25.6.3 The Directors shall cause minutes to be made in books provided for such purpose:
- 25.6.3.1 of all appointments of officers made by the Directors;
- 25.6.3.2 of the names of Directors present at each meeting of the Directors or committees of Directors;
- 25.6.3.3 of all resolutions and proceedings at all meetings of the Company, and of the Directors, and of committees of Directors; and any such minutes of any meeting, if purporting to be signed by the chairman of such meeting or by the chairman of the next succeeding meeting, shall be conclusive evidence without any further proof of the fact therein stated.
- 25.7 The Directors on behalf of the Company may pay a gratuity or pension or allowance on retirement to any Director who has held any other salaried office or place of profit with the Company or to his widow or dependants and may make contributions to any fund and pay premiums for the purpose of provision of any such gratuity, pension or allowance.
- 25.8 A Director shall declare his interest in any contract or arrangement which is being discussed by the board of Directors or which is being or may be entered into by the Company. He shall not be precluded from voting at any meeting where such contracts or arrangements are being considered.

## 26 PROCEEDINGS AT BOARD OF DIRECTORS

- 26.1 The business of the Company shall be managed by the Directors who may exercise all such powers of the Company, and do on behalf of the Company all such acts as may be exercised and done by the Company, and as are not by the Act or by this Constitution required to be exercised or done by the Company in a meeting. In so acting, the Directors shall in all cases conform to the provisions of the Act, and this Constitution, and to such regulations as may from time to time be prescribed by the Company in a meeting, but no regulation made by the Company in a meeting shall operate retrospectively to invalidate any previous act of the Directors.
- 26.2 The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit. Provided that the Directors shall hold a meeting at least three times per annum.
- 26.3 Questions arising at any meeting shall be decided by a majority of votes. In case of equality of votes, the chairman shall have a second or casting vote. A Director may, and the secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.
- 26.4 The quorum necessary for the transaction of the business of the Directors, shall be a majority of Directors present in person or by their alternate director.
- 26.5 The Directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five (5) minutes after the time appointed for holding same, the Directors present may choose one of their number to be chairman of the meeting.
- 26.6 Except as provided in Article 26.1 to Article 26.5 (inclusive), the Directors meetings shall be held in accordance with the Eighth Schedule to the Act.
- 26.7 The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors, and subject to any such regulations, it shall regulate its proceedings in like manner as if its meetings were meetings of the Directors.
- 26.8 The Directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. His appointment shall be automatically terminated if he ceases to be a Director.
- 26.9 A managing director shall receive such remuneration as the Directors, subject to the approval of the Company in a meeting, may from time to time determine.
- 26.10 The Directors may entrust to and confer upon a managing Director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of such powers.

## 27 REPRESENTATION AND DELEGATION

- 27.1 The person representing the Company may by instrument in writing delegate his powers of representation, including the power to sub-delegate, to such other persons as he deems fit.
- 27.2 Without prejudice to the provisions of Article 20 of the Constitution, the Company may upon resolution of its board of Directors, appoint by instrument in writing any person as its legal and/or judicial representative with full powers, including the power of substitution, to represent the Company, and in particular but without prejudice to the generality of the foregoing, to enter into any agreement, whether by public deed or by private writing or instrument, on behalf of the Company, and to sign and execute any documents on behalf of the Company.
- 27.3 For the purposes of this Article, an authenticated extract of the minutes of the board of Directors shall be treated as an instrument in writing.

## 28 ADMINISTRATOR

- 28.1 The Directors shall appoint a Management Company as Administrator, to manage the Company's administrative affairs.
- 28.2 The Directors may bestow to the Administrator any of the relevant functions, duties, powers and discretion exercisable by them as Directors, (other than its powers under any section specified in the Seventh Schedule to the Act), upon such terms and conditions, including the right to remuneration payable by the Company and with such powers of delegation and sub-delegation and such restrictions as they think fit, either collaterally with or to the exclusion of their own powers.

