

**Programme Memorandum  
dated 11 August 2008**



**ABSA BANK LIMITED**

*(Incorporated with limited liability under registration number 1986/004794/06 in the Republic of South Africa)*

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**ZAR30,000,000,000  
Domestic Medium Term Note Programme**

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On 25 March 2004, Absa Bank Limited (the "**Issuer**") established a ZAR2,000,000,000 Domestic Medium Term Note Programme (the "**Programme**").

During July 2005 the Issuer issued a supplement to the Domestic Medium Term Note Programme which reflected the changes contained in the section of this Programme Memorandum headed "*Description of the Issuer*" section brought about due to the acquisition by Barclays of a controlling stake in Absa Group Limited.

During July 2005 the maximum aggregate nominal amount of all Notes which may from time to time be outstanding under the Programme was increased from ZAR2,000,000,000 to ZAR15,000,000,000.

The Issuer now wishes to amend the Programme Memorandum further to reflect, *inter alia*, the increase of the maximum aggregate nominal amount of all Notes which may from time to time be outstanding under the Programme from ZAR15,000,000,000 to ZAR30,000,000,000, changes in the sections of this Programme Memorandum headed "*Description of the Issuer*" and the "*South African Taxation*", respectively, to provide for unlisted Notes (as defined below) and to provide for changes arising from the coming into effect from 1 January 2008 of the Banks Amendment Act, 2007, as read with the "Regulations Relating to Banks" promulgated under the Banks Act, 1990, as amended.

For the sake of convenience, all amendments to the Programme Memorandum dated 25 March 2004 are incorporated into this revised, consolidated document. Accordingly, this Programme Memorandum supersedes and replaces the Programme Memorandum dated 25 March 2004 and the supplement to the Programme issued by the Issuer during July 2005. Any Notes (as defined below) issued under the Programme on or after the date of this Programme Memorandum are subject to the provisions described herein. This Programme Memorandum does not affect any Notes issued before the date of this Programme Memorandum.

Under this ZAR30,000,000,000 Domestic Medium Term Note Programme, Absa Bank Limited (the "**Issuer**") may from time to time issue notes (the "**Notes**") denominated in the Specified Currency and subject to the terms and conditions ("**Terms and Conditions**") contained in the sections of this Programme Memorandum headed "*Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes*" and "*Terms and Conditions of the Tier 1 Notes*", respectively. Notes may be issued in bearer, order or registered form (respectively, "**Bearer Notes**", "**Order Notes**" and "**Registered Notes**"). The maximum aggregate Principal Amount of all Notes from time to time outstanding will not exceed ZAR30,000,000,000 or its equivalent in the Specified Currency. The Notes will be subject to a minimum maturity of one month, or such other period as may be required from time to time by the applicable Capital Regulations. Save as set out in this Programme Memorandum, the Notes will not be subject to any maximum maturity.

Notes will be issued in individual Tranches which, together with other Tranches, may form a Series of Notes. Before the Issuer issues any Tranche of Notes, the Issuer shall complete and sign an Applicable Pricing Supplement based on the *pro forma* Applicable Pricing Supplement included in this Programme Memorandum, setting out details of such Notes. The Applicable Pricing Supplement in relation to any Tranche of Notes may specify other terms and conditions (which may replace, modify or supplement the Terms and Conditions) in which event such other terms and conditions shall, to the extent so specified or to the extent inconsistent with the Terms and Conditions, replace, modify or supplement the Terms and Conditions for the purpose of such Tranche of Notes.

Notes to be issued under the Programme may comprise (i) unsubordinated Notes (the "**Unsubordinated Notes**"), (ii) Notes which are subordinated as described in this Programme Memorandum with a maturity date and with terms capable of qualifying the proceeds of such Notes as Dated Secondary Capital (as defined in "*Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes*") (the "**Dated Tier 2 Notes**") or Tertiary Capital (as defined in "*Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes*") (the "**Tier 3 Notes**" and, together with the Dated Tier 2 Notes, the "**Dated Subordinated Notes**"), (iii) Notes which are subordinated as described in this Programme Memorandum with no maturity date and with terms capable of qualifying the proceeds of such Notes as Undated Secondary Capital (the "**Undated Tier 2 Notes**" and, together with the Dated Tier 2 Notes, the "**Tier 2 Notes**") and (iv) Notes which are subordinated as described in this Programme Memorandum with no maturity date, ranking junior to the Tier 2 Notes and the Tier 3 Notes and with terms capable of qualifying the proceeds of such Notes as Primary Share Capital (as defined in "*Terms and Conditions of the Tier 1 Notes*") (the "**Tier 1 Notes**" and, together with the Tier 2 Notes and the Tier 3 Notes, the "**Subordinated Notes**").

An investment in Notes issued under the Programme involves certain risks. For a discussion of these risks see the section of this Programme Memorandum headed "*Risk Factors*".

The Programme has been registered with BESA. Each Tranche of Notes may be listed on BESA or on such other or further exchange(s) as may be determined by the Issuer and the Dealer(s) and subject to any Applicable Laws. With respect to a Tranche of Notes listed on BESA, the Applicable Pricing Supplement(s) relating to that Tranche will be delivered to BESA and the Central Securities Depository on or before the Issue Date, and the Notes in that Tranche may be traded by or through members of BESA from the date specified in the Applicable Pricing Supplement. The trading of Notes listed on BESA will take place in accordance with the rules and operating procedures for the time being of BESA. The settlement of trades on BESA will take place in accordance with the electronic settlement procedures of BESA and the Central Securities Depository. The settlement and redemption procedures for a Tranche of Notes listed on another exchange, irrespective of whether that Tranche is listed on BESA as well, will be specified in the Applicable Pricing Supplement.

Unlisted Notes may also be issued under this Programme. With respect to Notes not listed on BESA, the placement of such unlisted Notes may be reported through the BESA reporting system in order for the settlement of trades to take place with the electronic settlement procedures of BESA and the Central Securities Depository. In such event, the Applicable Pricing Supplement will be delivered to BESA and the Central Securities Depository. With respect to Notes not to be listed on BESA, and not to be settled through the electronic settlement procedures of BESA and the Central Securities Depository, no Applicable Pricing Supplement will be delivered to BESA.

Claims against the BESA Guarantee Fund may only be made in respect of trading of Notes listed on BESA and in accordance with the rules of the BESA Guarantee Fund.

Notes may be issued on a continuing basis and be placed by one or more Dealers appointed by the Issuer from time to time, which appointment may be for a specific issue or on an ongoing basis.



**Attorneys to the Issuer, Arranger  
and Sponsoring Member**



**Issuer**  
**Absa Bank Limited**



**Arranger, Dealer and Sponsoring  
Member**

**Absa Capital, a Division of Absa  
Bank Limited**

Capitalised terms used in this Programme Memorandum are defined in the sections of this Programme Memorandum headed "**Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes**" and "**Terms and Conditions of the Tier 1 Notes**", unless separately defined in this Programme Memorandum and/or the Applicable Pricing Supplements. Expressions defined in this Programme Memorandum will bear the same meanings in supplements to this Programme Memorandum which do not themselves contain their own definitions

*The Issuer accepts responsibility for the information contained in this Programme Memorandum. To the best of the knowledge and belief of the Issuer (having taken all reasonable care to ensure that such is the case) the information contained in this Programme Memorandum is in accordance with the facts and does not omit anything likely to affect the import of such information.*

*The Issuer, having made all reasonable enquiries, confirms that this Programme Memorandum contains or incorporates all information which is material in the context of the issue and the offering of Notes, that the information contained or incorporated in this Programme Memorandum is true and accurate in all material respects and is not misleading, that the opinions and the intentions expressed in this Programme Memorandum are honestly held and that there are no other facts the omission of which would make this Programme Memorandum or any of such information or expression of any such opinions or intentions misleading in any material respect.*

*This Programme Memorandum is to be read in conjunction with all documents which are deemed to be incorporated in this Programme Memorandum by reference. This Programme Memorandum shall be read and construed on the basis that such documents are incorporated into and form part of this Programme Memorandum.*

*The Arranger, the Dealers, their respective affiliates, other professional advisers and BESA have not separately verified the information contained in this Programme Memorandum. Accordingly, no representation, warranty or undertaking, express or implied, is made and no responsibility is accepted by the Arranger, the Dealers, their respective affiliates, other professional advisers or BESA as to the accuracy or completeness of the information contained in this Programme Memorandum or any other information provided by the Issuer. The Arranger, the Dealers, their respective affiliates, other professional advisers and BESA do not accept any liability in relation to the information contained in this Programme Memorandum or any other information provided by the Issuer in connection with the Programme.*

*No person has been authorised to give any information or to make any representation not contained in or not consistent with this Programme Memorandum or any other information supplied in connection with the Programme and, if given or made, such information or representation must not be relied upon as having been authorised by the Issuer, the Arranger, the Dealers, any other professional advisers or BESA.*

*Neither this Programme Memorandum nor any other information supplied in connection with the Programme is intended to provide a basis for any credit or other evaluation, or should be considered as a recommendation by the Issuer that any recipient of this Programme Memorandum or any other information supplied in connection with the Programme, should purchase any Notes.*

*Each investor contemplating the purchase of any Notes should make its own independent investigation of the financial condition and affairs, and its own appraisal of the creditworthiness, of the Issuer. Neither this Programme Memorandum nor any other information supplied in connection with the Programme constitutes an offer or invitation by or on behalf of the Issuer to any person to subscribe for or to purchase any Notes.*

*The delivery of this Programme Memorandum does not at any time imply that the information contained in this Programme Memorandum concerning the Issuer is correct at any time subsequent to the date of this Programme Memorandum or that any other financial statements or other information supplied in connection with the Programme is correct as at any time subsequent to the date indicated in the document containing the same. The Dealers expressly do not undertake to review the financial condition or affairs of the issuer during the life of the Programme. Investors should review, inter alia, the most recent financial statements of the Issuer when deciding whether or not to purchase any Notes.*

***This Programme Memorandum does not constitute an offer to sell or the solicitation of an offer to buy any Notes in any jurisdiction to any person to whom it is unlawful to make the offer or solicitation in such jurisdiction.***

*The distribution of this Programme Memorandum and the offer or sale of Notes may be restricted by law in certain jurisdictions. Persons into whose possession this Programme Memorandum or any Notes come must inform themselves about, and observe, any such restrictions. In particular, there are restrictions on the distribution of this Programme Memorandum and the offer or sale of Notes in the United States of America, the United Kingdom, the European Economic Area and South Africa. None of the Issuer, the Dealers, other professional advisers or BESA represents that this Programme Memorandum may be lawfully distributed, or that any Notes may be lawfully offered, in compliance with any applicable registration or other requirements in any such jurisdiction, or pursuant to an exemption available thereunder, or assumes any responsibility for facilitating any such distribution or offering. In particular, no action has been taken by the Issuer, the Dealers, other professional advisers or BESA which would permit a public offering of any Notes or distribution of this document in any jurisdiction where action for that purpose is required. Accordingly, no Notes may be offered or sold, directly or indirectly, and neither this Programme Memorandum nor any advertisement or other offering*

material may be distributed or published in any jurisdiction, except under circumstances that will result in compliance with any applicable laws and regulations and the Dealers have represented that all offers and sales by them will be made on the same terms.

The Notes have not been and will not be registered under the United States Securities Act of 1933, as amended (the "**Securities Act**"). Subject to certain exceptions, Notes may not be offered, sold or delivered within the United States or to any U.S. persons. In addition, there are restrictions on the distribution of this Programme Memorandum in South Africa and the United Kingdom. For a more complete description of certain restrictions on the offering, sale and delivery of Notes and distribution of this Programme Memorandum see the section of this Programme Memorandum headed "Subscription and Sale" below.

All references in this document to "**Rand**", "**ZAR**", "**South African Rand**", "**R**" and "**cent**" refer to the currency of South Africa.

*In connection with the issue and distribution of any Tranche of Notes, the Issuer or a Dealer disclosed as the approved stabilisation manager (if any) in the Applicable Pricing Supplement or any person acting for it ("Stabilisation Manager") may, subject to the terms and conditions for stabilisation contained in the Applicable Pricing Supplement, over-allot or effect transactions with a view to supporting the market price of the Notes at a level higher than that which might otherwise prevail for a limited period after the Issue Date. However, there may be no obligation on the Stabilisation Manager or any of its agents to do this. Such stabilising, if commenced, may be discontinued at any time and must be brought to an end after a limited period. Such stabilising is to be carried out in accordance with all Applicable Laws and the price/yield and size of the Tranche of Notes to be issued will be determined by the Issuer, each relevant Dealer(s) and/or the Arranger at the time of issue in accordance with the prevailing market conditions.*

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**TABLE OF CONTENTS**

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	<i>Page</i>
DOCUMENTS INCORPORATED BY REFERENCE	6
GENERAL DESCRIPTION OF THE PROGRAMME	7
SUMMARY OF THE PROGRAMME	8
FORM OF THE NOTES	13
RISK FACTORS	18
PRO FORMA PRICING SUPPLEMENT OF THE UNSUBORDINATED NOTES, TIER 2 NOTES AND TIER 3 NOTES	27
PRO FORMA PRICING SUPPLEMENT OF THE TIER 1 NOTES	32
TERMS AND CONDITIONS OF THE UNSUBORDINATED NOTES, TIER 2 NOTES AND TIER 3 NOTES	36
TERMS AND CONDITIONS OF THE TIER 1 NOTES	78
USE OF PROCEEDS	116
DESCRIPTION OF THE ISSUER	117
SETTLEMENT, CLEARING AND TRANSFER OF NOTES	138
SOUTH AFRICAN TAXATION	140
SOUTH AFRICAN BANKING SECTOR	142
SUBSCRIPTION AND SALE	145
EXCHANGE CONTROL	147
GENERAL INFORMATION	148

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## DOCUMENTS INCORPORATED BY REFERENCE

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The documents listed below are deemed to be incorporated in, and to form part of, this Programme Memorandum and are available on the Issuer's website, [www.absa.co.za](http://www.absa.co.za), and for inspection by Noteholders, during normal office hours after the date of this Programme Memorandum, at the Specified Office of the Issuer:

- (i) in respect of any issue of Notes under the Programme, the audited annual financial statements of the Issuer, together with such statements, reports and notes attached to or intended to be read with such financial statements, in respect of the three financial years of the Issuer prior to the date of such issue;
- (ii) each Applicable Pricing Supplement; and
- (iii) any other supplement to this Programme Memorandum circulated by the Issuer from time to time.

Any statement contained in this Programme Memorandum or in any document which is incorporated by reference into this Programme Memorandum will be deemed to be modified or superseded for the purposes of this Programme Memorandum to the extent that a statement contained in any such subsequent document which is deemed to be incorporated by reference in this Programme Memorandum modifies or supersedes such earlier statement (whether expressly, by implication or otherwise).

