

Republic of South Africa

Companies Act, 2008

MEMORANDUM OF INCORPORATION FOR A PRIVATE COMPANY

Name of company: Jabisan 04 (RF) Proprietary Limited

Registration No.: 2014/021122/07

This MOI was adopted by Special Resolution passed on _____2021, a copy of which was Filed together with the notice of amendment ("**Notice of Amendment**") in substitution for the existing memorandum of incorporation of the Company. This MOI takes effect (in terms of section 16(9)(b)(i)) of the Companies Act on the Date of Filing Hereof (as defined in clause 1.11 hereof).

CONTENTS

1.	INTERPRETATION	1
2.	CALCULATION OF BUSINESS DAYS	3
3.	PRIVATE COMPANY	3
4.	POWERS AND CAPACITY OF THE COMPANY	3
5.	RESTRICTIVE CONDITIONS	4
6.	AMENDMENTS TO THE MOI	6
7.	THE MAKING OF RULES	6
8.	AUTHORISED SECURITIES AND ALLOTMENT AND ISSUE	6
9.	AUTHORITY TO ISSUE SECURITIES	7
10.	PRE EMPTION ON ISSUE OF SHARES	7
11.	TRANSFER OF SECURITIES	7
12.	TRANSMISSION OF SECURITIES BY OPERATION OF LAW	8
13.	CERTIFICATES EVIDENCING ISSUED SECURITIES AND SECURITIES REGISTER	8
14.	PROHIBITION REGARDING BENEFICIAL INTERESTS	11
15.	FINANCIAL YEAR	11
16.	ACCOUNTING RECORDS AND FINANCIAL STATEMENTS	11
17.	SHAREHOLDERS MEETINGS AND ROUND ROBIN RESOLUTIONS	11
18.	RECORD DATE	17
19.	ELECTION OF DIRECTORS, ALTERNATE DIRECTORS AND VACANCIES	18
20.	CESSATION OF OFFICE AS DIRECTOR OR ALTERNATE DIRECTOR	19
21.	REMUNERATION OF DIRECTORS AND ALTERNATE DIRECTORS	19
22.	FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND THEIR RELATED AND INTER-RELATED PARTIES	19
23.	GENERAL POWERS AND DUTIES OF DIRECTORS	20
24.	BOARD COMMITTEES	20
25.	PERSONAL FINANCIAL INTERESTS OF DIRECTORS	20
26.	PROCEEDINGS OF DIRECTORS	21
27.	PRESCRIBED OFFICERS	23
28.	APPOINTMENT OF SECRETARY	23
29.	DISTRIBUTIONS	24
30.	LOSS OF DOCUMENTS	24
31.	NOTICES	24
32.	INDEMNITY	26
33.	TERMS ATTACHING TO THE BFC2 PREFERENCE SHARES	27
34.	LEGAL PROCEEDINGS	109
	Annexure A – Definitions in the Companies Act	110
	Annexure B – Ineligible / disqualified in terms of section 69(7) and (8) of the Companies Act read with Regulation 39(3)	116
	Annexure C – Prescribed Methods of Delivery in the Regulations	117

1. INTERPRETATION

In this MOI -

1.1 terms that are defined in –

1.1.1 the Companies Act (which are contained in Annexure A for easy reference but which do not form part of this MOI for purposes of interpretation) but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act; and

1.1.2 clause 33 shall bear the meanings ascribed thereto therein when used in this MOI;

1.2 unless the context otherwise requires –

1.2.1 "**Business**" means the business conducted by the Company, being its operation as an investment holding company;

1.2.2 "**Companies Act**" means the Companies Act, 2008 (Act No. 71 of 2008) and shall include the provisions of the Companies Act, 1973 (Act No. 61 of 1973) that have not been repealed;

1.2.3 "**Company**" means Jabisan 04 (RF) Proprietary Limited (Registration No. 2014/021122/07), a special purpose, private, limited liability company duly registered and incorporated in accordance with the company laws of South Africa;

1.2.4 "**Deliver**" means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 31 (*Notices*) of the MOI and the Act;

1.2.5 "**Electronic Address**" means in regard to Electronic Communication, any email address furnished to the Company by the Holder;

1.2.6 "**Holders**" means registered holders of Securities issued by the Company;

1.2.7 "**Ineligible or Disqualified**" means ineligible or disqualified as contemplated in the Companies Act (a list of which is in Annexure B) shall apply not only to Directors but also to members of Board committees and Prescribed Officers;

1.2.8 "**MOI**" means this memorandum of incorporation, as amended and replaced from time to time;

1.2.9 "**Regulations**" means regulations published pursuant to the Companies Act from time to time;

1.2.10 "**Restrictive Conditions**" means the restrictive conditions set out in clause 5 of this MOI;

1.2.11 "**Round Robin Resolution**" means:

1.2.11.1 in respect of a resolution of Shareholders or any class thereof, a resolution adopted in accordance with section 60 of the Companies Act, including any signature thereof by counterparts, and includes any other resolution of Shareholders (or any class thereof) which may from time to time be permitted under the Companies Act to be adopted other than by way of a meeting;

- 1.2.11.2 in respect of a resolution of the Directors, a resolution passed in accordance with section 74 of the Companies Act; ;
- 1.2.12 "**South Africa**" means the Republic of South Africa;
- 1.2.13 "**Writing/Written**" includes Electronic Communication but, as regards any Holder entitled to vote, only to the extent that such Holder has notified the Company of an Electronic Address;
- 1.3 references to Holders represented by proxy shall include Holders entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.4 references to Holders entitled to vote Present at a Meeting or acting in person shall include juristic persons represented by duly authorised representative or acting in the manner prescribed in the Companies Act;
- 1.5 all references to "**section/s**" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.6 the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.7 words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);
- 1.8 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;
- 1.9 save during the period contemplated in item 4(4) of Schedule 5 of the Companies Act when this MOI shall prevail, if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act;
- 1.10 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;
- 1.11 any reference in this MOI to "**Date of Filing Hereof**" shall be read as meaning a reference to the date on which the Notice of Amendment adopting this MOI is Filed;
- 1.12 any reference to an enactment is to that enactment as at the Date of Filing Hereof and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment;
- 1.13 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this MOI;
- 1.14 the use of any expression in this MOI covering a process available under South African law such as a winding up (without limitation *eiusdem generis*) shall, if any of the Parties to this MOI is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
- 1.15 if any Shareholder ceases to be a Shareholder and thus ceases formally to be a "**Party**", such cessation shall not in any way limit or derogate from any rights or obligations of such

Shareholder in terms of this MOI which expressly, or must of necessity, continue to operate in favour of or bind such Shareholder even after such cessation;

- 1.16 any reference in this MOI to a Party shall include a reference to that Party's assigns expressly permitted under this MOI and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be;
- 1.17 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;
- 1.18 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;
- 1.19 the words "**other**" and "**otherwise**" shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible; and
- 1.20 a "*Finance Document*", "*Transaction Document*" or any other agreement or instrument is a reference to that Finance Document, Transaction Document or other agreement or instrument as amended, restated, supplemented, extended, novated or replaced from time to time.

2. CALCULATION OF BUSINESS DAYS

When a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by -

- 2.1 excluding the day on which the first such event occurs;
- 2.2 including the day on or by which the second event is to occur; and
- 2.3 excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 2.1 and 2.2 respectively.

3. PRIVATE COMPANY

The Company -

- 3.1 is a Profit Company;
- 3.2 is prohibited from offering any of its shares or other Securities to the public; and
- 3.3 has restrictions on the transferability of its shares or other Securities as set out in clause 11, and accordingly it is a Private Company.

4. POWERS AND CAPACITY OF THE COMPANY

The Company has the powers and capacity of an Individual subject to the Restrictive Conditions set out in clause 5 (*Restrictive Conditions*). Notwithstanding the omission from this MOI of any provision to that effect, the Company may do anything which the Companies Act empowers a company to do if so authorised by its MOI, subject to clause 5.

5. RESTRICTIVE CONDITIONS

- 5.1 Unless otherwise defined in this clause below, capitalised terms used in this clause shall bear the meaning ascribed to them in clause 33.1 to this MOI.
- 5.2 Notwithstanding anything contained in this MOI, until the date on which all the BFC2 Preference Shares have been redeemed and the Company has irrevocably and unconditionally discharged all its obligations, whether contingent or actual, to the BFC2 Preference Shareholders under the BFC2 Preference Share Subscription Agreement, no:
- 5.2.1 (a) agreement, or undertaking, whether directly or indirectly given, issued or entered into by the Company (including, without limitation, any deed or instrument, arrangement, undertaking or understanding whatsoever), (b) indebtedness incurred including, without limitation any indebtedness incurred by the Company entering into or becoming a party to any guarantee, suretyship or indemnity, (c) assent to or any participation in any amendment to its issued or authorised share capital or issue of any new shares in its capital or (d) assumption of any obligation of whatsoever nature and howsoever arising, shall be of any force and effect unless reduced to writing and signed by the Company and the Preference Share Agent (or by the Company and MTN if a Preference Share Agent is no longer appointed), save for –
- 5.2.1.1 the entry into, the performance of its obligations and enforcement of its rights under and in terms of (a) the Transaction Documents to which the Company is a party and/or which may be required to render same unconditional; and (b) all documents, waivers, agreements, instruments or certificates required to be delivered or performed by the Company under and in terms of the Transaction Documents to which it is a party and implementation thereof, whether in order to render the same unconditional, or otherwise; and (c) any amendments or reinstatement of any of the Transaction Documents to which the Company is a party;
- 5.2.1.2 the incurral of costs and expenses in the ordinary course and scope of its business and which are necessary for the maintenance of its corporate existence (including, without limitation, any audit and/or legal fees) and which are permitted by the Transaction Documents to which the Company is a party;
- 5.2.1.3 the exercise of any voting and/or other rights attaching to the BIC2 Preference Shares;
- 5.2.1.4 issuing of shares in its share capital to the Ordinary Shareholders;
- 5.2.1.5 the appointment of auditors, legal advisors, agents and/or other professional advisors;
- 5.2.1.6 the borrowing of BFC2 Subordinated Loans;
- 5.2.1.7 the opening of the BFC2 Implementation Accounts, the BFC2 Subscription Accounts, the BFC2 Top-Up Loan Account and the BFC2 Collection Account; and
- 5.2.1.8 rendering tax and other statutory returns.
- 5.2.2 For the avoidance of doubt, nothing in clause 5.2 above shall preclude or be construed to limit the Company's capacity and authority to negotiate and enter

into the Transaction Documents to which it is a party, and from time to time to amend, novate, reinstate and cancel such Transaction Documents to which it is a party in accordance with their terms.

5.2.3 Any amendment, variation, modification, supplement or deletion of clause 5.2 shall not be effective unless reduced to writing and executed by the Company and the Preference Share Agent (or by the Company and MTN if a Preference Share Agent is no longer appointed).

5.3 The authority of the Board and the Directors shall be limited as follows:

5.3.1 neither the Board nor any Director shall have authority in respect of any matter which is prohibited by the limitations, restrictions and qualifications provided for in clause 5.2; and

5.3.2 neither the Board nor any Director shall, without the prior written consent of Preference Shareholders have the authority to:

5.3.2.1 conduct or engage in any business or activity other than as contemplated by clause 5.2;

5.3.2.2 save as permitted or required or contemplated in terms of the agreements referred to in clause 5.2:

5.3.2.2.1 incur any liabilities;

5.3.2.2.2 have or acquire any subsidiary;

5.3.2.2.3 acquire any shares in any company;

5.3.2.2.4 engage any employees;

5.3.2.2.5 occupy any premises;

5.3.2.2.6 commence or engage in any dissolution, liquidation, business rescue, consolidation or merger proceedings in relation to the Company;

5.3.2.2.7 sell or otherwise dispose of its assets or undertaking;

5.3.2.2.8 grant any rights, whether real or personal, of any nature whatsoever, whether registered or unregistered, over any of its assets to any third party whatsoever;

5.3.2.2.9 approve the registration of transfer of shares in its issued stated capital;

5.3.2.2.10 issue and shares in its authorised stated share capital to any third party whatsoever; or

5.3.2.3 exercise any authority contemplated in section 36(2)(b) or section 36(3) of the Companies Act.

5.4 The Ordinary Shareholders may not ratify any action by the Company or any Director which is inconsistent with any limitation, restriction or qualification on the purposes, powers and activities of the Company or any limitation of the authority of the Directors to perform any act on behalf of the Company, as contemplated in clause 5.2 and clause 5.3 (as applicable)

without the prior written consent of the Preference Share Agent (or the Company and MTN if a Preference Share Agent is no longer appointed).

- 5.5 To the extent that there is any conflict between the provisions of this clause 5 and any other clause in this MOI, the provisions of this clause 5 shall prevail.

6. AMENDMENTS TO THE MOI

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, but subject to the Restrictive Conditions.

7. THE MAKING OF RULES

The Board is not authorised to make, amend or repeal any Rules relating to the governance of the Company.

8. AUTHORISED SECURITIES AND ALLOTMENT AND ISSUE

- 8.1 The Company is authorised to issue the following numbers and classes of shares (which includes shares already issued at any time) -

8.1.1 3 500 000 (three million five hundred thousand) ordinary no par value Shares which shall have one Voting Right in respect of every matter that may be decided by voting, shall rank after all other classes of Shares in the Company which do not rank *pari passu* with the ordinary Shares as regards Distributions and returns of capital, but save as aforesaid shall be entitled to receive the net assets of the Company upon its liquidation; and

8.1.2 3 200 000 (three million two hundred thousand) preference shares having the preferences, rights, limitations and other terms as set out in clause 33 of this MOI.

- 8.2 Save as provided for above, the Board shall not have the power to amend the authorisation (including increasing or decreasing the number) or classification of shares (including determining rights and preferences) as contemplated in section 36(2)(b) or 36(3) of the Companies Act.

- 8.3 Save for the Securities referred to in clause 8.1.2, all or any of the rights, privileges or conditions for the time being attached to any class of Securities of the Company may (unless otherwise provided by the terms of issue of the Securities of that class) whether or not the Company is being wound up, be varied in any manner with the consent in Writing of the Holders of not less than $\frac{3}{4}$ (three fourths) of the issued Securities of that class, or with the sanction of an Ordinary Resolution with the support of more than 75% (seventy-five percent) of the Voting Rights exercised on the Ordinary Resolution at a separate meeting of the Holders of that class. The provisions of this MOI relating to Shareholders Meetings shall *mutatis mutandis* apply to any such separate meeting.

- 8.4 Notwithstanding any implication in this MOI to the contrary, the Board may not authorise any financial assistance by the Company in connection with the subscription for or purchase of its Securities or those of a Related or Inter-Related company without complying with section 44(3) of the Companies Act.

9. AUTHORITY TO ISSUE SECURITIES

9.1 The Board shall have the power to issue authorised shares, other than shares contemplated in section 41(1) and (3) of the Companies Act and options relating to such shares and secured and unsecured debt instruments as contemplated in section 43 of the Companies Act but not with any special privileges contemplated in section 43 of the Companies Act. The Board may not issue capitalisation shares or offer a cash payment in lieu of awarding a capitalisation share in accordance with section 47 of the Companies Act.

9.2 As regards the issue of -

9.2.1 shares contemplated in sections 41(1) and (3) of the Companies Act, the Directors shall not have the power to allot or issue same without the prior written approval of MTN and the Preference Share Agent (or the Company and MTN if a Preference Share Agent is no longer appointed);

9.2.2 secured and unsecured debt instruments to which special privileges are to be granted as contemplated in section 43(3) of the Companies Act, the Directors shall not have the power to allot or issue same without the prior written approval of MTN and the Preference Share Agent (or the Company and MTN if a Preference Share Agent is no longer appointed);

9.2.3 other Securities, the Directors shall not have the power to allot or issue same without the prior written approval of MTN and the Preference Share Agent (or the Company and MTN if a Preference Share Agent is no longer appointed).

Any such approval may be in the form of a general authority to the Directors, whether conditional or unconditional, to allot or issue any such Securities contemplated in clauses 9.2.1 and 9.2.3 in their discretion, or in the form of a specific authority in respect of any particular allotment or issue of such Securities contemplated in clauses 9.2.1 and 9.2.3. Such authority shall endure for the period provided in the Special Resolution in question but may be revoked by Special Resolution, at any time.

10. PRE EMPTION ON ISSUE OF SHARES

The pre-emptive right in section 39(2) of the Companies Act shall not apply in respect of the issue of any classes of Securities.

11. TRANSFER OF SECURITIES

11.1 The Directors may decline to register the transfer of any Securities unless:

11.1.1 the instrument of transfer is accompanied by the certificate of the Securities to which it relates, and such other evidence as the Directors may reasonably require to show the right of the transfer or to make the transfer; and

11.1.2 any securities transfer tax thereon has been paid.

11.2 The Company must enter in its Securities Register every transfer of any certificated Securities, including in the entry -

11.2.1 the name and address of the transferee;

11.2.2 the description of the Securities, or interest transferred;

- 11.2.3 the date of the transfer; and
 - 11.2.4 the value of any Consideration still to be received by the Company on each share or interest, in the case of a transfer of Securities the subscription price for which has not been fully paid,
- provided that such entry may only be made only if the transfer -
- 11.2.5 is evidenced by a proper instrument of transfer that has been delivered to the company; or
 - 11.2.6 was effected by operation of law.

12. TRANSMISSION OF SECURITIES BY OPERATION OF LAW

Subject to the laws relating to securities transfer tax upon or in respect of the estates of deceased Persons and the administration of the estates of insolvent and deceased Persons and Persons under disability -

- 12.1 the parent or guardian or curator of any Holder who is a minor;
- 12.2 the trustee of an insolvent Holder;
- 12.3 the liquidator of a body corporate;
- 12.4 the tutor or curator of a Holder under disability;
- 12.5 the executor or administrator of the estate of a deceased Holder; or
- 12.6 any other Person becoming entitled to any Securities held by a Holder by any lawful means other than transfer in terms of this MOI,

shall, upon production of such evidence as may be required by the Directors, have the right either -

- 12.7 to exercise the same rights and to receive the same Distributions and other advantages to which he would be entitled if he were the Holder of the Securities registered in the name of the Holder concerned; or
- 12.8 herself/himself/itself to be registered as the Holder in respect of those Securities and to make such transfer of those Securities as the Holder concerned could have made, but the Directors shall have the same right to decline or suspend registration as they would have had in the case of a transfer of the Securities by the Holder.

13. CERTIFICATES EVIDENCING ISSUED SECURITIES AND SECURITIES REGISTER

- 13.1 The Securities issued by the Company shall be evidenced by certificates.
- 13.2 As soon as practicable after -
 - 13.2.1 issuing any Securities the Company must enter or cause to be entered in its Securities Register, in respect of every class of Securities evidenced by certificates that it has issued -
 - 13.2.1.1 the names and addresses and identity numbers of the Persons to whom the Securities were issued;
 - 13.2.1.2 those Persons' Electronic Addresses who have furnished them;

- 13.2.1.3 the number and class of Securities issued to each of them, the date of issue, distinguishing numbers and the Consideration;
- 13.2.1.4 the total number of Securities of a class held by any Person;
- 13.2.1.5 the date on which any such Securities were transferred by the Holder or by operation of law to another Person or re acquired by or surrendered to the Company;
- 13.2.1.6 the number of, and prescribed circumstances relating to, any Securities -
 - 13.2.1.6.1 that have been placed in trust as contemplated in section (40)(6)(d) of the Companies Act by reason of not having been fully paid for; or
 - 13.2.1.6.2 whose transfer has been restricted;
- 13.2.1.7 as regards debt instruments as contemplated in section 43 of the Companies Act -
 - 13.2.1.7.1 the number of those Securities still in issue;
 - 13.2.1.7.2 the names and addresses of the Holders of the Securities in the Securities and any holders of a Beneficial Interest in the Securities;
- 13.2.2 the re-acquisition or surrender of any Securities -
 - 13.2.2.1 the date on which the Securities were re-acquired or surrendered to the Company;
 - 13.2.2.2 the distinguishing number or numbers of any certificated Securities re-acquired or surrendered to the Company;
 - 13.2.2.3 the Consideration for which the Securities were re-acquired by, or surrendered to the Company; and
 - 13.2.2.4 the name of the Person from or by whom the Securities were re-acquired or surrendered, as the case may be;
- 13.2.3 as regards transfers of Securities, the information contemplated in clause 13.2.1, any reference to issue being read as a reference to transfer;
- 13.2.4 as regards disclosures of Beneficial Interests a record of all such disclosures, including the following information for any Securities in respect of which a disclosure was made -
 - 13.2.4.1 the name and unique identifying number of the Holder of the Securities;
 - 13.2.4.2 the number, class and the distinguishing numbers of the Securities; and

- 13.2.4.3 for each Person who holds a Beneficial Interest in the Securities, the extent of the Person's Interest in the Securities, together with that Person's -
 - 13.2.4.3.1 name and unique identity number;
 - 13.2.4.3.2 business, residential or postal address;
 - 13.2.4.3.3 Electronic Address if available;
- 13.2.5 any other information prescribed in terms of the Companies Act from time to time.
- 13.3 Securities certificates shall be issued in such manner and form as the Directors shall from time to time prescribe save that they must -
 - 13.3.1 state on the face -
 - 13.3.1.1 the name of the Company;
 - 13.3.1.2 the name of the Person to whom the Securities were issued;
 - 13.3.1.3 the number and class of shares and the designation of the series, if any, evidenced by that certificate; and
 - 13.3.1.4 any restriction on the transfer of the Securities evidenced by that certificate;
 - 13.3.2 must be signed by 2 (two) Persons authorised by the Board by autographic, mechanical or electronic means.
- 13.4 Each class of shares, and any other Securities, must be distinguished by an appropriate numbering system.
- 13.5 Each Holder shall be entitled to 1 (one) certificate for all the Securities of a particular class registered in her/his/its name, or to several certificates, each for a part of such Securities.
- 13.6 A certificate for Securities registered in the names of 2 (two) or more Persons shall be Delivered to the Person first named in the Securities Register and Delivery of a certificate for Securities to that Person shall be a sufficient Delivery to all joint Holders.
- 13.7 If a certificate for Securities is defaced, lost or destroyed, it may be renewed, on such terms, as to evidence and indemnity and payment of such fee as the Directors think fit, and (in case of defacement) on delivery of the old certificate to the Company.
- 13.8 A Person -
 - 13.8.1 acquires the rights associated with any particular Securities of the Company when that Person's name is entered in the Company's Securities Register as a Person to whom those Securities have been issued or transferred; and
 - 13.8.2 ceases to have the rights associated with any particular Securities of the Company when the transfer to another Person, re acquisition by the Company, or surrender to the Company of those Securities has been entered in the Company's Securities Register.

14. PROHIBITION REGARDING BENEFICIAL INTERESTS

The Company shall not permit Securities to be voted upon by the holder of a Beneficial Interest who does not hold a proxy form from the Holder notwithstanding any agreement permitting the holder of the Beneficial Interest to vote the Securities to the exclusion of the Holder between the Holder and the holder of the Beneficial interest.

15. FINANCIAL YEAR

The financial year of the Company is the last day of December.

16. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

16.1 The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.

16.2 The Company shall prepare its Financial Statements in accordance with the International Financial Reporting Standards or, if it qualifies in terms of the Regulations, in accordance with the South African Statements of Generally Accepted Accounting Practise as adopted from time to time by the Accounting Practices Board or its successor body, or, if it qualifies in terms of the Regulations, in accordance with such standard as it shall determine, and shall have its annual Financial Statements audited in accordance with the International Standard for Review Engagements, as issued from time to time by a Registered Auditor or a member in good standing of a professional body that has been accredited in terms of section 33 of the Auditing Professions Act, unless it qualifies to use an accounting officer.

16.3 The Directors shall from time to time determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions, subject to the requirements of the Regulations, the documents which the Holders and holders of Beneficial Interests are entitled to inspect and take copies of (being the MOI, amendments to the MOI, any records in respect of Directors, Accounting Records required to be maintained by the Company, notices and minutes of Shareholders Meetings, communications generally to Holders and holders of Beneficial Interests, the Securities Register), shall be open to inspection by Holders and holders of Beneficial Interests, not being Directors.

16.4 Apart from the Holders and holders of Beneficial Interests, no other Person shall be entitled to inspect any of the documents of the Company (other than the Securities Register) unless expressly authorised by the Directors or by Ordinary Resolution.

16.5 The Company shall notify the Holders and holders of Beneficial Interests of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If a Holder or holders of Beneficial Interests demands a copy of the annual Financial Statements, the Company shall make same available to such Holder or holders of Beneficial Interests free of charge.

17. SHAREHOLDERS MEETINGS AND ROUND ROBIN RESOLUTIONS

17.1 The Company shall, as determined by the Board, either -

17.1.1 hold a Shareholders Meeting in order to consider one or more resolutions; or

17.1.2 as regards such resolution/s that could be voted on at a Shareholders Meeting, instead require them to be dealt with by Round Robin Resolution contemplated in clause 1.2.11.1.

- 17.2 Within 10 (ten) Business Days after a Round Robin Resolution is adopted including conducting an election of Directors, the Company must Deliver a statement describing the results of the vote, consent process, or election to every Holder who was entitled to vote on or consent to the Round Robin Resolution contemplated in clause 1.2.11.1.
- 17.3 A Company must hold a Shareholders Meeting or put the proposed resolution by way of a Round Robin Resolution contemplated in clause 1.2.11.1 -
- 17.3.1 at any time that the Board is required by the Companies Act or the MOI to refer a matter to Holders entitled to vote for decision; and
- 17.3.2 whenever required to fill a vacancy on the Board.
- 17.4 Each resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information / explanatory material to enable a Person who is entitled to vote on the resolution to determine whether to participate in the Shareholders Meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing.
- 17.5 The Board or any Shareholder or, if the Company has no Directors, any single Holder entitled to vote, may, whenever it thinks fit, convene a Shareholders Meeting or put the proposed resolution by way of a Round Robin Resolution. A Shareholders Meeting must be convened or the Board must put the proposed resolution by way of a Round Robin Resolution if one or more Written and signed demands for such a Shareholders Meeting or Round Robin Resolution is/are delivered to the Company, and -
- 17.5.1 each such demand describes the specific purpose for which the Shareholders Meeting is proposed; and
- 17.5.2 in aggregate, demands for substantially the same purpose are made and signed by the Holders at the earliest time specified in any of those demands, of at least 10% (ten percent) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the Shareholders Meeting.
- 17.6 Round Robin Resolutions contemplated in clause 1.2.11.1 will be passed if signed by Persons entitled to exercise sufficient Voting Rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at a properly constituted Shareholders Meeting.
- 17.7 Every Shareholders Meeting shall be held where the Board determines from time to time. The authority of the Company to conduct a Shareholders Meeting entirely by Electronic Communication, or to provide for participation in a Shareholders Meeting by Electronic Communication so long as the Electronic Communication employed ordinarily enables all Persons participating in that Shareholders Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Shareholders Meeting, as set out in section 63(2) of the Companies Act, is not limited or restricted.
- 17.8 The Holder of any Securities in which any Person has a Beneficial Interest must deliver to each such Person -
- 17.8.1 a notice of any Shareholders Meeting of the Company at which those Securities may be voted within 2 (two) Business Days after receiving such a notice from the Company; and
- 17.8.2 a proxy appointment to the extent of that Person's Beneficial Interest, if the Person so demands in compliance with section 56(11) of the Companies Act.

- 17.9 A Shareholders Meeting shall be called by at least 10 (ten) Business Days' notice Delivered by the Company to all Holders entitled to vote or otherwise entitled to receive notice.
- 17.10 The Company may call a Shareholders Meeting with less notice than required by clause 17.8, but such a Shareholders Meeting may proceed only if every Person who is entitled to exercise Voting Rights in respect of any item on the meeting agenda -
- 17.10.1 is Present at the Shareholders Meeting; and
- 17.10.2 votes to waive the required minimum notice of the Shareholders Meeting.
- 17.11 A Holder entitled to vote, who is Present at a Shareholders Meeting -
- 17.11.1 is regarded as having received or waived notice of the Shareholders Meeting if at least the required minimum notice was given;
- 17.11.2 has a right to -
- 17.11.2.1 allege a Material defect in the form of notice for a particular item on the agenda for the Shareholders Meeting; and
- 17.11.2.2 participate in the determination whether to waive the requirements for notice, if at least the required minimum notice was given, or to ratify a defective notice; and
- 17.11.3 except to the extent set out in clause 17.11.2 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholders Meeting.
- 17.12 A notice of a Shareholders Meeting must be in writing, in plain language and must include -
- 17.12.1 the date, time and place for the Meeting, and the Record Date for the Meeting;
- 17.12.2 the general purpose of the Meeting, and any specific purpose contemplated in clause 17.1, if applicable;
- 17.12.3 a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;
- 17.12.4 a reasonably prominent statement that -
- 17.12.4.1 a Holder 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 Holder entitled to vote or give or withhold written consent on behalf of the Holder entitled to vote to a decision by Round Robin Resolution contemplated in clause 1.2.11.1;
- 17.12.4.2 a proxy need not be a Holder;
- 17.12.4.3 a Holder entitled to vote may appoint more than 1 (one) proxy to exercise Voting Rights attached to different Securities held by that Holder entitled to vote in respect of any Shareholders Meeting and may appoint more than 1 (one) proxy to exercise Voting Rights attached to different Securities held by the Holder which entitle her/him/it to vote;

- 17.12.4.4 the proxy may delegate the authority granted to her/him/it as proxy, subject to any restriction in the proxy itself;
 - 17.12.4.5 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;
 - 17.12.4.6 participation in the Shareholders Meeting by Electronic Communication is available, and provide any necessary information to enable Holders 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 Holder entitled to vote or proxy, except to the extent that the Company determines otherwise.
- 17.13 A Shareholders Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 17.14, 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.
- 17.14 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 -
- 17.14.1 any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
 - 17.14.2 the Shareholders Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 17.15 An immaterial 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 any particular Holder to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Shareholders Meeting.
- 17.16 A Person who holds a Beneficial Interest in any Securities may vote in a matter at a Shareholders Meeting, without a proxy only to the extent that -
- 17.16.1 the Beneficial Interest includes the right to vote on the matter; and
 - 17.16.2 the Person's name is on the Company's register of disclosures, if one is required in terms of section 56(7) of the Companies Act, as the holder of a Beneficial Interest.
- 17.17 Business may be transacted at any Shareholders Meeting only while a quorum is present.
- 17.18 The quorum shall be sufficient Persons Present, at the Shareholders Meeting to exercise, in aggregate, at least 75% (seventy five percent) of all of the Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the Shareholders Meeting but if the Company -
- 17.18.1 has more than 2 (two) Persons entitled to vote, the Shareholders Meeting may not begin unless in addition at least 3 (three) Persons entitled to vote are Present;
 - 17.18.2 is a subsidiary of a company, those constituting the quorum must include its holding company Present at the Meeting;
 - 17.18.3 is a wholly owned subsidiary, the quorum shall be its holding company.