## 29 DIVIDENDS AND RESERVES

- 29.1 The Company in a meeting may declare dividends, but no dividends shall exceed the amount recommended by the Directors.
- 29.2 A meeting declaring a dividend may, upon the recommendation of the Directors, direct that it shall be satisfied wholly or partly by the distribution of assets, and the Directors shall give effect to such resolution. Where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient.
- 29.3 The Directors may from time to time pay to the Members such interim dividends as appear to the Directors to be justified by the profits of the Company. Such interim dividends may be satisfied wholly or partly by the distribution of assets.
- 29.4 For the avoidance of doubt, nothing in this Constitution shall preclude the Directors from offering to pay interim dividends to the Members by any means, including but not limited to scrip dividends.
- 29.5 No dividend shall be paid otherwise than out of profits.
- 29.6 The Directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as a reserve or reserves which shall, at the discretion of the Directors, be applicable for any purpose to which the profits of the Company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the Company or be invested in such investments (other than shares of the Company) as the Directors may from time to time think fit. The Directors may also without placing the same to reserve carry forward any profits which they may think prudent not to distribute.
- 29.7 Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on the share in advance of calls shall be treated for the purposes of this Article as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.
- 29.8 The Directors may deduct from any dividend payable to any Member all sums of money (if any) presently payable by him to the Company on account of calls or otherwise in relation to the shares of the Company.
- 29.9 No dividend shall bear interest against the Company.

## 30 ACCOUNTS

The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors, and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by the Company in a meeting.

## 31 CAPITALISATION OF RESERVES

- 31.1 The Company in a meeting may upon the recommendation of the Directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the Company's reserve accounts or to the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the Members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such Members respectively or paying up in full unissued shares or debentures of the Company to be allotted and distributed credited as fully paid up to and amongst such Members in the proportion aforesaid, or partly in the one way and partly in the other, and the Directors shall give effect to such resolution:
- 31.2 Provided that a share premium account and a capital redemption reserve fund may, for the purposes of this Article, only be applied in the paying up of unissued shares to be issued to Members of the Company as fully paid bonus shares:
- 31.3 Provided further that the Directors may in giving effect to such resolution make such provision by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions.
- 31.4 Without prejudice to the provisions of Article 31.1 above, the Company may, at its discretion, grant to all Members the right to choose to receive a cash dividend instead of all or part of their entitlement to Bonus Shares being issued by the Company, and the provisions of Article 29 hereof shall apply to the said cash dividend. When such option is granted by the Company, any Member who elects to receive a cash dividend instead of all or part of his entitlement to the Bonus Shares shall have the right to receive from the Company a cash amount which is as nearly as possible equal to the relevant amount in the Company's reserves which would have otherwise been applied in paying up the Accounting Par Value of the Bonus Shares to be issued to such Member (the "**Relevant Value**").
- 31.5 The Relevant Value shall be determined by the board of Directors from time to time.
- 31.6 Members shall be informed by the Company of their right to elect to receive a cash dividend instead of the Bonus Shares by means of a notice in writing. Accidental failure to send or receive such notice shall neither invalidate the offer nor give rise to any claim, suit or action.
- 31.7 For the purposes of this Article 31:
- 31.7.1 "**Bonus Shares**" shall refer to any shares issued by the Company through the capitalisation of any amounts standing to the credit of the company's profit and loss account or other distributable reserves, share premium account, capital redemption reserve and any other non-distributable reserve.
- 31.7.2 "**Accounting Par Value**" means in relation to each share, its nominal value and share premium, if any, or its nominal value and notional share premium, if any, as the case may be.

## 32 SPECIAL RESOLUTIONS

32.1 A resolution shall be a special resolution where -

- 32.1.1 it has been taken at a meeting of which notice specifying the intention to propose the text of the resolution as a special resolution and the principal purpose thereof has been duly given; and
- 32.1.2 it has been passed by a Member or Members having the right to attend and vote at the meeting holding in the aggregate not less than seventy-five per centum (75%) in nominal value of the shares represented and entitled to vote at the meeting.

32.2 A special resolution shall be required to:

- 32.2.1 alter or revoke the Company's constitution;
- 32.2.2 reduce the stated capital of the Company under section 62 of the Act 2001;
- 32.2.3 approve an amalgamation of the Company under section 246 of the Act 2001; or
- 32.2.4 put the Company into liquidation.

## 33 WINDING UP

33.1 The Company shall be wound up by a special resolution of the Company.

33.2 If the Company shall be wound up the liquidator may, with the sanction of a special resolution of the Company and any other sanction required by the Act, divide amongst the Members "in specie" or in kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose, set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the numbers of different classes of Members. The liquidator may, with like sanction, vest the whole or any part of such assets in trusts for the benefit of the beneficiaries as the liquidator, with the like sanction, shall think fit, but so that no Member shall be compelled to accept any shares or other securities whereon there is any liability.

