



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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IN THE JUDICIAL COMMISSION OF INQUIRY INTO THE ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE, HELD AT PARKTOWN NORTH, JOHANNESBURG (“the Commission”)

GIGABA, MALUSI KNOWLEDGE NKANYEZI

Applicant

INDEX TO THE STATEMENT OF RESPONSE AND APPLICATION FOR LEAVE TO CROSS EXAMINE A WITNESS: PREPARED BY THE APPLICANT’S ATTORNEYS ON WEDNESDAY, 26 JUNE 2019

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DATED at Sandton, Johannesburg on Wednesday, 26 June 2019.



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on Wednesday, 26 June 2019

IN THE JUDICIAL COMMISSION OF INQUIRY INTO THE ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE, HELD AT PARKTOWN NORTH, JOHANNESBURG (“the Commission”)

GIGABA, MALUSI KNOWLEDGE NKANYEZI

Applicant

PRELIMINARY STATEMENT OF RESPONSE/APPLICATION FOR LEAVE TO CROSS EXAMINE A WITNESS

KINDLY TAKE NOTICE that the Applicant hereby files his preliminary statement of response to the statement of Ms Sizakele Petunia Mzimela (“Ms Mzimela”) dated 6 June 2019 (“the Mzimela statement”) and simultaneously hereby gives notice of his intention to apply to the Commission on date and at the time determined by the Chairperson of the Commission, for Directions in the following terms:

1. That the statement of response annexed hereto marked “A” be admitted to the Commission as a preliminary response to the Mzimela statement;
2. That the secretary of the Commission be directed to take all necessary steps within the Rules of the Commission and in particular Rule 10 thereof in order to procure from South African Airways (SAA) Limited

(“SAA”), the following documentation required by the Applicant in order to effectively respond to the Mzimela statement:

- 2.1 the audited annual financial statements and reports of SAA for the period 2008 to 2015 (“the first period”);
- 2.2 any and all the memoranda of incorporation of SAA for the first period;
- 2.3 minutes of the board meetings of SAA during the period 2010 to 2014 (“the second period”);
- 2.4 any and all of the recapitalization applications by SAA to the Department for the first period;
- 2.5 any and all of the approvals of the recapitalization applications and the conditions thereof by the Department and/or National Treasury for the first period;
- 2.6 the annual route profitability reports on all the routes of SAA for the first period; and
- 2.7 any and all of the shareholder compacts between the SAA and the Department for the first period;

(“the required documents”)

3. That the Applicant be granted leave to cross examine Ms Mzimela on such terms as the Chairperson of the Commission may deem fit;
4. That the Applicant be granted leave to supplement his preliminary response (being annexure A hereto) within a period of 14 (fourteen) calendar days from receipt of the required documents from the Commission; and
5. That the Applicant be granted such further and alternative relief as the Chairperson of the Commission may deem fit.

DATED at Sandton, Johannesburg on Wednesday, 26 June 2019.



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on Wednesday, 26 June 2019

"A"

I, the undersigned,

MALUSI KNOWLEDGE NKANYEZI GIGABA

do hereby make oath and say:

THE DEPONENT

1. I am:
 - 1.1 an adult male; and
 - 1.2 the Former Minister of the Department of Public Enterprises.
2. The contents of this statement are within my personal knowledge and belief, save where the context indicates otherwise and are both true and correct.

PURPOSE OF THIS STATEMENT

3. The purpose of this statement is three-fold, namely to serve as:-
 - 3.1 a response to the statement of Ms Sizakele Petunia Mzimela ("Ms Mzimela") dated 12 June 2019 ("the Mzimela statement");
 - 3.2 a basis for an application for leave to cross examine Ms Mzimela as contemplated in Rule 3.3 read with Rule 8.2 of the Rules of the Commission into allegations of State Capture ("the Commission");and

m.m.s.

KMG

- 3.3 an application to the commission to obtain through its powers of subpoena *duces tecum* certain relevant documentation and information.

INTRODUCTION

4. On 12 June 2019 I received a notice in terms of Rule 3.3 from the Commission together with the Mzimela statement.
5. The Mzimela statement makes reference to certain events and documentation some of which dates back to about six years ago. In order to comprehensively respond to the Mzimela statement, I will need to do so by referencing, *inter alia* the following documents which are not in my possession, although ought to be in the possession of the Department of Public Enterprises ("the Department") and/or the South African Airways (SOC) Limited ("SAA"):-
- 5.1 the audited annual financial statements and reports of SAA for the period 2008 to 2015 ("the first period");
- 5.2 any and all the memoranda of incorporation of SAA for the first period;
- 5.3 minutes of the board meetings of SAA during the period 2010 to 2014 ("the second period");
- 5.4 any and all of the recapitalization applications by SAA to the Department for the first period;

- 5.5 any and all of the approvals of the recapitalization applications and the conditions thereof by the Department and/or National Treasury for the first period;
- 5.6 the annual route profitability reports on all the routes of SAA for the first period; and
- 5.7 any and all of the shareholder compacts between the SAA and the Department for the first period;

("the required documentation")

6. Although I would have preferred to make a statement with the required documentation in my possession, I have elected to make this statement in the absence thereof. I do so in order to ensure that the work of the Commission is not delayed whilst simultaneously reserving my rights to supplement this statement once the required documentation is to hand. I have instructed my attorneys to write to the Department and SAA to procure the required documentation. I also hereby request the Commission to assist in the process of procuring the required documentation through its powers of subpoena *duces tecum* so that this part of the process of the Commission is not unduly delayed.
7. I have endeavored as much as possible to identify the specific allegations in the Mzimela statement which I place in issue and to the extent that I may have omitted to deal with any specific allegation, such should not be

construed as being admitted. I have also at the same time, set out my version in response to a specific allegation being responded to.

SUMMARY OF THE STATE OF SAA ON MY APPOINTMENT

8. I was appointed as the Minister of the Department on 1 November 2010 and remained in such position until May 2014.
9. SAA was reported to be in a state of financial distress and could not meet its financial obligations. Upon my arrival at the Department, I received various briefings from the Department's officials on the state of the Department and the State entities that fall under its authority.
10. Given its precarious financial position, SAA had made requests for a State financial bail-out in order to fulfill its mandate. When a State financial bail-out is under consideration, an entity is put under certain conditions of performance and these must be strictly monitored by the Department as a shareholder to ensure optimal use of the State funds. Of importance it must be ensured that SAA implements the turnaround strategy that it has committed to and rids itself of material causes of losses.

AD GOVERNANCE AT SAA

11. It is not clear what the allegations of Ms Mzimela against me are in this regard. I wish to unequivocally state that neither the policies nor the communication channels changed during my tenure at the Department. Any allegation to this effect must be substantiated and documentation provided to enable me to deal meaningfully with the allegation against me. In this regard, I have requested access to the memoranda of incorporation of SAA during the first period.
12. It is not indicated which part of the memoranda of incorporation ("the MOI") is it alleged that I had a challenge with, nor what the issue is that I allegedly had with the MOI.
13. Ms Mzimela further makes mention of a "grey line" to respective responsibilities with no reference to any incidences. I deny the *innuendo* and aspersion sought to be established. As stated *supra* no changes under my watch were made to the protocols of the Department to the best of my knowledge.
14. As indicated, I was appointed Minister of the Department on 1 November 2010. It is unimaginable that in the short period between November and January 2011, I could have disintegrated corporate governance at SAA in the manner that Ms Mzimela seems to suggest.

15. Prior to my appointment as the Minister of the Department, I had served as a Deputy Minister of Home Affairs from 2004. During the period of six years, there had been five Ministers who had been appointed to the Department, including three that served between 2008 and 2010. The impact of this on the portfolio of State Owned Entities, SAA in particular cannot be underestimated. However, of particular significance was that even as I was appointed, SAA had gone through a lengthy period of excessive financial bleeding and poor corporate governance.
16. Even during my tenure, the financial bleeding continued and the situation remains unchanged as far as I am aware. To ignore this entire history and claim that in the two months I had been minister, a “very grey line” developed is to be disingenuous.
17. Several issues have been the reason for the financial woes of SAA, including:
- 17.1 aging and fuel-intensive fleet;
 - 17.2 expensive fleet bought earlier when SAA's financial position was weak;
 - 17.3 a huge debt and successive financial bailouts as a result;
 - 17.4 weak corporate governance from long prior my appointment;
 - 17.5 fuel levies;

- 17.6 loss-making routes due, in part, to high fuel cost;
 - 17.7 declining share of passengers;
 - 17.8 very lucrative pilots contracts; and
 - 17.9 declining domestic market dominance and high personnel cost (overheads).
18. It is perhaps important to highlight the fact that during my tenure, a great deal of engagement took place, almost daily, probably still to day, between the Department and SAA on various challenges and operational issues as mentioned supra, given the dire state of the airline. These did not involve my office unless there was an approval required of me as the shareholder representative. There was nothing irregular about this.
19. SAA had tried several turnaround strategies that had not been implemented to any fruition, often abandoned midstream when new executives or ministers were appointed.
20. During my address to the annual general meeting in October 2012, I bemoaned the fact that SAA had performed below expectations during the 2011/12 financial year. I stated amongst others that, although such performance could be attributed to the adverse global economic

environment, however, SAA had still fared unfavourably in comparison to its peers across the globe.

21. As a matter of fact, this has continued to be the case even to this day. I further bemoaned the decline of SAA's liquidity position over the previous two years – 2009 / 2010 and 2010 / 2011, which, I contended, had resulted from the cash burn which raised serious questions about SAA's status as a going concern. I do not presently have a copy of my speech to the annual general meeting and this is expected to be in the possession of the Department. I will endeavour to obtain this speech and make it available to the Commission.
22. The auditors of SAA had raised concerns regarding the restatement of corresponding figures and irregular expenditure, which restatement, whilst it is an acceptable accounting practice, cast aspersions on the integrity of the numbers year on year.
23. I raised serious concerns about SAA's financial statements, its financial position and liquidity position, the failure of the company to meet 56% of its key performance areas relating to financial value creation or commercial objectives stipulated in the shareholder compact, and the changes to the airline's accounting policies (as well as restatements) which created a false improvement in the financial performance of the company.

24. I was not, during this period in question, in any position to have formulated a view on what were the problems afflicting SOEs in general, and SAA in particular, and what would be the solutions to such. I certainly had not brought any presumptions about SAA's financial position and state of corporate governance.

MR SIYABONGA MAHLANGU

25. During 2010 and at or about the time of my appointment, Mr Siyabonga Mahlangu ("Mr Mahlangu") was appointed by me as my special advisor in terms of Section 12A of the Public Service Act to advise *inter alia* on legal, governance and administrative matters.
26. It is accordingly self-evident that in so far as Ms Mzimela wishes to cast Mr Mahlangu in a poor light, these aspersions should be dealt with by him, suffice it to emphasize that apart from vague allegations concerning Mr Mahlangu, there is no substance to the *innuendo*.
27. There was no interference that was brought to my attention regarding Mr Mahlangu, nor did any acts of such alleged interference occur in my presence. Had any instances of such behaviour been brought to my attention, I would have taken the appropriate corrective measures. The only issues that I observed revolved around personality clashes, which I reprimanded Mr Mahlangu for.

THE MUMBAI ROUTE

28. The suggestion that I may have been responsible for the termination of the Mumbai route is without merit. It is clear from the Mzimela statement that the issue of the Mumbai route was always in the pipeline even before my tenure, in fact way before my appointment. It was a subject-matter of discussion within SAA during my predecessor, Minister Hogan's tenure as evidenced by SM4. In addition thereto, on Mzimela's own version, Mr. Smythe who was the acting chief executive officer of SAA motivated for the cancellation of the Mumbai route on 1 April 2010, way before my appointment as the Minister of the Department. It would appear that by reason thereof, Ms Mzimela harboured some resentment towards Mr. Smythe.

29. It is also evident from Annexure SM2.1, *inter alia* that:

28.1 the 13 February 2010 submission stated that in July 2009 some profitability targets were set for the Johannesburg – Mumbai route and agreed upon; and

28.2 a rescue plan was implemented to turn around profitability without success and that the recommendation to terminate the route as since 2006 the route came under pressure. Again in 2008 the route showed consistent failure to deliver profit.

29. The 13 February 2010 submission shows damning financial implications. Now I fail to understand how Ms Mzimela can suggest that in 2011 a matter that had been pending since 2006 was urgent.
30. Ms Mzimela's assertions are not substantiated by any evidence in fact she also contradicts herself with regards to *inter alia* the Mumbai route.
31. There was no anomaly in me meeting with Jet Airways. SAA is not the only the only SOE in which the shareholder facilitated meetings between the SOE, the department's officials and third parties. To mention but a few:
- 31.1 When Eskom was experiencing delays in the build programme, I facilitated a meeting between various stakeholders, which included unions, the principal and secondary contractors as well as the executive of Eskom and the Department to resolve the issues both relating to the ongoing strike at Medupi as well as contractual issues which had caused delays and cost overrun;
- 31.2 Furthermore, I had facilitated meetings with Anglo CEO, Mark Cutiffani, on the proposed emerging miners strategy for Eskom with Mike Teke, then the Chairperson of the Mining Council, on the issues of coal supply to Eskom, as well as with emerging miners on the new strategy which was in the pipeline at Eskom to increase the share of coal supplied to Eskom by emerging miners by 2018;

- 31.3 I facilitated several meetings between Eskom and intensive users of electricity during what was a difficult time of energy shortage in the country, the point not being to disadvantage Eskom, but to find amicable solutions. I could not simply ignore the concerns of Eskom's stakeholders, particularly economic sectors, simply because I wanted to be seen favouring Eskom;
- 31.4 I facilitated various meetings between Transnet, Eskom and the automotive and mining sectors discuss the ways in which these SOEs could respond to the concerns of these sectors at a time when the large SOEs were viewed by these sectors as arrogant and unresponsive to industry concerns for network availability. As a result, several agreements were reached which improved SOE efficiency and helped the economy not to grind to a halt because of inefficient and indifferent performance by the SOEs;
- 31.5 I also facilitated a meeting with the big four audit firms to discuss audit work in the SOEs in my portfolio when the Department took the decision to rotate auditors, which resulted in the increase of market share by black audit firms. Without these decisions, black audit firms would have remained as junior partners in the audit work of SOEs and some would not even have grown. Sekela Xabisa emerged from that environment and Sizwe Nsaluba Gobodo became a giant during that time; and
- 31.6 I also facilitated many meetings during my tenures as Minister of Home Affairs and Finance, which meetings could not in any

possible way be said to have been intended to disadvantage these departments or the entities reporting to them.

THE MEETING OF 10 JANUARY 2011

32. Soon after my appointment as the Minister of the Department, my personal assistant informed me of a request from Jet Airways CEO for a meeting with myself to discuss a code-share between SAA and Jet Airways as a result of serious financial losses each airline was making on the route between Johannesburg and Mumbai, and that a code-share could enhance their revenues on the route whilst minimizing the losses.
33. Given that as the shareholder I was not privy to operational issues of SAA, I naturally invited to the meeting both the Department's transport and legal officials as well as SAA executives so that they could be part of the meeting and listen in, and later to advise me on the issues raised.
34. During the said meeting, I made it very clear that the meeting would take no decision and that after listening; the matter would be referred back to the two airlines to discuss the issues raised and to advise me on whichever decision was arrived at.
35. Indeed, I would, if such a decision was reached between the two parties which necessitated changes in the existing operations, exercise my discretion as the shareholder to provide input on the matter. My

understanding was that at the time, all decisions on new routes or on withdrawal from routes required shareholder approval. I found that procedure there and was advised that it had existed long before my own appointment to the Department.

36. This is one of the things identified in the long-term turnaround strategy as causing losses because it usually causes delays which lead to financial losses. I fully supported this proposal because, after all, daily decisions on routes are an operational matter which should not involve the shareholder.
37. When the meeting ended and the Jet Airways's CEO departed, I remarked to our team (the Department officials and executive of SAA) that this gentleman was extremely arrogant and I had not liked the manner in which he had presented his case.
38. Actually, I had during the said meeting called him to order in that regard. In the wrapping up session with our delegation I had clearly indicated to the team that they had to do what was in the best interests of SAA, and that I would take advice from them. There would have been no doubt whatsoever as to what I meant by that. It is in the nature of such meetings with other stakeholders that the shareholder would bring the executive directors along in order to ensure that they are aware of the issues raised and can advise accordingly afterwards on the best way forward.

39. I was silent during the meeting because I was listening to what was being discussed, which is courteous. I did not want to be perceived as taking sides. It is therefore mischievous to suggest that my silence meant anything more.

THE SUBMISSION OF 11 APRIL 2011

40. It is evident from this submission that there was no progress in the discussions between SAA and Jet Airways, despite Ms Mzimela's view that they had made substantial progress. There was no decision being presented.

THE MEETING OF 14 APRIL 2011

41. This was a follow up meeting to the first meeting held in Pretoria on 10 January 2011.
42. As a Minister, I do not physically arrange meetings. My diary was managed by my then personal assistant. No complaint was raised in the meeting with regards to the manner in which the meeting was arranged, if same was done I would have reprimanded my office for that.
43. Again, Ms Mzimela makes assertions regarding this meeting which are not supported by any evidence. Yes, I requested that the SAA and Jet Airways find each other and ensure the speedy finalization of the matter but there was nothing wrong in this regard. I am puzzled at the

insinuation herein as it seems clear from Ms Mzimela's statement that she herself was supportive of the initiative to code share untrammelled by outside influences.

44. I do not believe that any of my actions were against the interest of SAA. In any event, Ms Mzimela describes the solution found between SAA and Jet Airways as being "beneficial to SAA" and "enhanced added benefits to SAA".
45. In my view, the Director General's involvement was not interference, it was to facilitate the process to ensure that there is finality in the matter.
46. If Ms Mzimela had viewed it as interference at the time it is my submission that she should not have communicated with him on several occasions out of her own accord. Neither would she have requested him to assist with the application to the competition commission.
47. Interestingly, the decision to cancel the Mumbai route was taken by the SAA Board in 2015, when I was no longer the minister of the Department. I believe that this decision owed to the fact that SAA was bleeding on the route. These are not the only routes SAA has had to abandon because of loss of revenue on the route, this would include the Beijing route and many European routes (long hauls), and this was because of objective reasons.

EVENTS LEADING UP TO MS MZIMELA'S RESIGNATION

48. It would have been of assistance for Ms Mzimela for furnish documentation relating to what is being referred to as having resulted in the strain between SAA and the Department. For example, *inter alia* correspondence between SAA and the Department relating to *inter alia* the guarantees and, the annual general meetings are required in this regard.
49. I do state however that matters of recapitalization and guarantees do not rest with the Department. Upon receipt of a request and submission from an SOE, such submission is submitted by the Department to the National Treasury. This becomes a vigorous process as Government needs to justify any recapitalization, as is the case even to date regarding SAA. Thus, what had transpired then was not an anomaly. It is common cause that SAA had never fully met conditions set for it for recapitalization and guarantees, thus I can imagine that approvals in this regard could not have been made overnight.

CONCLUSION

50. The insinuation made by Ms Mzimela that SAA was dismantled as a result of my appointment is not supported by any evidence from her.

51. As an illustration of the fact that SAA's position was not because of my actions, I will give one simple example. SAA made losses on domestic routes and this is evidenced by the cancellation of the Durban – Cape Town route which was cancelled prior to my appointment as the minister of the Department, to the dismay of patrons, which included both the provincial Governments of KwaZulu – Natal and Western Cape, as well as Members of Parliament, that were not consulted on this decision. The KwaZulu – Natal Provincial Government, Public Enterprises Portfolio Committee and the African National Congress KwaZulu-Natal Caucus raised this matter very sharply with me subsequent to my appointment in meetings with me.
52. What I fail to understand is how SAA could have made a loss/losses on a route involving a captured market whereas other airlines such as British Airways were not and still fly the route using premium metal.
53. It is my submission that the challenges of SAA are structural and that it is unfair to blame me or the shareholder for the SAA's position.
54. Under Ms Mzimela, SAA established and implemented a top-heavy management style that was severely criticized during the turnaround strategy, accused of leading to delays in decision-making as there were too many layers of decision-makers which ensured that management always deferred decisions to other structures, which cost the company

a lot of money. Furthermore, the strategy was critical of many bad decisions that had previously been taken, which included, *inter alia*:

- 54.1 an incoherent route network strategy which did not consider SAA's ageing fleet which were fuel and carbon intensive and which ignored long-haul routes on which SAA was burning cash excessively;
- 54.2 bad pilots incentives which cost SAA excessive amounts of money in terms of salaries and other incentives; and
- 54.3 excessive cost-overruns. SAA had earlier implemented cost cutting measures, which included an early retirement and staff reduction plans, but these were also reversed during her tenure as she failed to stick to these measures. Instead, she relied on restatement of financials to paint a picture of success which was not demonstrated in practice as SAA continued to burn cash and rely on government bailouts, which received the ire of government and eventually resulted in the relocation of SAA from the Department to the National Treasury to try stop the financial mess which Mzimela had dismally failed to curb.

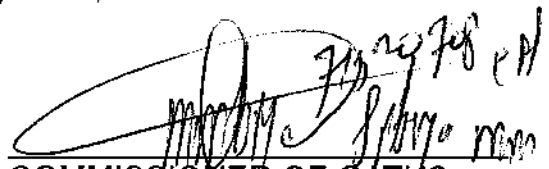
55. In the premises I submit that there was no wrong doing on my part as the shareholder in executing my duties.

56. Ms Mzimela has made serious allegations and insinuations against me. She has portrayed me as someone who has disregard for the law and corporate governance. She seems to suggest that I had some hand in the Mumbai route and that my actions were against the interest of SAA. These are serious allegations which not only I should be afforded an opportunity to respond to through this statement but I also believe that it would be in the interest of the Commission for me to be granted leave to cross examine Ms Mzimela.

57. I therefore humbly apply for leave to cross examine Ms Mzimela at a time convenient to the Commission.


DEPONENT

THUS SIGNED AND SWORN TO before me at Brooklyn SPS on this the 26th day of June 2019 by the deponent who acknowledges that the deponent knows and understands the contents of this affidavit; that it is the truth to the best of the deponent's knowledge and belief and that the deponent has no objection to taking the prescribed oath and regards the same as binding on the deponent's conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended.


COMMISSIONER OF OATHS

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FULL NAMES: Michael Madhona
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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

25 March 2020

To: Mr Gigaba

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And to: Ms Mzimela

Per email: SMzimela@flyexpress.aero / sizamzimela@gmail.com / ludwig@rouxlegal.com

APPLICATION FOR LEAVE TO ADDUCE EVIDENCE AND TO CROSS-EXAMINE

Applicant: Mr Malusi Knowledge Nkanyezi Gigaba

Witness implicating the applicant: Ms Sizakele Petunia Mzimela

1. The above-mentioned applicant and witness are thereby notified that the Chairperson of the Commission has made the following decision in the applicant's application for leave to adduce evidence and to cross-examine the above-mentioned witness before the Commission in connection with the above-mentioned witness's evidence or statement.

1.1. Chairperson's decision:

- (a) "In as far as the applicant may have failed to timeously deliver his/her application for leave to adduce evidence and to cross-examine the above-mentioned witness and applied for condonation, condonation is hereby granted.
- (b) The applicant is hereby granted leave to adduce evidence and to cross-examine the above-mentioned witness.
- (c) The date when the applicant will adduce evidence and to cross-examine the above-mentioned witness will be communicated to both the applicant and the above-mentioned witness in due course."

Yours sincerely

A handwritten signature in black ink, appearing to read 'K. Shabalala', written in a cursive style.

Ms KB SHABALALA

**ACTING SECRETARY, JUDICIAL COMMISSION OF INQUIRY INTO
ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE
PUBLIC SECTOR INCLUDING ORGANS OF STATE**

025

IN THE JUDICIAL COMMISSION OF INQUIRY INTO THE ALLEGATIONS OF
STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE, HELD AT PARKTOWN NORTH,
JOHANNESBURG ("the Commission")

GIGABA, MALUSI KNOWLEDGE NKANYEZI

Applicant

FILING SHEET: SUPPLEMENTARY AFFIDAVIT

Presented for service and filing: SUPPLEMENTARY AFFIDAVIT

DATED at Sandton, Johannesburg on Tuesday, 12 May 2020.

Reginald Tshabalala

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REF: Mr P Pedlar/Adv Andre Lamprecht/Adv Shannon van Vuuren

026

Filed with the Secretary of the Commission by e-mail
secretary@commissionsc.org.za
[/BoipeloR@commissionsc.org.za](mailto:BoipeloR@commissionsc.org.za)
on Tuesday, 12 May 2020

027

I, the undersigned,

MALUSI KNOWLEDGE NKANYEZI GIGABA

do hereby make oath and say:

THE DEPONENT

1. I am:
 - 1.1 an adult male; and
 - 1.2 the Former Minister of the Department of Public Enterprises.
2. The contents of this statement are within my personal knowledge and belief, save where the context indicates otherwise and are both true and correct.

NOMENCLATURE

3. For the sake of consistency, I will adopt the various terms defined in my preliminary statement without re-defining these terms.

PURPOSE OF THIS STATEMENT

4. The purpose of this statement is to supplement my preliminary statement submitted in response to the statement of Ms Mzimela.


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REQUEST FOR THE REQUIRED DOCUMENTATION

5. In my preliminary statement, I had sought the assistance of the Commission to use its powers of subpoena *duces tecum* to obtain the required documentation. I also approached SAA through my attorneys in order to obtain the required documentation.

5.1 SAA

5.1.1 On Monday, 1 July 2019, my attorneys wrote a letter to SAA annexed hereto marked as "MKG1" requesting the required documentation;

5.1.2 On Thursday, 25 July 2019, SAA made arrangements with my attorneys for my attorneys to attend at SAA to collect the required documentation saved on a USB drive due to the size thereof;

5.1.3 On Monday, 29 July 2019, my attorneys attended at the offices of SAA with a view to collect the required documentation. SAA furnished my attorneys with some of the required documentation. On the same day, being Monday, 29 July 2019, my attorneys wrote to SAA in a letter annexed hereto marked as "MKG2" indicating that the following documents remained outstanding: -

5.1.3.1 correspondence from SAA to Minister Hogan requesting the financial assistance which led



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to the guarantee of R1.6 billion referred to in the letter dated 28 September 2009 from Minister Hogan to SAA;

5.1.3.2 the guarantee framework agreement relating to the guarantee of R1.6 billion referred to in the letter dated 28 September 2009 from Minister Hogan to SAA;

5.1.3.3 correspondence from SAA to Minister Gigaba requesting the financial assistance which led to the guarantee of R5.006 billion referred to in the letter dated 12 November 2012 from Minister Gigaba to SAA;

5.1.3.4 correspondence dated 28 September 2012 from Minister Gigaba referred to in the letter dated 12 December 2012 from Minister Gigaba to SAA relating to the guarantee of R5.006 billion;

5.1.3.5 correspondence from SAA to the Minister of Public Enterprises requesting a guarantee of R6.4 billion and his/her response thereto;

5.1.3.6 annexure A to the letter dated 22 December 2014 from Minister Nene to SAA; and

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5.1.3.7 the guarantee framework agreement relating to the guarantee of R6.4 billion referred to in the letter dated 22 December 2014 from Minister Nene to SAA.

5.1.4 In so far as the memorandum of incorporation of SAA during the period 2008 to 2015 is concerned, SAA only furnished my attorneys with the one memorandum of incorporation and one article of association. The article of association dated 15 March 2010 unsigned by the shareholder annexed hereto marked as "MKG3" and the memorandum of incorporation is dated 22 May 2015 and duly signed by the shareholder annexed hereto marked as "MKG4". My attorneys requested SAA to confirm that these were the only two memorandums of incorporation which were applicable to SAA during the first period (2008 to 2015).

5.1.5 On Wednesday, 4 September 2019, SAA responded to MKG2 in an e-mail annexed hereto marked as "MKG5" in which it: -

5.1.5.1 furnished the documentation which was outstanding; and

5.1.5.2 confirmed that the two memorandums furnished to my attorneys, were the only

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memorandums which were applicable during the first period;

5.2 THE COMMISSION

5.2.1 On Thursday, 19 December 2019, the Commission wrote to my attorneys in a letter annexed hereto marked as "MKG6", indicating *inter alia* that it does not have all the required documentation in its possession and that those documents in its possession would be delivered on a USB flash drive to my attorneys.

5.2.2 The documents which were furnished to my attorneys by the Commission are as follows: -

5.2.2.1 The Memorandum of Incorporation of SAA dated 2015 being MKG4;

5.2.2.2 SAA Board minutes between the period 2009 to 2018;

5.2.2.3 SAA recapitalizations applications and related approvals between the period 2011 to 2014; and

5.2.2.4 SAA shareholder compacts for the period 2009 to 2014.

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GOVERNANCE AT SAA

6. The articles of association (**MKG3**) applied at SAA during my tenure as the Minister of Public Enterprises. I once again unequivocally state that neither the policies nor the communication channels with SAA changed during my tenure at the Department. The articles of association were never changed and no directive was given by me for changes to be made to the policies of SAA or communication channels between SAA and the Department. As a Minister, I would not get involved in policies of SAA, save for being consulted on the dividend policy. These were reserved for the board of SAA.
7. Based on the assurances from SAA, the articles of association remained the same until 22 May 2015 when these were replaced by **MKG4**. At the time, I was no longer the Minister of the Department.
8. From the required documentation received from SAA, there are three shareholder's compacts between the period 2010 to 2014 which applied between SAA and the Department. The first shareholders compact is dated 23 August 2010 annexed hereto marked as "**MKG7**" ("the first shareholder's compact"). The second shareholders compact is dated 9 November 2011 annexed hereto marked as "**MKG8**" ("the second shareholder's compact"). The third shareholders compact is dated 29 January 2014 annexed hereto marked as "**MKG9**" ("the third shareholder's compact").

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9. My attorneys drew my attention to the fact that the above three shareholder's compacts differ. For example, the second shareholder's compact which was signed by me does not contain the undertakings by the Minister at paragraph 8 at page 12, such as (a) not to impede or in any way restrict the discretion of the Board regarding matters falling within its authority and (b) not to delay critical decisions.
10. I have tried to recall without success, the reasons for the absence of these undertakings. I must mention that the conclusion of the shareholder's compact between SAA and the Department is arrived at after extensive negotiations between the two institutions. The process of negotiating the terms of the shareholder's compact is attended to by the officials of the Department led by the Director General and representatives of SAA, before the shareholder's compact is presented to the Minister for approval. The Minister does not get involved in these negotiations. I was not involved in the process of negotiations.
11. The Department had established its own framework of these processes bearing in mind that its sole mandate is shareholder oversight of the relevant State Owned Enterprise such as SAA in this instance and thus its approach to these processes would be as a specialist.
12. It is also worth mentioning that the reason there is no uniformity with State Owned Enterprises in so far as the role of Government as a shareholder is concerned, is largely because of the absence of an overarching shareholder governance legislation to prescribe shareholder governance. The Presidential Review Commission on State Owned


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Enterprises in 2010, to review all State owned entities in South Africa across all tiers of Government, raised a concern about the absence of the overarching legislation. In my view, the absence of an overarching legislation in this regard leads to the application of a myriad of legislation that is overlapping, sometimes conflicting, containing duplicated provisions all of which leads to confusion in interpretation and application. There are various legislations under which State Owned Enterprises. These are mainly, the Companies Act, Public Finance Management Act, Municipal Finance Management Act as well as the King Code of Good Governance and others, but there is no overarching legislation.

13. Amongst others, the existence of a plethora of founding or sectional legislations governing each or the major State Owned Enterprises, dealing with their constitutional or establishment powers, respective objectives, governance, reporting and accountability, creates problems of lack of uniformity across various founding documents resulting in different treatment of similar issues affecting State Owned Enterprises. Other problems relate to corporate governance which differs across State Owned Enterprises, departments and tiers of Government.
14. All of the above highlight the fact that there is no single shareholder governance framework that must be used as a reference point and it would be disingenuous for anyone to claim that there is a single point of reference in this regard.

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15. The effect of the absence of an overarching shareholder governance legislation, the confusion occasioned by its absence at Departmental level and the need for it can be illustrated by a number of examples. One of these examples is that in 2004, Minister Erwin announced a major policy shift for the Department from the one that had existed prior, underscored by the privatization paradigm. In announcing that the key State Owned Entities would be retained as such, Minister Erwin announced that there would thus need to be changes in the shareholder governance framework for State Owned Enterprises which underlined this perspective.
16. Like Minister Erwin, I also believe that the shareholder cannot be hands-off in overseeing the management of State Owned Enterprises and I outlined that in several of my speeches where I said that I would be hands-on, provide policy leadership to the State Owned Enterprises, but would respect the corporate governance principles. No one can point to an instance where I directly intervened in the internal running of an entity, except where such powers were granted to me by the existing policy.
17. I went further to even establish a new framework, including the principle that Board members would no longer be allowed to serve an extended period of more than more terms of three years per term, in order to improve governance and that external auditors of State Owned Enterprises would be rotated to avoid a trend of the big four audit firms monopolizing the State Owned Enterprises' internal and external audit


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environment and serving for long terms which tend to create conflict of interest.


18. As far as I can recall, in 2013, I even announced a new process that would lead to the finalization of shareholder compacts, setting of Key Performance Indicators and corporate plans.
19. I started the process to review the salaries and long-and short-term benefits of State Owned Enterprises' executive directors. I also left a draft Shareholder Governance Bill, which as far as I am aware, has not been finalized.
20. Reverting to the absence of the undertakings in the second shareholder's compact and even though I do not recall the reasons for the omissions of these undertakings, I can understand why the Department may have negotiated for these undertakings to be omitted. With a struggling entity such as SAA which survived through bailouts and recapitalization, it was in the interest of the shareholder to be hands on. That is why in 2014, President Zuma decided to transfer SAA to National Treasury in order to ensure that the shareholder is close to the airline in terms of the challenges it was going through. In my view, those same principles continue to exist, if one looks at how Minister Gordhan has been handling SAA right up to the process of its threatened liquidation. These processes of SAA were not done by the Board of SAA independently, they have been handled by the Minister and the Department. The Minister and the Department become hands-on in these circumstances.

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21. In concluding my submissions to the Commission in this regard and if there is any suggestion that I could make to assist the Commission in its work, is that the Commissioner, Honourable Deputy Chief Zondo should consider recommending that there be an overarching legislation to regulate shareholder governance of State Owned Enterprises across all tiers of Government and in this regard, the process had already been initiated through the draft Shareholder Governance Bill.

THE MUMBAI ROUTE AND THE JET AIRWAYS MEETINGS

22. In my preliminary statement in this regard, I demonstrated that the issue relating to the Mumbai route was a subject - matter of discussion of SAA before my tenure and that the decision to cancel the Mumbai route was taken by the SAA Board in 2015, when I was no longer the minister of the Department.
23. I had also indicated that there was no anomaly in me meeting with Jet Airways. In this regard, the articles of association (**MKG3**) applied during my tenure. Paragraph 22.4.2 states that SAA would not without the consent of the Minister, exit from routes and airports, save for instances where the use of diversion airports is required. In order for me to give consent to the termination of the Mumbai, I needed to satisfy myself that such would be in the interest of SAA and there was nothing wrong with me attending meetings arranged between the Department, SAA and Jet Airways to discuss this matter.