- 17.19 If within 30 (thirty) minutes from the time appointed for the Shareholders Meeting to commence, a quorum is not Present, the Shareholders Meeting shall be postponed, without motion, vote or further notice, subject to clause 17.20.2, to the same day 14 (fourteen) days later at the same time and venue, or if that day is not a business day to the next succeeding business day. If at such adjourned meeting a quorum is not Present within 30 (thirty) minutes after the scheduled time for commencement of that meeting there shall be a second adjournment of the meeting to the same day 7 (seven) days later at the same time and venue, or if that day is not a business day to the next succeeding business day, and if at such second adjourned meeting a quorum is not Present within 30 (thirty) minutes after the scheduled time for commencement of that meeting, the Shareholders Present thereat shall constitute a quorum.
- 17.20 A Shareholders Meeting, or the consideration of any matter being debated at the Shareholders Meeting, may be adjourned from time to time without further notice on a motion supported by Persons entitled to exercise, in aggregate, a majority of the Voting Rights -
- 17.20.1 held by all of the Persons who are Present at the Shareholders Meeting at the time; and
- 17.20.2 that are entitled to be exercised on at least one matter remaining on the agenda of the Shareholders Meeting, or on the matter under debate, as the case may be.
- Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be Delivered to Holders), as agreed at the Shareholders Meeting.
- 17.21 A Shareholders Meeting may not be adjourned beyond the earlier of -
- 17.21.1 the date that is 120 (one hundred and twenty) Business Days after the Record Date; or
- 17.21.2 the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.
- 17.22 No further notice is required to be Delivered by the Company of a Shareholders Meeting that is postponed or adjourned as contemplated in clause 17.19, unless the location for the Shareholders Meeting is different from -
- 17.22.1 the location of the postponed or adjourned Shareholders Meeting; or
- 17.22.2 a location announced at the time of adjournment, in the case of an adjourned Shareholders Meeting.
- 17.23 After a quorum has been established for a Shareholders Meeting, or for a matter to be considered at a Shareholders Meeting, the Shareholders Meeting may continue, or the matter may be considered, so long as at least 1 (one) Person with Voting Rights entitled to be exercised at the Shareholders Meeting, or on that matter, is Present at the Shareholders Meeting.
- 17.24 The chairperson, if any, of the Board shall preside as chairperson at every Shareholders Meeting. If there is no such chairperson, or if at any Shareholders Meeting s/he is not Present within 15 (fifteen) minutes after the time appointed for holding the Shareholders Meeting or is unwilling to act as chairperson, the Persons entitled to vote which are Present shall select a Director Present at the Shareholders Meeting, or if no Director be Present at the Shareholders Meeting, or if all the Directors Present decline to take the chair, the Persons entitled to vote shall select one of their number which is Present to be chairperson of the Shareholders Meeting.

17.25 At any Shareholders Meeting a resolution put to the vote shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by -

17.25.1 not less than 5 (five) Persons having the right to vote on that matter; or

17.25.2 a Person/s entitled to exercise not less than 1/10th (one tenth) of the total Voting Rights entitled to vote on that matter,

and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the Shareholders Meeting or adjourned Shareholders Meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such Shareholders Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the Shareholders Meeting, whose decision shall be final and conclusive.

17.26 If a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the Shareholders Meeting at which the poll was demanded. Scrutineers may be appointed by the chairperson to declare the result of the poll, and if appointed their decision, which shall be given by the chairperson of the Shareholders Meeting, shall be deemed to be the resolution of the Shareholders Meeting at which the poll is demanded.

17.27 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the Shareholders Meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.

17.28 A poll shall be taken forthwith. The demand for a poll shall not prevent the continuation of a Shareholders Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.

17.29 Any person entitled to a Share in terms of clause 12 (*Transmission of Securities by Operation of Law*) may vote at any Shareholders Meeting in respect thereof in the same manner as if he were the Holder of that Security: provided that (except where the Directors have previously accepted her/his/its right to vote in respect of that Security) 24 (twenty four) hours at least before the time of holding the Shareholders Meeting at which she/he/it proposes to vote, she/he/it shall have satisfied the Directors that she/he/it is entitled to exercise the right referred to in clause 12 (*Transmission of Securities by Operation of Law*).

17.30 Every resolution of Shareholders is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of more than 50% (fifty per cent) of the Voting Rights exercised on the resolution. A Special Resolution, save to the extent expressly provided in respect of an particular matter contemplated in this MOI, shall require to be adopted with the support of more than 75% (seventy five per cent) of the Voting Rights exercised on the resolution.

17.31 Subject to any rights or restrictions attaching to any class or classes of Securities, on a show of hands a Person entitled to vote Present at the Meeting shall have only 1 (one) vote, irrespective of the number of Securities she/he/it holds or represents. A proxy shall irrespective of the number of holders of Securities entitled to vote she/he/it represents have only 1 (one) vote on a show of hands. On a poll every Person entitled to vote who is Present at the Meeting shall have the number of votes determined in accordance with the Voting Rights associated with the Securities in question.

- 17.32 In the case of joint Holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint Holders; and for this purpose seniority shall be determined by the order in which the names stand in the Register.
- 17.33 No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration but it may be revoked at any time. The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company. The appointment is suspended at any time and to the extent that the Holder entitled to vote chooses to act directly and in person in the exercise of any rights as a Holder entitled to vote.
- 17.34 The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be delivered to the Company immediately prior to the Shareholders Meeting, before the proxy exercises any rights of the Holder entitled to vote at a Shareholders Meeting.
- 17.35 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Securities in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at its Registered Office before the commencement of the Shareholders Meeting or adjourned Shareholders Meeting at which the proxy is used.
- 17.36 Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form. The Company shall supply a generally standard form of proxy upon request by a Holder entitled to vote.
- 17.37 If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as she/he/it sees fit unless the proxy indicates otherwise.

18. RECORD DATE

- 18.1 If the Board determines the Record Date, it may not be earlier than the date on which the Record Date is determined or more than 10 (ten) Business Days before the date on which the event or action, for which the Record Date is being set, is scheduled to occur.
- 18.2 If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is -
- 18.2.1 in the case of a Shareholders Meeting, the latest date by which the Company is required to Deliver to Holders entitled to vote, notice of that Shareholders Meeting; or
 - 18.2.2 the date of the action or event, in any other case.
- 18.3 The Company must publish a notice of a Record Date for any matter by -
- 18.3.1 delivering a copy to each Holder; and/or
 - 18.3.2 posting a conspicuous copy of the notice -
 - 18.3.2.1 at its principal office;

18.3.2.2 on its web-site, if it has one.

19. ELECTION OF DIRECTORS, ALTERNATE DIRECTORS AND VACANCIES

- 19.1 The minimum number of Directors shall be 1 (one), and the maximum number of Directors shall be 6 (six) Directors. Any failure by the Company at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.
- 19.2 Each of the Directors, other than a Director contemplated in clause 19.9, shall be elected (which in the case of a vacancy arising shall take place at Shareholders Meeting or by Round Robin Resolution contemplated in clause 1.2.11.1, held or taken within 6 (six) months of the vacancy arising), in accordance with clause 19.6, to serve indefinitely as a Director.
- 19.3 Should the shareholding of the Company at any time change, each Shareholder shall be entitled to appoint 1 (one) Director for every full 20% (twenty percent) of the issued stated capital of the Company held by such Shareholder.
- 19.4 There are no general qualifications prescribed by the Company for a Person to serve as a Director in addition to the requirements of the Companies Act.
- 19.5 No Director shall be entitled to appoint any Person as an Alternate Director to himself/herself.
- 19.6 In any election of Directors, the election is to be conducted as follows -
- 19.6.1 a series of votes of those entitled to exercise votes regarding such election, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board at that time have been filled; and
- 19.6.2 in each vote to fill a vacancy -
- 19.6.2.1 each Voting Right entitled to be exercised may be exercised once; and
- 19.6.2.2 the vacancy is filled only if a majority of the voting rights exercised support the candidate.
- 19.7 No Person shall be elected as a Director, 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 Director nor act as a Director. A Person placed under probation by a court must not serve as a Director unless the order of court so permits.
- 19.8 No election of a Director shall take effect until he/she has delivered to the Company a Written consent to serve.
- 19.9 Any vacancy occurring on the Board may be filled by the Board, but the Individual so appointed shall cease to hold office at the termination of the first Shareholders Meeting to be held after the appointment of such Individual as a Director unless she/he is elected at such Shareholders Meeting or by Round Robin Resolution contemplated in clause 1.2.11.1.
- 19.10 The continuing Directors (or sole continuing Director) may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to this MOI as a quorum, the continuing Directors or Director may act only for the purpose of summoning a Shareholders Meeting.

19.11 If there is no Director able and willing to act, then any Holder entitled to exercise Voting Rights in the election of a Director may convene a Shareholders Meeting for the purpose of appointing Directors.

20. CESSATION OF OFFICE AS DIRECTOR OR ALTERNATE DIRECTOR

A Director shall cease to hold office as such -

- 20.1 immediately she/he becomes Ineligible or Disqualified or the Board resolves to remove her/him on such basis, and in the latter case the Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);
- 20.2 when she/he dies;
- 20.3 when she/he resigns by Written notice to the Company;
- 20.4 if there are more than 3 (three) Directors in office and if the Board determines that she/he has become 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 time, and the Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);
- 20.5 if she/he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company
- 20.6 if she/he is removed by Special Resolution;
- 20.7 if there are more than 3 (three) Directors in office and if she/he is removed by resolution of the Board for being negligent or derelict in performing the functions of a Director, and the Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);
- 20.8 she/he files a petition for the surrender of her/his estate or an application for an administration order, or if she/he commits an act of insolvency as defined in the insolvency law for the time being in force, or if she/he makes any arrangement or composition with her/his creditors generally; or
- 20.9 she/he is otherwise removed in accordance with any provisions of this MOI.

21. REMUNERATION OF DIRECTORS AND ALTERNATE DIRECTORS

The Directors or members of Board committees shall be entitled to such remuneration for their services as Directors or members of Board Committees as may have been determined by MTN and the Preference Share Agent (or the Company and MTN if a Preference Share Agent is no longer appointed) from time to time. The Company may pay or grant any type of remuneration contemplated in sections 30(6)(b) to (g) of the Companies Act to any executive Directors.

22. FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND THEIR RELATED AND INTER-RELATED PARTIES

The Board's powers to provide direct or indirect financial assistance as contemplated in section 45(2) of the Companies Act are limited by the provisions of clause 5.

23. GENERAL POWERS AND DUTIES OF DIRECTORS

- 23.1 The powers of management granted to the Directors in terms of section 66(1) of the Companies Act are limited in accordance with the provisions of this MOI.
- 23.2 For so long as the Company has only 1 (one) Director and that is permitted to be the minimum number of Directors, that Director may exercise any power or perform any function of the Board at any time, without notice or compliance with any other internal formalities of the Company.

24. BOARD COMMITTEES

- 24.1 The Directors may appoint any number of Board committees and delegate to such committees any authority of the Board. The members of such committees may include Persons who are not Directors as long as they are not Ineligible or Disqualified to be Directors who shall not be able to vote.
- 24.2 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.
- 24.3 There are no general qualifications prescribed by the Company for a Person to serve as a member of a Board committee in addition to the requirements of the Companies Act.
- 24.4 A member of a Board committee shall cease to hold office as such immediately when she/he becomes Ineligible or Disqualified in terms of the Companies Act.
- 24.5 Committees of the Board may consult with or receive advice from any person.
- 24.6 Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

25. PERSONAL FINANCIAL INTERESTS OF DIRECTORS

- 25.1 For the purposes of this clause 25 (*Personal Financial Interests of Directors*), "**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.
- 25.2 If a Person is the only Director, but does not hold all of the Beneficial Interests of all of the issued Securities of the Company, that Person may not -
- 25.2.1 approve or enter into any agreement in which the Person or a Related Person has a Personal Financial Interest; or
- 25.2.2 as a Director, determine any other matter in which the Person or a Related Person has a Personal Financial Interest.
- 25.3 At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board, or Holders (if the circumstances contemplated in clause 25.2 avail), a notice in Writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.

- 25.4 If a Director (whilst the circumstances contemplated in clause 25.2 are not applicable), has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board, or Knows that a Related Person has a Personal Financial Interest in the matter, the Director -
- 25.4.1 must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;
 - 25.4.2 must disclose to the meeting any Material information relating to the matter, and Known to the Director;
 - 25.4.3 may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
 - 25.4.4 if Present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 25.4.2 or 25.4.3;
 - 25.4.5 must not take part in the consideration of the matter, except to the extent contemplated in clauses 25.4.2 or 25.4.3;
 - 25.4.6 while absent from the meeting in terms of this clause 25.4:
 - 25.4.6.1 is to be regarded as being Present at the meeting for the purpose of determining whether sufficient Directors are Present to constitute a quorum; and
 - 25.4.6.2 is not to be regarded as being Present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
 - 25.4.7 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.
- 25.5 If a Director acquires a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, or Knows that a Related Person has acquired a Personal Financial Interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board, or to the Holders entitled to vote (if the Company is a company contemplated in clause 25.2), the nature and extent of that Personal Financial Interest, and the material circumstances relating to the Director or Related Person's acquisition of that Personal Financial Interest.
- 25.6 A decision by the Board, or a transaction or agreement approved by the Board, or by the Holders (if the Company is a company contemplated in clause 25.2), is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if -
- 25.6.1 it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clauses 25; or
 - 25.6.2 despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or so declared by a court.

26. PROCEEDINGS OF DIRECTORS

- 26.1 A Director authorised by the Board -
- 26.1.1 may, at any time, summon a meeting of the Directors; and

- 26.1.2 must call a meeting of the Directors if required to do so by at least 2 (two) Directors.
- 26.2 The Directors may determine what period of notice shall be given of meetings of Directors and may determine the means of giving such notice which may include telephone, telefax or Electronic Communication. It shall be necessary to give notice of a meeting of Directors to all Directors even those for the time being absent from South Africa.
- 26.3 It is intended that meetings of the Directors shall unless agreed by unanimous consent of the Directors, be held not less than 2 (two) times in every financial year.
- 26.4 If all of the Directors -
- 26.4.1 acknowledge actual receipt of the notice;
- 26.4.2 are Present at a meeting of the Directors; or
- 26.4.3 waive notice of the meeting,
- the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.
- 26.5 The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 26.6 Unless otherwise resolved by the Directors, all their meetings shall be held in the city or town where the Company's Registered Office is for the time being situated. A meeting of Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication so long as the Electronic Communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- 26.7 The quorum for a Directors' meeting shall be a majority of the Directors.
- 26.8 If within 30 (thirty) minutes from the time appointed for the Directors' meeting to commence, a quorum is not Present, the Directors' meeting shall be postponed, without motion, vote or further notice, to the same day 14 (fourteen) days later at the same time and venue, or if that day is not a business day to the next succeeding business day. If at such adjourned meeting a quorum is not Present within 30 (thirty) minutes after the scheduled time for commencement of that meeting there shall be a second adjournment of the meeting to the same day 7 (seven) days later at the same time and venue, or if that day is not a business day to the next succeeding business day, and if at such second adjourned meeting a quorum is not Present within 30 (thirty) minutes after the scheduled time for commencement of that meeting, the Directors Present thereat shall constitute a quorum.
- 26.9 The Directors may elect a chairperson of their meetings and determine the period for which she/he is to hold office; but if no such chairperson is elected, or if at any meeting the chairperson is not Present within 15 (fifteen) minutes after the time appointed for holding it, the Directors Present may choose one of their number to be chairperson of the meeting.
- 26.10 Subject to the Companies Act generally, resolutions of Directors of the Company in order to be of force and effect must be approved by a majority of the votes of the Directors Present and voting at a meeting.

- 26.11 Each Director shall have as many votes as the Shareholder nominating such Director would have had at a Shareholders meeting divided by the number of Directors appointed by such Shareholder.
- 26.12 In the case of a tied vote the chairperson may not cast a deciding vote even if the chairperson did not initially have or cast a vote and the matter being voted on fails.
- 26.13 The Company must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes -
- 26.13.1 any declaration given by notice or made by a Director as required by clause 25 (*Personal Financial Interests of Directors*);
- 26.13.2 every resolution adopted by the Board.
- 26.14 Resolutions adopted by the Board -
- 26.14.1 must be dated and sequentially numbered; and
- 26.14.2 are effective as of the date of the resolution, unless the resolution states otherwise.
- 26.15 Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
- 26.16 A Round Robin Resolution of Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted, provided that each Director in South Africa who is able to receive notice, has received notice of the matter to be decided upon.

27. PRESCRIBED OFFICERS

- 27.1 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.
- 27.2 A Prescribed Officer shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Companies Act.

28. APPOINTMENT OF SECRETARY

The Directors may appoint any one or more of their number or any Related company as the secretary of the Company from time to time.

29. DISTRIBUTIONS

29.1 Subject to the provisions of clauses 5 (*Restriction Conditions*) and 33.3 (*BFC2 Priority of Payments*), the Company may -

29.1.1 make Distributions from time to time, provided that -

29.1.1.1 any such Distribution:

29.1.1.1.1 is pursuant to an existing legal obligation of the Company, or a court order; or

29.1.1.1.2 has been authorised by the Board, by resolution;

29.1.1.2 it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed Distribution; and

29.1.1.3 the Board, by resolution, has acknowledged that it has applied the Solvency and Liquidity Test and reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed Distribution;

29.1.2 must before incurring any debt or other obligation for the benefit of any Holders, comply with the requirements in clause 29.1.1,

and must complete any such Distribution fully within 120 (one hundred and twenty) Business Days after the acknowledgement referred to in clause 29.1.1.3, failing which it must again comply with the foregoing.

29.2 No notice of change of address or instructions as to payment given after the determination of a dividend or other Distribution by the Company in terms of clause 29.1.1.1, shall become effective until after the dividend or other Distribution has been made, unless the Board so determines at the time the dividend or other Distribution is approved.

29.3 All unclaimed dividends or other Distributions as contemplated in this clause may be invested or otherwise be made use of by the Directors for the benefit of the Company until claimed, provided that any dividend or other Distribution remaining unclaimed for a period of not less than 3 (three) years from the date on which it became payable may be forfeited by resolution of the Directors for the benefit of the Company.

29.4 The Company shall be entitled at any time to delegate its obligations in respect of unclaimed dividends or other unclaimed Distributions, to any one of the Company's bankers from time to time.

30. LOSS OF DOCUMENTS

The Company shall not be responsible for the loss in transmission of any cheque, warrant, certificate or (without any limitation *eiusdem generis*) other document sent through the post either to the registered address of any Holder or to any other address requested by the Holder.

31. NOTICES

31.1 The Company may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Holder or holder of Beneficial Interests or by sending them prepaid through the post or by transmitting them by Electronic Communication.

- 31.2 Any Holder or holder of Beneficial Interests who/which has furnished an Electronic Address to the Company, by doing so -
- 31.2.1 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
 - 31.2.2 confirms that same can conveniently be printed by the Holder or holder of Beneficial Interests within a reasonable time and at a reasonable cost.
- 31.3 Any notice, document, record or statement or notice of availability of the foregoing sent by the Company shall be deemed to have been delivered on the date and time determined in accordance with Annexure C.
- 31.4 Any notice required to be given by the Company to the Holders, the holder of any Beneficial Interest or holder of a share warrant to bearer, and not expressly prohibiting the provisions of this clause from applying, shall be sufficiently given (subject to giving a notice of availability in accordance with clause 31.1 or 31.2), if given by posting it on the Company's web site until at least the date when the event to which the notice refers occurs.
- 31.5 A Holder or Person entitled to Securities (or his/her executor) shall be bound by every notice in respect of the Securities Delivered to the Person who was, at the date on which that notice was Delivered, shown in the Securities Register or established to the satisfaction of the Directors (as the case may be) as the Holder of or Person entitled to the Securities, notwithstanding that the Holder or Person entitled to Securities may then have been dead or may subsequently have died or have been or become otherwise incapable of acting in respect of the Securities, and notwithstanding any transfer of the Securities was not registered at that date. The Company shall not be bound to enter any Person in the Securities Register as entitled to any Securities until that Person gives the Company an address for entry on the Securities Register.
- 31.6 If joint Holders are registered in respect of any Securities or if more than 1 (one) Person is entitled to Securities, all notices shall be given to the Person named first in the Register in respect of the Securities, and notice so Delivered shall be sufficient notice to all the Holders of or Persons entitled to or otherwise interested in the Securities.
- 31.7 The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with clause 2 (*Calculation of Business Days*)), the provisions of clause 2 (*Calculation of Business Days*) shall also be applied.
- 31.8 The holder of a share warrant to bearer shall not, unless it be otherwise expressed in the warrant, be entitled in respect thereof to notice of any Shareholders Meeting or otherwise.
- 31.9 As regards the signature of an Electronic Communication by a Holder, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Holder indicating in the Electronic Communication that it is the Holder's intention to use the Electronic Communication as the medium to indicate the Holder's approval of the information in, or the Holder's signature of the document in or attached to, the Electronic Communication which contains the name of the Holder sending it in the body of the Electronic Communication.

32. INDEMNITY

- 32.1 For the purposes of this clause 32 (*Indemnity*), "**Director**" includes a former Director, a Prescribed Officer, 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.
- 32.2 The Company may -
- 32.2.1 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;
- 32.2.2 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
- 32.2.3 directly or indirectly indemnify a Director for -
- 32.2.3.1 any liability, other than in respect of -
- 32.2.3.1.1 any liability arising in terms of section 77(3)(a), (b) or (c) of the Companies Act or from wilful misconduct or wilful breach of trust on the part of the Director; or
- 32.2.3.1.2 any fine contemplated in clause 32.2.1;
- 32.2.3.2 any expenses contemplated in clause 32.2.2, irrespective of whether it has advanced those expenses, if the proceedings -
- 32.2.3.2.1 are abandoned or exculpate the Director; or
- 32.2.3.2.2 arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 32.2.3.1.
- 32.3 The Company may purchase insurance to protect -
- 32.3.1 a Director against any liability or expenses contemplated in clause 32.2.2 or 32.2.3; or
- 32.3.2 the Company against any contingency including but not limited to -
- 32.3.2.1 any expenses -
- 32.3.2.1.1 that the Company is permitted to advance in accordance with clause 32.2.2; or
- 32.3.2.1.2 for which the Company is permitted to indemnify a Director in accordance with clause 32.2.3.2; or
- 32.3.3 any liability for which the Company is permitted to indemnify a Director in accordance with clause 32.2.3.1.
- 32.4 The Company is entitled to claim restitution from a Director or of a Related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 75 of the Companies Act.

33. TERMS ATTACHING TO THE BFC2 PREFERENCE SHARES

33.1 Definitions and interpretation

In the event that the day for payment of any amount due or scheduled or required to be paid in terms of this MOI should fall on a day which is not a Business Day, the relevant day for payment shall be the immediately succeeding Business Day unless such day falls in the next calendar month, in which event the date for payment shall be the immediately preceding Business Day, provided that if as a result of such adjustment any redemption of a BFC2 Preference Share will occur before 3 (three) years and 1 (one) day after the Issue Date, then the relevant day for payment shall be the succeeding Business Day (notwithstanding that it falls within the next calendar month).

Any BFC2 Potential Trigger Event, BFC2 Illegality Event, breach, default or similar event is "continuing" if it is has not been remedied or waived.

Unless inconsistent with the context, in clauses 33.2 and 33.3, the words and expressions set forth in this clause 33.1 shall bear the following meanings:

- 33.1.1 "**Account Bank**" means the entity appointed as such from time to time pursuant to the terms of, *inter alia*, the Account Bank and Agency Agreement;
- 33.1.2 "**Account Bank and Agency Agreement**" means the account bank and agency agreement entered into between MTN, BIC2, the Company, the BIC2 Administrator, the BFC2 Administrator, the Preference Share Agent, the Account Bank, the Calculation Agent, the Security Custodian, the Preference Share Custodian and the BFC2 Preference Shareholders, all on the terms and conditions contained therein;
- 33.1.3 "**Acquisition Revised Total Share Cover Ratio**" shall bear the meaning ascribed thereto in clause 33.1.214.2.4;
- 33.1.4 "**Acquisition Revised Volatility Protection Share Cover Ratio**" shall bear the meaning ascribed thereto in clause 33.1.214.2.4;
- 33.1.5 "**Additional Shares**" means, at any time from the Issue Date (2016) until the BIC2 Discharge Date, all such shares as are acquired by BIC2 as a result of any Permitted Action, any capitalisation issue by any company in which BIC2 holds any shares at such time, the issuing of any Letters of Allocation or the making of any other non-cash Distribution of whatsoever nature by any company in which BIC2 holds any shares at such time to its shareholders;
- 33.1.6 "**Adjusted Consolidated EBITDA**" means, in relation to a Measurement Period, Consolidated EBITDA for that period adjusted as follows:
- 33.1.6.1 including the operating profit before interest, tax, depreciation, amortisation and impairment charges (EBITDA) of a member of the MTN Group or attributable to a business or assets acquired during the Measurement Period for that part of the Measurement Period when it was not a member of the MTN Group and/or the business or assets were not owned by a member of the MTN Group; and
- 33.1.6.2 excluding the EBITDA attributable to any member of the MTN Group or to any business or assets sold during that Measurement Period;

- 33.1.6.3 excluding any non-cash IFRS expense incurred by the MTN Group arising out of or in connection with the Transaction; and
- 33.1.6.4 in relation to the Measurement Periods ending 31 December 2016 and 30 June 2017 only, excluding any amount (up to a maximum amount of NGN330 000 000 000,00 (three hundred and thirty billion Naira) included in the relevant audited consolidated financial statements of MTN in relation to any liability to pay the fine imposed on MTN Nigeria Communications Limited by the Nigerian Communications Commission in relation to the timing of the disconnection of MTN Nigeria Communication Limited subscribers, who were disconnected in August and September 2015;
- 33.1.7 "**Affected BFC2 Preference Shareholder**" shall bear the meaning ascribed thereto in clause 33.2.1.6.1;
- 33.1.8 "**Applicable Laws**" means all laws, ordinances, writs, orders, regulations, judgements and orders of any competent court or central bank or governmental agency or authority in any jurisdiction applicable to any Party or any BFC2 Preference Shareholder;
- 33.1.9 "**Asset Revised Total Share Cover Ratio**" shall bear the meaning ascribed thereto in clause 33.1.214.3.2;
- 33.1.10 "**Asset Revised Volatility Protection Share Cover Ratio**" has the meaning ascribed thereto in clause 33.1.214.3.2;
- 33.1.11 "**Asset Unbundling Transaction**" means, at any time from the Issue Date (2016) until the BIC2 Discharge Date, any unbundling or distribution *in specie made* by any company in which BIC2 holds any shares at such time or a similar corporate event in terms of which holders of any shares in any company in which BIC2 holds any shares at such time receive assets other than cash from such company and are not given a cash alternative;
- 33.1.12 "**BBBEE Act**" means the Broad-Based Black Economic Empowerment Act, 53 of 2003, and any regulations and codes of good practice published thereunder (including the Codes);
- 33.1.13 "**BEE Listing**" means, on a date not earlier than the 3rd (third) anniversary of the Effective Date, the admission to listing of the BIC2 Ordinary Shares as BEE Securities (as contemplated and defined in the JSE Listings Requirements) on the BEE Segment (as contemplated and defined in the JSE Listings Requirements) of the main board of the exchange operated by the JSE (or such other licensed exchange as MTN may approve of in its sole and absolute discretion);
- 33.1.14 "**BEE Listing Period**" means the period commencing on the date upon which the BEE Listing takes place (if applicable) and ending on the earlier of (i) the last day of the BIC2 Empowerment Compliance Period or (ii) the date on which the BEE Listing terminates for any reason;
- 33.1.15 "**BEE Securities**" has the meaning given to such term in the JSE Listings Requirements from time to time;
- 33.1.16 "**BEE Segment**" has the meaning given to such term in the JSE Listings Requirements from time to time;

- 33.1.17 "**BFC2 Additional Dividend**" means, in respect of any BFC2 Preference Share, a BFC2 Preference Dividend defined in clause 33.2.1.6.1.1;
- 33.1.18 "**BFC2 Adjustment Event**" has the meaning specified in clause 33.2.1.6.1;
- 33.1.19 "**BFC2 Administrator**" means the entity appointed as such from time to time pursuant to the terms of the Account Bank and Agency Agreement;
- 33.1.20 "**BFC2 Accumulated Preference Dividends**" means, in respect of any BFC2 Preference Share, all or any part of the BFC2 Scheduled Preference Dividend accrued in respect of such BFC2 Preference Share during such BFC2 Dividend Period which is not paid in full by the last day of that BFC2 Dividend Period but which is accumulated in accordance with, and subject to the terms of, clause 33.2.1.1.3 below;
- 33.1.21 "**BFC2 Arrear Dividends**" means, in respect of any BFC2 Preference Share, all BFC2 Preference Dividends which were required or scheduled to have been declared on a BFC2 Dividend Date in respect of such BFC2 Preference Share but which have not been so declared on the applicable BFC2 Dividend Date (and for the avoidance of doubt excludes any BFC2 Accumulated Preference Dividends which BFC2 is deemed to have elected, in accordance with the provisions of clause 33.2.1.1.3 below, to accumulate and which accordingly were not required or scheduled to have been declared on a BFC2 Scheduled Preference Dividend Date);
- 33.1.22 "**BFC2 Collection Account**" means the bank account maintained by the Company with the Account Bank from time to time into which all cash Distributions and other payments whatsoever from time to time received by the Company from BIC2 will be paid;
- 33.1.23 "**BFC2 Default Rate**" means 200 (two hundred) basis points above the BFC2 Dividend Rate;
- 33.1.24 "**BFC2 Discharge Date**" means the later of:
- 33.1.24.1 the date on which the BFC2 Preference Shares have been fully, finally and irrevocably redeemed in accordance with the provisions of this MOI; and
- 33.1.24.2 the BIC2 Discharge Date;
- 33.1.25 "**BFC2 Dividend Date**" means, in respect of any BFC2 Preference Share, as applicable -
- 33.1.25.1 in respect of each BFC2 Scheduled Preference Dividend, each BFC2 Scheduled Preference Dividend Date;
- 33.1.25.2 in respect of each BFC2 Accumulated Preference Dividend, the first BFC2 Scheduled Preference Dividend Date to occur after the BFC2 Dividend Period in respect of which the BFC2 Accumulated Preference Dividend was accumulated;
- 33.1.25.3 in respect of BFC2 Additional Dividends only, the earlier of:
- 33.1.25.3.1 the date indicated in any Increase Notice for the declaration and payment of a BFC2 Additional Dividend; and