The Issuer will, for so long as any Notes in a Tranche remain outstanding and listed on BESA, publish a new Programme Memorandum or a supplement to this Programme Memorandum, as the case may be, if:

- a) a change in the condition (financial or otherwise) of the Issuer has occurred which is material in the context of the Notes; or
- b) an event has occurred which affects any matter contained in this Programme Memorandum, the disclosure of which would reasonably be required by Noteholders and/or potential investors in the Notes; or
- c) any of the information contained in this Programme Memorandum becomes outdated in a material respect; or
- d) this Programme Memorandum no longer contains all the material correct information required by the Applicable Procedures;

provided that, in the circumstances set out in paragraphs (c) and (d) above, no new Programme Memorandum or supplement to this Programme Memorandum, as the case may be, is required in respect of the Issuer's annual financial statements if such annual financial statements are incorporated by reference into this Programme Memorandum and such annual financial statements are published, as required by the Companies Act, and submitted to BESA within six months after the financial year end of the Issuer.

Any such new Programme Memorandum or Programme Memorandum as supplemented, as the case may be, will be deemed to have substituted the previous Programme Memorandum from the date of issue of the new Programme Memorandum or Programme Memorandum as supplemented, as the case may be.

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## GENERAL DESCRIPTION OF THE PROGRAMME

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*A general description of the Programme and the Terms and Conditions is set out below. The general description does not purport to be complete and is taken from, and is qualified by, the remainder of this Programme Memorandum and, in relation to any particular Tranche of Notes, the Applicable Pricing Supplements.*

Under the Programme, the Issuer may from time to time issue Notes denominated in the currency specified in the Applicable Pricing Supplement. The applicable terms of any Notes will be set out in the Terms and Conditions incorporated by reference into the Notes, as modified and supplemented by the Applicable Pricing Supplement relating to the Notes and any supplementary Programme Memorandum.

This Programme Memorandum will only apply to Notes issued and outstanding under the Programme in an aggregate Principal Amount which does not exceed ZAR30,000,000,000 or its equivalent in such other currencies as Notes are issued, unless such amount is increased as set out below. For the purpose of calculating the aggregate Principal Amount of Notes issued under the Programme from time to time:

- (a) the ZAR equivalent of Notes denominated in another currency shall be determined at or about the time at which an agreement is reached for the issue of such Notes as between the Issuer and the relevant Dealer(s) on the basis of the spot rate at such time for the sale of such ZAR amount against the purchase of such currency or unit of account in the Johannesburg inter-bank foreign exchange markets, as quoted by any leading bank selected by the Issuer;
- (b) the amount of Indexed Notes and Partly Paid Notes (each as defined in the Terms and Conditions) shall be calculated by reference to the original Principal Amount of such Notes (and, in the case of Partly Paid Notes, regardless of the subscription price paid); and
- (c) the amount of Zero Coupon Notes (as defined in the Terms and Conditions) and other Notes issued at a discount or premium shall be calculated by reference to the net proceeds received by the Issuer for the relevant issue.

Each Tranche of Notes may be listed on BESA or on such other or further exchange(s) as may be determined by the Issuer and the Dealer(s) and subject to any Applicable Laws. Unlisted Notes may also be issued. Claims against the BESA Guarantee Fund may only be made in respect of trading of Notes listed on BESA and in accordance with the rules of the BESA Guarantee Fund.

In the event that the Issuer issues unlisted Notes, or any Notes are listed on any exchange other than BESA, the Issuer shall, no later than the last day of the month of such issue, inform BESA in writing of the Principal Amount and scheduled maturity date in respect of such Notes.

From time to time the Issuer may wish to increase the aggregate Principal Amount of the Notes that may be issued under the Programme. Subject to the requirements of BESA and/or any such other exchange or exchanges on which the Notes may be listed or in terms of any law, the Issuer may, without the consent of Noteholders, increase the aggregate Principal Amount of the Notes that may be issued under the Programme by delivering a notice to Noteholders and the relevant exchange in accordance with the Terms and Conditions. Upon such notice being given, all references in the Programme Memorandum or any other agreement, deed or document in relation to the Programme, to the aggregate Principal Amount of the Notes, shall be and shall be deemed to be references to the increased aggregate Principal Amount.

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## SUMMARY OF THE PROGRAMME

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*The following summary does not purport to be complete and is taken from, and is qualified by, the remainder of this Programme Memorandum and, in relation to the Terms and Conditions of any particular Tranche of Notes, the Applicable Pricing Supplements.*

<b>Issuer</b>	Absa Bank Limited (registration number 1986/004794/06).
<b>Risk Factors</b>	There are certain factors that may affect the Issuer's ability to fulfill its obligations under Notes issued under the Programme. These are set out in the section of this Programme Memorandum headed " <i>Risk Factors</i> ". In addition, there are certain factors which are material for the purpose of assessing the market risks associated with Notes issued under the Programme. These are also set out in the section of this Programme Memorandum headed " <i>Risk Factors</i> " and include the fact that the Notes may not be a suitable investment for all investors, certain risks relating to the structure of particular series of Notes and certain market risks.
<b>Description of the Programme</b>	Absa Bank Limited, ZAR30,000,000,000 Domestic Medium Term Note Programme.
<b>Size of the Programme</b>	Up to ZAR30,000,000,000 (or its equivalent in the Specified Currency) outstanding at any time. The Issuer may, without the consent of Noteholders, increase the maximum aggregate Principal Amount of Notes that may be outstanding in terms of the Programme in accordance with Applicable Laws and subject to any required regulatory approvals. The total authorised amount of the Programme at the time of the issue of any Tranche of Notes will be set out in the Applicable Pricing Supplement.
<b>Arranger</b>	Absa Capital, a division of Absa Bank Limited.
<b>Dealers</b>	Absa Capital, a division of Absa Bank Limited and any additional Dealer appointed under the Programme from time to time, which appointment may be for a specific issue or on an ongoing basis, subject to the Issuer's right to terminate the appointment of any Dealer.
<b>Calculation Agent</b>	Absa Capital, a division of Absa Bank Limited, unless the Dealer or, in the case of a syndicated issue, the lead manager requests the Issuer to appoint, or the Issuer elects to appoint, in relation to a particular Tranche or Series of Notes, another entity as Calculation Agent, in which event that other entity, on execution of the Agency Agreement, shall act in such capacity in respect of that Tranche or Series of Notes.
<b>Paying Agent</b>	Absa Investor Services, a division of Absa Bank Limited, unless the Issuer elects to appoint, in relation to a particular Tranche or Series of Notes, another entity as Paying Agent, in which event that other entity shall act in such capacity in respect of that Tranche or Series of Notes.
<b>Transfer Agent</b>	Absa Investor Services (Proprietary) Limited or such other entity appointed as Transfer Agent by the Issuer from time to time.
<b>Central Securities Depository</b>	Strate Limited (registration number 1998/022242/06) or any additional or alternate depository approved by the Issuer, the Dealer(s) and BESA.
<b>Noteholder(s)</b>	The holders of the Registered Notes (as recorded in the Register) and/or Bearers of the Bearer Notes and/or the Payees of the Order Notes.
<b>Terms and Conditions</b>	The terms and conditions of the Notes are set out below in this Programme Memorandum under the section " <i>Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes</i> " (the " <b>Ordinary Conditions</b> ") or, as the case may be, " <i>Terms and Conditions of the Tier 1 Notes</i> " (the " <b>Tier 1 Conditions</b> "), together with the Ordinary Conditions, the " <b>Terms and Conditions</b> ").



<b>Form of Notes</b>	Notes may be issued in the form of Registered Notes, Bearer Notes or Order Notes as described in this Programme Memorandum under the section " <i>Form of the Notes</i> ". Registered Notes will not be exchangeable for Bearer Notes and vice versa. Subordinated Notes may not be issued in bearer form and will only be issued in registered form.
<b>Currencies</b>	South African Rand or, subject to all Applicable Laws and, in the case of Notes listed on BESA, the rules of BESA, in such other currency as specified in the Applicable Pricing Supplement.
<b>Issue Price</b>	Notes may be issued on a fully-paid or a partly-paid basis and at an issue price which is at their Principal Amount or at a discount to, or premium over, their Principal Amount as specified in the Applicable Pricing Supplement.
<b>Interest Period(s) or Interest Payment Date(s)</b>	Such period(s) or date(s) as specified in the Applicable Pricing Supplement.
<b>Denomination of Notes</b>	Notes will be issued in such denominations as specified in the Applicable Pricing Supplement.
<b>Status of the Notes</b>	Notes may be issued on a subordinated or unsubordinated basis, as specified in the Applicable Pricing Supplement.
<b>Status of the Unsubordinated Notes</b>	The Unsubordinated Notes will constitute direct, unconditional, unsubordinated and (subject to the provisions of Condition 23 ( <i>Negative Pledge</i> ) of the Ordinary Conditions) unsecured obligations of the Issuer, all as described in Condition 5.1 ( <i>Status — Status of the Unsubordinated Notes</i> ) of the Ordinary Conditions and the Applicable Pricing Supplement.
<b>Status of the Tier 3 Notes</b>	The Tier 3 Notes constitute direct, unsecured and, in accordance with Condition 5.2.3 ( <i>Subordination</i> ) of the Ordinary Conditions, subordinated obligations of the Issuer and rank <i>pari passu</i> without any preference among themselves and (save for those that have been accorded by law preferential rights) at least <i>pari passu</i> with all other claims of creditors of the Issuer which rank or are expressed to rank (and which are entitled to rank) <i>pari passu</i> with the Dated Subordinated Notes.
<b>Status of the Dated Tier 2 Notes</b>	The Dated Tier 2 Notes constitute direct, unsecured and, in accordance with Condition 5.3.3 ( <i>Subordination</i> ) of the Ordinary Conditions, subordinated obligations of the Issuer and rank <i>pari passu</i> without any preference among themselves and (save for those that have been accorded by law preferential rights) at least <i>pari passu</i> with all other claims of creditors of the Issuer which rank or are expressed to rank (and which are entitled to rank) <i>pari passu</i> with the Dated Subordinated Notes.
<b>Status of the Undated Tier 2 Notes</b>	The Undated Tier 2 Notes constitute direct, unsecured and, in accordance with Condition 5.4.3 ( <i>Subordination</i> ) of the Ordinary Conditions, subordinated obligations of the Issuer and rank <i>pari passu</i> without any preference among themselves and (save for those that have been accorded by law preferential rights) at least <i>pari passu</i> with all other claims of creditors of the Issuer which rank or are expressed to rank (and which are entitled to rank) <i>pari passu</i> with the Undated Tier 2 Notes.
<b>Status of the Tier 1 Notes</b>	Tier 1 Notes constitute direct, unsecured and, in accordance with Condition 5.2 ( <i>Subordination</i> ) of the Tier 1 Conditions, subordinated obligations of the Issuer and rank <i>pari passu</i> without any preference among themselves. Tier 1 Notes rank <i>pari passu</i> with all subordinated securities issued by the Issuer, the proceeds of which qualify as Primary Share Capital and all Non-Redeemable Non-Cumulative Preference Shares issued by the Issuer, the proceeds of which qualify as Primary Share Capital and are senior in respect of the rights and claims of the holders of Ordinary Shares.
<b>Subordinated Notes and Capital Regulations</b>	In order for the proceeds of the issue of a Tranche of Subordinated Notes to qualify as Primary Share Capital, Dated Secondary Capital, Undated Secondary Capital or Tertiary Capital, as the case may be, Subordinated Notes must comply with the applicable Capital Regulations (including such Additional Conditions (if any) as are prescribed by the Registrar of Banks in respect of that

Tranche of Subordinated Notes). The Issuer will specify in the Applicable Pricing Supplement whether any issue of Notes is an issue of Tier 1 Notes, the proceeds of which are intended to qualify as Primary Share Capital, Undated Tier 2 Notes, the proceeds of which are intended to qualify as Undated Secondary Capital, Dated Tier 2 Notes, the proceeds of which are intended to qualify as Dated Secondary Capital or Tier 3 Notes, the proceeds of which are intended to qualify as Tertiary Capital. The Additional Conditions (if any) prescribed by the Registrar of Banks in respect of Subordinated Notes will be specified in the Applicable Pricing Supplement or a supplement to this Programme Memorandum.

## **Maturities**

Notes may be issued with any maturity date or Notes may be issued with no maturity date, subject, in relation to Subordinated Notes, to such minimum maturities as may be required from time to time by the applicable Capital Regulations and, in relation to specific currencies, to compliance with all applicable legal and/or regulatory and/or central bank requirements.

Subject to the applicable Capital Regulations: (i) Tier 1 Notes will be issued without a maturity date; (ii) Undated Tier 2 Notes will be issued without a maturity date; (iii) Dated Tier 2 Notes will have a minimum maturity of 5 years and one day; and (iv) Tier 3 Notes will have a minimum maturity of 2 years and one day.

## **Redemption**

Subject as described in "*Maturities*" above, Notes may be redeemable at par or at such other Redemption Amount (detailed in a formula, index or otherwise) as may be specified in the Applicable Pricing Supplement. Notes may also be redeemable in 2 or more instalments on such dates and in such manner as may be specified in the Applicable Pricing Supplement. For so long as the Capital Regulations so require, Dated Subordinated Notes may be redeemed prior to the Maturity Date only at the option of the Issuer and no Subordinated Notes may be redeemed without the prior written approval of the Registrar of Banks or otherwise than in accordance with the conditions (if any) approved by the Registrar of Banks in writing.

There is no fixed redemption date for Undated Tier 2 Notes or Tier 1 Notes and the Issuer may only redeem them in accordance with the terms indicated in the Applicable Pricing Supplement.

## **Optional Redemption**

Subject as described in "*Redemption*" above, Notes may be redeemed before their stated maturity at the option of the Issuer (either in whole or in part) with, in the case of Subordinated Notes, the prior written approval of the Registrar of Banks and (if any) in accordance with conditions approved by the Registrar of Banks in writing, and/or the Noteholders to the extent (if at all) specified in the Applicable Pricing Supplement.

## **Tax Redemption**

Except as described in "*Optional Redemption*" above, and subject as described in "*Redemption*" above, early redemption will only be permitted for tax reasons as described in Condition 11.2 (*Redemption for tax reasons*) of the Ordinary Conditions and Condition 12.2 (*Redemption for tax reasons*) of the Tier 1 Conditions.

## **Redemption for Regulatory Reasons**

Except as described in "*Optional Redemption*" and "*Tax Redemption*" above, early redemption of the Subordinated Notes in whole (but not in part) is permitted at the option of the Issuer if a Regulatory Event occurs and is continuing on the relevant interest payment date as described in Condition 11.3 (*Redemption for regulatory reasons*) of the Ordinary Conditions and Condition 12.3 (*Redemption for regulatory reasons*) of the Tier 1 Conditions.

## **Interest**

Notes may be interest-bearing or non-interest bearing. Tier 1 Notes, Tier 2 Notes and Tier 3 Notes must be interest-bearing. Interest (if any) may accrue at a fixed rate or a floating rate or other variable rate or, except in the case of the Subordinated Notes, be index-linked and the method of calculating interest may vary between the issue date and the maturity date of the relevant Series of Notes.

The Issuer may elect not to pay, and in certain circumstances is obliged not to pay, interest on Tier 1 Notes as more fully set out in Condition 6.1 (*Non payment*

*of interest*) of the Tier 1 Conditions.