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CONCLUSION

24. Ms Mzimela insinuated that SAA was dismantled as a result of my appointment. It is common knowledge that SAA has not been doing well and has survived because of the State recapitalization.
25. As part of the process of obtaining the required documentation, my attorneys were furnished with the SAA's annual reports for the first period. These are voluminous and I will not attach them to my statement but should the Commission wish to have sight of these documents, I will make them available. The annual reports clearly demonstrate that SAA has not been doing well at all during the first period. This includes the period after my tenure.
26. In the premises I maintain that there was no wrong doing on my part as the shareholder in executing my duties.
27. In this affidavit, I have referred to matters attended to on my behalf by my attorneys and in this regard, I annex hereto the confirmatory affidavit of my attorney Mr Tirhani Reginald Tshabalala marked as "MKG10".

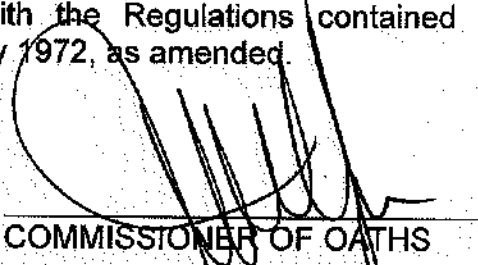


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 DEPONENT

THUS SIGNED AND SWORN TO before me at PRETORIA on this the 10th day of MAY 2020 by the deponent who acknowledges that the deponent knows and understands the contents of this affidavit; that it is the truth to the best of the deponent's knowledge and belief and that the deponent has no objection to taking the prescribed oath and regards the same as binding on the deponent's conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended.



 COMMISSIONER OF OATHS

EX OFFICIO:
 FULL NAMES:
 PHYSICAL ADDRESS:
 DESIGNATION:

SELEKA MARTIN HOPANE
 COMMISSIONER OF OATHS / KOMMISSARIS VAN EDE
 HOPANE ATTORNEYS / HOPANE PROKUREURS
 2 EULOPHIA CORNER / 38 GENERAL VAN RYNEVELD ST
 PERSEQUOR PARK, PRETORIA, 0020
 PRACTISING ATTORNEY / PRAKTISERENDE PROKUREUR
 Republic of South Africa / Republiek van Suid-Afrika



"MKG1"



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Gauteng, South Africa.
P O Box 67900
Bryanston 2021
Tel +27 (0) 11 783 5677
Fax +27 (0) 11 783 8734
www.tshabalala.com

Our Ref: Mr. T R Tshabalala/Miss. Y Silindane/Miss. K Slaffa/jp/G01221
Your Ref: Adv. Mpati Qofa – Chief Legal Officer

Date: Monday, 1 July 2019

The South African Airways SOC Limited
Airways Park
Jones Road
OR Tambo International Airport
Kempton Park

By e-mail: mpatiqofa@flysaa.com
ruthkibwka@flysaa.com

Dear Sirs,

OUR CLIENT: MR. MALUSI GIGABA

RE: IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

- [1] We confirm that we act on behalf of our client, Mr. Malusi Gigaba (“our client”). We refer to the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the public sector including organs of state (“the commission”).
- [2] Our client received a notice in terms of rule 3.3 from the commission on Wednesday, 12 June 2019 in relation to the evidence of Ms. Sizakele Petunia Mzimela (“Ms. Mzimela”) (hereinafter referred to as “the Mzimela statement”).
- [3] In order to effectively respond to the Mzimela statement and for our client to fully exercise the rights afforded to him by the rules of the commission, our client requires certain information and documentation listed below from you:-
 - [3.1] the audited annual financial statements and reports of SAA for the period 2008 to 2015 (“the first period”);
 - [3.2] any and all the memorandums of incorporation of SAA for the first period;
 - [3.3] minutes of the board meetings of SAA during the period 2010 to 2014 (“the second period”);

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- [3.4] any and all of the recapitalization applications by SAA to the Department of Public Enterprises (“the Department”) for the first period;
- [3.5] any and all of the approvals of the recapitalization applications and the conditions thereof by the Department and/or National Treasury for the first period;
- [3.6] the annual route profitability reports on all the routes of SAA for the first period; and
- [3.7] any and all of the shareholder compacts between the SAA and the Department for the first period;
- (“the required documentation”)
- [4] Our client was afforded until close of business Wednesday, 26 June 2019 to react to the notice in terms of rule 3.3 from the commission together with the Mzimela statement. Our client has sent a preliminary response to the commission on Wednesday, 26 June 2019 and therein he:-
- [4.1] indicates to the commission that he requires the required documentation in order to effectively respond to the Mzimela statement and that the preliminary response will be supplemented at a later stage once the required documentation is received; and
- [4.2] requests the commission to use its powers of *duces tecum* to obtain the required documentation, in the event that you fail to furnish required documentation on account of this letter.
- [5] We do trust that you will co-operate and furnish the required documentation.
- [6] We look forward to hearing from you.

Yours Faithfully,



TSHABALALA ATTORNEYS

Per: Reginald Tshabalala/Yolanda Silindane/Kim Slaffa

E-mail: jazmin@tshabalala.com / kim@tshabalala.com



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www.tshabalala.com

Our Ref: Mr. T R Tshabalala/Miss. K Slaffa/jp/G01221
Your Ref: Adv. Mpati Qofa – Chief Legal Officer/29/07/2019

Date: Monday, 29 July 2019

The South African Airways SOC Limited
Airways Park
Jones Road
OR Tambo International Airport
Kempton Park

By e-mail: mpatiqofa@flysaa.com
mphomogashu@flysaa.com

Dear Sirs,

OUR CLIENT: MR. MALUSI GIGABA

RE: IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

- [1] We refer to our meeting of this morning with your Mr. Mpho Mogashu (“the meeting”).
- [2] We are grateful for the meeting and your co-operation in furnishing the documentation required by our client. We note that the following documents remain outstanding:-
 - [2.1] correspondence from SAA to Minister Hogan requesting the financial assistance which led to the guarantee of R1.6 billion referred to in the letter dated 28 September 2009 from Minister Hogan to SAA;
 - [2.2] the guarantee framework agreement relating to the guarantee of R1.6 billion referred to in the letter dated 28 September 2009 from Minister Hogan to SAA;
 - [2.3] correspondence from SAA to Minister Gigaba requesting the financial assistance which led to the guarantee of R5.006 billion referred to in the letter dated 12 November 2012 from Minister Gigaba to SAA;

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- [2.4] correspondence dated 28 September 2012 from Minister Gigaba referred to in the letter dated 12 December 2012 from Minister Gigaba to SAA relating to the guarantee of R5.006 billion;
- [2.5] correspondence from SAA to the Minister of Public Enterprises requesting a guarantee of R6.4 billion and his/her response thereto;
- [2.6] annexure A to the letter dated 22 December 2014 from Minister Nene to SAA; and
- [2.7] the guarantee framework agreement relating to the guarantee of R6.4 billion referred to in the letter dated 22 December 2014 from Minister Nene to SAA.
- [3] In so far as the memorandum of incorporation of SAA during the period 2008 to 2015 are concerned, you only furnished us with the two memorandum of incorporation, one dated 15 March 2010 unsigned by the shareholder and the other is dated 22 May 2015 and duly signed by the shareholder. Kindly confirm that these are the only two memorandum of incorporation which were applicable to SAA during the period 2008 to 2015.
- [4] Kindly send us the outstanding documents via e-mail or dropbox.
- [5] We look forward to hearing from you.

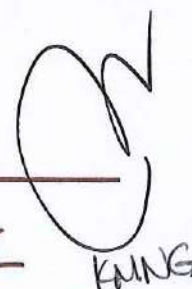
Yours Faithfully,



TSHABALALA ATTORNEYS

Per: Reginald Tshabalala/Kim Slaffa

E-mail: jazmin@tshabalala.com / kim@tshabalala.com



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"MKG3"**044**

I certify that these are the new
Articles of Association which
were adopted in terms of a
Special Resolution at a General
Meeting of the Company on

Date :



Director

15/02/2010

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT 1973

ARTICLES OF ASSOCIATION

OF A COMPANY HAVING A SHARE CAPITAL

NOT ADOPTING SCHEDULE 1

(Section 60(1); regulation 18)

Registration No. of Company

-insert-

1997/022444/07

Name of Company:

SOUTH AFRICAN AIRWAYS (PROPRIETARY) LIMITED ("the Company")

The Articles of Table B contained in Schedule 1 to the Companies Act 1973, as
amended, shall not apply to the Company.

The Articles of the Company are as follows:



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[Handwritten signature]
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1. INTERPRETATION

1.1 In the interpretation of these Articles and unless the subject or context otherwise requires, the following words and expressions shall have the following meanings attributed to them:

- 1.1.1 "Alliance" means an arrangement with an airline or a group of airlines for the purpose of optimising air transport services where the arrangement involves the provision of rights and obligations relating to the use of the designator of another airline and its trademarks, and/or its branding;
- 1.1.2 "Applicable SOE Legislation" means, collectively, the Principal Act, the PFMA, the Treasury Regulations and any other legislation or regulations which may be applicable to the Company and/or the conduct of the Company's business from time to time by virtue of the fact that the State is a Member of the Company;
- 1.1.3 "Articles" means the articles of association for the time being of the Company and any amendment thereof or substitution therefor from time to time;
- 1.1.4 "Authorised Representative" means a Person authorised, in terms of the Companies Act, by a company or other body corporate to act as its representative at any General Meeting;
- 1.1.5 "Beneficial Owner" means any Person registered in the Company's register pursuant to section 140A of the Companies Act as having a "beneficial interest" in the shares issued by the Company, but excluding Members;
- 1.1.6 "Board" means the board of Directors of the Company at the relevant time;
- 1.1.7 "Business" means operating from South Africa as a national and international airline;
- 1.1.8 "Capital" means the share capital or stated capital, as the case may be, of the Company;
- 1.1.9 "Charity" means any association, company, trust or other Person with charitable or like objectives;





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- 1.1.10 "Companies Act" means the Companies Act, No. 61 of 1973, and any amendment thereof or substitution therefor from time to time;
- 1.1.11 "Company" means South African (SAA) (Proprietary) Limited (registration number (1997/022444/07) and with registered address at (insert);
- 1.1.12 "Directors" means the directors from time to time of the Company, constituting the Board;
- 1.1.13 "ex officio Director" means a person who becomes a Director of the Company as a consequence of that person holding some other office, title, designation, or similar status in the Company;
- 1.1.14 "General Meeting" means a general meeting of the Members;
- 1.1.15 "Group Company" means any subsidiary of the Company;
- 1.1.16 "Legal Representative" means any Person who has submitted the necessary proof of his appointment as and is entitled to be entered in the register as a Member *nomine officii* as:
- 1.1.16.1 an executor, administrator, trustee, curator or guardian in respect of the estate of a deceased Member or of a Member whose estate has been sequestrated or of a Member who is otherwise under disability;
- 1.1.16.2 the liquidator of any Member which is a body corporate in the course of being wound up; or
- 1.1.16.3 the judicial manager of any Member which is a company under judicial management;
- 1.1.17 "Member" means the registered holder of any share(s) in the Company at the relevant time;
- 1.1.18 "Memorandum" means the Memorandum of Association for the time being of the Company;
- 1.1.19 "Minister" means the Minister of Public Enterprises in his/her capacity as the representative of the State, or if any other Minister is designated as being responsible to


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hold the shares of the Company on behalf of the State, then that Minister acting in such capacity;

- 1.1.20 "Odd-Lot" means a total holding by a single Member of less than:
- 1.1.20.1 100 shares; or
- 1.1.20.2 In the case of Securities other than shares, the minimum number of Securities with an aggregate nominal value of no less than R100,00,
- or such greater or lesser number of Securities determined by the Directors at the relevant time;
- 1.1.21 "Odd-Lot Offer" means an offer to the holders of Odd-Lots in terms of which the holders of the Odd-Lots may elect to:
- 1.1.21.1 top up their holding; or
- 1.1.21.2 sell their Odd-Lot; and
- may or may not provide that the holders may elect to retain their Odd-Lot holding;
- 1.1.22 "Office" means the registered office for the time being of the Company;
- 1.1.23 "Person" includes any company incorporated or registered as such under any law, any other juristic person and any body of persons corporate or unincorporate;
- 1.1.24 "PFMA" means the Public Finance Management Act, No.1 of 1999, and any amendment thereof or substitution therefor from time to time;
- 1.1.25 "Principal Act" means South African Airways Act No. 5 of 2007
- 1.1.26 "Remuneration Guidelines" means the remuneration guidelines in respect of the remuneration of Directors of State Owned Entities and as approved by cabinet on 10 October 2007, as may be amended by time to time;
- 1.1.27 "Securities" includes stocks, shares, debentures, specialist securities, notes, units of stock issued in place

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of shares, and options on stocks, shares or debentures, notes or units, and rights thereto, issued by the Company;

- 1.1.28 "Sign" includes the reproduction of a signature by lithography, printing, or any kind of stamp or any other mechanical process, and "Signature" has the corresponding meaning;
- 1.1.29 "State" means the Government of the Republic of South Africa;
- 1.1.30 "Transfer Office" means the office(s) of the transfer secretary(les) of the Company from time to time; and
- 1.1.31 "Treasury Regulations" means the regulations issued by the National Treasury in terms of section 76 of the PFMA and any amendment thereof or substitution therefor from time to time.

1.2 Words importing one gender include the other genders and words in the singular number include the plural, and vice versa.

1.3 Any word or expression which is defined in the Companies Act and which is not otherwise defined in these Articles shall have the meaning assigned thereto in the Companies Act.

1.4 If any provision in Article 1 is a substantive provision conferring rights or imposing obligations on any party, then notwithstanding that such provision is contained in this Article 1, effect shall be given thereto as if such provision were a substantive provision in the body of the Articles.

1.5 Notwithstanding any provision of these Articles or the Memorandum and notwithstanding the omission of any provision from these Articles, but subject to the provisions of the Applicable SOE Legislation (to the extent applicable), the Company may do anything which the Companies Act empowers a company to do if so authorised by its Articles.

2. HEADING AND REFERENCES

These Articles are to be construed as not including the headings to Articles which are for information only.

3. APPLICABLE SOE LEGISLATION


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For as long as the Company and/or the conduct of the Company's business is regulated by the Applicable SOE Legislation or any part thereof:

- 3.1 the Company and the Board shall exercise the powers and authority vested in them in terms of these Articles in accordance with the relevant provisions of the Applicable SOE Legislation; and
- 3.2 these Articles shall be read subject to, and shall not confer any powers or authority on the Company or the Board in conflict with, the Applicable SOE Legislation.

4. PRIVATE COMPANY

The Company is a private company and accordingly -

- 4.1 It is prohibited from offering any of its shares or debentures to the public for subscription;
- 4.2 the number of Members of the Company (exclusive of persons who are in the employment of the Company and of persons who having been formerly in the employment of the Company were, while in such employment, and have continued after the determination of such employment to be, Members of the Company) shall be limited to 50 (fifty); and
- 4.3 the right to transfer shares shall be restricted as hereinafter provided.

5. ISSUE OF SHARES AND DEBENTURES

- 5.1 Subject to Articles 5.2 and 5.4, the Companies Act (insofar as its application is not excluded by the Applicable SOE Legislation), the Applicable SOE Legislation and the Memorandum and without prejudice to any special right previously conferred on the holder of an issued share, a General Meeting, or the Directors with the prior approval of a General Meeting, may:
 - 5.1.1 issue or grant options to subscribe for any shares (including with preferred, deferred or other special rights or restrictions, whether in regard to dividends, voting, return of Capital or otherwise);
 - 5.1.2 create, issue, re-issue and grant options to subscribe for secured or unsecured debentures or grant options to subscribe; and



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5.1.3 Issue or grant options to subscribe for preference shares which are, or at the option of the Company are liable, to be redeemed,

on such terms and conditions as a General Meeting or the Directors, as the case may be, may determine from time to time, provided that the Company may not issue share warrants or bearer shares.

5.2 Notwithstanding the provisions of Article 5.1, unless the Directors are authorised in terms of Article 5.3, if any offer is made of new Securities of any class to Members of that class, then the Securities in question shall firstly be offered to those Members in proportion, as nearly as may be, to the amount of the Securities of that class held by those Members, except where the Securities are issued for the acquisition of assets.

5.3 A General Meeting may authorise the Directors to issue unissued Securities and/or give options to subscribe for unissued Securities either specifically or generally as the Directors in their discretion think fit, subject to compliance with the provisions of the Companies Act.

5.4 Notwithstanding the provisions of Article 5.1, should there be any issued preference shares of any class in the Capital of the Company then no further Securities ranking in priority to, or *pari passu* with, any such class of issued preference shares shall be created or issued without:

5.4.1 the consent in writing of the holders of at least three-quarters of such class of preference shares; or

5.4.2 the sanction of a resolution of the holders of such class of preference shares, passed at a separate General Meeting of such holders, at which preference shareholders holding in aggregate not less than one-quarter of the total votes of all the preference shareholders holding Securities in that class entitled to vote at that meeting, are present in person or by proxy, and the resolution has been passed by not less than three-quarters of the total votes to which the Members of that class, present in person or by proxy, are entitled, and the provisions of these Articles relating to General Meetings shall apply to any such separate General Meeting.

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- 5.5 Subject to the provisions of the Companies Act, the Company may pay a commission not exceeding 10% to any Person in consideration for his subscribing or agreeing to subscribe or for procuring or agreeing to procure subscriptions, whether absolute or conditional, for any Securities of the Company.
- 5.6 Subject to the provisions of the Companies Act, the Company may pay interest from time to time on any shares issued to raise money for redeeming the costs of constructing works or buildings or the provision of plant, provided that for so long as the State is the sole or majority shareholder of the Company such right may only be exercised with the prior written approval of the Minister.

6. SHARES AND CERTIFICATES OF SHARES

- 6.1 Subject to the provisions of the Companies Act, certificates in respect of Securities issued by the Company shall be issued under the authority of the Directors in such manner and form as the Directors may determine from time to time, provided that:
- 6.1.1 If any Member requires more than one certificate in respect of shares registered in his name he shall pay such sum as the Directors may determine, for each additional certificate;
- 6.1.2 If any certificate is defaced, lost or destroyed, it may be replaced on payment of such fee, if any, and on such terms, if any, as to evidence and/or indemnity and/or advertisement and/or other terms or conditions as the Directors may determine;
- 6.1.3 all Signatures may be affixed or placed on certificates by autographic, mechanical or electronic means; and
- 6.1.4 a certificate signed by 2 (two) Directors or by 1 (one) Director and an officer of the Company duly authorised thereto by the Directors, and specifying the shares or stock held by any Member, shall be *prima facie* evidence of the title of such Member to such shares or stock.
- 6.2 Without limitation to and in accordance with section 140A of the Companies Act, where Securities issued by the Company are registered in the name of a Member, and that registered Member is not the holder of the beneficial interest in all the shares held by such registered Member, then such registered Member shall, at the end of every three month period required by the Companies Act (initially having commenced on 30 June 1999), disclose to the


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Company the Identity of each Person on whose behalf it directly and indirectly holds Securities and the number and class of Securities issued by the Company held on behalf of each such Person.

7. JOINT HOLDERS OF SHARES

7.1 Where two or more Persons are registered as the holders of any share they shall be deemed to hold that share jointly, subject to the following:

7.1.1 the joint holders of any share shall be liable jointly and severally in respect of any obligation arising out of or in connection with the holding of that share;

7.1.2 notwithstanding anything to the contrary in these Articles, on the death, sequestration, liquidation or legal disability of anyone of such joint holders:

7.1.2.1 the other remaining joint holder(s) may be recognised, at the discretion of the Directors, as the only Person(s) having title to such share, but

7.1.2.2 any such holder or his estate, as the case may be, shall not be released from any obligation which such joint holder or his estate had arising out of or in connection with the holding of that share;

7.1.3 any one of such joint holders may give effectual receipts for any dividends, bonuses or returns of Capital or other accruals payable to such joint holders;

7.1.4 only the joint holder whose name stands first in the register shall be entitled to:

7.1.4.1 delivery of the certificate relating to that share; and

7.1.4.2 to receive notices from the Company (and any notice given to such joint holder shall be deemed to be notice to all the joint holders);

7.1.5 any one of the joint holders of any share conferring a right to vote may vote either personally or by proxy at any meeting in respect of such share as if he were solely entitled thereto, and if more than one of such joint holders be present at any meeting, either personally or

by proxy, then only the joint holder who tenders the vote and whose name stands in the register before the other joint holder(s) who is/are present in person or by proxy shall be entitled to vote in respect of that share.

8. TRANSFER AND TRANSMISSION OF SHARES

- 8.1 Every instrument of transfer of a share shall be left at the Transfer Office at which it is presented for registration, accompanied by the certificate of the shares to be transferred, and/or such other evidence as the Company may require to prove the title of the transferor or his rights to transfer the shares. All authorities to sign transfer deeds granted by a Member for the purpose of transferring shares which may be lodged, produced or exhibited with or to the Company at any of its Transfer Office(s) shall as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Company's Transfer Office(s) at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices the Company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the Company, as being in order before the giving and lodging of such notice.
- 8.2 The Company shall maintain Transfer Offices at such place(s) in the Republic of South Africa or elsewhere as the Directors may determine from time to time.
- 8.3 A Legal Representative (not being one of several joint holders) shall be the only Person recognised by the Company as a Member or having any title to a share registered in the name of the Member whom he represents.
- 8.4 A Legal Representative shall be entitled to be registered as a Member *nomine officii* in respect of any share registered in the name of any Member whom he represents or to transfer any such share to himself or any other Person provided that:
- 8.4.1 the Directors shall in any of such cases have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the Member in whose name it is registered;

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- 8.4.2 should any Legal Representative fail to elect either to be registered as a Member or to transfer any such share to himself or any other Person within 90 (ninety) days after the Directors have given him notice requiring him to do so, then the Directors shall be entitled to withhold any dividends, bonuses, return of Capital or other accruals in respect of such share until compliance with the notice; and
- 8.4.3 any Member who is represented by a Legal Representative shall not be released from any obligation arising out of or in connection with the holding of that share.
- 8.5 Except as required by law or these Articles or ordered by a Court of competent jurisdiction, no Person shall be recognised by the Company as holding any share upon any trust and the Company shall not be bound by or required to recognise (even when having notice of it) any interest or other right in or in respect of any share, except the holder's absolute right to the entirety of the share. Without affecting the foregoing, the Directors may in their discretion record in the Company's register of Members that any share is held in trust or by a nominee and for whom that share is so held but there shall be no obligation on the Company to verify the existence of the trust or principal or the legal status of any Person who holds a share as a trustee or nominee, or to ensure the carrying out of any trust (express or implied) in respect of any such share.
- 8.6 The instrument in respect of transfer of a share shall be in the usual or common form or such other form as the Directors may approve and shall be signed by the transferor and the transferee (to the extent required by law).
- 8.7 If a Member of the Company desires to sell all or any of his Securities in the Company he shall give notice, in writing, of his intention to sell, to the Directors and state the price he requires for the Securities. The Directors shall within one month of the date of receipt of the notice referred to in Article 8.7 advise every other Member of the Company of the contents thereof and each such Member shall be entitled to acquire the Securities so offered within one month after the date of the receipt of such advice; provided that if more than one Member makes an offer for all of the Securities so offered, the Securities shall be sold to each such Member in equal proportions, and where fractional proportions of Securities remain, such Members shall become joint holders of such fractional proportions of the Securities.



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- 8.8 If the Members of the Company are unable to agree upon the selling price of the Securities, the auditor of the Company may be requested to determine the true and fair value thereof and the Members shall accept that value as the selling price of the shares.
- 8.9 If none of the Members of the Company offers to purchase the Securities within the time referred to in Article 8.7, or if Members of the Company offer to purchase a part of the Securities so offered, the Member who is offering the Securities for sale may offer the Securities or the remaining portion of the Securities which have not been purchased by Members of the Company, for sale to any other person and the Directors shall approve the registration of the Securities in the name of that person unless they have good reason to refuse such registration.

9. **ALTERATION OF MEMORANDUM**

Subject to the Companies Act and the Applicable SOE Legislation (to the extent applicable), the Company shall be entitled to alter the provisions of its Memorandum.

10. **ALTERATION OF CAPITAL**

Subject to the Companies Act, the Company may if authorised by ordinary resolution (or special resolution where required by the Companies Act) of the Members in General Meeting:

- 10.1 Increase, consolidate, divide, sub-divide, convert or cancel all or any part of its Capital or Securities, as the case may be;
- 10.2 reduce its Capital, any capital redemption reserve fund, or any share premium account in any way whatsoever, including without limitation:
- 10.2.1 by way of payment to its Members;
- 10.2.2 by cancelling any share Capital which is lost or unrepresented by available assets; and/or
- 10.2.3 by cancelling shares which have not been taken or agreed to be taken by any Person or which are repurchased by the Company and diminish the amount of the share Capital by the amount of shares so cancelled;
- 10.3 convert any of its preference shares into preference shares which are, or at the option of the Company are liable, to be redeemed;


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- 10.4 convert all or any of its ordinary shares into redeemable preference shares;
- 10.5 convert all or any of its paid-up shares into stock and reconvert such stock into paid-up shares;
- 10.6 convert all or any of its par value shares into shares having no par value and vice versa; and
- 10.7 convert shares of any class into shares of any other class, whether such shares are issued or not.

11. FRACTIONS OF SHARES

If, on any capitalisation issue or consolidation of shares or other transaction with the Company, Members would, but for the provisions of this Article, become entitled to fractions of Securities, all allocations of such Securities will be rounded up or down based on standard rounding convention (i.e. allocations will be rounded up to the nearest whole number if they are equal to or greater than 0.5) resulting in the allocations of whole Securities and no fractional entitlements.

12. ACQUISITION OF OWN SHARES AND ODD-LOT OFFERS

- 12.1 Subject to the authorities, consents and requirements as may from time to time be stipulated by law, the Companies Act and the Applicable SOE Legislation (to the extent applicable), the Members in General Meeting may by special resolution approve the acquisition by the Company or any of its subsidiaries of shares issued by itself or by its holding company. Such approval may be a general approval or a specific approval for a particular transaction. If such approval is given in the form of a general authority to the Directors, it shall only be valid until the next annual General Meeting of the Company, but it may be varied or revoked by special resolution by any General Meeting of the Company at any time prior to such annual General Meeting.
- 12.2 Without limitation to the generality of Article 12.1, and subject to the Companies Act and the Applicable SOE Legislation (to the extent applicable), the Company may with the requisite specific or general approval of its Members in General Meeting make Odd-Lot Offers to the holders of Odd-Lots. Any Odd-Lot Offer that is specifically approved by the Members in General Meeting may provide that if the holder of an Odd-Lot does not make an alternative election, then such holder will by default have elected to sell his Odd-Lot holding to the Company (i.e. a default "expropriation" of the Odd-Lot).


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13. SECURITIES OTHER THAN SHARES

In so far as these Articles may be binding on the holder of Securities other than shares, except where the law or terms applicable to such other Securities provide otherwise, the provisions of Articles 6.1, 7.1 to 8.6 and 12.2 shall, where appropriate, apply to such other Securities, adapted accordingly (*mutatis mutandis*).

14. PAYMENTS TO MEMBERS

The Company may make payments to its Members subject to the provisions of the Companies Act. Without limiting the generality of the foregoing power, such payments other than dividends which are governed by Article 29, may be:

- 14.1 made out of the Capital of the Company;
- 14.2 authorised specifically or generally by way of an ordinary resolution (or where required by the Companies Act, a special resolution) of the Members of the Company in General Meeting.

15. VARIATION OF RIGHTS

15.1 Unless otherwise provided by the terms of issue of the shares of any class or by the terms under which such shares are held, the special rights or restrictions attached to all or any shares of that class may be amended, modified, varied or cancelled by a General Meeting, provided that any such amendment, modification, variation or cancellation which directly or indirectly and adversely affects the special rights or restrictions attached to all or any shares of that class may only be effected with:

- 15.1.1 the prior written consent of the holders of at least three-quarters of the shares in question; or
- 15.1.2 the prior sanction of a resolution passed at a separate General Meeting of the holders of the shares in question in the same manner, *mutatis mutandis*, as a special resolution, and the provisions of these Articles relating to General Meetings shall apply to any such separate General Meeting, except that a quorum at any such General Meeting shall be such number of Persons holding or representing by proxy at least twenty-five percent of the issued shares of the class in question provided that if a quorum is not so present the meeting shall be adjourned to the fifth business day thereafter and the Members present or represented at the

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reconvening of the adjourned meeting shall constitute a quorum.

15.2 Unless otherwise provided by the terms of issue or by these Articles, the special rights or conditions attached to all or any class of shares shall be deemed not to be adversely affected (whether directly or indirectly) by the creation or issue of any other shares ranking *pari passu* with (but in no respect in priority to) any such shares already issued by the Company.

15.3 For purposes of these Articles, any shares not ranking *pari passu* in all respects with any other shares (including in respect of rate of dividend and any other term of issue) shall be deemed to constitute a separate class of shares.

16. GENERAL MEETINGS

16.1 Subject to the provisions of the Companies Act:

16.1.1 a General Meeting shall be held at such time and place as may be determined by the Directors;

16.1.2 for as long as the State is the only Member of the Company, the Minister may convene a General Meeting at such time and place as he may deem fit;

16.1.3 notices and supporting documentation of general or annual General Meetings shall be sent to Members;

16.1.4 the notice of a General Meeting shall state the place, day and hour of, and the nature of the business to be transacted at the General Meeting; and

16.1.5 not less than 21 (twenty one) clear days' notice shall be given of all annual General Meetings or meetings called for the passing of a special resolution and not less than 14 (fourteen) clear days' notice shall be given of any other General Meeting, provided that the Members may waive or consent to short notice of General Meetings in accordance with the provisions of the Companies Act.

16.2 A Member shall be entitled to appoint a proxy to attend and speak and on a poll, to vote in his stead at any General Meeting in accordance with the Companies Act.

17. PROCEEDINGS AT GENERAL MEETINGS


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- 17.1 Subject to the provisions of Section 190 of the Companies Act, and unless a General Meeting determines that there shall be a greater number, a quorum for a General Meeting shall:
- 17.1.1 for as long as the State is the only Member of the Company, be one Member present in person and entitled to attend and vote;
 - 17.1.2 for as long as there are two Members of the Company, be two Members present in person and entitled to attend and vote; and
 - 17.1.3 otherwise, be three Members present in person and entitled to attend and vote.
- 17.2 Should a quorum not be present within one-half hour after the appointed time for a General Meeting, the General Meeting, if convened by or on a requisition of Members, shall be dissolved and in any other case shall stand adjourned to the same day (or if that day be a public holiday, the next business day) in the next week at the same time and place, and a quorum at any such adjourned General Meeting shall be the minimum number required by the Companies Act.
- 17.3 The chairperson or, failing him, a deputy chairperson (if any, or if more than one of them is present and willing to act, the most senior of them) of the Directors shall be the chairperson of each General Meeting provided that if no chairperson or deputy chairperson is present or willing to act, the Members present may elect one of the Directors present to be chairperson or, if no Director is present or willing to act as chairperson, the Members present may elect one of their number to be chairperson of that General Meeting.
- 17.4 The Board may both prior to and during any General Meeting make any arrangements and impose any restrictions which it considers appropriate to ensure the security and/or the orderly conduct of any such General Meeting, including, without limitation, arranging, in so far as is lawful, for any Person attending any such meeting to be searched, for items of personal property which may be taken into any such meeting to be restricted and for any Person (whether or not a Member of the Company) who refuses to comply with any such arrangements or restrictions to be refused entry to or excluded from any such meeting.
- 17.5 The chairperson of any General Meeting of the Company shall take such action as he thinks fit to promote the orderly conduct of the

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business of such meeting as laid down in the notice of such meeting, including, without limitation, asking any Person or Persons (whether or not a Member or Members of the Company) to leave such meeting and, if necessary, having such Person or Persons excluded from such meeting. The decision of the chairperson on matters relating to the orderly conduct of such meeting and on any other matters of procedure or arising incidentally from the business of such meeting shall be final as shall be his determination, acting in good faith, as to whether any matter is of such nature. Nothing in this Article 17.5 shall limit any other power vested in the chairperson.

- 17.6 The chairperson of a General Meeting shall, if obliged to do so in terms of the Companies Act, adjourn a General Meeting from time to time.
- 17.7 Subject to the provisions of the Companies Act, it shall not be necessary to give notice of any adjournment of a General Meeting.
- 17.8 No business shall be transacted at the resumption of any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place.
- 17.9 Subject to any restriction as to voting to which any Member or share may be subject, a Member who is present in person, by Authorised Representative or by proxy shall have:
- 17.9.1 one vote on a show of hands;
- 17.9.2 on a poll, that proportion of the total votes in the Company which the aggregate amount of the nominal value of the shares held by such Member bears to the aggregate amount of the nominal value of all the shares issued by the Company and accordingly, for so long as all the shares have the same nominal value, one vote for each share of which that Member is the registered holder.
- 17.10 At any General Meeting a resolution put to the vote shall be decided by a show of hands unless a poll is demanded (before or shortly after the declaration of the result of a show of hands) by:
- 17.10.1 the chairperson of the General Meeting; or
- 17.10.2 not less than five Members having the right to vote at such a meeting; or

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- 18.3 Such arrangements for simultaneous attendance may include arrangements for regulating the level of attendance in the manner aforesaid at the other place or any of such other places.
- 18.4 For the purposes of all other provisions of these Articles (unless the context requires otherwise) the Members shall be deemed to be meeting in one place and that shall be the Main Meeting Place.

19. PROXIES

- 19.1 A proxy form, power of attorney or other authority in respect of a General Meeting shall be in writing and signed by or on behalf of the Member.
- 19.2 Subject to the provisions of the Companies Act, a proxy form shall:
 - 19.2.1 The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

..... LIMITED

I, of being a member of Limited hereby appoint of or failing him of or failing him of as my proxy to vote for me and on my behalf at the annual general meeting (as the case may be) of the Company to be held on the day of and at any adjournment thereof as follows:

.....

In favour of Against Abstain from Voting

.....

Resolution to

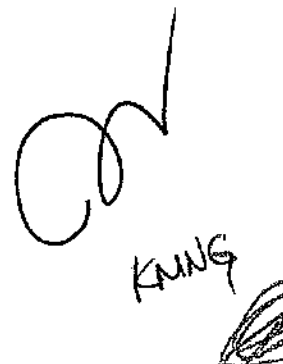
Resolution to

Resolution to

(Indicate instruction to proxy by way of a cross in space provided above).

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17.10.3 a Member or Members representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting; or

17.10.4 a Member or Members entitled to vote at the meeting and holding in the aggregate not less than one-tenth of the issued share Capital of the company,

provided that such Member or Members as contemplated in this Article 17.10 shall be entitled to demand that, while the result of the poll shall be entered in the minutes, the votes of the Member or Members in such poll shall remain secret.