- 33.1.25.3.2 any BFC2 Priority of Payments Date which occurs after the date of the Increase Notice, to the extent funds are available in accordance with the applicable BFC2 Priority of Payments;
- 33.1.25.4 in respect of any BFC2 Arrear Dividend and any BFC2 Unpaid Dividend, each BFC2 Priority of Payments Date; and
- 33.1.25.5 in respect of all BFC2 Preference Dividends, the BFC2 Redemption Date of such BFC2 Preference Share;
- 33.1.26 **"BFC2 Dividend Period"** means, in respect of each BFC2 Preference Share, each period commencing on (and including) the previous BFC2 Scheduled Preference Dividend Date and ending on (but excluding) the subsequent BFC2 Scheduled Preference Dividend Date, provided that -
- 33.1.26.1 the first BFC2 Dividend Period shall be the period from (and including) the Issue Date of such BFC2 Preference Share until (but excluding) the first BFC2 Scheduled Preference Dividend Date occurring after that Issue Date;
- 33.1.26.2 the last BFC2 Dividend Period in respect of such BFC2 Preference Share shall be the period from and including the BFC2 Scheduled Preference Dividend Date immediately preceding the BFC2 Redemption Date of such BFC2 Preference Share until (but excluding) the BFC2 Redemption Date of such BFC2 Preference Share;
- 33.1.27 **"BFC2 Dividend Rate"** means the BFC2 Dividend Rate Percentage multiplied by the Prime Rate, expressed as a simple rate of interest (compounded on each BFC2 Scheduled Preference Dividend Date), subject to any adjustments pursuant to clause 33.2.1.6;
- 33.1.28 **"BFC2 Dividend Rate Percentage"** means:
- 33.1.28.1 up to 30 September 2021 and, if the Refinancing is not implemented on 30 September 2021 in accordance with the provisions of the Refinancing Agreement, on and from 30 September 2021, a rate of 75% (seventy five per cent); or
- 33.1.28.2 if the Refinancing is implemented on 30 September 2021 in accordance with the provisions of the Refinancing Agreement, on and with effect from 30 September 2021, a rate of 72.5% (seventy two point five per cent) ;
- 33.1.29 **"BFC2 Early Redemption Notice"** has the meaning specified in clause 33.2.3.2;
- 33.1.30 **"BFC2 Enforcement Action"** means:
- 33.1.30.1 the acceleration of any BFC2 Subordinated Claim or any declaration that any BFC2 Subordinated Claim is prematurely due and payable or payable on demand;
- 33.1.30.2 the making of any claim on the Company in respect of or arising from any BFC2 Subordinated Claim, including the giving of instructions to the Company in relation to the taking of any steps to enforce or require the enforcement of any BFC2 Subordinated Claim (including

- the taking of any steps which are required to convert security interests into real security);
- 33.1.30.3 the making of any demand against the Company in relation to or in respect of any BFC2 Subordinated Claim;
- 33.1.30.4 the exercise of any right of set-off against the Company in respect of any BFC2 Subordinated Claim;
- 33.1.30.5 the suing for, commencing or joining of any legal or arbitration proceedings against the Company to recover or enforce any BFC2 Subordinated Claim;
- 33.1.30.6 the entering into of any composition, assignment or arrangement with the Company in respect of the BFC2 Subordinated Claims or any of them;
- 33.1.30.7 the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator, business rescue practitioner or similar officer) in relation to the winding up, dissolution, bankruptcy, administration, or reorganisation of the Company or taking any steps to place the Company under supervision for business rescue proceedings or any suspension of payments or moratorium of any indebtedness of the Company, or any analogous procedure or step in any jurisdiction; and/or
- 33.1.30.8 voting to amend, approve or reject a proposed business rescue plan in relation to such business rescue proceedings in respect of the Company in accordance with the provisions of section 152 of the Companies Act, proposing the development of an alternative business rescue plan in the manner contemplated in section 153 of the Companies Act and/or presenting an offer to acquire the interests of any or all of the other creditors of the Company in the manner contemplated in section 153 of the Companies Act;
- 33.1.31 **"BFC2 Further Refinancing"** means, at any time after the Refinancing Date, any arrangement pursuant to which the Company will redeem all of the BFC2 Preference Shares and pay the BFC2 Redemption Amount per BFC2 Preference Share out of the proceeds of new Financial Indebtedness that the Company may incur and for the avoidance of doubt excludes the voluntary redemption at the Company's discretion of the Depfin BFC2 Preference Shares on the Refinancing Date;
- 33.1.32 **"BFC2 Illegality Event"** means, in relation to a BFC2 Preference Shareholder, that -
- 33.1.32.1 it becomes unlawful or illegal under any Applicable Laws for such BFC2 Preference Shareholder to hold the BFC2 Preference Shares or to claim and recover all or part of a BFC2 Preference Dividend or a BFC2 Redemption Amount; or
- 33.1.32.2 there is any change in Applicable Laws which renders or will render any of the Key Transaction Documents or anything done or to be done pursuant thereto, illegal or unlawful;

- 33.1.33 **"BFC2 Implementation Accounts"** means the accounts opened by BFC2 with Nedbank and designated the *"BFC2 Implementation Accounts"* in order to facilitate the subscription for the BFC2 Tranche 1 Preference Shares and the subscription for the BIC2 Preference Shares on the Issue Date (2016);
- 33.1.34 **"BFC2 Initial Investors"** means Depfin, RMB and United Towers;
- 33.1.35 **"BFC2 Investors"** means collectively the BFC2 Initial Investors and the BFC2 Refinancing Investors;
- 33.1.36 **"BFC2 Issue Price"** means the price at which the Company (i) allotted and issued the BFC2 Tranche 1 Preference Shares to the BFC2 Initial Investors on the Issue Date (2016) in terms of the provisions of the BFC2 Preference Share Subscription Agreement and (ii) will allot and issue the BFC2 Tranche 2 Preference Shares to the BFC2 Refinancing Investors on the Issue Date (2021), in terms of the provisions of the Refinancing Agreement, being R1 000,00 (one thousand Rand) per BFC2 Preference Share;
- 33.1.37 **"BFC2 Loan Undertaking"** means a **"Loan Undertaking"**, as defined in the MTN Subordination and Undertaking Agreement, in respect of a BFC2 Subordinated Loan which is to be given to the Company;
- 33.1.38 **"BFC2 Margin Dividend"** means a further BFC2 Preference Dividend payable to the BFC2 Preference Shareholders in terms of clause 33.2.1.3;
- 33.1.39 **"BFC2 Margin Dividend Date"** means any BFC2 Redemption Date on which any BFC2 Preference Share is redeemed in accordance with clause 33.2.1.3;
- 33.1.40 **"BFC2 Owner Trust"** means the trustees for the time being of the BFC2 Owner Trust, a trust duly established in accordance with the laws of South Africa;
- 33.1.41 **"BFC2 Permitted Enforcement Action"** means -
- 33.1.41.1 in circumstances where the Company is obliged, in terms of the MTN Subordination and Undertaking Agreement or the BFC2 Priority of Payments, to repay a BFC2 Subordinated Loan or make payment of any other amount on account of a BFC2 Subordinated Loan and the Company has failed to make payment thereof on the due date therefor, the making of a written demand on the Company to make payment thereof within a period of not less than 2 (two) Business Days from the date of receipt of such written demand (or such shorter period as may be agreed by the Preference Share Agent) and, if such failure to pay is not remedied by the Company within such 2 (two) Business Day period, the taking of such steps as may be reasonable in the circumstances in order only to claim specific performance of the relevant payment obligation from the Company, provided that the Preference Share Agent -
- 33.1.41.1.1 is simultaneously provided with a copy of such written demand for payment;
- 33.1.41.1.2 is given prior written notice of all steps proposed to be taken against the Company in order to obtain specific performance of the relevant payment obligation from the Company, and written notification of any such steps which are in fact taken

- against the Company promptly after such steps are taken;
- 33.1.41.1.3 is provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to the Company, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from the Company in respect of such steps or other action;
- 33.1.41.1.4 is satisfied, acting reasonably, that the steps proposed to be taken against the Company in order to obtain specific performance of the relevant payment obligation from the Company will not or are not likely to adversely impact on the rights of the BFC2 Preference Shareholders or the security granted to the BFC2 Preference Shareholders; and
- 33.1.41.1.5 has not, in accordance with its rights under any Finance Document, made a written demand on the Company to remedy such failure to pay and/or is not otherwise taking steps in order to obtain performance of the relevant payment obligation from the Company;
- 33.1.41.2 subject to the provisions of clause 33.1.41.533.1.41.5 below, if applicable, in circumstances where the Company breaches any material term or condition of any of the Finance Documents to which it and MTN is a party, the making of a written demand on the Company to remedy such breach within the grace period specified in the relevant Finance Document and, if such breach is not remedied within such grace period, the taking of such steps as may be reasonable in the circumstances in order only to claim specific performance of the relevant obligation from the Company, provided that the Preference Share Agent -
- 33.1.41.2.1 is simultaneously provided with a copy of such written demand;
- 33.1.41.2.2 is given prior written notice of all steps proposed to be taken against the Company in order to obtain specific performance of the relevant obligation from the Company, and written notification of any such steps which are in fact taken against the Company promptly after such steps are taken;
- 33.1.41.2.3 is provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to BFC2, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from the Company in respect of such steps or other action;
- 33.1.41.2.4 is satisfied, acting reasonably, that the steps proposed to be taken against the Company in order to obtain specific performance of the relevant obligation from the Company will not or are not

likely to adversely impact on the rights of the BFC2 Preference Shareholders or the security granted to the BFC2 Preference Shareholders; and

- 33.1.41.2.5 has not, in accordance with its rights under any Finance Document, made a written demand on the Company to remedy such breach and/or is not otherwise taking steps in order to obtain specific performance of the relevant obligation from the Company;
- 33.1.41.3 subject to the provisions of clause 33.1.41.533.1.41.5 below, if applicable, in circumstances where the Company threatens to breach any material term or condition of any of the Finance Documents to which it and MTN is a party, the making of a written demand on the Company to unconditionally withdraw such threat of breach within a period of not less than 2 (two) Business Days from the date of receipt of such written demand (or such shorter period as the Preference Share Agent may consent to in writing) and, if such breach is not unconditionally withdrawn within such 2 (two) Business Day period, the taking of such steps as may be reasonable in the circumstances in order only to obtain an interdict against the Company in respect of the threatened breach, or any other appropriate order against the Company to restrain such threatened breach, provided that the Preference Share Agent -
 - 33.1.41.3.1 is simultaneously provided with a copy of such written demand;
 - 33.1.41.3.2 is given prior written notice of all steps proposed to be taken against the Company in order to interdict or obtain any other appropriate order against the Company in respect of the breach or threatened breach of the relevant obligation by the Company, and written notification of any such steps which are in fact taken against the Company promptly after such steps are taken;
 - 33.1.41.3.3 is provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to the Company, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from the Company in respect of such steps or other action;
 - 33.1.41.3.4 is satisfied, acting reasonably, that the steps proposed to be taken against the Company in order to interdict or obtain any other appropriate order against the Company will not or are not likely to adversely impact on the rights of the BFC2 Preference Shareholders or the security granted to the BFC2 Preference Shareholders; and
 - 33.1.41.3.5 has not, in accordance with its rights under any Finance Document, made a written demand on the Company to remedy such breach or threatened breach and/or is not otherwise taking steps in order

to prevent a breach or threatened breach of the relevant obligation by the Company;

- 33.1.41.4 subject to the provisions of clause 33.1.41.533.1.41.5 below, if applicable, any action for the purposes of obtaining declaratory relief against the Company in respect of any Finance Document to which it and MTN is a party, provided that the Preference Share Agent -
 - 33.1.41.4.1 is given prior written notice of all steps proposed to be taken against the Company in order to obtain such declaratory relief against the Company in respect of any Finance Document to which it is a party, and written notification of any such steps which are in fact taken against the Company promptly after such steps are taken;
 - 33.1.41.4.2 is provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to the Company, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from the Company in respect of such steps or other action;
 - 33.1.41.4.3 is satisfied, acting reasonably, that the steps proposed to be taken against the Company in order to obtain such declaratory relief against the Company will not or are not likely to adversely impact on the rights of the BFC2 Preference Shareholders or the security granted to the BFC2 Preference Shareholders; and
 - 33.1.41.4.4 is not, in accordance with its rights under any Finance Document, otherwise taking steps in order to obtain such declaratory relief against the Company in respect of any Finance Document to which it is a party; and/or
- 33.1.41.5 any BFC2 Enforcement Action which is taken against the Company by MTN or any MTN Acceded Nominee, in its capacity as holder of BFC2 Preference Shares, in respect of any MTN BFC2 Preference Shareholder Claim, pursuant to a decision having been duly taken to do so by the relevant BFC2 Preference Shareholders in accordance with the relevant provisions of the Interfunder Agreement; and/or
- 33.1.41.6 any BFC2 Enforcement Action which is taken against the Company with the prior written consent of the Preference Share Agent;
- 33.1.42 **"BFC2 Potential Trigger Event"** means any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Key Transaction Documents or any combination of the foregoing) be a BFC2 Trigger Event;
- 33.1.43 **"BFC2 Preference Dividends"** means, in respect of each BFC2 Preference Share, the preferential dividend which is or may be payable in respect of such BFC2 Preference Share in accordance with clause 33.2.1 or otherwise in accordance with clause 33.2 including, without limitation and without double counting any amount, all and any BFC2 Scheduled Preference Dividends, BFC2

Accumulated Preference Dividends, BFC2 Arrear Dividends, BFC2 Unpaid Dividends, the BFC2 Margin Dividend and/or BFC2 Additional Dividends and a **"BFC2 Preference Dividend"** shall be a reference to any of them, as the context may require;

- 33.1.44 **"BFC2 Preference Shareholders"** means the holders of the BFC2 Preference Shares from time to time and **"BFC2 Preference Shareholder"** shall mean any such holder, as may be appropriate in the context;
- 33.1.45 **"BFC2 Preference Shares"** means collectively the BFC2 Tranche 1 Preference Shares and the BFC2 Tranche 2 Preference Shares and a reference to **"BFC2 Preference Share"** shall be a reference to any of them;
- 33.1.46 **"BFC2 Preference Share Subscription Agreement"** means the BFC2 preference share subscription agreement entered into between the Preference Share Agent, the Company, Depfin, RMB, United Towers (and acceded to by MML) pursuant to which Depfin, RMB, and United Towers subscribed for the BFC2 Tranche 1 Preference Shares on the Issue Date (2016), all on the terms and conditions contained therein;
- 33.1.47 **"BFC2 Priority of Payments"** means the priority of payments contemplated in clause 33.3;
- 33.1.48 **"BFC2 Priority of Payments Date"** means any date on which funds are to be applied in accordance with the BFC2 Priority of Payments;
- 33.1.49 **"BFC2 Received Amounts"** has the meaning specified in clause 33.3.2;
- 33.1.50 **"BFC2 Redemption Amount"** means, in relation to each BFC2 Preference Share, the aggregate of the following amounts as at the applicable BFC2 Redemption Date -
 - 33.1.50.1 the BFC2 Issue Price of such BFC2 Preference Share; plus
 - 33.1.50.2 all undeclared and/or unpaid BFC2 Preference Dividends in respect of such BFC2 Preference Share, including (without limitation) -
 - 33.1.50.2.1 any accrued and/or accumulated BFC2 Scheduled Preference Dividends;
 - 33.1.50.2.2 any BFC2 Accumulated Preference Dividends, BFC2 Arrear Dividends and/or BFC2 Unpaid Dividends;
 - 33.1.50.2.3 any BFC2 Margin Dividend, if applicable;
 - 33.1.50.2.4 any BFC2 Additional Dividends, if applicable; plus
 - 33.1.50.3 any other amount payable in accordance with these terms and conditions by the Company to the BFC2 Preference Shareholder holding such BFC2 Preference Share;
- 33.1.51 **"BFC2 Redemption Date"** means the date on which such BFC2 Preference Share is actually redeemed and the BFC2 Redemption Amount thereof paid in full to the BFC2 Preference Shareholders;
- 33.1.52 **"BFC2 Refinancing Investors"** means MML, RMB and United Towers;

- 33.1.53 **"BFC2 Scheduled Preference Dividend"** means, in respect of each BFC2 Preference Share, a BFC2 Preference Dividend calculated in accordance with the provisions of clause 33.2.1.1;
- 33.1.54 **"BFC2 Scheduled Preference Dividend Date"** means (i) 30 April of each year during the Term and (ii) 30 September of each year during the Term, or such earlier or later date as may be agreed in writing by the Company and the Preference Share Agent at least 5 (five) Business Days prior to 30 April or 30 September (as the case may be) of any year during the Term;
- 33.1.55 **"BFC2 Scheduled Redemption Date"** means:
- 33.1.55.1 if the Refinancing is implemented on 30 September 2021 in accordance with the terms of the Refinancing Agreement, 23 November 2024 (or such later date or dates as agreed to in Writing by the Preference Share Agent); or
- 33.1.55.2 if the Refinancing is not implemented on 30 September 2021 in accordance with the terms of the Refinancing Agreement, 23 November 2022 (or such later date or dates as agreed to in Writing by the Preference Share Agent);
- 33.1.56 **"BFC2 Subordinated Claims"** means all present and future amounts, claims, liabilities and obligations, of whatsoever nature and howsoever arising, which are owed or may be owing by the Company to MTN and/or the MTN Acceded Nominees (both actual or contingent and whether incurred solely or jointly or in any other capacity) from time to time during the Term and includes, without limitation:
- 33.1.56.1 all and any claims of MTN and/or the MTN Acceded Nominees against the Company arising out of or in connection with or under any Transaction Document;
- 33.1.56.2 all and any claims of MTN and/or the MTN Acceded Nominees against the Company arising out of or in connection with or under the BFC2 Subordinated Loans, whether in respect of the repayment of any interest, capital or other amount payable by the Company to MTN and/or the MTN Acceded Nominees or otherwise; and
- 33.1.56.3 any claim of whatsoever nature and howsoever arising of MTN and/or the MTN Acceded Nominees against the Company as a result of or in connection with any repudiation, cancellation, termination, voidness, voidability of or misrepresentation (whether innocent, negligent or fraudulent) or breach of representation, warranty or undertaking in relation to any claims contemplated above;
- 33.1.57 **"BFC2 Subordinated Loan"** means a **"BFC2 Subordinated Loan"** made or to be made in accordance with the provisions of the MTN Subordination and Undertaking Agreement, which is given to the Company;
- 33.1.58 **"BFC2 Subordinated Loan Agreements"** means, if any BFC2 Subordinated Loans are advanced by MTN and/or any MTN Acceded Nominee to the Company, the loan agreements pursuant to which the interest rates applicable to any such BFC2 Subordinated Loans are set out, provided that all of the other terms applicable to each such BFC2 Subordinated Loan (and, to the extent applicable in relation to one or more BIC2 Subordinated Loan, the interest rates applicable to such loans) shall be governed by the MTN Subordination and

Undertaking Agreement and "**BFC2 Subordinated Loan Agreement**" means any one of them, as the context may require;

- 33.1.59 "**BFC2 Subscription Accounts**" means the accounts opened by the Company with Nedbank and designated the "*BFC2 Subscription Accounts*" to facilitate the subscription for the BFC2 Tranche 1 Preference Shares on the Issue Date (2016);
- 33.1.60 "**BFC2 Top-Up Loan Account**" means the bank account to be opened by the Company with the Account Bank if so required in terms of the MTN Subordination and Undertaking Agreement and into which all BFC2 Subordinated Loans will be paid;
- 33.1.61 "**BFC2 Tranche 1 Preference Shares**" means the 2 160 857 (two million one hundred and sixty thousand eight hundred and fifty seven) cumulative redeemable non participating preference shares in the issued share capital of the Company, having the rights and privileges set out in this clause 33 which were issued by the Company to the BFC2 Initial Investors on the Issue Date (2016) in terms of the BFC2 Preference Share Subscription Agreement;
- 33.1.62 "**BFC2 Tranche 2 Preference Shares**" means the 383,939 (three hundred and eighty three thousand nine hundred and thirty nine) cumulative redeemable non participating preference shares in the issued share capital of the Company, having the rights and privileges set out in this clause 33 which the Company will issue and allot to the BFC2 Refinancing Investors on the Refinancing Date, subject to, and in accordance with, the terms and conditions of the Refinancing Agreement;
- 33.1.63 "**BFC2 Trigger Event**" has the meaning specified in clause 33.2.3;
- 33.1.64 "**BFC2 Unpaid Dividends**" means, in respect of any BFC2 Preference Share, all the BFC2 Preference Dividends which have been declared in respect of such BFC2 Preference Share but which were not paid on the applicable BFC2 Dividend Date;
- 33.1.65 "**BFC2 Unredeemed Preference Shares**" means, at any time, that number of BFC2 Preference Shares which have not been redeemed by the Company at that time in accordance with this MOI;
- 33.1.66 "**BFC2 Voluntary Redemption**" has the meaning specified in clause 33.2.2.2;
- 33.1.67 "**BFC2 Voluntary Redemption Date**" has the meaning specified in clause 33.2.2.2.5;
- 33.1.68 "**BFC2 Voluntary Redemption Notice**" has the meaning specified in clause 33.2.2.2.1;
- 33.1.69 "**BFC2 Voluntary Redemption Notice Date**" has the meaning specified in clause 33.2.2.2.1;
- 33.1.70 "**BIC2**" means MTN Zakhele Futhi (RF) Limited (Registration No. 2016/268837/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 33.1.71 "**BIC2 Account Cession**" means the account cession entered into between the BFC2 Preference Shareholders (as security cessionaries), the Preference Share Agent and BIC2 (as cedent) pursuant to which BIC2 cedes, *in securitatem debiti*, to the BFC2 Preference Shareholders, all of its right, title and interest in and to certain bank accounts held by BIC2 from time to time, all as security for its

obligations under the First Ranking Guarantee, and all on the terms and conditions contained therein;

- 33.1.72 "**BIC2 Administrator**" means the entity appointed as such from time to time pursuant to the terms of the Account Bank and Agency Agreement;
- 33.1.73 "**BIC2 Collection Account**" means the bank account maintained by BIC2 with the Account Bank from time to time into which, amongst other things, all cash Distributions and other payments whatsoever from time to time received by BIC2 in respect of any of the Subject Shares will be paid;
- 33.1.74 "**BIC2 Consideration Shares**" means the BIC2 Ordinary Shares which reinvesting ordinary shareholders of MTN Zakhele elected to receive from MTN Zakhele in accordance with and subject to the terms of the MTN Zakhele Unwinding Scheme, which shares were initially issued to MTN Zakhele;
- 33.1.75 "**BIC2 Discharge Date**" means the later of (i) the date on which the last BIC2 Preference Shares is fully, finally and irrevocably redeemed in full in accordance with the BIC2 Preference Share Terms; and (ii) if, in accordance with the provisions of the BIC2 Preference Share Subscription Agreement, BIC2 is required to pay any amounts contemplated in clause 14 thereof into the BIC2 Security Account, the date on which any and all such amounts have been paid in full by BIC2 into the BIC2 Security Account;
- 33.1.76 "**BIC2 Empowerment Compliance Period**" means a period of 8 (eight) years commencing on the Effective Date and ending on the fifth anniversary of the Effective Date;
- 33.1.77 "**BIC2 Enforcement Action**" means:
- 33.1.77.1 the acceleration of any BIC2 Subordinated Claim or any declaration that any BIC2 Subordinated Claim is prematurely due and payable or payable on demand;
 - 33.1.77.2 the making of any claim on BIC2 in respect of or arising from any BIC2 Subordinated Claim, including the giving of instructions to BIC2 in relation to the taking of any steps to enforce or require the enforcement of any BIC2 Subordinated Claim (including the taking of any steps which are required to convert security interests into real security);
 - 33.1.77.3 the making of any demand against BIC2 in relation to or in respect of any BIC2 Subordinated Claim;
 - 33.1.77.4 the exercise of any right of set-off against BIC2 in respect of any BIC2 Subordinated Claim;
 - 33.1.77.5 the suing for, commencing or joining of any legal or arbitration proceedings against BIC2 to recover or enforce any BIC2 Subordinated Claim;
 - 33.1.77.6 the entering into of any composition, assignment or arrangement with BIC2 in respect of the BIC2 Subordinated Claims or any of them;
 - 33.1.77.7 the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator, business rescue practitioner or similar officer) in relation to the

winding up, dissolution, bankruptcy, administration, or reorganisation of BIC2 or taking any steps to place BIC2 under supervision for business rescue proceedings or any suspension of payments or moratorium of any indebtedness of BIC2, or any analogous procedure or step in any jurisdiction; and/or

- 33.1.77.8 voting to amend, approve or reject a proposed business rescue plan in relation to such business rescue proceedings in respect of BIC2 in accordance with the provisions of section 152 of the Companies Act, proposing the development of an alternative business rescue plan in the manner contemplated in section 153 of the Companies Act and/or presenting an offer to acquire the interests of any or all of the other creditors of BIC2 in the manner contemplated in section 153 of the Companies Act;
- 33.1.78 "**BIC2 Issue Price**" means the price at which BIC2 allotted and issued each BIC2 Preference Share to the Company, which price was R1 000,00 (one thousand Rand) per BIC2 Preference Share;
- 33.1.79 "**BIC2 Loan Account Cession**" means the cession in security entered between the BFC2 Preference Shareholders (as security cessionaries) and BIC2 (as security cedent) pursuant to which BIC2 cedes, *in securitatem debiti*, to the BFC2 Preference Shareholders, all of its right, title and interest in and to the MTN Loan Account as security for its obligations under the First Ranking Guarantee, and all on the terms and conditions contained therein;
- 33.1.80 "**BIC2 Loan Undertaking**" means a "**Loan Undertaking**", as defined in the MTN Subordination and Undertaking Agreement, in respect of a BIC2 Subordinated Loan which is to be given to BIC2;
- 33.1.81 "**BIC2 Margin Dividend**" means a further BIC2 Preference Dividend payable to the BIC2 Preference Shareholder in terms of the BIC2 MOI;
- 33.1.82 "**BIC2 MOI**" means the memorandum of incorporation of BIC2 from time to time;
- 33.1.83 "**BIC2 Ordinary Shareholders**" means the legal and beneficial owners of the BIC2 Ordinary Shares, from time to time;
- 33.1.84 "**BIC2 Ordinary Shares**" means the ordinary shares having no par value in the issued share capital of BIC2. For the avoidance of doubt, references to the BIC2 Ordinary Shares include references – changed as necessary – to any class of shares into which such shares may be converted (whether pursuant to the Companies Act or otherwise) and to such shares as they may be consolidated and sub-divided from time to time;
- 33.1.85 "**BIC2 Ords Subscription Agreement**" means the subscription agreement entitled "*BIC2 Ordinary Share Subscription Agreement*" entered into between MTN and BIC2 in terms of which, *inter alia*, MTN (or an MTN Acceded Nominee) subscribed for certain shares;
- 33.1.86 "**BIC2 Permitted Enforcement Action**" means -
- 33.1.86.1 in circumstances where BIC2 is obliged, in terms of the MTN Subordination and Undertaking Agreement or the BIC2 Priority of Payments, to repay a BIC2 Subordinated Loan or make payment of any other amount on account of a BIC2 Subordinated Loan and BIC2

has failed to make payment thereof on the due date therefor, the making of a written demand on BIC2 to make payment thereof within a period of not less than 2 (two) Business Days from the date of receipt of such written demand (or such shorter period as may be agreed by the Preference Share Agent) and, if such failure to pay is not remedied by BIC2 within such 2 (two) Business Day period, the taking of such steps as may be reasonable in the circumstances in order only to claim specific performance of the relevant payment obligation from BIC2, provided that the Preference Share Agent is -

- 33.1.86.1.1 simultaneously provided with a copy of such written demand for payment;
 - 33.1.86.1.2 given prior written notice of all steps proposed to be taken against BIC2 in order to obtain specific performance of the relevant payment obligation from BIC2, and written notification of any such steps which are in fact taken against BIC2 promptly after such steps are taken;
 - 33.1.86.1.3 is satisfied, acting reasonably, that the steps proposed to be taken against BIC2 in order to obtain specific performance of the relevant payment obligation from BIC2 will not or are not likely to adversely impact on the rights of the BIC2 Preference Shareholders or the security granted to the BIC2 Preference Shareholders; and
 - 33.1.86.1.4 provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to BIC2, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from BIC2 in respect of such steps or other action;
- 33.1.86.2 subject to the provisions of clause 33.1.41.533.1.86.5 below, if applicable, in circumstances where BIC2 breaches any material term or condition of any of the Key Transaction Documents to which it and MTN is a party, the making of a written demand on BIC2 to remedy such breach within the grace period specified in the relevant Key Transaction Document and, if such breach is not remedied within such grace period, the taking of such steps as may be reasonable in the circumstances in order only to claim specific performance of the relevant obligation from BIC2, provided that the Preference Share Agent is -
- 33.1.86.2.1 simultaneously provided with a copy of such written demand;
 - 33.1.86.2.2 given prior written notice of all steps proposed to be taken against BIC2 in order to obtain specific performance of the relevant obligation from BIC2, and written notification of any such steps which are in fact taken against BIC2 promptly after such steps are taken;
 - 33.1.86.2.3 is satisfied, acting reasonably, that the steps proposed to be taken against BIC2 in order to obtain

specific performance of the relevant obligation from BIC2 will not or are not likely to adversely impact on the rights of the BIC2 Preference Shareholders or the security granted to the BIC2 Preference Shareholders; and

