

**CONSTITUTION**

**OF**

**MCB CAPITAL MARKETS LTD**

**A PRIVATE COMPANY LIMITED BY SHARES**



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## **1 CONSTITUTION**

There is established to organise, regulate and govern the Company, this Constitution, which modifies, adapts and extends as herein provided, the provisions of the Act in its application to the Company.

## **2 DEFINITIONS AND INTERPRETATION**

### **2.1 Definitions**

In this Constitution, the words in the first column of the following table shall bear the meanings set opposite them respectively in the second column, if not inconsistent with the subject or context:-

WORDS	MEANINGS
Act	The Companies Act No. 15 of 2001, as amended from time to time.
Board	The Directors present at a duly convened meeting at which a quorum is present.
Company	MCB Capital Markets Ltd.
Constitution	The present Constitution governing the Company, as may from time to time be amended.
Director	A person who is a director of the Company.
Eligible Employee	Any employee who are eligible to the Redeemable Participating Shares as described in the ESS Rules.
ESS Rules	The rules governing the employee share scheme of the Company as adopted in 2010.
Ordinary Resolution	A resolution approved by a simple majority of the votes of those shareholders entitled to vote and voting on the matter which is subject of the resolution.
Ordinary Shares	A class of Shares in the share capital of the Company.
Redeemable Participating Shares	A class of Shares in the share capital of the Company.
Secretary	Any person, firm or association appointed by the Board to perform any of the duties of the secretary of the Company appointed under Article 21 in accordance with section 163 of the Act.

Shares	Any shares of any class in the capital of the Company.
Shareholder	Any person who holds Shares in the Company.
Special Resolution	A resolution approved by a majority consisting of seventy-five percent (75%) or more of votes of those shareholders entitled to vote and voting on the matter which is subject to the resolution.

## 2.2 Interpretation

2.2.1 In this Constitution, unless there be something in the subject or context inconsistent with such construction: -

- (a) Words importing the singular number only shall include the plural number and vice versa;
- (b) A reference to one gender shall include a reference to the other genders;
- (c) Words importing persons shall include companies or associations or bodies of persons, whether corporate or not;
- (d) The word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;
- (e) Where for the purposes of this Constitution or for any other purpose any amount in one currency is required to be converted into another currency, the Board may effect such conversion using such rate of exchange as in their absolute discretion they think appropriate except where otherwise specifically provided;
- (f) Reference to an Article is to an article of this Constitution;
- (g) Any reference to The Mauritius Commercial Bank Ltd or MCB in the ESS Rules shall be replaced by MCB Group Limited and the number of Redeemable Participating Shares still in issue under the ESS Rules at the date of this Constitution is 53,748 instead of 83,333;
- (h) Subject to the foregoing provisions, any words defined in the Act, shall, if not inconsistent with the subject or context, bear the same meaning in this Constitution; and
- (i) References to enactments and to articles or sections of enactments shall include references to any modifications or re-enactments thereof for the time being in force.

### **3 NAME, CAPACITY AND POWERS**

#### **3.1 Name**

3.1.1 The name of the Company is MCB Capital Markets Ltd.

3.1.2 An application to change the name of the Company may be made with the consent of Shareholders by Special Resolution.

#### **3.2 Capacity and Powers**

3.2.1 The Company has full capacity to carry on or undertake any business or activity or do any act that is not prohibited under any laws for the time being in force in the Republic of Mauritius.

3.2.2 The Company shall have such rights, powers and privileges as are permitted by law for the time being in force in the Republic of Mauritius, which are necessary or conducive to the conduct, promotion or attainment of the objects of the Company.

### **4 NATURE AND DURATION**

#### **4.1 Nature**

The Company shall be a private company with limited liability. The liability of a Shareholder is limited to the amount for the time being unpaid on each Share held by him.

#### **4.2 Duration of Company**

The Company shall be of an unlimited duration.

#### **4.3 Expenses**

The expenses incurred in forming the Company or revising its structure or constitution from time to time, including without limitation, in the applications for authorisations for the Company, the determination of its tax status and in the preparation of its initial agreements, shall be paid by the Company and may be amortised or written off over such period as the Board may determine from time to time and the amount so paid shall, in the accounts of the Company, be charged against income and/or capital as determined by the Board.

#### **4.4 Balance Sheet Date**

The balance sheet date of the Company is the 30<sup>th</sup> June of each year or such other day as the Board may determine from time to time.