17.11 On a show of hands at a General Meeting a declaration by the chairperson as to the result of the voting on any particular resolution and an entry to that effect in the minutes shall be conclusive proof of that result, without proof of the number or proportions of votes recorded in favour of and/or against such resolution.

17.12 If a poll is demanded at a General Meeting:

17.12.1 on the election of a chairperson or on an adjournment, the poll shall be taken immediately and in such manner as the General Meeting determines, and on any other question shall be taken at such time and in such manner as the chairperson of the General Meeting directs;

17.12.2 the result of the poll shall be deemed to be the resolution of the General Meeting at which the poll was demanded;

17.12.3 the demand shall not preclude the General Meeting from considering any question other than that on which the poll has been demanded unless the General Meeting decides otherwise;

17.12.4 the demand may be withdrawn at any time.

17.13 No objection shall be taken to the admission or rejection of any vote except at the General Meeting at which the vote in dispute is cast, or any adjournment thereof. The chairperson of that General Meeting shall determine any such objection and his determination shall be final and binding.

17.14 A resolution in writing signed by all Members entitled to receive notice of and to attend and vote at a General Meeting shall be as valid and effective as if it had been passed at a General

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Meeting properly called and held. Any such resolution may consist of several documents, each of which may be Signed by one or more Members and shall be deemed to have been passed on the date on which it was Signed by the last Member who Signed it, unless a statement to the contrary is made in that resolution.

- 17.15 Any director or a representative of the Company's auditors and/or attorneys may attend and speak at any General Meeting, but may not vote thereat unless he is an authorised proxy of a Member.

18. OVERFLOW OF GENERAL MEETINGS

- 18.1 The Board may make such arrangements as it shall in its absolute discretion consider to be appropriate for any of the following purposes:

- 18.1.1 to regulate the level of attendance at any place specified for the holding of a General Meeting or any adjournment of such a meeting; or
- 18.1.2 to ensure the safety of people attending at any such place; or
- 18.1.3 to facilitate attendance at such meeting or adjournment.

and may from time to time vary any such arrangements or make new arrangements in their place. Such arrangements may include, without prejudice to the generality of the foregoing, the issue of tickets or the use of some random means of selection or otherwise as the Board shall consider to be appropriate.

- 18.2 In the case of any meeting to which such arrangements apply, the Board may when specifying the place of the meeting:

- 18.2.1 direct that the meeting shall be held at a place specified in the notice ("Main Meeting Place") at which the chairperson of the meeting shall preside; and
- 18.2.2 make arrangements for simultaneous attendance and participation at another place or other places by Members, Authorised Representatives and proxies otherwise entitled to attend the General Meeting but excluded from it under the provisions of this Article or who wish to attend at the other place or any of such other places; provided that all Members can communicate and participate in the proceedings.


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- 19.2.2 be deposited at the Transfer Office or with the Company secretary not less than twenty-four hours before the time appointed for the holding of the General Meeting (or any adjournment thereof) at which the Person named therein proposes to vote;
- 19.2.3 In addition to the authority conferred by the Companies Act except insofar as it provides otherwise, be deemed to include the power generally to act at the General Meeting in question, subject to any specific direction as to the manner of voting;
- 19.2.4 unless the contrary is stated thereon, be valid at every adjournment of the meeting to which it relates;
- 19.2.5 not be used at the resumption of an adjourned General Meeting if it could not have been used at the General Meeting from which it was adjourned for any reason other than that it was not lodged timeously for the meeting from which the adjournment took place; and
- 19.2.6 not be valid after the expiry of two months after the date when it was signed unless it specifically provides otherwise.
- 19.3 If two or more valid but differing instruments of proxy are received in respect of the same share for use at the same meeting or poll, the one which is last received (regardless of its date or of the date or time of its execution or dispatch) shall be treated as replacing and revoking the others as regards that share and, if the Company is unable to determine which was last received, none of them shall be treated as valid in respect of that share.
- 19.4 From time to time the Directors may (consistently with the Companies Act and these Articles) make such regulations and establish such procedures as they consider appropriate to receive and verify the appointment of a proxy or the notice of revocation of a proxy. The Directors may upon reasonable notice to member, which shall not be less than 7 working days, modify or revoke any such regulations from time to time as they think fit but without prejudice to the validity of any appointment or revocation of a proxy in existence at the date of any such modification or revocation. Without prejudice to the generality of the foregoing the chairperson of the General Meeting shall be authorised to conclusively determine any matter or dispute relating to the appointment or revocation or purported appointment or


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revocation of a proxy or any instructions containing or purporting to be contained in such appointment or revocation.

19.5 A vote cast or done in accordance with the terms of a proxy form shall be deemed to be valid notwithstanding:

19.5.1 the previous death, insanity, or any other legal disability of the Person appointing the proxy;

19.5.2 the revocation of the proxy; or

19.5.3 the transfer of a share in respect of which the proxy was given.

unless notice as to any of the abovementioned matters shall have been received by the Company at its Office or by the chairperson of the meeting at the place of the General Meeting if not held at the Company's Office, before the commencement of the General Meeting at which the vote was cast or the act was done or before the poll on which the vote was cast.



20. AUTHORISED REPRESENTATIVES

20.1 A company or other body corporate that is a Member may in terms of section 188 of the Companies Act, by resolution of its directors or other governing body, authorise any Person to act as its representative at any General Meeting of the Company and to exercise the rights and votes attaching to the shares held by it as if the representative was the Individual Member. Notwithstanding the foregoing the chairperson of the General Meeting shall be entitled to request reasonable evidence of any representative's appointment; failing presentation of such reasonable evidence, the chairperson may exclude the representative from attending and voting at the General Meeting. For the purpose of this Article a certified copy of the extract of the minutes recording the adoption of the resolution shall be reasonable evidence of such authorisation.

20.2 Notwithstanding anything to the contrary in these Articles, under no circumstances may the aggregate number of shares represented by proxies and a Person appointed in terms of Article 20.1 on behalf of a Member exceed the total number of shares registered in the name of the relevant Member. If the number of shares for which proxy voting and letters of representation have been received in respect of the shares held by the Member purport to represent shares in excess of the aggregate number of shares registered in the name of the relevant Member then:

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- 20.2.1 the letters of representation and Authorised Representatives shall prevail over the proxies unless the letters of representation or authorisations are revoked in writing (including telefax) by the Member prior to the meeting; and
- 20.2.2 subject to Article 20.2.1, unless a court orders otherwise prior to the General Meeting, the chairperson shall be entitled to determine which Authorised Representatives and proxies, if any, shall be entitled to represent the shares registered in the name of the Member, taking into account whatever considerations he, in his absolute discretion, regards as appropriate and may, without limitation:
- 20.2.2.1 reject all or part of the authorisations and proxies;
- 20.2.2.2 reduce the number of shares which an Authorised Representative or proxy may represent and vote at the General Meeting;
- 20.2.2.3 rule that all the shares represented by either the proxies or the Authorised Representatives or both must be proportionately reduced; and/or
- 20.2.2.4 make any other appropriate ruling, and
- the determination of the chairperson shall be final and binding.
- 20.3 From time to time the Directors may (consistently with the Companies Act and these Articles) make such regulations and establish such procedures as they consider appropriate to receive and verify the appointment of an Authorised Representative or notice of revocation of an Authorised Representative contemplated in Article 20.1. The Directors may modify or revoke any such regulations from time to time as they think fit but without prejudice to the validity of any appointment or revocation of an Authorised Representative in existence at the date of any such modification or revocation. Without prejudice to the generality of the foregoing the chairperson of the General Meeting or such other Person as the Directors may determine shall be authorised to conclusively determine any matter or dispute relating to the appointment or revocation or purported appointment or revocation of an Authorised Representative or any instruction


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containing or purporting to be contained in such appointment or revocation.

- 20.4 Nothing in Articles 20.1 to 20.3 shall be construed as limiting the powers of a company or body corporate to appoint a Legal Representative in terms of section 188 of the Companies Act and in the event of any conflict, the provisions of section 188 of the Companies Act shall prevail.

21. DIRECTORS

- 21.1 Subject to the provisions of the Companies Act, unless otherwise determined by a General Meeting, the number of Directors shall be not less than 3 nor more than 16 comprising:

21.1.1 non-executive Directors (of which the majority shall be independent Directors), from whom shall be appointed the chairman of the Company; and

21.1.2 not less than two *ex officio* Directors, who shall include the chief executive officer and chief financial officer, respectively, of the Company.

provided that the Board shall at all times consist of a majority of non-executive Directors.

- 21.2 The quorum applicable to all the meetings of the Directors shall be a majority of directors

- 21.3 The Company in General Meeting may, subject to annual review and confirmation of the Members, designate the chairperson who shall always be a non-executive Director and any terms and conditions applicable to such appointment.

- 21.4 Notwithstanding the provisions of any other Article herein, the Chief Executive Officer and the Chief Financial Officer shall be *ex officio* Directors of the company as a consequence of them holding the office of Chief Executive Officer and Chief Financial Officer, in the Company, respectively. The Board may decide on any other person who will be an *ex officio* Director of the Company as a consequence of that person holding some other office, title, designation, or similar status.

- 21.4.1 Notwithstanding the provisions of Article 21.4, an *ex officio* Director:

21.4.1.1 may not serve or continue to serve as an *ex officio* Director of the Company despite holding the relevant

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office, title, designation or similar status, if that person is or becomes ineligible or disqualified in terms of Section 69 of the Companies Act;

- 21.4.1.2 has all the powers and functions of any other director of the Company except to the extent that the Company may restrict the powers and functions or duties of *ex officio* Directors in these Articles; and
- 21.4.1.3 has all the duties, and is subject to all the liabilities, of any other Director of the Company.
- 21.4.2 The Board must conclude an employment contract with each *ex officio* Director the terms of which must include the following:
- 21.4.1 the *ex officio* Director may not serve or continue to serve as an *ex officio* if he or she no longer holds the office, title, designation or similar status which entitled him or her to be *ex officio* Director;
- 21.4.2 the remuneration, of the *ex officio* Director which shall be determined and adjusted from time to time by the Board, having due regard to the Remuneration Guidelines and any recommendations of the Company's remuneration committee, if any; and
- 21.4.3 a comprehensive performance contract.
- 21.5 The Company in General Meeting may designate a deputy chairperson (who shall be a non-executive Director), of the Board and determine the period for which such deputy chairperson is to hold office and the other terms and conditions applicable to such appointment. At any meeting of the Board, the chairperson of the Board, or if he is not present or willing to act as such, the deputy chairperson (if any), shall act as chairperson. If no chairperson or deputy chairperson has been elected, or is present and willing to act as such, the Directors present at any Board meeting shall choose one of their number to be chairperson of the meeting.
- 21.6 The Members shall have the power, from time to time, to appoint anyone as a Director, either to fill a vacancy in the Directors or as an additional Director, provided that the total number of Directors shall not at any time exceed the maximum number fixed by or in accordance with these Articles and any Director so appointed shall hold office only until the next annual General Meeting at which he shall be eligible for re-election, but shall not be taken into account in determining the Directors who are to retire by rotation at that annual General Meeting.

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- 21.7 The continuing Directors may act, notwithstanding any vacancy in their number, but if and for so long as their number is reduced below the minimum number of Directors in terms of Article 21.1 required to act as such for the time being, the continuing Director(s) may act only to:
- 21.7.1 Increase the number of Directors to the required minimum; or
- 21.7.2 summon a General Meeting for that purpose, provided that if there is no Director able or willing to act then any Member may convene a General Meeting for that purpose.
- 21.8 Unless otherwise determined by a General Meeting, a Director shall not be obliged to hold any qualification shares.
- 21.9 The remuneration for Directors for their services as Directors shall be determined from time to time by the Members of the Company in General Meeting, provided that, for so long as the State is the sole or majority shareholder of the Company, such remuneration shall be determined after having due regard to the Remuneration Guidelines. Where the Members appoint a Director to fill a vacancy or an additional Director in terms of Article 21.6, then the Members may determine the remuneration of such appointed Director for his services as a Director during the period from the date of his appointment until the next annual General Meeting, provided that, for so long as the State is the sole or majority shareholder of the Company, such remuneration shall be determined after having due regard to the Remuneration Guidelines. For the purposes of clarity it is recorded that the remuneration referred to in this Article 21.9 is for services rendered in the capacity as Director of the Company (ordinarily Directors fees) and is to be distinguished from any remuneration in respect of the employment of a Director as an ex officio Director which is governed by Article 21.2 or in any other capacity which is governed by Article 21.10.
- 21.10 Subject to having due regard to the Remuneration Guidelines for so long as the State is the sole or majority shareholder of the Company, the Directors shall be paid all travelling, subsistence, and other expenses properly and necessarily incurred by them in the execution of their duties in or about the business of the Company, and in attending meetings of Directors or of committees thereof; and if any Director is required to perform extra services or to go and reside abroad or otherwise shall be specifically occupied about the Company's business, he shall be

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entitled to receive such remuneration as is determined by the Members in General Meeting, which may be either in addition to or in substitution for any other remuneration.

21.11 For so long as the State is the sole or majority shareholder of the Company, as regards any:

21.11.1 ex officio Directors to be appointed to any subsidiary of the Company, the Board shall appoint same after consultation with the Minister and the remuneration, or any adjustment of the remuneration, of any such ex officio Director shall be determined by the Company in General Meeting having due regard to the Remuneration Guidelines and any recommendations of the Company's remuneration committee, if any; and

21.11.2 non-executive directors to be appointed to any subsidiary of the Company, the Board shall appoint same after consultation with the board of directors of the subsidiary and the Minister.

22. MINISTER RESERVED MATTERS AND COMPULSORY DISCLOSURES

22.1 The annual budget and corporate plan of the Company must be approved by the Minister;

22.2 The Company must disclose to the Minister all changes to terms and conditions of trade which may result in a significant impact on the Company's financial statements, including Unutilised Ticket Liability and Voyager.

22.3 For so long as the State is the sole or majority shareholder in the Company, and subject to the provisions of the Companies Act (including, without limitation, section 228 thereof), the Public Finance Management Act, 1 of 1999 and Applicable SOE Legislation, the Company shall not, without the prior approval of the Minister;

22.3.1 establish or participate in the establishment of a company;

22.3.2 participate in a significant partnership, trust, unincorporated joint venture or similar arrangement;

22.3.3 acquire or dispose of a significant shareholding in a company;

22.3.4 acquire or dispose of a significant asset;

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- 22.3.5 commence or cease a significant business activity;
- 22.3.6 undertake or agree to a significant change in the nature or extent of the Company's interest in a significant partnership, trust, unincorporated joint venture or similar arrangement; or
- 22.3.7 appoint any Chief Executive Officer of the Company.
- 22.4 Subject to the significance and materiality framework applicable from time to time, the Company shall not without prior approval of the Minister:
- 22.4.1 enter into, vary in any material respect or terminate any Alliances by any Group Company and the Company;
- 22.4.2 commence or exit from routes and airports save for instances where the use of diversion airports is required;
- 22.4.3 authorise the acquisition by a Group Company and the Company of any interest in another airline;
- 22.4.4 sell a material Group Company, consolidate or amalgamate a material Group Company with any other Company;
- 22.4.5 dispose or dilute the Company's interests, directly or indirectly, in any of its material subsidiaries;
- 22.4.6 authorise the acquisition by any Group Company of any share capital or other securities of any body corporate (other than a Group Company) for a consideration (converted, where applicable, at prevailing exchange rates) of material consideration as set out in the significance and materiality framework from time to time;
- 22.4.7 dispose of a substantial or major part of the Business;
- 22.4.8 change the rights attaching to any of the Company's authorized or issued share capital other than as required by a shareholders' agreement;
- 22.4.9 merge with another Person;
- 22.4.10 raise any finance, whether equity or debt, recourse or non-recourse, in an amount (converted, where applicable, at prevailing exchange rates) of material

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consideration as set out in the significance and materiality framework from time to time; and

- 22.4.11 Amendment of the provisions of the Articles of Memorandum of Association of the Company
- 22.4.12 enter into, materially revise, renew or effect an early termination of any contract or agreement between the Company and any shareholder beneficially owning, directly or indirectly, shares representing 1% or more of the voting rights in the Company or any Group Company.


23. POWERS AND DUTIES OF THE DIRECTORS

23.1 Subject to the limitations imposed by these Articles, the management of the business and the control of the Company shall be vested in the Directors who, in addition to and without limitation of the powers expressly conferred upon them by the Companies Act, the PFMA or these Articles, may exercise or delegate to any one or more Persons (including, without limitation, a committee) all such powers and do or delegate to any one or more Persons (including, without limitation, a committee) the doing of all such acts (including the right to sub-delegate) as may be exercised or done by the Company and are not in terms of the Companies Act, the Applicable SOE Legislation or by these Articles expressly directed or required to be exercised or done by a General Meeting, subject, nevertheless, to that management not being inconsistent with any resolution passed by a General Meeting. No such resolution passed by a General Meeting shall invalidate any prior act of the Directors or any delegate(s) which would have been valid if that resolution had not been passed.

23.2 Without limiting the generality of Article 23.1, the Directors may appoint such sub-committees with such functions and powers as the Board may consider necessary for the effective exercise of its functions or as it may be obliged to appoint in terms of the Applicable SOE Legislation from time to time and to the extent applicable.

24. BORROWING POWERS

24.1 The Directors may, subject to the Applicable SOE Legislation, exercise all the powers of the Company to borrow money and to mortgage or encumber its undertaking or property and to issue debentures, debenture stock and other Securities (with special privileges as to allotment of shares or stock, attending and voting


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of General Meetings, appointment of Directors or otherwise if sanctioned by a General Meeting), whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party.

- 24.2 For the purposes of the provisions of Article 24.1, and subject only to section 66 of the PFMA and any other relevant provisions of the Applicable SOE Legislation (where the state is the sole or majority shareholder), the borrowing powers of the Directors shall be unlimited.

25. DISCLOSURE OF DIRECTORS INTEREST

- 25.1 Subject to the Companies Act and the Applicable SOE Legislation (to the extent applicable), any contract or arrangement (or proposed contract or arrangement) with the Company in which a Director is interested or otherwise conflicted may be approved by a disinterested quorum of Directors after full disclosure of the relevant Director's interest in the contract.

- 25.2 Where a Director is interested in a contract or arrangement, he:

25.2.1 may not be counted in a quorum for the purpose of a meeting of Directors to consider any matter; and

25.2.2 shall not be entitled to vote in regard to any matter, relating to that contract or arrangement.

- 25.3 Subject to compliance with the provisions of the Companies Act and the Applicable SOE Legislation (to the extent applicable), a Director shall not be liable (in the absence of any agreement to the contrary) to account to the Company for any profit or other benefit arising out of any contract entered into by the Company in which he is directly or indirectly interested; provided that the Director's interest in the contract has been disclosed and the contract has been approved in accordance with these Articles.

- 25.4 For so long as the State is the majority shareholder in the Company, the Directors shall be obliged to furnish the Minister with quarterly and annual written reports setting out each Director's disclosure of interests as required under the Companies Act and the Applicable SOE Legislation and including any directorships each such Director may hold in other companies.

26. DISQUALIFICATION OF DIRECTORS

A Director shall cease to hold office as such if he:

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- 26.1 is prohibited from being or is removed as or is disqualified from acting as a Director in terms of the Companies Act or the Applicable SOE Legislation (to the extent applicable);
- 26.2 is knowingly interested in any contract or proposed contract with the Company and fails to declare his interest and its nature in the manner required by the Companies Act and the PFMA, unless the Board resolves otherwise;
- 26.3 dies, becomes of unsound mind or suffers from diminished mental capacity;
- 26.4 gives notice to the Company of his resignation as a Director with effect from the date of, or such later date as is provided for in, such notice;
- 26.5 absents himself from meetings of the Board for two or more consecutive meetings otherwise than on the business of the Company or without special leave of absence from the Board who resolve that his office shall be vacated;
- 26.6 is given notice, signed by Members holding in the aggregate more than 50% of the total voting rights on a poll of all Members then entitled to vote on a poll at a General Meeting, of the termination of his appointment.
27. PROCEEDINGS OF DIRECTORS
- 27.1 The Board may:
- 27.1.1 meet, adjourn, and otherwise regulate its meetings as it thinks fit and any Director shall be entitled to or request the secretary to convene a meeting of the Board; and
- 27.1.2 determine what notice shall be given of its meetings and the means of giving that notice (by way of the post, delivery, telefax or e-mail, or in any other manner it deems fit), provided that any such prior determination may be varied, depending on the circumstances and reasons for the Board meeting in question.
- 27.2 The Board and any committees established by the Board in terms of Article 23.1 may, if it so desires, convene a meeting by teleconference, videoconference or any other conference at which all Directors can communicate with each other and participate in proceedings.

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- 27.3 Unless otherwise determined by the Company in General Meeting, the quorum necessary for the transaction of the business of the Board shall be at least one-half of the Directors, provided that such quorum shall always include a majority of non-executive Directors.
- 27.4 Questions arising at any meeting of the Board shall be decided by a majority of votes and, in the event of an equality of votes, the chairperson shall have a second or casting vote.
- 27.5 Subject to the provisions of the Companies Act and these Articles, a resolution signed by all the Directors at the relevant time as contemplated by Article 27.3 inserted in the minutes, shall be as valid and effective as if it had been passed at a meeting of the Board. Any such resolution may consist of several documents and/or counterparts, each of which may be signed by one or more Directors and shall be deemed to have been passed on the date on which it was signed by the last Director who signed it (unless a statement to the contrary is made in that resolution).

28. ROTATION AND RETIREMENT OF DIRECTORS

- 28.1 Notwithstanding any provisions to the contrary in these Articles but subject to Articles 28.2 and 28.3, the Directors shall retire from office in the following manner:
- 28.1.1 at the conclusion of each annual General Meeting of the Company, one third of the Directors or, if their number is not a multiple of 3 (three), then the number nearest to but not less than one third of the Directors shall retire from office;
- 28.1.2 the Directors who retire in terms of 28.1.1 shall be those who have been longest in office since their last election, provided that:
- 28.1.2.1 If more than one of them were elected Directors on the same day, those to retire shall be determined by lot unless those Directors agree otherwise between themselves;
- 28.1.2.2 If at any annual General Meeting any Director will have held office for 5 (five) years since his last election, he shall also retire at the conclusion of such annual General Meeting;

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- 28.1.3 any Director appointed as such after the conclusion of the Company's preceding annual General Meeting shall retire from office at the conclusion of the annual General Meeting held immediately after his appointment;
- 28.1.4 a retiring Director shall be eligible for re-election, and, if re-elected, shall be deemed not to have vacated his office; and
- 28.1.5 no person other than a retiring Director shall be eligible for election as a Director at any annual General Meeting unless the Directors recommend otherwise, or unless not less than 7 (seven) nor more than 28 (twenty eight) days before the date appointed for the annual General Meeting, a Member who is entitled to attend and vote at such annual General Meeting shall have lodged written notice to Company's Office proposing such person as a Director, together with the consent of that person to be elected as a Director.
- 28.2 Notwithstanding the provisions of Article 28.1, any ex officio Director appointed in terms of Article 21.2 shall not (subject to the provisions of the contract under which he is appointed) whilst he continues to hold that position or office, be subject to retirement by rotation and such ex officio Director:
- 28.2.1 shall not, during the currency of such appointment, be taken into account in determining the rotation or retirement of Directors; and
- 28.2.2 shall be subject to the same provisions as to disqualification as provided for in Article 26 as the other Directors of the Company, and if he ceases to hold office as a Director, his appointment to such position or executive office shall *ipso facto* terminate, without prejudice to any claims for damages which may accrue to him as a result of such termination.
- 28.3 Notwithstanding the provisions of Articles 28.1 and 28.2, the Minister shall be entitled to determine the terms and conditions upon which Directors shall rotate and/or retire from Office for as long as the State remains the only shareholder in the Company entitled to appoint and/or remove Directors.

29. DIVIDENDS

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30. RESERVES

The Directors may:

- 30.1 set aside and carry to a reserve fund any part of the profits of the Company, which may at their discretion be applied for any purpose for which the profits of the Company may properly be applied in such manner as the Directors deem fit; and
- 30.2 divide any such reserve account into such special funds as they deem fit and consolidate such special funds (or any part thereof) into one or more accounts.

provided that for as long as the State is the majority shareholder in the Company, the approval of the Minister of Finance and all such other approvals as may be required in terms of the Applicable SOE Legislation shall be obtained for such action.

31. CAPITALISATION

- 31.1 Subject to the provisions of the Companies Act, the Directors or the Company in General Meeting, on recommendation of the Directors, may resolve to capitalise the whole or any part of:

31.1.1 any amount available for distribution as a dividend and not required for the payment or provision of dividends on preference shares;

31.1.2 any amount standing to the credit of any of the Company's reserve accounts (including its share premium account or capital redemption fund),

by setting such amount free for distribution in the same proportion amongst the Members who would have been entitled thereto if it had been distributed by way of a dividend (subject to the rights of any Members to whom shares have been issued on special conditions) on condition that the amount in question is not paid to the Members in question but is applied in paying up in full for unissued shares of the Company; provided that for so long as the State is the sole or majority shareholder of the Company the rights to capitalise as contemplated in this Article 31.1 may only be exercised subject to the prior written approval of the Minister.

- 31.2 Whenever a resolution relating to a capitalisation shall have been passed by a General Meeting, the Directors shall:



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- 29.1 For so long as the State is the sole or majority shareholder of the Company, the Directors, after consultation with the Member, shall develop an appropriate medium-term dividend policy and framework for the Company taking into account, *inter alia*, the Company's corporate plan, shareholder compact, developmental and strategic targets and financial well-being, management and sustainability of the Company. Such dividend policy framework shall include an obligation on the Board to notify the Member timeously in the event that the Board considers that there is a prospect that no dividends will be declared in any particular year.
- 29.2 Subject to Article 29.1, a General Meeting may declare dividends to any one or more classes of Members from time to time, and with the sanction of a General Meeting any dividend declared may be paid or satisfied either wholly or in part by the distribution of such specific assets in such manner as the Directors may determine.
- 29.3 Subject to Articles 29.4 to 0, dividends must be payable to Members recorded in the register at a date subsequent to the date of declaration of the dividend or date of approval by a General Meeting of a final dividend proposed by the Directors whichever is the later.
- 29.4 Any dividend so declared may be paid and satisfied, either wholly or in part, by the distribution of specific assets, and in particular of the paid up shares or debentures of this or any other company, or in cash or in any one or more of such ways as the Directors may at the time of declaring the dividend determine and direct, and where any difficulty arises in regard to the distribution they may settle the same as they think expedient, and in particular, may reasonably fix the value for distribution of such specific assets or any part thereof, and may determine that cash payments shall be made to any Members upon the basis of the value so fixed in order to adjust the rights of all parties and may vest any such assets in trustees upon such trusts for the Persons entitled to the dividend as may seem expedient to them.
- 29.5 The Company may, at the risk of the Member, transmit (including, without limitation, by cheque) any dividend or other amount payable in respect of a share to the address of the holder thereof recorded in the register or such other address as the holder thereof may previously have given to the Company in writing, and shall not be responsible for any loss or damage suffered arising out of or in connection with such transmission.


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- 31.2.1 be obliged to give effect to any such resolution;
- 31.2.2 be entitled to authorise any Person on behalf of all the Members concerned to, where the resolution of the General Meeting so provides, enter into an agreement with the Company providing for the allotment to them, credited as fully paid, of any shares to which they may be entitled in respect of such capitalisation, and any such agreement shall be effective and binding on all those Members.

32. GOVERNANCE

The Board shall include a report with respect to corporate governance in its annual reports as required from time to time by the Member(s).

33. WINDING UP

If the Company is wound up (whether voluntarily or compulsorily) subject to the provisions of the Applicable SOE Legislation:

- 33.1 the assets remaining after payment of the debts and liabilities of the Company and the costs of winding up shall be distributed amongst the Members in proportion to the numbers of shares respectively held by each of them, subject to the rights of any Members to whom shares have been issued on special conditions and subject to the liability, if any, of Members for unpaid Capital or premium;
- 33.2 the liquidator, with the authority of a special resolution, may divide amongst the Members in specie or kind the whole or any part of the assets and whether or not those assets consist of property of one kind or different kinds; and
- 33.3 If, despite diligent enquiry, the liquidator cannot locate any Member, he shall tender to deposit in the National Revenue Fund that Member's share in the winding up (undertaking for that purpose to realise any assets included therein). If any such tender is refused by the Master of the High Court, the liquidator shall distribute such share amongst the remaining Members in proportion to the number of shares held by them, subject to the rights of any Member to whom shares have been issued on special conditions.

34. INDEMNITY


Every Director, manager, secretary and other officer of the Company except for its auditor shall be indemnified out of the Company's funds

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against all liability incurred by him in connection with the performance of his functions and/or by virtue of his status as a Director, manager, secretary or other officer (excluding the auditor of the Company) in defending any proceedings (whether civil or criminal) in which judgement is given in his favour or in which he is acquitted or in connection with any matter in which relief is granted to him by the Court in terms of the Companies Act.

35. NOTICES

- 35.1 The Company may give or send to any Member, Beneficial Owner, Director and/or member of a committee any notice or other document by delivery, post or (except for a share certificate) by telefax, e-mail or other electronic communication insofar and in such manner as is permitted by law including, without limitation, by way of notification to the Member, Beneficial Owner, Director and/or member of a committee or its publication on a website.
- 35.2 Any Member, Beneficial Owner, or Director shall be entitled to have a notice served on him at any address outside the Republic of South Africa; provided that if on three consecutive occasions a notice to such Member addressed to that address is returned undelivered, such Member shall not thereafter be entitled to receive notices from the Company until the Member gives notice in writing to the Company of a new address for the service of notices. For this purpose, a notice sent by post shall be treated as returned undelivered if the notice is sent back to the Company or its agent and a notice sent by electronic communication shall be treated as returned undelivered if the Company or its agent receives notification that the notice was not delivered to the address to which it was sent.
- 35.3 Every notice or document sent to:
- 35.3.1 a Director or other committee member at his address shown in the register of Directors or committee members, as the case may be, or in the case of an electronic communication any telefax number, e-mail or other electronic communication address provided by the Director or other committee member for the purposes of Article 35.2, whether or not such address is included in the relevant register;
- 35.3.2 a Member at his address shown in the register of Members or in the case of an electronic communication any telefax number, e-mail or other electronic communication address provided by the Member for the



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purposes of Article 35.2, whether or not such address is included in the register of Members; or

- 35.3.3 a Beneficial Owner that is not a Member, at the address which has been disclosed to the Company in respect of that Beneficial Owner and which has been recorded in the Company's relevant register of such disclosures or any telefax number, e-mail or other electronic communication address provided by the Member for the purposes of Article 35.2, whether or not such address is included in the register of Members,

shall be deemed to have been received:

- (a) If it is delivered by an employee or officer of the Company, on the date on which it is so delivered;
 - (b) If it is delivered by way of a courier or delivery service provider, 48 hours after it is given to the courier or other delivery service provider for delivery and in proving the giving of the notice/document by courier or delivery service it shall be sufficient to prove that the notice/document was properly addressed and given to the courier or delivery service provider;
 - (c) If it is sent by post, 48 hours after it is so posted and in proving the giving of the notice/document by post, it shall be sufficient to prove that the letter containing the notice/document was properly addressed and posted; and
 - (d) If it is sent by e-mail, telefax or other electronic communication, 24 hours after the e-mail, telefax or other electronic communication containing same is sent (despatched) to the relevant e-mail address, telefax number or other electronic address and in proving the giving of the such notice/document it shall be sufficient to prove that it was sent (as opposed to received) to the proper e-mail address, fax number or other electronic communication address and a printout of the electronic confirmation of despatch of the telefax, e-mail or electronic communication shall constitute conclusive proof that it was sent, unless the contrary is proved.
- 35.4 When a given number of days notice or notice over any period is required to be given, the date of service or posting, as the case may be, and the date on which it is deemed to be received shall not be counted in such number of days or period.

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- 35.5 Whenever a notice is to be given in any of the aforementioned methods, the notice may be given by the Company to the Persons entitled to a share in consequence of the death or insolvency of a Member or any other event giving rise to the transmission of the shares by law (including, without limitation, any executor, trustee or administrator), at the address (including fax number, e-mail or other electronic communication address) supplied for that purpose by the Persons claiming to be so entitled with reference to the name of such representative, the deceased or insolvent Member or the title of the representative or any like description. Until such an address has been so supplied the Company may give the notice in any manner in which the same might have been given if the death, insolvency or other event giving rise to the transmission had not occurred. A notice given to the registered Member shall be binding on all Persons claiming on the Member's death, insolvency or other event giving rise to the transmission of the Member's interests.
- 35.6 The accidental omission to give any notice of a General Meeting or of a meeting of Directors to or the non-receipt of any such notice by any Member or Director, as the case may be, shall not invalidate any resolution passed at any such meeting. Without limitation to the foregoing, subject to the Companies Act, the omission to give any notice of a General Meeting to a Beneficial Owner that is not a Member or the non-receipt of any such notice by such a Beneficial Owner shall not, under any circumstances whatsoever, invalidate a General Meeting nor any resolution passed at such meeting, whether the omission is accidental or otherwise.
- 35.7 The Directors shall in their discretion, in addition to the notice referred to in Article 35.2, be entitled, but not obliged, to publish the notice by advertisement in any newspaper(s) they consider appropriate.
- 35.8 Any notice or other document may be served or delivered by the Company by reference to the register as it stands at the close of business on such day as the Board shall determine not being more than 21 (twenty one) days before the date of the despatch of the notice. No change in the register after such time shall invalidate a notice or other document so served or delivered.

36. **BRANCH REGISTER**

The Company shall be entitled to cause a branch share register to be kept in any foreign country and the Directors may make such provisions as they may think fit respecting the keeping of any such branch register(s).



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37. **ACQUISITION OF SHARES AND STOCK**

The Company may (subject to the Applicable SOE Legislation) by special resolution of the Members approve the acquisition by the Company of shares and stock issued by It and/or its holding company, in accordance with the requirements of the Companies Act. The Company agrees (subject to the Applicable SOE Legislation) that any of its subsidiaries may acquire shares and stock in the Company, only subject to compliance with the requirements of the Companies Act and the approval of the Members of the Company by resolution passed *mufatis mutandis* as if it were a special resolution.

38. **LOCAL COMMITTEE(S)**

38.1 All appointments of alternate committee members or substituted agents by members of any local committee or agents made in accordance with the provisions of the preceding Article shall be subject to the approval of the remaining members of the local committee or agents and shall be reported forthwith to the Directors. No local committee members or his alternate or agent or substituted agent shall be obliged to be a Member of the Company.


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Form CM 2

REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 1973

Memorandum of association

of a company having a share capital
[Section 54(1) ; regulation 17 (1) and 17 (2)]

Registration No. of company
1997/022444/07

1. NAME

(a) The name of the Company is


SOUTH AFRICAN AIRWAYS (PROPRIETARY) LIMITED

(b) The name of the Company in the other official language of the Republic is

N/A

(c) The shortened form of the Company is

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39. **DIRECTORS' REPORT TO DISCLOSE RESOLUTIONS PASSED BY SUBSIDIARY COMPANIES**

If the Company is a holding company as defined in the Companies Act, the Director's report attached to each annual balance sheet issued by the Company pursuant to the Companies Act shall disclose full details of all special resolutions and resolutions passed at General Meetings of the Company's subsidiaries since the date of the Directors' report attached to the previous annual balance sheet of the Company.