## 34 NOTICES

Notice under this Constitution shall be given in accordance with this Article. Any notice must be served by post, fax or electronic mail and shall be deemed to have been served, in the case of post seven calendar days immediately following that on which it was posted and in the case of a fax or electronic mail on the day of transmission, and in providing such service it shall be sufficient to prove that the notice was addressed properly and posted or transmitted to such fax number or electronic mail address as may be notified by the Members and Directors to the Company.

## 35 MEETINGS BY TELEPHONE

A person is entitled to participate at a meeting of the board of Directors or at any meeting by means of telephone conference link or through any communication equipment that allows all persons participating in the meeting to hear and speak to each other, provided the other Members or Directors agree to such participation. A person so participating shall be deemed to be present in person at the meeting and shall be entitled to vote and be counted in a quorum accordingly. Such a meeting shall be deemed to take place where the largest group of those participating is assembled, or, if there is no such group, where the chairman of the meeting is. The chairman of the meeting shall sign on behalf of the person participating by such electronic means and shall record the fact that all persons present at the meeting have agreed to such participation.

## 36 INDEMNITY

Every managing director, Director holding any other executive office or other Director, and every agent, or Company secretary and in general any officer or auditor for the time being of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in defending any proceedings in which judgement is given in his favour or in which he is acquitted.

## 37 INSURANCE

The Company may purchase and maintain Director's and officer's liability insurance from a reputable insurer covering any acts or omissions. Such insurance may be taken out on customary terms with an amount of coverage of such amount as may be determined by the Company from time to time.

## 38 ARBITRATION

38.1 Any dispute arising out of or in connection with this Constitution, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration Rules of the Mauritius International Arbitration Centre, which rules are deemed to be incorporated by reference into this Article.

38.2 The number of arbitrators shall be one.

38.3 The juridical seat of arbitration shall be Mauritius, and the International Arbitration Act 2008 shall apply to the arbitration.

38.4 The language to be used in the arbitral proceedings shall be the English language.

38.5 The shareholders and the Company agree to keep confidential all awards in their arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a court or other judicial authority.

## 39 DATA PROTECTION

39.1 Each of the Shareholders and Directors (from time to time) consents to the processing of his personal data by the Company, its Shareholders and Directors (each a **Recipient**) for the purposes of conducting the business of the Company, due diligence exercises, compliance with applicable laws, regulations and procedures and exchange of information amongst themselves. A Recipient may process such personal data either electronically or manually.

39.2 The personal data that may be processed for such purposes under this Article 40 shall include any information which may have a bearing on the prudence or commercial merits of investing in, or disposing of any Shares (or other investment or security) in, the Company. Save as required by law, court order or any regulatory authority, that personal data shall not be disclosed by a Recipient or any other person except to:

39.2.1 A Member of the Same Group as the Recipient (each a **Recipient Group Company**); and

39.2.2 Employees, directors and professional advisers of that Recipient or any Recipient Group Company.

39.3 Each of the Shareholders and Directors consent (from time to time) to the transfer of such personal data to persons acting on behalf of any Recipient and to the offices of any Recipient, both within and outside the Republic of Mauritius for the purposes stated above, where it is necessary or desirable to do so.

## ANNEX 5: KEY PARAMETERS OF THE LTIP

The LTIP is a five-year structure which has been designed to align the interests of the Advisor with those of Shareholders in delivering on Brait's revised strategy of realising value from the portfolio over the medium term, whilst minimising dilution to Shareholders. Key parameters of the LTIP:

- the LTIP will result in the Advisor receiving participation rights ("**Participation Rights**") to the realised proceeds distributed from the Brait portfolio only once cumulative distributions to Shareholders have exceeded the 31 March 2020 Net Asset Value ("**NAV**") of R8.27 per share (the "**Hurdle Price**"). The value accruing to the Advisor would be equal to the surplus between such distributions and the Hurdle Price and would be settled in cash;
- the Participation Right, which carries no voting rights, will be based on a sliding scale from 5.0% to 0.5% depending on the quantum of cumulative realised proceeds distributed to Shareholders. The LTIP has a diminishing participation rate as the disposal proceeds increase, in order to avoid any "excess participation" by the Advisor in the event of significant outperformance;
- the Hurdle Price represents a five-year, 16% Compound Annual Growth Rate ("**CAGR**") over the Brait share price of R3.89 as at 6 October 2020, and will be adjusted to account for corporate events such as the declaration of ordinary and special dividends, share buybacks, and asset unbundlings;
- the LTIP will remain in place for five years to align it with the revised Brait strategy of realising value from the Brait portfolio over a three to five-year timeframe and can be extended at the Board's election;
- Ethos will allocate the LTIP to its employees on terms to be agreed between such parties and it is expected that the terms will include standard good leaver/bad leaver provisions in the event of an employee leaving Ethos' employment. Any allocation foregone by employees leaving can be reallocated by Ethos to its remaining employees working on the Brait portfolio;
- in the event of a change in control of Brait or a termination/non-renewal of the Ethos Advisory Agreement, the rights under the LTIP would remain in place and the Advisor would receive its Participation Rights as they fall due; and
- the dilution for Shareholders will be minimised whilst ensuring that the Company has an equitable LTIP in place to ensure alignment of interests with the Advisor.

