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To whom it may concern:

Legal requirement for companies subject to the Companies Act (71 of 2008 – as amended) to have a signed shareholders’ agreement

The requirements for the incorporation, management and dissolution of any company registered with the Republic of South African are governed by the Companies Act.

The Memorandum of Incorporation (MOI) appears to be a statutory requirement under the Act. The rules pertaining to the MOI are comprehensively discussed in section 15 of the Act. A door is left open for a shareholders’ agreement in section 15(7)

*The shareholders of a company **may** enter into any agreement with one another concerning any matter relating to the company, but any such agreement must be consistent with this Act and the company’s Memorandum of Incorporation, and any provision of such an agreement that is inconsistent with this Act or the company’s Memorandum of Incorporation is void to the extent of the inconsistency.*

The use of the word MAY above clearly demonstrates that a shareholders’ agreement is not a legal requirement and no company is in breach of the Companies Act by not having such an agreement.

A handwritten signature in blue ink, appearing to read 'Paul', is centered on a light blue background.

Paul Janisch
CEO – Caird

- (b) the company is incorporated under this Act as from the date, and the time, if any, stated in the certificate.

15. Memorandum of Incorporation, shareholder agreements and rules of company

- (1) Each provision of a company's Memorandum of Incorporation-
 - (a) must be consistent with this Act; and
 - (b) is void to the extent that it contravenes, or is inconsistent with, this Act, subject to [section 6\(15\)](#).
[Para. (b) substituted by s. 10 of Act 3/2011]
- (2) The Memorandum of Incorporation of any company may-
 - (a) include any provision-
 - (i) dealing with a matter that this Act does not address;
[Subpara. (i) substituted by s. 10 of Act 3/2011]
 - (ii) altering the effect of any alterable provision of this Act; or
[Subpara. (ii) substituted by s. 10 of Act 3/2011]
 - (iii) imposing on the company a higher standard, greater restriction, longer period of time or any similarly more onerous requirement, than would otherwise apply to the company in terms of an unalterable provision of this Act;
[Subpara. (iii) inserted by s. 10 of Act 3/2011]
 - (b) contain any restrictive conditions applicable to the company, and any requirement for the amendment of any such condition in addition to the requirements set out in [section 16](#);
[Para. (b) substituted by s. 10 of Act 3/2011]
 - (c) prohibit the amendment of any particular provision of the Memorandum of Incorporation; or
[Para. (c) substituted by s. 10 of Act 3/2011]
 - (d) not include any provision that negates, restricts, limits, qualifies, extends or otherwise alters the substance or effect of an unalterable provision of this Act, except to the extent contemplated in paragraph (a)(iii).
[Para. (d) inserted by s. 10 of Act 3/2011]
- (3) Except to the extent that a company's Memorandum of Incorporation provides otherwise, the board of the company may make, amend or repeal any necessary or incidental rules relating to the governance of the company in respect of matters that are not addressed in this Act or the Memorandum of Incorporation, by-
 - (a) publishing a copy of those rules, in any manner required or permitted by the Memorandum of Incorporation, or the rules of the company; and

- (b) filing a copy of those rules.
- (4) A rule contemplated in subsection (3)-
 - (a) must be consistent with this Act and the company's Memorandum of Incorporation, and any such rule that is inconsistent with this Act or the company's Memorandum of Incorporation is void to the extent of the inconsistency;
 - (b) takes effect on a date that is the later of-
 - (i) 10 business days after the rule is filed in terms of subsection (3)(b); or
[Subpara. (i) substituted by s. 10 of Act 3/2011]
 - (ii) the date, if any, specified in the rule; and
 - (c) is binding-
 - (i) on an interim basis from the time it takes effect until it is put to a vote at the next general shareholders meeting of the company; and
 - (ii) on a permanent basis only if it has been ratified by an ordinary resolution at the meeting contemplated in subparagraph (i).

(5) If a rule that has been filed in terms of subsection (3) is subsequently -

- (a) ratified as contemplated in subsection (4)(c), the company must file a notice of ratification within five business days in the prescribed manner and form; or
- (b) not ratified when put to a vote -
 - (i) the company must file a notice of non-ratification within five business days after the vote, in the prescribed manner and form; and
 - (ii) the company's board may not make a substantially similar rule within the ensuing 12 months, unless it has been approved in advance by ordinary resolution of the shareholders.
[Subs. (5) substituted by s. 10 of Act 3/2011]

(5A) Any failure to ratify the rules of a company does not affect the validity of anything done in terms of those rules during the period that they had an interim effect as provided in subsection (4)(c)(i).
[Subs. (5A) inserted by s. 10 of Act 3/2011]

- (6) A company's Memorandum of Incorporation, and any rules of the company, are binding-
 - (a) between the company and each shareholder;

- (b) between or among the shareholders of the company; and
- (c) between the company and-
 - (i) each director or prescribed officer of the company; or
 - (ii) any other person serving the company as a member of a committee of the board,

[Subpara. (ii) substituted by s. 10 of Act 3/2011]

in the exercise of their respective functions within the company.

- (7) The shareholders of a company may enter into any agreement with one another concerning any matter relating to the company, but any such agreement must be consistent with this Act and the company's Memorandum of Incorporation, and any provision of such an agreement that is inconsistent with this Act or the company's Memorandum of Incorporation is void to the extent of the inconsistency.

16. Amending Memorandum of Incorporation

- (1) A company's Memorandum of Incorporation may be amended-
 - (a) in compliance with a court order in the manner contemplated in subsection (4);
 - (b) in the manner contemplated in [section 36](#)(3) and (4); or
 - (c) at any other time if a special resolution to amend it-
 - (i) is proposed by-
 - (aa) the board of the company; or
 - (bb) shareholders entitled to exercise at least 10 percent of the voting rights that may be exercised on such a resolution; and
 - (ii) is adopted at a shareholders meeting, or in accordance with [section 60](#), subject to subsection (3).
- (2) A company's Memorandum of Incorporation may provide different requirements than those set out in subsection (1)(c)(i) with respect to proposals for amendments.
- (3) Despite subsection (1)(c)(ii), if a non-profit company has no voting members-
 - (a) the board of that company may amend its Memorandum of Incorporation in the manner contemplated in subsection (1)(c)(i)(aa); and
 - (b) the requirements of subsection (1)(c)(ii) do not apply to the company.