

MOI CHECKLIST



Name of Applicant:

Name of Issuer Agent:

Date of First Submission:

Colour coding for the Checklist:

Confirmed compliance with CTSE LR
General issue to be solved
Urgent issue to be solved
No further comments

	APPENDIX 5: CONSTITUTION CHECKLIST	ISSUER AGENT REFERENCE TO MOI INDICATING COMPLIANCE	IRD 1 ST SUBMISSION COMMENTS	ISSUER AGENT RESPONSE	IRD 2 ND SUBMISSION COMMENTS	ISSUER AGENT RESPONSE
	Introduction					
1	The Issuer's Constitution may be drafted in any language, however the Issuer must also have one version of its Constitution drafted in English. The English version of the Constitution must be the primary version and the version in the other language will be the translated version for the purposes of section 17(3) of the Companies Act.					
2	There must be no provision in the Constitution of the Issuer or of its Subsidiaries that conflicts with or is less stringent than the Listing Requirements and that prevents the enforcement of the Listing Requirements. If there is such a conflict or less stringent provision then the Issuer must ensure that the Constitution of the Issuer and/or its Subsidiaries be amended to comply with the Listing Requirements. The onus is on the Issuer to ensure compliance with this provision before lodging an application for Listing its Securities.					
3	Nothing prevents an Issuer from imposing more stringent provisions in its Constitution provided that such provisions are approved by CTSE.					
4	CTSE shall be able to take action against the Issuer in terms of the Listing Requirements in the event of non-compliance with the Listing Requirements.					
5	Shareholders cannot ratify any action of the Issuer or its Subsidiaries if such ratification would lead to an action inconsistent with or less stringent than the provisions of the Listing Requirements.					
6	Nothing in the Constitution of the Issuer or its Subsidiaries shall relieve the Issuer from compliance with the Listing Requirements.					

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7	CTSE retains the discretion, subject to the provisions of the FMA and any applicable administrative laws, to reject an Issuer's Constitution if any of its provisions are unlawful, unreasonable or against public policy.					
8	No application for Listing will be considered by CTSE until:					
8.1	the Constitution of the Issuer has been approved by CTSE; and					
8.2	The CTSE approved version of the Constitution must be filed with and registered with the Companies and Intellectual Property Commission established in terms of the Companies Act.					
9	Any of the following amendments to the Constitution proposed to shareholders of the Issuer, needs to be approved by CTSE prior to it being proposed to such shareholders:					
9.1	Any amendments relating to the provisions listed in this Appendix;					
9.2	Any amendment, which may result in the Issuer not being able to comply with any of the Listing Requirements.					
10	The Constitution must comply with the Companies Act, including but not limited to sections 15, 16, 17 and 18 thereof.					
	The Constitution of any Issuer must provide for:					
12	Transfer and registration.					

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13	Notwithstanding the provisions of Section 40(5) of the Companies Act, Securities must be fully paid up for before being admitted to the Official List, unless otherwise required by statute.					
14	Securities must be freely transferable unless CTSE and the Registry approve of a restriction and such restriction must be provided for in detail in the Constitution and as a minimum the following must be provided in the Constitution:					
14.1	Applicable to all Securities of that class issued or proposed to be issued;					
14.2	Is objectively determinable without ambiguity and uncertainty;					
14.3	Is legally permissible;					
14.4	Is unconditional, or where subject to any condition, such condition is objectively determinable without ambiguity and uncertainty.					
15	All authorities to sign transfer deeds granted by the holders of Securities for the purpose of transferring Securities that may be lodged, produced or exhibited with or to the Issuer at any of its transfer offices shall, as between the Issuer and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Issuer may allow the same to be acted upon until such time as express notice in writing of the revocation of the same have been given and lodged at the Issuer's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notice, the Issuer shall be entitled to give effect to any instruments signed under the authority to sign, and certified by any officer of the					

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	Issuer, as being in order before the giving and lodging of such notice.					
16	For Securities to be transferred, the Securities must be uncertificated.					
	Transmission clause					
17	A provision to the effect that Securities registered in the name of a deceased or insolvent holder shall be forfeited if the executor or administrator fails to register the Securities in his own name or in the name of the heir/s or legatee/s, when called upon by the Directors to do so, <u>will not be permitted</u> .					
	Distributions to Securities holders					
18	Distributions to Security holders must as a minimum comply with Section 46 of the Companies Act and must not provide that capital shall be repaid upon the basis that it may be called up again.					
19	Distributions are to be payable to Security holders registered as at the date subsequent to the date of declaration or date of confirmation of the dividend, whichever is the later.					
	Capitalisation Securities					

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20	Any issue of Securities as capitalisation Securities must as a minimum be subject to the requirements of Section 47 of the Companies Act. The Constitution may not provide for less stringent requirements.					
	Scrip dividend and cash dividend elections					
21	The grant of the right of election must not be prohibited in the Constitution.					
	Investment Companies					
22	The Constitution of Investment Companies must provide where Distributions are paid from the profits arising from the realisation of investments, the shareholders have approved the Distribution by Ordinary Resolution.					
	Lien upon Securities					
23	Any power by the Issuer to claim a lien on Securities must be prohibited.					
	Directors					
24	A minimum of at least four Directors.					
25	The Constitution may provide for the nomination of 1 (one) or more Directors by any person who is named in the Constitution or determined in terms of the Constitution provided that any Shareholder will have the right to nominate Directors. Such a person must not be entitled to appoint or to remove any Director/s. The appointment of all Directors shall be subject to Shareholder approval at any annual/general meeting of Shareholders.					