### **5 SITUATION OF OFFICES OF COMPANY**

- 5.1 The registered office shall be at Sir William Newton Street, Port Louis, Republic of Mauritius, or at such other address in the Republic of Mauritius as the Board may from time to time determine.
- 5.2 The Company, in addition to the registered office, may establish and maintain such other offices and places of business in the Republic of Mauritius or elsewhere as the Board may from time to time determine.

## **6 SHARE CAPITAL**

- 6.1 Shares of the Company shall have no par value.
- 6.2 Shares may be issued in different classes or series, with each class having such rights, privileges and limitations and denomination in such other currencies as the Board may in its sole discretion determine. Shares may be issued as redeemable Shares, as the Board may in its sole discretion determine.
- 6.3 The share capital of the Company comprises the following classes of Shares:
- (a) Ordinary Shares; and
  - (b) Redeemable Participating Shares.
- 6.4 Ordinary Shares
- 6.4.1 An Ordinary Share in the capital of the Company shall confer upon the holder thereof, the following rights:
- (a) one vote per share on a poll at a meeting of the shareholders of the Company on all resolution matters falling to the determination or approval of shareholders under the Act and this Constitution;
  - (b) the right to an equal share of dividends as may be declared and paid by the Company; and
  - (c) the right to an equal share in the distribution of the surplus assets of the Company.
- 6.4.2 The Ordinary Shares shall not be redeemable.
- 6.5 Redeemable Participating Shares
- 6.5.1 A Redeemable Participating Share in the capital of the Company shall be held by or issued to an Eligible Employee or MCB Group Limited.
- 6.5.2 A Redeemable Participating Share shall confer upon the holder thereof, the following



rights:

(a) in relation to redemption:

(i) when held by MCB Group Limited, may be redeemed by the Company on such date or dates as the Board shall, in its sole discretion, determine for a sum to be calculated according to the valuation guidelines contained in the ESS Rules;

(ii) when held by an Eligible Employee:

(aa) automatically redeemed on the date on which the employment of the holder thereof with the Company or any of its subsidiaries shall terminate for any reason whatsoever, including but not limited to, resignation, dismissal and death, for a sum to be calculated in line with the valuation guidelines contained in the ESS Rules;

(bb) redeemed in such other circumstances as may be prescribed in the ESS Rules;

(b) convertible into Ordinary Shares in the proportion of one Ordinary Share for each Redeemable Share held in the circumstances prescribed in the ESS Rules;

(c) the right to any distribution made by the Company "*pari passu*" with the holders of the Ordinary Shares;

(d) the right to any surplus assets in case of winding up of the Company "*pari passu*" with the holders of the Ordinary Shares.

6.5.3 The Redeemable Participating Shares shall not confer on the holders thereof the right to vote at the shareholders' meetings. However, save in the case of a variation of rights and notwithstanding anything to the contrary in the ESS Rules to that effect, the holders thereof shall be entitled to vote in accordance with the Act.

6.6 For the purposes of the Act, the Company is expressly authorised to purchase, redeem Shares issued as redeemable or otherwise acquire Shares issued by it provided that no purchase, redemption or other acquisition of Shares shall be made except in accordance with the Act.

6.7 The Secretary shall maintain a share register for the purpose of recording issues, transfers and cancellation of Shares in the manner required by the Act.

## **7 ISSUE OF SHARES**

- 7.1 Subject to the other provisions of this Constitution, the Act and the terms of issue of any existing Shares, the Board may issue Shares (and rights or options to acquire Shares), at any time, to any person and in any number it thinks fit.
- 7.2 Notwithstanding section 55 of the Act and unless the terms of issue of any class of Shares specifically provide otherwise, the Board may, subject to the approval of an Ordinary Resolution, issue shares that rank (as to voting, distribution or otherwise) equally with or in priority to, or in subordination to the existing Shares without any requirement that the shares be first offered to existing Shareholders.
- 7.3 The price per Share at issue shall be a price determined by the Board as being fair and reasonable to the Company and its Shareholders.
- 7.4 The amount payable on the issue of any Shares in the capital of the Company shall be payable in full on issue unless the Board has decided to accept payment by instalments or calls, whereupon payment shall be made in accordance with the terms of issue of such Shares and, otherwise, in accordance with the provisions of the Fourth Schedule to the Act.
- 7.5 Any Shares in the Company may be issued in payment or part payment for any property or rights acquired by the Company or for services rendered to the Company subject to compliance with section 57 of the Act.
- 7.6 The Company may issue fractions of a Share and a fractional share shall have the same corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class or series of Shares.