The Issuer may elect to defer, and in certain circumstances is obliged not to pay, interest on Undated Tier 2 Notes as more fully set out in Condition 6.1 (*Optional deferral of interest on the Undated Tier 2 Notes*) of the Ordinary Conditions.

The Issuer will be obliged to defer the payment of interest on the Tier 3 Notes if required by the Registrar of Banks if the Issuer's qualifying capital falls below or is likely to fall below the minimum amount required by the Capital Regulations as more fully described in Condition 6.3 (*Deferral of Principal and Interest on Tier 3 Notes*) of the Ordinary Conditions.

**Deferred Payment**

If the Issuer's qualifying capital falls below or is likely to fall below the minimum amount prescribed by the Capital Regulations, the Registrar of Banks, pursuant to the Tier 3 Capital Regulations, may require the Issuer to defer the due date for payment of any principal and/or any interest payable in respect of such Tier 3 Notes.

**Negative Pledge**

Unsubordinated Notes will have the benefit of a negative pledge as described in Condition 23 (*Negative Pledge*) of the Ordinary Conditions.

**Cross Default**

Unsubordinated Notes will have the benefit of a cross default as described in Condition 13 (*Events of Default*) of the Ordinary Conditions.

**Stamp Duty**

In terms of current South African legislation as at the date of this Programme Memorandum, no securities transfer tax is payable in respect of the issue or subsequent transfer of the Notes, on the basis that the Notes will not comprise a "security" as defined in section 1 of the Securities Transfer Tax Act, 2007. Any future securities transfer tax that may be introduced will be for the account of the Noteholders.

**Withholding tax**

As at the date of this Programme Memorandum, all payments in respect of the Notes will be made without withholding or deduction for or on account of Taxes levied in South Africa. In the event that certain withholding tax or such other deduction is required by law, then the Issuer will, subject to certain exceptions as provided in Condition 12 of the Ordinary Conditions and Condition 13 of Tier 1 Conditions, pay such additional amounts as shall be necessary in order that the net amounts received by the Noteholders after such withholding or deduction shall equal the respective amounts of principal and interest which would otherwise have been receivable in respect of the Notes in the absence of such withholding or deduction.

**Tax status**

A summary of applicable current South African Tax legislation appears in the section of this Programme Memorandum headed "*South African Taxation*". The section does not constitute tax advice and investors should consult their own professional advisers.

**Governing Law**

The Notes will be governed by, and construed in accordance with the laws of South Africa.

**Listing**

The Programme has been registered with BESA. Notes issued under the Programme may be listed on BESA or such other or further exchange(s) as may be determined by the Issuer and the Dealer(s) in relation to such issue and subject to any Applicable Laws. Unlisted Notes may also be issued under the Programme. The Applicable Pricing Supplement in respect of a Tranche will specify whether or not such Notes will be listed and, if so, on which exchange.

**Register**

The Register maintained by the Transfer Agent in terms of the Terms and Conditions.

**Selling Restrictions**

The distribution of this Programme Memorandum and any offering or sale of a particular Tranche of Notes may be restricted by law in certain jurisdictions, and are restricted by law in the United States of America, the United Kingdom and South Africa. Any relevant selling restrictions and other restrictions as may be required to be met in relation to an offering or sale of a particular Tranche of Notes shall be included in the Applicable Pricing Supplement. Persons who come into possession of this Programme Memorandum or the Applicable Pricing Supplement

must inform themselves about and observe such restrictions.

**Blocked Rand**

Blocked Rand may be used for the purchase of Notes, subject to South African Exchange Control Regulations, 1961, promulgated under the Currency and Exchanges Act, 1933.

**Distribution**

Notes may be offered by way of private placement or any other means permitted by law and in each case on a syndicated or non-syndicated basis as determined by the Issuer and reflected in the Applicable Pricing Supplement.

**Electronic Settlement**

The Notes will be issued, cleared and settled in accordance with the rules of BESA and the Central Securities Depository through the Strate electronic settlement system. Euroclear Bank S.A./N.V., as operator of the Euroclear System ("**Euroclear**") and Clearstream Banking Société anonyme ("**Clearstream, Luxembourg**") access BESA through their Settlement Agent. The Notes will be cleared by BESA recognised Settlement Agents which will follow the electronic settlement procedures, prescribed by BESA and the Central Securities Depository. Interest and principal payments will be made via electronic funds transfer and cheques shall only be issued to holders of Definitive Certificates, if so requested by such Noteholders in writing.

**Participants**

Depository institutions accepted by the Central Securities Depository as participants in terms of the Securities Services Act.

**Settlement Agents**

As at the date of this Programme Memorandum, the BESA recognised settlement agents, who are also Participants, are ABSA Bank Limited, FirstRand Bank Limited, Nedbank Limited, The South African Reserve Bank and The Standard Bank of South Africa Limited. Euroclear and Clearstream, Luxembourg will settle offshore transfers through their Settlement Agent.

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## FORM OF THE NOTES

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Notes may be issued as Registered Notes, Bearer Notes or Order Notes.

Each Tranche of Notes may be listed on BESA or on such other or further exchange(s) as may be determined by the Issuer and the Dealer(s) and subject to any Applicable Laws. Unlisted Notes may also be issued under the Programme.

Each Tranche of Notes will be issued in accordance with the Terms and Conditions and represented by (i) Definitive Certificates in the form of Registered Notes (whether listed or unlisted), Bearer Notes (if unlisted) or Order Notes (if unlisted) or, (ii) a single Global Certificate in the form of a Registered Note (whether listed or unlisted), which will be lodged and immobilised in the Central Securities Depository or, (iii) no Certificate, if listed on BESA and issued as a Registered Note in uncertificated form.

## GLOBAL CERTIFICATES

### Listed or unlisted Registered Notes

The Central Securities Depository will hold each Tranche of Notes represented by the Global Certificate, subject to the Securities Services Act and the Applicable Procedures. Each Tranche of Notes represented by the Global Certificate will be registered in the name of the Central Securities Depository's Nominee, and the Central Securities Depository's Nominee will be named in the Register as the sole Noteholder of such Tranche of Notes.

Accordingly, and except where the contrary is provided in the Terms and Conditions, all amounts to be paid and all rights to be exercised in respect of the Notes represented by the Global Certificate, will be paid to and may be exercised only by the Central Securities Depository's Nominee for the holders of Beneficial Interests in such Notes.

The Central Securities Depository maintains central securities accounts only for Participants. As at the date of this Programme Memorandum, the Participants are Absa Bank Limited, FirstRand Bank Limited, Nedbank Limited, The Standard Bank of South Africa Limited and the South African Reserve Bank.

The Participants are in turn required to maintain securities accounts for their clients. The clients of Participants may include the holders of Beneficial Interests in the Notes or their custodians. The clients of Participants, as the holders of Beneficial Interests or as custodians for such holders, may exercise their rights in respect of the Notes held by them in the Central Securities Depository only through their Participants.

A certificate or other document issued by such a Participant as to the Principal Amount of such Beneficial Interest in the Notes standing to the account of any person shall be *prima facie* proof of such Beneficial Interest.

Transfers of Beneficial Interests in the Central Securities Depository to and from clients of the Participants occur by electronic book entry in the central securities accounts of the clients of the Participants. Transfers among Participants of Notes held in the Central Securities Depository system occur through electronic book entry in the Participants' central security accounts with the Central Securities Depository. Beneficial Interests may be transferred only in accordance with the Terms and Conditions and the rules and operating procedures for the time being of the Central Securities Depository, Participants and BESA.

Beneficial Interests may be exchanged, without charge by the Issuer, for Definitive Certificates in accordance with the provisions of Condition 14 of the Ordinary Conditions or Condition 16 of the Tier 1 Conditions, as the case may be. A Global Certificate may also be replaced by uncertificated securities in terms of section 37 of the Securities Services Act.

The Issuer shall regard the Register as the conclusive record of title to the Notes.

The placement of trades of unlisted Notes may be reported through the BESA reporting system in order for the settlement of trades to take place in accordance with the electronic settlement procedures of BESA and the Central Securities Depository. The trading and/or settlement of unlisted Notes will not be guaranteed by the Bond Exchange Guarantee Fund. With respect to a Tranche of Notes reported through the BESA reporting system, the Applicable Pricing Supplement relating to each Tranche of Notes will be delivered to BESA and the Central Securities Depository on or before the issue date of such Tranche of Notes.

## DEFINITIVE CERTIFICATES

### Listed or unlisted Registered Notes

The Notes represented by Definitive Certificates will be registered in the name of the individual Noteholders in the Register of Noteholders.

Notes represented by Definitive Certificates may be transferred only in accordance with the Terms and Conditions.

Payments of interest and principal in respect of Notes represented by Definitive Certificates will be made in accordance with Condition 8 of the Ordinary Conditions or Condition 10 of the Tier 1 Conditions, as the case may be, to the person reflected as the registered holder of such Definitive Certificates in the Register at 17h00 (South African time) on the Last Day to Register, and the Issuer will be discharged by proper payment to or to the order of the registered holder of the Certificate in respect of each amount so paid.

### Unlisted Bearer or Order Notes

Notes issued in bearer form ("**Bearer Notes**") or in order form ("**Order Notes**") and which are interest bearing shall, if indicated in the Applicable Pricing Supplement, have interest coupons ("**Coupons**") and, if indicated in the Applicable Pricing Supplement, talons for further Coupons ("**Talons**") attached on issue. Notes repayable in instalments shall have receipts ("**Receipts**") for the payment of the instalments of principal (other than the final instalment) attached on issue.

Title to Bearer Notes and/or Receipts, Coupons and Talons attached on issue to the Certificate evidencing such Bearer Notes will pass by delivery of such Certificate, Receipt, Coupon or Talon (as the case may be). Title to Order Notes and/or any Receipts, Coupons and Talons attached on issue to the Certificate evidencing such Order Note, will pass by way of endorsement and delivery of such Certificate, Receipt, Coupon or Talon (as the case may be).

Title to Bearer Notes is subject to the Bearer obtaining the exemption from the National Treasury in respect of the prohibition on dealing in bearer securities as set out in regulation 15 of the Exchange Control Regulations.

In terms of the current Capital Regulations, Tier 1 Notes, Tier 2 Notes and Tier 3 Notes may not be payable to bearer.

## UNCERTIFICATED NOTES

### Listed Registered Notes

The Issuer may, subject to Applicable Laws, issue Notes in uncertificated form. A Global Certificate may also be replaced by uncertificated securities in terms of Section 37 of the Securities Services Act.

Notes issued in uncertificated form will not be represented by any certificate or written instrument. A Tranche of Notes issued in uncertificated form will be held by the Central Securities Depository, and the Central Securities Depository's Nominee will be named in the Register as the registered holder of that Tranche of Notes.

All transactions in uncertificated securities as contemplated in the Securities Services Act will be cleared and settled in accordance with the Applicable Procedures. All the provisions relating to Beneficial Interests in the Notes held in the Central Securities Depository will apply to Uncertificated Notes.

## LEGEND TO APPEAR ON TIER 1 NOTES CERTIFICATES

The Certificates representing Tier 1 Notes will bear a legend to the following effect:

*"The proceeds obtained through the issue of the Notes represented by this Certificate qualify as capital for the issuing bank in terms of the provisions of the South African Banks Act, 1990 (the "**Banks Act**"). Any direct or indirect acquisition of the Notes represented by this Certificate by a bank or controlling company, as defined in the Banks Act, or by a non-bank subsidiary of a bank or controlling company, shall be regarded as a deduction against the capital of the acquiring bank or controlling company in question, in an amount equal to the book value of the said investment in the Notes represented by this Certificate.*

*The Notes represented by this Certificate constitute direct, unsecured and, in accordance with Condition 5.2 (Subordination) of the "Terms and Conditions of the Tier 1 Notes", subordinated obligations of the Issuer and rank **pari passu** without any preference amongst themselves. The Notes represented by this Certificate rank **pari passu** with all subordinated debt issued by the Issuer the proceeds of which subordinated debt qualify as "primary share capital" (as defined in the Banks Act) and all Non-Redeemable Non-Cumulative Preference Shares issued by the Issuer the proceeds of which qualify as "primary share capital" as defined in the Banks Act. The Notes represented by this Certificate rank senior only to the ordinary shares in the issued share capital of the Issuer.*

*Subject to applicable law, if the Issuer is wound-up or put into liquidation or placed under judicial management or curatorship, voluntarily or involuntarily, the claims of the Holders of the Notes represented by this Certificate shall be subordinated to the claims of Depositors, Senior Creditors and holders of Subordinated Debt (each as defined, in relation to Tier 1 Notes, in Condition 1 (Interpretation) of the "Terms and Conditions of the Tier 1 Notes"). In any such event, no amount shall be payable to any Holder of the Notes represented by this Certificate until the claims of Depositors, Senior Creditors and holders of Subordinated Debt which are admissible in any such winding-up, liquidation or administration have been paid or discharged in full, as set out more fully in Condition 5 (Status) of the "Terms and Conditions of the Tier 1 Notes".*

*The Notes represented by this Certificate may be redeemed only at the option of the Issuer and with prior written approval of the Registrar of Banks.*

*The Registrar of Banks has approved the issue of the Notes represented by this Certificate in terms of the Banks Act (as read with Regulation 38(13) of the "Regulations Relating to Banks" promulgated under the Banks Act) and for the proceeds thereof to rank as "primary share capital" as defined in the Banks Act.*

*The Notes represented by this Certificate have no Maturity Date."*

## **LEGEND TO APPEAR ON UNDATED TIER 2 NOTES CERTIFICATES**

The Certificates representing Undated Tier 2 Notes will bear a legend to the following effect:

*"The proceeds obtained through the issue of the Notes represented by this Certificate qualify as capital for the issuing bank in terms of the provisions of the South African Banks Act, 1990 (the "**Banks Act**"). Any direct or indirect acquisition of the Notes represented by this Certificate by a bank or controlling company, as defined in the Banks Act, or by a non-bank subsidiary of a bank or controlling company, shall be regarded as a deduction against the capital of the acquiring bank or controlling company in question, in an amount equal to the book value of the said investment in the Notes represented by this Certificate.*

*The Notes represented by this Certificate constitute direct, unsecured and, in accordance with Condition 5.3.3 (Subordination) of the "Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes", subordinated obligations of the Issuer and rank **pari passu** without any preference amongst themselves and (save for those that have been accorded by law preferential rights) at least **pari passu** with all other claims of creditors of the Issuer which rank or are expressed to rank (and which are entitled to rank) **pari passu** with the Undated Tier 2 Notes.*

*Subject to applicable law, if the Issuer is wound-up or put into liquidation or placed under judicial management or curatorship, voluntarily or involuntarily, the claims of the Holders of the Notes represented by this Certificate shall be subordinated to the claims of Depositors, Senior Creditors and holders of Subordinated Debt (each as defined, in relation to Undated Tier 2 Notes, in Condition 1 (Interpretation) of the "Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes"). In any such event, no amount shall be payable to any Holder of the Notes represented by this Certificate until the claims of Depositors, Senior Creditors and holders of Subordinated Debt which are admissible in any such winding-up, administration or liquidation have been paid or discharged in full, as set out more fully in Condition 5.4 (Status of the Undated Tier 2 Notes) of the "Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes".*

*The Notes represented by this Certificate may be redeemed only at the option of the Issuer and with prior written approval of the Registrar of Banks.*

*The Registrar of Banks has approved the issue of the Notes represented by this Certificate in terms of the Banks Act (as read with Regulation 38(14) (a) of the "Regulations Relating to Banks" promulgated under the Banks Act) and for the proceeds thereof to rank as "secondary capital" as defined in the Banks Act.*

*The Notes represented by this Certificate have no Maturity Date."*

## **LEGEND TO APPEAR ON DATED TIER 2 NOTES CERTIFICATES**

The Certificates representing Dated Tier 2 Notes will bear a legend to the following effect:

*"The proceeds obtained through the issue of the Notes represented by this Certificate qualify as capital for the issuing bank in terms of the provisions of the South African Banks Act, 1990 (the "**Banks Act**"). Any direct or indirect acquisition of the Notes represented by this Certificate by a bank or controlling company, as defined in the Banks Act, or by a non-bank subsidiary of a bank or controlling company, shall be regarded as a deduction against the capital of the acquiring bank or controlling company in question, in an amount equal to the book value of the said investment in the Notes represented by this Certificate.*

The Notes represented by this Certificate constitute direct, unsecured and, in accordance with Condition 5.3.3 (Subordination) of the "Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes", subordinated obligations of the Issuer and rank **pari passu** without any preference amongst themselves and (save for those that have been accorded by law preferential rights) at least **pari passu** with all other claims of creditors of the Issuer which rank or are expressed to rank (and which are entitled to rank) **pari passu** with the Dated Tier 2 Notes.