- 33.1.86.2.4 provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to BIC2, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from BIC2 in respect of such steps or other action;
- 33.1.86.3 subject to the provisions of clause 33.1.41.533.1.86.5 below, if applicable, in circumstances where BIC2 threatens to breach any material term or condition of any of the Key Transaction Documents to which it and MTN is a party, the making of a written demand on BIC2 to unconditionally withdraw such threat of breach within a period of not less than 2 (two) Business Days from the date of receipt of such written demand (or such shorter period as the Preference Share Agent may consent to in writing) and, if such breach is not unconditionally withdrawn within such 2 (two) Business Day period, the taking of such steps as may be reasonable in the circumstances in order only to obtain an interdict against BIC2 in respect of the threatened breach or any other appropriate order against BIC2 to restrain such threatened breach, provided that the Preference Share Agent is -
 - 33.1.86.3.1 simultaneously provided with a copy of such written demand;
 - 33.1.86.3.2 given prior written notice of all steps proposed to be taken against BIC2 in order to interdict or obtain any other appropriate order against BIC2 in respect of the breach or threatened breach of the relevant obligation by BIC2, and written notification of any such steps which are in fact taken against BIC2 promptly after such steps are taken;
 - 33.1.86.3.3 is satisfied, acting reasonably, that the steps proposed to be taken against BIC2 in order to interdict or obtain any other appropriate order against BIC2 will not or are not likely to adversely impact on the rights of the BIC2 Preference Shareholders or the security granted to the BIC2 Preference Shareholders; and
 - 33.1.86.3.4 provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to BIC2, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from BIC2 in respect of such steps or other action;
- 33.1.86.4 subject to the provisions of clause 33.1.41.533.1.86.5 below, if applicable, any action for the purposes of obtaining declaratory relief

against BIC2 in respect of any Transaction Document to which it and MTN is a party, provided that the Preference Share Agent -

- 33.1.86.4.1 is given prior written notice of all steps proposed to be taken against BIC2 in order to obtain such declaratory relief against BIC2 in respect of any Transaction Document to which it is a party, and written notification of any such steps which are in fact taken against BIC2 promptly after such steps are taken;
- 33.1.86.4.2 is satisfied, acting reasonably, that the steps proposed to be taken against BIC2 in order to obtain such declaratory relief against BIC2 will not or are not likely to adversely impact on the rights of the BIC2 Preference Shareholders or the security granted to the BIC2 Preference Shareholders; and
- 33.1.86.4.3 is provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to BIC2, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from BIC2 in respect of such steps or other action; and/or
- 33.1.86.5 any BIC2 Enforcement Action which is taken against the Company by MTN or any MTN Acceded Nominee, in its capacity as holder of BFC2 Preference Shares, in respect of any MTN BFC2 Preference Shareholder Claim, pursuant to a decision having been duly taken to do so by the relevant BFC2 Preference Shareholders in accordance with the relevant provisions of the Interfunder Agreement; and/or
- 33.1.86.6 any BIC2 Enforcement Action which is taken against BIC2 with the prior written consent of the Preference Share Agent;
- 33.1.87 "**BIC2 Pledge and Cession**" means the pledge and cession entered into between the BFC2 Preference Shareholders (as pledgees and security cessionaries), the Preference Share Agent and BIC2 (as pledgor and security cedent) pursuant to which BIC2 pledges and cedes, *in securitatem debiti*, to the BFC2 Preference Shareholders, the Subject Shares and its claims, if any, against the issuers of the Subject Shares, all as security for its obligations under the First Ranking Guarantee, and all on the terms and conditions contained therein;
- 33.1.88 "**BIC2 Preference Dividends**" means, in respect of each BIC2 Preference Share, the preferential dividend which is or may be payable in respect of such BIC2 Preference Share in accordance with the BIC2 MOI and a "**BIC2 Preference Dividend**" shall be a reference to any of them, as the context may require;
- 33.1.89 "**BIC2 Preference Shares**" means the 2 160 857 (two million one hundred and sixty thousand eight hundred and fifty seven) cumulative redeemable non-participating preference shares in the issued share capital of BIC2 issued to the Company on the Issue Date (2016) and having the rights and privileges attaching thereto set forth in the BIC2 MOI;
- 33.1.90 "**BIC2 Preference Share Subscription Agreement**" means the BIC2 preference share subscription agreement entered into between the Company (as BIC2

Investor), BIC2 (as issuer) and the Preference Share Agent pursuant to which the Company agreed to subscribe for the BIC2 Preference Shares;

- 33.1.91 "**BIC2 Priority of Payments**" means each of the priority of payments incorporated into the BIC2 MOI;
- 33.1.92 "**BIC2 Redemption Amount**" means, in relation to each BIC2 Preference Share, the aggregate redemption amount of each such BIC2 Preference Share as determined in accordance with the provisions of the BIC2 MOI;
- 33.1.93 "**BIC2 Reversionary Account Cession**" means the cession entered into between MTN and MTN Holdings (as security cessionary) and BIC2 (as cedent) pursuant to which BIC2 cedes, *in securitatem debiti*, to MTN or an MTN Acceded Nominee, as the case may be, all of its Reversionary Rights to the BIC2 Collection Account and various other accounts, all as security for its obligations under the Transaction Documents to which BIC2 and MTN or an MTN Acceded Nominee, as the case may be, are a party or in respect of which a *stipulatio alteri* is given in favour of MTN or an MTN Acceded Nominee, and all on the terms and conditions contained therein;
- 33.1.94 "**BIC2 Reversionary Pledge and Cession**" means the pledge and cession entered into between MTN and MTN Holdings (as pledgee and security cessionary), and BIC2 (as pledgor and security cedent) pursuant to which BIC2 pledges and cedes, *in securitatem debiti*, to MTN or an MTN Acceded Nominee, as the case may be, its Reversionary Rights to the Subject Shares and its Reversionary Rights to its claims, if any, against the issuers of the Subject Shares, all as security for its obligations under the Transaction Documents to which BIC2 and MTN or an MTN Acceded Nominee, as the case may be, are a party or in respect of which a *stipulatio alteri* is given in favour of MTN or an MTN Acceded Nominee, and all on the terms and conditions contained therein;
- 33.1.95 "**BIC2 Security Account**" means the bank account to be maintained by BIC2 with the Account Bank into which certain sums are required under the Finance Documents to be paid in respect of the BIC2 Preference Shares;
- 33.1.96 "**BIC2 Special Priority of Payments Date**" means any date on which funds are to be applied in accordance with the priority of payments set out in clause 3.2 of the BIC2 MOI;
- 33.1.97 "**BIC2 Subordinated Claims**" means all present and future amounts, claims, liabilities and obligations, of whatsoever nature and howsoever arising, which are owed or may be owing by BIC2 to MTN and/or the MTN Acceded Nominees (both actual or contingent and whether incurred solely or jointly or in any other capacity) from time to time during the Term and includes, without limitation:
- 33.1.97.1 all and any claims of MTN against BIC2 and/or the MTN Acceded Nominees arising out of or in connection with or under any Transaction Document;
- 33.1.97.2 all and any claims of MTN and/or the MTN Acceded Nominees against BIC2 arising out of or in connection with or under the BIC2 Subordinated Loans, whether in respect of the repayment of any interest, capital or other amount payable by BIC2 to MTN and/or the MTN Acceded Nominees or otherwise; and
- 33.1.97.3 any claim of whatsoever nature and howsoever arising of MTN and/or the MTN Acceded Nominees against BIC2 as a result of or in

connection with any repudiation, cancellation, termination, voidness, voidability of or misrepresentation (whether innocent, negligent or fraudulent) or breach of representation, warranty or undertaking in relation to any claims contemplated above;

- 33.1.98 "**BIC2 Subordinated Loan Agreements**" if any BIC2 Subordinated Loans are advanced by MTN and/or any MTN Acceded Nominee to BIC2, the loan agreements pursuant to which the interest rates applicable to any such BIC2 Subordinated Loans are set out, provided that all of the other terms applicable to each such BIC2 Subordinated Loan (and, to the extent applicable in relation to one or more BIC2 Subordinated Loan, the interest rates applicable to such loans) shall be governed by the MTN Subordination and Undertaking Agreement and "**BIC2 Subordinated Loan Agreement**" means any one of them, as the context may require;
- 33.1.99 "**BIC2 Subordinated Loans**" means all loans advanced by MTN and/or any MTN Acceded Nominee to the Company in accordance with the provisions of the MTN Subordination and Undertaking Agreement and "**BIC2 Subordinated Loan**", means any one of them as the context may require;
- 33.1.100 "**BIC2 Top-Up Loan Account**" means the bank account maintained by BIC2 with the Account Bank into which, *inter alia*, certain BIC2 Subordinated Loans will be paid, as required under and in terms of the MTN Subordination and Undertaking Agreement;
- 33.1.101 "**BIC2 Trigger Event**" has the meaning specified in clause 2.3 of the BIC2 MOI;
- 33.1.102 "**BIC2 Unredeemed Preference Shares**" means, at any time, that number of BIC2 Preference Shares which have not been redeemed by BIC2 at that time in accordance with the BIC2 MOI;
- 33.1.103 "**Black Company**" means a company incorporated in accordance with the laws of South Africa, and which is both a Black Majority Owned Company and a Black Majority Controlled Company, and a reference to "company" in this definition shall include a reference to a close corporation;
- 33.1.104 "**Black Entity**" means (i) a vesting trust, (ii) a broad based ownership scheme and (iii) an unincorporated entity or association, including a partnership, joint venture, syndicate or Stokvel, in each case under (i) to (iii) as may be determined from time to time (generally or in relation to any particular Black Entity or category of Black Entities) by MTN in its sole discretion as an entity or association which qualifies under the BEE Legislation (and the Codes in particular) for recognition and measurement of ownership, economic interest and control by Black People such that the MTN Group may claim recognition of such ownership, economic interest and control under the BEE Legislation as all being held by a majority of Black People;
- 33.1.105 "**Black Majority Controlled Company**" means a "B-BBEE Controlled Company" (or comparable term) as defined from time to time under the BEE Legislation, which definition as at the Signature Date is as follows: "*means juristic person, having shareholding or similar members interest, in which black participants enjoy a right to Exercisable Voting Rights that is at least 51% (fifty one per cent) of the total such rights measures using the Flow Through Principle*"; provided that where the BEE Legislation contains more than one definition of a "Black Majority Controlled Company" and such definitions are not the same, then the term "Black Majority Controlled Company" shall mean

(and be restricted to) the class of persons who satisfy the relevant criteria in every such definition;

- 33.1.106 "**Black Majority Owned Company**" means a "B-BBEE Controlled Company" (or comparable term) as defined from time to time under the BEE Legislation, which definition as at the Signature Date is as follows: "*means juristic person, having shareholding or similar members interest, that is B-BBEE controlled, in which Black participants enjoy a right to Economic Interest that is at least 51% (fifty one per cent) of the total such rights measured using the Flow Through Principle*"; provided that where the BEE Legislation contains more than one definition of a "Black Majority Owned Company" and such definitions are not the same, then the term "Black Majority Owned Company" shall mean (and be restricted to) the class of persons who satisfy the relevant criteria in every such definition;
- 33.1.107 "**Black Participants**" means individually and collectively (as the context may dictate), Black People, Black Companies and Black Entities (i) who are eligible to subscribe for and beneficially own BIC2 Ordinary Shares pursuant to the Public Offer; (ii) ordinary shareholders in MTN Zakhele who are eligible to elect BIC2 Consideration Shares pursuant to the MTN Zakhele Unwinding Scheme; or (iii) who are otherwise permitted to own BIC2 Ordinary Shares in terms of the provisions of the Relationship Agreement;
- 33.1.108 "**Black People**" means "black people" (or comparable term) as defined from time to time under the BEE Legislation; provided that where the BEE Legislation contains more than one definition of "black people" (or comparable term) and such definitions are not the same, then the term "Black People" shall mean (and be restricted to) the class of persons who satisfy the relevant criteria in every such definition;
- 33.1.109 "**Business Day**" means every day other than a Saturday, Sunday or official public holiday in South Africa;
- 33.1.110 "**Calculation Agent**" means the entity appointed as such from time to time pursuant to the terms of *inter alia* the Account Bank and Agency Agreement;
- 33.1.111 "**Call Option Agreement**" means the call option agreement entered into between MTN, the BFC2 Preference Shareholders and the Preference Share Agent pursuant to which MTN or a Call Option MTN Acceded Nominee is granted various call options in respect of the BFC2 Unredeemed Preference Shares, all on the terms and conditions contained therein;
- 33.1.112 "**Call Option Closing Date**" means, in respect of any Trigger Event Call Option pursuant to which MTN or an MTN Acceded Nominee delivers a Call Option Exercise Notice, the 3rd (third) Business Day from the expiry date of the applicable Trigger Event Call Option Period;
- 33.1.113 "**Call Option Exercise Notice**" means a written notice to be delivered by MTN or any Call Option MTN Acceded Nominee to the Preference Share Agent during the applicable Trigger Event Call Option Period in order to exercise the Trigger Event Call Option;
- 33.1.114 "**Call Option MTN Acceded Nominee**" means, at any relevant time, each MTN Nominee that that has become an MTN Acceded Nominee in accordance with the provisions of the Call Option Agreement, and "**Call Option MTN Acceded Nominees**" shall mean all of them;

- 33.1.115 "**Call Option Notice**" means a written notice to be delivered by the Preference Share Agent to MTN, advising MTN that a Trigger Event Call Option may be exercised by MTN or any Call Option MTN Acceded Nominee;
- 33.1.116 "**Call Option Strike Price**" means, in respect of the Trigger Event Call Option, the purchase price payable by MTN or the applicable Call Option MTN Acceded Nominee in respect of the applicable BFC2 Preference Shares pursuant to the exercise of a Trigger Event Call Option, which shall (i) be notified by the Preference Share Agent to MTN in the applicable Call Option Notice; and (ii) comprise (but without double counting) -
- 33.1.116.1 the aggregate of any amounts owed by the Company to the BFC2 Preference Shareholders under any Finance Document (including, without limitation, but without duplication, any costs payable by the Company to such BFC2 Preference Shareholders pursuant to the BFC2 Preference Share Subscription Agreement or any of the other Finance Documents and any indemnity payments due and payable by the Company to such BFC2 Preference Shareholders under any of the Finance Documents); and
- 33.1.116.2 with respect to each applicable BFC2 Preference Share, an amount equal to -
- 33.1.116.2.1 the BFC2 Redemption Amount; plus
- 33.1.116.2.2 all other amounts necessary to place each BFC2 Preference Shareholder in the same financial and net after Tax position it would have been in had the BFC2 Trigger Event or BFC2 Potential Trigger Event not occurred;
- 33.1.117 "**Codes**" means the Codes of Good Practice on Broad Based Black Economic Empowerment issued by the Minister of Trade and Industry on 9 February 2007 in terms of section 9 of the BBEE Act;
- 33.1.118 "**Consolidated EBITDA**" means, in relation to each Measurement Period, the aggregate of the consolidated operating profits of MTN (including the results from discontinued operations) before finance costs and tax for that Measurement Period, adjusted by:
- 33.1.118.1 taking no account of any material items which represent gains or losses arising on:
- 33.1.118.1.1 restructurings of the activities of any entity and reversals of any provisions for the costs of restructuring;
- 33.1.118.1.2 disposals of non-current assets;
- 33.1.118.1.3 the disposal of assets associated with discontinued operations; or
- 33.1.118.1.4 reversals of any provision;
- 33.1.118.2 taking no account of any unrealised gains or losses on any financial instrument (other than any derivative instrument which is accounted

for on a hedge accounting basis) which is reported through the income statement;

- 33.1.118.3 taking no account of any income or charge attributable to a post-employment benefit scheme other than the current service costs and any past service costs and curtailments and settlements attributable to the scheme; and
- 33.1.118.4 adding back any depreciation and amortisation and taking no account of any change for impairment or any reversal of any previous impairment charge made in the period;
- 33.1.119 **"Consolidated Eligible Cash and Cash Equivalents"** means, at any time, the cash and the cash equivalents included as cash, in each case calculated in accordance with the most recent consolidated balance sheet of MTN excluding, for the avoidance of doubt, Restricted Cash;
- 33.1.120 **"Consolidated Total Borrowings"** means at any time and without double counting, the aggregate of the following liabilities calculated at the nominal, principal or other amount at which the liabilities would be carried in a consolidated balance sheet of MTN drawn up at that time:
 - 33.1.120.1 any moneys borrowed;
 - 33.1.120.2 any redeemable preference shares;
 - 33.1.120.3 any acceptance under any acceptance credit (including any dematerialised equivalent);
 - 33.1.120.4 any bond, note, debenture, loan stock or other similar instrument;
 - 33.1.120.5 any indebtedness under a finance or capital lease;
 - 33.1.120.6 any moneys owing in connection with the sale or discounting of receivables (except to the extent that there is no recourse);
 - 33.1.120.7 any indebtedness arising from any deferred payment agreements arranged primarily as a method of raising finance or financing the acquisition of an asset in circumstances where payment is deferred for any period in excess of 6 (six) months;
 - 33.1.120.8 any indebtedness arising in connection with any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing; and
 - 33.1.120.9 any indebtedness of any person of a type referred to in the above clauses which are the subject of a guarantee, indemnity or similar assurance against financial loss given by a member of the MTN Group;
- 33.1.121 **"Consolidated Total Net Borrowings"** means at any time Consolidated Total Borrowings less Consolidated Eligible Cash and Cash Equivalents;
- 33.1.122 **"Consolidating Company"** has the meaning specified in clause 33.2.1.6.1 of this MOI;
- 33.1.123 **"Corporate Tax Rate"** means the maximum nominal rate of income tax (expressed as a decimal) levied on each Rand of taxable income of companies (as

defined in the Income Tax Act) at the applicable date, which rate expressed as a decimal is 0,28 (zero comma two eight) as at the Signature Date;

- 33.1.124 "**CPI**" means the weighted average consumer price index of all items of the 12 (twelve) areas specified in the notice as notified by Statistics South Africa (with the average for 2015 as a base which equals 100 (one hundred));
- 33.1.125 "**Depfin**" means Depfin Investments Proprietary Limited (Registration No. 1982/006127/07), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 33.1.126 "**Depfin BFC2 Preference Shares**" means 383 939 (three hundred and eighty three thousand nine hundred and thirty nine) BFC2 Tranche 1 Preference Shares which are held by Depfin on 30 September 2021 immediately prior to the implementation of the Refinancing;
- 33.1.127 "**Determination Date**" means the date on which the board of directors of MTN meets in accordance with the provisions of clause 9.3.1 of the Implementation Agreement;
- 33.1.128 "**CSD**" means STRATE Limited (Registration No. 1998/022242/06), licensed as a central securities depository in terms of the Financial Markets Act, or any other depository institution that may be established under the Financial Markets Act;
- 33.1.129 "**Designated Additional Shares**" means the Additional Shares acquired by BIC2 as a result of a Distribution *in specie* in circumstances where the BIC2 does not have an election to receive cash on account of such Distribution;
- 33.1.130 "**Disposal**" or "**Dispose**" or any other cognate expression means to sell, alienate, donate, exchange, distribute, transfer or to in any other manner whatsoever dispose;
- 33.1.131 "**Disposal Proceeds**" means all and any proceeds arising from the Disposal by the Company of all or some of the BIC2 Preference Shares;
- 33.1.132 "**Distribution**" means, in relation to any company -
- 33.1.132.1 any repurchase by that company, in terms of section 48 of the Companies Act of any shares of any class in its issued share capital;
- 33.1.132.2 the payment of any dividend or the making of any other distribution by that company to its shareholders, or the redemption of any shares by that company; or
- 33.1.132.3 the making of any payment as envisaged in section 46 of the Companies Act by that company to its shareholders, whether such payment is made in cash or *in specie*;
- 33.1.133 "**Dividends Tax**" means any Tax imposed on dividends declared or paid by a company, whether such tax is payable directly by the beneficial owner of such shares or by the company declaring or paying the dividend, or recovered by means of a withholding effected by the company declaring or paying the dividend or effected by any other person (including any intermediary);
- 33.1.134 "**Dividends Tax Credit**" means, if applicable under the Income Tax Act or any other legislation, any credit given or permitted to be given in relation to Dividends Tax and that is capable of being utilised by corporate taxpayers generally;

- 33.1.135 "**Dollars**", "**US\$**" and "**USD**" means the lawful currency of the United States of America;
- 33.1.136 "**Effective Date**" means the date on which BIC2 Ordinary Shares were allotted and issued to Black Participants under the Public Offer;
- 33.1.137 "**Encumbrance**" means in relation to any property, includes any pledge, security cession, charge, hypothecation, lien, subordination, mortgage, option over, right of retention or any other encumbrance whatsoever, or any form of hedging or similar derivative instrument of any nature whatsoever of or over or in respect of that property or class of property (or any part or proceeds thereof), or any lending of that property, and, the words "**Encumber**", "**Encumbering**" shall have the corresponding meanings;
- 33.1.138 "**Fees Letter**" means the fees letter entered into between the BFC2 Initial Investors, BIC2, the Preference Share Agent and MTN pursuant to which BIC2 and MTN agreed to pay the Transaction Fees in relation to the implementation of the financing arrangements which were implemented on or about the Issue Date (2016), all on the terms and conditions contained therein;
- 33.1.139 "**Final Capital Structure**" means final capital structure applicable to the Transaction calculated in accordance with the provisions of the Implementation Agreement;
- 33.1.140 "**Final Capital Structure Documents**" means the Final Capital Structure and the corresponding funds flow statement generated in accordance with the capital structure model relating to the Transaction on or about the Effective Date;
- 33.1.141 "**Finance Documents**" means -
- 33.1.141.1 the BIC2 Preference Share Subscription Agreement;
 - 33.1.141.2 the BFC2 Preference Share Subscription Agreement;
 - 33.1.141.3 the First Ranking Guarantee;
 - 33.1.141.4 the MTN Limited Recourse Guarantee;
 - 33.1.141.5 the MTN Account Cession;
 - 33.1.141.6 the BIC2 Pledge and Cession;
 - 33.1.141.7 the BIC2 Account Cession;
 - 33.1.141.8 the BIC2 Loan Account Cession;
 - 33.1.141.9 the MTN Subordination and Undertaking Agreement;
 - 33.1.141.10 the Account Bank and Agency Agreement;
 - 33.1.141.11 the Interfunder Agreement;
 - 33.1.141.12 the Call Option Agreement;
 - 33.1.141.13 the constitutional documents of each of the Company and BIC2;
 - 33.1.141.14 the deed of trust constituting the BFC2 Owner Trust;

- 33.1.141.15 the Fees Letter;
- 33.1.141.16 the Nedbank Agency Fees Letter;
- 33.1.141.17 the Preference Shares Custody Agreement;
- 33.1.141.18 the Subject Shares Custody Agreement;
- 33.1.141.19 the Refinancing Agreement;
- 33.1.141.20 the Refinancing Fees Letter;
- 33.1.141.21 the RMB Agency Fees Letter; and
- 33.1.141.22 any other written agreement or document which the Company, BIC2, MTN and the Preference Share Agent may agree in writing is a Finance Document from time to time,

and "**Finance Document**" means any one of them, as the context requires;

- 33.1.142 "**Financial Covenant**" means Consolidated Total Net Borrowings to Adjusted Consolidated EBITDA at the end of any Measurement Period, on the basis that -
 - 33.1.142.1 an accounting term used in the calculation of the Financial Covenant is to be construed in accordance with the principles applied in connection with the financial statements dated 31 December 2015;
 - 33.1.142.2 any amount in a currency other than ZAR is to be taken into account as its ZAR equivalent calculated on the basis of:
 - 33.1.142.2.1 the Preference Share Agent's spot rate of exchange for the purchase of the relevant currency in the Johannesburg foreign exchange market ZAR at or about 11.00 a.m. on the day the relevant amount falls to be calculated; or
 - 33.1.142.2.2 if the amount is to be calculated on the last day of a financial period of MTN, the relevant rates of exchange used by MTN in, or in connection with, its financial statements for that period;
 - 33.1.142.3 companies which are not members of the MTN Group, but which are proportionately consolidated in the consolidated financial statements of MTN, will be included as members of the MTN Group, on a proportionate basis to the same extent as such proportionate consolidation, in the calculation of Adjusted Consolidated EBITDA, Consolidated EBITDA and Consolidated Total Borrowings; and
 - 33.1.142.4 no item must be credited or deducted more than once in any calculation in respect of the Financial Covenant;
- 33.1.143 "**Financial Half Year**" means a period of 6 (six) months commencing at the beginning of the Financial Year;

- 33.1.144 **"Financial Indebtedness"** means any indebtedness for or in respect of -
- 33.1.144.1 moneys borrowed;
 - 33.1.144.2 any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
 - 33.1.144.3 any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
 - 33.1.144.4 the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease;
 - 33.1.144.5 receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
 - 33.1.144.6 any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
 - 33.1.144.7 any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
 - 33.1.144.8 any amount raised by the issue of shares which are redeemable;
 - 33.1.144.9 any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
 - 33.1.144.10 deferred payment for goods and/or services for a period exceeding 90 (ninety) days; and
 - 33.1.144.11 the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in clauses 33.1.144.1 to 33.1.144.9;
- 33.1.145 **"Financial Indebtedness (MTN)"** means, without double counting, any indebtedness for or in respect of -
- 33.1.145.1 moneys borrowed;
 - 33.1.145.2 any acceptance credit (including any dematerialised equivalent);
 - 33.1.145.3 any bond , note, debenture, loan stock or other similar instrument;
 - 33.1.145.4 any redeemable preference share;
 - 33.1.145.5 any agreement treated as a finance or capital lease in accordance with IFRS;

- 33.1.145.6 receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- 33.1.145.7 any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing;
- 33.1.145.8 any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark to market value of the derivative transaction, will be used to calculate its amount);
- 33.1.145.9 any amount raised by the issue of shares which are redeemable;
- 33.1.145.10 any counter-indemnity obligation in respect of a guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution; and
- 33.1.145.11 any guarantee or indemnity or similar assurance against financial loss of any person in respect of any item referred to in the above paragraphs,
- but excludes any Financial Indebtedness (MTN) owed by any one member of the MTN Group to another member of the MTN Group;
- 33.1.146 "**Financial Markets Act**" means the Financial Markets Act, No. 19 of 2012 as amended, or any legislation which replaces it;
- 33.1.147 "**Financial Year**" means each financial year of the Company, ending on the last day of December of each year;
- 33.1.148 "**First Ranking Guarantee**" means the first ranking guarantee entered into between BIC2 (as guarantor), the Preference Share Agent and the BFC2 Preference Shareholders, pursuant to which BIC2 unconditionally and irrevocably guarantees the payment of all amounts required and/or scheduled or intended to be paid by the Company under the Finance Documents to the BFC2 Preference Shareholders, all on the terms and conditions contained therein;
- 33.1.149 "**Five Day VWAP**" means, in respect of any shares in the issued ordinary share capital of any company listed on the JSE, the volume weighted average price of such shares calculated over a period of 5 (five) consecutive Trading Days immediately preceding the date on which such volume weighted average price is calculated, as determined by the Calculation Agent in accordance with the Account Bank and Agency Agreement;
- 33.1.150 "**IFRS**" means International Financial Reporting Standards, issued by the Board of the International Accounting Standards Committee from time to time;
- 33.1.151 "**Implementation Agreement**" means the implementation agreement entered into between, amongst others, the BFC2 Initial Investors, the Preference Share Agent, BIC2, the Company, the Security Custodian, the Calculation Agent, the Preference Share Custodian, the Account Bank and MTN pursuant to which the implementation of the Transaction on the Effective Date is regulated, all on the terms and conditions contained therein;

- 33.1.152 **"Inception Total Share Cover Ratio"** means, on the Determination Date, the ratio of A:B, where:
- 33.1.152.1 A is the number of Subscription Shares to be subscribed for by BIC2 in accordance with the Implementation Agreement on the New Empowerment Transaction Closing Date, multiplied by (i) the One Day VWAP of the MTN Shares; or (ii) the Five Day VWAP of the MTN Shares, whichever is the lower, on the Business Day immediately prior to the Determination Date; and
- 33.1.152.2 B is the aggregate BIC2 Issue Price of the BIC2 Preference Shares to be issued to the Company in accordance with the provisions of the BIC2 Preference Share Subscription Agreement, as set out in the Final Capital Structure, less an amount equal to the Permanent Initial Subordinated Loan (if any);
- 33.1.153 **"Income Tax Act"** means the Income Tax Act, 1962 (Act No. 58 of 1962), as amended;
- 33.1.154 **"Increased Costs"** means, in relation to any BFC2 Preference Shareholder or its Consolidating Company, as the case may be -
- 33.1.154.1 a reduction in that BFC2 Preference Shareholder or its Consolidating Company's return on overall capital (including, without limitation, as a result of any reduction in that BFC2 Preference Shareholder or its Consolidating Company's return on capital brought about by more capital being required to be allocated by that BFC2 Preference Shareholder or its Consolidating Company, or that BFC2 Preference Shareholder or its Consolidating Company being required to comply with any reserve, cash ratio, special deposit, capital adequacy or liquidity requirement (or any other similar requirement));
- 33.1.154.2 an additional or increased cost, liability or expense; or
- 33.1.154.3 a reduction of any amount payable under the BFC2 Preference Shares (including the after-tax BFC2 Preference Dividend receipt by that BFC2 Preference Shareholder in respect of the BFC2 Preference Shares),
- which is incurred or suffered by that BFC2 Preference Shareholder or its Consolidating Company as a consequence of, or attributable to, that BFC2 Preference Shareholder or its Consolidating Company having subscribed (or having committed to subscribe) for, or holding and/or funding, any of the BFC2 Preference Shares or to that BFC2 Preference Shareholder or its Consolidating Company having any rights or obligations, or exercising any rights or performing any obligations, under any Finance Document;
- 33.1.155 **"Increase Notice"** shall bear the meaning ascribed thereto in clause 33.2.1.6.1;
- 33.1.156 **"Indemnity Period"** shall bear the meaning ascribed thereto in clause 33.2.1.6.7 below;
- 33.1.157 **"Initial Subordinated Loan"** means a subordinated loan or loans, if any, to be advanced by MTN (or an MTN Acceded Nominee) to BIC2 pursuant to the provisions of clause 9.3.5.2 and/or clause 9.3.7.2.2(a) of the Implementation

Agreement, and in accordance with clause 4.1 of the MTN Subordination and Undertaking Agreement;

33.1.158 **"Insolvency Event"** means, in relation to each of the Company, BIC2 and MTN, any of the following events or circumstances -

33.1.158.1 an order or declaration is made or a meeting of the directors or shareholders or trustees of such person is convened to consider the passing of, or a resolution is passed for the administration, custodianship, bankruptcy, liquidation, sequestration, winding-up, dissolution or placing under supervision for business rescue proceedings (and whether provisional or final) of it or its estate (and if any of the parties to the Transaction Documents is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction); or

33.1.158.2 it is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness; or

33.1.158.3 it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step; or

33.1.158.4 any receiver, administrative receiver, judicial manager, administrator, compulsory manager, judicial custodian, trustee in bankruptcy, liquidator, business rescue practitioner or the like is appointed in respect of it or any material part of its assets or it requests any such appointment (and if any of the parties to the Transaction Documents is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction); or

33.1.158.5 any act which, if such act was committed by an individual, would be an act of insolvency within the meaning of section 8 of the Insolvency Act, 1936 (Act No. 24 of 1936) or any equivalent legislation in any jurisdiction to which such person is subject; or