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26	The Constitution may provide for the appointment of alternate Directors in terms of the Companies Act.					
27	The appointment of a Director to fill a casual vacancy or as an addition to the board must be confirmed by Shareholders at the next Annual General Meeting or general meeting.					
28	If the number of Directors falls below the minimum provided in the Constitution, the remaining Directors must as soon as possible and by no later than 3(three) months fill the vacancies or call a general meeting for the purpose of filling the vacancies, provided that the failure by the Company 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. After the expiry of the 3(three) month period, the remaining Directors shall only be permitted to act for the purpose of filling vacancies or calling general meetings of Shareholders.					
29	A Director may be employed in any other capacity by the Company or as a Director or employee of a company controlled by itself or a Major Subsidiary of the Company and in such event his/her appointment and the remuneration in respect of such other office must be determined by a disinterested quorum of Directors.					

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30	Directors cannot serve a term of more than 3 (three) years, but this does not prohibit re-election for by Shareholders for subsequent terms.					
	Preferences, rights, limitations and other terms relating to Securities					
31	Securities in each class for which Listing is applied must rank <i>pari passu</i> in respect of all rights.					
32	An Issuer must ensure equality of treatment for all holders of Securities of the same class.					
33	Every holder of an ordinary share must have one vote in respect of each share that he holds and must be entitled to vote at every general/annual general meeting, whether in person or by proxy.					
34	Subject to an amendment ordered by a court as contemplated in Section 16(1)(a) read with Section 16(4) of the Companies Act, any amendment of the Constitution shall be subject to a Special Resolution passed by the ordinary shareholders. An amendment to the Constitution shall include, but not be limited to:					
34.1	the increase or decrease of the authorised capital of an Issuer;					

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34.2	The variation of any preferences, rights, limitations and other terms attaching to any class of Securities;					
34.3	The conversion of one class of Securities into one or more other classes;					
34.4	the change of the name of the Issuer.					
35	If any amendment relates to the variation of any preferences, rights, limitations and other terms attaching to any class of Securities already in issue, that amendment must not be implemented without a Special Resolution taken by the Shareholders in that class at a separate meeting.					
36	The granting of special privileges to the holders of Securities, other than ordinary shareholders, such as attending and voting at general meetings and the appointment of Directors is only permitted with the approval of a Special Resolution by ordinary shareholders. These rights must be provided for in detail in the notice of the resolution.					
37	If there are listed cumulative and/or listed non-cumulative preference Securities the following right must be attached to such Securities: <i>"No further Securities ranking in priority to or pari passu with existing preference share/s, shall be created without a Special Resolution passed at a separate general meeting of such preference shareholder/s."</i>					
38	Preferences, rights, limitations or other terms of any class of Securities <u>must not be</u> varied in response to any objectively ascertainable external fact or facts as provided for in Section 37(6) and (7) of the Companies Act.					

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	Debt Securities					
39	The granting of special privileges to the holders of Debt Securities, such as attending and voting at general meetings and the appointment of Directors is only permitted with the approval of a Special Resolution by ordinary shareholders.					
40	These rights must be provided for in detail in the notice of the general meeting.					
41	The rights will lapse as soon the debt pertaining to such Securities has been extinguished.					
	Pre-emption rights					
42	Unissued Securities shall be offered to existing holders of Securities pro rata to their shareholding, unless the rights are waived by a general or Special Resolution as provided for below.					
43	Subject to the provisions of section 41 of Companies Act, except in the circumstances mentioned in paragraph 44 below, the Directors of the Issuer shall obtain a specific authority (by way of an Ordinary Resolution) prior to:					
43.1	Allotting, issuing or granting:					
43.1.1	Securities;					
43.1.2	Debt Securities convertible into Securities; or					
43.1.3	Options, warrants or similar rights to subscribe for any Securities or such convertible Securities; and					

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43.2	any Major Subsidiary making any such allotment, issue or grant which results in:					
43.2.1	such Major Subsidiary no longer being a Subsidiary of the Issuer; or					
43.2.2	Material changes to the Issuer.					
44	No such specific Ordinary Resolution as is referred to in paragraph 43 above shall be required:					
44.1	for the allotment, issue or grant of such Securities pursuant to an offer made to the holders of Securities of the Issuer and, where appropriate, to holders of other Securities of the Issuer entitled to be offered to them pro rata (apart from fractional entitlements) to their existing holdings; or					
44.2	if, but only to the extent that, the shareholders of the Issuer have by Ordinary Resolution given a general authority to the Directors of the Issuer, to allot, issue and grant Securities of the Issuer or to vote in favour of an allotment, issue or grant of Securities by any Major Subsidiary, which mandate must:					
44.2.1	State a price range or a basis of determining the price range at which Securities may be issued; and					
44.2.2	Stipulate a maximum number of Securities that may be so issued or the maximum dilution permissible within the period in question.					
45	A general resolution given under in terms of paragraph 44 above shall only continue and be in force until the earlier of:					