40. **COPIES OF ANNUAL ACCOUNTS AND REPORTS TO BE SENT TO MEMBERS**

The Directors shall cause the required number of copies of every income statement, balance sheet and group accounts of the Company, together with the reports of the Directors and auditors, all as required to be laid before a General Meeting, to be sent to Members at least 21 (twenty-one) days before the General Meeting at which they are to be considered.


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Form CM 2A

**REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 1973**

2. PURPOSE DESCRIBING THE MAIN BUSINESS

The main business which the Company is to carry on:

“The operation of international, regional and domestic scheduled air services for carriage of passengers, freight and mail.”

3. MAIN OBJECT

The main object of the Company is:

“To engage in passenger airline and cargo transport services, air charter services and other related services.”

4. ANCILLARY OBJECTS EXCLUDED

The specific ancillary objects, if any, referred to in section 33 (1) of the Act, which are excluded from the unlimited ancillary objects of the Company

No ancillary objects, referred to in section 33(1) of the Act, are excluded from the unlimited ancillary objects of the Company.

5. POWERS

(a) The specific powers or part of any powers of the Company, if any, which are excluded from the plenary powers or the powers set out in Schedule 2 to the Act

No powers or part of any power are excluded from the unlimited capacity of the Company or the common powers described in Schedule 2 to the Act.

(b) The specific powers or part of any specific powers of the Company set out in Schedule 2 to the Act, if any, which are qualified under section 34 of the Act

No powers or part of any power of the Company described in Schedule 2 to the Act are qualified in terms of section 34 of the Act.

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6. CONDITIONS

Any special conditions which apply to the Company and the requirement, if any, additional to those prescribed in the Act for their alteration.

(a) The Company shall not as a special condition have the power to conclude any of the following transactions without the approval of the Shareholder Minister:-

- i) establishment or participation in the establishment of a company;
- ii) participation in a significant partnership, trust, unincorporated joint venture, or similar arrangement;
- iii) acquisition or disposal of a significant shareholding in the company;
- iv) acquisition or disposal of a significant asset;
- v) commencement or cessation of a significant business activity;
- vi) a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement; and
- vii) borrowings of the Company and its subsidiaries conferring rights to a lender to convert debt into shares of any kind.

7. PRE-INCORPORATION CONTRACTS (IF ANY)

Not Applicable

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"MKG4"

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SOUTH AFRICAN AIRWAYS


MEMORANDUM OF INCORPORATION


OF

SOUTH AFRICAN AIRWAYS STATE OWNED COMPANY (SOC) LIMITED

Registration No. 1997/022444/30

This MOI was adopted by Special Resolution passed by the Shareholder of the Company.


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Form CM 2B

**REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 1973**

8. CAPITAL

8.1 Par Value: The share capital of the Company is 15 000 000 000 (FIFTEEN BILLION) rand

8.2 No Par Value:

8.2.1 The number of no par value ordinary shares is 0 (NIL);

8.2.2 The number of no par value preference shares is 0 (NIL); and

8.2.3 The number of no par value redeemable preference shares is 0 (NIL).



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Page 2 of 66

This Memorandum of Incorporation was submitted to and adopted by a Special Resolution passed by the Shareholders of the Company at _____ on _____ 2015 and initialed by the chairperson for the purpose of identification.

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT, 2008

MEMORANDUM OF INCORPORATION

OF

SOUTH AFRICAN AIRWAYS SOC LIMITED

REGISTRATION NO. 1997/022444/30


which is referred to in the rest of this Memorandum of Incorporation as the "Company".

The Schedules and Annexures attached to this Memorandum of Incorporation are incorporated into, and form an integral part of, this Memorandum of Incorporation.

This Memorandum of Incorporation was adopted by Special Resolution passed on _____ 2015 in substitution for the existing memorandum of incorporation of the Company.

Preamble

The Company is a pre-existing company as contemplated in Item 2 of Schedule 5 of the Companies Act and was incorporated pursuant to the Legal Succession to the South African Transport Services Act, No. 9 of 1989. The business of the Company is engaging in passenger airline and cargo transport services; air charter services; and other related services, it being recorded that the Company is also subject to the provisions of the PFMA. The Company now wishes to adopt this Memorandum of Incorporation in order to bring its constitution in line with the Companies Act.


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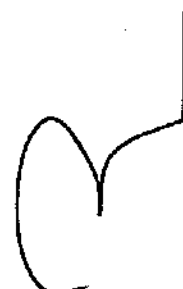

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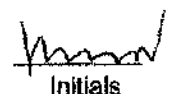
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1. INTERPRETATION

In this Memorandum of Incorporation:-

- 1.1. Words used in this MOI, but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act and/or the PFMA. The definitions from the Companies Act are contained in **Annexure A** for ease of reference. For ease of reading, all such terms have been capitalised in this MOI.
- 1.2. The headings to the clauses of this MOI are for reference purposes only and shall not in no way govern or effect the interpretation of nor the modify nor amplify the terms of this MOI nor any clause;
- 1.3. Unless the context provides or requires otherwise the and expression below shall bear the following meanings and cognate expressions shall bear corresponding :-
- 1.4. **"Alliance Membership"** means a strategic arrangement with a group of airlines for the purpose of optimising air transport services where the arrangement involves the provision of rights and obligations relating to the use of the designator of another airline, its trademarks, and/or its branding;
- 1.5. **"Auditing Profession Act"** means the Auditing Profession Act, 2005 (Act No. 26 of 2005);
- 1.6. **"Board"** means the board of directors of the Company as constituted from time to time, as defined in the Companies Act, which is also the accounting authority for purposes of the PFMA;
- 1.7. **"CEO"** means the Chief Executive Officer of the Company;
- 1.8. **"CFO"** means the Chief Financial Officer of the Company;
- 1.9. **"Companies Act"** means the Companies Act, 2008 (Act No. 71 of 2008)as amended, consolidated or re-enacted from time to time and includes all schedules thereto and the Regulations;
- 1.10. **"Company"** means the South African Airways SOC Limited, with registration No. 1997/022444/30 created in terms of the South African Airways Act, 2007 (Act No.6 of 2007);
- 1.11. **"Company in general meeting"** means a formal meeting of, or a resolution passed by, the Shareholders;




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- 1.12. **"Corporate Plan"** means the 3 (three) year plan of the Company as contemplated in the PFMA, which plan must include (but is not limited to):-
- 1.12.1. strategic objectives and outcomes identified and agreed on by the Shareholders in the Shareholder's Compact;
 - 1.12.2. strategic and business initiatives as embodied in business function strategies;
 - 1.12.3. key performance measures and indicators for assessing the Company's performance in delivering the desired outcomes and objectives;
 - 1.12.4. a risk management plan;
 - 1.12.5. a fraud prevention plan;
 - 1.12.6. the SMF;
 - 1.12.7. a financial plan addressing:-
 - 1.12.8. quarterly projections for the first year of revenue, expenditure and borrowings against annual targets;
 - 1.12.9. asset and liability management;
 - 1.12.10. cash flow projections;
 - 1.12.11. capital expenditure programmes; and
 - 1.12.12. dividend policies; and
 - 1.12.13. such other issues as may be required in terms of the PFMA from time to time.
- 1.13. **"Deliver"** means the various ways in which the Company is entitled to give notice or deliver documents in accordance with clause 24 and the Companies Act, including Table CR3 of the Regulations of the Companies Act (which is attached hereto as **Annexure C**), and **"Delivered"** and **"Delivering"** shall have the corresponding meaning as the context may indicate;
- 1.14. **"Directors"** means the directors of the Company from time to time, as defined in the Companies Act and **"Director"** shall have a corresponding meaning as the context may indicate;
- 1.15. **"Distribution"** means a distribution as defined in the Companies Act and **"Distribute"** and **"Distributed"** shall have the corresponding meaning as the context may indicate;



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- 1.16. **"Effective Date"** with reference to any particular provision of the Companies Act, means the date on which that provision came into operation in terms of section 225 of the Companies Act;
- 1.17. **"Electronic Address"** means in regard to Electronic Communication, any email address furnished to the Company by the Shareholders;
- 1.18. **"Electronic Communication"** has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002;
- 1.19. **"Enabling Legislation"** means the South African Airways Act, No. 5 of 2007 as amended or any legislation which replaces it;
- 1.20. **"Financial Assistance"** has the meaning set out in section 45(1) of the Companies Act;
- 1.21. **"Financial Year"** has the meaning set out in clause 25;
- 1.22. **"Gazette"** means the Government Gazette of the Republic;
- 1.23. **"Government"** means the Government of the Republic;
- 1.24. **"Group Company"** means any Subsidiary of the Company;
- 1.25. **"Ineligible or Disqualified"** means ineligible or disqualified as contemplated in the Companies Act (a list of which is in Annexure B for ease of reference) or as contemplated in clause 13.7.2.2.6, which shall apply not only to Directors but also to members of Board committees and Prescribed Officers;
- 1.26. **"Memorandum of Incorporation"** or **"MOI"** means this Memorandum of Incorporation, as amended from time to time;
- 1.27. **"Minister"** means the Minister responsible for the administration of the South African Airways Act, 2007 (Act No.5 of 2007);
- 1.28. **"Month"** means a calendar month and **"Months"** shall have a corresponding meaning as the context may indicate;
- 1.29. **"Office"** means the registered office of the Company from time to time;
- 1.30. **"Ordinary Resolution"** means a resolution adopted with the support of more than 50% (fifty percent) of the Voting Rights Exercised on the resolution at a Shareholders' Meeting, or by the Shareholders acting other than at a meeting, as contemplated in section 60 of the Companies Act;



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- 1.31. **"Person"** includes a Juristic Person;
- 1.32. **"PFMA"** means the Public Finance Management Act 1999(Act No. 1 of 1999, including all Treasury Regulations made pursuant thereto;
- 1.33. **"Prescribed Officers"** means a person who, within a company, performs any function that has been designated by the Minister of Trade and Industry in terms of section 66 (10) of the Companies Act;
- 1.34. **"Present"** shall have the meaning ascribed to the term "present at a meeting" in the Companies Act;
- 1.35. **"Public Audit Act"** means the Public Audit Act 2004, (Act No. 25 of 2004);
- 1.36. **"Regulations"** means the regulations published pursuant to the Companies Act from time to time;
- 1.37. **"Remuneration Policy"** means the Remuneration Policy of the Company which will include and incorporate the "Remuneration Guidelines" and/or "Standards" on remuneration issued by the Minister from time to time as confirmed by the Company on an annual or biennial basis ;
- 1.38. **"Republic"** means the Republic of South Africa;
- 1.39. **"Revenue Fund"** has the meaning set out in section 1 of the PFMA;
- 1.40. **"Round Robin Resolution"** means a resolution passed other than at a:-
- 1.40.1 Shareholders' meeting, which:-
- 1.40.1.1 was submitted for consideration to the Persons entitled to Exercise Voting Rights in relation to the resolution; and
- 1.40.1.2 was voted on in Writing by the requisite percentage of the Persons entitled to vote, as contemplated in clause 12 by signing a resolution in counterparts on behalf of the Shareholders or by duly authorised representatives thereof within 20 (twenty) Business Days after the resolution was submitted to them.
- 1.40.1.3 meeting of Directors, in respect of which, subject to clause 13.11.9, 51 (fifty one percent) of the Directors voted in favour by Signing, in Writing, a resolution in counterparts, within 10 (ten) Business Days after the resolution was submitted to them; provided that each Director has received notice of the matter to be decided;

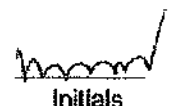


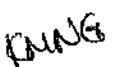

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- 1.41. **"Shareholders"** means the registered holders of Shares, and **"Shareholder"** shall have the corresponding meaning;
- 1.42. **"Shareholder's Compact"** means the Shareholder's Compact, being an agreement entered into in terms of sub-regulation 29.2 of the Treasury Regulations between the Government (as represented by the Minister) and the Board annually;
- 1.43. **"Shareholders' Meeting"** means with respect to any particular matter concerning the Company, a meeting of the those Shareholders of the Company's issued Shares who are entitled to Exercise Voting Rights in relation to that matter;
- 1.44. **"Shares"** means any shares issued, or authorised to be issued by the Company;
- 1.45. **"Sign"** and **"Signature"** include, respectively, lithography, printing, electronic signature or signing by a mechanical or electronic process or means;
- 1.46. **"SMF"** means the Significance and Materiality Framework applicable to the Company, developed under the Treasury Regulations;
- 1.47. **"Special Resolution"** means a resolution adopted with the support of at least 75% (seventy five percent) of the Voting Rights Exercised on the resolution at a Shareholder's Meeting or by Shareholders acting other than at a meeting, as contemplated in section 60 of the Companies Act;
- 1.48. **"Statutes"** means collectively, the Enabling Legislation, the PFMA, the Public Audit Act, the Companies Act, Treasury Practice Notices, the Companies Act and any and every other statute, regulation, directive, guideline, framework, policy or ordinance not specifically mentioned from time to time in force concerning companies and necessarily affecting the Company or its Subsidiaries and **"Statute"** shall mean any one of the them as the context may indicate;
- 1.49. **"Strategic Intent Statement"** means the primary tool used by the Shareholders to communicate their expectations of the Company strategy and which contains the Company's strategic purpose, scope of business, core business, consultation thresholds or investment strategy developed by the Shareholders in consultation with, the National Treasury and the Presidency of the Republic and taking into account an assessment of the interaction between the policy and regulatory environment with the financial and operational goals of the Company to ensure Shareholders value optimisation and achievement of wider socio-economic objectives;




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- 1.50. "**Subsidiary**" means a "subsidiary" of the Company, as such term is defined in the Companies Act and "**Subsidiaries**" shall have a corresponding meaning;
- 1.51. "**Treasury Regulations**" means the regulations promulgated by the National Treasury in terms of section 76 of the PFMA and any amendment thereof or substitution therefor from time to time;
- 1.52. "**Voting Rights**" with respect to any matter to be decided by the Company, means the rights of any Shareholder to vote in connection with that matter; and
- 1.53. "**Writing**" means legible writing, in English and includes any form of Electronic Communication.
- 1.54. Words importing the singular number shall include the plural number and vice versa.
- 1.55. Words importing any one gender shall include the other gender.
- 1.56. Words importing natural persons shall include Juristic Persons (whether corporate or not and including partnerships and trusts) and vice versa.
- 1.57. Reference to a section by number in this MOI shall be a reference to the corresponding section in the Companies Act, unless otherwise stated.
- 1.58. Reference to any provision of any Statute shall include such provision as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such Statute. Any reference to a particular section in a Statute is to that section as at the date of adoption of this MOI, and as amended or re-enacted from time to time and/or an equivalent measure in a Statute, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this MOI are changed, the relevant provision of this MOI shall be read also as if it had been amended as necessary, without the necessity for an actual amendment.
- 1.59. Reference to Shareholders represented by proxy shall include Shareholders entitled to vote represented by (i) an agent appointed under a general or special power of attorney and (ii) the Minister.
- 1.60. References to Shareholders entitled to vote Present at a meeting or acting in person shall include Juristic Persons represented by duly authorised representatives (which duly authorised representatives may be natural or Juristic Persons) or acting in the manner prescribed in the Companies Act.



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- 1.61. Subject to clause 1.58, any words or expressions defined in any Statute shall, unless the context otherwise requires, bear the same meaning in this MOI as in the Statute in which they are defined. If any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision.
- 1.62. The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.
- 1.63. The words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s.
- 1.64. Any reference in this MOI to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented.
- 1.65. The words "other" and "otherwise" shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

2. INCORPORATION AND NATURE OF THE COMPANY AND GOVERNING PROVISIONS

- 2.1. The Company is a pre-existing Profit Company incorporated on 29 December 1997 and is listed as a Public Entity in Schedule 2 of the PFMA. As such, the Company continues to exist as a State-Owned Company as defined in the Companies Act as if it had been incorporated and registered in terms of the Companies Act, as contemplated in Item 2 of Schedule 5 to the Companies Act, and the Companies Act has modified application, as set out in section 9 of the Companies Act.
- 2.2. The Company is governed by:
- 2.2.1. the Enabling Legislation;
 - 2.2.2. the PFMA;
 - 2.2.3. relevant Unalterable Provisions of the Companies Act;
 - 2.2.4. relevant Alterable Provisions of the Companies Act, subject to the limitations, extensions and variations set out in this MOI;
 - 2.2.5. the provisions of this MOI; and

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2.2.6. applicable provisions of any other Statutes affecting the company from time to time.

2.3. Subject to section 5(4) of the Companies Act:-

2.3.1. if any provision of this MOI is in any way inconsistent with any provisions of the Companies Act and/or the PFMA, as the case may be, the said provision of the Companies Act and/or the PFMA shall prevail and this MOI shall be read in all respects subject to the Companies Act and/or the PFMA, as the case may be; and

2.3.2. if there is any inconsistency between any provision of the PFMA and any provision of the Companies Act, then to the extent that it is impossible to apply or comply with one of the inconsistent provisions without contravening the other, the PFMA provision will prevail.

3. POWERS AND CAPACITY OF THE COMPANY

3.1. The powers and capacity of the Company are not subject to any provisions contemplated in section 15(2) (b) or (c) of the Companies Act but shall be subjected to the Statutes.

3.2. The purposes and powers of the Company are subject to any restrictions, limitations or qualifications, as contemplated in section 19(1) (b) (ii) of the Companies Act.

3.3. Notwithstanding anything to the contrary contained herein or any omissions from this MOI of any provisions to that effect, the Company may do anything that the Companies Act and/or the Statutes empower it to do if not so prohibited by this MOI and/or by any provision of the Companies Act and/or the Statutes as the case may be.

3.4. The Company shall not, without the prior Written approval of the Minister:-

3.4.1. enter into any transaction which exceeds or falls outside of the limits prescribed in the SMF;

3.4.2. establish or participate in:-

3.4.2.1. the establishment of a company; or

3.4.2.2. a significant partnership, trust, unincorporated joint venture or similar arrangement.

3.4.3. acquire or dispose of a significant shareholding in a company or a significant asset;

3.4.4. commence or cease a significant business activity;

3.4.5. commit the Company or its Subsidiaries to borrowings which confer rights to a lender to convert debt into shares of any kind;

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- 3.4.6. undertake or agree to a significant change in the nature or extent of the Company's interest in a significant partnership, trust, unincorporated joint venture or similar arrangement;
- 3.4.7. appoint the CEO;
- 3.4.8. issue, or approve the transfer of, any Shares in the Company;
- 3.4.9. subject to clause 4, amend the provisions of this MOI; or
- 3.4.10. borrow for itself and its Subsidiaries, conferring rights to a lender to convert debt into shares of any kind.
- 3.5. The Company shall not without prior approval of the Minister:-
- 3.5.1. enter into, vary in any material respect or terminate any Alliance Membership, such as Star Alliance, Sky Team, One World, by any Group Company and the Company;
- 3.5.2. commence or exit from routes and airports where the routes or airports account for more than 10% (ten percent) of passenger volumes ("PAX") or any amount determined by the Minister, from time to time;
- 3.5.3. authorise the acquisition by a Group Company and the Company of any interest in another airline;
- 3.5.4. sell a material Group Company, consolidate or amalgamate a material Group Company with any other Company;
- 3.5.5. dispose or dilute the Company's interests, directly or indirectly, in any of its material subsidiaries;
- 3.5.6. authorise the acquisition by any Group Company of any share capital or other securities of anybody corporate (other than a Group Company) for a consideration (converted, where applicable, at prevailing exchange rates) of material consideration as set out in the significance and materiality framework from time to time;
- 3.5.7. dispose of a substantial or major part of the business of the Company;
- 3.5.8. change the rights attaching to any of the Company's authorised or issued share capital;
- 3.5.9. merge with another Person; and
- 3.5.10. raise any finance, whether equity or debt, recourse or non-recourse, in an amount (converted, where applicable, at prevailing exchange rates) of material consideration as set out in the SMF from time to time.




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3.6. In addition to the limitations and restrictions set out in clauses 3.4 and 3.5 above, the Board shall ensure that:-

- 3.6.1. the Shareholder's Compact, Signed by the Company, for the following Financial Year shall be submitted by 30 September each year;
- 3.6.2. the annual budget and the Corporate Plan of the Company is presented and/or submitted to the Minister prior to 28 February each year; and
- 3.6.3. the Company discloses to the Minister all changes to terms and conditions of trade which may have a Material Impact on the Company including Unutilised Ticket Liability and Voyager liability.



3.7. Subject, at all times, to the PFMA, the Minister may, from time to time:-

- 3.7.1. grant to the Board a general authority to raise or borrow from time to time for the purposes of the Company, or secure the payment of, such sums not exceeding a financial limit as determined by the Minister; and/or
- 3.7.2. prescribe a financial limit for the issue of guarantees, indemnities, securities or the entering into of other transactions, in terms of which specific approval by the Minister is currently not required.

3.8. In addition to the Strategic Intent Statement which shall be issued by the Minister 2 (two) months prior to 31 July each year, the Minister may issue directives to the Board regarding the mandate and objectives of the Company if it is reasonably necessary to do so.

4. AMENDMENTS TO MEMORANDUM OF INCORPORATION

- 4.1. Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation, *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with section 16(1) of the Companies Act and the provisions of this MOI.
- 4.2. The Board shall publish a notice of any alteration of the MOI correcting a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the MOI, by furnishing a copy thereof to the Shareholders and file a notice of alteration in accordance with section 17(1) of the Companies Act and the provisions of the MOI.



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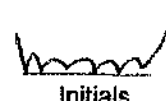
5. THE MAKING OF RULES

The Board shall not have the power to make any necessary or incidental rules relating to the governance of the Company in respect of the matters that are not addressed in this MOI or the Companies Act.

6. AUTHORISED SHARES ALLOTMENT AND ISSUE

6.1. Authorised Classes of Shares

- 6.1.1. Subject to the Statutes, the Company is authorised to issue ordinary Shares of the classes set out in clause 6.1.3 below, and each such ordinary Share entitles each Shareholder thereof to:-
- 6.1.1.1. attend, participate in, speak at and vote on any matter to be considered at any meeting of the Shareholders;
 - 6.1.1.2. vote on any matter to be decided by the Shareholders of the Company;
 - 6.1.1.3. vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share;
 - 6.1.1.4. participate proportionally in any Distribution made by the Company;
 - 6.1.1.5. participate in the Distribution of profit to the ordinary Shareholders; and
 - 6.1.1.6. receive proportionally the net assets of the Company upon its liquidation/dissolution.
- 6.1.2. The Company is authorised to issue 15 000 000 000 (fifteen billion) authorised ordinary Shares with a par value of R1 (one Rand) each.
- 6.1.3. The issued Shares in the share capital of the Company are classified as follows:-
- 6.1.3.1. 8 786 771 465 (eight billion seven hundred and eighty six million and seven hundred and seventy one thousand four hundred and sixty five) "A" ordinary Shares of R1 (one Rand) each;
 - 6.1.3.2. 2 412 563 822 (two billion four hundred and twelve million and five hundred and sixty three thousand eight hundred and twenty two) "B" ordinary Shares of R1 (one Rand) each;
 - 6.1.3.3. 1 206 281 911 (one billion two hundred and six million and two hundred and eighty one thousand nine hundred and eleven) "C" ordinary Shares of R1 (one Rand) each;



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- 6.1.3.4. 603 140 956 (six hundred and three million one hundred and forty thousand and nine hundred and fifty six) "D" ordinary Shares of R1 (one Rand) each; and
- 6.1.3.5. 117 578 806 (one hundred and seventeen million five hundred and seventy eight thousand and eight hundred and six) "E" ordinary Shares of R1 (one Rand) each.

each of which shall have Voting Rights on the basis of 1 (one) voting right per ordinary Share in respect of every matter that may be decided by voting, and shall rank *pari passu* in all respects and together with all other ordinary Shares in the Company as regards Distributions and returns of capital and shall be entitled to receive the net assets of the Company upon its liquidation.

- 6.1.4. The Board shall not have the power to amend the authorisation (including increasing or decreasing the number) and classification of Shares (including determining rights and preferences) as contemplated in section 36(2) (b) or section 36(3) of the Companies Act.
- 6.1.5. Subject to provisions of the Companies Act and the Statutes, the Company may from time to time by Special Resolution passed by the Shareholders:-
- 6.1.5.1. increase or decrease the number of its authorised Shares;
- 6.1.5.2. reclassify any Shares that have been authorised but not issued;
- 6.1.5.3. classify any unclassified Shares;
- 6.1.5.4. create any class of Shares and establish any preferences, rights, limitation or other terms in respect of any class of Shares so created, in terms of section 37 of the Companies Act;
- 6.1.5.5. alter the provisions of this MOI with respect to the objects and powers of the Company;
- 6.1.5.6. convert any Shares in the Company to Shares of a different class, whether issued or not, and in particular (but without derogating from the generality of the foregoing) convert ordinary Shares or preference Shares to redeemable preference Shares, provided that moneys other than dividends due to the Shareholders or the amount payable on the redemption of any preference Shares shall be held in trust by the Company indefinitely until lawfully claimed by the Shareholders.


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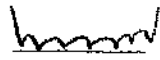
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- 6.1.6. To the extent that the Company immediately before the Effective Date has authorised but unissued par value Shares in its capital of a class of which there are issued Shares, the unissued Shares of that class may be issued at par or at a premium or at a discount.
- 6.1.7. No rights, privileges or conditions for the time being attached to any class of Shares of the Company nor any interests of that class of Shares may (unless otherwise provided by the terms of issue of the Shares of that class) whether or not the Company is being wound up, be varied in any manner adverse to the Shareholders of that class of Shares, nor may any variations be made to the rights, privileges or conditions of any class of Shares, such that the interests of another class of Shares is adversely affected, unless the consent in Writing of the Holders of not less than 75% (seventy five percent) of the issued Shares of that adversely affected class has been obtained, or a Special Resolution has been passed by the Shareholders of that adversely affected class of Shares with the support of at least 75% (seventy five percent) of the Voting Rights Exercised on the Special Resolution at a separate meeting of the Shareholders of that class.
- 6.1.8. The Board shall not have the power to issue:-
- 6.1.8.1. authorised shares and options relating to Shares and secured and unsecured debt Instruments as contemplated in sections 42 and 43 of the Companies Act; or
- 6.1.8.2. capitalisation Shares or offer a cash payment in lieu of awarding a capitalisation Share in accordance with section 47 of the Companies Act.

without the passing of an Ordinary Resolution of the Shareholders and the consent of the Minister.

6.2. Certificates of Securities

The Securities issued by the Company shall be evidenced by certificates, which shall contain the information specified in section 51(1) of the Companies Act, and be issued in the manner prescribed in section 51 of the Companies Act.



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6.3. Register of Securities

The Company shall establish and keep a register of its issued Securities at its Office in the manner specified in section 50 of the Companies Act and the Regulations.

7. PRE-EMPTION ON ISSUE OF ORDINARY SHARES

7.1. Save if:-


- 7.1.1. ordinary Shares are to be issued for the acquisition of any asset or for an Amalgamation or Merger;
- 7.1.2. the Shareholders by Ordinary Resolution approve the issue of ordinary Shares for any other purpose without this clause applying;
- 7.1.3. a capitalisation issue of ordinary Shares is to be undertaken;
- 7.1.4. ordinary Shares are to be issued in terms of option or conversion rights; or
- 7.1.5. ordinary Shares are to be issued for a subscription price which is not a cash amount payable in full on subscription.

the Government has a right, before any other Person to be offered and within a reasonable time to subscribe for all the ordinary Shares to be issued for subscription. The offer to the Government shall be Delivered in Writing specifying the number of ordinary Shares offered, and specifying a time (which shall not be less than 90 (ninety) business days) by which the offer must be accepted and the requisite portion of the subscription price paid, failing which it shall be deemed to be rejected.

7.2. After the expiration of the time within which an offer may be accepted, or on the receipt of an intimation from the Government that it declines to accept the ordinary Shares offered, then, subject always to the Written consent of the Government as provided in this MOI or such other approvals as may be required in terms of the Enabling Legislation:

- 7.2.1. in the case of offer for subscription, the Directors may, subject to the foregoing provisions, issue such ordinary Shares in such manner as they think most beneficial to the Company; and
- 7.2.2. in the case of an offer for purchase, the Shareholder may, subject to clause 9 dispose of the Shares to a third party.

7.3. Save as provided in clause 7.1, the pre-emptive right in section 39(2) of the Companies Act shall not apply in respect of the issue of any other classes of Shares.


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8. PROHIBITION REGARDING BENEFICIAL INTERESTS

The Company shall not permit its Shares to be held by, and registered in the name of, one Person for the Beneficial Interest of another Person, as set out in section 56(1) of the Companies Act.

9. RESTRICTION ON THE TRANSFER OF SHARES

In addition to any prescribed obligations which the Shareholders may agree to, or in terms of the Enabling Legislation, no Shares shall be transferred without the written consent of the Minister.

10. SHAREHOLDERS' AND DIRECTORS' RIGHT TO INFORMATION

10.1. The Shareholders shall have the rights to all such information relating to the Company as contemplated in this MOI, the Companies Act the PFMA, the Regulations, the Enabling Legislation and the Statutes.

10.2. The Board shall procure that detailed management accounts of the Company and its Subsidiaries shall be prepared on a quarterly basis and submitted to the Government within 6 (six) weeks after the end of the quarter or such other period as maybe agreed by the Shareholders and the Company in Writing in respect of which such accounts are being prepared. Such management accounts shall be circulated to each Director and the Government as soon as possible after the end of each quarter.

10.3. Any Director or the Government shall be entitled to request in Writing from time to time such accounting and other information as may be reasonably required by such Director or the Shareholders.

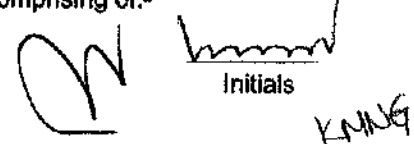
11. RECORD DATE

If, at any time, the Board fails to determine a Record Date as contemplated in section 59(1) of the Companies Act, the Record Date for the relevant action or event is as determined in accordance with section 59(3) of the Companies Act.



12. SHAREHOLDERS' MEETINGS AND ROUND-ROBIN RESOLUTIONS**12.1. Convening of Shareholders' Meetings and Annual General Meetings**

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


12.1.1.1. presentation of the integrated annual report, comprising of:-


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- 12.1.1.1.1. the Directors' report,
 - 12.1.1.1.2. report by the external Auditors;
 - 12.1.1.1.3. audited Financial Statements for the immediately preceding Financial Year, subject to the provisions of section 84(3) of the Companies Act;
 - 12.1.1.1.4. an audit and risk committee report; and
 - 12.1.1.1.5. the social, ethics, governance and nominations committee report; and;
- 12.1.1.2. approval of the remuneration payable to non-executive Directors by Special Resolution on an annual basis.
 - 12.1.1.3. approval of the remuneration payable to executive Directors and members of Exco by Ordinary Resolution;
 - 12.1.1.4. appointment of the Auditor for the current Financial Year (subject to the provisions of section 84(3) of the Companies Act);
 - 12.1.1.5. noting the audit fees for the previous Financial Year under review;
 - 12.1.1.6. authorising the audit and risk committee to fix the audit fees for the current Financial Year;
 - 12.1.1.7. appointing the audit and risk committee subject to clause 18 of the MOI;
 - 12.1.1.8. approval of a Distribution to the Shareholders (if applicable and if the Company can satisfy the requirements in terms of the Companies Act), which shall have been approved by the Board prior to the Annual General Meeting in accordance with any Distribution policies applicable to the Company, from time to time and the provisions of clause 22;
 - 12.1.1.9. noting of the Shareholder's Compact for the current Financial Year;
 - 12.1.1.10. consideration of the performance of the Board (through the Board performance appraisal report); and
 - 12.1.1.11. considering any matters raised by the Shareholders, with or without advance notice to the Company.
- 12.2. The Shareholders or Board may, subject to the provisions of section 61 of the Companies Act, convene a Shareholders' Meeting at any time.



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- 12.3. The Shareholders' Meetings referred to in clauses 12.1.1 above shall be held where the Shareholders determine from time to time.
- 12.4. The Company shall, as determined by the Board, either:-
- 12.4.1. hold a Shareholders' Meeting in order to consider one or more resolutions; or
- 12.4.2. as regards such resolution/s that could be voted on at a Shareholders' Meeting, other than an Annual General Meeting, instead require such resolutions to be dealt with by Round Robin Resolution of the Shareholders.
- 12.5. Within 10 (ten) Business Days after the Shareholders adopt a Round Robin Resolution, the Company must Deliver a statement describing the results of the vote, consent process, or election to the Shareholders.
- 12.6. The Company must hold a Shareholders' Meeting or put the proposed resolution to the Shareholders, by way of a Round Robin Resolution:-
- 12.6.1. at any time that the Board is required by the Companies Act or the MOI to refer a matter to the Shareholders for decision; or
- 12.6.2. when otherwise required in terms of section 61(3) of the Companies Act or by this MOI.
- 12.7. Notice of meetings of the Shareholders
- 12.7.1. Subject to compliance with section 62 of the Companies Act, an Annual General Meeting and a general meeting of the Shareholders shall be convened by giving notice of at least 15 (fifteen) Business Days to the Shareholders.
- 12.7.2. A notice of a Shareholders' Meeting must be in Writing, in plain language and must include:-
- 12.7.2.1. the date, time and place for the meeting, and the Record Date for the meeting;
- 12.7.2.2. the general purpose of the meeting, and any specific purpose contemplated in section 61(3)(a) of the Companies Act if applicable;
- 12.7.2.3. in the case of the Annual General Meeting, the complete annual Financial Statements to be presented and directions for obtaining a copy of the complete annual Financial Statements for the preceding Financial Year;


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- 12.7.2.4. a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Shareholders' Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;
- 12.7.3. a reasonably prominent statement that:-
- 12.7.3.1.1. a Person entitled to attend and vote at the Shareholders' Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Shareholders' Meeting in the place of the Person entitled to vote or give or withhold Written consent on behalf of the Person entitled to vote to a decision by Round Robin Resolution of the relevant Person entitled to vote;
- 12.7.3.1.2. a proxy need not be a Person entitled to vote;
- 12.7.3.1.3. a Person entitled to vote may appoint more than 1 (one) proxy to Exercise Voting Rights attached to different Shares held by that Person entitled to vote in respect of any Shareholders' Meeting and may appoint more than 1 (one) proxy to Exercise Voting Rights attached to different Shares held by the Person which entitle her/him/it to vote;
- 12.7.3.1.4. the proxy may not delegate the authority granted to her/him/it as proxy;
- 12.7.3.1.5. participants in a Shareholders' Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the Person presiding at the Shareholders' Meeting that the right of that Person to participate and vote, either as the Shareholders or as the proxy for the Shareholders, has been reasonably verified;
- 12.7.3.1.6. participation in the Shareholders' Meeting by Electronic Communication is available, and provide that any necessary information to enable Persons entitled to vote or their proxies to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Person entitled to vote or proxy, except to the extent that the Company determines otherwise.
- 12.7.4. A Shareholders' Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 12.7.5, only if every Person who is entitled to exercise Voting Rights in respect of each item on the agenda of the Shareholders' Meeting is Present at the Shareholders' Meeting and votes to approve the ratification of the defective notice.