## **8 MODIFICATIONS OF RIGHTS**

- 8.1 Where Shares are issued in different classes, the rights attached to any class of Shares (unless otherwise provided by the terms of issue of the Shares of that class) may only be varied with the consent in writing of the holders of seventy-five percent (75%) of the issued Shares of that class or by the approval of the Shareholders of that class by Special Resolution at a separate meeting of the holders of the shares of that class.
- 8.2 Where a resolution affects all classes equally, all such classes may be treated as one class for the purposes of this Article 8.
- 8.3 The special rights attached to any class of Shares shall (unless otherwise expressly provided by the conditions of issue of such Shares) be deemed not to be varied by :-
- (a) the issue of further Shares ranking *pari passu*; or

- (b) by the winding up of the Company and the exercise by the liquidator of his powers.

## **9 CERTIFICATES**

- 9.1 Shares shall be issued in inscribed form and no certificate shall be issued in respect of Shares of the Company.
- 9.2 An entry of the name of a person in the share register as holder of a Share shall be *prima facie* evidence of the legal title of such person to such Share.
- 9.3 The Company shall, on application by Shareholder issue to such Shareholder within twenty-eight (28) days of such application, Share certificates under the hand of the Secretary which shall specify -
  - (a) the name of the Company;
  - (b) the classes of Shares held by the Shareholder;
  - (c) the number of Shares held by the Shareholder.
- 9.4 Notwithstanding Article 9, where a share certificate has been issued, no transfer of Shares shall be registered unless the instrument of transfer is accompanied by the share certificates relating to the Shares to be transferred.
- 9.5 Where a share certificate has been lost or destroyed, the Company may, on application being made and payment of the prescribed fee, issue a duplicate certificate subject to -
  - (a) the Company receiving such evidence of loss or destruction as the Board may deem sufficiently satisfactory;
  - (b) a written undertaking by the Shareholder that should the original be found, it will be returned to the Company; and
  - (c) the Shareholder furnishing such indemnity as the Board deem fit to protect the interests of the Company.

## **10 LIEN**

- 10.1 The Company shall have a first and paramount lien and privilege on all the Shares (whether fully or partly paid) registered in the name of a Shareholder (whether solely or jointly with others) for his debts, liabilities and engagements, including without limitation any unpaid calls on Shares, either alone or jointly with any other person, whether a Shareholder or not, to or with the Company, whether the period for the payment or discharge thereof shall have actually arrived or not.

- 10.2 Such lien shall extend to all dividends from time to time declared in respect of such Shares.
- 10.3 The enforcement of the lien under this Article 10 shall be made in accordance with the Act.

## **11 TRANSFER OF SHARES**

- 11.1 Unless otherwise provided in the terms of issue, no Shareholder shall have any pre-emptive rights whatsoever in respect of any transfer of any Shares of the Company.
- 11.2 No transfer of Shares shall be effected without the prior approval of the Board.
- 11.3 The Board may, in its absolute discretion and without assigning any reason therefor, decline to register any transfer of Shares.

## **12 FORFEITURE OF SHARES**

- 12.1 If a Shareholder fails to pay any call or instalment of a call on the day appointed for payment thereof the Board may at any time thereafter, proceed to the forfeiture of such Share as per the procedure set out in the Fourth Schedule to the Act.
- 12.2 The provisions of this Constitution as to forfeiture shall apply in the case of non-payment of any sum, which by the terms of issue of a Share becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.

## **13 MEETINGS OF SHAREHOLDERS**

- 13.1 Save as otherwise provided in this Constitution, the meeting of Shareholders shall be governed by the Fifth Schedule to the Act.
- 13.2 No business shall be transacted at any meeting of Shareholders unless a quorum is present at the time when the meeting proceeds to business and a quorum shall be deemed to be constituted by the presence of one (1) Shareholder present in person or by proxy representing at least twenty-five percent (25%) of the Shares in the Company or class of Shares in the Company entitled to vote on resolutions of Shareholders to be considered at the meeting.
- 13.3 Any Shareholder may appoint a proxy for the purposes of attending and voting at a meeting of Shareholders in the manner provided for by the Act provided that the instrument appointing such proxy is delivered at the registered office of the Company at least twenty-four (24) hours prior to the meeting failing which the appointment shall not be effective.
- 13.4 Postal votes shall not be allowed.

- 13.5 A duly authorised representative of a corporation present at any meeting of the Company or at any meeting of any class of Shareholders of the Company shall be deemed to be a Shareholder for the purpose of counting towards a quorum.
- 13.6 The Company shall be dispensed from holding an annual meeting each year where everything required to be done at such annual meeting is done by way of a resolution in writing signed by not less than seventy-five percent (75%) of the votes entitled to be cast on that resolution.
- 13.7 A resolution in writing signed by Shareholders entitled to vote at a meeting of Shareholders and who hold not less than 75 per cent of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those Shareholders. The signatures of the Shareholders may be received in counterparts by facsimile or other similar means of communication.