Subject to applicable law, if the Issuer is wound-up or put into liquidation or placed under judicial management or curatorship, voluntarily or involuntarily, the claims of the Holders of the Notes represented by this Certificate shall be subordinated to the claims of Depositors and Senior Creditors (each as defined, in relation to Dated Tier 2 Notes, in Condition 1 (Interpretation) of the "Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes"). In any such event, no amount shall be payable to any Holder of the Notes represented by this Certificate entitled to be paid amounts due under the Notes represented by this Certificate until the claims of Depositors and Senior Creditors which are admissible in any such winding-up, liquidation or administration have been paid or discharged in full, as set out more fully in Condition 5.3 (Status of the Dated Tier 2 Notes) of the "Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes".

The Notes represented by this Certificate may be redeemed before the Maturity Date only at the option of the Issuer and with prior written approval of the Registrar of Banks.

The Registrar of Banks has approved the issue of the Notes represented by this Certificate in terms of the Banks Act (as read with Regulation 38(14) (b) of the "Regulations Relating to Banks" promulgated under the Banks Act) and for the proceeds thereof to rank as "secondary capital" as defined in the Banks Act.

The Notes represented by this Certificate are issued for a minimum period of 5 years and one day."

#### LEGEND TO APPEAR ON TIER 3 NOTES CERTIFICATE

The Global Note Certificate and the Individual Note Certificates representing Tier 3 Notes will bear a legend to the following effect:

"The proceeds obtained through the issue of the Notes represented by this Certificate qualify as capital for the issuing bank in terms of the provisions of the South African Banks Act, 1990 (the "**Banks Act**"). Any direct or indirect acquisition of the Notes represented by this Certificate by a bank or controlling company, as defined in the Banks Act, or by a non-bank subsidiary of a bank or controlling company, shall be regarded as a deduction against the capital of the acquiring bank or controlling company in question, in an amount equal to the book value of the said investment in the Notes represented by this Certificate.

The Notes represented by this Certificate constitute direct, unsecured and, in accordance with Condition 5.2.3 (Subordination) of the "Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes", subordinated obligations of the Issuer and rank **pari passu** without any preference amongst themselves and (save for those that have been accorded by law preferential rights) at least **pari passu** with all other claims of creditors of the Issuer which rank or are expressed to rank (and which are entitled to rank) **pari passu** with the Tier 3 Notes.

Subject to applicable law, if the Issuer is wound-up or put into liquidation or placed under judicial management or curatorship, voluntarily or involuntarily, the claims of the Holders of the Notes represented by this Certificate shall be subordinated to the claims of Depositors and Senior Creditors (each as defined, in relation to Tier 3 Notes, in Condition 1 (Interpretation) of the "Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes"). In any such event, no amount shall be payable to any Holder of the Notes represented by this Certificate entitled to be paid amounts due under the Notes represented by this Certificate until the claims of Depositors and Senior Creditors which are admissible in any such winding-up, liquidation or administration have been paid or discharged in full, as set out more fully in Condition 5.2 (Status of the Tier 3 Notes) of the "Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes".

The Notes represented by this Certificate may be redeemed before the Maturity Date only at the option of the Issuer and with the prior written approval of the Registrar of Banks.

The Registrar of Banks has approved the issue of the Notes represented by this Certificate in terms of the Banks Act (as read with Regulation 38(16) of the "Regulations Relating to Banks" promulgated under the Banks Act) and for the proceeds thereof to rank as "tertiary capital" as defined in the Banks Act.

The Notes represented by this Certificate are issued for a minimum period of 2 years and one day."



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## RISK FACTORS

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The Issuer believes that the following factors may affect its ability to fulfill its obligations under Notes issued under the Programme. Most of these factors are contingencies which may or may not occur and the Issuer is not in a position to express a view on the likelihood of any such contingency occurring.

In addition, factors which are material for the purpose of assessing the market risks associated with Notes issued under the Programme are also described below.

The Issuer believes that the factors described below represent the principal risks inherent in investing in Notes issued under the Programme, but the inability of the Issuer to pay interest, principal or other amounts on or in connection with any Notes may occur for other reasons which may not be considered significant risks by the Issuer based on information currently available to it or which it may not currently be able to anticipate. Prospective investors should also read the detailed information set out elsewhere in this Programme Memorandum and reach their own views prior to making any investment decision.

References below to the "*Terms and Conditions*", in relation to Unsubordinated Notes, Tier 2 and Tier 3 Notes, shall mean the "*Terms and Conditions of the Unsubordinated Tier 2 and Tier 3 Notes*" set out below and, in relation to Tier 1 Notes shall mean the "*Terms and Conditions of the Tier 1 Notes*" set out below and references to a numbered "*Condition*" shall be to the relevant Condition under the relevant Terms and Conditions set out below. Capitalised terms used herein and not otherwise defined shall bear the meanings ascribed to them in the "*Terms and Conditions*".

### **Factors that may affect the Issuer's ability to fulfill its obligations under Notes issued under the Programme**

#### ***The Issuer's financial performance is subject to inherent risks concerning borrower credit***

The Issuer's businesses are subject to inherent risks regarding borrower credit quality and the recoverability of loans and amounts due from counterparties. Changes in the credit quality of the Issuer's borrowers and counterparties or arising from systemic risk in the financial systems could reduce the value of the Issuer's assets, and require increased provisions for bad and doubtful debts. In addition, changes in economic conditions may result in deterioration in the value of security held against lending exposures and increase the risk of loss in the event of borrower default. The Issuer has established credit quality management policies and actively monitors credit exposure on an on-going basis to mitigate such risks.

#### ***The Issuer's businesses are inherently subject to the risk of market fluctuations***

The Issuer's businesses are inherently subject to the risk of market fluctuations. In particular, the Issuer's activities are subject to interest rate risks and may in some cases also be subject to foreign exchange, bond and equity price risks. Changes in interest rate levels, yield curves and spreads may affect the interest rate margin realised between lending and borrowing costs. The performance of financial markets may cause changes in the value of the Issuer's investment and trading portfolios. The Issuer has implemented risk management methods to mitigate and control these and other market risks to which the Issuer is exposed. However, it is difficult to predict with accuracy changes in economic or market conditions and to anticipate the effects that such changes could have on the Issuer's financial performance.

#### ***The Issuer's business may be exposed to the adverse effects of operational risks***

The Issuer's businesses are subject to operational risk, and losses can result from inadequate or failed internal processes, documentation, people, systems, fraud, equipment failures, natural disasters or the failure of external systems, including those of the Issuer's suppliers and counterparties. The Issuer's systems, processes and internal controls are designed to ensure that the operational risks associated with its activities are appropriately monitored and controlled. In addition, business resumption and disaster recovery processes have been implemented to mitigate operational risks inherent in the Issuer's business.

#### ***Liquidity risk may impair the Issuer's ability to adequately fund its operations***

Ready access to funds is essential to any banking business, including those operated by the Issuer. An inability on the part of the Issuer to access funds or to access the markets from which it raises funds may lead to the Issuer being unable to finance its operations adequately, which in turn could adversely affect its results of operations and financial condition. In particular, the Issuer takes deposits with maturities which are shorter than the loans it makes. This exposes the Issuer to the risk that depositors could withdraw their funds at a rate faster than the rate at which borrowers repay their loans, thus causing liquidity strains. Additionally, the Issuer's ability to raise or access funds may be impaired by factors that are not specific to it, such as general market conditions, severe disruption of the financial markets or negative views about the prospects for the industries or regions in which the Issuer operates. In addition, the Issuer's

borrowing costs and access to funds may be adversely affected by any reduction in its credit rating, and no assurance can be given that any rating agency will not at some time in the future reduce such credit ratings. The Issuer has developed and implemented risk management policies, procedures and processes designed to reduce this risk through active monitoring and reporting of its liquidity position.

The Issuer, in common with other banks in South Africa, is very reliant on wholesale funding rather than retail deposits, due to the low savings rate within South Africa. Although the Issuer believes that its level of access to domestic and international inter-bank and capital markets and its liquidity risk management policy allow and will continue to allow the Issuer to meet its short-term and long-term liquidity needs, any maturity mismatches may have a material adverse effect on its financial condition and results of operations. Furthermore, there can be no assurance that the Issuer will be successful in obtaining additional sources of funds on acceptable terms or at all.

***The Issuer's risk management policies and procedures may not have identified or anticipated all potential risk exposures***

The Issuer has devoted significant resources to developing its risk management policies and procedures, particularly in connection with credit, market, liquidity, interest rate and operational risks, and expects to continue to do so in the future. Nonetheless, its risk management techniques may not be fully effective in mitigating its risk exposure in all market environments or against all types of risk, including risks that are unidentified or unanticipated. Some of the Issuer's methods of managing risk are based upon its use of observed historical market behaviour. As a result, these methods may not predict future risk exposures, which could be greater than historical measures indicate. Other risk management methods depend upon evaluation of information regarding the markets in which the Issuer operates, its clients or other matters that are publicly available or otherwise accessible by the Issuer. This information may not be accurate in all cases, complete, up-to-date or properly evaluated. Any failure arising out of the Issuer's risk management techniques may have an adverse effect on its results of operations and financial condition.

***The financial services industry in which the Issuer operates is competitive***

The financial services industry in which the Issuer's businesses operate is highly competitive. The Issuer competes on the basis of a number of factors, including customer services and quality, transaction execution, its products and services, innovation, reputation and price. New competitors, including companies other than banks, may disintermediate the market thus impacting market share. Many of the banks operating in the Issuer's markets compete for substantially the same customers as the Issuer. An increase in competition in some or all of the Issuer's principal markets may have an adverse effect on its financial condition and results of operations.

***Concentration Risk***

The Issuer's business is significantly focused on the South African markets and therefore faces a geographic concentration risk. Any adverse changes affecting the South African economy are likely to have an adverse impact on the Issuer's loan portfolio and, as a result, on its financial condition and results of its operations.

***The Issuer may be unable to recruit, retain and motivate key personnel***

The Issuer's performance is dependent on the talents and efforts of key personnel, some of whom may have been employed by the Issuer for a substantial period of time and have developed with the business. The Issuer's continued ability to compete effectively and further develop its businesses also depends on its ability to attract new employees. In relation to the development and training of new staff, the Issuer is reliant on the continued development of the educational sector within South Africa, including access to facilities and educational programmes by its future employees. The Issuer has implemented programmes, for example its Graduate Programme, to attract new employees and equip them with appropriate skills.

***Terrorist acts and other acts of war could have a negative impact on the business***

Terrorist acts, and other acts of war or hostility and responses to those acts, may create economic and political uncertainties, which could have a negative impact on South Africa, and international economic conditions generally, and more specifically on the business and results of operations of the Issuer in ways that cannot be predicted.

***The Issuer is subject to capital requirements that could limit its operations***

The Issuer is subject to capital adequacy guidelines adopted by the SARB, which provide for a minimum target ratio of capital to risk-adjusted assets. Any failure by the Issuer to maintain its ratios may result in sanctions against the Issuer which may in turn impact on its ability to fulfill its obligations under the Notes (See "*Description of the Issuer – Implementation of Basel II Framework*" for a description of the measures the Issuer has put in place in order to comply with Basel II).

### ***Basel II Framework - recent developments***

On 16 April 2008, the Basel Committee on Banking Supervision announced steps to strengthen the resilience of the banking system, which include: (i) enhancing aspects of the Basel II Framework, including the capital treatment of complex structured credit products, liquidity facilities to support asset-backed commercial paper (ABCP) conduits, and credit exposures held in the trading book; (ii) strengthening global practice standards for liquidity risk management and supervision, which the Committee is expected to issue for public consultation within 2008; (iii) initiating efforts to strengthen banks' risk management practices and supervision related to stress testing, off-balance sheet management and valuation practices, among others; and (iv) enhancing market discipline through better disclosure and valuation practices. The Committee's actions are in support of the Financial Stability Forum's Working Group on Market and Institutional Resilience, which released its report making recommendations for enhancing the resilience of markets and financial institutions to the G7 Finance Ministers and Central Bank Governors in April 2008. The Issuer cannot predict the precise effects of the potential changes that might result from implementation of the proposals on both its own financial performance or the impact on the pricing of its Notes issued under this Programme. Prospective investors in the Notes should consult their own advisers as to the consequences for them of the potential application of the new Basel Committee proposals.

### ***Political, social and economic risks in South Africa or regionally may have an adverse effect on the Issuer's operations***

The Issuer's operations are concentrated in South Africa with the majority of its revenues deriving from operations in South Africa. Operations in this market are subject to various risks which need to be assessed in comparison to jurisdictions elsewhere. These include political, social and economic risks specific to South Africa, such as general economic volatility, recession, inflationary pressure, exchange rate risks and exchange controls, which could affect an investment in the Notes. The existence of such factors may have an impact on South Africa and the results of the Issuer in ways that cannot be predicted.

### ***The impact of any future change in law or regulation on the Issuer's business is uncertain***

The nature and impact of future changes in laws, regulations and regulatory policies are not predictable and are beyond the Issuer's control, and changes in such laws, regulations and regulatory policies may have an adverse effect on the Issuer's financial condition and results of operations.