33.1.158.6 such person has any Judgment (which, if such person is MTN, is a Judgment which requires the payment of, or other application or commitment of resources (within the 12 months following the date of such Judgment) with a value of US\$50 000 000 or more (or an equivalent in any other currency)) made against it and it fails to –

33.1.158.6.1 appeal against such Judgment (if such Judgment is appealable) or to apply for the rescission thereof (if such Judgment is a default judgment) within the prescribed time limits or thereafter fails to prosecute such appeal or application expeditiously and diligently or ultimately fails in such appeal or application; or

- 33.1.158.6.2 satisfy such Judgment, or, if it lodges an appeal or application referred to in clause 33.1.158.6.1 and such appeal or application ultimately fails, it fails to satisfy such Judgment within 1 (one) Business Day of such appeal or application failing;
- 33.1.158.7 such entity is "financially distressed" as contemplated section 128(1) of the Companies Act; or
- 33.1.158.8 such entity is "financially distressed" as contemplated section 128(1) of the Companies Act and an application is made by any affected person for an order placing such entity under supervision for business rescue proceedings as contemplated in section 131(1) of the Companies Act;
- 33.1.159 "**Interfunder Agreement**" means the interfunder agreement entered into between the BFC2 Preference Shareholders and the Preference Share Agent pursuant to which, *inter alia*, the BFC2 Preference Shareholders regulate their relationship as the holders of the BFC2 Preference Shares, all on the terms and conditions contained therein;
- 33.1.160 "**Issue Date**" means each date on which BFC2 Preference Shares are actually issued to a BFC2 Preference Shareholder;
- 33.1.161 "**Issue Date (2016)**" means the date on which the BFC2 Tranche 1 Preference Shares were issued to the BFC2 Initial Investors in accordance with the provisions of the BFC2 Preference Share Subscription Agreement;
- 33.1.162 "**Issue Date (2021)**" means the date on which the BFC2 Tranche 2 Preference Shares are issued to the BFC2 Refinancing Investors, in accordance with the provisions of the Refinancing Agreement;
- 33.1.163 "**JSE**" means JSE Limited (Registration No. 2005/022939/06), a limited liability company duly registered and incorporated in South Africa being licensed in terms of the Financial Markets Act;
- 33.1.164 "**JSE Listings Requirements**" means the Listings Requirements of the JSE as amended from time to time;
- 33.1.165 "**JSE Losses**" means all and any losses, damages, liabilities, claims, penalties, fines, charges, judgments, costs and expenses incurred or sustained by BIC2, during the BEE Listing Period, as a result of or arising from or pursuant to the establishment, operation and/or maintenance of the JSE Trading Platform;
- 33.1.166 "**JSE Trading Platform**" means the trading platform established, operated and maintained by BIC2 in respect of the BIC2 Ordinary Shares, pursuant to which the BIC2 Ordinary Shares will be listed on, and traded, on the JSE during the BEE Listing Period;
- 33.1.167 "**JSE Trading Platform Agreements**" means:
- 33.1.167.1 any agreements entered into between BIC2 and third party service providers in relation to the provision of:
- 33.1.167.2 legal services;
- 33.1.167.3 accounting and auditing services;

- 33.1.167.4 project management services;
- 33.1.167.5 services related to education sessions to be provided to the BIC2 Ordinary Shareholders;
- 33.1.167.6 system verification testing services; and
- 33.1.167.7 services related to the usage of software materials, software documentation and any other intellectual property;
- 33.1.167.8 services related to the development, maintenance, hosting and overall management of the JSE Trading Platform (including websites), a call centre and a walk in client centre;
- 33.1.167.9 public relations, marketing and communications services;
- 33.1.167.10 live and/or delayed share data services in relation BIC2 Ordinary Shares traded on the JSE,
- 33.1.167.11 for the purposes of, in connection with, or in relation to, the establishment, operation and maintenance of the JSE Trading Platform;
- 33.1.167.12 any agreements entered into between one or more of BIC2, MTN, MTN Holdings, the JSE, any member of the JSE and any person directly or indirectly providing custodial services to any BIC2 Ordinary Shareholder in respect of such BIC2 Ordinary Shares;
- 33.1.167.13 any agreements entered into between BIC2 and the CSD;
- 33.1.167.14 the termination and reinstatement agreements in relation to any of the agreements referred to in clauses 33.1.167.1 to 33.1.167.3 above;
- 33.1.167.15 insurance contracts in relation to the JSE Trading Platform, if any; and
- 33.1.167.16 any agreements incidental or ancillary to any of the agreements referred to in this clause 33.1.167 to the extent required for the establishment, operation and maintenance of the JSE Trading Platform;
- 33.1.168 "**Judgment**" means any judgment of any competent court or similar award (including any arbitral award);
- 33.1.169 "**Key Material Agreements**" means -
 - 33.1.169.1 any BIC2 Subordinated Loan Agreement;
 - 33.1.169.2 any BFC2 Subordinated Loan Agreement;
 - 33.1.169.3 the BIC2 Reversionary Pledge and Cession;
 - 33.1.169.4 the BIC2 Reversionary Account Cession;
 - 33.1.169.5 the MTN Tranche 1 Subscription and Call Option Agreement;
 - 33.1.169.6 the MTN Tranche 2 Subscription Agreement;

- 33.1.169.7 the MTN Tranche 3 Subscription Agreement;
 - 33.1.169.8 the MTN Loan Transfer and Cession Agreement;
 - 33.1.169.9 the Relationship Agreement;
 - 33.1.169.10 the Public Offer and Reinvestment Documents;
 - 33.1.169.11 the Repurchase Agreement;
 - 33.1.169.12 the Implementation Agreement; and
 - 33.1.169.13 the BIC2 Ords Subscription Agreement,
- and "**Key Material Agreement**" means, as the context requires, any one of them;
- 33.1.170 "**Key Transaction Documents**" means the Finance Documents and the Key Material Agreements and "**Key Transaction Document**" means, as the context requires, any one of them;
 - 33.1.171 "**Letters of Allocation**" means, at any relevant time from the Issue Date (2106) until the BIC2 Discharge Date, letters of allocation (howsoever named) issued to the shareholders of any company in which the Company holds any shares at such time in respect of such shareholders' shares in such company pursuant to a rights offer by such company and in terms of which such shareholders are entitled to subscribe for securities or acquire any other asset of such company;
 - 33.1.172 "**Losses**" includes all losses, payments, damages, liabilities, claims, proceedings, actions, penalties, breakage costs, charges, demands or other sanctions of a monetary nature, fees, Taxes, costs and expenses (including legal fees on the *de facto* scale between attorney and own client) (provided that any such charges, fees, costs and expenses incurred prior to any default, breach or other act or omission giving rise to an obligation to indemnify or make good any Losses shall be costs reasonably incurred) and the term "**Loss**" shall bear a corresponding meaning;
 - 33.1.173 "**Material Adverse Event**" means the occurrence of any event, circumstance or matter or combination of events, circumstances or matters which has or is reasonably likely to have a material adverse effect on:
 - 33.1.173.1 the financial condition (including assets, revenues and liabilities), business, operations or affairs of the Company, BIC2, any MTN Acceded Nominee, or the MTN Group taken as a whole; and/or
 - 33.1.173.2 the ability of the Company and/or BIC2 to perform in a timely manner any or all of its obligations under and in terms of any of the Key Transaction Documents to which it is a party and/or the ability of MTN to perform in a timely manner any or all of its material obligations under and in terms of any of the Transaction Documents to which it is a party; and/or
 - 33.1.173.3 the validity and/or enforceability of any of the Key Transaction Documents;
 - 33.1.174 "**Material Agreements**" means -
 - 33.1.174.1 each Key Material Agreement;

- 33.1.174.2 each Service Provider Agreement; and
 - 33.1.174.3 any other written agreement or document which BIC2, MTN and the Preference Share Agent may agree in writing is a Material Agreement from time to time,
 - 33.1.174.4 and "**Material Agreement**" means any one of them as the context may require;
- 33.1.175 "**Material Subsidiary**" means, at any time, an Operating Subsidiary of MTN if the gross assets, pre-tax profits or turnover of that Operating Subsidiary then equals or exceeds 10% (ten per cent) of either the gross assets, pre-tax profits or turnover of the MTN Group and for this purpose -
- 33.1.175.1 subject to clause 33.1.175.1.1 below:
 - 33.1.175.1.1 the contribution of an Operating Subsidiary of MTN will be determined from its financial statements which were consolidated into the latest audited consolidated financial statements of the MTN; and
 - 33.1.175.1.2 the gross assets pre-tax profits or turnover of the MTN Group will be determined from the latest audited consolidated financial statements of MTN;
 - 33.1.175.2 if an Operating Subsidiary of MTN becomes a member of the MTN Group after the date on which the latest audited consolidated financial statements of MTN were prepared -
 - 33.1.175.2.1 the contribution of the Operating Subsidiary will be determined from its latest financial statements; and
 - 33.1.175.2.2 the gross assets pre-tax profits or turnover of the MTN Group will be determined from the latest audited consolidated financial statements of MTN but adjusted to take into account any subsequent acquisition or disposal of a business or a company (including that Operating Subsidiary);
 - 33.1.175.3 the contribution of an Operating Subsidiary will, if it has Subsidiaries, be determined from its consolidated financial statements;
 - 33.1.175.4 if a Material Subsidiary disposes of all or substantially all of its assets to another member of the MTN Group, it will immediately cease to be a Material Subsidiary and the other member of the MTN Group (if it is not MTN or already a Material Subsidiary) will immediately become a Material Subsidiary;
 - 33.1.175.5 an Operating Subsidiary of MTN (if it is not already a Material Subsidiary) will become a Material Subsidiary on completion of any other intra-MTN Group transfer or reorganisation if it would have been a Material Subsidiary had the intra-MTN Group transfer or reorganisation occurred on the date of the latest audited consolidated financial statements of MTN;

- 33.1.175.6 except as specifically mentioned in clause 33.1.175.4 above, a member of the MTN Group will remain a Material Subsidiary until the next audited consolidated financial statements of MTN show otherwise under clause 33.1.175.1; and
- 33.1.175.7 if there is a dispute as to whether or not a member of the MTN Group is a Material Subsidiary, a certificate of the auditors of MTN will be, in the absence of manifest error, conclusive;
- 33.1.176 "**Maximum Roll-Up Amount**" means, on any Priority of Payments Date, and immediately after the application of the applicable Priority of Payments on such Priority of Payments Date, an amount equal to 105% (one hundred and five percent) of the aggregate BFC2 Issue Price of the BFC2 Unredeemed Preference Shares plus all accrued and/or accumulated BFC2 Preference Dividends in respect of the BFC2 Unredeemed Preference Shares;
- 33.1.177 "**Measurement Period**" means a period of 12 (twelve) months ending on the last day of a financial year and Financial Half Year of MTN;
- 33.1.178 "**MML**" means Momentum Metropolitan Life Limited, (Registration No. 1904/002186/06), a public limited liability company duly registered and incorporated in accordance with the company laws of South Africa;
- 33.1.179 "**MTN**" means MTN Group Limited (Registration No. 1994/009584/06), a public limited liability company duly registered and incorporated in accordance with the laws of South Africa, the ordinary shares of which are listed on the main board of the stock exchange maintained by the JSE;
- 33.1.180 "**MTN Acceded Nominee**" means, at any relevant time, (i) MTN Holdings; and (ii) each MTN Nominee that has acceded to the provisions of the MTN Subordination and Undertaking Agreement in the manner provided for therein and "**MTN Acceded Nominees**" shall mean all of them;
- 33.1.181 "**MTN Account Cession**" means the account cession entered into between the Preference Share Agent (as preference share agent), BFC2 Preference Shareholders (as security cessionaries) and MTN (as cedent) pursuant to which MTN cedes, *in securitatem debiti*, to the BFC2 Preference Shareholders, all of its right, title and interest in and to the MTN Implementation Account, all as security for its obligations under the MTN Limited Recourse Guarantee, and all on the terms and conditions contained therein;
- 33.1.182 "**MTN BFC2 Preference Share Claims**" shall bear the meaning ascribed thereto in the MTN Subordination and Undertaking Agreement;
- 33.1.183 "**MTN Group**" means MTN and its Subsidiaries;
- 33.1.184 "**MTN Holdings**" means Mobile Telephone Networks Holdings Limited (Registration No. 1993/001411/07/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 33.1.185 "**MTN Implementation Account**" means the account opened by MTN with Nedbank and designated the "*MTN Implementation Account*" in the Implementation Agreement;
- 33.1.186 "**MTN International**" means MTN International Proprietary Limited (Registration No. 1998/002351/07), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;

- 33.1.187 "**MTN Limited Recourse Guarantee**" means the limited recourse guarantee entered into between MTN (as guarantor) and the BFC2 Preference Shareholders, pursuant to which MTN unconditionally and irrevocably guarantees, on a limited recourse basis, the payment of all amounts required and/or scheduled or intended to be paid by BFC2 under the Finance Documents to the BFC2 Preference Shareholders, all on the terms and conditions contained therein;
- 33.1.188 "**MTN Loan Account**" means the claim on loan account initially held by MTN Zakhele against MTN (arising pursuant to the provisions of the Repurchase Agreement) and transferred to the Company pursuant to the MTN Loan Transfer and Cession Agreement;
- 33.1.189 "**MTN Loan Transfer and Cession Agreement**" means the agreement entered into between MTN Zakhele, MTN and BIC2 pursuant to which MTN Zakhele cedes and transfers on an out and out basis all of its right, title and interest in and to the MTN Loan Account to BIC2 in consideration for the BIC2 Consideration Shares;
- 33.1.190 "**MTN Nominee**" means, at any time at which a Call Option may be exercised by MTN or an MTN Acceded Nominee in terms of the MTN Subordination and Undertaking Agreement:
- 33.1.190.1 any Material Subsidiary which is duly registered and incorporated in accordance with the laws of South Africa;
- 33.1.190.2 MTN Holdings;
- 33.1.190.3 MTN International; and
- 33.1.190.4 any other entity approved by the Preference Share Agent in writing, provided that such entity is a Subsidiary of MTN at such time and provided further that such entity is not a Sanctioned Entity;
- 33.1.191 "**MTN Related Entity**" means any Subsidiary, joint venture of MTN, associate of MTN or trust in which MTN has an interest;
- 33.1.192 "**MTN Shares**" means the ordinary shares with a par value of R0.0001 each in the issued share capital of MTN. For the avoidance of doubt, references to the MTN Shares include references – changed as necessary – to any class of shares into which such shares may be converted (whether pursuant to the Companies Act or otherwise) and to such shares as they may be consolidated and sub-divided from time to time;
- 33.1.193 "**MTN Subordination and Undertaking Agreement**" means the subordination and undertaking agreement entered into between MTN, MTN Holdings, the BFC2 Preference Shareholders, the Preference Share Agent, BIC2 and the Company pursuant to which, *inter alia*, MTN or an MTN Acceded Nominee, as the case may be, subordinates all claims against the Company and BIC2 in favour of the BIC2 Preference Shareholders and the BFC2 Preference Shareholders and gives certain warranties and undertakings, all on the terms and conditions contained therein;
- 33.1.194 "**MTN Tranche 1 Additional Subscription Shares**" means the MTN Shares acquired and/or subscribed for and issued to, BIC2 from time to time after the Issue Date (2016) in terms of the MTN Tranche 1 Subscription and Call Option Agreement;

- 33.1.195 "**MTN Tranche 1 Initial Subscription Shares**" means the MTN Shares to be subscribed for, and issued to, BIC2 on the Issue Date (2016) in terms of the MTN Tranche 1 Subscription and Call Option Agreement;
- 33.1.196 "**MTN Tranche 1 Subscription and Call Option Agreement**" means the MTN tranche 1 subscription and call option agreement entered into between BIC2 and MTN, pursuant to which BIC2 subscribed for the MTN Tranche 1 Initial Subscription Shares and the MTN Tranche 1 Additional Subscription Shares, all on the terms and conditions contained therein;
- 33.1.197 "**MTN Tranche 2 Subscription Agreement**" means the MTN tranche 2 subscription agreement entered into between BIC2 and MTN, pursuant to which BIC2 subscribed for the MTN Tranche 2 Subscription Shares, all on the terms and conditions contained therein;
- 33.1.198 "**MTN Tranche 2 Subscription Shares**" means the MTN Shares subscribed for, and issued to, BIC2, on the Issue Date (2016) in terms of the MTN Tranche 2 Subscription Agreement;
- 33.1.199 "**MTN Tranche 3 Subscription Agreement**" means the MTN tranche 3 subscription agreement entered into between the Company and MTN, pursuant to which BIC2 subscribed for the MTN Tranche 3 Subscription Shares, all on the terms and conditions contained therein;
- 33.1.200 "**MTN Tranche 3 Subscription Shares**" means the MTN Shares subscribed for, and issued to, the Company, on the first Business day following the Issue Date (2016) in terms of the MTN Tranche 3 Subscription Agreement;
- 33.1.201 "**MTN Zakhele**" means MTN Zakhele (RF) Limited (Registration No. 2010/004693/06), a public limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 33.1.202 "**MTN Zakhele Reinvestment Offer**" means one of three options available to ordinary shareholders in MTN Zakhele under the MTN Zakhele Unwinding Scheme, pursuant to which qualifying ordinary shareholders in MTN Zakhele were, subject to the relevant terms and conditions, be offered an election to receive certain BIC2 Consideration Shares, thus allowing them an opportunity to reinvest all or a portion of their investment in MTN Zakhele into BIC2;
- 33.1.203 "**MTN Zakhele Unwinding Scheme**" means the scheme of arrangement pursuant to section 114 of the Companies Act proposed by the board of directors of MTN Zakhele as between MTN Zakhele and the ordinary shareholders of MTN Zakhele, for the purpose of MTN Zakhele buying back and cancelling all of the ordinary shares in the issued share capital of MTN Zakhele from the ordinary shareholders of MTN Zakhele (other than such share held by MTN Holdings), pursuant to which scheme and subject to the relevant terms and conditions, *inter alia*, each ordinary shareholder of MTN Zakhele will be entitled to elect to receive one or more of: (i) ordinary shares in the ordinary issued share capital of MTN; (ii) cash consideration; (iii) BIC2 Consideration Shares; or (iv) a combination of the items listed in the BIC2 MOI;
- 33.1.204 "**Naira**" and "**NGN**" means the lawful currency of Nigeria;
- 33.1.205 "**Nedbank**" means Nedbank Limited (Registration No. 1951/000009/06) a limited liability company duly registered and incorporated in accordance with the laws of South Africa;

- 33.1.206 "**Nedbank Agency Fees Letter**" means the fees letter by *inter alia* Nedbank addressed to BIC2 and MTN and counter-signed by MTN, setting out the fees payable by BIC2 for the various functions to be performed by Nedbank and NIS in terms of certain Finance Documents (it being recorded that if there is any conflict between the provisions of the Nedbank Agency Fees Letter and the Account Bank and Agency Agreement, the provisions of the Account Bank and Agency Agreement shall prevail);
- 33.1.207 "**New Empowerment Transaction Closing Date**" means each of the applicable dates contemplated in the Implementation Agreement upon which the steps to the Transaction are to be completed;
- 33.1.208 "**NIS**" means Nedbank Limited (Registration No 1951/000009/06) (acting through its Corporate and Investment Banking division and its Nedbank Investor Services business unit), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 33.1.209 "**One Day VWAP**" means, in respect of any shares in the issued ordinary share capital of any company listed on the JSE, the volume weighted average price of such shares calculated on the Trading Day immediately preceding the date on which such volume weighted average price is calculated, as determined by the Calculation Agent in accordance with the Account Bank and Agency Agreement;
- 33.1.210 "**Operating Subsidiary**" means any Subsidiary of MTN which generates its revenue directly from telecommunication services, including offering cellular network and access and business solutions;
- 33.1.211 "**Ordinary Shareholders**" means the legal and beneficial owners of the Ordinary Shares, from time to time;
- 33.1.212 "**Ordinary Shares**" means the ordinary Shares having no par value in the share capital of the Company;
- 33.1.213 "**Permanent Initial Subordinated Loan**" means an Initial Subordinated Loan (if any, as determined in accordance with the Final Capital Structure Documents) advanced or to be advanced by MTN (or an MTN Acceded Nominee) to BIC2, in accordance with the provisions of clause 4.1.1.1 of the MTN Subordination and Undertaking Agreement, for the purpose of ensuring that the Inception Total Share Cover Ratio will be at least equal to 4:1 (four to one) on the Determination Date, which such loan shall (a) not be permitted to be repaid by BIC2 to MTN (or the applicable MTN Acceded Nominee); and (b) remain in the BIC2 Top-Up Loan Account until such time as (i) all of the BIC2 Preference Shares are redeemed in full; and (ii) the BIC2 Discharge Date has occurred;
- 33.1.214 "**Permitted Action**" means -
- 33.1.214.1 *pro rata* share buy-backs by MTN, by way of:
- 33.1.214.1.1 a scheme of arrangement offered to all shareholders of MTN (other than, at MTN's election, shareholders designated as such in terms of any employee share option schemes); or
- 33.1.214.1.2 a repurchase programme offered to all shareholders of MTN (other than, at MTN's election, shareholders designated as such in terms of any employee share option schemes) of MTN;

33.1.214.1.3 share buy-backs on the open market pursuant to which MTN acquires MTN Shares from its shareholders (other than, at MTN's election, shareholders designated as such in terms of any employee share option schemes);

33.1.214.2 any:

33.1.214.2.1 scheme of arrangement proposed between MTN and its shareholders or between an issuer of any Additional Shares, and its shareholders; or

33.1.214.2.2 any other corporate action in respect of the MTN Shares or in respect of the ordinary shares issued by an issuer of any Additional Shares,

(in each case other than an Asset Unbundling Transaction) pursuant to which:

33.1.214.2.3 BIC2 is entitled to receive cash in exchange for all or a portion of the Target Shares or all or a portion of the Additional Shares, as the case may be, and in respect of an offer for all of the Target Shares or Additional Shares, such cash is at least equal to the aggregate of the BIC2 Redemption Amount and in respect of an offer for a portion of the Additional Shares or Target Shares, the Preference Share Agent is satisfied that (i) the Total Share Cover Ratio or the applicable Revised Total Share Cover Ratio, as the case may be; and (ii) the Volatility Protection Share Cover Ratio or the Revised Volatility Protection Share Cover Ratio, as the case may be, will be maintained immediately after the implementation of such scheme of arrangement or such other corporate action; or

33.1.214.2.4 BIC2 is entitled to receive assets other than cash in exchange for the Target Shares or the Additional Shares (an "**Acquisition Event**"), as the case may be, provided that the Preference Share Agent has consented thereto in advance and in writing provided that (a) any amendments required to be made to (i) the Total Share Cover Ratio as a result of any Acquisition Event, as the case may be, are effected to the written satisfaction of the Preference Share Agent (the "**Acquisition Revised Total Share Cover Ratio**"); and (ii) the Volatility Protection Share Cover Ratio as a result of any Acquisition Event, as the case may be, are effected to the written satisfaction of the Preference Share Agent (the "**Acquisition Revised Volatility Protection Share Cover Ratio**"), and any additional security which is required in writing by the Preference Share Agent as a result of any Acquisition Event is provided by BIC2 to the satisfaction of the Preference Share Agent; and (b) any other amendments to the Key Transaction Documents that may be necessary as a

result of any Acquisition Event are effected to the written satisfaction of the Preference Share Agent; or

- 33.1.214.2.5 BIC2 is entitled to receive a combination of cash and assets in exchange for the Target Shares or Additional Shares, as the case may be, and the cash portion is at least equal to the aggregate of the BIC2 Redemption Amount;
- 33.1.214.3 any Asset Unbundling Transaction by MTN or any other issuer of Subject Shares pursuant to which BIC2 is entitled to receive any shares as part of such Asset Unbundling Transaction (the "**Unbundled Shares**") provided that -
- 33.1.214.3.1 the Preference Share Agent has confirmed in writing that it is satisfied with the aggregate value of the Unbundled Shares (as determined by a firm of corporate advisors acceptable to the Preference Share Agent) (the "**Unbundled Agreed Value**");
- 33.1.214.3.2 any amendments required to be made to the (i) Total Share Cover Ratio as a result of such Asset Unbundling Transaction are effected to the written satisfaction of the Preference Share Agent (the "**Asset Revised Total Share Cover Ratio**"); and (ii) the Volatility Protection Share Cover Ratio as a result of such Asset Unbundling Transaction are effected to the written satisfaction of the Preference Share Agent (the "**Asset Revised Volatility Protection Share Cover Ratio**"), and any additional security which is required in writing by the Preference Share Agent as a result of the Asset Unbundling Transaction is provided by the Company;
- 33.1.214.3.3 any other amendments to the Key Transaction Documents required to be made by the Preference Share Agent that may be necessary as a result of such Asset Unbundling Transaction are effected to the written satisfaction of the Preference Share Agent;
- 33.1.214.3.4 by no later than the Business Day on which the conditions contemplated in clauses 33.1.214.3.1, 33.1.214.3.2 and 33.1.214.3.3 are fulfilled, the Calculation Agent confirms in writing that there is no, and there will not be, a breach of the Asset Revised Total Share Cover Ratio and/or the Asset Revised Volatility Protection Share Cover Ratio (provided that for the purposes of this clause 33.1.214.3 in determining the Asset Revised Total Share Cover Ratio and the Asset Revised Volatility Protection Share Cover Ratio, the Calculation Agent shall include an amount equal to the number of Unbundled Shares multiplied by the Unbundled Agreed Value) as a result of the Asset Unbundling Transaction; and

- 33.1.214.3.5 the Preference Share Agent confirms in advance and in writing that such Asset Unbundling Transaction will not in any way materially adversely affect the rights or interests of the BIC2 Preference Shareholders in respect of the BIC2 Preference Shares and/or the rights or interests of the BFC2 Preference Shareholders in respect of the BFC2 Preference Shares; or
- 33.1.214.4 any consolidation or sub-division of any of the Subject Shares; or
- 33.1.214.5 any other corporate action in relation to any of the Subject Shares which is taken with the prior written consent of the Preference Share Agent;
- 33.1.215 **"Permitted Disposal"** means -
- 33.1.215.1 any Disposal of any of the Subject Shares made pursuant to a Permitted Action;
- 33.1.215.2 the Disposal of the MTN Loan Account pursuant to the issue of the MTN Tranche 3 Subscription Shares;
- 33.1.215.3 subject to the applicable BIC2 Priority of Payments, any Disposal of the Target Shares in accordance with the terms of the MTN Tranche 1 Subscription and Call Option Agreement;
- 33.1.215.4 any Disposal of any of the Subject Shares made by BIC2 with the prior written consent of the Preference Share Agent;
- 33.1.215.5 any expenditure of cash which is made in accordance with the applicable BIC2 Priority of Payments;
- 33.1.215.6 any Disposal of any Designated Additional Shares; or
- 33.1.215.7 any other Disposal made by BIC2 with the prior written consent of the Preference Share Agent;
- 33.1.216 **"Preference Share Agent"** means the entity appointed as such from time to time pursuant to the terms of, *inter alia*, the Interfunder Agreement;
- 33.1.217 **"Preference Share Custodian"** means the entity appointed as such from time to time pursuant to the provisions of, *inter alia*, the Account Bank and Agency Agreement;
- 33.1.218 **"Preference Shares Custody Agreement"** means each agreement entered into between the Preference Share Agent, the Company and the Preference Share Custodian pursuant to which, *inter alia*, the Preference Share Custodian agrees to hold the BIC2 Preference Shares and the BFC2 Preference Shares, all on the terms and conditions contained therein (it being recorded that if there is any conflict between the provisions of the Preference Shares Custody Agreement and the Account Bank and Agency Agreement the provisions of the Account Bank and Agency Agreement shall prevail);
- 33.1.219 **"Prime Rate"** means the quoted prime lending rate (per cent, per annum, compounded monthly in arrear and calculated on a 365 (three hundred and sixty five) day year) from time to time of the Preference Share Agent (or, if the

Preference Share Agent is not Absa Bank Limited, FirstRand Bank Limited, The Standard Bank of South Africa Limited or Nedbank Limited, or any division of any of them, then the quoted prime lending rate from time to time of RMB as certified (save for manifest error) by any manager of the Preference Share Agent or RMB, as applicable, whose appointment, designation or authority need not be proved;

- 33.1.220 "**Professional Advisors**" means the professional advisors appointed by BIC2, the BFC2 Investors, including the BFC2 Refinancing Investors, and/or the BFC2 Preference Shareholders from time to time, including their respective auditors, legal advisors, corporate advisors, Tax advisors, directors, public officer, company secretary, the BIC2 Administrator, the BFC2 Administrator and the various agents appointed under in terms of the Account Bank and Agency Agreement;
- 33.1.221 "**Professional Advisor Agreements**" means any and all agreements entered into between BIC2 and any Professional Advisors in relation to the provision of services by such Professional Advisors to BIC2 for the purposes of advising on, administering and implementing the transaction/s contemplated by the Transaction Documents;
- 33.1.222 "**Public Offer**" means the public offering in terms of which, subject to certain qualification criteria (i) Black Participants are invited to subscribe for and beneficially own BIC2 Ordinary Shares; and (ii) reinvesting ordinary shareholders of MTN Zakhele may elect to receive, and MTN Zakhele will receive and distribute, BIC2 Consideration Shares;
- 33.1.223 "**Public Offer and Reinvestment Documents**" means all documents and agreements required to be executed in connection with the MTN Zakhele Reinvestment Offer and/or the Public Offer, including, without limitation, the prospectus issued by BIC2 and MTN Zakhele in respect of the MTN Zakhele Reinvestment Offer and the Public Offer;
- 33.1.224 "**Refinancing**" means, subject to the Refinancing Agreement becoming unconditional in accordance with its terms, the arrangement pursuant to which the Company proposes to issue the BFC2 Tranche 2 Preference Shares to the BFC2 Refinancing Investors on 30 September 2021 and to use the proceeds for the issue of the BFC2 Tranche 2 Preference Shares to voluntarily redeem, in the absolute and sole discretion of the director of the Company, each Depfin BFC2 Preference Share, on 30 September 2021 for the BFC2 Issue Price per Depfin BFC2 Preference Share;
- 33.1.225 "**Refinancing Agreement**" means the written agreement entered into or to be entered into between, *inter alios*, the Company, BIC2, MTN, MTN Holdings and the BFC2 Investors, in terms of which, *inter alia*, (i) the Refinancing is implemented and (ii) certain Finance Documents are amended and restated, on the terms and subject to the conditions therein;
- 33.1.226 "**Refinancing Date**" means, subject to the Refinancing being implemented in accordance with the terms of the Refinancing Agreement, 30 September 2021;
- 33.1.227 "**Refinancing Fees Letter**" means the fees letter entered into or to be entered into between BIC2, the BFC2 Refinancing Investors and the Company pursuant to which BIC2, on behalf of the Company, agrees to pay a non-refundable restructuring fees (plus VAT thereon) to the BFC2 Refinancing Investors on the Refinancing Date, all on the terms and conditions contained therein;