Once, on a cumulative basis, the realised distributions to Shareholders exceeds the Hurdle Price, the Advisor will be entitled to its Participation Right of any further distributions to Shareholders. The Participation Right percentage is based on the following cumulative distributions to Shareholders and the resultant Shareholder dilution is set out below:

Realised distributions per share	Participation	Shareholder dilution
> R8.27 < R12.0	5.0%	0.0% to 1.6%
> R12.0 < R15.0	4.5%	1.6% to 2.1%
> R15.0 < R18.0	4.0%	2.1% to 2.5%
> R18.0 < R21.0	3.5%	2.5% to 2.6%
> R21.0 < R24.0	3.0%	2.6% to 2.7%
> R24.0 < R27.0	2.5%	2.7% to 2.6%
> R27.0 < R30.0	2.0%	2.6%
> R30.0 < R33.0	1.5%	2.6%
> R33.0 < R36.0	1.0%	2.5%
> R36.0	0.5%	< 2.4%

The proposed LTIP would result in the following value received by the Advisor based on various outcomes:

Realised distributions per share	Total Shareholder return	Shareholder dilution
R8.27	213%	–
R9.36	241%	0.6%
R10.55	271%	1.1%
R11.87	305%	1.5%
R13.32	342%	1.8%
R14.90	383%	2.1%
R16.63	428%	2.3%

Assuming, for illustrative purposes that realised proceeds of R11.87 are distributed, Shareholder returns from the current Brait share price of R3.89 would be 305% (25% per annum over five years) and the resultant dilution to Shareholders due to the LTIP would be 1.5%.

# Form of proxy



BRAIT SE  
(Registered in Malta as a European Company) (Registration No.SE1)  
Listed in Luxembourg and South Africa  
("Brait" or the "Company")

## Form of Proxy for use by certificated Brait holders of ordinary shares and "own-name" dematerialised Brait holders of ordinary shares only at the extraordinary general meeting of Friday, 30 October 2020 at 08h30 CET

For use only:

- by holders of certificated shares of the Company; and
- holders of dematerialised shares in the Company held through a Central Securities Depository Participant ("CSDP") or broker and who have selected "own name" registration;
- at the extraordinary general meeting of the Company to be held at 08h30 CET on Friday 30 October 2020, at 4th Floor, Avantech Building, St. Julian's Road, San Gwann SGN 2805, Malta or at any adjournment thereof ("EGM").

If you are a Brait shareholder entitled to attend and vote at the EGM, you can appoint a proxy or proxies to attend, vote and speak in yourstead. A proxy need not be a shareholder of the Company.

If you are a Brait shareholder and have dematerialised your share certificates through a CSDP (and have not selected "own name" registration in the sub-register maintained by a CSDP), do not complete this form of proxy (blue) but instruct your CSDP to issue you with the necessary letter of representation to attend the EGM, or if you do not wish to attend, provide your CSDP with your voting instructions in terms of your custody agreement entered into with them.

I/We

(full names in block letters) of (address)

Being a holder/s of \_\_\_\_\_ Shares in the Company, hereby appoint (see note ii)

1. \_\_\_\_\_ or (or failing him/her)

2. \_\_\_\_\_ or (or failing him/her)

3. the Chairman of the Company or failing him/her the Chairman of the EGM, as my/our proxy to attend, speak, and on a poll to vote or abstain from voting on my/our behalf at the EGM which will be held for the purpose of considering and, if deemed fit, passing, with or without modification, the ordinary or extraordinary resolution to be proposed thereat and at any adjournment thereof.