### ***Factors which are material for the purpose of assessing the market risks associated with Notes issued under the Programme***

#### ***The Notes may not be a suitable investment for all investors***

Each potential investor in the Notes must determine the suitability of that investment in light of its own circumstances. In particular, each potential investor should:

- (i) have sufficient knowledge and experience to make a meaningful evaluation of the Notes, the merits and risks of investing in the Notes and the information contained or incorporated by reference in this Programme Memorandum or any applicable supplement;
- (ii) have access to, and knowledge of, appropriate analytical tools to evaluate, in the context of its particular financial situation, an investment in the Notes and the impact the Notes will have on its overall investment portfolio;
- (iii) have sufficient financial resources and liquidity to bear all of the risks of an investment in the Notes, including Notes with principal or interest payable in one or more currencies, or where the currency for principal or interest payments is different from the potential investor's currency;
- (iv) understand thoroughly the terms of the Notes and be familiar with the behaviour of any relevant indices and financial markets; and
- (v) be able to evaluate (either alone or with the help of a financial adviser) possible scenarios for economic, interest rate and other factors that may affect its investment and its ability to bear the applicable risks.

Some Notes are complex financial instruments. Sophisticated institutional investors generally do not purchase complex financial instruments as stand-alone investments. They purchase complex financial instruments as a way to reduce risk or enhance yield with an understood, measured, appropriate addition of risk to their overall portfolios. A potential investor should not invest in Notes which are complex financial instruments unless it has the expertise (either alone or with a financial adviser) to evaluate how the Notes will perform under changing conditions, the resulting effects on the value of the Notes and the impact this investment will have on the potential investor's overall investment portfolio.

### ***Risks related to the structure of a particular issue of Notes***

A wide range of Notes may be issued under the Programme. A number of these Notes may have features which contain particular risks for potential investors. Set out below is a description of the most common such features:

#### *The Notes may be redeemed prior to maturity*

Unless in the case of any particular Tranche of Notes the final terms in the Applicable Pricing Supplement specify otherwise, the Issuer may redeem all outstanding Notes on the occurrence of certain tax events or regulatory events in accordance with the Terms and Conditions.

In addition, if in the case of any particular Tranche of Notes the final terms in the Applicable Pricing Supplement specify that the Notes are redeemable at the Issuer's option in certain other circumstances, the Issuer may choose to redeem the Notes at times when prevailing interest rates may be relatively low. In such circumstances an investor may not be able to reinvest the redemption proceeds in a comparable security at an effective interest rate as high as that of the relevant Notes. Any redemption of Subordinated Notes and Tier 1 Notes prior to their Maturity Date (if any) requires the prior written approval of the Registrar of Banks and is subject to a number of other restrictions as more particularly described in Condition 12.5 of the Terms and Conditions of the Tier 1 Notes and Condition 11.5 of the Terms and Conditions of the Unsubordinated, Tier 2 and Tier 3 Notes respectively.

#### *Notes subject to optional redemption by the Issuer*

An optional redemption feature of Notes is likely to limit their market value. During any period when the Issuer may elect to redeem Notes, the market value of those Notes generally will not rise substantially above the price at which they can be redeemed. This also may be true prior to any redemption period.

The Issuer may be expected to redeem Notes when its cost of borrowing is lower than the interest rate on the Notes. At those times, an investor generally would not be able to reinvest the redemption proceeds at an effective interest rate as high as the interest rate on the Notes being redeemed and may only be able to do so at a significantly lower rate. Potential investors should consider reinvestment risk in light of other investments available at that time.

#### *Index Linked Notes*

The Issuer may issue Notes with principal or interest determined by reference to an index or formula, to changes in the prices of securities or commodities, to movements in currency exchange rates or other factors (each a "**Relevant Factor**"). Potential investors should be aware that:

- (i) the market price of such Notes may be volatile;
- (ii) they may receive no interest;
- (iii) payment of principal or interest may occur at a different time than expected;
- (iv) they may lose all or a substantial portion of their principal;
- (v) a Relevant Factor may be subject to significant fluctuations that may not correlate with changes in interest rates, currencies or other indices;
- (vi) if a Relevant Factor is applied to Notes in conjunction with a multiplier greater than one or contains some other leverage factor, the effect of changes in the Relevant Factor on principal or interest payable likely will be magnified; and
- (vii) the timing of changes in a Relevant Factor may affect the actual yield to investors, even if the average level is consistent with their expectations. In general, the earlier the change in the Relevant Factor, the greater the effect on yield.

The historical experience of an index should not be viewed as an indication of the future performance of such index during the term of any Index Linked Notes. Accordingly, each potential investor should consult its own financial and legal advisers about the risk entailed by an investment in any Index Linked Notes and the suitability of such Notes in light of its particular circumstances.

#### *Partly-paid Notes*

The Issuer may issue Notes where the issue price is payable in more than one instalment. Failure to pay any subsequent instalment could result in an investor losing all of its investment.

#### *Variable rate Notes with a multiplier or other leverage factor*

Notes with variable interest rates can be volatile investments. If they are structured to include multipliers or other leverage factors, or caps or floors, or any combination of those features or other similar related features, their market values may be even more volatile than those for securities that do not include those features.

#### *Inverse Floating Rate Notes*

Inverse Floating Rate Notes have an interest rate equal to a fixed rate minus a rate based upon a reference rate such as JIBAR. The market values of those Notes typically are more volatile than market values of other conventional floating rate debt securities based on the same reference rate (and with otherwise comparable terms). Inverse Floating Rate Notes are more volatile because an increase in the reference rate not only decreases the interest rate of the Notes, but may also reflect an increase in prevailing interest rates, which further adversely affects the market value of these Notes.

#### *Fixed/Floating Rate Notes*

Fixed/Floating Rate Notes may bear interest at a rate that converts from a fixed rate to a floating rate, or from a floating rate to a fixed rate. Where the Issuer has the right to effect such a conversion, this will affect the secondary market and the market value of the Notes since the Issuer may be expected to convert the rate when it is likely to produce a lower overall cost of borrowing. If the Issuer converts from a fixed rate to a floating rate in such circumstances, the spread on the Fixed/Floating Rate Notes may be less favourable than then prevailing spreads on comparable Floating Rate Notes tied to the same reference rate. In addition, the new floating rate at any time may be lower than the rates on other Notes. If the Issuer converts from a floating rate to a fixed rate in such circumstances, the fixed rate may be lower than then prevailing rates on its Notes.

#### *Notes issued at a substantial discount or premium*

The market values of securities issued at a substantial discount or premium from their principal amount tend to fluctuate more in relation to general changes in interest rates than do prices for conventional interest-bearing securities. Generally, the longer the remaining term of the securities, the greater the price volatility as compared to conventional interest-bearing securities with comparable maturities.

#### *Notes may be subordinated to most of the Issuer's liabilities*

The payment obligations of the issuer under Subordinated Notes and Tier 1 Notes will rank behind Unsubordinated Notes and in particular the payment obligations of the Issuer under (a) Tier 1 Notes will rank behind Unsubordinated Notes, Tier 3 Notes and Tier 2 Notes, (b) Undated Tier 2 Notes will rank behind Unsubordinated Notes, Dated Tier 2 Notes and Tier 3 Notes, (c) Dated Tier 2 Notes will rank behind Unsubordinated Notes and pari passu with Tier 3 Notes, and (d) Tier 3 Notes will rank behind Unsubordinated Notes and pari passu with Dated Tier 2 Notes. See Condition 5 in respect of the Terms and Conditions of the Tier 1 Notes and Condition 5 in respect of the Terms and Conditions of the Unsubordinated, Tier 2 and Tier 3 Notes for a full description of subordination and the payment obligations of the Issuer under Tier 1 Notes and Subordinated Notes respectively.

With regard to any Subordinated Notes and Tier 1 Notes, in the event of the dissolution of the Issuer or if the Issuer is placed into liquidation, administration or is wound-up, the Issuer will be required to pay or discharge the claims of Depositors, Senior Creditors (each as defined, in relation to Tier 1 Notes, in Condition 1 of the Terms and Conditions of the Tier 1 Notes and, in relation to Unsubordinated, Tier 2 Notes and Tier 3 Notes, in Condition 1 of the Terms and Conditions of the Unsubordinated, Tier 2 and Tier 3 Notes) and (other than in the case of Tier 3 Notes and Dated Tier 2 Notes) the holders of Subordinated Debt (as defined, in relation to Tier 1 Notes, in Condition 1 of the Terms and Conditions of the Tier 1 Notes and, in relation to Tier 2 Notes and Tier 3 Notes, in Condition 1 of the Terms and Conditions of the Unsubordinated, Tier 2 and Tier 3 Notes) in full before it can make any payments in respect of such Subordinated Notes or Tier 1 Notes, as the case may be. If this occurs, the Issuer may not have enough assets remaining after these payments to pay amounts due under the relevant Subordinated Notes or Tier 1 Notes. There is no limitation on the ability of the Issuer to issue debt securities in the future that would rank in a winding-up, liquidation or administration equal or senior to the Subordinated Notes or Tier 1 Notes.

#### ***Deferral of interest payments***

The Issuer may elect not to pay, or to defer the payment, of any interest amounts due to holders of Tier 1 Notes and Undated Tier 2 Notes, respectively, in accordance with Condition 6.1.1 of the Terms and Conditions of the Tier 1 Notes and Condition 6.1.1 of the Terms and Conditions of the Undated Tier 2 Notes, respectively. The Issuer may also not be obliged to pay interest in relation to Tier 1 Notes and Undated Tier 2 Notes in the circumstances described in Condition 6.1.2 and 6.1.3 of the Terms and Conditions of the Tier 1 Notes and Condition 6.1.2 and 6.1.3 of the Terms and Conditions of the Undated Tier 2 Notes.

Any election not to pay or to defer interest payments in respect of Tier 1 Notes or Undated Tier 2 Notes, respectively, may have an adverse effect on the market price of such Tier 1 Notes or Undated Tier 2 Notes. In addition, as a result of an election not to pay or to defer provision of such Tier 1 Notes or Undated Tier 2 Notes, the market price of such Tier 1

Notes or Undated Tier 2 Notes may be more volatile than the market prices of other debt securities of the Issuer on which original issue discount or interest accrues that are not subject to such deferrals and may be more sensitive generally to adverse changes in the Issuer's financial condition.

If an election is made not to pay any Interest Amount on an Interest Payment Date in respect of Tier 1 Notes, the Issuer and the Controlling Company will, from such Interest Payment Date, until the Issuer next pays in full the Interest Amounts due and payable on any succeeding Interest Payment Date on all outstanding Tier 1 Notes, be restricted from declaring or paying distributions or dividends or paying any interest on, or from redeeming or purchasing, any Junior Securities or Parity Securities, except in limited circumstances, all as more fully described in Condition 6.2 of the Terms and Conditions of the Tier 1 Notes.

If any interest is deferred in respect of Undated Tier 2 Notes, the Issuer and the Controlling Company will, until such Arrears of Interest are settled in full, be restricted from declaring or paying distributions or dividends or paying any interest on, or from redeeming or purchasing, any Junior Securities or Parity Securities, except in limited circumstances, all as more fully described in Condition 6.2 of the Terms and Conditions of the Undated Tier 2 Notes.

In relation to Tier 1 Notes and Undated Tier 2 Notes, potential investors will only be entitled to sue for non-payment of deferred interest in limited circumstances, as further set out in Condition 6.2 of the Terms and Conditions of the Tier 1 Notes and Condition 6.1 of the Terms and Conditions of the Undated Tier 2 Notes. The Tier 1 Notes and Undated Tier 2 Notes will have no maturity date and will only be redeemable in certain circumstances, as further set out in Condition 12 of the Terms and Conditions of Tier 1 Notes and Condition 11 of the Terms and Conditions of the Undated Tier 2 Notes.

In terms of the Regulatory Capital Requirements applicable to Tier 3 Notes, if the Issuer's qualifying capital falls below the minimum amount prescribed by the Banks Act, the Registrar of Banks may require that interest and principal payments in respect of Tier 3 Notes be deferred for such period of time and subject to such conditions (if any) as the Registrar of Banks may deem fit, as more fully described in Condition 6.3 of the Ordinary Conditions and the section of this Programme Memorandum headed "*Regulatory Capital Requirements*".

Any deferral of interest payments under Tier 3 Notes will likely have an adverse effect on the market price of the Tier 3 Notes. In addition, as a result of the interest deferral provision of the Tier 3 Notes, the market price of the Tier 3 Notes may be more volatile than the market prices of other debt securities on which original issue discount or interest accrues that are not subject to such deferrals and may be more sensitive generally to adverse changes in the Issuer's financial condition.

#### ***Interest satisfied through the issue of Ordinary Shares***

The Issuer can elect not to pay, or may not be obliged to pay, an Interest Amount on the Tier 1 Notes or the Undated Tier 2 Notes, as more particularly described in Condition 6.1 of the Terms and Conditions of the Tier 1 Notes and Condition 6.1 of the Terms and Conditions of the Undated Tier 2 Notes. If the Issuer has elected not to pay interest on an Interest Payment Date in respect of Tier 1 Notes, the Issuer must satisfy the payment of such Deferred Interest Amount (in the case of Tier 1 Notes) in full or in part through the issue via the Controlling Company of ordinary shares, in accordance with the Alternative Coupon Satisfaction Mechanism ("**ACSM**") more particularly described in Condition 7 of the Terms and Conditions of the Tier 1 Notes.

Potential investors should be aware that the Issuer's ability to raise the necessary amount to satisfy the payment of the Deferred Interest Amounts in accordance with the ACSM is subject to, amongst other things, the ability of the Controlling Company to obtain the requisite shareholder approvals for the issuance of ordinary shares and there not being a Market Disruption Event. Potential investors are referred to Condition 7 of the Terms and Conditions of the Tier 1 Notes for a fuller explanation of the operation of the ACSM, including as to payment of interest shortfall amounts.

#### ***Risks related to Notes generally***

Set out below is a brief description of certain risks relating to the Notes generally:

##### ***Modification, waivers and substitution***

The conditions of the Notes contain provisions for calling meetings of Noteholders to consider matters affecting their interests generally. These provisions permit defined majorities to bind all Noteholders including Noteholders who did not attend and vote at the relevant meeting and Noteholders who voted in a manner contrary to the majority.

##### ***Change of law***

Certain Conditions of the Notes are governed by English law, while a number of conditions are governed by South African law, in effect as at the date of this Programme Memorandum. No assurance can be given as to the impact of any possible judicial decision or change to English law or South African law or administrative practice after the date of this Programme Memorandum.

### *Trading in the clearing systems*

In relation to Notes which have a minimum denomination and are tradeable in the clearing systems in amounts above such minimum denomination which are smaller than it, should definitive Notes be required to be issued, a holder who does not have an integral multiple of the minimum denomination in his account with the relevant clearing system at the relevant time may not receive all of his entitlement in the form of definitive Notes unless and until such time as his holding becomes an integral multiple of the minimum denomination.

If definitive Notes are issued, holders should be aware that definitive Notes which have a denomination which is not an integral multiple of the minimum Specified Denomination may be illiquid and difficult to trade.

### ***Risks related to the market generally***

Set out below is a brief description of the principal market risks, including liquidity risk, exchange rate risk, interest rate risk and credit risk:

#### *The secondary market generally*

Notes may have no established trading market when issued, and one may never develop. If a market does develop, it may not be very liquid. Therefore, investors may not be able to sell their Notes easily or at prices that will provide them with a yield comparable to similar investments that have a developed secondary market. This is particularly the case for Notes that are especially sensitive to interest rate, currency or market risks, are designed for specific investment objectives or strategies or have been structured to meet the investment requirements of limited categories of investors. These types of Notes generally would have a more limited secondary market and more price volatility than conventional debt securities. Illiquidity may have a severely adverse effect on the market value of Notes.