- 33.1.228 "**Relationship Agreement**" means the relationship agreement entered into between MTN and BIC2 and thereafter the BIC2 Ordinary Shareholders pursuant to which MTN and BIC2 regulate their relationship in respect of BIC2's shareholding in MTN and BIC2's undertakings in relation to the Transaction, all on the terms and conditions contained therein;
- 33.1.229 "**Repurchase Agreement**" means the repurchase of shares agreement entered into between MTN and MTN Zakhele pursuant to which, *inter alia*, MTN shall repurchase a certain number of MTN ordinary shares held by MTN Zakhele and the obligation of MTN to discharge the purchase price therefor shall (i) partially be discharged by the payment of cash by MTN to MTN Zakhele; and (ii) to extent not discharged by the payment of cash by MTN to MTN Zakhele, remain outstanding on loan account;
- 33.1.230 "**Restricted Cash**" means "*Restricted Cash*" as defined in the most recent audited consolidated financial statements of MTN;
- 33.1.231 "**Return**" means, in relation to any BFC2 Preference Shareholder or its Consolidating Company, as the case may be, the overall return on investment to be achieved by that BFC2 Preference Shareholder or its Consolidating Company in respect of, or in connection with, the subscription for, holding or funding of the BFC2 Preference Shares, and includes the relevant BFC2 Preference Shareholder or its Consolidating Company's -
- 33.1.231.1 financial return, net of charges, costs, imposts, capital adequacy or liquidity requirements or any other costs, charges, levies or imposts in respect of which a BFC2 Adjustment Event may apply; and/or
- 33.1.231.2 after-Tax return, net of all taxes payable in respect of, or in connection with, or as a result of the subscription for, holding and/or funding of the BFC2 Preference Shares;
- 33.1.232 "**Reversionary Rights**" means the reversionary rights of BIC2 to the assets granted as security under the BIC2 Pledge and Cession and the BIC2 Account Cession after full and irrevocable satisfaction of all its obligations under the First Ranking Guarantee, the BIC2 Pledge and Cession and the BIC2 Account Cession;
- 33.1.233 "**Revised Total Share Cover Ratios**" means the Acquisition Revised Total Share Cover Ratio and the Asset Revised Total Share Cover Ratio and "Revised Total Share Cover Ratio" means any one of them, as the context may require;
- 33.1.234 "**Revised Volatility Protection Share Cover Ratios**" means the Acquisition Revised Volatility Protection Share Cover Ratio and the Asset Revised Volatility Protection Share Cover Ratio and "**Revised Volatility Protection Share Cover Ratio**" means any one of them, as the context may require;
- 33.1.235 "**RMB**" means FirstRand Bank Limited (acting through its Rand Merchant Bank Division) (Registration No. 1929/001225/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 33.1.236 "**RMB Agency Fees Letter**" means the fees letter by RMB addressed to the Company, and counter signed by the Company, setting out the fees payable by the Company for the various functions to be performed by RMB in its capacity as Preference Share Agent, Calculation Agent, Preference Share Custodian and Account Bank respectively (it being recorded that if there is any conflict between the provisions of the RMB Agency Fees Letter and the Account Bank and Agency

Agreement, the provisions of the Account Bank and Agency Agreement shall prevail);

33.1.237 "**Sanctioned Entity**" means -

33.1.237.1 a person, country or territory which is listed on a Sanctions List or is subject to Sanctions; and/or

33.1.237.2 a natural person which is ordinarily resident in a country or territory which is listed on a Sanctions List or is subject to Sanctions;

33.1.238 "**Sanctions**" means trade, economic or financial sanctions, laws, regulations, embargoes or restrictive measures imposed, administered or enforced from time to time by any Sanctions Authority;

33.1.239 "**Sanctions Authority**" means -

33.1.239.1 the United Nations;

33.1.239.2 the European Union;

33.1.239.3 the Council of Europe (founded under the Treaty of London, 1946);

33.1.239.4 the government of the United States of America;

33.1.239.5 the government of the Republic of France;

33.1.239.6 the government of the United Kingdom; and

and any of their governmental authorities, including, without limitation, the Office of Foreign Assets Control for the US Department of Treasury ("**OFAC**"), the US Department of Commerce, the US State Department or the US Department of the Treasury and Her Majesty's Treasury ("**HMT**") and the French Ministry of Finance;

33.1.240 "**Sanctions List**" means -

33.1.240.1 the Specially Designated Nationals and Blocked Persons List maintained by OFAC;

33.1.240.2 the Consolidated List of Financial Sanctions Targets and the Investments Ban List maintained by HMT,

and any similar list maintained, or a public announcement of a Sanctions designation made, by any Sanctions Authority, in each case as amended, supplemented or substituted from time to time;

33.1.241 "**Securities Transfer Tax**" means securities transfer tax (as contemplated by the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007));

33.1.242 "**Security Custodian**" means the entity appointed as such from time to time pursuant to the terms of, *inter alia*, the Account Bank and Agency Agreement;

33.1.243 "**Service Provider Agreements**" means -

33.1.243.1 the JSE Trading Platform Agreements;

33.1.243.2 the Professional Advisor Agreements; and

- 33.1.243.3 the Unwinding Service Agreements,
- and "**Service Provider Agreement**" means, as the context requires, any one of them;
- 33.1.244 "**Signature Date**" means the date on which the BFC2 Preference Share Subscription Agreement is signed by the last party thereto;
- 33.1.245 "**Specified Funding Conditions Precedent**" means the conditions precedent contained in clauses 3.1.10, 3.1.11, 3.1.21, 3.1.28, 3.1.29, 3.1.30, 3.1.31, 3.1.32, 3.1.33, 3.1.35, 3.1.36, 3.1.37, 3.1.39, 3.1.40 and 3.1.41 of the BIC2 Preference Share Subscription Agreement;
- 33.1.246 "**Subject Shares**" means collectively the Target Shares and the Additional Shares as such shares may be consolidated or subdivided pursuant to a Permitted Action;
- 33.1.247 "**Subject Shares Custody Agreement**" means each custody agreement entered into between the Security Custodian and BIC2 from time to time pursuant to which, *inter alia*, the Security Custodian agrees to hold the Subject Shares and manage the Subject Shares Securities Account, all on the terms and conditions contained therein (it being recorded that if there is any conflict between the provisions of the Subject Shares Custody Agreement and the Account Bank and Agency Agreement the provisions of the Account Bank and Agency Agreement shall prevail);
- 33.1.248 "**Subject Shares Securities Account**" means the securities account maintained by BIC2 with the Security Custodian from time to time in which all Subject Shares will be reflected;
- 33.1.249 "**Subscription Shares**" means the MTN Tranche 1 Initial Subscription Shares and the MTN Tranche 2 Subscription Shares and the MTN Tranche 3 Subscription Shares;
- 33.1.250 "**Subsidiary**" means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50% (fifty per cent) of the voting capital or similar right of ownership and control for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise;
- 33.1.251 "**Target Shares**" means -
- 33.1.251.1 the Subscription Shares;
- 33.1.251.2 the MTN Tranche 1 Additional Subscription Shares acquired and/or subscribed for and legally and beneficially owned by BIC2 from time to time pursuant to the MTN Tranche 1 Subscription and Call Option Agreement in accordance with the applicable BIC2 Priority of Payments; and
- 33.1.251.3 any other MTN Shares legally and beneficially owned by BIC2 as a result of BIC2 being the legal and beneficial owner of the Sale Shares, the Subscription Shares and/or the MTN Tranche 1 Additional Subscription Shares;
- 33.1.252 "**Tax**" includes, without limitation, any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature and whatever called (including, without limitation, Securities Transfer Tax, stamp duty, documentary,

registration or other like duty, all income tax, capital gains tax, secondary tax on companies, dividend tax and value added tax), together with any penalties, fines or interest imposed thereon, imposed, levied, collected, withheld or assessed by any person on any person in any jurisdiction and with respect to any thing, and the terms "**Taxes**" and "**Taxation**" and other cognate terms shall bear corresponding meanings;

33.1.253 "**Term**" means the period commencing on the Issue Date (2016) and ending on the date on which the last of the BFC2 Preference Shares is fully, finally and irrevocably redeemed;

33.1.254 "**Total Share Cover Ratio**" means, as at any date, the ratio of A:B, where:

33.1.254.1 A is the number of MTN Shares reflected in the Subject Shares Securities Account as at that date multiplied by the Five Day VWAP of the MTN Shares; and

33.1.254.2 B is (a) the aggregate BIC2 Redemption Amount (excluding any BIC2 Margin Dividend) of the BIC2 Unredeemed Preference Shares as at that date calculated on the basis that the BIC2 Unredeemed Preference Shares were to be redeemed on that date (calculated, for these purposes, in accordance with the Account Bank and Agency Agreement); minus (b) the aggregate of all amounts standing to the credit of the BFC2 Collection Account, BIC2 Collection Account, the BIC2 Security Account, BFC2 Top-Up Loan Account and the BIC2 Top-Up Loan Account on that date;

33.1.255 "**Trading Day**" means any day that is a trading day on the JSE and does not include a day on which trading on the JSE is scheduled to close prior to its regular weekday closing time;

33.1.256 "**Transaction**" means each of the transactions contemplated by the Transaction Documents, pursuant to which, *inter alia* -

33.1.256.1 on the Effective Date:

33.1.256.1.1 BIC2 made the Public Offer;

33.1.256.1.2 BIC2 issued the BIC2 Preference Shares to the Company;

33.1.256.1.3 the Company issued the BFC2 Tranche 1 Preference Shares to the BFC2 Initial Investors; and

33.1.256.1.4 BIC2 acquired the MTN Loan Account from MTN Zakhele in consideration for the issue of BIC2 Consideration Shares to MTN Zakhele; and BIC2 subscribed for the Subscription Shares; and

33.1.256.2 on the Refinancing Date, the Refinancing will be implemented,

all on the terms and conditions contained therein;

33.1.257 "**Transaction Documents**" means the Finance Documents and the Material Agreements and "**Transaction Document**" means, as the context requires, any one of them;

- 33.1.258 **"Transaction Fees"** means the amount of the legal costs and expenses and all other legal and other professional advisory fees agreed to in writing by MTN, plus VAT thereon, payable in connection with the negotiation, preparation and implementation of the Transaction Documents from time to time;
- 33.1.259 **"Trigger Event Call Option"** means the irrevocable call option which MTN or the applicable MTN Acceded Nominee is granted by the BFC2 Preference Shareholders entitling MTN or the applicable MTN Acceded Nominee to purchase all of the BFC2 Unredeemed Preference Shares from the BFC2 Preference Shareholders on the terms and conditions of the Call Option Agreement;
- 33.1.260 **"Trigger Event Call Option Period"** means -
- 33.1.260.1 in respect of the occurrence of the BFC2 Potential Trigger Event contemplated in clause 33.2.3.1.14 (*Acceleration of Financial Indebtedness (MTN)*) of this MOI, the period from the date of the applicable Call Option Notice to the earlier of:
- 33.1.260.1.1 1 (one) Business Day from the date of such Call Option Notice;
- 33.1.260.1.2 the date and time on which and at which the BFC2 Potential Trigger Event is waived in writing by the Preference Share Agent; and
- 33.1.260.1.3 the date and time on which and at which the BFC2 Potential Trigger Event is remedied;
- 33.1.260.2 in respect of the occurrence of any of the BFC2 Potential Trigger Events contemplated in:
- 33.1.260.2.1 clause 33.2.3.1.33 (*One Day VWAP of the MTN Shares is R38,00 (thirty eight Rand) or less*); and/or
- 33.1.260.2.2 clause 33.2.3.1.16 (*Breach of Total Share Cover Ratio or Revised Total Share Cover Ratio*);
- 33.1.260.2.3 clause 33.2.3.1.6 (*Material Adverse Effect*);
- 33.1.260.2.4 clause 33.2.3.1.11 (*Invalidity of Finance Documents*);
- 33.1.260.2.5 clause 33.2.3.1.14 (*Breach of Financial Indebtedness*);
- 33.1.260.2.6 clause 33.2.3.1.21 (*Distributions*);
- 33.1.260.2.7 clause 33.2.3.1.25 (*Asset Unbundling Transaction*);
- 33.1.260.2.8 clause 33.2.3.1.26 (*Insolvency*); and/or
- 33.1.260.2.9 clause 33.2.3.1.30 (*Attachment of Assets*)
- of this MOI, the period from the date of the applicable Call Option Notice to the earlier of:

- 33.1.260.2.10 2 (two) Business Days from the date of such Call Option Notice;
 - 33.1.260.2.11 the date and time on which and at which the BFC2 Potential Trigger Event is waived in writing by the Preference Share Agent; and
 - 33.1.260.2.12 the date and time on which and at which the Potential Trigger Event is remedied;
- 33.1.260.3 in respect of the occurrence of any other BFC2 Potential Trigger Event (save for any BFC2 Potential Trigger Event contemplated in clauses 33.2.3.1.34 (*MTN Tranche 1 Subscription Shares*), 33.2.3.1.35 (*MTN Tranche 2 Subscription Shares*) or 33.2.3.1.36 (*MTN Tranche 3 Subscription Shares*); 33.2.3.1.37 (*Breach of the Repurchase Agreement*) and/or 33.2.3.1.26 (*Failure to Redeem the Class A Shares*)), the period from date of the applicable Call Option Notice to the earlier of:
- 33.1.260.3.1 3 (three) Business Days from the date of the applicable Call Option Notice or the expiry of the grace period, if any, in respect of such BFC2 Potential Trigger Event, whichever is the later;
 - 33.1.260.3.2 the date and time on which and at which the BFC2 Potential Trigger Event is waived in writing by the Preference Share Agent; and
 - 33.1.260.3.3 the date and time on which and at which the BFC2 Potential Trigger Event is remedied;
- 33.1.261 "**United Towers**" means United Towers Proprietary Limited (Registration No. 1968/01555/07), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 33.1.262 "**Unbundled Agreed Value**" shall bear the meaning ascribed thereto in clause 33.1.214.3.1 hereof;
- 33.1.263 "**Unwinding Service Agreements**" means agreements to be entered into between BIC2 and various third party service providers in relation to the provision of, amongst others, the following services:
- 33.1.263.1 legal services;
 - 33.1.263.2 accounting services;
 - 33.1.263.3 project management services;
 - 33.1.263.4 services related to education sessions to be provided to the holders of ordinary shares in MTN Zakhele;
 - 33.1.263.5 public relations, marketing and communication services,
 - 33.1.263.6 for the purpose of, in connection with or in relation to the facilitation of the unwinding of BIC2 to occur on or after the date on which the BIC2 Preference Shares are redeemed in full and any agreements incidental or ancillary to any of the above agreements, to the extent required therefor;

- 33.1.264 **"Value Added Tax"** or **"VAT"** means value-added tax leviable in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991);
- 33.1.265 **"Volatility Protection Share Cover Ratio"** means, as at any date, the ratio of A:B, where:
- 33.1.265.1 A is the number of MTN Shares reflected in the Subject Shares Securities Account as at that date multiplied by the One Day VWAP of the MTN Shares; and
- 33.1.265.2 B is (a) the aggregate BIC2 Redemption Amount (excluding any BIC2 Margin Dividend) of the BIC2 Unredeemed Preference Shares as at that date calculated on the basis that the BIC2 Unredeemed Preference Shares were to be redeemed on that date (calculated, for these purposes, in accordance with the Account Bank and Agency Agreement); minus (b) the aggregate of all amounts standing to the credit of the BFC2 Collection Account, the BIC2 Collection Account, the BFC2 Top-Up Loan Account, the BIC2 Security Account and the BIC2 Top-Up Loan Account on that date;
- 33.1.266 **"ZAR"** or **"R"** or **"Rands"** or **"South African Rands"** means South African Rands, the lawful currency of South Africa.
- 33.2 The following terms and conditions shall attach to the BFC2 Preference Shares:
- 33.2.1 **BFC2 Preference Dividends**
- 33.2.1.1 **BFC2 Scheduled Preference Dividends**
- 33.2.1.1.1 Subject to the provisions of clause 33.2.1.1.3 and clause 33.2.1.1.4 below, each BFC2 Preference Shareholder registered as such on each BFC2 Scheduled Preference Dividend Date shall have the right to receive and be paid on each BFC2 Scheduled Preference Dividend Date, in priority to the holders of any other class of shares in the capital of the Company and in respect of each BFC2 Preference Share held by it, a BFC2 Scheduled Preference Dividend for the BFC2 Dividend Period preceding such BFC2 Scheduled Preference Dividend Date determined as the aggregate of the amounts obtained, on each day in the BFC2 Dividend Period for which the BFC2 Scheduled Preference Dividend is payable, by multiplying the sum of (and without double counting any amount):
- 33.2.1.1.1.1 the BFC2 Issue Price of each BFC2 Unredeemed Preference Share; plus
- 33.2.1.1.1.2 any BFC2 Accumulated Preference Dividends; plus
- 33.2.1.1.1.3 any BFC2 Arrear Dividends; plus

- 33.2.1.1.1.4 any BFC2 Unpaid Dividends,
by the BFC2 Dividend Rate on each such day during
such BFC2 Dividend Period.
- 33.2.1.1.2 Each such BFC2 Preference Shareholder shall also
have the right to receive and be paid on each BFC2
Scheduled Preference Dividend Date, in priority to
the holders of any other class of shares in the capital
of the Company (and without double counting any
amount):
 - 33.2.1.1.2.1 any BFC2 Arrear Dividends and
any BFC2 Unpaid Dividends; plus
 - 33.2.1.1.2.2 any BFC2 Accumulated Dividends
required to be declared and paid on
the applicable BFC2 Scheduled
Preference Dividend Date; plus
 - 33.2.1.1.2.3 any BFC2 Additional Dividends
required to be declared and paid on
the relevant BFC2 Scheduled
Preference Dividend Date.
- 33.2.1.1.3 If in terms of clause 2.1.1.3 of the BIC2 MOI and as
at any BFC2 Scheduled Preference Dividend Date,
BIC2 has elected to accumulate all or any part of the
BIC2 Scheduled Preference Dividends that have
accrued in respect of the BIC2 Preference Shares as
at such BFC2 Scheduled Preference Dividend Date,
the Company shall be deemed to have elected to
accumulate all or such part of the BFC2 Scheduled
Preference Dividends which have accrued in respect
of the BFC2 Preference Shares as at such BFC2
Scheduled Preference Dividend Date, provided that
such election shall not result in the Maximum Roll-
Up Amount being exceeded on such BFC2
Scheduled Preference Dividend Date (and after the
application of the Priority of Payments on such
Priority of Payments Date). In such circumstances,
such BFC2 Accumulated Preference Dividends shall
not be required to be declared and paid on such
BFC2 Scheduled Preference Dividend Date, but
shall instead be required to be declared and paid
(together with all other accrued BFC2 Preference
Dividends) in full on the immediately succeeding
BFC2 Scheduled Preference Dividend Date.
- 33.2.1.1.4 Each BFC2 Preference Dividend shall in respect of
each BFC2 Preference Share -
 - 33.2.1.1.4.1 be declared and paid only from
dividends received by the Company
in respect of the BIC2 Preference
Shares, unless the Preference Share
Agent agrees otherwise in advance

and in writing (which agreement shall, if given, be given as soon as reasonably possible);

33.2.1.1.4.2 subject to the Companies Act and to the extent the Company has cash available to pay such dividend, be declared and be payable on the applicable BFC2 Dividend Date; and

33.2.1.1.4.3 be payable in cash.

33.2.1.2 **Payment of BFC2 Preference Dividends and Accumulations**

33.2.1.2.1 The Company shall be obliged to declare and pay all accrued but unpaid BFC2 Preference Dividends in respect of each BFC2 Preference Share:

33.2.1.2.1.1 on each applicable BFC2 Dividend Date; and

33.2.1.2.1.2 prior to the redemption of such BFC2 Preference Share.

33.2.1.2.2 If any BFC2 Preference Dividend is not declared and/or paid on any applicable BFC2 Dividend Date then, notwithstanding anything to the contrary in this MOI, the amount of the undeclared and/or unpaid BFC2 Preference Dividend shall be accumulated until declared and paid in full or until the BFC2 Redemption Date of the last BFC2 Preference Share, whichever is the earlier.

33.2.1.3 **BFC2 Margin Dividend**

If the Refinancing is implemented on 30 September 2021, and the Company at any time after 30 September 2021 redeems all of the BFC2 Preference Shares and pays the BFC2 Redemption Amount per BFC2 Preference Share with funding raised pursuant to (a) a BFC2 Further Refinancing other than a BFC2 Further Refinancing used to redeem all of the BFC2 Preference Shares pursuant to clause 33.2.2.4 and /or (b) a Disposal by BIC2 of any of its assets other than pursuant to a Permitted Disposal, then the Company shall declare and, on the BFC2 Margin Dividend Date, pay the BFC2 Preference Shareholder a further BFC2 Dividend (a "**BFC2 Margin Dividend**") calculated by the Preference Share Agent (and the Preference Share Agent shall deliver a written statement of its calculation of the Company) in accordance with the following formula:

$$MD = A \times B$$

Where

MD = the BFC2 Margin Dividend to be declared and paid in respect of each BFC2 Preference Share which is redeemed and to which this clause 33.2.1.3 applies;

A = if the BFC2 Further Refinancing or Disposal contemplated in this clause 33.2.1.3 occurs (i) during the period of 12 months immediately following 30 September 2021, then 2% (two per cent); (ii) during the period of 12 to 24 months after 30 September 2021, then 1% (one per cent); or (iii) after 24 months from 30 September 2021, then 0% (zero per cent);

B = the BFC2 Redemption Amount (excluding any BFC2 Margin Dividend).

33.2.1.4 **Taxes**

If at any time any Tax is or becomes payable on any BFC2 Preference Dividend or other amount received in respect of the BFC2 Preference Shares by a BFC2 Preference Shareholder such BFC2 Preference Dividend or other amount shall be increased by an amount calculated in accordance with the following formula (such that the BFC2 Preference Shareholder receives the same financial return and/or net after Tax return as it would have had had such Tax not been payable or withheld) -

$$A = (B \div T) - B$$

where -

A = the additional amount of the BFC2 Preference Dividend to be paid;

B = the actual amount of the BFC2 Preference Dividend or other amount received;

T = 1 (one) minus the then prevailing Corporate Tax Rate or, if such Tax is payable at any other rate, such rate, as applicable.

33.2.1.5 **BFC2 Preference Dividend Rate Adjustments**

Notwithstanding anything to the contrary in this MOI, subject to clause 33.2.1.1.3, and in addition to any other remedy specified in this MOI, if:

33.2.1.5.1 any BFC2 Preference Dividend is not declared on the applicable BFC2 Dividend Date; or

33.2.1.5.2 any BFC2 Preference Dividend is declared but not paid in full on the applicable BFC2 Dividend Date; or

33.2.1.5.3 any BFC2 Preference Share is not redeemed and the BFC2 Redemption Amount thereof is not paid in full on the BFC2 Scheduled Redemption Date or on the date on which such BFC2 Preference Share is to be redeemed following a BFC2 Voluntary Redemption Offer given pursuant to clause 33.2.2.2 and which has not been revoked or on the date on which such

BFC2 Preference Share is to be redeemed following a mandatory redemption pursuant to clause 33.2.2.3,

then, for so long as such BFC2 Preference Dividend remains a BFC2 Unpaid Dividend or BFC2 Arrear Dividend (as the case may be) or such BFC2 Preference Share is not redeemed and the BFC2 Redemption Amount thereof not paid in full, the BFC2 Dividend Rate shall be increased to the BFC2 Default Rate with effect from (and including) the applicable BFC2 Dividend Date or the date on which such BFC2 Preference Share was required or scheduled to be redeemed (as the case may be) until (but excluding) the date of actual payment of such BFC2 Preference Dividend or until the BFC2 Redemption Date (and payment of the BFC2 Redemption Amount in respect thereof in full) of all such BFC2 Preference Shares, and on such date the BFC2 Dividend Rate shall again be the BFC2 Dividend Rate.

33.2.1.6 **BFC2 Adjustment Events and BFC2 Additional Dividends**

33.2.1.6.1 **Consequences of the occurrence of a BFC2 Adjustment Event**

If, in relation to (i) a BFC2 Preference Shareholder (an "**Affected BFC2 Preference Shareholder**"), (ii) any company that consolidates the BFC2 Preference Shareholder for financial reporting purposes and/or (iii) any affiliate of the BFC2 Preference Shareholder or any company that consolidates the BFC2 Preference Shareholder for financial reporting purposes (the entities referred to in (ii) and (iii) each being a "**Consolidating Company**"), as the case may be, at any time after the Signature Date, any event described as an adjustment event in clause 33.2.1.6.2 (each, a "**BFC2 Adjustment Event**") occurs that results in an Increased Cost or a reduction in the Return for the Affected BFC2 Preference Shareholder and/or its Consolidating Company, as the case may be, (other than as a result of the gross negligence or wilful misconduct on the part of such BFC2 Preference Shareholder or its Consolidating Company) which would not have resulted but for the occurrence of that BFC2 Adjustment Event, then the Affected BFC2 Preference Shareholder shall, notwithstanding anything to the contrary contained herein or in any other Transaction Document, be entitled to give written notice thereof to the Preference Share Agent, requiring the Preference Share Agent to carry out the necessary calculations and if, after such calculation, the Preference Share Agent finds that such BFC2 Adjustment Event has the effect that (a) the Affected BFC2 Preference Shareholder and/or its Consolidating Company would be in a worse position than it would have been if that BFC2 Adjustment Event had not occurred, (b) the Losses suffered by the BFC2 Preference Shareholder and/or its Consolidating Company are as a result of the

occurrence of the BFC2 Adjustment Event and (c) that the Losses were actually suffered by such BFC2 Preference Shareholder and/or its Consolidating Company, then the Preference Share Agent shall, on written notice to the Company, (an "**Increase Notice**") require the Company (in which event the Company shall be obliged) to -

33.2.1.6.1.1 declare and pay an additional BFC2 Preference Dividend in such amount as may be specified by the Affected BFC2 Preference Shareholder in the Increase Notice (a "**BFC2 Additional Dividend**"), which BFC2 Additional Preference Dividend shall be paid on the 1st (first) BFC2 Scheduled Preference Dividend Date following the date of such Increase Notice, provided that, if prior to such date, the Company receives any BFC2 Received Amount pursuant to the occurrence of a BIC2 Special Priority of Payments Date, then the amount of the BFC2 Additional Dividend shall be recalculated by the Preference Share Agent and shall be payable by the Company on the date on which the Company receives any BFC2 Received Amount pursuant to the occurrence of a BIC2 Special Priority of Payments Date; and/or

33.2.1.6.1.2 increase the BFC2 Dividend Rate Percentage, with effect from the date specified in the Increase Notice (which may be a date earlier than the date of the Increase Notice), by such a margin specified by the Affected BFC2 Preference Shareholder in the Increase Notice,

either -

33.2.1.6.1.3 in the case of the BFC2 Adjustment Events referred to in clauses 33.2.1.6.2.1 and/or 33.2.1.6.2.3, as may be necessary to compensate any Affected BFC2 Preference Shareholder and/or its Consolidating Company, as the case may be, for the occurrence of that Increased Cost or reduction in Return and to place that Affected BFC2 Preference Shareholder and/or its Consolidating Company, as the case may be, in the same

after-Tax position in respect of the BFC2 Preference Shares to which the Increase Notice applies and/or ensure that the Affected BFC2 Preference Shareholder and/or its Consolidating Company, as the case may be, will receive the same Return, in either case as if the relevant BFC2 Adjustment Event had not occurred; and

33.2.1.6.1.4 in the case of the BFC2 Adjustment Events referred to in clauses 33.2.1.6.2.2, 33.2.1.6.2.4 and 33.2.1.6.2.5, as determined in accordance with clause 33.2.1.6.3.

33.2.1.6.2 **BFC2 Adjustment Events**

An Adjustment Event shall occur if -

33.2.1.6.2.1 there is any change in law or in the interpretation or general application thereof, or the introduction of any new law;

33.2.1.6.2.2 an Affected BFC2 Preference Shareholder ceases to be exempt from Dividends Tax;

33.2.1.6.2.3 for so long as the Affected BFC2 Preference Shareholder or its Consolidating Company, as the case may be, is a bank duly registered as such in accordance with the Banks Act, No. 94 of 1990 or is otherwise subject to regulation under the Banks Act, No. 94 of 1990 or is a financial institution duly registered as such with any statutory or monetary authority, or is a subsidiary of such bank or financial institution, there is any -

33.2.1.6.2.3.1 proposal or measure implemented pursuant to any version of the International Convergence of Capital Measurement and Capital Standards (Basel Accord) on a basis different to that which is in force as at the Signature Date;

33.2.1.6.2.3.2 new directive of any central bank or any other fiscal,

- monetary, regulatory or other authority in South Africa having jurisdiction in respect of such bank, financial institution or subsidiary, as the case may be;
- 33.2.1.6.2.3.3 change in practice as it affects or is applied generally by such banks, financial institutions or subsidiaries, as the case may be, in South Africa;
- 33.2.1.6.2.3.4 requirement or request by any central bank or statutory or monetary authority with which such banks, financial institutions or subsidiaries, as the case may be, in South Africa generally comply, to pay any amounts or maintain any special deposits or reserve assets in addition to those paid or maintained or reserved by the Affected BFC2 Preference Shareholder or its Consolidating Company, as the case may be, as at the Signature Date; or
- 33.2.1.6.2.3.5 compliance by the Affected BFC2 Preference Shareholder or its Consolidating Company, as the case may be, with any reserve, cash ratio, special deposit, capital adequacy or liquidity requirement (or any other similar requirement) whether or not having the force of law, in respect of the BFC2 Preference Shares with which such banks, financial institutions or subsidiaries, as the case may be, in South Africa generally comply in

addition to those applicable
as at the Signature Date,

which is applicable to that bank,
financial institution or subsidiary, as
the case may be;

33.2.1.6.2.4 any Tax becomes payable, by the Affected BFC2 Preference Shareholder or for which the Affected BFC2 Preference Shareholder is or becomes liable on, or in respect of, the BFC2 Preference Shares (including as a result of the subscription for, the holding of and/or the funding of the BFC2 Preference Shares), any BFC2 Preference Dividend or any amount payable on the redemption of any BFC2 Preference Share, whether before or after redemption of the BFC2 Preference Shares; and/or

33.2.1.6.2.5 there is any increase or decrease in the Corporate Tax Rate.