	Number of votes (one per share)		
	In favour	Against	Abstain
<b>Extraordinary resolutions</b>			
<b>Resolution number 1(a)</b> Approval of the Draft Terms			
<b>Resolution number 1(b)</b> Approval of the Conversion			
<b>Resolution number 1(c)</b> Approval of the New Memorandum and Articles of Association			
<b>Resolution number 2</b> Approval of the Redomiciliation			
<b>Resolution number 3</b> Approval of the New Constitution			
<b>Ordinary Resolutions</b>			
<b>Resolution number 4</b> Approval of the LTIP			
<b>Resolution number 5</b> Approval of the Board's authority			

Note: Please indicate with an "x" in the spaces above how you wish your votes to be cast.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of 2020

Signature: \_\_\_\_\_

## Notes to the proxy

- i. The following dates are applicable to all Ordinary Shareholders. This notice is being released to the Ordinary Shareholders on the register of members of the Company as at Friday, 25 September 2020. Ordinary Shareholders registered on the register of members at Friday, 23 October 2020 (“**Record Date**”) shall have the right to participate in and vote at the EGM. Accordingly, the last day to trade for Ordinary Shareholders in order to be able to participate in and vote at the EGM is Tuesday, 20 October 2020. Any change to an entry on the register of members after the Record Date shall be disregarded in determining the right of any person to attend and vote at the EGM.
- ii. A member entitled to vote may appoint a proxy to attend and vote instead of him/her using the enclosed form of proxy. The appointed proxy need not be a member. To be valid the Form of Proxy must be signed and must reach the office of the Company Secretary at Brait SE, 4th Floor, Avantech Building, St. Julian’s Road, San Gwann, SGN 2805, Malta by not later than Thursday, 29 October 2020 at 08h30 CET.
- iii. Should you not wish to send the duly completed proxy directly to the Company Secretary you may send it to the appropriate transfer agent:
  - for the Luxembourg share register: Maitland Luxembourg S.A., 58, rue Charles Martel, Luxembourg, L-2134, Tel: +352 402 5051, Fax: +352 402 505 66; or
  - for the South African share register: Computershare Investor Services (Pty) Limited, Private Bag X9000, Saxonwold, 2132, Tel: +27 11 370 5000, Fax: +27 11 668 5200by not later than Wednesday, 28 October 2020 at 08h30 CET, in order to enable the transfer agent to send it on your behalf for receipt by the Company Secretary by not later than Thursday, 29 October 2020 at 08h30 CET.
- iv. In order to participate in and to vote at the EGM, an Ordinary Shareholder or his/her proxy is to present his/her identity card or other means of identification. In the case of an Ordinary Shareholder being a body corporate, association of persons, foundation or other body of persons, a representative thereof will only be eligible to attend and be admitted to the EGM, and to vote there at, if a form of proxy has been (a) duly executed in his/her favour by the competent organ of the entity which he/she represents, and (b) submitted to the Company Secretary in accordance with the procedures set out under (ii) above.
- v. A holder of shares in the Company holding not less than 10 (ten) per cent of the voting issued share capital of Brait may:
  - (a) request Brait to include items on the agenda of the EGM, provided that each item is accompanied by a justification or a draft resolution to be adopted at the EGM; and
  - (b) table draft resolutions for items included in the agenda of the EGM.Provided that, with respect to the request to put items on the agenda of the EGM or table draft resolutions, these shall be submitted to Brait in hard copy form or in electronic form at least 7 (seven) days before the date set for the EGM and it shall be authenticated by the person or persons making it. In the event that such a request or resolution is received after the lapse of the 7 day time limit set out above, Brait shall not be obliged to entertain any requests by such holders of ordinary shares.
- vi. In the case of ordinary shares held jointly by several persons, the person who had been nominated by the joint holders to be the registered holder of such shares shall be entitled to attend and vote at the EGM. In the event that the joint holders failed to nominate such person, the first named joint holder on the register of members of the Company shall be entitled to attend and vote at the EGM.
- vii. An Ordinary Shareholder who is a minor may be represented at the EGM by his/her legal guardian who will be required to present his/her identity card.
- viii. Admission to the EGM will commence one hour before the advertised and appointed time.
- ix. The following information is also made available to shareholders on [www.brait.com](http://www.brait.com) in the Investor Relations section:
  - (a) a copy of this notice;
  - (b) the total number of shares and voting rights at the date of the notice;
  - (c) the documents to be submitted to the EGM;
  - (d) the proxy forms.