In addition, Noteholders should be aware of the prevailing and widely reported global credit market conditions (which continue at the date of this Programme Memorandum), whereby there is a general lack of liquidity in the secondary market for instruments similar to the Notes. Such lack of liquidity may result in investors suffering losses on the Notes in secondary resales even if there is no decline in the performance of the assets of the Issuer. The Issuer cannot predict whether these circumstances will change and whether, if and when they do change, there will be a more liquid market for the Notes and instruments similar to the Notes at that time.

#### *Exchange rate risks and exchange controls*

The Issuer will pay principal and interest on the Notes in the Specified Currency. This presents certain risks relating to currency conversions if an investor's financial activities are denominated principally in a currency or currency unit (the "**Investor's Currency**") other than the Specified Currency. These include the risk that exchange rates may significantly change (including changes due to devaluation of the Specified Currency or revaluation of the Investor's Currency) and the risk that authorities with jurisdiction over the Investor's Currency may impose or modify exchange controls. An appreciation in the value of the Investor's Currency relative to the Specified Currency would decrease (1) the Investor's Currency-equivalent yield on the Notes, (2) the Investor's Currency equivalent value of the principal payable on the Notes and (3) the Investor's Currency equivalent market value of the Notes.

Government and monetary authorities may impose (as some have done in the past) exchange controls that could adversely affect an applicable exchange rate. As a result, investors may receive less interest or principal than expected, or no interest or principal.

#### *Interest rate risks*

Investment in Fixed Rate Notes involves the risk that subsequent changes in market interest rates may adversely affect the value of the Fixed Rate Notes.

#### *Credit ratings may not reflect all risks*

One or more independent credit rating agencies may assign credit ratings to the Notes. The ratings may not reflect the potential impact of all risks related to structure, market, additional factors discussed above, and other factors that may affect the value of the Notes. A credit rating is not a recommendation to buy, sell or hold securities and may be revised or withdrawn by the rating agency at any time. Any adverse change in the applicable credit rating could adversely affect the trading price for the Notes issued under the Programme.

### ***Legal investment considerations may restrict certain investments***

The investment activities of certain investors are subject to legal investment laws and regulations, or review or regulation by certain authorities. Each potential investor should consult its legal advisers to determine whether and to what extent (1) Notes are legal investments for it, (2) Notes can be used as collateral for various types of borrowing and (3) other restrictions apply to its purchase or pledge of any Notes. Financial institutions should consult their legal advisers or the

appropriate regulators to determine the appropriate treatment of Notes under any applicable risk-based capital or similar rules.

## **Risks relating to South Africa**

### ***Risk relating to Emerging Markets***

South Africa is generally considered by international investors to be an emerging market. Investors in emerging markets such as South Africa should be aware that these markets are subject to greater risk than more developed markets. These risks include economic instability as well as, in some cases, significant legal and political risks.

Economic instability in South Africa in the past and in other emerging market countries has been caused by many different factors, including the following:

- high interest rates;
- changes in currency values;
- high levels of inflation;
- exchange controls;
- wage and price controls;
- changes in economic or tax policies;
- the imposition of trade barriers; and
- internal security issues.

Any of these factors, as well as volatility in the markets for securities similar to the Notes, may adversely affect the value or liquidity of the Notes.

Accordingly, investors should exercise particular care in evaluating the risks involved and must decide for themselves whether, in light of those risks, their investment is appropriate. Generally, investment in developing markets is only suitable for sophisticated investors who fully appreciate the significance of the risks involved, and prospective investors are urged to consult with their own legal and financial advisors before making an investment in the Notes.

Investors should also note that developing markets, such as South Africa, are subject to rapid change and that the information set out in this Offering Circular may become outdated relatively quickly.

### ***Regulatory Environment***

The Issuer is subject to government regulation in South Africa. Regulatory agencies have broad jurisdiction over many aspects of the Issuer's business, which may include capital adequacy, premium rates, marketing and selling practices, advertising, licensing agents, policy forms, terms of business and permitted investments.

Changes in government policy, legislation or regulatory interpretation applying to the financial services industry in the markets in which the Issuer operates may adversely affect the Issuer's product range, distribution channels, capital requirements and, consequently, reported results and financing requirements.

### ***Exchange Controls***

Since 1995, certain exchange controls in South Africa have been relaxed. The extent to which the South African Government (the "**Government**") may further relax such exchange controls cannot be predicted with certainty, although the Government has committed itself to a gradual approach of relaxation. Further relaxation or abolition of exchange controls may precipitate a change in the capital flows to and from South Africa. If the net result of this were to cause large capital outflows, this could adversely affect the Issuer's business and it could have an adverse effect on the financial condition of the Issuer as a whole. In the event of the immediate abolition of exchange control there may be a sudden withdrawal of Rand from the South African market by investors. Because South Africa has a fully floating exchange rate and a flexible interest rate policy, this could result in a rapid depreciation of the Rand exchange rate which could serve to stem the flight and could also result in an increase in interest rates due to the depreciation of the Rand.



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**PRO FORMA PRICING SUPPLEMENT OF THE UNSUBORDINATED NOTES, TIER 2 NOTES AND TIER 3 NOTES**


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Set out below is the form of Pricing Supplement which will be completed for each Tranche of Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes issued under the Programme:

**Absa Bank Limited**

(Incorporated with limited liability in South Africa under registration number 1986/004794/06)

**Issue of [Aggregate Nominal Amount of Tranche] [Title of Notes]**

**Under its ZAR30,000,000,000 Domestic Medium Term Note Programme**

This document constitutes the Applicable Pricing Supplement relating to the issue of the Tranche of Notes described in this Pricing Supplement.

This Pricing Supplement must be read in conjunction with the Programme Memorandum issued by Absa Bank Limited dated 11 August 2008, as amended. To the extent that there is any conflict or inconsistency between the contents of this Pricing Supplement and the Programme Memorandum, the provisions of this Pricing Supplement shall prevail.

Any capitalised terms not defined in this Pricing Supplement shall have the meanings ascribed to them in the Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes. References in this Pricing Supplement to the Terms and Conditions are to the section of the Programme Memorandum "*Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes*". References to any Condition in this Pricing Supplement are to that Condition of the Terms and Conditions.

**DESCRIPTION OF THE NOTES**

1. Issuer	Absa Bank Limited
2. Status of Notes	[Unsubordinated Notes] [Subordinated Notes : Undated Tier 2 Notes / Dated Tier 2 Notes / Tier 3 Notes]
3. (a) Tranche Number	[ ]
(b) Series Number	[ ]
4. Aggregate Principal Amount	[ ]
5. Interest/Payment Basis	[Fixed Rate/Floating Rate/Zero Coupon/Indexed Interest /Indexed Redemption Amount/Partly Paid/Instalment/Exchangeable/other]
6. Form of Notes	[Registered Notes/Bearer Notes/Order Notes]
7. Secured	[Yes/No]
8. Automatic/Optional Conversion from one Interest/Payment Basis to another	[insert details including date for conversion]
9. Issue Date	[ ]
10. Business Centre	[ ]
11. Additional Business Centre	[ ]
12. Specified Denomination	[ ]
13. Issue Price	[ ]
14. Interest Commencement Date	[ ]
15. Maturity Date	[ ]
16. Specified Currency	[ ]
17. Applicable Business Day Convention	[Floating Rate Business Day/Following

	Business Day/Modified Following Business Day/Preceding Business Day/other convention – insert details]
18. Calculation Agent	[ ]
19. Specified Office of the Calculation Agent	[ ]
20. Paying Agent	[ ]
21. Specified Office of the Paying Agent	[ ]
22. Transfer Agent	[ ]
23. Specified Office of the Transfer Agent	[ ]
24. Final Redemption Amount	[ ]

**PARTLY PAID NOTES**

25. Amount of each payment comprising the Issue Price	[ ]
26. Date upon which each payment is to be made by Noteholder	[ ]
27. Consequences (if any) of failure to make any such payment by Noteholder	[ ]
28. Interest Rate to accrue on the first and subsequent instalments after the due date for payment of such instalments	[ ] percent

**INSTALMENT NOTES**

29. Instalment Dates	[ ]
30. Instalment Amounts (expressed as a percentage of the aggregate Principal Amount of the Notes)	[ ]

**FIXED RATE NOTES**

31. (a) Fixed Interest Rate	[ ] percent, per annum
(b) Interest Payment Date(s)	[Dates/Periods]
(c) Initial Broken Amount	[ ]
(d) Final Broken Amount	[ ]
(e) Any other terms relating to the method of calculating interest	particular [ ]

**FLOATING RATE NOTES**

32. (a) Interest Payment Date(s)	[Dates/Periods]
(b) Interest Period(s)	[ ]
(c) Definitions of Business Day (if different from that set out in Condition 1 of the Ordinary Conditions)	[ ]
(d) Minimum Interest Rate	[ ] percent
(e) Maximum Interest Rate	[ ] percent
(f) Other terms relating to the method of calculating interest (e.g., Day Count Fraction, rounding up provision, if different from Condition 6 of the Ordinary Conditions)	[ ]
33. Manner in which the Interest Rate is to be determined	[ISDA Determination/Screen Rate Determination/other (insert details)]
34. Margin	[(+/-) • percent to be added to/subtracted from the relevant (ISDA Rate/Reference Rate)]
35. If ISDA Determination	
(a) Floating Rate	[ ]
(b) Floating Rate Option	[ ]
(c) Designated Maturity	[ ]

(d) Reset Date(s) [ ]

36. If Screen Determination

(a) Reference Rate (including relevant period by reference to which the Interest Rate is to be calculated) [e.g. ZAR-JIBAR-SAFEX]

(b) Interest Determination Date(s) [ ]

(c) Relevant Screen Page and Reference Code [ ]

37. If Interest Rate to be calculated otherwise than by reference to the previous 2 sub-paragraphs, insert basis for determining Interest Rate/Margin/Fall back provisions [ ]

38. If different from the Calculation Agent, agent responsible for calculating amount of principal and interest [ ]

**MIXED RATE NOTES**

39. Period(s) during which the interest rate for the Mixed Rate Notes will be (as applicable) that for: [ ]

(a) Fixed Rate Notes [ ]

(b) Floating Rate Notes [ ]

(c) Indexed Notes [ ]

(d) Other Notes [ ]

**ZERO COUPON NOTES**

40. (a) Implied Yield [ ]

(b) Reference Price [ ]

(c) Any other formula or basis for determining amount(s) payable [ ]

**INDEXED NOTES**

41. (a) Type of Indexed Notes [Indexed Interest Notes/Indexed Redemption Amount Notes]

(b) Index/Formula by reference to which Interest Amount/Final Redemption Amount is to be determined [ ]

(c) Manner in which the Interest Amount/Final Redemption Amount is to be determined [ ]

(d) Interest Period [ ]

(d) Interest Payment Date(s) [ ]

(f) If different from the Calculation Agent, agent responsible for calculating amount of principal and interest [ ]

(g) Provisions where calculation by reference to Index and/or Formula is impossible or impracticable [ ]

**EXCHANGEABLE NOTES**

42. Mandatory Exchange applicable? [Yes/No]

43. Noteholders' Exchange Right applicable? [Yes/No]

44. Exchange Securities [ ]

45. Manner of determining Exchange Price [ ]

46. Exchange Period [ ]

47. Other [ ]

**OTHER NOTES**

48. If the Notes are not Partly Paid Notes, Instalment Notes, Fixed Rate Notes, Floating Rate Notes, Mixed Rate Notes, Zero Coupon Notes, Indexed Notes or [ ]

Exchangeable Notes or if the Notes are a combination of any of the foregoing, set out the relevant description and any additional Terms and Conditions relating to such Notes

#### PROVISIONS REGARDING REDEMPTION MATURITY

49. Prior consent of Registrar of Banks required for any redemption prior to the Maturity Date [Yes/No] [Consent of the Registrar of Banks will be necessary where the Notes are Subordinated Notes]
50. Redemption at the option of the Issuer: if yes: [Yes/No]
- (a) First Optional Redemption Date [ ]
- (b) Optional Redemption Date(s) [ ]
- (c) Optional Redemption Amount(s) and method, if any, of calculation of such amount(s) [ ]
- (d) Minimum period of notice (if different to Condition 11.4 of the Ordinary Conditions) [ ]
- (e) If redeemable in part:
- Minimum Redemption Amount(s) [ ]
- Higher Redemption Amount(s) [ ]
- (f) Approval(s) of Registrar of Banks [Applicable/Not Applicable] [Note: only applicable where Notes are Subordinated Notes]
- (g) Other terms applicable on Redemption [ ]
51. Redemption at the option of the Noteholders: If yes: [Yes/No] [Only applicable to Unsubordinated Notes]
- (a) Optional Redemption Date(s) [ ]
- (b) Optional Redemption Amount(s) and method, if any, of calculation of such amount(s) [ ]
- (c) Minimum period of notice (if different to Condition 11.5 of the Ordinary Conditions) [ ]
- (d) If redeemable in part:
- Minimum Redemption Amount(s) [ ]
- Higher Redemption Amount(s) [ ]
- (e) Other terms applicable on Redemption [ ]
- (f) Attach *pro forma* put notice(s)
52. Early Redemption Amount(s) [ ]
- (a) Early Redemption Amount (Regulatory) [Principal amount plus accrued interest (if any) to the date fixed for redemption]
- (b) Early Redemption Amount (Tax) [Principal amount plus accrued interest (if any) to the date fixed for redemption]
- (c) Early Termination Amount [ ]

#### GENERAL

53. Additional selling restrictions [ ]
54. (a) International Securities Numbering (SIN) [ ]
- (b) Stock Code [ ]
55. Financial Exchange [ ]
56. Method of distribution [ ]
57. If syndicated, names of managers
58. Receipts attached? If yes, number of Receipts attached [Yes/No]  
[ ]

- |   |   |
|---|---|
| 59. Coupons attached? If yes, number of Coupons attached  | [Yes/No]<br>[     ]   |
| 60. Talons attached? If yes, number of Talons attached  | [Yes/No]<br>[     ]   |
| 61. Credit Rating assigned to Notes (if any)  | [     ]   |
| 62. Stripping of Receipts and/or Coupons prohibited as provided in Condition 15.4 of the Ordinary Conditions? | [Yes/No]  |
| 63. Governing law (if the laws of South Africa are not applicable)  | [     ]   |
| 64. Other Banking Jurisdiction  | [     ]   |
| 65. Last Day to Register  | [     ], which shall mean that the "Books Closed Period" (during which the Register will be closed) will be from each Last Day to Register to the applicable Payment Day until the date of redemption |
| 66. Stabilisation Manager (if any)  | [     ]   |
| 67. Pricing Methodology   | [     ]   |
| 68. Authorised amount of the Programme  | [     ]   |
| 69. Other provisions  | [     ]   |

### Responsibility

The Issuer accepts responsibility for the information contained in this Applicable Pricing Supplement.

Application [is hereby] / [will not be] made to list this issue of Notes on [insert date].