33.2.1.6.3 **Specific provisions applicable to certain Adjustment Events**

33.2.1.6.3.1 The Company agrees that the provisions of this clause 33.2.1.6.2.4 will apply in respect of the BFC2 Adjustment Events referred to in clauses 33.2.1.6.2.2, 33.2.1.6.2.4 and 33.2.1.6.2.5, notwithstanding anything to the contrary contained in this clause 33.

33.2.1.6.3.2 If any BFC2 Adjustment Event described in clauses 33.2.1.6.2.2, or 33.2.1.6.2.4 occurs, the BFC2 Additional Dividend payable by the Company as a consequence of the occurrence of that BFC2 Adjustment Event shall be determined as an amount which is equal to the Tax contemplated by clauses 33.2.1.6.2.2, or 33.2.1.6.2.4, as applicable, which will be incurred or payable by, or withheld in respect of, the Affected BFC2 Preference Shareholder such that the Affected BFC2 Preference Shareholder, after taking account of

its liability for any such Tax, will receive a net after-Tax amount equal to the amount which would otherwise have been receivable by the Affected BFC2 Preference Shareholder in the absence of the occurrence of any such BFC2 Adjustment Event.

33.2.1.6.3.3 If any BFC2 Adjustment Event described in clause 33.2.1.6.2.5 occurs which requires that the BFC2 Dividend Rate be increased, the BFC2 Dividend Rate will be recalculated in accordance with the following formula -

$$NDR = ODR \times \frac{(1 - NCTR)}{(1 - OCTR)}$$

Where -

NDR = the new BFC2 Dividend Rate to be determined, expressed as a percentage;

ODRP = the BFC2 Dividend Rate applicable immediately prior to the occurrence of such BFC2 Adjustment Event, expressed as a percentage;

NCTR = the new Corporate Tax Rate applicable pursuant to such BFC2 Adjustment Event; and

OCTR = the Corporate Tax Rate applicable immediately prior to the occurrence of such BFC2 Adjustment Event.

The new BFC2 Dividend Rate determined by applying the BFC2 Dividend Rate Percentage calculated in accordance with this clause 33.2.1.6.3.3 shall be applied retrospectively in re-calculating, *mutatis mutandis* in accordance with clause 33.2.1.2, all accumulated BFC2 Preference Dividends, and provided that the BFC2 Dividend Rate Percentage

shall not be decreased to a BFC2 Dividend Rate Percentage which is less than (i) prior to 30 September 2021, the BFC2 Dividend Rate Percentage prevailing at the Issue Date (2016); and (ii) on and from 30 September 2021, the BFC2 Dividend Rate Percentage prevailing on 30 September 2021.

33.2.1.6.3.4 Without double counting, if any amount payable pursuant to the provisions of clauses 33.2.1.6.1.3, 33.2.1.6.3.2 or 33.2.1.6.3.3 is subject to Tax, then the Company shall pay such additional amounts to the Affected BFC2 Preference Shareholder or its Consolidating Company, as the case may be, so as to place the Affected BFC2 Preference Shareholder or its Consolidating Company, as the case may be, in a position as if no such Tax was payable.

33.2.1.6.4 After the Company has declared and paid the BFC2 Additional Dividend in respect of the applicable BFC2 Preference Shares, the Company shall be entitled to redeem all the BFC2 Preference Shares then in issue in accordance with the provisions of clause 33.2.2.2.

33.2.1.6.5 **Reciprocity**

If the BFC2 Dividend Rate Percentage in relation to an Affected BFC2 Preference Shareholder or its Consolidating Company is increased by that Affected BFC2 Preference Shareholder in accordance with the foregoing provisions of this clause 33.2.1.6 and following such increase in the BFC2 Dividend Rate Percentage any BFC2 Adjustment Event occurs and the occurrence of any such event/s results in the Increased Cost or lower Return that gave rise to the increase in the BFC2 Dividend Rate being wholly or partially reduced or eliminated, the Company shall be entitled to give written notice to the Preference Share Agent, and upon receipt of such notice, the Preference Share Agent shall, if its calculations confirm that as a result of the occurrence of any such BFC2 Adjustment Event/s, such Increased Cost or lower Return that gave rise to the increase in the BFC2 Dividend Rate Percentage has been wholly or partially reduced or eliminated by the occurrence of any such BFC2 Adjustment Event/s, decrease the BFC2 Dividend Rate Percentage so that the Affected BFC2 Preference Shareholder or its Consolidating

Company, as the case may be, is placed in the same after-Tax position that it would have been in had the BFC2 Adjustment Event/s giving rise to the increase in the BFC2 Dividend Rate Percentage not occurred, provided that:

33.2.1.6.5.1 the BFC2 Dividend Rate Percentage shall not be decreased to a rate which is less than (i) prior to 30 September 2021, the BFC2 Dividend Rate Percentage prevailing at the Issue Date (2016); and (ii) on and from 30 September 2021, the BFC2 Dividend Rate Percentage applicable as at the Issue Date (2021);

33.2.1.6.5.2 the Company shall not be entitled to give notice pursuant to this clause 33.2.1.6.5 if a BFC2 Trigger Event has occurred or for so long as a BFC2 Potential Trigger Event has occurred which is continuing;

33.2.1.6.5.3 the formula set out in clause 33.2.1.6.3.3 shall be applied with reference to any BFC2 Adjustment Event described in clause 33.2.1.6.2.5 occurring which requires that the BFC2 Dividend Rate be decreased;

33.2.1.6.5.4 no BFC2 Preference Shareholder shall be under any obligation to disclose any information and/or documentation relating to its affairs (Tax or otherwise); and

33.2.1.6.5.5 no BFC2 Preference Shareholder nor the Preference Share Agent shall be under any obligation to provide the Company with any notice of the occurrence of any such event.

33.2.1.6.6 **Disputes**

If the Company disputes the correctness of any calculation in an Increase Notice or the calculation by any Affected BFC2 Preference Shareholder or the Preference Share Agent in terms of this clause 33.2.1.6, a certificate by the auditors of the Affected BFC2 Preference Shareholder or its Consolidating Company, as the case may be, shall, in the absence of manifest error, be *prima facie* proof of the correctness of such calculation.

Post-Redemption Indemnity and Payment

If the effect of a BFC2 Adjustment Event only becomes apparent, or an Affected BFC2 Preference Shareholder or ex-Affected BFC2 Preference Shareholder, as the case may be, only becomes aware of the effects of such BFC2 Adjustment Event after the date on which all of the BFC2 Preference Shares held by such Affected BFC2 Preference Shareholder have been redeemed or after the date on which such Affected BFC2 Preference Shareholder has sold and transferred all the BFC2 Preference Shares held by it, whether as a result of a sale of such BFC2 Preference Shares to MTN or an MTN Acceded Nominee pursuant to the exercise of a call option in respect of such BFC2 Preference Shares in terms of the Call Option Agreement, or pursuant to a sale and transfer of such BFC2 Preference Shares to a third party, the Company shall and hereby does indemnify and hold the Affected BFC2 Preference Shareholder or ex-Affected BFC2 Preference Shareholder, as the case may be, harmless against the effect of such BFC2 Adjustment Event and, accordingly, shall pay to the Affected BFC2 Preference Shareholder or ex-Affected BFC2 Preference Shareholder, as the case may be, on demand, such amount as may be required to result in the Affected BFC2 Preference Shareholder achieving the same Return as it would have achieved had the relevant BFC2 Adjustment Event not occurred. The provisions of this clause 33.2.1.6.7 shall survive the redemption of all the BFC2 Preference Shares held by such Affected BFC2 Preference Shareholder or ex-Affected BFC2 Preference Shareholder, as the case may be, and shall remain enforceable against the Company by the Affected BFC2 Preference Shareholder or ex-Affected BFC2 Preference Shareholder, as the case may be, for a period of 5 (five) years (or such shorter period as such Affected BFC2 Preference Shareholder or ex-Affected BFC2 Preference Shareholder, as the case may be, may agree in writing) from the date on which all of the BFC2 Preference Shares held by such Affected BFC2 Preference Shareholder have been redeemed or after the date on which such Affected BFC2 Preference Shareholder has sold and transferred all the BFC2 Preference Shares held by it, whether as a result of a sale of such BFC2 Preference Shares to MTN or an MTN Acceded Nominee pursuant to the exercise of a call option in respect of such BFC2 Preference Shares in terms of the Call Option Agreement, or pursuant to a sale and transfer of such BFC2 Preference Shares to a third party (such period, in relation to each BFC2 Preference Shareholder, its "**Indemnity Period**"). Notwithstanding the foregoing, any claim which an Affected BFC2

Preference Shareholder ex-Affected BFC2 Preference Shareholder, as the case may be, has against the Company arising during its Indemnity Period shall survive for as long as may be necessary to permit the final resolution of such matter.

33.2.1.7 **Capital Reduction**

33.2.1.7.1 Notwithstanding anything else which may be contained in this MOI but subject to clause 33.2.1.7.2, the Company shall be entitled to effect a capital reduction in respect of the BFC2 Preference Shares by making a payment to the BFC2 Preference Shareholders in terms of section 46 of the Companies Act on the basis that such payment shall not be deemed to be a redemption of the BFC2 Preference Shares or any of them, but merely a reduction of the original BFC2 Issue Price paid pursuant to the subscription for each of the BFC2 Preference Shares.

33.2.1.7.2 Any capital reduction contemplated in clause 33.2.1.7.1 shall only take place with the prior written consent of the Preference Share Agent and on the basis that -

33.2.1.7.2.1 all BFC2 Preference Shares shall be treated proportionately and the BFC2 Preference Shareholder of each BFC2 Preference Share shall be paid the same amount in respect of each BFC2 Preference Share;

33.2.1.7.2.2 the capital reduction shall not result in a redemption of the BFC2 Preference Shares or any of them;

33.2.1.7.2.3 the Company shall only be entitled to implement a capital reduction on a BFC2 Scheduled Preference Dividend Date or such other date as may be agreed to by the Preference Share Agent;

33.2.1.7.2.4 the capital reduction takes place voluntarily in the entire discretion of the Company irrespective of whether there may be any BFC2 Arrear Dividend or BFC2 Unpaid Dividend outstanding at that point in time, provided that BIC2 also effects a capital reduction in respect of a corresponding number of the BIC2 Preference Shares on such BFC2 Scheduled Preference Dividend Date;

33.2.1.7.2.5 the capital reduction may take place irrespective of whether there is any BFC2 Arrear Dividend or BFC2 Unpaid Dividend or other accumulated BFC2 Preference Dividends in respect of the BFC2 Preference Shares;

33.2.1.7.2.6 the capital reduction will not result in any BFC2 Arrear Dividend or BFC2 Unpaid Dividend being affected, and the BFC2 Preference Shares shall continue to accrue BFC2 Preference Dividends at the BFC2 Dividend Rate or BFC2 Default Rate, as applicable;

33.2.1.7.2.7 the capital reduction shall not prejudice any BFC2 Preference Shareholder's rights under any of the Finance Documents;

33.2.1.7.2.8 the Company shall give notice to the Preference Share Agent and MTN of any capital reduction that may have been implemented forthwith after it has taken place and the details thereof.

33.2.1.7.3 After implementation of any capital reduction, BFC2 Scheduled Preference Dividends shall continue to accrue on the BFC2 Preference Shares calculated in terms of clause 33.2.1.1 on the basis that BFC2 Scheduled Preference Dividends shall be calculated as if variable D is reduced by the amount of the capital reduction per BFC2 Preference Share.

33.2.2 **Redemption**

33.2.2.1 **General**

33.2.2.1.1 Whenever a BFC2 Preference Share is redeemed in terms of this clause 33.2 -

33.2.2.1.1.1 the Company shall redeem the BFC2 Preference Share by paying the BFC2 Redemption Amount to the BFC2 Preference Shareholder against the surrender to the Company of the share certificate in respect of that BFC2 Preference Share (or, if such certificate has been lost or destroyed, such proof of loss or destruction and such indemnity as the Company would be entitled to require in terms of clause 33.2.7.3);

- 33.2.2.1.1.2 unless all of the BFC2 Unredeemed Preference Shares are to be redeemed, whenever BFC2 Preference Shares are redeemed the Company shall issue share certificates to the BFC2 Preference Shareholder in respect of the BFC2 Preference Shares held by the BFC2 Preference Shareholder which are not redeemed.
- 33.2.2.1.2 If any BFC2 Redemption Amount (excluding any BFC2 Preference Dividend payable on such BFC2 Redemption Date) is not paid in full on the applicable BFC2 Redemption Date, the unpaid BFC2 Redemption Amount shall continue to accrue BFC2 Preference Dividends at the BFC2 Default Rate from (and including) such BFC2 Redemption Date up to (but excluding) the date of actual payment of that BFC2 Redemption Amount in full.
- 33.2.2.1.3 In the event of a winding up of the Company, the BFC2 Preference Shareholders shall be paid out of the assets of the Company and in priority to the holders of all other classes of shares in the capital of the Company, the full BFC2 Redemption Amount calculated as if the BFC2 Preference Shares were all being redeemed on the day immediately preceding the date of winding-up.
- 33.2.2.1.4 Save as set out in clause 33.2 and this clause 33.2.2, the BFC2 Preference Shareholders shall not be entitled to any participation in the profits or assets of the Company in respect of the BFC2 Preference Shares.
- 33.2.2.1.5 Where the Company is entitled or obliged to redeem the BFC2 Preference Shares in terms of this clause 33.2, the Company shall be entitled to redeem the BFC2 Preference Shares in any manner permissible at law.
- 33.2.2.1.6 The Company shall be liable for any securities transfer Tax and/or any other Tax (without double counting), which may be or become payable on the redemption of any BFC2 Preference Share for any reason. To the extent that any BFC2 Preference Shareholder pays or becomes liable to pay such Securities Transfer Tax or any such other Tax, the Company shall pay to the relevant BFC2 Preference Shareholder an amount equal to the amount so paid by that BFC2 Preference Shareholder.

33.2.2.2 **Voluntary Redemption**

The Company shall be entitled, at any time and from time to time, to voluntarily redeem at the BFC2 Redemption Amount per BFC2

Preference Share all or a portion of the BFC2 Preference Shares (a "**BFC2 Voluntary Redemption**") with funds standing to the credit of the BFC2 Collection Account on the following terms and conditions:

- 33.2.2.2.1 the Company shall give written notice (a "**BFC2 Voluntary Redemption Notice**") to the BFC2 Preference Shareholders (the date on which such notice is given, the "**BFC2 Voluntary Redemption Notice Date**") stipulating the number of BFC2 Preference Shares to be redeemed (provided that such BFC2 Voluntary Redemption Notice shall be capable of being revoked at any time prior to the BFC2 Voluntary Redemption Date;
- 33.2.2.2.2 the Company shall be obliged, prior to the voluntary redemption of the applicable BFC2 Preference Shares to declare and pay any and all accrued and/or accumulated BFC2 Preference Dividends on all of the BFC2 Unredeemed Preference Shares;
- 33.2.2.2.3 if applicable, the BFC2 Preference Shares to be redeemed pursuant to a BFC2 Voluntary Redemption Offer shall consist of a *pro rata* portion of the BFC2 Preference Shares held by each BFC2 Preference Shareholder, unless otherwise agreed in writing by the Preference Share Agent;
- 33.2.2.2.4 subject to clause 33.2.2.2.2, the aggregate BFC2 Issue Price of all the BFC2 Preference Shares redeemed pursuant to any BFC2 Voluntary Redemption shall be equal to or exceed the amount standing to the credit of the BFC2 Collection Account on the Voluntary Redemption Notice Date or such other amount as the Preference Share Agent may agree in writing;
- 33.2.2.2.5 the BFC2 Preference Shares to be redeemed pursuant to a BFC2 Voluntary Redemption Notice shall be redeemed 5 (five) Business Days following the BFC2 Voluntary Redemption Notice Date (the "**BFC2 Voluntary Redemption Date**") or such other date as the Preference Share Agent may agree in writing;
- 33.2.2.2.6 if the Company revokes a BFC2 Voluntary Redemption Notice, it shall indemnify each of the BFC2 Preference Shareholders against all Losses of whatsoever nature that a BFC2 Preference Shareholder may incur as a result of such revocation;
- 33.2.2.2.7 if:
 - 33.2.2.2.7.1 a BFC2 Potential Trigger Event has occurred or would occur as a result of any redemption, the Company shall not have the right to redeem

the BFC2 Preference Shares in terms of this clause 33.2.2.2 without the prior written consent of the Preference Share Agent; or

33.2.2.2.7.2 a BFC2 Trigger Event has occurred or would occur as a result of any redemption, the Company shall not have the right to redeem the BFC2 Preference Shares in terms of this clause 33.2.2.2; and

33.2.2.2.8 the Company shall only be entitled to voluntarily redeem the BFC2 Preference Shares in accordance with clause 33.2.1.6.4 if the BFC2 Preference Shares are redeemed by no later than the date which is 6 (six) months calculated from the date of the Increase Notice.

Nothing in this clause 33.2.2.2 shall limit the obligations of the Company under clause 33.2.2.3 or the rights of the BFC2 Preference Shareholders if a Potential Trigger Event or Trigger Event occurs between the BFC2 Voluntary Redemption Notice Date and the BFC2 Voluntary Redemption Date.

33.2.2.3 **Mandatory Redemption**

The Company shall be obliged to redeem all the BFC2 Preference Shares not previously redeemed:

33.2.2.3.1 on the BFC2 Scheduled Redemption Date; and/or

33.2.2.3.2 upon the giving of a BFC2 Early Redemption Notice.

33.2.2.4 **Refinancing Redemption**

If MTN and the Preference Share Agent have consented thereto in writing, nothing in this MOI shall be construed as preventing the redemption by the Company, at the BIC2 Redemption Amount per BFC2 Preference Share, at any time all (but not less than all) of the BFC2 Preference Shares with funding raised pursuant to a BFC2 Further Refinancing, provided that the Company shall be obliged, on the relevant BFC2 Redemption Date, and where applicable pursuant to clause 33.2.1.3, to declare and pay a BFC2 Margin Dividend.

33.2.3 **BFC2 Trigger Events**

33.2.3.1 Each of the events set out in this clause 33.2.3.1 is a BFC2 Trigger Event (each, a "**BFC2 Trigger Event**"), whether or not caused by or for any reason whatsoever outside the control of the Company, namely -

33.2.3.1.1 the failure of the Company to declare and pay all or any BFC2 Preference Dividends on the applicable BFC2 Dividend Date and such failure has not been remedied within 2 (two) Business Days after receipt

- by the Company of written notice from the Preference Share Agent requiring it to declare and/or pay such BFC2 Preference Dividends; or
- 33.2.3.1.2 the failure by the Company to redeem all of the BFC2 Preference Shares in full on or prior to the BFC2 Scheduled Redemption Date or to mandatorily redeem any BFC2 Preference Share as contemplated in clause 33.2.2.3 or to redeem any BFC2 Preference Share on the BFC2 Voluntary Redemption Date thereof if a BFC2 Voluntary Redemption Notice has been given in relation thereto (and such BFC2 Voluntary Redemption Notice has not, if it is revocable in accordance with this MOI, been revoked) and such redemption has not occurred within 2 (two) Business Days after receipt by the Company of written notice from the Preference Share Agent demanding such redemption; or
- 33.2.3.1.3 the occurrence of any BIC2 Trigger Event;
- 33.2.3.1.4 the failure by the Company for any reason whatsoever to pay the BFC2 Redemption Amount per BFC2 Preference Share in full on the date on which Company is obliged or otherwise required or scheduled to make such payment and such failure is not remedied within 2 (two) Business Days following receipt of written notice from the Preference Share Agent calling upon the Company to remedy such failure to pay; or
- 33.2.3.1.5 BIC2 ceases to be either a Black Entity or a Black Company as a result of any event or circumstance (other than the acquisition or holding by MTN or any MTN Acceded Nominee (or any MTN Related Entity that has acceded to the MTN Subordination and Undertaking Agreement in accordance with its terms) of any ordinary shares in BIC2 at any time and from time to time) without the prior written approval of the Preference Share Agent and such circumstance is not remedied, after consultation with MTN, the Company and the Preference Share Agent, within a period of 180 (one hundred and eighty) Business Days of receipt of written notice from the Preference Share Agent calling upon the Company to remedy such circumstance; or
- 33.2.3.1.6 there is a Material Adverse Event in relation to the Company, BIC2 or MTN which remains 2 (two) Business Days after the Preference Share Agent has provided written notice thereof to the relevant entity; or
- 33.2.3.1.7 there is a breach by the Company, BIC2 and/or MTN of any term, condition, representation, warranty or undertaking given in or under any Finance

Document to which it is a party (other than any such breach contemplated elsewhere in this clause 33.2.3.1, and save for any breach of any provisions of this MOI where (i) such provisions are substantially the same as the provisions of the Relationship Agreement and have been inserted into the this MOI in compliance with the Relationship Agreement and (ii) provided that any such breach would not also constitute a breach of any other provision of the this MOI, whether inserted pursuant to the other Finance Documents or otherwise), which breach has not been remedied or waived by the Preference Share Agent in writing:

33.2.3.1.7.1 in the case of any such breach by the Company or BIC2, within 5 (five) Business Days of receipt of written notice from the Preference Share Agent requiring such breach to be remedied; or

33.2.3.1.7.2 in the case of a breach by MTN of:

33.2.3.1.7.2.1 any representation, warranty or undertaking given by MTN in any Finance Document, any provision of a Finance Document requiring MTN to make any payment, and/or clause 5 (*BIC2 Subordination*) of the MTN Subordination and Undertaking Agreement (or any other provision of such agreement dealing with the subordination of the claims of MTN against the Company), within 5 (five) Business Days of receipt of written notice from the Preference Share Agent requiring such breach to be remedied; or

33.2.3.1.7.2.2 any other term or condition of any Finance Document, within 10 (ten) Business Days of receipt of written notice from the Preference Share Agent requiring such breach to be remedied;

33.2.3.1.8 there is a breach by the Company or BIC2 of any term of any agreement of whatsoever nature to which it is party (other than any such breach contemplated elsewhere in this clause 33.2.3.1),

which breach has not been remedied within 5 (five) Business Days of receipt of written notice from the Preference Share Agent, given after the expiry of any originally applicable remedy period in such agreement ("**Remedy Period**"), requiring such breach to be remedied, and provided that where:

33.2.3.1.8.1 such breach is (a) a breach of a Material Agreement and (b) is not a failure to pay any amount when due and payable; and

33.2.3.1.8.2 in relation to the Key Material Agreements only, MTN has, prior to the expiry of any Remedy Period, given notice to the Preference Share Agent that MTN will or may, if upon the expiry of the Remedy Period the breach remains unremedied, take any BFC2 Permitted Enforcement Action against the Company or BIC2 Permitted Enforcement Action against BIC2 (as applicable) as a consequence of such breach,

the Preference Share Agent shall not provide any written notice requiring such breach to be remedied until 5 (five) Business Days after the expiry of the Remedy Period or, if the Preference Share Agent is of the view, in its discretion, that such breach is not adverse to the rights or interests of the Preference Shareholders, such longer period as the Preference Share Agent may deem appropriate; or

33.2.3.1.9 any Encumbrance created under or evidenced by any Finance Document in favour of the BIC2 Preference Shareholder or the BFC2 Preference Shareholders is or becomes unlawful or is not, or ceases to provide security rights of the ranking that it purports to provide or to be legal, valid, binding and enforceable (in each case a "**Voidable Encumbrance Event**") and such Voidable Encumbrance Event is not remedied within 5 (five) Business Days of receipt of written notice from the Preference Share Agent requiring that same be remedied; or

33.2.3.1.10 any of the Finance Documents (other than the Interfunder Agreement and the Preference Share Custody Agreement) ceases to be valid, binding and enforceable against the parties thereto or, in respect of any Finance Document to which the Company, BIC2 or MTN is a party is alleged by the Company, BIC2 or MTN (as applicable and in relation to such Finance Document to which it is a party) in writing to be invalid, not binding and/or unenforceable for any reason, and such validity, binding nature or

enforceability is not restored or such allegation revoked within 2 (two) Business Days after receipt by the Company, BIC2 and MTN of notice from the Preference Share Agent requiring that same be restored; or

33.2.3.1.11 it is or becomes unlawful for the Company, BIC2 and/or MTN to perform any of its obligations under any Key Transaction Documents to which they are party, and such unlawfulness is not remedied within a period of 2 (two) Business Days of receipt of written notice from the Preference Share Agent to the Company, BIC2 and MTN calling upon the Company to remedy such unlawfulness; or

33.2.3.1.12 save as otherwise expressly provided in this clause 33.2.3.1, there is a failure by the Company, BIC2 and/or MTN to fully and timeously perform or comply with any obligation which is expressed to be assumed by it under any Material Agreement to which it is a party, which failure has not been remedied within 5 (five) Business Days (in the case of the Company or BIC2) or 10 (ten) Business Days (in the case of MTN) of receipt of written notice from the Preference Share Agent, given after the expiry of any originally applicable remedy period in such agreement ("**Remedy Period**"), requiring such failure to be remedied, and provided that, in relation to any such failure by the Company and/or BIC2, where:

33.2.3.1.12.1 such failure is not a failure to pay any amount when due and payable; and

33.2.3.1.12.2 in relation to the Key Material Agreements only, MTN has, prior to the expiry of any Remedy Period, given notice to the Preference Share Agent that MTN will or may, if upon the expiry of the Remedy Period the breach remains unremedied, take any BFC2 Permitted Enforcement Action against the Company or BIC2 Permitted Enforcement Action against BIC2 (as applicable) as a consequence of such breach,

the Preference Share Agent shall not provide any written notice requiring such breach to be remedied until 5 (five) Business Days after the expiry of the Remedy Period or, if the Preference Share Agent is of the view, in its discretion, that such breach is not adverse to the rights or interests of the BFC2 Preference Shareholders, such longer period as the Preference Share Agent may deem appropriate; or

33.2.3.1.13 the Company and/or BIC2 is in breach or default of any obligation in respect of any Financial Indebtedness and such breach or default, as the case may be, is not remedied within 2 (two) Business Days following receipt of written notice by the Company from the Preference Share Agent requiring such breach or default to be remedied; or

33.2.3.1.14 any Financial Indebtedness (MTN) of MTN or any Material Subsidiary in an aggregate outstanding amount of US\$50 000 000,00 or more (or an equivalent in any other currency):

33.2.3.1.14.1 is not paid when due (after the expiry of any applicable grace period);

33.2.3.1.14.2 becomes prematurely due and payable;

33.2.3.1.14.3 is placed on demand; or

33.2.3.1.14.4 is capable of being declared by or on behalf of a creditor to be prematurely due and payable or of being placed on demand,

in each case, as a result of an event of default or any provisions having a similar effect and in each case, any step is taken by the relevant creditor for the acceleration of payment and/or enforcement of payment of the relevant Financial Indebtedness (MTN), or any enforcement action is taken in respect of any security in relation thereto, and such Financial Indebtedness (MTN) is not irrevocably and unconditionally repaid in full within 1 (one) Business Day after receipt of written notice from the Preference Share Agent requiring such event to be remedied; or

33.2.3.1.15 the Calculation Agent notifies the Preference Share Agent in writing that on any day the Total Share Cover Ratio is less than 2 (two) (if the Financial Covenant was below 2 (two) when most recently measured) or less than 2.2 (two point two) (if the Financial Covenant was at or above 2 (two) when most recently measured), or the Revised Total Share Cover Ratio is breached, and such Total Share Cover Ratio is not restored to 2.9 (two point nine) (if the Financial Covenant was below 2 (two) when most recently measured) or 3.2 (three point two) (if the Financial Covenant was at or above 2 (two) when most recently measured) or more in each case within 2 (two) Business Days after receipt of written notice from the Preference Share Agent requiring such restoration, or if applicable the Revised Total Share Cover Ratio is not restored to a level which is in each

case 145% (one hundred and forty five per cent) of the trigger level below which it is breached or more in each case within 2 (two) Business Days after receipt of written notice from the Preference Share Agent requiring such restoration, and in either case such restoration may take place by the provision by MTN or an MTN Acceded Nominee of:

33.2.3.1.15.1 a BIC2 Loan Undertaking or a BFC2 Loan Undertaking (with the prior written consent of the Preference Share Agent); and

33.2.3.1.15.2 if such BIC2 Loan Undertaking or BFC2 Loan Undertaking (with the prior written consent of the Preference Share Agent) is provided in a timely manner by MTN or an MTN Acceded Nominee, a BFC2 Subordinated Loan or a BIC2 Subordinated Loan, as the case may be,

in each case within a period of 5 (five) Business Days of such Written Notice from the Preference Share Agent, and strictly in accordance with the provisions of the MTN Subordination and Undertaking Agreement;

33.2.3.1.16 the Financial Covenant is greater than 2.5:1 (two point five to one) at the end of any Measurement Period and such circumstance is not remedied within 3 (three) Business Days of receipt of written notice from the Preference Share Agent requiring such circumstance to be remedied;

33.2.3.1.17 any licence, permit, authorisation, approval or consent required under any Applicable Law necessary for the conduct of the business of the Company or BIC2 is not obtained, expires, or is withdrawn, cancelled, revoked or not renewed and such circumstance is not remedied within 5 (five) Business Days after receipt by the Company of written notice from the Preference Share Agent requiring such circumstance to be remedied; or

33.2.3.1.18 the Company, BIC2 and/or MTN cancels or terminates any Finance Document to which it is a party (other than in circumstances in which it is legally entitled to do so as a result of a material breach thereof by the BFC2 Preference Shareholders going to the root of the relevant Finance Document which is not remedied within 15 (fifteen) Business Days of notice from the relevant entity to the Preference Share Agent requiring such remedy) or repudiates any Finance Document to which it is a party and any such cancellation, termination or

repudiation or evidence of repudiation is not unconditionally withdrawn 5 (five) Business Days after the Preference Share Agent has provided written notice thereof to the Company, BIC2 and/or MTN, as applicable; or