#### **14 THE BOARD**

- 14.1 Unless otherwise determined by the Company by Ordinary Resolution in a meeting of Shareholders, the Board shall consist of a minimum of four (4) and a maximum of eight (8) Directors.
- 14.2 The appointment of two or more directors may be made by way of a single resolution without the need for any prior approval.
- 14.3 A Director need not be a Shareholder of the Company but shall be entitled to receive notice of and attend all meetings of Shareholders of the Company.
- 14.4 The office of a Director shall be vacated:-
- (a) where the Director no longer fulfils the qualifying criteria to act as director under the Act;
  - (b) for any one of the reasons for vacation of the office of director under the Act exists; or
  - (c) in any event, the Director is removed from office by an Ordinary Resolution.
- 14.5 The Company may, upon the office of a Director being vacated, fill up the vacated office by electing a new Director unless the Company resolves by Ordinary Resolution to reduce the number of Directors in accordance with this Constitution.

#### **15 TRANSACTIONS WITH DIRECTORS**

- 15.1 Subject to the disclosure requirements and formality requirements of the Act in relation

to transactions with Directors and transactions in which Directors have an interest, a Director:-

- (a) may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director on such terms as to tenure of office and otherwise as the Board may determine, and no Director or intending Director shall be disqualified by his office from contracting with the Company, nor shall any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested be liable to be avoided;
- (b) shall be counted in the quorum and shall be entitled to vote in respect of his appointment to hold any office or place of profit under the Company or the arrangement of the terms of any such appointment or in respect of any contract or arrangement in which he is materially interested;
- (c) may act by himself or through his firm in a professional capacity for the Company, and he shall be entitled to remuneration for professional services; and
- (d) may continue to be or become a director, managing director, manager or other officer or Shareholder of any company promoted by the Company or in which the Company may be interested, and no such Director shall be accountable for any remuneration or other benefits received by him as a director, managing director, manager, or other officer or Shareholder of any such other company.

15.2 The Company shall cause to be kept an interests register in which shall be entered the particulars of any matter required to be disclosed under this Article 15 unless the Company has, by unanimous resolution, dispensed with the need to keep an interests register in accordance with section 271 of the Act.

## **16 ALTERNATE DIRECTORS**

16.1 Every Director may, by notice given in writing to the Company, appoint any person (including any other Director) to act as an alternate director in the Director's place, either generally, or in respect of a specified meeting or meetings at which the Director is not present.

16.2 The appointing Director may, at his discretion, by notice in writing to the Company, remove his alternate director.

16.3 An alternate director may, when acting in the place of the appointing Director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the

right of acting as the Chairperson) of the appointing Director. The alternate director shall be subject, in all respects, to the same terms and provisions as those regarding the appointment of his appointing Director, except as regards remuneration and the power to appoint an alternate director under this Constitution.

- 16.4 A Director who is also an alternate director shall be entitled, in addition to his own vote, to a separate vote on behalf of the Director he is representing.
- 16.5 An alternate director's appointment shall lapse upon his appointing Director ceasing to be a Director.
- 16.6 The notice of appointment of an alternate director shall include an address for service of notice of meetings of the Board. Failure to give an address will not invalidate the appointment, but notice of meetings of the Board need not be given to the alternate director until an address is provided to the Company.
- 16.7 An alternate director shall not be the agent of his appointor, and shall exercise his duties as a Director independently of his appointor.

## **17 POWERS OF DIRECTORS**

The business of the Company shall be managed by the Board, which may exercise all such powers of the Company as are not by the Act or by this Constitution required to be exercised by the Shareholders, subject nevertheless to such resolutions of Shareholders which are not inconsistent with the Act, provided that no Shareholder resolution shall invalidate any prior act of the Board which would have been valid if no resolutions had been made.

## **18 PROCEEDINGS OF DIRECTORS**

- 18.1 Save as provided herein, the proceedings of the Board shall be governed by the Eighth Schedule to the Act.
- 18.2 The quorum necessary for the transaction of the business of the Board shall be an amount equal to half of the Directors appointed in office at that time, with such amount rounded up to the next whole figure whenever such amount is a fraction.
- 18.3 A meeting shall be deemed properly constituted if carried out by means of simultaneous telephonic communication between two or more Directors, regardless of whether any two of them are in the same place.