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

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

12.7.5.2. the Shareholders' Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified in terms of clause 12.7.4.

12.7.6. A non-Material defect in the form or manner of Delivering notice of a Shareholders' Meeting, or an accidental or inadvertent failure in the Delivery of the notice to the Shareholder to whom it was addressed If the Company elects to do so, does not invalidate any action taken at the Shareholders' Meeting.

12.7.7. A Person entitled to vote, who is Present at the Shareholders' Meeting in Person or by proxy:-

12.7.7.1. is regarded as having received or waived notice of the Shareholders' Meeting if at least the required minimum notice was given;

12.7.7.2. has a right to —

12.7.7.2.1. allege a Material defect in the form of notice for a particular item on the agenda for the Shareholders' Meeting; and

12.7.7.2.2. participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice.

12.7.7.3. except to the extent set out in clause 12.7.7.2 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholders' Meeting.

12.8. Proceedings at meetings of the Shareholders

12.8.1. The Annual General Meeting shall deal with and dispose of all matters prescribed by the Companies Act and the provisions of this MOI and may deal with any other business raised by the Shareholders or any other business presented to it.

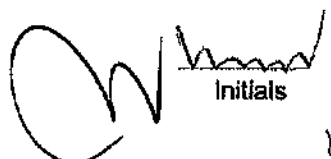
12.8.2. The quorum necessary for the commencement of a Shareholders' Meeting shall be the Minister Present in person or represented by proxy. Business at any Shareholders' Meeting may only be conducted while a quorum is Present.




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- 12.8.3. The appointment of the proxy to represent the Shareholders in any Shareholders' Meeting or Annual General Meeting of the Company shall be in accordance with the provisions of the Companies Act and this MOI.
- 12.8.4. A Shareholders' Meeting may be conducted by way of Electronic Communication or by any one or more persons participating in the Shareholders' Meeting by Electronic Communication.
- 12.8.5. Subject to clause 12.8.7, any Shareholders' Meeting may be adjourned or postponed as provided for in the Companies Act.
- 12.8.6. No further notice is required to be Delivered by the Company of a Shareholders' Meeting that is postponed or adjourned or postponed as contemplated in clause 12.8.5 unless the location or time for the Shareholders' Meeting is different from a location or time announced at the time of adjournment, in the case of an adjourned or postponed Shareholders' Meeting.
- 12.8.7. If within 30 (thirty) minutes from the time appointed for the Shareholders' Meeting a quorum is not Present, the Shareholders' Meeting shall be postponed, without motion, vote or further notice to the date, time and place as agreed to by the Shareholders as soon as reasonably practicable after the date of such postponed or adjourned meeting. If, at such adjourned meeting, a quorum is not Present within 1 (one) hour, then, subject to the provisions of the Companies Act, the Shareholders then Present in person or by proxy shall be a quorum provided always that the Government is Present.
- 12.8.8. The chairperson of the Board shall preside as chairperson at every Shareholder's Meeting. If the chairperson is not Present at the Shareholders' Meeting, or if s/he is not Present within 30 (thirty) minutes after the time appointed for holding the Shareholders' Meeting, the deputy chairperson shall preside as the chairperson at the Shareholders' Meeting. In the exceptional circumstance that the chairperson and the deputy chairperson are not Present at the Shareholders' Meeting, Shareholders shall choose any nonexecutive Director Present to be the chairperson.
- 12.8.9. The chairperson may, in accordance with section 64(10) of the Companies Act, with the consent of any Shareholders at the Shareholders' Meeting at which a quorum is Present (and shall if so directed by the Shareholders' Meeting), adjourn or postpone the Shareholders' Meeting from time to time and from place to place, but no business shall be transacted at any adjourned or postponed Shareholders' Meeting other than the business left unfinished at the Shareholders' Meeting from which the adjournment or postponement took place.


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- 12.8.10. When a Shareholders' Meeting is adjourned as a result of a direction given in terms of any applicable provision in the Companies Act, notice of the adjourned Shareholders' Meeting shall be given in the manner prescribed by such provision but, save as aforesaid, it shall not be necessary to give any notice of an adjournment or postponement or of the business to be transacted at an adjourned Shareholders' Meeting. No Shareholders' Meeting may be adjourned beyond a period of 60 (sixty) Business Days from the date on which the adjournment or postponement occurred.
- 12.8.11. Every resolution of the Shareholders is either an Ordinary Resolution or a Special Resolution.
- 12.8.12. A Round Robin Resolution Signed by the Shareholders or by a duly authorised representative on behalf of the Shareholders, within 20 (twenty) Business Days after it has been submitted to the Shareholders in terms of section 60 of the Companies Act, shall be as valid and effective as if it had been passed at a Shareholders' Meeting of the Company duly convened and held.
- 12.8.13. At any Shareholders' Meeting, a resolution put to the vote of the Shareholders' Meeting shall be decided on a poll.
- 12.8.14. Each of the Shareholders hereby irrevocably and unconditionally undertakes and agree, when requested by the Minister or the Company to do so, to take all such actions, do all such things, sign all such documents (including, without limitation, all notices and resolutions), attend any meeting and to vote all of its Shares in favour of any resolution at such meeting.

13. DIRECTORS

13.1. Composition of the Board

- 13.1.1. The Board shall consist of a minimum of 5 (five) Directors and a maximum of 15 (fifteen) Directors, who are to be appointed by the Minister in consultation with Cabinet.
- 13.1.2. The Shareholder shall ensure that the Board: -
- 13.1.2.1 Comprises of executive and non-executive Directors with the majority being non-executive Directors and with no less than 2 (two) executive Directors, being the CEO and the CFO;
- 13.1.2.2 is appointed on the grounds of their knowledge and experience which, when considered collectively, should enable the Board to attain the objects of the Company;


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13.1.2.3 is representative of gender and race demographics of the Republic; and

13.1.2.4 not include persons who are Ineligible or Disqualified as set out in section 69 of the Companies Act or in terms of this MOI.

13.2. Chairperson of the Board

13.2.1. The chairperson and the deputy chairperson of the Board shall be appointed by the Minister.

13.2.2. The chairperson of the Board or in his absence the deputy chairperson shall chair all the meetings of the Shareholders and the Board. If the chairperson and the deputy chairperson are not present at any such meeting, then the Directors present may appoint any non-executive Director to act as chairperson for the duration of the meeting until it is adjourned.

13.2.3. The chairperson of the Board shall not be appointed or serve as the chairperson of a Board committee (save for the social, ethics, governance and nominations committee) or as the chairperson of a Subsidiary's board.

13.3. Process of appointment of the CEO and CFO

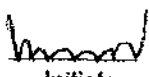
13.3.1. The Board shall, with the approval of the Minister, appoint a suitable skilled and qualified person as the CEO of the Company.

13.3.2. The Board shall conduct the recruitment and selection process of the CEO. In addition to being employed by the company as its CEO the CEO shall be an *ex officio* Director of the Board.

13.3.3. The CEO shall be responsible for the day-to-day functions of the Company and shall be obliged to comply with any instructions issued by the Board and any directives issued by the Minister to the Board provided that the Board remains accountable for purposes of the PFMA, as contemplated in section 49(1) of the PFMA.

13.3.4. The CEO's conditions of employment, functions, authority and remuneration shall be determined by the Board, in consultation with the Minister. The CEO shall accept any such conditions, functions, authority and remuneration at the time of appointment and shall, no later than three (3) months after assuming office enter into a performance agreement with the Board.

13.3.5. In the event that the CEO is absent for a period not longer than two (2) months, the CEO may appoint a person in an executive position to act in his stead.

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- 13.3.6. In the event that the CEO is absent for a period exceeding two (2) months or is unable to perform his function or duties for such period, for any reason whatsoever, the Board shall notify the Shareholders thereof in Writing and shall appoint an acting CEO.
- 13.3.7. A person who has been appointed as CEO in terms of clause 13.3.1 or to act in that position in terms of clause 13.3.5 or 13.3.6 shall not purport to exercise greater authority or enjoy more powers than those conferred on the CEO by the Board or by this MOI.
- 13.3.8. The CEO shall make recommendations to the Board with regard to the appointment of the CFO of the Company.
- 13.3.9. This MOI provides for the CEO and CFO of the Company to be appointed as *ex officio* executive Directors of the Company.

13.4. Retirement of non-executive Directors

- 13.4.1. A non-executive Director shall hold office for a term of three (3) years and shall not hold office for more than three (3) consecutive terms.
- 13.4.2. At any Annual General Meeting a non-executive Director who has been in office for a period of three (3) years since his last appointment, shall retire at such meeting.
- 13.4.3. one-third of the non-executive Directors for the time being or if their number is not a multiple of three (3), then the number nearest but not less than one-third, shall retire from office.
- 13.4.4. The non-executive Directors so to retire shall be those who have been longest in office since their last appointment, but in the case of persons who became Directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- 13.4.5. The length of time a Director has been in office shall be computed from the date of his last appointment or date upon which he was considered re-appointed.
- 13.4.6. A Director retiring at a meeting shall retain office until the appointment of the newly nominated Directors has been completed or until the expiration of six (6) months from the meeting at which he was due to retire, whichever is earlier.
- 13.4.7. retiring non-executive Directors shall be eligible for re-appointment.

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13.5. Extension of terms for non-executive Directors

Notwithstanding any other provision in this MOI, if the terms of all non-executive Directors expire at the same time, the Minister may extend the terms of office of the non-executive Directors.

13.6. Removal of Directors

13.6.1. Despite anything to the contrary in this MOI, or any agreement between the Company and a Director, or between any Shareholders and a Director, the Shareholders shall be entitled to remove any Director of the Company by an Ordinary Resolution adopted at a Shareholders' Meeting.

13.6.2. The Shareholders shall, prior to considering the Ordinary Resolution for the removal of any Director:-

13.6.2.1. provide the Director concerned with a notice of the meeting and a copy of the resolution proposed to be passed at such meeting at least equivalent to that which a Shareholder is entitled to receive, irrespective of whether or not the Director is a Shareholder of the Company setting out reasons for the resolution, with sufficient specificity to reasonably permit the Director to prepare and present a response; and

13.6.2.2. afford the Director concerned reasonable opportunity to make a presentation, in person or through a representative, at the meeting prior to the resolution being put to a vote.

13.7. Filling of vacancies

13.7.1. The Minister shall have the authority to fill vacancies as and when they arise in consultation with Cabinet.

13.7.2. A person shall cease to be a Director and a vacancy on the Board shall arise:-

13.7.2.1. when the Director's term of office expires or is due for retirement;

13.7.2.2. if any of the circumstances referred to in section 70(1) (b) of the Companies Act occur, which include the following, if the Director:-

13.7.2.2.1 resigns by Written Notice to the Shareholders and the Company;

13.7.2.2.2 dies;




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- 13.7.2.2.3 in the case of an *ex officio* Director, ceases to hold the office, title, designation or similar status that entitled such a person to be an *ex officio* Director of the Company;
- 13.7.2.2.4 becomes incapacitated to the extent that the person is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable period subject to section 71(3) of the Companies Act;
- 13.7.2.2.5 is declared delinquent by the court or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company, in terms of section 162 of the Companies Act; and
- 13.7.2.2.6 becomes Ineligible or Disqualified to be a Director in terms of section 69 subject to section 71 (3) of the Companies Act or the Enabling Legislation, the Statutes and this MOI.
- 13.7.2.2.7 Is removed as a Director by:-
- 13.7.2.2.7.1 resolution of the Shareholders in terms of section 71(1) of the Companies Act (and in accordance with clause 13.6); or
- 13.7.2.2.7.2 resolution of the Board in terms of section 71(3) of the Companies Act (and in accordance with clause 13.6, provided the Director so removed has not applied to court for review of the determination of the Board to remove him or if has applied to court such application has been finalised and with the written consent of the Minister; or
- 13.7.2.2.7.3 an order of the court in terms of section 71(5) or (6) of the Companies Act; or
- 13.7.2.2.7.4 if he/she is absent from meetings of the Directors for 2 (two) consecutive meetings without leave of the Directors (via the chairperson or the Company secretary) and the Shareholders resolve that the office be vacated.

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- 13.7.3. A person shall cease to be a non-executive Director and a vacancy on the Board shall arise where:-
- 13.7.3.1 a Director's appointment is reviewed and his term is terminated prematurely to the 3 (three) year term; or
 - 13.7.3.2 a Director has served for a 3 (three) year term as a Director, and fails to be re-appointed as Director for a 2nd (second) term; or
 - 13.7.3.3 a Director has served for 2 (two) consecutive 3 (three) year terms, and fails to be re-appointed as a Director for a 3rd (third) term; or
 - 13.7.3.4 a Director has been appointed as a Director for 3 (three) consecutive 3 (three) year terms, which 3rd (third) term has now expired.
- 13.7.4. Unless the Shareholders resolves otherwise, a Director shall also cease to hold office if he:-
- 13.7.4.1 is knowingly interested in any contract or proposed contract with the Company and fails to declare his interest and its nature in the manner required by the Companies Act and the PFMA; or
 - 13.7.4.2 assigns his estate for the benefit of his creditors, or suspends payment or files a petition for the liquidation of his affairs, or compounds generally with his creditors; or
 - 13.7.4.3 ceases to be an employee of the Company and/or is suspended as an employee of the Company (In the case of an executive Director).
- 13.7.5. In addition if the CEO and/or CFO ceases to hold office as a Director for any reason whatsoever, his appointment as the CEO and/or CFO (as the case may be) shall *ipso facto* terminate, without prejudice to any claims for damages which may accrue to him as a result of such termination in accordance with applicable employment laws, provided however, that he shall not be precluded from being employed in any other position of the Company by virtue of the fact that he is no longer a Director.
- 13.7.6. Despite anything to the contrary in this MOI, or any agreement between the Company and a Director, or between any Shareholders and a Director, the Shareholders shall be entitled to remove any Director of the Company by an Ordinary Resolution adopted at a Shareholders' Meeting.




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13.7.7. The Board shall be entitled, by a resolution of the Board and in consultation with the Minister, to remove a Director whom the Board has determined to have:-

13.7.8.1 become Ineligible or Disqualified to be a Director of the Company in terms of the Companies Act;

13.7.8.2 become incapacitated to the extent that such Director is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable time; and

13.7.8.3 neglected or been derelict in the performance of, the functions of a Director.

13.7.8. The Board shall, prior to approving the resolution for the removal of a Director in terms of clause 13.7.7:-

13.7.9.1 provide the Director concerned with the notice of a meeting and a copy of the resolution proposed to be passed at such meeting and a statement setting out reasons for the resolution, with sufficient specificity to reasonably permit the Director to prepare and present a response; and

13.7.9.2 afford the Director concerned reasonable opportunity to make presentation, in person or through a representative, at the meeting prior to the resolution being put to the vote.

13.8. Non-executive Directors remuneration

13.8.1. The Board may, subject to a special resolution of the Shareholders passed annually and section 66(8) and (9) of the Act approve the remuneration of non-executive Directors of the Company.

13.8.2. All Directors may be paid all travelling, hotel and other expenses properly incurred by them in or about the performance of their duties as Directors, including those expenses incurred in attending and travelling to and from meetings of the Directors or any committee of the Directors or at any Shareholders' Meeting.

13.8.3. The Board may pay or grant any type of remuneration contemplated in sections 30(6) (b) to (g) of the Companies Act to any executive Directors in accordance with the Remuneration Policy.

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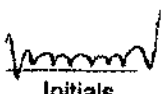
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13.9. Appointment of Directors to the Boards of Directors of wholly-owned Subsidiaries of the Company

- 13.9.1. For so long as the State holds a majority of the Shares, it is recorded that the boards of the wholly-owned Subsidiaries of the Company should, subject to clauses 13.9.2 and 13.9.3 comprise of a maximum of 5 (five) Directors comprising of executive and non-executive Directors with the majority being non-executive Directors of the Company's Board and 2 (two) executive Directors, being the CEO and the CFO of the subsidiary.
- 13.9.2. It is recorded that, should any wholly-owned Subsidiary of the Company wish to appoint non-executive Directors who are not Directors of the Subsidiary or the Company, such appointments shall be approved by the Minister in Writing.
- 13.9.3. The Company shall notify the Minister when any members of the Board or employees are appointed to a Subsidiary Board.

13.10. Powers of Directors

- 13.10.1. The management and control of the Company shall be vested in the Board who, in addition to the powers and authorities expressly conferred upon them by this MOI and the Enabling Legislation, may exercise all such powers, and do all such acts and things, as may be exercised or done by the Company and are not, in terms of this MOI or by the Statutes, expressly directed or required to be exercised or done by the Company in a general meeting or with the prior Written consent of the Minister. The Board will not be divested of any power, nor be relieved on any function or duty it may have delegated.
- 13.10.2. The Board may delegate any of the powers or functions to any Director, employee(s) of the Company and/or to a committee of the Board. The delegation shall be exercised lawfully, within the prescribed powers and authorisation levels and in terms of the Company's policies, directives and procedures.
- 13.10.3. The delegation:-
- 13.10.3.1. may be made on and subject to any conditions determined by the Directors;
- 13.10.3.2. may be given together with the power to sub-delegate subject to the provisions of the PFMA, the Companies Act, the Statutes and further subject to any conditions so determined (if any);



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13.10.3.3. shall be communicated to the delegate in Writing and such Written communication must contain full particulars of the matters being delegated and of the conditions determined under clause 13.10.3.1 and 13.10.3.2 above, if any, and where the power of sub-delegation is also conferred, must state that fact, as well as any conditions determined under this clause 13.10.3.3 (if any); and

13.10.3.4. shall be reviewed on a regular basis.

13.10.4. The Board may, without requiring the consent of the Minister, and in accordance with clause 13.10.2 from time to time revoke, withdraw or vary such powers contemplated in clause 13.10.3.

13.10.5. The Board is not authorised to fill any vacancy on the Board.

13.11. Proceedings at Meetings of the Board

13.11.1 The Board may meet for the dispatch of business, adjourn, postpone and otherwise regulate its meetings as it thinks fit. The company secretary or a Director may at any time:-

13.11.1.1 when authorised by the Board;

13.11.1.2 if requested by at least 1 (one) Director which request shall also be approved by the chairperson of the Board; or

13.11.1.3 if requested by at least 2 (two) Directors of the Company,

convene a meeting of the Board.

13.11.2 The Board shall determine the period of notice which shall be given for meetings of the Board and may determine the form or medium of giving such notice, which may include an Electronic Communication facility. It shall be necessary to give notice of a meeting of the Board to all Directors even those for the time being absent from the Republic.

13.11.3 A meeting of the Board shall proceed even if the Company has not given the required notice of such meeting in accordance with clause 13.11.2 or if there was a defect in the giving of the notice, provided that all Directors:-

13.11.3.1 acknowledge actual receipt of the notice of the meeting concerned;

13.11.3.2 are Present at the meeting; or

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- 13.11.3.3 waive notice of the meeting.
- 13.11.4 The authority of the Board to conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, provided that the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting, is not restricted or varied by this MOI.
- 13.11.5 The quorum for a Board meeting and meetings of the Board committees shall be not less than a majority (50% plus one) of all Directors, Present in person or via Electronic Communication facility.
- 13.11.6 The provisions of clause 13.3 shall *mutatis mutandis* apply to this clause 13.11 in relation to the appointment of the chairperson of the meetings of the Board.
- 13.11.7 Each Director shall have 1 (one) vote on a matter before the Board and save for as otherwise provided in this MOI a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 13.11.8 Resolutions of the Board shall be decided by a majority of votes and in case of an equality of votes, the chairperson shall not have a second or casting vote (in addition to his/her vote as a Director of the Board) and the matter being voted on shall fail.
- 13.11.9 Subject to the Companies Act and the MOI, a Round Robin Resolution Signed and approved by a majority of the Directors shall be as valid and effective as if it had been passed at a meeting of the Directors duly called and constituted (provided that a Written notice proposing such resolution shall have been circulated to all Directors and at least 75% (seventy five percent) of the Directors have cast their vote (irrespective of whether they voted in favor of, or against, such resolution).
- 13.11.10 Resolutions adopted by the Board:-
- 13.11.10.1 must be dated and sequentially numbered; and
- 13.11.10.2 are effective as of the date of the resolution, unless the resolution states otherwise.
- 13.11.11 The company secretary shall attend meetings and record the minutes of such meetings. Where it is not at all possible for the company secretary to attend any such meeting, the Directors shall ensure that minutes are recorded, kept and prepared for that meeting. The Director elected by the Board to record and keep minutes of a meeting held by making use of Electronic Communication shall, as

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soon as is reasonably possible after such meeting has been held, provide the company secretary with a copy of the minutes of the meeting

13.12. Conflict of interest and declaration by Directors

13.12.1. For purposes of this clause 13.12, "Director" includes a Prescribed Officer and a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board.

13.12.2. The Company shall establish a policy that will deal with Personal Financial Interests and conflicts of interest of Directors and employees of the Company, which shall be consistent with the provisions of the Companies Act and the PFMA.

13.12.3. If a Director has a Personal Financial Interest or Knows that a Person Related to the Director, as described in section 2 of the Companies Act, has a Personal Financial Interest in respect of any matter to be considered by the Board, the Director:-

13.12.3.1 must disclose the interest and its general nature in Writing before the matter is considered at the meeting;

13.12.3.2 must disclose to the meeting any Material information relating to the matter, and that is Known to the Director;

13.12.3.3 may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;

13.12.3.4 if Present at the meeting of the Board, must leave the meeting immediately after making any disclosure contemplated in clause 13.12.3.2 or 13.12.3.3;

13.12.3.5 must not take part in the consideration of the matter, except to the extent of the disclosures contemplated in clauses 13.12.3.2 or 13.12.3.3;

13.12.3.6 while absent from the meeting as provided in clause 13.12.3.4-

13.12.3.6.1 shall be regarded as being Present at the meeting for the purpose of determining whether sufficient Directors are Present to constitute a quorum of the meeting; and

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- 13.12.3.6.2 shall not be regarded as being Present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
- 13.12.3.6.3 must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.
- 13.12.4. If a Director of the Company acquires, or Knows that a Related Person has acquired, a Personal Financial Interest in an agreement or other matter in which the Company has a Material Interest, after the agreement or other matter has been approved by the Company, the Director shall promptly disclose to the Board, the nature and extent of that Interest, and the Material circumstances relating to the Director or Related Person's acquisition of that interest, as the case may be.
- 13.12.5. If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.
- 13.12.6. A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or Related Person to the Director, if:-
- 13.12.6.1. it was approved in the manner contemplated in section 75 of the Companies Act; or
- 13.12.6.2. despite having been approved without disclosure of that Personal Financial Interest, it:-
- 13.12.6.2.1 has subsequently been ratified by an Ordinary Resolution of the Shareholders following disclosure of that Personal Financial Interest; or
- 13.12.6.2.2 has been declared valid by the court in terms of section 75(8) of the Companies Act.

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- 13.12.7. A Director may at any time disclose any general Personal Financial Interest in advance by delivering a Written notice to the Board setting out the nature and extent of that interest for the purposes of this clause 13.12 until changed or withdrawn by such Director in Writing.
- 13.12.8. A court, on application by any interested Person, may declare valid a transaction or agreement that had been approved by the Board, or Shareholders as the case may be, despite the failure of the Director to satisfy the requirements of this clause 13.12 and section 75 of the Companies Act.
- 13.12.9. The provisions of this clause 13.12 do not derogate from those Directors' duties prescribed by the PFMA and the Directors shall be required to comply both with the provisions of this clause 13.12 and the provisions of the PFMA.

13.13. Directors powers to effect borrowings

Subject to the provisions of the PFMA (and, in particular, section 66 of the PFMA) and the provisions of and/or restrictions contained in this MOI, the Board may raise or borrow from time to time for the purposes of the Company, or secure the payment, of such sums as is in accordance with its Corporate Plan and the borrowing programme submitted to the Minister and within the financial limits determined by the Minister under clause 3.7.

13.14. Company's power to issue guarantees, indemnities, securities or to enter into other transactions that bind the Company to any future financial commitment

13.14.1 The Company may not:-

13.14.1.1 issue a guarantee, indemnity or security; or

13.14.1.2 enter into any other transactions that binds, or may bind, the Company or the Revenue Fund to any future financial commitment unless-

13.14.1.2.1 the provisions of the PFMA, in particular, section 66, are complied with; and

13.14.1.2.2 if the guarantee, indemnity, security or transaction requires Minister's consent under clause 3, the prior Written consent of the Minister is obtained.

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13.15. Financing and funding structures

The Board shall, in accordance with the Companies Act and the Statutes, consider and determine the funding structures of the Company having regard to the funding requirements of the Company from time to time.

14. FINANCIAL ASSISTANCE

14.1 Financial Assistance

14.1.1 The Company is prohibited from and shall not have the power to:-

14.1.1.1 authorise the provision by the Company of Financial Assistance to any person for the purpose of, or in connection with, the subscription of any option, or any Shares, issued or to be issued by the Company or a Related Person or Inter-Related company, or for the purchase of any Shares of the Company or a Related or Inter-Related company;

14.1.1.2 provide any direct or indirect Financial Assistance to a Related or Inter-Related company or corporation, or to a member of a Related or Inter-Related corporation or to a person Related to any such company, corporation, or member,

Except, in each case, where:-

14.1.1.3 the Minister has approved such Financial Assistance, either for the specific recipient or generally for a category of potential recipients (and the specific recipient falls within that category), by Special Resolution adopted within the previous 2 (two) years; provided that where the Minister is requested to approve the provision of specific Financial Assistance, the Board shall, at the request of the Minister, provide such information to the Minister as the Minister may require, to satisfy the Minister that the conditions set out in clauses 14.1.1.4, 14.1.1.5 and 14.1.1.6.2 of this MOI have been met, or will be met;

14.1.1.4 the provisions of the PFMA have been met;

14.1.1.5 the provisions of section 44 and/or 45 (as the case may be) of the Companies Act have been met; and

14.1.1.6 the Board is satisfied that:-

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14.1.1.6.1 immediately after providing the Financial Assistance, the Company would satisfy the solvency and liquidity test prescribed in section 4 of the Companies Act; and

14.1.1.6.2 the terms under which the Financial Assistance is proposed to be given are fair and reasonable to the Company.

14.1.1.7 The Company shall be prohibited from providing any direct or indirect Financial Assistance to any Director or Prescribed Officer of the Company or to a Person Related or Inter-Related to any such Director or Prescribed Officer under any circumstances whatsoever.

15. INDEMNIFICATION OF DIRECTORS

15.1 For the purposes of this clause 15, "Director" includes a former Director, a Prescribed Officer and a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board.

15.2 Subject to the provisions of the PFMA, the Company may:-

15.2.1 not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a Related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation unless the conviction is based on strict liability;

15.2.2 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company. For purposes of this clause 15, "service to the Company" includes services which are directly linked to the activities of the Company, and services which the Company consents to or acknowledges; and

15.2.3 directly or indirectly indemnify a Director for:-

15.2.3.1 any liability, other than in respect of:-

15.2.3.1.1 any liability arising in terms of section 77(3)(a), (b) or (c) of the Companies Act or sections 86(2) or (3) of the PFMA, or from wilful misconduct or wilful breach of trust on the part of the Director; or

15.2.3.1.2 any fine contemplated in clause 15.2.1;

15.2.3.2 any expenses contemplated in clause 15.2.2, irrespective of whether it has advanced those expenses, if the proceedings:-

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15.2.3.2.1 are abandoned or exculpate the Director; or

15.2.3.2.2 arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 15.2.3.1.

15.3 Subject to the provisions of the PFMA, the Company may purchase insurance to protect:-

15.3.1 a Director against any liability or expenses contemplated in clause 15.2.2 or 15.2.3; or

15.3.2 the Company against any contingency including but not limited to:-

15.3.2.1 any expenses:-

15.3.2.1.1 that the Company is permitted to advance in accordance with clause 15.2.2; or

15.3.2.1.2 for which the Company is permitted to indemnify a Director in accordance with clause 15.2.3.2; or

15.3.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with clause 15.2.3.1.

15.4 The Company is entitled to claim restitution from a Director, for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78 of the Companies Act.

16. PRESCRIBED OFFICER

16.1 No person shall hold office as a Prescribed Officer, if she/he is Ineligible or Disqualified. A person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions. A person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

16.2 A Prescribed Officer shall cease to hold office as such immediately if she/he becomes Ineligible or Disqualified in terms of the Companies Act.

17. COMMITTEES OF THE BOARD

17.1 The Board may establish any number of Board committees and delegate to such committee any authority of the Board.

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- 17.2 The Board must submit Written "terms of reference" in respect of the new committees including *inter alia* the need for such a committee, the functioning of such a committee, the functions of the committee, and any other information required by the Minister.
- 17.3 Recognised committees at the date of this MOI (in addition to the audit and risk committee and the social, ethics, governance and nominations committee) include:
- 17.3.1 human resources and remuneration committee;
- 17.4 No person shall be appointed as a member of a Board committee, if she/he is Ineligible or Disqualified and any such appointment shall be a nullity. A person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.
- 17.5 The Board may remove a member of a Board committee by written notice to such member and to the Board committee, if such member has neglected or been derelict in the performance of his/her duties.
- 17.6 The quorum for Board committees shall be regulated in such Board committee's terms of reference, or shall be the majority of its members, if the quorum is not regulated in such Board committee's terms of reference.
- 17.7 Committees of the Board may consult with or receive advice from any person.
- 17.8 Meetings and other proceedings of a committee of the Board shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

18 AUDIT AND RISK COMMITTEE

- 18.1 The Board shall propose, and the Shareholders shall appoint, an audit and risk committee. The audit and risk committee shall comprise at least 3 (three) members, all of whom shall be non-executive Directors of the Company and whose appointment shall comply with-
- 18.1.1 section 77 of the PFMA; and
- 18.1.2 to the extent that the provisions of section 94 of the Companies Act and Regulation 42 do not conflict with section 77 of the PFMA, section 94 of the Companies Act and Regulation 42.
- 18.2 The audit and risk committee shall meet at least 4 (four) times a year to execute its duties.
- 18.3 The audit and risk committee members shall appoint a chairperson from amongst themselves who shall not be the chairperson of the Board.

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- 18.4 In accordance with the Treasury Regulations the chairperson of the audit and risk committee shall be independent, be knowledgeable of the status of the position, have the requisite business, financial and leadership skills and may not be the chairperson of the Board or a person who fulfils an executive function in the Company.
- 18.5 Each member of the audit and risk committee must:-
- 18.5.1 be a non-executive Director, who satisfies any applicable requirements prescribed by the Minister of Trade and Industry from time to time in terms of section 94(5) of the Companies Act;
- 18.5.2 not be:-
- 18.5.2.1 involved in the day-to-day management of the Company's business or have been so involved at any time during the previous Financial Year;
- 18.5.2.2 a Prescribed Officer, or full-time employee, of the Company or another Related or Inter-Related Person company, or have been such an Officer or employee at any time during the previous 3 (three) Financial Years; or
- 18.5.2.3 a Material supplier or customer of the Company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that Director is compromised by that relationship; and
- 18.5.2.4 not be a Related Person to any Person who falls within the criteria in clauses 18.5.2.1 to 18.5.2.3.
- 18.6 In addition at least 1/3 (one third) of the members of the audit and risk committee at any particular time must have academic qualifications, or experience, in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management.
- 18.7 The audit and risk committee shall exercise all the functions as may be prescribed from time to time by the Companies Act (as read with the Regulations) and the PFMA, as well as in its own terms of reference as determined from time to time.
- 18.8 The Company may require that its audit and risk committee will perform the functions required by section 94 of the Companies Act on behalf of its Subsidiaries.

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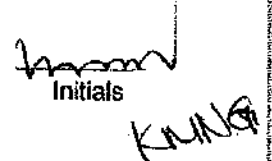
- 18.9 The Company must pay all expenses reasonably incurred by its audit and risk committee, including, if the audit and risk committee considers it appropriate, the fees of any consultant or specialist engaged by the audit and risk committee to assist it in the performance of its functions.
- 18.10 No person shall be elected as a member of the audit and risk committee, if she/he is ineligible or Disqualified and any such election shall be a nullity. A person who is ineligible or Disqualified must not consent to be elected as a member of the audit and risk committee nor act as a member of the audit and risk committee. A person placed under probation by a court must not serve as a member of the audit and risk committee unless the order of court so permits.
- 18.11 A member of the audit and risk committee shall cease to hold office as such immediately if she/he becomes Ineligible or Disqualified in terms of the Companies Act.
- 18.12 There are no general qualifications prescribed by the Company for a person to serve as a member of the audit and risk committee in addition to the requirements of the Companies Act and this clause 18Error! Reference source not found.
- 19 SOCIAL, ETHICS, GOVERNANCE AND NOMINATIONS COMMITTEE**
- 19.1 The Board must appoint a social, ethics, governance and nominations committee unless it has been exempted in terms of the Companies Act from having a social, ethics, governance and nominations committee.
- 19.2 The social, ethics, governance and nominations committee shall comprise at least 3 (three) members, all of whom shall be Directors of the Company, at least 1 (one) of whom must be a non-executive Director, and must not have been so involved within the previous 3 (three) Financial Years and whose appointment shall be in compliance with the Companies Act and the Regulations.
- 19.3 The social, ethics, governance and nominations committee shall meet at least once a year to deal with and attend to all functions and matters that are required to be dealt with by the committee in terms of the Companies Act and the Regulations, as well as in its own terms of reference as determined from time to time.
- 19.4 The social, ethics, governance and nominations committee of the Company is entitled to:-
- 19.4.1 require from any Director or Prescribed Officer any information or explanation necessary for the performance of the committee's functions;
- 19.4.2 request from any employee of the Company any information or explanation necessary for the performance of the committee's functions;

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- 19.4.3 attend any Shareholders' Meeting;
- 19.4.4 receive all notices of and other communications relating to any Shareholders' Meeting; and
- 19.4.5 be heard at any Shareholders' Meeting on any part of the business of the meeting that concerns the committee's functions.
- 19.5 The Company may require that its social, ethics, governance and nominations committee will perform the functions required in terms of regulation 43(2) of the Companies Act on behalf of its Subsidiaries.
- 19.6 The Company must pay all the expenses reasonably incurred by its social, ethics, governance and nominations committee, including, if the social, ethics, governance and nominations committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the social, ethics, governance and nominations committee in the performance of its functions.