### ABSA BANK LIMITED

#### Issuer

By: \_\_\_\_\_  
Director, duly authorised

By: \_\_\_\_\_  
Director, duly authorised

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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**PRO FORMA PRICING SUPPLEMENT OF THE TIER 1 NOTES**


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Set out below is the form of Pricing Supplement which will be completed for each Tranche of Tier 1 Notes issued under the Programme:

**Absa Bank Limited**

(Incorporated with limited liability in South Africa under registration number 1986/004794/06)

**Issue of [Aggregate Nominal Amount of Tranche] [Title of Notes]**

**Under its ZAR30,000,000,000 Domestic Medium Term Note Programme**

This document constitutes the Applicable Pricing Supplement relating to the issue of the Tranche of Notes described in this Pricing Supplement.

This Pricing Supplement must be read in conjunction with the Programme Memorandum issued by Absa Bank Limited dated 11 August 2008, as amended. To the extent that there is any conflict or inconsistency between the contents of this Pricing Supplement and the Programme Memorandum, the provisions of this Pricing Supplement shall prevail.

Any capitalised terms not defined in this Pricing Supplement shall have the meanings ascribed to them in the Terms and Conditions of the Tier 1 Notes. References in this Pricing Supplement to the Terms and Conditions are to the section of the Programme Memorandum "*Terms and Conditions of the Notes*". References to any Condition in this Pricing Supplement are to that Condition of the Terms and Conditions.

**DESCRIPTION OF THE NOTES**

1. Issuer	Absa Bank Limited
2. Status of Notes	[Subordinated Notes: Tier 1]
3. (a) Tranche Number	[     ]
(b) Series Number	[     ]
4. Aggregate Principal Amount	[     ]
5. Interest/Payment Basis	[Fixed Rate / Floating Rate / Zero Coupon / Partly Paid / Instalment / Exchangeable / other]
6. Form of Notes	[Registered Notes / Bearer Notes / Order] Notes]
7. Secured	[Yes/No]
8. Automatic/Optional Conversion from one Interest/Payment Basis to another	[insert details including date for conversion]
9. Issue Date	[     ]
10. Business Centre	[     ]
11. Additional Business Centre	[     ]
12. Specified Denomination	[     ]
13. Issue Price	[     ]
14. Interest Commencement Date	[     ]
15. Maturity Date	[     ]
16. Specified Currency	[     ]
17. Applicable Business Day Convention	[Floating Rate Business Day/Following Business Day/Modified Following Business Day/Preceding Business Day/other convention – insert details]
18. Calculation Agent	[     ]

- |   |         |
|---|---------|
| 19. Specified Office of the Calculation Agent | [     ] |
| 20. Paying Agent                              | [     ] |
| 21. Specified Office of the Paying Agent      | [     ] |
| 22. Transfer Agent                            | [     ] |
| 23. Specified Office of the Transfer Agent    | [     ] |
| 24. Final Redemption Amount                   | [     ] |

**PARTLY PAID NOTES**

- |  |                 |
|--|-----------------|
| 25. Amount of each payment comprising the Issue Price  | [     ]         |
| 26. Date upon which each payment is to be made by Noteholder   | [     ]         |
| 27. Consequences (if any) of failure to make any such payment by Noteholder  | [     ]         |
| 28. Interest Rate to accrue on the first and subsequent instalments after the due date for payment of such instalments | [     ] percent |

**INSTALMENT NOTES**

- |   |         |
|---|---------|
| 29. Instalment Dates  | [     ] |
| 30. Instalment Amounts (expressed as a percentage of the aggregate Principal Amount of the Notes) | [     ] |

**FIXED RATE NOTES**

- |   |                            |
|---|----------------------------|
| 31. (a) Fixed Interest Rate   | [     ] percent, per annum |
| (b) Interest Payment Date(s)  | [Dates/Periods]            |
| (c) Initial Broken Amount   | [     ]                    |
| (d) Final Broken Amount   | [     ]                    |
| (e) Any other terms relating to the particular method of calculating interest | [     ]                    |

**FLOATING RATE NOTES**

- |  |  |
|--|--|
| 32. (a) Interest Payment Date(s)   | [Dates/Periods]  |
| (b) Interest Period(s)   | [     ]  |
| (c) Definitions of Business Day (if different from that set out in Condition 1 of the Tier 1 Conditions)   | [     ]  |
| (d) Minimum Interest Rate  | [     ] percent  |
| (e) Maximum Interest Rate  | [     ] percent  |
| (f) Other terms relating to the method of calculating interest (e.g., Day Count Fraction, rounding up provision, if different from Condition 9 of the Tier 1 Conditions) | [     ]  |
| 33. Manner in which the Interest Rate is to be determined  | [ISDA     Determination/Screen     Rate<br>Determination/other (insert details)]         |
| 34. Margin   | [(+/-) • percent to be added to/subtracted from the relevant (ISDA Rate/Reference Rate)] |
| 35. If ISDA Determination  |  |
| (a) Floating Rate  | [     ]  |
| (b) Floating Rate Option   | [     ]  |
| (c) Designated Maturity  | [     ]  |
| (d) Reset Date(s)  | [     ]  |
| 36. If Screen Determination  |  |
| (a) Reference Rate (including relevant period by   | [e.g. ZAR-JIBAR-SAFEX]   |

reference to which the Interest Rate is to be calculated)

- (b) Interest Determination Date(s) [ ]
- (c) Relevant Screen Page and Reference Code [ ]
37. If Interest Rate to be calculated otherwise than by reference the previous 2 sub-paragraphs, insert basis for determining Interest Rate/Margin/Fall back provisions [ ]
38. If different from the Calculation Agent, agent responsible for calculating amount of principal and interest [ ]

#### MIXED RATE NOTES

39. Period(s) during which the interest rate for the Mixed Rate Notes will be (as applicable) that for: [ ]
- (a) Fixed Rate Notes [ ]
- (b) Floating Rate Notes [ ]
- (c) Indexed Notes [ ]
- (d) Other Notes [ ]

#### EXCHANGEABLE NOTES

40. Mandatory Exchange applicable? [Yes/No]
41. Noteholders' Exchange Right applicable? [Yes/No]
42. Exchange Securities [ ]
43. Manner of determining Exchange Price [ ]
44. Exchange Period [ ]
45. Other [ ]

#### OTHER NOTES

46. If the Notes are not Partly Paid Notes, Instalment Notes, Fixed Rate Notes, Floating Rate Notes, Mixed Rate Notes or Exchangeable Notes or if the Notes are a combination of any of the foregoing, set out the relevant description and any additional Terms and Conditions relating to such Notes [ ]

#### PROVISIONS REGARDING REDEMPTION MATURITY

47. Prior consent of Registrar of Banks required for any redemption Yes
48. Redemption at the option of the Issuer: Yes
- (a) First Optional Redemption Date [ ]
- (b) Optional Redemption Date(s) [ ]
- (c) Optional Redemption Amount(s) and method, if any, of calculation of such amount(s) [ ]
- (d) Other terms applicable on Redemption [ ]
49. Early Redemption Amount(s): [ ]
- (a) Early Redemption Amount (Regulatory) [Principal amount plus accrued interest (if any) to the date fixed for redemption]
- (b) Early Redemption Amount (Tax) [Principal amount plus accrued interest (if any) to the date fixed for redemption]

#### GENERAL

50. Additional selling restrictions [ ]
51. (a) International Securities Numbering (SIN) [ ]
- (b) Stock Code [ ]



- |   |   |
|---|---|
| 52. Financial Exchange  | [     ]   |
| 53. Method of distribution  | [     ]   |
| 54. If syndicated, names of managers  |   |
| 55. Receipts attached? If yes, number of Receipts attached  | [Yes/No]<br>[     ]   |
| 56. Coupons attached? If yes, number of Coupons attached  | [Yes/No]<br>[     ]   |
| 57. Talons attached? If yes, number of Talons attached  | [Yes/No]<br>[     ]   |
| 58. Credit Rating assigned to Notes (if any)  | [     ]   |
| 59. Stripping of Receipts and/or Coupons prohibited as provided in Condition 17.4 of the Tier 1 Conditions? | [Yes/No]  |
| 60. Governing law (if the laws of South Africa are not applicable)  | [     ]   |
| 61. Other Banking Jurisdiction  | [     ]   |
| 62. Last Day to Register  | [     ], which shall mean that the "Books Closed Period" (during which the Register will be closed) will be from each Last Day to Register to the applicable Payment Day until the date of redemption |
| 63. Stabilisation Manager (if any)  | [     ]   |
| 64. Pricing Methodology   | [     ]   |
| 65. Authorised amount of the Programme  | [     ]   |
| 66. Other provisions  | [     ]   |

### Responsibility

The Issuer accepts responsibility for the information contained in this Applicable Pricing Supplement.

Application [is hereby] / [will not be] made to list this issue of Notes on [insert date].

### ABSA BANK LIMITED

#### Issuer

By: \_\_\_\_\_  
Director, duly authorised

By: \_\_\_\_\_  
Director, duly authorised

Date: \_\_\_\_\_

Date: \_\_\_\_\_

### TERMS AND CONDITIONS OF THE UNSUBORDINATED NOTES, TIER 2 NOTES AND TIER 3 NOTES

*The following are the Terms and Conditions of the Unsubordinated Notes, Tier 2 Notes and Tier 3 Notes to be issued by the Issuer. Notes will be issued in individual Tranches which, together with other Tranches, may form a Series of Notes. Before the Issuer issues any Tranche of Notes, the Issuer shall complete, sign and deliver to BESA and the Central Securities Depository an Applicable Pricing Supplement, based on the pro forma Pricing Supplement included in the Programme Memorandum, setting out details of such Notes. The Applicable Pricing Supplement in relation to any Tranche of Notes may specify other terms and conditions which shall, to the extent so specified or to the extent inconsistent with the following Terms and Conditions, replace or modify the following Terms and Conditions for the purpose of such Tranche of Notes. The Terms and Conditions set out below and the Applicable Pricing Supplement will be deemed to be incorporated by reference into each Certificate evidencing any Notes.*

## 1. INTERPRETATION

1.1	"Absa Capital"	Absa Capital, a division of Absa Bank Limited;
1.2	"Absa Group"	the Controlling Company, the Issuer and any of the respective wholly-owned consolidated subsidiaries of the Controlling Company or the Issuer;
1.3	"Absa Group Subsidiary"	a subsidiary of the Absa Group;
1.4	"Additional Conditions"	in relation to any issue of Notes, the proceeds of which are intended by the Issuer to qualify as Secondary Capital or Tertiary Capital, as the case may be, such conditions, in addition to the conditions specified in the applicable Capital Regulations, as may be prescribed by the Registrar of Banks for the proceeds of the issue of such Notes to qualify as Secondary Capital or Tertiary Capital, as the case may be, pursuant to the approval granted by the Registrar of Banks for the issue of such Notes, as specified in the Applicable Pricing Supplement;
1.5	"Agency Agreement"	the agreement concluded between the Issuer, the Paying Agent, the Calculation Agent and the Transfer Agent, or a separate agreement between the Issuer and each of the Paying Agent, the Calculation Agent and the Transfer Agent, unless the Issuer itself acts in any of the abovementioned capacities;
1.6	"Applicable Laws"	In relation to a person, all and any:
1.6.1		statutes and subordinate legislation;
1.6.2		regulations, ordinances and directives;
1.6.3		by-laws;
1.6.4		codes of practice, circulars, guidance notices, judgments and decisions of any competent authority; and
1.6.5		other similar provisions, from time to time;
1.7	"Applicable Pricing Supplement"	in relation to a Tranche of Notes, the pricing supplement completed and signed by the Issuer in relation to the issue of that Tranche of Notes, setting out such additional and/or other terms and conditions as are applicable to that Tranche of Notes, based upon the <i>pro forma</i> pricing supplement which is set out in the section of the Programme Memorandum headed " <i>Pro Forma Pricing Supplement</i> ";
1.8	"Applicable Procedures"	the rules and operating procedures for the time being of the Central Securities Depository, Settlement Agents, BESA and/or any Financial Exchange, as the case may be;
1.9	"Arranger"	Absa Capital;
1.10	"Arrears of Interest"	has the meaning given in Condition 6.1 ( <i>Optional deferral of interest on the Undated Tier 2 Notes</i> );
1.11	"Assets"	the total amount of the non consolidated gross assets of the Issuer as shown in the latest published audited non consolidated balance sheet of the Issuer, but adjusted for contingencies and subsequent events in such manner as the directors of the Issuer, the auditors of the Issuer or a liquidator, judicial manager, administrator or curator of the

		Issuer (if applicable) may determine;
1.12	<b>"Banks Act"</b>	the Banks Act, 1990;
1.13	<b>"Bearer"</b>	the bearer of a Certificate evidencing a Bearer Note or of a Receipt or Coupon attached to such Certificate on issue;
1.14	<b>"Bearer Note"</b>	a Note payable to the Bearer thereof, transferable by way of delivery in accordance with Condition 15.2 and the term <i>"Bearer Note"</i> shall include the rights to payment of any interest or principal represented by a Coupon or Receipt (if any) attached on issue to the Certificate evidencing such Bearer Note;
1.15	<b>"Beneficial Interest"</b>	in relation to a Note, an interest as co-owner of an undivided share in a Note represented by a Global Certificate or an Uncertificated Note, in accordance with the Securities Services Act;
1.16	<b>"BESA"</b>	the Bond Exchange of South Africa Limited (registration number 2007/034441/06), a duly licensed financial exchange in terms of the Securities Services Act, or any exchange which operates as a successor exchange to BESA;
1.17	<b>"Books Closed Period"</b>	the period during which the Transfer Agent will not record any transfer of Notes in the Register, as specified in the Applicable Pricing Supplement;
1.18	<b>"Business Day"</b>	a day (other than a Saturday or Sunday or public holiday within the meaning of the Public Holidays Act, 1994) which is a day on which commercial banks settle ZAR payments in Johannesburg or any Additional Business Centre specified in the Applicable Pricing Supplement save that if the Specified Currency is not ZAR, <i>"Business Day"</i> shall mean a day (other than a Saturday or Sunday) which is a day on which commercial banks and foreign exchange markets settle payments in the principal financial centre of the Specified Currency and in each (if any) Additional Business Centre, save further that if the Applicable Pricing Supplement so provides, <i>"Business Day"</i> shall include a Saturday;
1.19	<b>"Calculation Agent"</b>	Absa Capital unless the Dealer, or in the case of a syndicated issue, the lead manager, requests the Issuer to appoint or the Issuer elects to appoint, in relation to a particular Tranche or Series of Notes, another entity as Calculation Agent, in which event that other entity shall act, on execution of the Agency Agreement, as a Calculation Agent in respect of that Tranche or Series of Notes;
1.20	<b>"Call Option"</b>	has the meaning given in the Applicable Pricing Supplement;
1.21	<b>"Capital Regulations"</b>	at any time, any legislation, regulations, requirements, guidelines and policies relating to capital adequacy then in effect in South Africa in relation to banks registered under the Banks Act and licensed to conduct the business of a bank in South Africa (including the Additional Conditions (if any)) (or if the Issuer becomes domiciled in a jurisdiction other than South Africa, any legislation, regulations, requirements, guidelines and policies relating to capital adequacy then in effect in such other jurisdiction in relation to banks registered in, and licensed to conduct the business of a bank in, such other jurisdiction);
1.22	<b>"Central Securities Depository"</b>	Strate Limited (registration number 1998/022242/06), or its nominee, operating in terms of the Securities Services Act

a central securities depository, or any additional or alternate depository approved by the Issuer, the Dealer(s) and BESA;