- 33.2.3.1.19 the Company, BIC2, MTN and/or any other party to a Key Material Agreement cancels or terminates any Key Material Agreement to which it is a party prior to the date on which the Transaction (which for the avoidance of doubt shall be the "New Empowerment Transaction" as contemplated in the Implementation Agreement) is fully and finally implemented in accordance with the provisions of the Implementation Agreement; or
- 33.2.3.1.20 any cash Distribution or other payment of whatsoever nature, including without limitation any Disposal Proceeds, received by the Company is not immediately paid directly into the BFC2 Collection Account or otherwise applied strictly in accordance with the Account Bank and Agency Agreement and such failure is not remedied within 2 (two) Business Days after receipt by the Company of written notice from the Preference Share Agent requiring that such amount be paid into the BFC2 Collection Account or such other account as is specified in the Account Bank and Agency Agreement; or
- 33.2.3.1.21 unless the Preference Share Agent provides BIC2 with advance Written instructions to the contrary, any Subject Shares received BIC2 are not immediately reflected in the Subject Shares Securities Account (or, if any Subject Shares are materialised, the share certificates representing any such materialised Subject Shares, together with undated, duly executed share transfer declarations in respect of such Subject Shares which are blank as to transferee, are not immediately delivered to the Security Custodian) and such failure is not remedied within 3 (three) Business Days after receipt by BIC2 of Written notice from the Preference Share Agent requiring that such Subject Shares be reflected in the Subject Shares Securities Account; or
- 33.2.3.1.22 unless the Preference Share Agent provides the Company with advance written instructions to the contrary, the share certificates representing the BIC2 Preference Shares, together with undated, duly executed securities transfer declarations in respect of such BIC2 Preference Shares which are blank as to transferee, are not immediately delivered to the Preference Share Custodian when received by the Company and such failure is not remedied within 3 (three) Business Days after receipt by the Company of written notice from the Preference Share Agent

- requiring that such share certificates and share transfer declarations be delivered; or
- 33.2.3.1.23 save as a result of any Permitted Action or otherwise with the prior written consent of the Preference Share Agent, BIC2 is entitled to acquire or acquires shares in any entity in exchange for the Target Shares or any Additional Shares (to the extent that, at the relevant time, the value of such Additional Shares is included in the calculation of the numerator of each of the Revised Total Share Cover Ratio and the Revised Volatility Protection Share Cover Ratio) and such circumstance is not remedied within 3 (three) Business Days of receipt by BIC2 of written notice from the Preference Share Agent requiring such circumstance to be remedied; or
- 33.2.3.1.24 save for any Permitted Action, the ordinary shareholders of MTN approve any Asset Unbundling Transaction as a result of which BIC2 would be entitled to acquire shares in any company other than MTN and such approval is not revoked within 2 (two) Business Days following receipt by BIC2 from the Preference Share Agent requiring such approval to be revoked; or
- 33.2.3.1.25 any Insolvency Event occurs and such Insolvency Event is not remedied within 2 (two) Business Days of receipt by the Company of written notice from the Preference Share Agent requiring such event to be remedied; or
- 33.2.3.1.26 all of the "A" class cumulative redeemable non-participating preference shares in the issued share capital of MTN Zakhele are not redeemed in full by no later than the 1st (first) Business Day following their issue date;
- 33.2.3.1.27 MTN, the listings committee of the JSE or any other regulatory authority publishes any notice of its intention to suspend or discontinue the listing of MTN Shares which are of the same class as the Target Shares by the JSE and such decision or step remains un-reversed for a period of 3 (three) Trading Days after receipt by the Company of written notice from the Preference Share Agent demanding its reversal; or
- 33.2.3.1.28 trading in the MTN Shares listed on the JSE which are of the same class as the Target Shares is suspended for any reason (other than a general suspension of trading on the JSE) and trading remains suspended for 3 (three) Trading Days after receipt by the Company of written notice from the Preference Share Agent demanding that such trading resume; or

- 33.2.3.1.29 any asset of the Company or BIC2 is attached under a writ of execution issued out of any court, and the Company fails, within a period of 2 (two) Business Days of receipt by the Company of written notice from the Preference Share Agent demanding that such attachment be set aside, to take the necessary steps to have such attachment set aside or thereafter fails to pursue such steps expeditiously and diligently; or
- 33.2.3.1.30 there is any revocation, amendment, variation or modification of any of the Finance Documents by the Company, BIC2 or MTN without the prior written consent of the Preference Share Agent and where such revocation, amendment, variation or modification is capable of remedy, the Company, BIC2 or MTN, as applicable, fails to remedy such revocation, amendment, variation or modification within a period of 5 (five) Business Days of written notice from the Preference Share Agent calling on the Company, BIC2 or MTN, as applicable, to remedy such amendment, variation, modification, cancellation or revocation; or
- 33.2.3.1.31 the auditors of the Company or BIC2 qualify their report on any audited financial statements of the Company or BIC2 in any respect, or insert an adverse qualifying note in the supporting documents to such financial statements, and such qualification is not unconditionally withdrawn within a period of 5 (five) Business Days of receipt by the Company of written notice from the Preference Share Agent requiring such qualification to be withdrawn; or
- 33.2.3.1.32 the auditors of MTN qualify their report on any audited financial statements of MTN in any material respect, or insert a material adverse qualifying note in the supporting documents to such financial statements, in any case:
- 33.2.3.1.32.1 on the grounds that the information supplied to them or to which they had access was inadequate or unreliable;
 - 33.2.3.1.32.2 on the grounds that they are unable to prepare such financial statements on a going concern basis; or
 - 33.2.3.1.32.3 otherwise in terms or as to issues which in the opinion of the Preference Share Agent (acting reasonably) are material in the context of the Finance Documents

and the transactions contemplated by them,

and such qualification is not unconditionally withdrawn within a period of 5 (five) Business Days of receipt by MTN of written notice from the Preference Share Agent requiring such qualification to be withdrawn; or

33.2.3.1.33 on any Trading Day, the One Day VWAP of the MTN Shares is an amount of R38,00 (thirty eight Rand) or less and the One Day VWAP of the MTN Shares is not restored to above R38,00 (thirty eight Rand) within a period of 2 (two) Business Days following Written notice from the Preference Share Agent to the Company requiring the One Day VWAP of the MTN Shares to be above R45,00 (forty five Rand); or

33.2.3.1.34 the MTN Initial Tranche 1 Subscription Shares are not duly allotted and issued to BIC2 on the Issue Date (2016); or

33.2.3.1.35 the MTN Tranche 2 Subscription Shares are not duly allotted and issued to BIC2 on the Issue Date (2016); or

33.2.3.1.36 if any MTN Tranche 3 Subscription Shares are required to be issued in terms of the Final Capital Structure Documents, any of such MTN Tranche 3 Subscription Shares are not duly allotted and issued to BIC2 on the 1st (first) Business Day following the Issue Date (2016) or such later date as the Preference Share Agent may agree to in writing on or prior to date which is the 1st (first) Business Day following the Issue Date (2016); or

33.2.3.1.37 the Repurchase Agreement has not been implemented in accordance with its terms on the date which is 1 (one) Business Day following the Issue Date (2016); or

33.2.3.1.38 the Volatility Protection Share Cover Ratio is less than:

33.2.3.1.38.1 if the Financial Covenant is below 2x (two times), 2.3x (two point three times); or

33.2.3.1.38.2 if the Financial Covenant is at or above 2x (two times), 2.6 (two point six times),

in each case, for a period exceeding 10 (ten) consecutive Trading Days and MTN has not restored

the Volatility Protection Share Cover Ratio to not less than:

- 33.2.3.1.38.3 if the Financial Covenant is below 2x (two times), 2.6 (two point six times);
- 33.2.3.1.38.4 if the Financial Covenant is at or above 2x (two times), 2.9 (two point nine times); or
- 33.2.3.1.38.5 the Revised Volatility Protection Share Cover Ratio is breached and is not restored to a level which is 130% (one hundred and thirty per cent) of the trigger level below which it is breached or more,

in each case within 3 (three) Business Days following receipt of written Notice from the Preference Share Agent requiring the Volatility Protection Share Cover Ratio to be restored and in either case such restoration must take place by the provision by MTN or an MTN Acceded Nominee of:

- 33.2.3.1.38.6 a BIC2 Loan Undertaking or a BFC2 Loan Undertaking (with the prior Written consent of the Preference Share Agent); and
- 33.2.3.1.38.7 if such BIC2 Loan Undertaking or BFC2 Loan Undertaking (with the prior written consent of the Preference Share Agent) is provided in a timely manner by MTN or an MTN Acceded Nominee, a BIC2 Subordinated Loan or a BFC2 Subordinated Loan, as the case may be,

in each case within a period of 10 (ten) Business Days of such Written Notice from the Preference Share Agent, and strictly in accordance with the provisions of the MTN Subordination and Undertaking Agreement,

it being recorded that in each case:

- 33.2.3.1.39 the period for remedy of any BFC2 Potential Trigger Event (if any) may be extended if, prior to the expiry thereof, the written agreement of the Preference Share Agent to such extended remedy period is provided; and
- 33.2.3.1.40 if MTN or an MTN Acceded Nominee has delivered a Call Option Exercise Notice during the relevant Trigger Event Call Option Period in accordance with the provisions of the Call Option Agreement, the

period for remedy of any BFC2 Potential Trigger Event shall automatically be extended until the applicable Call Option Closing Date and, provided that the relevant Call Option Strike Price is paid in full on or before the Call Option Closing Date, shall be extended by a period of 15 (fifteen) Business Days after the Call Option Closing Date.

33.2.3.2 The Preference Share Agent shall, upon the occurrence of a BFC2 Trigger Event and at any time while it is continuing, be entitled to require the Company to redeem all the BFC2 Unredeemed Preference Shares by written notice to the Company (a "**BFC2 Early Redemption Notice**"), and the Company shall be obliged to redeem all the BFC2 Unredeemed Preference Shares on the 1st (first) Business Day following the date of the BFC2 Early Redemption Notice, provided that no BFC2 Early Redemption notice may be given unless -

33.2.3.2.1 the Preference Share Agent has given notice to MTN that a BFC2 Potential Trigger Event has occurred in accordance with the Call Option Agreement; and

33.2.3.2.2 MTN or an MTN Acceded Nominee has either (i) notified the Preference Share Agent in writing that neither MTN nor any MTN Acceded Nominee will deliver a Call Option Exercise Notice, or (ii) not delivered a Call Option Exercise Notice during the relevant Trigger Event Call Option Period in accordance with the provisions of the Call Option Agreement.

33.2.4 **Discussion Event**

Should the Preference Share Agent notify the Company in Writing that a Material Adverse Event in respect of the Company, BIC2 and/or MTN has occurred or is likely to occur, then the Company, the Preference Share Agent and MTN shall meet to discuss the manner in which the situation may be improved.

33.2.5 **BFC2 Illegality Event**

Upon the occurrence of a BFC2 Illegality Event, the Preference Share Agent shall give a notice to the Company specifying:

33.2.5.1 the BFC2 Illegality Event; and

33.2.5.2 that the applicable unlawfulness or illegality has already occurred, in which event the BFC2 Preference Shares held by any BFC2 Preference Shareholder shall become immediately redeemable at the BFC2 Redemption Amount per BFC2 Preference Share; or

33.2.5.3 that the applicable unlawfulness or illegality will occur in future (including the date on which it will occur, if known to the Preference Share Agent), in which event the BFC2 Preference Shares held by any BFC2 Preference Shareholder shall become redeemable at the BFC2 Redemption Amount per BFC2 Preference Share on the Business Day immediately preceding the date on which the applicable unlawfulness or illegality will occur.

33.2.6 Meetings and Voting

33.2.6.1 The BFC2 Preference Shareholders and the Preference Share Agent shall be entitled to receive notice of, and to be present at, and the Company shall be obliged to give notice to the BFC2 Preference Shareholders and the Preference Share Agent of, any general meeting of the Company but the BFC2 Preference Shareholders shall not (in their capacity as BFC2 Preference Shareholders) be entitled to vote, either in person, by representation or by proxy, at any such meeting unless any one or more of the following circumstances prevails -

33.2.6.1.1 the Company proposes or purports to dispose of the whole or substantially the whole of the undertaking of the Company or the whole or the greater part of the assets of the Company (save where this is pursuant to the exercise by MTN of its rights under the Call Option Agreement);

33.2.6.1.2 any BFC2 Potential Trigger Event or BFC2 Trigger Event or BFC2 Illegality Event has occurred and is continuing;

33.2.6.1.3 there are any BFC2 Unpaid Dividends or BFC2 Arrear Dividends;

33.2.6.1.4 any BFC2 Redemption Amount remains in arrear and unpaid;

33.2.6.1.5 a special resolution of the Company is proposed; or

33.2.6.1.6 a resolution of the Company is proposed -

33.2.6.1.6.1 which affects the rights attached to the BFC2 Preference Shares or the interests of the BFC2 Preference Shareholders;

33.2.6.1.6.2 for the winding-up of the Company;

33.2.6.1.6.3 for any acquisition of the Company of its Shares in terms of section 48 of the Companies Act for any acquisition of the Company's Shares by a subsidiary of the Company in terms of section 48 of the Companies Act;

33.2.6.1.6.4 that would change the Financial Year.

33.2.6.2 At every general meeting of the Company at which the BFC2 Preference Shareholders are entitled to vote in terms of clause 33.2.6.1 -

33.2.6.2.1 the provisions of this MOI relating to general meetings of the Ordinary Shareholders shall apply,

mutatis mutandis, to the BFC2 Preference Shareholders;

33.2.6.2.2 all resolutions put to the meeting shall be voted on by way of a poll;

33.2.6.2.3 subject to the provisions of section 63(5) of the Companies Act, the BFC2 Preference Shares in aggregate shall carry that number of votes which would entitle the BFC2 Preference Shareholders to exercise, in aggregate, 95% (ninety five per cent) of the total votes exercisable at a general meeting of the Company so that each BFC2 Preference Share shall carry that number of votes equal to 95% (ninety five per cent) of the total votes exercisable at a general meeting divided by the number of BFC2 Preference Shares in issue;

33.2.6.2.4 the BFC2 Preference Shareholders shall not exercise any voting rights attaching to the BFC2 Preference Shares without the prior written consent of the Preference Share Agent.

33.2.6.3 While any of the circumstances set out in clause 33.2.6.1 prevail -

33.2.6.3.1 the Preference Share Agent shall be entitled to appoint and remove directors of the Company; and

33.2.6.3.2 the Preference Share Agent shall be entitled (but not obliged) to -

33.2.6.3.2.1 convene a meeting of the shareholders of the Company; and/or

33.2.6.3.2.2 appoint the chairman of a general meeting of the shareholders of the Company.

33.2.7 **General**

33.2.7.1 The Ordinary Shareholders shall pass all such resolutions, and approve all such actions of the board of directors of the Company, as may be necessary to allow for the declaration and payment of the BFC2 Preference Dividends and any BFC2 Redemption Amount.

33.2.7.2 The entries made in the accounts maintained by the BFC2 Preference Shareholders in connection with its BFC2 Preference Shares and/or any certificate issued, and signed by any manager or director or authorised signatory (whose appointment, designation and authority as such it shall not be necessary to prove) of the BFC2 Preference Shareholder with respect to -

33.2.7.2.1 the existence and amount of any indebtedness of the Company to that BFC2 Preference Shareholder at any time;

- 33.2.7.2.2 the fact that such amount is due and payable;
- 33.2.7.2.3 the BFC2 Dividend Rate applicable to such amount;

shall be, save for manifest error -

- 33.2.7.2.4 *prima facie* proof of its contents and of their correctness for all purposes;

- 33.2.7.2.5 insofar as the related obligation is a debt obligation, valid as a liquid document for purposes of any provisional sentence, summary judgment or other proceedings instituted by the BFC2 Preference Shareholder against the Company; and

- 33.2.7.2.6 deemed to be sufficiently particular for the purposes of pleading or trial in any action or other proceedings instituted by the BFC2 Preference Shareholder against the Company.

- 33.2.7.3 If any certificate issued in respect of a BFC2 Preference Share is defaced, lost or destroyed, it shall be replaced by the Company upon receipt by the Company of either the defaced certificate or an affidavit by a Director of the Preference Share Agent to the effect that such certificate has been lost or destroyed together with a written undertaking indemnifying the Company against any loss, liability, damage, cost or expense which the Company may suffer as a result of issuing such replacement certificate.

33.2.8 **No Double Counting**

All payments which become due and payable pursuant to the provisions of the BFC2 Preference Share Subscription Agreement and this MOI shall be paid without double counting.

33.2.9 **No Prejudice**

Should any BFC2 Preference Shareholder have the benefit of an assessed loss or a Dividends Tax Credit, other than in respect of the BFC2 Preference Shares, such circumstances shall not operate to deprive such BFC2 Preference Shareholder of the benefit of any claim or right it would otherwise have against the Company under this clause 33.2.

33.2.10 **No Conflict**

Save as otherwise provided for in the Companies Act, unless otherwise agreed to in writing by the Preference Share Agent, if there is any conflict or inconsistency between this clause 33.2 and any other provision of this MOI, the provisions of this clause 33.2 shall prevail.

33.2.11 **Stipulatio alteri**

To the extent that any provisions of this MOI purport to confer benefits on MTN (including all provisions providing that MTN's consent is required for any act or omission), such provisions constitute *stipulationes alteri* in favour of MTN, the benefit of which may be accepted by MTN at any time and in any manner, provided that in each provision requiring the consent of both MTN and the

Preference Share Agent, the consent of MTN shall not be unreasonably withheld or delayed if the Preference Share Agent has provided its consent.

33.2.12 **Transfers of BFC2 Preference Shares**

33.2.12.1 Restrictions on Transfer of the BFC2 Preference Shares

33.2.12.1.1 Subject to clause 33.2.12.2 and clause 12 of the BFC2 Preference Share Subscription Agreement, any BFC2 Preference Shareholder (the "**Existing BFC2 Preference Shareholder**") may transfer any of its BFC2 Preference Shares to any person (the "**New BFC2 Preference Shareholder**") by written notice to the Company.

33.2.12.1.2 Every share certificate evidencing a BFC2 Preference Share shall, in accordance with section 51(1)(a)(iv) of the Companies Act, contain the following statement referring to the restrictions on transfer of that BFC2 Preference Share contemplated by this clause 33.2.12.1:

"The securities evidenced by this share certificate are transferable only upon compliance with the provisions of clause 33.2.12.1.2 (Conditions of Transfer) of the Memorandum of Incorporation of the Company, as amended or substituted from time to time, a copy of which is on file with the Company."

33.2.12.2 Conditions of Transfer

33.2.12.2.1 The Company consents to a transfer of any BFC2 Preference Shares by any Existing BFC2 Preference Shareholder to a New BFC2 Preference Shareholder.

33.2.12.2.2 A transfer of BFC2 Preference Share shall only be effective on the date (the "**Transfer Date**") of receipt by the Company of:

33.2.12.2.2.1 a duly completed share transfer form executed by or on behalf of the Existing BFC2 Preference Shareholder (as Transferor) and the New BFC2 Preference Shareholder (as Transferee); and

33.2.12.2.2.2 the share certificate evidencing the BFC2 Preference Shares transferred in terms of such share transfer form.

33.2.12.2.3 Each New BFC2 Preference Shareholder shall be liable for the payment of any Tax payable in connection with any transfer of the BFC2 Preference Share to it and to the extent that the Company becomes liable to pay or has paid any such Tax, such New BFC2 Preference Shareholder shall pay to the

Company within 5 (five) Business Days of written demand the amount of such Tax.

33.2.12.2.4 On the Transfer Date the Company shall record the New BFC2 Preference Shareholder as the BFC2 Preference Shareholder of the BFC2 Preference Shares in the securities register of the Company and the New BFC2 Preference Shareholder shall become the BFC2 Preference Shareholder for the purposes of this clause 33.2.12.2 on the Transfer Date.

33.2.12.2.5 Within 10 (ten) Business Days after the date of receipt by the Company of the share transfer form pursuant to clause 33.2.12.2.1 the Company shall deliver to the New BFC2 Preference Shareholder a new share certificate(s) complying with section 51(1) of the Companies Act in respect of the BFC2 Preference Shares transferred to the New BFC2 Preference Shareholder pursuant to such share transfer form.

33.3 BFC2 Priority of Payments

33.3.1 The following Priority of Payments is applicable to the BFC2 Preference Shares and notwithstanding any provision to the contrary in this MOI or any other Transaction Document, shall be applied in accordance with this clause 33.3, unless otherwise agreed to in writing by the Company, the Preference Share Agent and MTN. Without limiting the general nature and effect of the foregoing, such agreement may include (but shall not be limited to) the addition or removal of items (in whole or in part) and/or a variation to the sequence and/or amounts set out below. Capitalised terms used but not defined herein shall bear the meanings ascribed thereto in clause 33.1 of this MOI.

33.3.2 Notwithstanding anything to the contrary in this MOI, until the BFC2 Discharge Date, the Company shall apply (i) all Distributions received by it in relation to the BIC2 Preference Shares; (ii) all interest income received by it on the BFC2 Collection Account; (iii) any amount standing to the credit of the BFC2 Collection Account from time to time (other than the proceeds of the issue of the BFC2 Tranche 2 Preference Shares); and (iv) any amount standing to the credit of the BFC2 Top-Up Loan Account from time to time in the circumstances contemplated in clauses 3.1.3.3 and 3.2.3.3 of the MTN Subordination and Undertaking Agreement (collectively, the "**BFC2 Received Amounts**"), on each BFC2 Preference Dividend Date and on each BFC2 Redemption Date (whether as a result of a scheduled redemption, voluntary redemption or mandatory redemption of any or all of the BFC2 Preference Shares, as the case may be), in accordance with the following priority of payments on the basis that each level of priority is to be paid or fully provided for before any payment of or provision for the following level of priority is paid or provided for:

33.3.2.1 first, to the payment of or provision for any Tax that may be owed by the Company and which arises as a result of (i) the holding of, or otherwise in connection with, the BIC2 Preference Shares and/or the BFC2 Preference Shares, (ii) interest accruing or being paid on the BFC2 Collection Account or the funds therein and/or (iii) the implementation of the Refinancing;

- 33.3.2.2 second, to the payment of or provision for any amounts that may be owed by the Company to any BFC2 Preference Shareholder or ex BFC2 Preference Shareholder in terms of clauses 13 and 14 of the BFC2 Preference Share Subscription Agreement and/or which is payable pursuant to clause 33.2.1.6.7 of this MOI;
- 33.3.2.3 third, to the payment of any BFC2 Preference Dividends which are, as at the relevant date on which any BFC2 Received Amounts are being applied, scheduled, accumulated, due or otherwise required to be declared and/or paid in accordance with this MOI;
- 33.3.2.4 fourth:
 - 33.3.2.4.1 provided that no BFC2 Trigger Event has occurred, to place on deposit in the BFC2 Collection Account an amount equal to the lesser of (a) the balance, if any, of the BFC2 Received Amounts or (b) an amount equal to the BFC2 Redemption Amount of the BFC2 Unredeemed Preference Shares; or
 - 33.3.2.4.2 if any BFC2 Trigger Event has occurred, to redeem as many of the BFC2 Unredeemed Preference Shares at their BFC2 Redemption Amounts as can be redeemed in full with the balance of such BFC2 Received Amounts; and
- 33.3.2.5 fifth, provided that all the BFC2 Preference Shares have been redeemed in full, to pay or repay all or part of any BFC2 Subordinated Loan, whether in respect of principal, interest or otherwise, in an amount equal to the lesser of (a) the balance, if any, of the BFC2 Received Amounts and (b) an amount equal to the amount of principal, interest or otherwise owing in respect of such BFC2 Subordinated Loan (or such lesser amount as agreed to in writing by MTN).

34. LEGAL PROCEEDINGS

Should any Director of the Company deem it necessary that the Company should institute legal proceedings or take any other action against any other Shareholders or Directors or any entity in which its Shareholders are directly or indirectly interested, then such Director shall refer the matter to the Board and should the Directors not take such action within 30 (thirty) days after the matter has been referred to them by such Director, then any such Director who has referred the matter to the Board shall be authorised to take all such steps or sign all such documents (as may be necessary) to take such action in the name of and at the cost of the Company, and shall be authorised to determine and control the manner in which such action is taken on behalf of the Company, provided that should any such action be frivolous or fictitious then such Director undertakes to refund the Company all costs of any nature whatever incurred taking such action.

Annexure A – Definitions in the Companies Act

"**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;¹

"**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;

"**amalgamation or merger**" means a transaction, or series of transactions, pursuant to an agreement between two or more companies, resulting in -

- (a) 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 amalgamation or merging companies; or
- (b) 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 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;

"**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);

"**Auditing Profession Act**" means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

"**auditor**" has the meaning set out in the Auditing Profession Act;

"**Banks Act**" means the Banks Act, 1990 (Act No. 94 of 1990) as amended, or any legislation which replaces it;

"**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 -

- (a) receive or participate in any distribution in respect of the company's securities;
- (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or
- (c) 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);

"**board**" means the board of directors of a company;

"**business days**" has the meaning determined in accordance with section 5(3);

"**central securities depository**" means the person who is licenced as a central securities depository under section 9 of the Financial Markets Act;

"**Commission**" means the Companies and Intellectual Property Commission established by section 185;

¹ Regulation 25(3) contains requirements as to what the accounting records must include.

"**Commissioner**" means the person appointed to or acting in the office of that name, as contemplated in section 189;

"**company**" means a juristic person incorporated in terms of this Act, a domesticated company, or a juristic person that, immediately before the effective date -

- (a) was registered in terms of the -
 - (i) Companies Act, 1973 (Act No. 61 of 1973), other than as an external company as defined in that Act; or
 - (ii) Close Corporations Act, 1984 (Act No. 69 of 1984), if it has subsequently been converted;
- (b) was in existence and recognised as an 'existing company' in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- (c) 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;

"**Competition Act**", means the Competition Act, 1998 (Act No. 89 of 1998);

"**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 -

- (a) any money, property, negotiable instrument, securities, investment credit facility, token or ticket;
- (b) any labour, barter or similar exchange of one thing for another; or
- (c) any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly;

"**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 -

- (a) any non-voting securities issued by the company and which will become voting securities -
 - (i) on the happening of a designated event; or
 - (ii) if the holder of those securities so elects at some time after acquiring them; and
- (b) 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);

"**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 alternative director, by whatever name designated;

"**distribution**" means a direct or indirect -

- (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 -
 - (i) in the form of a dividend;
 - (ii) as a payment in lieu of a capitalisation share, as contemplated in section 47;

- (iii) as consideration for the acquisition -
 - (aa) by the company of any of its shares, as contemplated in section 48; or
 - (bb) by any company within the same group of companies, of any shares of a company within that group of companies; or
- (iv) 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);
- (b) 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
- (c) 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;

"**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;

"**electronic communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act;

"**Electronic Communications and Transactions Act**" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

"**employee share scheme**" has the meaning set out in section 95(1)(c);

"**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);

"**exercise**", when used in relation to voting rights, includes voting by proxy, nominee, trustee or other person in a similar capacity;

"**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;

"**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);

"**financial statement**" includes -

- (a) annual financial statements and provisional annual financial statements;
- (b) interim or preliminary reports;
- (c) group and consolidated financial statements in the case of a group of companies; and
- (d) 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;

"**group of companies**" means a holding company and all of its subsidiaries;

"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);

"incorporator", when used -

- (a) with respect to a company incorporated in terms of this Act, means a person who incorporated that company, as contemplated in section 13; or
- (b) 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;

"individual" means a natural person;

"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;

"juristic person" includes -

- (a) a foreign company; and
- (b) a trust, irrespective of whether or not it was established within or outside the Republic;

"knowing", **"knowingly"** or **"knows"**, when used with respect to a person, and in relation to a particular matter, means that the person either -

- (a) Had actual knowledge of the matter; or
- (b) Was in a position in which the person reasonably ought to have -
 - (i) had actual knowledge;
 - (ii) investigated the matter to an extent that would have provided the person with actual knowledge; or
 - (iii) taken other measures which, if taken, could reasonably be expected to have provided the person with actual knowledge of the matter;

"material", when used as an adjective, means significant in the circumstances of a particular matter, to a degree that is -

- (a) of consequence in determining the matter; or
- (b) might reasonably affect a person's judgement or decision-making in the matter;

"nominee" has the meaning given to this term in the Financial Markets Act;

"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) -

- (a) at a shareholders meeting; or
- (b) by holders of the company's securities acting other than at a meeting, as contemplated in section 60;

"person" includes a juristic person;

"**personal financial interest**", when used with respect to any person -

- (a) 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
- (b) 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;

"**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);

"**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;

"**private company**" means a profit company that -

- (a) is not a public, personal liability or state-owned company; and
- (b) satisfies the criteria set out in section 8(2)(b);

"**profit company**" means a company incorporated for the purpose of financial gain for its shareholders;

"**public company**" means a profit company that is not a state-owned company, a private company or a personal liability company;

"**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;

"**registered auditor**" has the meaning set out in the Auditing Profession Act;

"**registered office**" means the office of a company, or of an external company, that is registered as required by section 23;

"**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 section (c);

"**rules**" and "**rules of a company**" means any rules made by a company as contemplated in section 15(3) to (5);

"**securities**" means any shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by a profit company;

"**securities register**" means the register required to be established by a profit company in terms of section 50(1);

"**share**" means one of the units into which the proprietary interest in a profit company is divided;

"**shareholder**", 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;

"**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;

"**solvency and liquidity test**" means the test set out in section 4 (1);

"special resolution" means -

- (a) 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) -
 - (i) at a shareholders meeting; or
 - (ii) by holders of the company's securities acting other than at a meeting, as contemplated in section 60; or
- (b) 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;

"subsidiary" has the meaning determined in accordance with section 3;

"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;

"voting rights", with respect to any matter to be decided by a company, means -

- (a) 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
- (b) the rights of a member to vote in connection with the matter, in the case of a non-profit company;

"voting securities", with respect to any particular matter, means securities that -

- (a) carry voting rights with respect to that matter; or
- (b) are presently convertible to securities that carry voting rights with respect to that matter;

"wholly-owned subsidiary" has the meaning determined in accordance with section 3(1)(b).

Annexure B – Ineligible / disqualified in terms of section 69(7) and (8) of the Companies Act read with Regulation 39(3)

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 the Person -
 - 2.2.1 is an unrehabilitated insolvent;
 - 2.2.2 is prohibited in terms of any public regulation to be a Director;
 - 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) amount, 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).

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.
	<p>By sending the notice or a copy of the document by electronic mail, if the Person has an Electronic Address;</p> <p>By sending the notice or a certified copy of the document by registered post to the Person's last known address;</p> <p>By any other means authorised by the High Court; or</p> <p>By any other method allowed for that Person in terms of the following rows of this Table.</p>	<p>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.</p> <p>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.</p> <p>In accordance with the order of the High Court.</p> <p>As provided for that method of delivery.</p>
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.
	<p>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;</p> <p>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.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>
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 registered office or its principal place of business within South Africa;	On the date and at the time recorded on a receipt for the delivery.
	If there is no employee willing to accept service, by affixing the	On the date and at the time sworn to by affidavit of the Person who affixed the

Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
	notice or a certified copy of the document to the main door of the office or place of business.	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.	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.
	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.