20 AUDITORS

- 20.1 Auditors shall be appointed, and their duties regulated, in accordance with the provisions of sections 90, 91, 92 and 93 of the Companies Act, the Auditing Profession Act and applicable provisions of the Public Audit Act.
- 20.2 The Company shall not be required to appoint an Auditor for any Financial Year in respect of which the Auditor-General has elected, in terms of the Public Audit Act, to conduct an Audit of the Company.
- 20.3 Subject to the provisions of the Companies Act, the Auditing Profession Act and the Public Audit Act, all acts done by any Person acting as Auditor, shall, as regard to all Persons dealing in good faith with the Company, be valid notwithstanding that there was some defect in that appointment.
- 20.4 Nothing precludes the election by the Company at its Annual General Meeting of an Auditor other than one nominated by the audit and risk committee, but if such an Auditor is elected, the appointment is valid only if the audit and risk committee is satisfied that the proposed Auditor is independent of the Company.
- 20.5 In considering whether, for the purposes of the Companies Act, a Registered Auditor is independent of the Company, the audit and risk committee must:-
- 20.5.1 ascertain that the Auditor does not receive any direct or indirect remuneration or other benefit from the Company, except:-

- 20.5.1.1 as Auditor; or
- 20.5.1.2 for rendering other services to the Company, to the extent permitted in terms of the Companies Act;

20.5.2 consider whether the Auditor's independence may have been prejudiced:-

- 20.5.2.1 as a result of any previous appointment as Auditor; or
- 20.5.2.2 having regard to the extent of any consultancy, advisory or other work undertaken by the Auditor for the Company; and

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

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

21 COMPANY SECRETARY

21.1 The Directors must appoint the company secretary from time to time, who:-

- 21.1.1 shall be a permanent resident of the Republic and remain so while serving as secretary; and
- 21.1.2 shall have the requisite knowledge of, or experience in, relevant laws; and
- 21.1.3 may be a Juristic Person subject to the following:-
 - 21.1.3.1 every employee of that Juristic Person who provides company secretary services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified;
 - 21.1.3.2 at least 1 (one) employee of that Juristic Person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 21.1.1 and 21.1.2

21.2 The company secretary shall not be a Director.

21.3 Within 60 (sixty) Business Days after a vacancy arises in the office of company secretary, the Board must fill the vacancy by appointing a Person whom the Directors consider to have the requisite knowledge and experience. A change in the membership of a Juristic Person or partnership that holds office as company secretary does not constitute a vacancy in the office of

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company secretary, if the Juristic Person or partnership continues to satisfy the requirements of clause 21.1.3.

21.4 If at any time a Juristic Person or partnership holds office as company secretary of the Company:-

21.4.1 the Juristic Person or partnership must immediately notify the Directors if the Juristic Person or partnership no longer satisfies the requirements of clause 21.1.3, and is regarded to have resigned as company secretary upon giving that notice to the Company;

21.4.2 the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 21.1.3, until the Company has received a notice contemplated in clause 21.4.1; and

21.4.3 any action taken by the Juristic Person or partnership in performance of its functions as company secretary is not invalidated merely because the Juristic Person or partnership had ceased to satisfy the requirements of clause 21.1.3 at the time of that action.

21.5 The company secretary may resign from office by giving the Company 1 (one) Month's Written notice or less than that with the prior Written approval of the Board.

21.6 If the company secretary is removed from office by the Board, the company secretary may, by giving Written notice to that effect to the Company by not later than the end of the Financial Year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that Financial Year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.

22 DISTRIBUTIONS TO THE SHAREHOLDERS

22.1 The Board may make Distributions to the Shareholders from time to time in accordance with the Enabling Legislation and the Distributions or similar policy of the Company from time to time, subject to the provisions of clause 12.1.1.8, this clause 22 and the provisions of section 46 of the Companies Act.

22.2 The Board, after consultation with the Shareholders, shall develop an appropriate Distribution or similar policy and framework for the Company taking into account, *inter alia*, the Corporate Plan and strategic objectives of the Company which shall be reviewed on a regular basis. In addition, the Company shall be entitled to invest sufficient funds of the Company for the adequate

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capitalisation and on-going investment that the Company or its Subsidiaries deemed appropriate. Such capitalisation or investment, and expenditure incurred in respect of industry restructuring, delivery of universal services or any other socio-economic activities carried out by the Company upon the request of the Shareholders shall be taken into account in calculating any Distributions and other payments payable to the Shareholders.

- 22.3 Without derogating from the provisions of clause 22.1 and subject to the requirements of the Companies Act and clause 12.1.1.8 of this MOI, the Board may, resolve to Distribute or deal with, in any such way authorised by the Companies Act, all or any part of the amount for the time being standing to the credit of any of the Company's reserves or any share capital of the Company.

23 ACCOUNTS

- 23.1 The Company's Board of Directors shall cause to be kept such Accounting Records and books of account as are prescribed by the Companies Act and the PFMA.
- 23.2 The Financial Statements, books of account and other books and documents of the Company shall be kept at the Office of the Company or (subject to the provisions of section 25 of the Companies Act, and the PFMA) at such other place within the Republic as the Board thinks fit, and shall at all times be open to inspection by the Shareholders and the Board during normal business hours.
- 23.3 The Board shall, in accordance with sections 30 and 31 of the Companies Act and section 55 of the PFMA, cause to be prepared and presented at the Annual General Meeting such reports (if any) as are referred to in those sections and required in terms of this MOI.
- 23.4 Subject to the provisions of the Companies Act, a copy of the documents referred to in clause 23.3 shall be Delivered or sent by post to the registered address of the Shareholders at least 15 (fifteen) Business Days before the Annual General Meeting, so that such period shall not include the day on which such documents are Delivered or sent, or deemed to be Delivered or sent, or the day on which the meeting is to be held. Alternatively, the Shareholders may give the Company an Electronic Address, in which case a copy of the said documents may be Delivered to the Shareholders at that address.

24 NOTICES

- 24.1 All notices and/or documents intended or required to be given by the Company to the Shareholders, any Director, other Person or to the Company, as the case may be, shall be given in Writing in any manner authorised and shall be deemed to have been Delivered on the date and time determined by the Regulations and particularly Table CR 3 of the Regulations, attached hereto as Annexure C.

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- 52.1. with respect to a company incorporated in terms of this Act, means a person who incorporated that company, as contemplated in section 13; or
- 52.2. with respect to a pre-existing company, means a person who took the relevant actions comparable to those contemplated in section 13 to bring about the incorporation of that company;
53. "individual" means a natural person;
54. "inspector" means a person appointed as such in terms of section 209(1);
55. "inter-related", when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in section 2(1), and one of them is related to the third in any such manner, and so forth in an unbroken series;
56. "investigator" means a person appointed as such in terms of section 209(3);
57. "juristic person" includes:-
- 57.1. a foreign company; and
- 57.2. a trust, irrespective of whether or not it was established within or outside the Republic;
58. "knowing", "knowingly" or "knows", when used with respect to a person, and in relation to a particular matter, means that the person either:-
- 58.1. had actual knowledge of the matter; or
- 58.2. was in a position in which the person reasonably ought to have—
- 58.2.1. had actual knowledge;
- 58.2.2. investigated the matter to an extent that would have provided the person with actual knowledge; or
- 58.2.3. taken other measures which, if taken, would reasonably be expected to have provided the person with actual knowledge of the matter;
59. "listed securities" has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);
60. "Master" means the officer of the High Court, referred to in section 2 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), who has jurisdiction over a particular matter arising in terms of this Act;

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- 24.2 Each Shareholder and Director shall:-
- 24.2.1 notify the Company in writing of a postal address, which address will be his registered address for the purposes of receiving written notices from the Company by post;
 - 24.2.2 notify the Company in writing of a physical address, which address will be his registered address for the purposes of receiving written notices from the Company by hand; and/or
 - 24.2.3 unless otherwise agreed with the Company, notify in writing to the Company an Electronic Address, which address will be his address for the purposes of receiving notices by way of Electronic Communication.
- 24.3 Notices for the Minister shall be served by the Company by hand delivery to the office of the Minister or by transmission through the post in a prepaid letter, telefax or any Electronic Communication addressed to the Minister at his registered address or Electronic Address (as the case may be).
- 24.4 The Minister chooses the address of the permanent office of the Government in Pretoria as his address or such other address as the Minister shall upon Written notice be entitled to change.
- 24.5 Any Shareholder after having furnished the Company with an Electronic Address, to the Company, by doing so:-
- 24.5.1 authorises the Company to use Electronic Communication to give notices, documents, Records or statements or notices of availability of the foregoing to her/him/it; and
 - 24.5.2 confirms that same can conveniently be printed by the Shareholders within a reasonable time and at a reasonable cost.
- 24.6 Every notice calling any general meeting shall comply with the provisions of the Companies Act unless otherwise determined by the Directors.

25 FINANCIAL YEAR

The Financial Year of the Company is the 12 (twelve) Month period ending on 31 March of each year. The Financial Year may not be changed by the Board without the prior written consent or approval of the Shareholders and subject to the PFMA and the requirements of section 27(4) of the Companies Act.


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26 WINDING UP

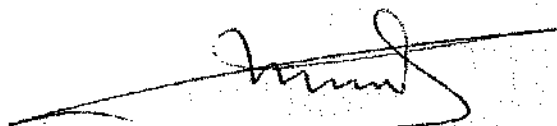
The Company shall not be wound up or placed into "business rescue" as contemplated in the Companies Act, without the prior Written consent of the Shareholder.

27 SUBSIDIARIES

The Company may, from time to time, form or acquire further Subsidiaries, subject to the Statutes and the provisions of this MOI.

28 PROTECTION OF WHISTLE-BLOWERS

The Company shall establish and maintain a system to receive disclosures contemplated in section 159 of the Companies Act.



NHLANHLA NENE, MP

MINISTER OF FINANCE (representing the state)

Signed at Pretoria on the 22 day of May 2015




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Annexure A – Definitions

In the Companies Act, unless the context indicates otherwise:-

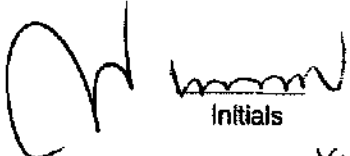
1. **"accounting records"** means information in written or electronic form concerning the financial affairs of a company as required in terms of this Act, including but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements;
2. **"acquiring party"**, when used in respect of a transaction or proposed transaction, means a person who, as a result of the transaction, would directly or indirectly acquire or establish direct or indirect control or increased control over all or the greater part of a company, or all or the greater part of the assets or undertaking of a company;
3. **"advertisement"** means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person seeks to bring any information to the attention of all or part of the public;
4. **"agreement"** includes a contract, or an arrangement or understanding between or among two or more parties that purports to create rights and obligations between or among those parties;
5. **"all or the greater part of the assets or undertaking"**, when used in respect of a company, means:-
 - (a) in the case of the company's assets, more than 50% of its gross assets fairly valued, irrespective of its liabilities; or
 - (b) in the case of the company's undertaking, more than 50% of the value of its entire undertaking, fairly valued;"
6. **"alterable provision"** means a provision of this Act in which it is expressly contemplated that its effect on a particular company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by that company's Memorandum of Incorporation;
7. **"alternate director"** means a person elected or appointed to serve, as the occasion requires, as a member of the board of a company in substitution for a particular elected or appointed director of that company;
8. **"amalgamation or merger"** means a transaction, or series of transactions, pursuant to an agreement between two or more companies, resulting in:-

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- 8.1. the formation of one or more new companies, which together hold all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement, and the dissolution of each of the amalgamating or merging companies; or
- 8.2. the survival of at least one of the amalgamating or merging companies, with or without the formation of one or more new companies, and the vesting in the surviving company or companies, together with any such new company or companies, of all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement;
9. **"amalgamated or merged company"** means a company that either:-
- 9.1. was incorporated pursuant to an amalgamation or merger agreement; or
- 9.2. was an amalgamating or merging company and continued in existence after the implementation of the amalgamation or merger agreement,
- and holds any part of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement;
10. **"amalgamating or merging company"** means a company that is a party to an amalgamation or merger agreement;
11. **"annual general meeting"** means the meeting of a public company required by section 61(7);
12. **"audit"** has the meaning set out in the Auditing Profession Act, but does not include an 'independent review' of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb);
13. **"Auditing Profession Act"** means the Auditing Profession Act, 2005 (Act No. 26 of 2005);
14. **"auditor"** has the meaning set out in the Auditing Profession Act;
15. **"Banks Act"** means the Banks Act, 1990 (Act No. 94 of 1990);
16. **"beneficial interest"**, when used in relation to a company's securities, means the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to:-
- 16.1. receive or participate in any distribution in respect of the company's securities;
- 16.2. exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or


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16.3. dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities,

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

17. "board" means the board of directors of a company;
18. "business days" has the meaning determined in accordance with section 5(3);
19. "Cabinet" means the body of the national executive described in section 91 of the Constitution;
20. "central securities depository" has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);
21. "close corporation" means a juristic person incorporated under the Close Corporations Act, 1984 (Act No. 69 of 1984);
22. "Commission" means the Companies and Intellectual Property Commission established by section 185;
23. "Commissioner" means the person appointed to or acting in the office of that name, as contemplated in section 189;
24. "company" means a juristic person incorporated in terms of this Act, a domesticated company, or a juristic person that, immediately before the effective date:-
- 24.1. was registered in terms of the:-
- 24.1.1. Act, 1973 (Act No. 61 of 1973), other than as an external company as defined in that Act; or
- 24.1.2. Close Corporations Act, 1984 (Act No. 69 of 1984), if it has subsequently been converted in terms of Schedule 2;
- 24.2. was in existence and recognised as an 'existing company' in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- 24.3. was deregistered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and has subsequently been re-registered in terms of this Act;
25. "companies register" means the register required to be established by the Commission in terms of section 187(4);
26. "Companies Tribunal" means the Companies Tribunal established in terms of section 193;


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27. **"Competition Act"**, means the Competition Act, 1998 (Act No. 89 of 1998);
28. **"consideration"** means anything of value given and accepted in exchange for any property, service, act, omission or forbearance or any other thing of value, including:-
- 28.1. any money, property, negotiable instrument, securities, investment credit facility, token or ticket;
- 28.2. any labour, barter or similar exchange of one thing for another; or
- 28.3. any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly;
29. **"Constitution"** means the Constitution of the Republic of South Africa, 1996;
30. **"convertible"**, when used in relation to any securities of a company, means securities that may, by their terms, be converted into other securities of the company, including:-
- 30.1. any non-voting securities issued by the company and which will become voting securities—
- 30.1.1. on the happening of a designated event; or
- 30.1.2. if the holder of those securities so elects at some time after acquiring them; and
- 30.2. options to acquire securities to be issued by the company, irrespective of whether those securities may be voting securities, or non-voting securities contemplated in paragraph (a);
31. **"co-operative"** means a juristic person as defined in the Co-operatives Act, 2005 (Act No. 14 of 2005);
32. **"Council"** means the Financial Reporting Standards Council established by section 203;
33. **"director"** means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternate director, by whatever name designated;
34. **"distribution"** means a direct or indirect—
- 34.1. (a) transfer by a company of money or other property of the company, other than its own shares, to or for the benefit of one or more holders of any of the shares, or to the holder of a Beneficial Interest in any such shares, of that company or of another company within the same group of companies, whether:-
- 34.1.1. in the form of a dividend;

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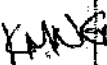
- 34.1.2. as a payment in lieu of a capitalisation share, as contemplated in section 47;
- 34.1.3. as consideration for the acquisition—
- 34.1.3.1. by the company of any of its shares, as contemplated in section 48;
or
- 34.1.3.2. by any company within the same group of companies, of any shares
of a company within that group of companies; or
- 34.1.4. otherwise in respect of any of the shares of that company or of another
company within the same group of companies, subject to section 164(19);
- 34.2. incurrence of a debt or other obligation by a company for the benefit of one or more holders
of any of the shares of that company or of another company within the same group of
companies; or
- 34.3. forgiveness or waiver by a company of a debt or other obligation owed to the company by
one or more holders of any of the shares of that company or of another company within the
same group of companies,
- but does not include any such action taken upon the final liquidation of the company;
35. **"domesticated company"** means a foreign company whose registration has been transferred to the
Republic in terms of section 13(5) to (11);
36. **"effective date"**, with reference to any particular provision of this Act, means the date on which that
provision came into operation in terms of section 225;
37. **"electronic communication"** has the meaning set out in section 1 of the Electronic
Communications and Transactions Act;
38. **"Electronic Communications and Transactions Act"** means the Electronic Communications and
Transactions Act, 2002 (Act No. 25 of 2002);
39. **"employee share scheme"** has the meaning set out in section 95(1)(c);
40. **"exchange"** when used as a noun, has the meaning set out in section 1 of the Securities Services
Act, 2004 (Act No. 36 of 2004);
41. **"exercise"**, when used in relation to voting rights, includes voting by proxy, nominee, trustee or
other person in a similar capacity;


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42. **"ex officio director"** means a person who holds office as a director of a particular company solely as a consequence of that person holding some other office, title, designation or similar status specified in the company's Memorandum of Incorporation;
43. **"external company"** means a foreign company that is carrying on business, or non-profit activities, as the case may be, within the Republic, subject to section 23(2);
44. **"file"**, when used as a verb, means to deliver a document to the Commission in the manner and form, if any, prescribed for that document;
45. **"financial reporting standards"**, with respect to any particular company's financial statements, means the standards applicable to that company, as prescribed in terms of section 29(4) and (5);
46. **"financial statement"** includes:-
- 46.1. annual financial statements and provisional annual financial statements;
 - 46.2. interim or preliminary reports;
 - 46.3. group and consolidated financial statements in the case of a group of companies; and
 - 46.4. financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or holder of the company's securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on;
47. **"foreign company"** means an entity incorporated outside the Republic, irrespective of whether it is:-
- 47.1. a profit, or non-profit, entity; or
 - 47.2. carrying on business or non-profit activities, as the case may be, within the Republic;
48. **"general voting rights"** means voting rights that can be exercised generally at a general meeting of a company;
49. **"group of companies"** means a holding company and all of its subsidiaries;
50. **"holding company"**, in relation to a subsidiary, means a juristic person that controls that subsidiary as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a);
51. **"Human Rights Commission"** means the South African Human Rights Commission established in terms of Chapter 9 of the Constitution;
52. **"incorporator"**, when used:-




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61. "material", when used as an adjective, means significant in the circumstances of a particular matter, to a degree that is:-
- 61.1. of consequence in determining the matter; or
 - 61.2. might reasonably affect a person's judgment or decision-making in the matter;
62. "member", when used in reference to:-
- 62.1. a close corporation, has the meaning set out in section 1 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
 - 62.2. a non-profit company, means a person who holds membership in, and specified rights in respect of, that non-profit company, as contemplated in Schedule 1; or
 - 62.3. any other entity, means a person who is a constituent part of that entity;
63. "Memorandum", or "Memorandum of Incorporation", means the document, as amended from time to time) that sets out rights, duties and responsibilities of shareholders, directors and others within and in relation to a company, and other matters as contemplated in section 15 and by which:-
- 63.1. the company was incorporated under this Act, as contemplated in section 13;
 - 63.2. a pre-existing company was structured and governed before the later of the—
 - 63.2.1. effective date; or
 - 63.2.2. date it was converted to a company in terms of Schedule 2; or
 - 63.3. a domesticated company is structured and governed;
64. "Minister" means the member of the Cabinet responsible for companies;
65. "nominee" has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);
66. "non-profit company" means a company:-
- 66.1. incorporated for a public benefit or other object as required by item 1(1) of Schedule 1; and
 - 66.2. (the income and property of which are not distributable to its incorporators, members, directors, officers or persons related to any of them except to the extent permitted by item 1(3) of Schedule 1;

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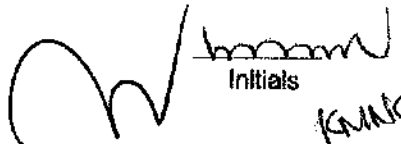
67. **"Notice of Incorporation"** means the notice to be filed in terms of section 13(1), by which the incorporators of a company inform the Commission of the incorporation of that company, for the purpose of having it registered;
68. **"official language"** means a language mentioned in section 6(1) of the Constitution;
69. **"ordinary resolution"** means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution, or a higher percentage as contemplated in section 65(8):-
- 69.1. at a shareholders meeting; or
- 69.2. by holders of the company's securities acting other than at a meeting, as contemplated in section 60;
70. **"organ of state"** has the meaning set out in section 239 of the Constitution;
71. **"Panel"** means the Takeover Regulation Panel, established by section 198;
72. **"participant"** has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);
73. **"person"** includes a juristic person;
74. **"personal financial interest"**, when used with respect to any person:-
- 74.1. means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but
- 74.2. does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment;
75. **"personal liability company"** means a profit company that satisfies the criteria in section 8(2)(c);
76. **"pre-existing company"** means a company contemplated in paragraph (a), (b) or (c) of the definition of 'company' in this section;
77. **"pre-incorporation contract"** means a written agreement entered into before the incorporation of a company by a person who purports to act in the name of, or on behalf of, the proposed company, with the intention or understanding that the proposed company will be incorporated, and will thereafter be bound by the agreement;
78. **"premises"** includes land, or any building, structure, vehicle, ship, boat, vessel, aircraft or container;


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79. **"prescribed"** means determined, stipulated, required, authorised, permitted or otherwise regulated by a regulation or notice made in terms of this Act;
80. **"prescribed officer"** means a person who, within a company, performs any function that has been designated by the Minister in terms of section 66(10);
81. **"present at a meeting"** means to be present in person, or able to participate in the meeting by electronic communication, or to be represented by a proxy who is present in person or able to participate in the meeting by electronic communication;
82. **"private company"** means a profit company that:-
- 82.1. is not a public, personal liability or state-owned company; and
- 82.2. satisfies the criteria set out in section 8(2)(b);
83. **"profit company"** means a company incorporated for the purpose of financial gain for its shareholders;
84. **"public company"** means a profit company that is not a state-owned company, a private company or a personal liability company;
85. **"public regulation"** means any national, provincial or local government legislation or subordinate legislation, or any licence, tariff, directive or similar authorisation issued by a regulatory authority or pursuant to any statutory authority;
86. **"records"**, when used with respect to any information pertaining to a company, means any information contemplated in section 24(1);
87. **"record date"** means the date established under section 59 on which a company determines the identity of its shareholders and their shareholdings for the purposes of this Act;
88. **"registered auditor"** has the meaning set out in the Auditing Profession Act;
89. **"registered external company"** means an external company that has registered its office as required by section 23, and has been assigned a registration number in terms of that section;
90. **"registered trade union"** means a trade union registered in terms of section 96 of the Labour Relations Act, 1995 (Act No. 66 of 1995);
91. **"registration certificate"**, when used with respect to a:-


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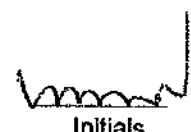
- 91.1. company incorporated on or after the effective date, means the certificate, or amended certificate, issued by the Commission as evidence of the incorporation and registration of that company;
- 91.2. pre-existing company registered in terms of—
- 91.2.1. the Companies Act, 1973 (Act No. 61 of 1973), means the certificate of incorporation or registration issued to it in terms of that Act;
- 91.2.2. the Close Corporations Act, 1984 (Act No. 69 of 1984), and converted in terms of Schedule 2 to this Act, means the certificate of incorporation issued to the company in terms of that Schedule, read with section 14; or
- 91.2.3. any other law, means any document issued to the company in terms of that law as evidence of the company's incorporation; or
- 91.3. registered external company, means the certificate of registration issued to it in terms of this Act or the Companies Act, 1973 (Act No. 61 of 1973); or
- 91.4. a domesticated company, means the certificate issued to it upon the transfer of its registration to the Republic in terms of section 13(5) to (11);
92. "registry" means a depository of documents required to be kept by the Commission in terms of section 187(4);
93. "regulated person or entity" means a person that has been granted authority to conduct business by a regulatory authority;
94. "regulation" means a regulation made under this Act;
95. "regulatory authority" means an entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of an industry;
96. "related", when used in respect of two persons, means persons who are connected to one another in any manner contemplated in section 2(1)(a) to (c);
97. "relationship" includes the connection subsisting between any two or more persons who are related or inter-related, as determined in accordance with section 2;
98. "rules" and "rules of a company" means any rules made by a company as contemplated in section 15(3) to (5);
99. "securities" means any shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by a profit company;


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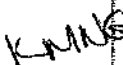
100. **"securities register"** means the register required to be established by a profit company in terms of section 50(1);
101. **"series of integrated transactions"** has the meaning set out in section 41(4)(b);
102. **"share"** means one of the units into which the proprietary interest in a profit company is divided;
103. **"Shareholders"**, subject to section 57(1), means the holder of a share issued by a company and who is entered as such in the certificated or uncertificated securities register, as the case may be;
104. **"shareholders meeting"**, with respect to any particular matter concerning a company, means a meeting of those holders of that company's issued securities who are entitled to exercise voting rights in relation to that matter;
105. **"solvency and liquidity test"** means the test set out in section 4(1);
106. **"special resolution"** means:-
- 106.1. in the case of a company, a resolution adopted with the support of at least 75% of the voting rights exercised on the resolution, or a different percentage as contemplated in section 65(10):-
- 106.1.1. at a shareholders meeting; or
- 106.1.2. by holders of the company's securities acting other than at a meeting, as contemplated in section 60; or
- 106.2. in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised person, that requires the highest level of support in order to be adopted, in terms of the relevant law under which that juristic person was incorporated;
107. **"state-owned company"** means an enterprise that is registered in terms of this Act as a company, and either:-
- 107.1. is listed as a public entity in Schedule 2 or 3 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
- 107.2. is owned by a municipality, as contemplated in the Local Government:- Municipal Systems Act, 2000 (Act No. 32 of 2000), and is otherwise similar to an enterprise referred to in paragraph (a);
108. **"subsidiary"** has the meaning determined in accordance with section 3;

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109. **"Takeover Regulations"** means the regulations made by the Minister in terms of sections 120 and 223;
110. **"this Act"** includes the Schedules and regulations;
111. **"unalterable provision"** means a provision of this Act that does not expressly contemplate that its effect on any particular company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by a company's Memorandum of Incorporation or rules;
112. **"uncertificated securities"** means any securities defined as such in section 29 of the Securities Services Act, 2004 (Act No. 36 of 2004);
113. **"uncertificated securities register"** means the record of uncertificated securities administered and maintained by a participant or central securities depository, as determined in accordance with the rules of a central securities depository, and which forms part of the relevant company's securities register established and maintained in terms of Part E of Chapter 2;
114. **"voting power"**, with respect to any matter to be decided by a company, means the voting rights that may be exercised in connection with that matter by a particular person, as a percentage of all such voting rights;
115. **"voting rights"**, with respect to any matter to be decided by a company, means:-
- 115.1. the rights of any holder of the company's securities to vote in connection with that matter, in the case of a profit company; or
- 115.2. the rights of a member to vote in connection with the matter, in the case of a non-profit company;
116. **"voting securities"**, with respect to any particular matter, means securities that:-
- 116.1. carry voting rights with respect to that matter; or
- 116.2. are presently convertible to securities that carry voting rights with respect to that matter; and
117. **"wholly-owned subsidiary"** has the meaning determined in accordance with section 3(1) (b).

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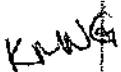
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Annexure B - Ineligible / disqualified in terms of section 69(7) and (8) of the Companies Act read with Regulation 39(4)

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


2. A person is disqualified to be a Director if:-
 - 2.1. a court has prohibited that Person to be a Director, or declared the Person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
 - 2.2. subject to subsections (9) and (12), the person:-
 - 2.2.1. is an unrehabilitated insolvent;
 - 2.2.2. is prohibited in terms of any public regulation to be a director of the company;
 - 2.2.3. has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
 - 2.2.4. has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than R1 000,00 (one thousand rand) for theft, fraud, forgery, perjury or an offence:-
 - 2.2.4.1. involving fraud, misrepresentation or dishonesty;
 - 2.2.4.2. in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or
 - 2.2.4.3. under the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).


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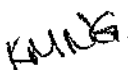


Annexure C - Prescribed methods of delivery in the Regulations

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


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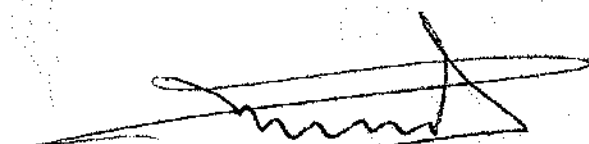
Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
	If there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or place of business.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
The state or a province	By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.	On the date and at the time recorded on a receipt for the delivery.
A municipality	By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any Person acting on behalf of that Person.	On the date and at the time recorded on a receipt for the delivery.
A trade union	By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union or for the purposes of section 13(2), if there is a union office within the magisterial district of the firm required to notify its employees, in terms of the Regulations at that office.	On the date and at the time recorded on a receipt for the delivery.
	If there is no person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
Employees of the Company	By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
A partnership, firm or association	By handing the notice or a certified copy of the document to a Person who is apparently in charge of the premises and apparently at least 16 (sixteen) years of age, at the place of business of the partnership, firm or association;	On the date and at the time recorded on a receipt for the delivery.

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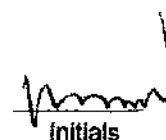
Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
	If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.	On the date and at the time recorded on a receipt for the delivery.
A statutory body other than the commission and tribunal	By handing the notice or a certified copy of the document to the secretary or similar officer or member of the board or committee of that body, or any person acting on behalf of that body.	On the date and at the time recorded on a receipt for delivery



NHLANHLA M NENE, MP

MINISTER OF FINANCE (representing the state)

Signed at Pretoria on the 22 day of May 2015



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Kim Slaffa

From: Mpho Mogashu <MphoMogashu@flysaa.com>
Sent: Wednesday, 04 September 2019 13:31
To: Kim Slaffa
Cc: Mpati Qofa; Ruth Kibuuka; Ephraim Lusenga; Mduduzi Nyoni
Subject: RE: OUR CLIENT: MR. MALUSI GIGABA
Attachments: Scanned from a Xerox Multifunction Device.pdf; Scanned from a Xerox Multifunction.pdf

Hi Kim

Kindly accept my apologies for not having not reverted back to you as promised.

Please find attached the outstanding documents requested.

Further, we confirm that the two MOI's are the only ones applicable during the period 2008-2015.

Kind Regards,

Mpho Mogashu | Legal Advisor | Legal

Mobile: +27 | Phone: +2711 978-1857 | Fax: 011 978-1807 | E-Mail: Mphomogashu@flysaa.com
 Airways Park32 Jones RoadOR Tambo ComplexKempton Park- Johannesburg- SOUTH AFRICA

From: Kim Slaffa [mailto:kim@tshabalala.com]
Sent: Tuesday, 03 September 2019 12:38
To: Mpho Mogashu <MphoMogashu@flysaa.com>
Cc: Mpati Qofa <MpatiQofa@flysaa.com>
Subject: RE: OUR CLIENT: MR. MALUSI GIGABA

Dear Mr. Mogashu,

I confirm that you had undertaken to get back to me by Wednesday, 28 August and I have not yet heard from you or received the outstanding documentation required by our client.

Kindly advise, I await to hear from you.

Yours faithfully,

Kim Slaffa
 Candidate Attorney

Important Notice: Please note that we will never change our bank account details by email. We urge you to contact our office to verify banking details prior to making any payments or deposits.

Tshabalala Attorneys, Notaries & Conveyancers
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 Fax: +27(0) 11 783 8734
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 Sandton, Johannesburg
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 P O Box 67900
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 2021



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www.tshabalala.com

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From: Kim Slaffa <kim@tshabalala.com>
Sent: Monday, 29 July 2019 17:26
To: 'Mpho Mogashu' <MphoMogashu@flysaa.com>
Cc: mpatigofa@flysaa.com
Subject: RE: OUR CLIENT: MR. MALUSI GIGABA

Dear Mr. Mogashu,

Kindly find our letter appended hereto.

Yours faithfully,

Kim Slaffa
 Candidate Attorney

Important Notice: Please note that we will never change our bank account details by email. We urge you to contact our office to verify banking details prior to making any payments or deposits.

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From: Mpho Mogashu <MphoMogashu@flysaa.com>
Sent: Friday, 26 July 2019 11:06
To: kim@tshabalala.com
Subject: FW: OUR CLIENT: MR. MALUSI GIGABA

Hi Kim

Please find attached hereto your parking details.

Regards,



Mogashu

"MKG6"**158**

2nd floor, Hillside House
 17 Empire Road,
 Parktown
 Johannesburg
 2193
 Tel (International): +27 (10) 214-0651
 Tel (Tollfree): 0800 222 097
 Email: inquiries@sastatecapture.org.za
 Web: www.sastatecapture.org.za

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
 CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

18 December 2019

Tshabalala Attorneys, Notaries & Conveyancers

1st Floor, 3 Gwen Lane

Sandton, Johannesburg

E-mail: reginald@tshabalala.com; jazmin@tshabalala.com; yolanda@tshabalala.com;
kim@tshabalala.com

Ref: Mr TR Tshabalala/Miss Y Silindane/Miss K Slaffa/jp/G01222

Dear Sirs

**Your client: Gigaba, Malusi Knowledge Nkanyezi
 Statement of Response and Application to cross-examine Ms Sandra Julia Hester
 Coetzee ("Ms Coetzee")**

1. We confirm receipt of your client's preliminary statement of response and his application to cross-examine Ms Coetzee whose affidavit was placed before the Chairperson as evidence during the testimony of Ms Sizakele Petunia Mzimela ("**Ms Mzimela**") on 26 June 2019.
2. As your client is aware, Ms Coetzee did not testify but submitted an affidavit as her evidence in support of certain aspects of Ms Mzimela's evidence.
3. We note that your client applies for the following substantive relief summarised as follows:
 - 3.1 That his preliminary response marked "G1" be admitted to the Commission;
 - 3.2 A directive to the Secretariat to source a list of specified documents for him from the Department of Public Enterprises ("**DPE**") and South African Airways (SOC) Limited ("**the list of requested documents**");

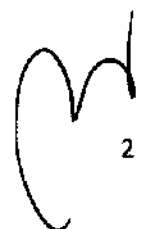
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- 3.3 A right to cross-examine Ms Coetzee; and
- 3.4 Leave to supplement his statement within 14 days of receipt of the documents he has requested and the documents relating to Ms Mzimela.
4. The Commission does not have in its possession all of the requested documents listed in your client's application in its possession.
- 4.1 A USB flash drive containing all the documents that the Commission currently has in its possession will be delivered to your offices with a copy of this letter in due course. In the meantime, a link to all such documents is included in the enclosing email to this letter. These documents, in whole or in part, include:
- Directives issued by the Minister to South African Airways SOC Limited ("SAA");
 - Correspondence between the Minister and the Board;
 - Delegation of Authority; and
 - SAA Corporate Plan.
- 4.2 Your client is requested to seek the remaining documents directly from the Department of Public Enterprises, SAA or any other applicable institution.
5. Should the Commission however obtain possession of any of the documents in future, pursuant to its own independent investigations for which its powers of compulsion are reserved, copies will be provided to your client.
6. Should your client fail to obtain the documents directly from any of the above institutions after taking reasonable steps to do so, the Commission may, in its discretion, assist your client on receipt of a full explanation as to why each document is material and relevant to any evidence against him.
7. In the circumstances, your client's application will be processed accordingly.