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45.1	The conclusion of the first Annual General Meeting of the Issuer following the passing of the resolution at which time it shall lapse; or					
45.2	an Ordinary Resolution revoking or varying such general authority is passed.					
46	Notwithstanding paragraph 44 above, the Directors of the Issuer must obtain a Special Resolution prior to issuing any Securities if such issue would effectively alter the control of the Issuer.					
	Announcements					
47	An International Issuer whose Primary Listing is or is to be on CTSE shall give sufficient notice to enable Security holders, whose registered addresses are in South Africa, to exercise their rights or comply with the terms of the notice. If the International Issuer's Primary Listing is on another Recognised Exchange, CTSE will normally be satisfied with an undertaking by the Issuer to do so and will not normally request the Issuer to change its Constitution to comply with this paragraph where it would be unreasonable to do so.					
48	There is no prohibition on the giving of notice to Security holders whose registered address is outside South Africa.					
	Notification of Controlling Shareholder					
49	Where an Issuer has a Controlling Shareholder, CTSE may require the appointment of a sufficient number of Independent Directors and/or appropriate controls and procedures to ensure that the Issuer is at all times capable of operating and making decisions independently of the Controlling Shareholder and that all transactions between the Issuer and the					

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	Controlling Shareholder are conducted at arm's length and on a normal commercial basis.					
	Capital structure					
50	The structure of the share capital of the Issuer must be stated and where such capital consists of more than one class of Security, particulars of the order in which the various classes shall rank for any distribution including by way of dividend and on a return of capital be given.					
51	The classes of Securities and the number of Securities that the Issuer is authorized to issue.					
	Non-voting or restricted voting Securities					
52	Where the equity capital includes Securities with different voting rights, the designation of each class of Securities, other than those with the most favourable voting rights, shall include the words "restricted voting" or "limited voting".					
	Meetings					
53	There must be no prohibition or restriction on the Issuer from calling any meeting for the purposes of adhering to the Listing Requirements.					
54	The quorum requirements provided for in Section 64 of the Companies Act must not be less than 25% and at least 3(three) members.					

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55	Meetings to be conducted entirely by electronic communication; or one or more shareholders to participate by electronic communication in all or part of a shareholders meeting being held in person, must be permissible. The electronic communications employed must ordinarily enable all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.					
56	Voting via electronic communications at shareholder meetings must be permissible.					
57	A proxy form must be sent with the Announcement convening a meeting of shareholders to each Person entitled to vote at the meeting, and must:					
57.1	Provide for voting through the Registry by electronic means;					
57.2	Provide for voting on all resolutions intended to be proposed;					
57.3	State that a shareholder is entitled to appoint a proxy of his own choice and provide a space for insertion of the name of such proxy; and					
57.4	State that, if it is returned without an indication as to how the proxy shall vote on any particular matter, the proxy will exercise his discretion as to whether, and if so how, he votes.					
	Record date					

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58	The record date(s) for all transactions must be in accordance with section 59 of the Companies Act as set out in the Procedures.					
	Annual financial statements and Annual report					
59	A copy of the annual financial statements (or an abridged version thereof) must be distributed to shareholders at least 21 (twenty one) Days before the date of the Annual General Meeting at which the financial statements will be presented.					
60	An Issuer must Announce its Annual Report not less than 21 (twenty one) Days before the date of its Annual General Meeting but not later than 90 (ninety) Days after its financial year end.					
61	The Annual Report must contain all the detail as required by the Listing Requirements.					
	Interim reports					
62	The Constitution must provide for interim reports as per the Listing Requirements.					
	Commission					
63	An Issuer may not pay commission exceeding 10% (ten percent) (of the proposed aggregate issue price of the Securities) to any person in consideration for them subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities of the Issuer. Commission greater than 10% (ten percent) (of the proposed aggregate issue price of the Securities) may be permissible subject to the approval thereof by shareholders by means of a Special Resolution.					

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	Review of documents					
64	In addition to the specific requirements set out in these Listing Requirements, the Issuer shall submit to CTSE for review before shareholders are issued copies of:					
64.1	Drafts of any Announcements relating to the issue of new or further Securities or any Announcements the subject matter of which may involve a change in or relate to or affect arrangements regarding trading in its Listed Securities (including a suspension of Dealings);					
64.2	Drafts of any proposed amendments to its Constitution.					
65	The Issuer shall not Announce or otherwise issue any of the documents referred to in paragraph 64 above if CTSE so directs.					
	Corporate Actions					
66	The following corporate actions must be provided for in the Constitution in accordance with the Listing Requirements:					
66.1	Substantial Transactions;					
66.2	Related Party Transactions; and					
66.3	Repurchase of Securities.					

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	General					