## **19 OFFICERS AND AGENTS**

- 19.1 The Board may appoint any person, including a person who is a director, to be an officer or agent of the Company.
- 19.2 Subject to a unanimous shareholder agreement to the contrary, each officer or agent shall, subject to Article 19.3, have such powers and authority of the Directors, including the power and authority to affix the common seal of the Company as set forth in the board resolution appointing the officer or agent.
- 19.3 No officer or agent shall have any power or authority with respect to the matters requiring a resolution of Directors under the Act or this Constitution.
- 19.4 The Directors may, at any time, remove an officer or agent or revoke or vary a power conferred on him given pursuant to this Article 19.

## **20 BORROWING POWERS**

The Board may exercise all the powers of the Company to borrow money and hypothecate, mortgage, charge or pledge its undertaking, property, and assets or any part thereof, and to issue debentures, debenture stock or other securities, whether outright or as collateral security for any debt, liability or obligation of the Company or any third party.

## **21 SECRETARY**

- 21.1 The Secretary shall be appointed by the Board.
- 21.2 Anything required or authorised to be done by or to the Secretary, may, if the office is vacant or there is for any other reason no Secretary capable of acting, be done by or to any Director, or any officer of the Company authorised by the Board provided that no officer can act both as officer and secretary for any act required to be performed by such officer and the secretary.

## **22 THE SEAL**

The Board may provide for the safe custody of the seal of the Company and any duplicate seal for use outside the Republic of Mauritius. The Board may from time to time as it sees fit determine the persons and the number of such persons in whose presence the seal or duplicate seal shall be used, and until otherwise so determined the seal or duplicate seal shall be affixed in the presence of two Directors or of one Director and the Secretary, or some other person duly authorised by the Board.

## **23 DIVIDENDS**

- 23.1 Dividends may be payable to the Shareholders at the sole discretion of the Board without



the requirement of any prior approval of the Shareholders provided always that the Company meets the solvency test after payment of the dividend.

- 23.2 Subject to any preference attached to any class of Shares, all dividends shall be declared and paid according to the amount paid up on the Shares in respect whereof the dividend is paid, but no amount paid up on a Share in advance of calls shall be treated for the purpose of this Article as paid up on the Share.
- 23.3 All unclaimed dividends may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. No dividend shall bear interest against the Company.
- 23.4 The Board may deduct from any moneys payable to any Shareholder on or in respect of a Share all sums of money (if any) presently payable by him to the Company on account of calls or otherwise in relation to the Shares of the Company.

## **24 CAPITALISATION OF PROFITS**

- 24.1 Subject to compliance with sections 56 and 64 of the Act, the Board may resolve to capitalise any part its reserves or accumulated profits by applying same in or towards paying up any amounts for the time being unpaid on any Shares held by such holders respectively or issuing new Shares to holders entitled to distribution in accordance with their respective distribution rights.
- 24.2 For the purposes of giving effect to a resolution passed in accordance with Article 24.1, the Board is empowered to make all appropriations and applications of the profits and reserves resolved to be capitalised thereby, and issue fully paid Shares, if any, and generally shall do all acts and things required to give effect thereto.

## **25 RESERVE ACCOUNTS**

The Board may create reserve accounts and may set aside out of the profits of the Company and carry to the credit of any reserve account such sums as it thinks proper, which shall, at the discretion of the Board, be applicable for any purpose to which the profits or reserves may be properly applied and pending such application may at the like discretion either be employed in the business of the Company or be invested in such investments as the Board may from time to time think fit.

## **26 AMENDMENT TO CONSTITUTION**

The Company may by Special Resolution alter or modify this Constitution as originally drafted or as amended from time to time.

## **27 WINDING UP**

- 27.1 If the Company is wound up, the liquidator shall apply the assets of the Company in satisfaction of creditors' claims in accordance with the law.
- 27.2 Subject to any preferences attached to any class of Shares, the assets available for distribution among the Shareholders shall then be applied in the payment to the Shareholders of any balance then remaining, such payment being made in proportion to the number of Shares held.
- 27.3 Distribution (whether of cash or of assets of the Company in specie) may be effected in such instalments and over such period or periods as the liquidator considers reasonable in the circumstances having regards to the time involved in and the manner of realisation of the Company's assets.
- 27.4 If the Company is wound up (whether the liquidation is voluntary, under supervision or by the Court) the liquidator may divide among the Shareholders in specie the whole or any part of the assets of the Company, and whether or not the assets shall consist of property of a single kind, and may for such purposes set such value as he deems fair upon any one or more class or classes of property, and may determine how such division shall be carried out as between the Shareholders or different classes of Shareholders.

## **28 INDEMNITY**

Directors shall be entitled to indemnity and insurance to the fullest extent permissible under section 161 of the Act.