Yours faithfully



MS K B SHABALALA
Acting Secretary
Judicial Commission of Inquiry into Allegations
of State Capture, Corruption and Fraud
In the Public Sector including Organs of State



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public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

SHAREHOLDER'S COMPACT

Entered into by and between

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH
AFRICA, HEREIN REPRESENTED BY THE MINISTER OF
PUBLIC ENTERPRISES
("The Shareholder Representative")**

and

SOUTH AFRICAN AIRWAYS (PROPRIETARY) LIMITED

2010/2011

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UNDERTAKINGS BY THE SHAREHOLDER	12
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A. KEY PERFORMANCE INDICATORS	ANNEXURE A
B. MATERIALITY FRAMEWORK	ANNEXURE B



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1 **INTERPRETATION**


- 1.1 "Accounting Authority" means the Board of South African Airways;
- 1.2 "Accounting Officer" means the Director-General of the Department of Public Enterprises;
- 1.3 "Board" means the Board of Directors of South African Airways;
- 1.4 "Company" means South African Airways;
- 1.5 "Companies Act" means the Companies Act, No 61 of 1973, as amended and includes any regulation issued there under;
- 1.6 "Founding Documents" means the Memorandum of Association and Articles of Association of South African Airways or any of its subsidiaries as the case may be;
- 1.7 "King Report" means the King Reports I and II on Corporate Governance;
- 1.8 "Parties" means the Shareholder and South African Airways collectively;
- 1.9 "PFMA" means the Public Finance Management Act, No. 1 of 1999, as amended;
- 1.10 "Protocol" means the Protocol on Corporate Governance in the Public Sector (1977).
- 1.11 "Shareholder Compact" means this agreement including the appendices hereto;
- 1.12 "Shareholder" means the Government of the Republic of South Africa as represented by the Shareholder Representative and his/her successor in law;
- 1.13 "Shareholder Representative" means the Minister of Public Enterprises;
- 1.14 "Subsidiary" means a subsidiary of South African Airways or any of its subsidiaries over which it exercises ownership control as defined in terms of the PFMA;
- 1.15 "South African Airways" means South African Airways (Proprietary) Limited, a public company registered and incorporated as such in terms of the company laws of the Republic of South Africa with the registration number 1997/022444/07, and having its registered head office at Airways Park, Jones Road, Oliver Tambo Airport, Kempton Park, 1627.

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2 FUNCTION OF SHAREHOLDER COMPACT

- 2.1 The parties subscribe to the principles of the Protocol, the South African Airways Act, 2007, PFMA and applicable Treasury Regulations in endeavouring to enhance effective business performance and to maintain good corporate governance, including the principles contained in the King Report, within South African Airways. The parties hereby agree on the purpose, terms and conditions set out below.
- 2.2 The purpose of this Shareholder Compact is to confirm:
- 2.2.1 South African Airways' Mandate; as recorded in Paragraph 3 of the Shareholders Compact.
- 2.2.2 The strategic objectives that will be attained by South African Airways during the period of the Shareholder Compact; and
- 2.2.3 The Key Performance Areas and Indicators to measure South African Airways' performance during the period of the Shareholder Compact.
- 2.3 The Parties agree that the Founding Documents of South African Airways shall be reviewed and amended, where required, to ensure that agreed principles and enduring rights and obligations regarding the relationship between the Parties are incorporated and that the Founding documents comply with the provisions of the Companies Act, PFMA, National Treasury Regulations, Protocol, and South African Airways' Mandate.
- 2.4 The Board shall ensure that South African Airways and its subsidiaries comply with the provisions of the Companies Act, the Protocol, the PFMA and any other relevant legislation, regulations and guidelines issued by the National Treasury and/or the Shareholder Representative.
- 2.5 The Board of Directors shall ensure that South African Airways:



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- 2.5.1 Reviews the mandate of all its subsidiaries, to amend, where required, the Founding Documents of such subsidiaries, to ensure that agreed principles and enduring rights and obligations regarding the relationship between the South African Airways and the subsidiaries are incorporated and that the Founding Documents comply with the provisions of the Companies Act, PFMA, National Treasury Regulations and the respective subsidiary's mandate.
- 2.5.2 Concludes performance agreements with all its subsidiaries that comply with the spirit, rights, obligations and undertakings stipulated in the Shareholder Compact.

3

MANDATE

- 3.1 The Parties acknowledge that the Memorandum of Association of SAA defines the main object of SAA as follows: "to engage in passenger airline and cargo transport services, air charter services and other related services".
- 3.2 The Parties agree that the object defined in the Memorandum of Association does not reflect the Shareholder's strategic intent with respect to SAA.
- 3.3 The parties note the preamble of the of South African Airways Act, 2007
- *"the Republic's rapidly developing economy requires reliable and extensive air transport capacity;*
 - *the State desires to promote air links with the Republic's main business, trading and tourism markets within the African continent and internationally;*
 - *the State has a developmental orientation and regards South African Airways as a national carrier and strategic asset that would enable the State to preserve its ability to contribute to key domestic, intra-regional and international air linkages, the State intends to retain it as a national carrier."*

4.3 Capital and financial efficiency

4.3.1 The parties recognise that SAA is currently inadequately capitalised and agree that South African Airways shall:

4.3.1.1 Aim to conserve its balance sheet strength, reduce gearing and the reliance on Government guarantees to levels that will be appropriate to its operations in order to improve its net asset value as appropriate within the constraints of the South African Airways Restructuring Plan.

4.3.1.2 Continue to pursue financial recovery and stability, based on the objective to achieve sustainable profitability on all its routes and reduce costs.

4.3.1.3 Deliver an appropriate return on assets, new routes and investments.

4.3.1.4 Implement cost effective strategies covering foreign exchange, fuel, fuel levies and interest rates to reduce value at risk to within acceptable levels through hedging, cost recovery, product configuration etc.

4.4 Commercial and operational efficiency and effectiveness

South African Airways shall:

4.4.1 Significantly improve its operating efficiency and effectiveness, and to this end, South African Airways shall:

4.4.1.1 Improve its market focus

4.4.1.2 Develop suitable commercially acceptable pricing models and revenue management approaches for each of its traffic generating markets and introduce competitive monitoring functionality.

4.4.1.3 Optimise operational costs, improve turnaround time, increase aircraft utilization, reduce lost baggage claims, improve crew deployment, fuel usage and customer satisfaction, optimise revenue, load factors and cargo income.

- 3.4 The Parties therefore agree that the main objective as contained in the Memorandum of Association of SAA should be amended to include the words: "Be an African airline with a global reach."

In so doing, SAA may serve a wide range of routes by focusing on profitable routes into each of the major continents, linking to key cities and their airports.

4 STRATEGIC OBJECTIVES

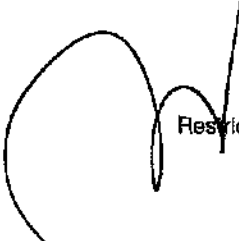
- 4.1 The Parties agree that the strategic objectives of South African Airways fall into six main areas, namely:


- 4.1.1 South African Airways' strategic role for South Africa;
- 4.1.2 Capital base and financial efficiency;
- 4.1.3 Commercial and operational efficiency and effectiveness;
- 4.1.4 Co-operation and consolidation;
- 4.1.5 Capital expenditure and new route development; and
- 4.1.6 Developmental objectives.

4.2 Strategic Role

South African Airways shall:

- 4.2.1 Provide passenger, mail and cargo air services (other than to the extent that there is a need for the Government to provide such services in the national interests of South Africa) on a sustainable basis.
- 4.2.2 Assist in lowering the cost of doing business in South Africa by providing affordable air services within acceptable benchmark standards.


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4.4.1.4 Optimise route profitability and net operating margin in each route and key business;

4.4.1.5 Effect appropriate investments in technology and business process re-engineering.

4.4.2 Competitively price services in an efficient and effective manner within market norms or appropriate benchmarks.

4.4.3 Pursue and achieve reductions in major cost components and their drivers.

4.4.4 The Parties agree that South African Airways shall, in implementing the foregoing, give due consideration to developments in relation to more liberalised air transport environments.

4.5 Co-operation and consolidation

South African Airways shall:

4.5.1 Pursue opportunities to leverage on the operations of other airlines by various means including code-share, block space and capacity share agreements and or arrangements within the ambit of appropriate competition rules in order to develop routes and reduce fixed commitments to operational costs.

4.5.2 Co-operate with South African Express Airways where operational costs and frequency of service with the gauge of aircraft operated by South African Express Airways is appropriate within the legal constraints applicable.

4.5.3 South African Airways notes the preamble to the South African Express Act, 2007:

- *"retaining South African Express as a strategic asset would enable the State to preserve its ability to provide frequency of services on lower density routes;*
- *the State desires to contribute to the expansion of regional air service capability within South Africa and to the African continent and the surrounding islands."*

4.6 **Capital expenditure and new route development,**

- 4.6.1 All capital expenditure and new route developments shall be supported on the basis of a business plan which shall include a financial motivation (based on net present value, internal rate of return (IRR) and payback period) and other criteria that may be applicable in the route selection.
- 4.6.2 The launch of a new route development shall be preceded by adequate market research, a business and roll-out plan that will ensure that enough support for the new route of South African Airways is developed in a professional and commercial manner. The sunk costs of the new route development should be included in the financial analysis.
- 4.6.3 SAA shall develop a strategy for reducing its gearing ratio (including on and off balance sheet debt) to industry norms within 7 years, with no government support.

4.7 **Developmental Objectives**

4.7.1 **Environmental, Health and Safety Issues**

South African Airways shall conduct an annual environmental, health and safety audit to identify major areas of financial and operational risk and provide a plan to mitigate such issues in relation to all territories that South African Airways operates in.

4.7.2 **Accelerated and shared growth initiative for South Africa**

4.7.2.1 The Parties acknowledge that the Accelerated and Shared Growth Initiative (ASGI-SA) seeks to halve unemployment, reduce poverty, provide the skills required by the economy, and achieve an average economic growth rate of 6% between 2010 and 2014.

4.7.2.2 The Parties intend that, to the extent that is possible South African Airways shall:

- ♦ Contribute to this objective through its core businesses and by leveraging the economic benefits from associated activities;
- Contribute in terms of its core businesses; including continuous provision of efficient transport and logistics services, security of

supply and creation of an environment conducive to reducing the cost of logistics and improving the competitiveness of the South African economy; and

4.7.2.3 Building on the gains of the South African Airways Restructuring Plan, the intended investment programme for the next five years presents opportunities for job creation, poverty alleviation, economic development and shared growth of the country. Any other social service obligation that SAA is to undertake requires an amendment of this Shareholder Compact with the Minister as stated in paragraph 4.3.3 of the Protocol.

4.7.3 Skills development

There is a growing local and international demand for scarce commercial, operational, managerial and technical skills.

The Parties agree that South African Airways shall develop a strategy to acquire, develop and retain the appropriate critical skills and support the development of training for the airline industry within the South African context

4.7.4 Black Economic Empowerment

The Parties acknowledge that Broad Based Black Economic Empowerment and business development is part of South African Airways' strategy. The Parties agree that South African Airways will endeavour to meet the targets agreed in the BEE Charter for the Transport or Aviation Sector.

5 KEY PERFORMANCE INDICATORS AND EVALUATION

The Parties agree that:

- 5.1 South African Airways' performance in relation to the strategic objectives, save for the strategic objective in the Key Performance Indicators (KPI) as set out in format, content and coverage of KPIs in Appendix A; shall be guided by and be compliant with relevant government policies and legislation and be determined by the Board.

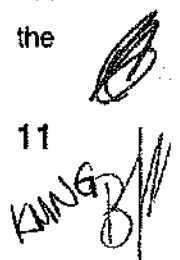
- 5.2 South African Airways shall report the Key Performance Indicators of, and results achieved by, the company and its subsidiaries in accordance with clause 2.4.2 in the Corporate Plan, Monthly Management Accounts, Quarterly and Annual Reports and associated Reviews as well as the Five Year Review

6. PERIOD OF COMPACT

- 6.1 The Parties agree that the Shareholder Compact shall remain in full force and effect until it is renegotiated, provided that the Parties shall at least once per annum consider renegotiation of the Shareholder Compact. Renegotiation of the Shareholder Compact may be initiated by any one of the Parties through written notice including the reasons for such renegotiation. Upon receipt of such notice by the other Party, the Shareholder's Representative and the Board shall commence negotiation.
- 6.2 It is hereby recorded that the agreed principles, although subject to review annually, set out matters that are applicable beyond a period of a year. In the event that they are amended, the parties shall take into account initiatives already commenced on the basis of such principles.

7. ROLE AND RESPONSIBILITIES OF THE BOARD

- 7.1 The Board is hereby mandated to control, supervise, manage and run the business in accordance with the strategic intent, corporate plan, the Memorandum and Articles of Association and any applicable legislation. The directors shall exercise their skill and fiduciary duties to pursue the objectives and targets as set out in the corporate plan.
- 7.2 The Board:
- 7.2.1 commits itself to the achievement of the vision, mission, goals and objectives, and strategic intent of South African Airways, and always to act within its powers and in the best interests of the company;
- 7.2.2 accepts its responsibility to direct and guide the business in a proper manner in keeping with good governance practices, the PFMA, South African Airways' Memorandum and Articles of Association, the

Shareholder Compact, and in particular, in compliance with the materiality framework agreed to with the Shareholder, which is annexed hereto as appendix B; and

7.2.3 recognises the importance of speedy decision-making, and will use its best endeavours to prevent undue delays with regard to critical decisions.

8 UNDERTAKINGS BY THE SHAREHOLDER

The Shareholder undertakes for the duration of this agreement:

- 8.1 not to introduce new or additional requirements during the validity of this compact other than through a process of consultation with the company. Reasonable notice shall be provided before the introduction of any new or additional requirements. In addition, the parties shall, in such event, amend the key performance indicators and targets, failing which, no new requirements or targets may be introduced;
- 8.2 not to impede or, in any way, restrict the discretion of the Board regarding matters falling within its authority, as provided for in this agreement; as well as the SAA Founding documents
- 8.3 not to delay critical decisions;
- 8.4 not to delay the proper constitution of the Board, and to fill vacancies that arise promptly, and;
- 8.5 not to cause South African Airways or any of its directors to breach any legal duty.

Signed: 

BARBARA HOGAN

SHAREHOLDER REPRESENTATIVE

DATE: 23 August 2010

Signed: 

CHERYL COROLUS

CHAIRPERSON

DATE: 24 AUGUST 2010

ANNEXURE A

KEY PERFORMANCE INDICATOR

The Net Profit of the SAA Group will be the primary KPI for the 2010/11 financial year as a consequence of SAA's current financial position. Other support KPI's (as outlined below) have been formulated to meet this primary objective and are consistent with SAA's latest Corporate Plan. Meeting the primary KPI may over the forthcoming year result in SAA having to adjust to unforeseen market conditions which require forfeiting to a limited extent delivery against the support KPI's set for this financial year.

1. Profitability

Achieve sustainable profitable operation in all market segments namely: domestic (both legacy and Mango); regional and intercontinental markets. In order to achieve the below Net Profit KPI, SAA has committed to the following structural and operational improvements over the next 3 years:

- A business plan for Voyager by 31 January 2011. Ring-fencing the Voyager liability by 31 March 2011 and introducing innovative partnering towards profitability, reduction in liability and stand-alone sustainability by 31 March 2012
- Improving cargo profitability by at least 8% per annum
- Restructuring Air Chefs through critical investment and improved efficiencies by 31 March 2012 towards the sale of the business by 31 March 2013
- A business plan for SAA Technical's (SAAT) by 31 March 2011. Restructuring and improve SAAT's profitability by at least 8% per annum and establish SAAT as a multi-airline focused African maintenance hub by 31 March 2012
- Develop and implement criteria for route restructurings and fleet investments to enable clear go/ no go decision-making by 31 March 2011
- Continuous implementation and monitoring of the effectiveness of the revised hedging policy with quarterly report back to the shareholder
- Obtain suitable Airbus Financing without Government support six months in advance of the first delivery of aircraft
- Progressively improve SAA's financial fitness and the need for guarantee support (including Air Traffic Liability) from the shareholder.
- Strengthening of the Balance Sheet evidenced by net retained earnings (R201m in 2010/11) and continued year-on-year improvement towards a 75% debt-equity ratio by 31 March 2013

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Non-Confidential Key Performance Indicators


SAA GROUP	SAA Group	TARGET RANGE		
Key Performance Area	Key Performance Indicator	Unit of Measure	2011/12	2012/13
Main KPI	Net Retained Earnings	R'm	460	520
			SAA Group 2010/11	
			201	

Support KPI's					
Revenue, Traffic and Costs					
1.1	Cargo Belly Revenue per Available Tonne Kilometre	Cents per tonne kilometres	128	134	140
1.2	Average Passenger Fare (Rev passengers)	ZAR	2,315	2,317	2,384
Financial Value Creation (ASK's include both SAA & Mango)					
2.1	PBT to Total Income	Percentage	1.3%	2.2%	2.3%
2.2	RASK (Total Income)	ZAR cents	82.0	85.9	89.1
2.3	RASK (Total Income) excluding fuel levy	ZAR cents	70.2	73.3	76.0
2.4	RASK (Only Pax revenue & Fuel Levy)	ZAR cents	65.2	68.3	70.7
2.5	CASK (Total Operating Expenses + Leases + Depreciation)	ZAR cents	79.9	83.2	86.3
2.6	CASK (Excluding Fuel Costs)	ZAR cents	58.4	60.9	63.2
% of CASK					
2.7	• Maintenance	Percentage	9.1%	9.0%	8.9%
2.8	• Labour	Percentage	17.8%	17.7%	17.9%
2.9	• Fuel	Percentage	26.9%	26.8%	26.7%
2.10	Return on Total Assets	Percentage	2.3%	4.0%	4.7%
2.11	Free Cash to Air Traffic Liability (Estimated R1b Free)	Percentage	82%	82%	82%

Operational Efficiency (SAA only)			
3.1	Passenger Load Factor (Revpx)	Percentage	74%
3.2	Cargo load factor (Tonnes Carried / ATK)	Percentage	54%
3.3	Daily Block Hours per Aircraft	Hours	9.65
3.4	On-time Performance (within 15 minutes of scheduled departure time; average of monthly OTP's)	Percentage	83%
Human Capital			
4.1	Total income per employee (Perm +Cas) (SAA only)	ZAR	3,009,108
4.2	ASK's (SAA only) per employee	Number	3,450,209
4.3	Training spend to Total Income	Percentage	0.36%
Safety and Maintenance Efficiency			
5.1	Operational Reportable Incidents	Number	150
			135
			120

2. Gearing

Report actual and forward (for a 3 year period) gearing ratio on a quarterly basis including on and off balance sheet debt and commitments. (Off balance sheet commitments to be calculated on the basis of the annual lease cost multiplied by a factor of 7.5)

Signed: 

BARBARA HOGAN
 SHAREHOLDER REPRESENTATIVE
 DATE: 23 August 2010.

Signed: 

CHERYL COROLUS
 CHAIRPERSON
 DATE: 24 AUGUST 2010



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Confidential Key Performance Indicators as at 26 July 2010

SAA			TARGET RANGE		
Key Performance Area	Key Performance Indicator	Unit of Measure	2010/11	2011/12	2012/13
SAA					
1.1	Crew Costs (Acc & Ref; Labour; Transport) per ASK (SAA only)	Cents	7.0	7.5	7.6
Revenue, Traffic and Costs					
SAA - Intercontinental					
2.1	Cargo Belly Revenue per Available Tonne Kilometre	Cents per tonne kilometres	104	108	112
2.2	Average Passenger Fare (Revpx)	Rands	5,542	5,388	5,591
SAA - Domestic					
2.3	Cargo Belly Revenue per Available Tonne Kilometre	Cents per tonne kilometres	318	337	358
2.4	Average Passenger Fare (Revpx)	Rands	967	1,018	1,058
SAA - African Region					
2.5	Cargo Belly Revenue per Available Tonne Kilometre	Cents per tonne kilometres	226	237	249
2.6	Average Passenger Fare (Revpx)	Rands	2,292	2,416	2,509
Operational Efficiency					
SAA - Intercontinental					
3.1	Load Factor	Percentage	77%	78%	80%
SAA - Domestic					
3.2	Load Factor	Percentage	73%	75%	77%
SAA - African Region					
3.3	Load Factor	Percentage	66%	68%	70%
SAAT			TARGET RANGE		
Key Performance Area	Key Performance Indicator	Unit of Measure	2010/11	2011/12	2012/13
4.1	Return on Total Fixed Assets	Percentage	7.8% *	8.0% *	8.2% *
4.2	Training spend to Turnover (Excluding engines)	Percentage	1.04% *	1.04% *	1.04% *
4.3	Heavy Maintenance On-Time release (Average)	Days	NA	1 Day	1 Day
4.4	PBIT per Turnover (Excluding engines)		1.3% *	1.5% *	1.7% *
4.5	Dispatch Reliability		98.5%	98.5%	98.5%

* Targets subject to the outcome of the S-H & E analysis.

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VOYAGER			TARGET RANGE		
Key Performance Area	Key Performance Indicator	Unit of Measure	VOYAGER 2010/11	2011/12	2012/13
5.1	Training spend to Turnover	Percentage	0.1%	0.1%	0.1%
5.2	PBT (Before Hedging) per Revenue Turnover		12%	13%	14%
5.3	% Voyager miles redeemed to Opening Mileage Liability	Percentage	35%	36%	38%
5.4	% Voyager direct costs to SAA Voyager Total Revenue (Before Consolidation)	Percentage	36%	34%	32%
5.5	Invoiced Voyager miles accrued to Total Voyager miles accrued	Ratio	0.48:1	0.80:1	0.90:1
5.6	Fair Value of the Mile	ZAR	0.108	0.095	0.085
5.7	% Voyager Passenger Revenue to SAA Passenger Revenue (See Notes)	Percentage	25%**	25%**	25%**
5.8	% Programme Active Membership	Percentage	23.0%	27.0%	33.0%

** Excluding SA Express and Airlink

MANGO (Confidential)			TARGET RANGE		
Key Performance Area	Key Performance Indicator	Unit of Measure	2010/11	2011/12	2012/13
Revenue, Traffic and Costs					
6.1	Total Income per passenger		587	616	647
Financial Value Creation					
7.1	PBT (Before Hedging) to Total Income	Percentage	4.54%	1.81%	2.93%
7.2	RASK (Total Income including interest)	cents	47.76	48.68	50.96
7.3	CASK (Total Operating Expenses + Leases + Depreciation)	cents	45.66	47.82	49.50
7.4	CASK (Excluding Fuel Costs)	cents	31.16	32.59	33.51
7.5	% of CASK				
7.6	• Maintenance	Percentage	23.0%	23.0%	23.0%
7.7	• Labour	Percentage	20.2%	20.2%	20.2%
7.8	• Fuel	Percentage	46.5%	46.5%	46.5%
7.9	Return on Total Assets	Percentage	6.00%	6.00%	6.00%
7.10	Free Cash to Air Traffic Liability	Ratio	1.5	1.5	1.5
Operational Efficiency					
8.1	Load Factor	Percentage	83%	80%	80%
8.2	Daily Block Hours per Aircraft	Hours	11.4	11.4	11.4
8.3	On-time Performance (within 15 minutes of scheduled departure time)	Percentage	88%	88%	88%
Human Capital					
9.1	Total Income per employee (Perm +Cas)	ZAR millions	2.075	1.902	1.997
9.2	Crew scheduling Flight Hours/Duty Hours	Percentage	41%	45%	50%
9.3	Total Staff per aircraft	Number	107	107	107
9.4	Training spend to Total Income	Percentage	0.5%	0.5%	0.5%


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Safety and Maintenance Efficiency					
10.1	Operational Reportable Incidents	Number	36	36	36
10.2	Dispatch Reliability	Percentage	99%	99%	99%
10.3	Aircraft Availability	Percentage	99%	99%	99%

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public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

SHAREHOLDER'S COMPACT



Entered into by and between

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH
AFRICA, HEREIN REPRESENTED BY THE MINISTER OF
PUBLIC ENTERPRISES**
("The Shareholder Representative")

and

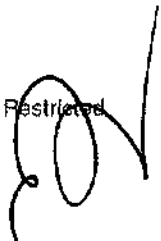
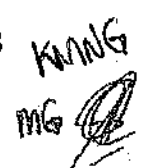
SOUTH AFRICAN AIRWAYS (PROPRIETARY) LIMITED

2011/2012


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1 INTERPRETATION

- 1.1 "Accounting Authority" means the Board of South African Airways;
- 1.2 "Accounting Officer" means the Director-General of the Department of Public Enterprises;
- 1.3 "Board" means the Board of Directors of South African Airways;
- 1.4 "Company" means South African Airways;
- 1.5 "Companies Act" means the Companies Act, No 61 of 1973, as amended and includes any regulation issued there under;
- 1.6 "Founding Documents" means the Memorandum of Association and Articles of Association of South African Airways or any of its subsidiaries as the case may be;
- 1.7 "King Report" means the King Reports I, II and III on Corporate Governance;
- 1.8 "Parties" means the Shareholder and South African Airways collectively;
- 1.9 "PFMA" means the Public Finance Management Act, No. 1 of 1999, as amended;
- 1.10 "Protocol" means the Protocol on Corporate Governance in the Public Sector (1997).
- 1.11 "Shareholder's Compact" means this agreement including the appendices hereto;
- 1.12 "Shareholder" means the Government of the Republic of South Africa as represented by the Shareholder Representative and his/her successor in law;
- 1.13 "Shareholder Representative" means the Minister of Public Enterprises;
- 1.14 "Subsidiary" means a subsidiary of South African Airways or any of its subsidiaries over which it exercises ownership control as defined in terms of the PFMA;
- 1.15 "South African Airways" means South African Airways (Proprietary) Limited, a public company registered and incorporated as such in terms of the company laws of the Republic of South Africa with the registration number 1997/022444/07, and having its registered head office at Airways Park, Jones Road, Oliver Tambo Airport, Kempton Park, 1627.

2 FUNCTION OF SHAREHOLDER'S COMPACT

- 2.1 The Parties subscribe to the principles of the Protocol, the South African Airways Act, 2007, PFMA and applicable Treasury Regulations in endeavouring to enhance effective business performance and to maintain good corporate governance, including the principles contained in the King Report, within South African Airways. The Parties hereby agree on the purpose, terms and conditions set out below.
- 2.2 The purpose of this Shareholder's Compact is to confirm:
- 2.2.1 South African Airways' Mandate; as recorded in Paragraph 3 of the Shareholder's Compact;
 - 2.2.2 The strategic objectives that will be attained by South African Airways during the period of the Shareholder's Compact; and
 - 2.2.3 The Key Performance Areas and Indicators to measure South African Airways' performance during the period of the Shareholder's Compact.
- 2.3 The Parties agree that the Founding Documents of South African Airways shall be reviewed and amended, where required, to ensure that agreed principles and enduring rights and obligations regarding the relationship between the Parties are incorporated and that the Founding documents comply with the provisions of the Companies Act, PFMA, National Treasury Regulations, Protocol, and South African Airways' Mandate.
- 2.4 The Board shall ensure that South African Airways and its subsidiaries comply with the provisions of the Companies Act, the Protocol, the PFMA and any other relevant legislation, regulations and guidelines issued by the National Treasury and/or the Shareholder Representative.

2.5 The Board of Directors shall ensure that South African Airways:

2.5.1 Reviews the mandate of all its subsidiaries, to amend, where required, the Founding Documents of such subsidiaries, to ensure that agreed principles and enduring rights and obligations regarding the relationship between the South African Airways and the subsidiaries are incorporated and that the Founding Documents comply with the provisions of the Companies Act, PFMA, National Treasury Regulations and the respective subsidiary's mandate.

2.5.2 Concludes performance agreements with all its subsidiaries that comply with the spirit, rights, obligations and undertakings stipulated in the Shareholder's Compact.

3 MANDATE

3.1 The Parties acknowledge that the Memorandum of Association of SAA defines the main object of SAA as follows: "to engage in passenger airline and cargo transport services, air charter services and other related services".

3.2 The Parties note the preamble of the of South African Airways Act, 2007, contains the following:

- *"the Republic's rapidly developing economy requires reliable and extensive air transport capacity;*
- *the State desires to promote air links with the Republic's main business, trading and tourism markets within the African continent and internationally; and*
- *the State has a developmental orientation and regards South African Airways as a national carrier and strategic asset that would enable the State to preserve its ability to contribute to key domestic, intra-regional and international air linkages, the State intends to retain it as a national carrier."*

3.3 The Parties therefore agree a further mandate that SAA "be an African airline with a global reach".

4.3 Capital base and financial efficiency

4.3.1 The Parties recognise that SAA is currently inadequately capitalised and agree that South African Airways shall:

4.3.1.1 Aim to conserve its balance sheet strength, reduce gearing and the reliance on Government guarantees to levels that will be appropriate to its operations in order to improve its net asset value as appropriate within the constraints of the South African Airways Restructuring Plan.

4.3.1.2 Continue to pursue financial recovery and stability, based on the objective to achieve sustainable profitability on all its routes and reduce costs.

4.3.1.3 Optimise the deployment of the Company's assets in domestic, regional (African) and other international markets to deliver an appropriate return on assets, new routes and investments.

4.3.1.4 Implement cost effective strategies covering foreign exchange, fuel, fuel levies and interest rates to reduce value at risk to within acceptable levels through hedging, cost recovery, product configuration etc.

4.4 Commercial and operational efficiency and effectiveness

South African Airways shall:

4.4.1 Significantly improve its operating efficiency and effectiveness, and to this end, South African Airways shall:

4.4.1.1 Improve its market focus, optimising passenger and cargo revenue.

4.4.1.2 Develop suitable commercially acceptable pricing models and revenue management approaches for each of its traffic generating markets and introduce competitive monitoring functionality.

4.4.1.3 Endeavour to compress operational costs, including: improving aircraft utilization; optimising schedules; reducing cost of sales;

In so doing, SAA may serve a wide range of routes by focusing on profitable routes into each of the major continents, linking to key cities and their airports.

This mandate is not currently included in the Memorandum of Association. The Parties agree this amendment will be made when the Memorandum of Association and Articles of Association are combined into SAA's new Memorandum of Incorporation, as required under amendments to the Companies Act.

4 STRATEGIC OBJECTIVES

4.1 The Parties agree that the strategic objectives of South African Airways fall into six main areas, namely:

- 4.1.1 South African Airways' strategic role for South Africa;
- 4.1.2 Capital base and financial efficiency;
- 4.1.3 Commercial and operational efficiency and effectiveness;
- 4.1.4 Co-operation and consolidation;
- 4.1.5 Capital expenditure and new route development; and
- 4.1.6 Developmental objectives.

4.2 Strategic Role

South African Airways shall:

- 4.2.1 Provide passenger, mail and cargo air services (other than to the extent that there is a need for the Government to provide such services in the national interests of South Africa) on a sustainable basis.
- 4.2.2 Assist in lowering the cost of doing business in South Africa by providing affordable air services within acceptable benchmark standards.

reducing lost baggage claims; improving crew deployment; reducing fuel usage; and optimising revenue, load factors and cargo income.

4.4.1.4 Optimise route profitability and net operating margin in each route and key business;

4.4.1.5 Effect appropriate investments in technology and business process re-engineering.

4.4.2 Competitively price services in an efficient and effective manner within market norms or appropriate benchmarks.

4.4.3 The Parties agree that South African Airways shall, in implementing the foregoing, give due consideration to developments in relation to more liberalised air transport environments.

4.5 Co-operation and consolidation

South African Airways shall:

4.5.1 Pursue opportunities to leverage on the operations of other airlines by various means including code-share, block space and capacity share agreements and or arrangements within the ambit of appropriate competition rules in order to develop routes and reduce fixed commitments to operational costs.

4.5.2 Co-operate on network and schedule with both Mango and South African Express Airways where operational costs, the nature of an individual market or route and frequency of service with the gauge of aircraft operated by Mango and South African Express Airways is appropriate within the legal constraints applicable.

4.5.3 South African Airways notes the preamble to the South African Express Act, 2007:

- *"retaining South African Express as a strategic asset would enable the State to preserve its ability to provide frequency of services on lower density routes;*

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- *the State desires to contribute to the expansion of regional air service capability within South Africa and to the African continent and the surrounding islands."*

4.6 Capital expenditure and new route development,

- 4.6.1 All capital expenditure and new route developments shall be supported on the basis of a business plan which shall include a financial motivation (based on net present value, internal rate of return (IRR) and payback period) and other criteria that may be applicable in the route selection.
- 4.6.2 The launch of a new route development shall be preceded by adequate market research, a business and roll-out plan that will ensure that enough support for the new route of South African Airways is developed in a professional and commercial manner. The sunk costs of the new route development should be included in the financial analysis.
- 4.6.3 South African Airways shall develop a strategy for reducing its gearing ratio (including on and off balance sheet debt) to industry norms within 6 years, with no government support.

4.7 Developmental Objectives

4.7.1 Environmental, Health and Safety Issues

South African Airways shall conduct an annual environmental, health and safety audit to identify major areas of financial and operational risk and provide a plan to mitigate such issues in relation to all territories that South African Airways operates in.

4.7.2 Reconstruction and Development Programme

4.7.2.1 The Parties acknowledge that consistent with the Reconstruction and Development Programme, the New Growth Path aims at supporting economic growth of up to 7% per annum and create employment nationally of up to 5 million in the next 10 year

4.7.2.2 The Parties intend that, to the extent that is possible South African Airways shall:

- Contribute to this objective through its core businesses and by leveraging the economic benefits from associated activities;
- Contribute in terms of its core businesses; including continuous provision of efficient transport and logistics services, security of supply and creation of an environment conducive to reducing the cost of logistics and improving the competitiveness of South African economy; and

4.7.2.3 Building on the gains of the South African Airways Restructuring Plan, the intended investment programme for the next five years presents opportunities for job creation, poverty alleviation, economic development and shared growth of the country. Any other social service obligation that SAA is to undertake requires an amendment of this Shareholder Compact with the Minister as stated in paragraph 4.3.3 of the Protocol.

4.7.3 Skills development and job creation

There is a growing local and international demand for scarce commercial operational, managerial and technical skills.

The Parties agree that South African Airways shall develop a strategy to acquire, develop and retain the appropriate critical skills and support the development of training for the airline industry within the South African context.

The Parties also agree that South African Airways, as a State Owned Enterprise, will support the Government's New Growth Path policy objectives without compromising its financial sustainability objectives. Particular areas of focus should be on job creation in specialist and technical areas.

4.7.4 Broad Based Black Economic Empowerment

The Parties acknowledge that Broad Based Black Economic Empowerment and business development is part of South African Airways' strategy. The Parties agree that South African Airways will endeavour to meet the targets agreed in the BEE Charter for the Transport or Aviation Sector.

5 KEY PERFORMANCE INDICATORS AND EVALUATION

The Parties agree that:

- 5.1 South African Airways' performance in relation to the strategic objectives, save for the strategic objective in the Key Performance Indicators (KPI) as set out in format, content and coverage of KPIs in Appendix A; shall be guided by and be compliant with relevant government policies and legislation and be determined by the Board.
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6 PERIOD OF COMPACT

- 6.1 The Parties agree that the Shareholder's Compact shall remain in full force and effect until it is renegotiated, provided that the Parties shall at least once per annum consider renegotiation of the Shareholder's Compact. Renegotiation of the Shareholder's Compact may be initiated by any one of the Parties through written notice including the reasons for such renegotiation. Upon receipt of such notice by the other Party, the Shareholder's Representative and the Board shall commence negotiation.
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event that they are amended, the Parties shall take into account initiatives already commenced on the basis of such principles.

7 ROLE AND RESPONSIBILITIES OF THE BOARD

7.1 The Board is hereby mandated to control, supervise, manage and run the business in accordance with the strategic intent, corporate plan, the Memorandum and Articles of Association and any applicable legislation. The directors shall exercise their skill and fiduciary duties to pursue the objectives and targets as set out in the corporate plan.

7.2 The Board:


- 7.2.1 commits itself to the achievement of the vision, mission, goals and objectives, and strategic intent of South African Airways, and always to act within its powers and in the best interests of the company;
- 7.2.2 accepts its responsibility to direct and guide the business in a proper manner in keeping with good governance practices, the PFMA, South African Airways' Memorandum and Articles of Association, the Shareholder's Compact, and in particular, in compliance with the materiality framework agreed to with the Shareholder, which is annexed hereto as appendix B; and
- 7.2.3 recognises the importance of speedy decision-making, and will use its best endeavours to prevent undue delays with regard to critical decisions.

8 UNDERTAKINGS BY THE SHAREHOLDER

The Shareholder undertakes for the duration of this Shareholder's Compact:

- 8.1 not to introduce new or additional requirements during the validity of this compact other than through a process of consultation with the company. Reasonable notice shall be provided before the introduction of any new or additional requirements. In addition, the Parties shall, in such event, amend the key performance indicators and targets, failing which no new requirements or targets may be introduced;

- 8.2 not to delay the proper constitution of the Board, and to fill vacancies that arise promptly, and;
- 8.3 not to cause South African Airways or any of its directors to breach any legal duty.

Signed: 

MALUSI GIGABA
SHAREHOLDER'S REPRESENTATIVE
DATE: 2011/11/09

Signed: 

CHERYL CAROLUS
CHAIRPERSON
DATE:

ANNEXURE A

KEY PERFORMANCE INDICATORS

The SAA Group's Net retained Earnings will be the primary KPI as a consequence of SAA's current financial position. Other support KPI's (as outlined below) have also been formulated to meet this primary objective and are consistent with SAA's latest Corporate Plan. Meeting the primary KPI may over the forthcoming year result in SAA having to adjust to unforeseen market conditions (such as a highly volatile fuel price and/or unfavourable ZAR/USD exchange rate), which require forfeiting (to a limited extent) delivery against the support KPIs.

1. Profitability

Achieve sustainable profitable operation in all market segments namely: domestic; regional; and (long-haul) international markets. In order to achieve the below Net Retained Earnings KPI, SAA has committed to the following structural and operational improvements over the next 3 years:

- Generating net profits of 5% of revenue in Voyager (before consolidation) by 31 March 2012.
- Generating net profits in Cargo of at least 8% of revenue per annum.
- Generating net profits of 5% of revenue per annum to make Air Chefs sustainable.
- Restructuring SAA Technical (SAAT) and improving profitability to at least 4.5% of turnover per annum towards establishing SAAT as a multi-airline focused African maintenance hub by 31 March 2012.
- Continuous implementing and monitoring of the effectiveness of the revised hedging policy.
- Obtain suitable Airbus Financing, without government support, at least six months prior to the first aircraft delivery.
- Progressively reduce the need for government support (including Air Traffic Liability) by at least 10% per annum.
- Continuous year on year retained earnings improvement towards an 83% debt: equity ratio by 31 March 2013.



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Key Performance Indicators

SAA GROUP	SAA Group		TARGET RANGE	
	Key Performance Area	Key Performance Indicator	Unit of Measure	Key Performance Area
Main KPI	Net Retained Earnings		R million	
		SAA Group 2011/12	460	SAA Group 2012/13
		SAA Group 2012/13	520	SAA Group 2012/13
			985	

Support KPI's		SAA Group		TARGET RANGE	
Key Performance Area	Key Performance Indicator	Unit of Measure	Key Performance Area	Unit of Measure	Key Performance Area
Revenue, Traffic and Costs - SAA (excludes Mango)					
1.1	Cargo belly revenue per ATK	Cents per tonne kilometres	118	129	132
1.2	Average passenger fare (network average - revenue passengers)	ZAR	1,969	2,078	2,228
Financial Value Creation					
2.1	PBT to total income	Percentage	2.18%	2.31%	3.25%
2.2	RASK (total income)	ZAR cents	75.2	78.9	81.8
2.3	RASK (total income) excluding fuel levy	ZAR cents	62.4	65.6	68.5
2.4	RASK (only pax revenue & fuel levy)	ZAR cents	77.6	81.9	85.0
2.5	CASK (total operating expenses + leases + depreciation)	ZAR cents	73.0	76.7	79.1
2.6	CASK (excluding fuel costs)	ZAR cents	50.6	53.5	55.5
2.7	Return on total assets	Percentage	3.24%	3.72%	5.59%
2.8	Free cash to Air Traffic Liability (estimated R1b free)	Percentage	53.73%	55.36%	71.67%
Operational Efficiency					
3.1	Passenger load factor (network average - revenue passengers)	Percentage	78%	81%	82%
3.2	Cargo load factor (tonnes carried / ATK)	Percentage	73%	74%	75%
3.3	Daily block hours per aircraft	Hours	11.3	12.1	12.73
3.4	On-time Performance (within 15 minutes of scheduled departure)	Percentage	85%	86%	87%

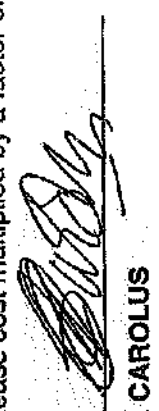
Human Capital		Number	4,896,873	4,896,873	4,896,873
		Percentage	3.0%	3.0%	3.0%
4.1	ASKs per employee				
4.2	Training spend				
Skills Development		Target (2011/12)			
Key Performance Area	Learners in system (2010/11)	Unit of Measure	Total learners in the system in 2011/12	New Learners to be enrolled in 2011/12	
5.1	Increased learners trained in scarce and critical skills *2010-2011 Current Learners in the system: • Engineering trainees: 0 • Technician trainees: 0 • Artisan trainees: SAA 178 Partnership intake 40 • Sector specific trainees: Cadet Pilots 4 Internships 9	No of Learners (scarce and critical skills)	• Engineering trainees: 0 • Technician trainees: 0 • Artisan trainees: SAA 283 Partnership intake 40 • Sector specific trainees: Cadet Pilots 47	• Engineering trainees: 0 • Technician trainees: 0 • Artisan trainees: 105 • Sector specific trainees: Cadet Pilots 47 Internship 86	
Safety and Maintenance Efficiency		Number	135	120	110
6.1	Operational Reportable Incidents				

2. Gearing

Report actual and forward (for a 3 year period) gearing ratio on a quarterly basis including on and off balance sheet debt and commitments (off balance sheet commitments to be calculated on the basis of the annual lease cost multiplied by a factor of 7.5).

Signed: 
MALUSI GIGABA
 SHAREHOLDER'S REPRESENTATIVE

DATE: 2011/11/09

Signed: 
CHERYL CAROLUS
 CHAIRPERSON

DATE:



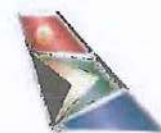
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public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA



SOUTH AFRICAN AIRWAYS

A STAR ALLIANCE MEMBER 

SHAREHOLDER'S COMPACT

Entered into by and between

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA,
HEREIN REPRESENTED BY THE MINISTER OF PUBLIC
ENTERPRISES**

("The Shareholder Representative")

and

**SOUTH AFRICAN AIRWAYS (SOC) LIMITED
("SAA")**

2013/2014

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1. INTERPRETATION

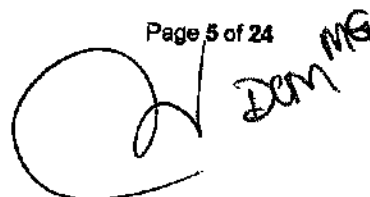
- 1.1 "Board" means the Board of Directors of South African Airways;
- 1.2 "Companies Act" means the Companies Act, No 71 of 2008, as amended and includes any regulation issued there under;
- 1.3 "Corporate Plan" means the 3 (three) year plan of South African Airways as contemplated in the PFMA read with the Treasury Regulations, which plan must include (but is not limited to):
 - 1.3.1 Strategic objectives and outcomes identified and agreed on by the Shareholder in the Shareholder's Compact;
 - 1.3.2 Strategic and business initiatives as embodied in business function Strategies;
 - 1.3.3 Key performance measures and indicators for assessing South African Airways performance in delivering the desired outcomes and objectives;
 - 1.3.4 A risk management plan;
 - 1.3.5 A fraud prevention plan;
 - 1.3.6 The Significance and Materiality Framework;
 - 1.3.7 A financial plan addressing:
 - 1.3.7.1 Quarterly projections for the first year of revenue, expenditure and borrowings against annual targets;
 - 1.3.7.2 Asset and liability management;
 - 1.3.7.3 Cash flow projections;
 - 1.3.7.4 Capital expenditure programmes;

- 1.3.7.5 Dividend policies; and
- 1.3.7.6 Such other issues as may be required in terms of the PFMA from time to time;
- 1.4 "Enabling legislation" means the South African Airways Act, 2007;
- 1.5 "Group" means South African Airways and its subsidiaries;
- 1.6 "King Code" means the King Code III on Corporate Governance in South Africa;
- 1.7 Memorandum of Incorporation (MOI)" means the document, as amended from time to time that sets out rights, duties and responsibilities of the Shareholder, directors and others within and in relation to South African Airways, as defined in the Companies Act;
- 1.8 "Minister" means the Minister of Public Enterprises in his/her capacity as the representative of Government and the executive authority (as defined in the PFMA);
- 1.9 "Significance and Materiality Framework" means the Significance and Materiality Framework applicable to South African Airways, as developed under the Treasury Regulations;
- 1.10 "Long-Term Turnaround Strategy" or "LTTS" refers to the delivery orientated strategy developed and completed in 2013 with the aim realigning the operations of the Group to Shareholder expectation;
- 1.11 "Parties" means the Shareholder and South African Airways collectively;
- 1.12 "Period of the Shareholder's Compact" means 01 April to 31 March;
- 1.13 "PFMA" means the Public Finance Management Act, No. 1 of 1999, as amended;

- 1.14 "Prescribed officer" means a person who, in respect of the Group;
- 1.14.1 exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the Group; or
- 1.14.2 regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business and activities of the Group;
- 1.15 "Protocol" means the Protocol on Corporate Governance in the Public Sector (1997);
- 1.16 "Shareholder's Compact" means this agreement including the appendices hereto;
- 1.17 "Shareholder" means the Government of the Republic of South Africa as represented by the Shareholder Representative and his/her successor in law;
- 1.18 "Shareholder Representative" means the Minister of Public Enterprises;
- 1.19 "Subsidiary" means a subsidiary of South African Airways or any of its subsidiaries over which it exercises ownership control as defined in terms of the PFMA; and
- 1.20 "South African Airways" means South African Airways SOC Limited, a state-owned company registered and incorporated as such in terms of the company laws of the Republic of South Africa with the registration number 1997/022444/30, and having its registered head office at Airways Park, Jones Road, Oliver Tambo Airport, Kempton Park, 1627.

2. RECORDAL

- 2.1 It is recorded that:




- 2.1.1 The Parties are in terms of the Treasury Regulations, required to annually conclude a Shareholder's Compact to record the mandated key performance measures and indicators to be attained by South African Airways as agreed between the Board and the Shareholder Representative;
- 2.1.2 South African Airways faces inherent operational challenges within the aviation industry such as;
- 2.1.2.1 The weakening of the Rand against foreign currencies;
 - 2.1.2.2 Increased fuel costs;
 - 2.1.2.3 Increased competition in the regional market; and
 - 2.1.2.4 Infrastructure; and
 - 2.1.2.5 Restrictive Bilateral Air Services Agreements.
- 2.1.3 In assessing the performance of South African Airways, the Shareholder Representative will take into account the challenges listed in sub-clause 2.1.2; and
- 2.1.4 Notwithstanding the provisions of sub-clause 2.1.3, South African Airways is not exempted from performing its obligation and/or meeting the agreed key performance indicators as stipulated in Annexures A to F of the Shareholder's Compact.

3. FUNCTION OF SHAREHOLDER'S COMPACT


- 3.1 The Parties are bound by the principles of the Protocol, the South African Airways Act, 2007, the Companies Act, the PFMA and applicable Treasury Regulations in endeavouring to enhance effective business performance and to maintain good corporate governance, including the principles contained in the King Report, within South African Airways. The Parties hereby agree on the purpose, terms and conditions set out below.

- 3.2 The purpose of this Shareholder's Compact is to confirm:
- 3.2.1 South African Airways' Mandate as recorded in Paragraph 5 of the Shareholder's Compact;
 - 3.2.2 The short-term goals of the Group which will be aligned with its medium and long term goals.
 - 3.2.3 The Strategic Objectives that will be attained by South African Airways during the period of the Shareholder's Compact; and
 - 3.2.4 The Key Performance Areas and Indicators to measure South African Airways' performance during the period of the Shareholder's Compact.
- 3.3 As part of broader legislative compliance, South African Airways shall at all times adhere to the legal framework providing for the prevention and combating of fraud and corruption, particularly within the context of procuring goods and services, competing for and executing contracts.

4. FOUNDING DOCUMENTS AND GOVERNANCE FRAMEWORK

- 4.1 The Board shall ensure that:
- 4.1.1 South African Airways and its subsidiaries comply with the provisions of the Companies Act, the Protocol, the Memorandum of Incorporation, the Significance and Materiality Framework, the PFMA and any other relevant legislation, regulations and guidelines issued by the National Treasury and/or the Shareholder Representative.

- 4.1.2 South African Airways reviews the Mandate of the Group and all its subsidiaries, to amend, where required, the enabling legislation, MOI and agreements with its service providers to ensure that agreed principles and enduring rights and obligations regarding the relationship between the South African Airways and the subsidiaries are incorporated and that the enabling legislation and MOI comply with the provisions of the Companies Act, the PFMA, applicable Treasury Regulations and the Mandate.
- 4.1.3 South African Airways concludes Shareholder's Compacts with all its subsidiaries that comply with the spirit, rights, obligations and undertakings stipulated in the Shareholder's Compact.
- 4.1.4 South African Airways concludes performance agreements with all its significant subsidiaries that are comprehensively and consistently compliant with the spirit, rights, obligations and undertakings stipulated in the Shareholder's Compact.
- 4.2 The Parties agree that the Founding Documents of South African Airways shall be reviewed and amended, where required, to ensure that agreed principles and enduring rights and obligations regarding the relationship between the Parties are incorporated and that the Founding documents are comprehensively consistent with the provisions of the Companies Act, PFMA, King III code of Corporate Governance, National Treasury Regulations and SAA Act of 1997.
- 4.3 If there is any conflict or inconsistency among the provisions of the Founding Documents or the Statement of Strategic Intent or the Corporate Plan and this Shareholder's Compact, the Parties shall take whatever steps that may be necessary to amend the documents to remove the conflict or inconsistency. For so long as the conflict exists on Founding Documents, the MOI shall take precedence and thereafter the Statement of Strategic Intent.



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5. MANDATE

- 5.1 The Parties acknowledge that the Memorandum of Incorporation defines the main object of South African Airways as follows: "to engage in passenger airline and cargo transport services, air charter services and other related services."
- 5.2 The Parties note the preamble of South African Airways Act, 2007, contains the following:
- *"Since the Republic's rapidly developing economy requires reliable and extensive air transport capacity";*
 - *"And since the State desires to promote air links with the Republic's main business, trading and tourism markets within the African continent and internationally"; and*
 - *"And since the State has a developmental orientation and regards South African Airways as a national carrier and strategic asset that would enable the State to preserve its ability to contribute to key domestic, intra-regional and international air linkages, the State intends to retain it as a national carrier."*
- 5.3 The Parties agree that the vision of South African Airways shall be 'Africa's leading world class airline with a focus primarily on Africa.' In so doing, South African Airways may serve a wide range of routes by focusing on strategic and profitable routes into each of the major continents, linking to key cities and their airports.

6. STRATEGIC OBJECTIVES

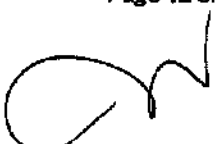
- 6.1 The Parties agree that South African Airways has the following strategic objectives:

- 6.1.1 Support South Africa's national development agenda;
 - 6.1.2 Achieve and maintain commercial sustainability;
 - 6.1.3 Provide excellent customer service;
 - 6.1.4 Achieve consistent, efficient and effective operations; and
 - 6.1.5 Foster performance excellence.
- 6.2 Support South Africa's national development agenda:**
- 6.2.1 The parties acknowledge South African Airways already makes considerable contribution to South African Gross Domestic Product, job creation and skills development.
 - 6.2.2 South African Airways will endeavour to support South Africa's national development agenda and will engage the Shareholder in all instances where support would compromise the ability to achieve its Mandate or any other Strategic Objective.
 - 6.2.3 The Parties also acknowledge that skills development, job creation (not necessarily direct jobs in South African Airways, but through the catalytic demand effect of its operations e.g. supply chain) and Broad-Based Black Economic Empowerment are important.
- 6.3 South African Airways shall:**
- 6.3.1 deliver commercially sustainable world class air passenger and aviation services in South Africa, the African continent and South Africa's tourism and trading partners.

- 6.3.2 endeavour to identify loss making routes on the network. SAA will quantify the benefits derived from those routes to the broader SA economy. This will allow Government to assess the strategic nature of the routes and whether the routes should be continued to be operated with Government's financial assistance.
- 6.3.3 assist in lowering the cost of doing business in South Africa by providing affordable air services within acceptable benchmark standards.
- 6.3.4 build capacity and scale to ensure Johannesburg remains a major aviation hub.
- 6.3.5 support key South African state policies (such as National Development Plan, New Growth Path, Airlift Strategy and the Integrated and Sub-Sector B-BBEE Charters of Transport) through its strategic and tactical decisions.
- 6.4 **To achieve and maintain commercial sustainability**
- 6.4.1 The Parties recognise that, although South African Airways is a state-owned company, it operates in a highly competitive global market and must be commercially agile to compete with its major domestic, regional and international competitors, many of whom are state-owned.
- 6.4.2 South African Airways shall:
- 6.4.2.1 deliver its financial targets, as defined in its Long-Term Turnaround Strategy and revalidated annually in its Corporate Plan. These are agreed in the KPIs in Annexure A, with the primary focus on achieving a net operating profit and a positive net cash flow from operating activities.
- 6.4.2.2 optimise the deployment of the Group's assets in domestic, regional (African) and other international markets to ensure alignment with market demand. Maintain a disciplined approach to route network

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- profitability and ensure tolerance levels for losses in specific routes are vigorously managed with high Board visibility.
- 6.4.2.3 support new route developments on the basis of a Business Plan which shall include a financial motivation (based on net present value, internal rate of return (IRR) and payback period) and other criteria that may be applicable in the route.
- 6.4.2.4 develop and effectively manage alliance (including code-share and interline) relationships with other airlines, to broaden South African Airways and Mango's network reach. These relationships must operate within the ambit of appropriate competition rules.
- 6.4.2.5 co-operate on network and schedule (including through code-share agreements), with both Mango and South African Express Airways to ensure aircraft gauge, capacity and airline brand alignment with market demand is optimised to maximise route profitability and return on capital. These relationships must operate within the ambit of appropriate competition rules.
- 6.4.2.6 continue to strengthen its time to market with new business initiatives, to optimise passenger and cargo revenue.
- 6.4.2.7 maintain suitable and commercially acceptable pricing models and revenue management approaches for its passenger and cargo operations.
- 6.4.2.8 continue to compress operating costs, including: improving aircraft utilisation; optimising schedules; reducing cost of sales; reducing lost baggage claims; improving crew deployment; and reducing fuel usage.
- 6.4.2.9 effect appropriate investments in technology and business process improvement.
- 6.4.2.10 implement strategies that cost effectively manage risks in relation to: foreign exchange; fuel; and interest rates and ensure the Board has full visibility of the implementation and performance of these strategies.



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6.4.3 The Shareholder shall:

- 6.4.3.1 ensure that requests for PFMA approval, required under the Materiality and Significance Framework are considered and a response provided within the 30 day period agreed in the Memorandum of Understanding.
- 6.4.3.2 support South African Airways in engaging other National Government Ministries, to ensure that the aviation and related state policy framework is optimised for the achievement of South African Airways' Mandate and Strategic Objectives.

6.5 Provide excellent customer service

South African Airways shall deliver its core value of being customer focused, by striving to meet the unique needs of its customers by tailoring each interaction to suit their needs.

6.6 Achieve consistent, efficient & effective operations

Apart from delivering its core safety value, South African Airways shall strive to improve operational efficiency and effectiveness and ensure this is delivered consistently.

6.7 Foster performance excellence

South African Airways shall foster performance excellence across the organisation, with a particular focus on operational (e.g. on-time) performance and performance management. A culture of accountability needs to be fostered, driven by performance management contracts that are fully aligned to delivery of the Mandate and Strategic Objectives and the Key Performance Indicators as agreed annually with the Shareholder.

7. STRATEGIC INITIATIVES

The Parties agree and undertake to support the strategic initiatives as listed in Annexures A through to F.

In addition, South African Airways is required to report on a quarterly basis on the LTTS with respect to the following:

- a) Full cooperation and participation of South African Airways to assist the Department in the review of the implementation of the LTTS;
- b) Full participation of South African Airways with respect to the "whole of state" aviation policy and further review of related aviation policies and regulations; and
- c) South African Airways to ensure migration from yearly to quarterly data for all indicators, where appropriate.

8. KEY PERFORMANCE INDICATORS AND EVALUATION

The Parties agree that:

- 8.1 South African Airways' performance in relation to the Strategic Objectives, save for the Strategic Objective in the Key Performance Indicators (KPIs) as set out in format, content and coverage of KPIs in the Annexures; shall be guided by and be compliant with relevant government policies and legislation and be determined by the Board.
- 8.2 South African Airways shall report, in accordance with prescribed guidelines, the Key Performance Indicators of, and results achieved by, the Group and its subsidiaries on the Corporate Plan through Monthly Management Accounts, Quarterly and Annual Reports and associated reviews.

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- 8.3 there should be alignment between the achievement of Strategic Objectives, KPIs as specified in this document and the payment of incentives to prescribed officers. Performance incentives proposed by the board to prescribed officers will be discussed with the Minister prior to approval.

9. SCOPE OF PERFORMANCE MONITORING

The compact is to ensure that the Minister and South African Airways are in a position to agree on policy, financial and operational targets, which will be reflected in the Long Term Turnaround Strategy, Shareholder Compact and the South African Airways Corporate Plan.

- 9.1 **Policy Targets:** these give a more detailed specification to Government's national policy objectives for the sector as well as specific promotion of socio economic development. These targets would be expressed as much as possible in guaranteeable and measurable terms, including the terms of developmental outcomes.
- 9.2 **Financial Targets:** these seek to ensure that the South African Airways Board and management assure long-term financial sustainability without potentially resorting to additional government support.
- 9.3 **Operational Targets:** these seek to ensure that South African Airways meets relevant targets taking into account interests of stakeholders and other measures which the Board considers appropriate to best protect and grow the value of the State's investment in South African Airways.
- 9.4 **Compliance Targets:** these include internal processes to promote greater transparency and accountability within South African Airways and include (but are not necessarily limited to) the following compliance areas:

- 9.4.1 **Legal and regulatory compliance:** pursuing South African Airways' commitment to the industry regulations and protocols; and the sustainable management and development of human resources utilised in the business. These targets will be reflected in the South African Airways' Corporate Plan and may be included in the Shareholder's Compact;
- 9.4.2 **Corporate governance:** attaining a high standard of good corporate governance which must ensure, among other things, establishing the procedures for dealing with any potential conflict of interest which may arise between the responsibilities of a director and/or senior executive directors and any other personal interests which he/she may have relating to the business of South African Airways.
- 9.4.3 **Stakeholder relations:** building and maintaining relationships through partnering with key Government departments/agencies, industry players and fostering relationships with organised labour and the communities in which South African Airways operates.
- 9.5 **Risk Management Targets:** systems in place to manage risks on all contracted programmes, internal and financial controls through an up to date risk register and risk mitigation plan, amongst others.

10. SIGNIFICANCE AND MATERIALITY FRAMEWORK

In accordance with the provisions of Treasury Regulations 28.3, the framework for the levels of significance and materiality is set out in Annexure E.

11. PERIOD OF SHAREHOLDER'S COMPACT

- 11.1 The Parties agree that the Shareholder's Compact shall remain in full force and effect for the Period of the Shareholder's Compact.

- 11.2 It is hereby recorded that the terms of and/or the principles agreed in the Shareholder's Compact, although subject to review annually, set out matters that are applicable beyond the Period of the Shareholder's Compact.

12. ROLE AND RESPONSIBILITIES OF THE BOARD

- 12.1 The Board is hereby mandated to manage and direct South African Airways in accordance with the Strategic Intent Statement, Corporate Plan, the Memorandum of Incorporation and any applicable legislation. The directors shall exercise their skill and fiduciary duties to pursue the objectives and targets as set out in the Corporate Plan.

12.2 The Board:

- 12.2.1 commits itself to the achievement of the Vision, Mission and Strategic Objectives, and strategic intent of South African Airways, and always to act within its powers and in the best interests of the Group;
- 12.2.2 accepts its responsibility to direct and guide the business in a proper manner in keeping with good governance practices, the PFMA, South African Airways' Memorandum of Incorporation, the Shareholder's Compact, and in particular, in compliance with the Significance and Materiality Framework agreed to with the Shareholder, which is annexed hereto as appendix E; and
- 12.2.3 recognises the importance of speedy decision-making, and will use its best endeavours to prevent undue delays with regard to critical decisions.

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13. NO AMENDMENT

- 13.1 This Shareholder's Compact constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any other discussions, agreements and/or understanding regarding the subject matter hereof.
- 13.2 It is recorded, acknowledged and agreed that no Party shall be entitled to amend the key performance areas and/or key performance indicators as detailed in Annexures "A" through to "F" of this Shareholder's Compact.

Signed: 

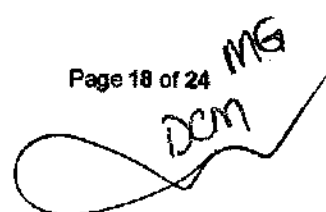
MALUSI GIGABA
SHAREHOLDER REPRESENTATIVE

DATE: 29/01/2014

Signed: 

DUDU MYENI
CHAIRPERSON

DATE: 29/01/2014



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ANNEXURE A: ^(a) STRATEGIC DELIVERABLES

Key Performance Area	Description of deliverables	Delivery timeline
Cost reduction/containment	Provide a Board approved plan for the reduction of costs in this year <ul style="list-style-type: none"> - Review the major cost drivers i.e. ageing assets and human capital - What is being done to address these costs and other costs 	31 March 2014
LTTS Implementation Plan	Review and update the implementation plan	31 March 2014
Africa Regional expansion	Africa Expansion Plan that will include positioning SAA as an MRO of choice	31 March 2014
Research and Development Excellence	Develop a project plan for the SAA Flight Academy to be launched in 2017	31 March 2014
Network and fleet optimization	Approved Network Plan for SAA Group	31 January 2014
	Approved Fleet Plan for SAA Group	28 February 2014
Commercial Agreements	Remediation plan of most loss-making (SAA) regional & international routes	31 March 2014
	Review of Airlink Alliance Agreement (Provide Report)	31 March 2014
Financial sustainability	Provide a Report on the formation of alliances and code share agreements	31 March 2014
	Funding Plan Submission	31 March 2014
	Equity Injection - Submit a comprehensive business case	28 February 2014
	A long-term Employment Equity Plan for n the SAA Group	31 March 2014
	A plan addressing the generally below - optimal human resource deployment within the Group	31 March 2014
Human capital	A project plan to address the onerous collective agreements with SAPA	31 March 2014
	Performance Management: Provide Balanced Scorecards of the executive management linked to the LTTS	31 March 2014

^(a) The Board shall report on the progress of strategic deliverables on a quarterly basis and within the Annual report

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ANNEXURE B: OPERATIONAL PERFORMANCE (SAA Group)

Key Performance Area	Key Performance Indicator	Unit of measure	2013/14
Financial Value Creation	Net Operating Profit/(Loss)	R'm	(R1 473m)
	Net retained earnings movement	R'm	(R2 873m)
	Net cash flow from operating activities	R'm	(R38.2m)
	Cargo revenue as a percentage of operating revenue	%	5%
Customer service	Customer Satisfaction	%	84%
Fleet utilization	Daily block hours	hours	10.6
On-time performance	On-time performance	%	86%
Safety	Implementation of Safety Management System as per CAA and ICAO requirements	%	35%

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ANNEXURE C: SOCIAL IMPACT

Key Performance Area	Key Performance Indicator	Unit of measure	2013/14
Skills Development	Training Spend	%	3% of personnel costs
	Cadets	Number	30
	Technician trainees	Number	100
	Sector specific interns	Number	60
Education/Aviation awareness / Other CSI initiatives	Total CSI budget	R'm	R 5.4 m

ANNEXURE D: ECONOMIC IMPACT

Key Performance Area	Key Performance Indicator	Unit of measure	2013/14
Procurement	% Spend locally	%	70%
	Spend on B-BBEE compliant companies as a % of local eligible spend	%	80%
	% of local spend on Black owned entities	%	5%



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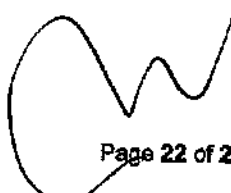
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ANNEXURE E: SIGNIFICANCE AND MATERIALITY FRAMEWORK

The Significance and Materiality Framework is attached.

ANNEXURE F: ENERGY EFFICIENCY

1. Reduction in energy usage (kW) of 30% due to energy efficiency measures such as replacement of lighting, heating and other measures by 31 December 2013.


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OTHER REPORTABLE ITEMS

In addition to the above KPI's, the turnaround of the business will be monitored by various other measures not listed as KPIs in the Shareholder's Compact but included in the reporting guidelines for SAA to the Department. These measures are the following:

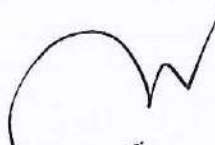
Reporting item	
1.	RASK (Revenue per available seat kilometer)
2.	CASK (Cost per available seat kilometer)
3.	CASK excluding fuel
4.	Cargo belly revenue per Available Tonne Kilometers
5.	Average passenger fare
6.	Passenger load factor
7.	Cargo load factor
8.	Procurement - % of local spend on Black youth owned entities
9.	Procurement - % of local spend on Black women owned entities
10.	Procurement - % of local spend on Black SMME entities
11.	CSI Education - Boeing/SAA project in partnership with DPE
12.	CSI Education - Mandela container libraries
13.	CSI aviation awareness - Road shows to schools Convert container and buy a horse to pull it Educational tours to SAA
14.	CSI other - Emergency medical relief tickets
15.	CSI other - Youth job creation initiatives
16.	A progress report to address the legacy collective agreements/contracts (South African Pilots Association - SAPA).
17.	Hedging losses (Profits/Losses incurred by SAA as a result of its hedging activities)
18.	Finance charges (Cost of funds borrowed by SAA)

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KPI INTERPRETATION

The following table gives a brief summary of the KPIs included above:

KPI	Definition
Net operating profit / (loss)	A measure of operating profit that excludes interest and income tax expenses.
Net retained earnings movement	Total net profit after deduction of interest and taxation expenses
Net cash flow from operating activities	Cash resulting from on-going, regular business activities. Does not include long-term capital or investment costs
Cargo revenue as a percentage of operating revenue	A measure of cargo's contribution to SAA Group revenue.
Customer satisfaction	The weighted average satisfaction level of standard and premium customers across a number of key touch points
Daily block hours	Block hours for a given flight is the time from the moment the aircraft pushes back from the departure gate until the moment the aircraft arrives at the arrival gate
On-time performance	A Flight which operates within 15 minutes of its schedule
CAA and ICAO requirements	Civil Aviation Authority and International Civil Aviation Organisation
Training spend %	Training expense as a % of the total labour bill (total cost to company)
Cadets	Trainee-pilots to accelerate direct entry into SAA (at flight school and on internship)
Technician trainees	Trainee artisans
Sector specific interns	Includes workplace experience for graduates and in-service training for under-graduates
% Spend locally	Procurement spent within on suppliers within South Africa
Spend on B-BBEE compliant companies as a % of local eligible spend	Compliant with the Broad-Based Black Economic Empowerment Act
% of local spend on Black owned entities	Entities owned by a black person / people as defined
CSI	Corporate Social Investment



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I, the undersigned,

TIRHANI REGINALD TSHABALALA

do hereby make oath and say:

THE DEPONENT

1. I am:

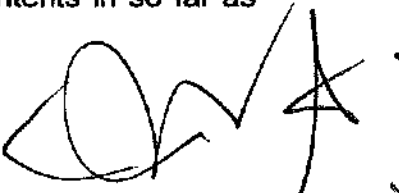
1.1 an adult male duly enrolled attorney, conveyancer and notary public of the High Court of South Africa, practicing for my own account under the name and style, Tshabalala Attorneys, Notaries and Conveyancers at 1st Floor, 3 Gwen Lane, Sandton, Johannesburg; and

1.2 the attorney of record for Mr Gigaba, the Former Minister of the Department of Public Enterprises.

2. The contents of this statement are within my personal knowledge and belief, save where the context indicates otherwise and are both true and correct.

CONFIRMATION

3. I have read the affidavit of Mr Gigaba submitted to the Commission and to which this affidavit is annexed and confirm the contents in so far as reference is made to me.



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 DEPONENT

THUS SIGNED AND SWORN TO before me at PRETORIA on
 this the 12th day of MAY 2020 by the deponent who
 acknowledges that the deponent knows and understands the contents of this
 affidavit; that it is the truth to the best of the deponent's knowledge and belief
 and that the deponent has no objection to taking the prescribed oath and
 regards the same as binding on the deponent's conscience and the
 administration of the oath complied with the Regulations contained in
 Government Gazette No. R1258 of 21 July 1972 as amended.



 COMMISSIONER OF OATHS

EX OFFICIO:
 FULL NAMES:
 PHYSICAL ADDRESS:
 DESIGNATION:

SELEKA MARTIN HOPANE
 COMMISSIONER OF OATHS / KOMMISSARIS VAN EDE
 HOPANE ATTORNEYS / HOPANE PROKUREURS
 2 EULOPHIA CORNER / 38 GENERAL VAN RYNEVELD ST
 PERSEQUOR PARK, PRETORIA, 0020
 PRACTISING ATTORNEY / PRAKTYSERENDE PROKUREUR
 Republic of South Africa / Republiek van Suid-Afrika