1.23	<b>"Central Securities Depository's Nominee"</b>	any wholly owned subsidiary (as defined in the Companies Act) of the Central Securities Depository approved by the Transfer Agent (as defined in the Securities Services Act) for purposes of, and as contemplated in, section 40 of the Securities Services Act and any reference to "Central Securities Depository's Nominee" shall, whenever the context permits, be deemed to include a reference to its successor operating in terms of the Securities Services Act;
1.24	<b>"Certificate"</b>	a Global Certificate or Definitive Certificate, as the case may be;
1.25	<b>"Companies Act"</b>	the Companies Act, 1973;
1.26	<b>"Controlling Company"</b>	Absa Group Limited (registration number 1986/003934/06) and/or any other company which is a " <i>controlling company</i> " in relation to the Issuer as contemplated by the Banks Act;
1.27	<b>"Coupon"</b>	an interest coupon evidencing title to an interest payment in respect of an interest bearing Note which is a Bearer Note or an Order Note, attached on issue to the Certificate evidencing such interest bearing Note and any reference to a Coupon shall, unless the context otherwise requires, be deemed to include a reference to a Talon;
1.28	<b>"Covered Bonds"</b>	Bonds, notes or other securities (however defined) designated by the Issuer or any Material Subsidiary as covered bonds and secured on a segregated pool of assets;
1.29	<b>"Dated Secondary Capital"</b>	the proceeds of the issue of debt instruments contemplated in the definition of " <i>secondary capital</i> " in section 1(1) of the Banks Act that are term debt instruments which proceeds are intended, upon issue of such term debt instruments, to qualify as Secondary Capital in accordance with the Dated Tier 2 Capital Regulations;
1.30	<b>"Dated Subordinated Noteholder"</b>	the Holder of a Dated Subordinated Note;
1.31	<b>"Dated Subordinated Notes"</b>	collectively, Tier 3 Notes and Dated Tier 2 Notes;
1.32	<b>"Dated Tier 2 Capital Regulations"</b>	Regulation 38(14)(b) of the " <i>Regulations Relating to Banks</i> " promulgated under the Banks Act and such other provisions of the Capital Regulations with which Dated Tier 2 Notes must comply in order for the proceeds of the issue of such Notes to qualify as Secondary Capital;
1.33	<b>"Dated Tier 2 Noteholder"</b>	a Holder of a Dated Tier 2 Note;
1.34	<b>"Dated Tier 2 Notes"</b>	Notes specified as such in the Applicable Pricing Supplement and complying with the Dated Tier 2 Capital Regulations;
1.35	<b>"Dealer"</b>	Absa Capital and/or any other additional Dealer appointed under the Programme from time to time, which appointment may be for a specific issue or on an ongoing basis, subject to the Issuer's right to terminate the appointment of any Dealer;
1.36	<b>"Deferral Notice"</b>	has the meaning given in Condition 6.3 ( <i>Deferral of</i>

*Principal and Interest on the Tier 3 Notes*);

1.37	<b>"Deferred Payment"</b>	has the meaning given in Condition 6.3 ( <i>Deferral of Principal and Interest on the Tier 3 Notes</i> );
1.38	<b>"Deferred Payment Date"</b>	has the meaning given in Condition 6.3 ( <i>Deferral of Principal and Interest on the Tier 3 Notes</i> );
1.39	<b>"Definitive Certificate"</b>	means:
1.39.1		in respect of Registered Notes: a Note in the definitive registered form of a single Certificate and, in respect of Registered Notes which are listed, being a Certificate exchanged for a Beneficial Interest in the Notes represented by the Global Certificate in accordance with Condition 15 and any further Certificate issued in consequence of a transfer thereof;
1.39.2		in respect of Bearer Notes: a Note in the definitive bearer form of a single Certificate together with Coupons and/or Receipts, if applicable;
1.39.3		in respect of Order Notes: a Note in the definitive order form of a single Certificate together with Coupons and/or Receipts, if applicable;
1.40	<b>"Deposit"</b>	a " <i>deposit</i> " as defined in section 1(1) of the Banks Act;
1.41	<b>"Depositor"</b>	any Person having a claim against the Issuer in respect of a Deposit;
1.42	<b>"Early Redemption Amount (Regulatory)"</b>	in respect of each Note in a Tranche of Subordinated Notes, its Principal Amount (or the relevant part thereof) plus accrued interest (if any) to the date fixed for redemption or such other amount as may be specified in, or determined in accordance with, the Applicable Pricing Supplement, as the case may be;
1.43	<b>"Early Redemption Amount (Tax)"</b>	in respect of each Note in a Tranche of Notes (other than a Tranche of Zero Coupon Notes), its Principal Amount (or the relevant part thereof) or such other amount as may be specified in, or determined in accordance with, the Applicable Pricing Supplement, as the case may be, and, in respect of a Zero Coupon Note, the amount calculated in accordance with Condition 11.8 ( <i>Early redemption of Zero Coupon Notes</i> ) or such other amount as may be specified in, or determined in accordance with, the Applicable Pricing Supplement, as the case may be;
1.44	<b>"Early Termination Amount"</b>	in respect of each Note in a Tranche of Notes (other than a Tranche of Zero Coupon Notes), its Principal Amount (or the relevant part thereof) or such other amount as may be specified in, or determined in accordance with, the Applicable Pricing Supplement, as the case may be, and, in respect of a Zero Coupon Note, the amount calculated in accordance with Condition 11.8 ( <i>Early redemption of Zero Coupon Notes</i> ) or such other amount as may be specified in, or determined in accordance with, the Applicable Pricing Supplement, as the case may be;
1.45	<b>"Eligible Capital"</b>	Notes that are treated on issue by the Registrar of Banks for inclusion in the Primary Share Capital, Undated Secondary Capital, Dated Secondary Capital or Tertiary Capital, as the case may be, of the Issuer or the Controlling Company on a solo and/or consolidated basis, in accordance with the Capital Regulations;

1.46	<b>"Endorsement"</b>	an "indorsement", <i>mutatis mutandis</i> , within the meaning of the Bills of Exchange Act, 1964;
1.47	<b>"Endorsement in Blank"</b>	an Endorsement which specifies no named Payee;
1.48	<b>"Event of Default"</b>	any of the events described in Condition 13 ( <i>Events of Default</i> );
1.49	<b>"Exchangeable Notes"</b>	Notes which may be redeemed by the Issuer in the manner indicated in the Applicable Pricing Supplement by the delivery to the Noteholders of cash or of so many of the Exchange Securities as is determined in accordance with the Applicable Pricing Supplement;
1.50	<b>"Exchange Period"</b>	in respect of Exchangeable Notes to which the Noteholders' Exchange Right applies (as indicated in the Applicable Pricing Supplement), the period indicated in the Applicable Pricing Supplement during which such right may be exercised;
1.51	<b>"Exchange Price"</b>	the value indicated in the Applicable Pricing Supplement according to which the number of Exchange Securities which may be delivered in redemption of an Exchangeable Note will be determined;
1.52	<b>"Exchange Securities"</b>	the securities indicated in the Applicable Pricing Supplement which may be delivered by the Issuer in redemption of Exchangeable Notes to the value of the Exchange Price;
1.53	<b>"Extraordinary Resolution"</b>	a resolution passed at a properly constituted meeting of Noteholders or Noteholders of the relevant Series of Notes, as the case may be, by a majority consisting of not less than three-fourths of the votes cast at a poll by Noteholders or Noteholders of the relevant Series, as the case may be, present in person or by proxy;
1.54	<b>"Final Redemption Amount"</b>	in respect of any Note, its Principal Amount or such other amount as may be specified in, or determined in accordance with, the Applicable Pricing Supplement;
1.55	<b>"Financial Exchange"</b>	BESA or any other financial exchange(s) on which any Notes may be listed;
1.56	<b>"First Optional Redemption Date"</b>	has the meaning given in the Applicable Pricing Supplement;
1.57	<b>"Fixed Interest Rate"</b>	the rate or rates of interest applicable to Fixed Rate Notes, as specified in the Applicable Pricing Supplement;
1.58	<b>"Fixed Rate Notes"</b>	Notes which will bear interest at the Fixed Interest Rate, as specified in the Applicable Pricing Supplement;
1.59	<b>"Floating Rate Notes"</b>	Notes which will bear interest at a floating Interest Rate, as specified in the Applicable Pricing Supplement;
1.60	<b>"Global Certificate"</b>	as contemplated in the Terms and Conditions, a single certificate for a Tranche of Notes (other than those Notes within the Tranche represented by Definitive Certificates), registered in each case in the name of the Central Securities Depository's Nominee and representing those Notes issued in terms of the Terms and Conditions which are lodged and immobilised in the Central Securities Depository. A Global Certificate may be replaced by the issue of uncertificated securities in terms of section 37 of the Securities Services Act;

1.61	<b>"Group"</b>	the Issuer and its consolidated subsidiaries taken as a whole;
1.62	<b>"Income Tax Act"</b>	the Income Tax Act, 1962;
1.63	<b>"Implied Yield"</b>	the yield accruing on the Issue Price of Zero Coupon Notes, as specified in the Applicable Pricing Supplement;
1.64	<b>"Independent Investment Bank"</b>	the independent investment bank or financial institution of international repute selected and appointed by the Issuer (at the Issuer's expense) for the purposes of performing one or more of the functions expressed to be performed by such independent investment bank or financial institution under these Terms and Conditions;
1.65	<b>"Indexed Interest Notes"</b>	Notes in respect of which the Interest Amount is calculated by reference to such index and/or formula, as specified in the Applicable Pricing Supplement;
1.66	<b>"Indexed Note"</b>	an Indexed Interest Note and/or an Indexed Redemption Amount Note, as applicable;
1.67	<b>"Indexed Redemption Amount Notes"</b>	Notes in respect of which the Final Redemption Amount is calculated by reference to an index and/or a formula, as specified in the Applicable Pricing Supplement;
1.68	<b>"Instalment Amount"</b>	the amount expressed as a percentage of the Principal Amount of an Instalment Note, being an instalment of principal (other than the final instalment) on an Instalment Note;
1.69	<b>"Instalment Notes"</b>	Notes redeemable in Instalment Amounts by the Issuer on an amortised basis on different Instalment Dates, as indicated in the Applicable Pricing Supplement;
1.70	<b>"Interest Amount"</b>	the amount of interest payable in respect of each Principal Amount of Fixed Rate Notes, Floating Rate Notes and Indexed Notes, as determined in accordance with Condition 7.1, 7.2F and 7.4 respectively;
1.71	<b>"Interest Commencement Date"</b>	the first date from which interest on the Notes, other than Zero Coupon Notes, will accrue, as specified in the Applicable Pricing Supplement;
1.72	<b>"Interest Payment Date"</b>	the date(s) specified as such in the Applicable Pricing Supplement, or if no express such date(s) is/are specified in the Applicable Pricing Supplement, each date which occurs after a certain period following the preceding date upon which Interest Amounts are due and payable (such period as specified in the Applicable Pricing Supplement) or, in the case of the first Interest Payment Date, after the Interest Commencement Date;
1.73	<b>"Interest Period"</b>	the period(s) specified as such in the Applicable Pricing Supplement in respect of which interest accrues on Notes other than Zero Coupon Notes, commencing on and including the day of any Interest Payment Date and ending on but excluding the following Interest Payment Date provided that the first Interest Period shall be from and including the issue date of such Notes to but excluding the first Interest Payment Date thereafter;
1.74	<b>"Interest Rate"</b>	the rate or rates of interest applicable to Notes other than Zero Coupon Notes and Fixed Rate Notes;
1.75	<b>"ISDA"</b>	International Swaps and Derivatives Association, Inc.;

1.76	<b>"ISDA Definitions"</b>	the 2000 ISDA Definitions as published by ISDA (as amended, supplemented, revised or republished from time to time);
1.77	<b>"Issuer"</b>	Absa Bank Limited (registration number 1986/004794/06);
1.78	<b>"Junior Securities"</b>	the Ordinary Shares, other share capital or any other securities of the Issuer or any other member of the Absa Group, the proceeds of which qualify as Primary Share Capital of the Issuer or any other member of the Absa Group (as the case may be), ranking or expressed to rank junior to the Undated Tier 2 Notes either issued directly by the Issuer or, where issued by a member of the Absa Group, where the terms of the securities benefit from a guarantee or support agreement entered into by the Issuer or any other member of the Absa Group which ranks or is expressed to rank junior to the Undated Tier 2 Notes;
1.79	<b>"Last Day to Register"</b>	with respect to a particular Series of Notes (as reflected in the Applicable Pricing Supplement), the last date or dates preceding a Payment Day on which the Transfer Agent will accept Transfer Forms and record the transfer of Notes in the Register for that particular Series of Notes and whereafter the Register is closed for further transfers or entries until the Payment Day;
1.80	<b>"Liabilities"</b>	the total amount of the non consolidated gross liabilities of the Issuer as shown in the latest published audited non consolidated balance sheet of the Issuer, but adjusted for contingencies and subsequent events in such manner as the directors of the Issuer, the auditors of the Issuer or a liquidator or administrator of the Issuer (if applicable) may determine;
1.81	<b>"Mandatory Exchange"</b>	if indicated in the Applicable Pricing Supplement, the obligation of the Issuer to redeem Exchangeable Notes on the Maturity Date by delivery of Exchange Securities to the relevant Noteholders of Exchangeable Notes;
1.82	<b>"Material Subsidiary"</b>	any subsidiary of the Issuer:
1.82.1		whose gross revenues (consolidated in the case of a subsidiary which itself has Subsidiaries) represent no less than 10 percent. of the consolidated gross revenues of the Group, all as calculated by reference to the last audited (consolidated or, as the case may be, unconsolidated) accounts of the subsidiary and the latest audited consolidated accounts of the Issuer; or
1.82.2		whose total assets (consolidated in the case of a subsidiary which itself has Subsidiaries) represent no less than 10 percent. of the consolidated total assets of the Group, all as calculated by reference to the latest audited (consolidated or, as the case may be, unconsolidated) accounts of the subsidiary and the latest audited consolidated accounts of the Issuer; or
1.82.3		to which is transferred the whole or substantially the whole of the undertaking and assets of a subsidiary of the issuer which immediately before the transfer is a Material subsidiary of the Issuer (whereupon such transferor subsidiary shall cease to be a Material subsidiary until the next publication of audited consolidated accounts of the Issuer following such transfer);

*provided that*



1.82.4		in the case of a subsidiary acquired or an entity which becomes a subsidiary after the end of the financial period to which the latest audited consolidated accounts of the Issuer relate, the reference to the latest audited consolidated accounts for the purposes of the calculation above shall, until audited consolidated accounts of the issuer are published for the financial period in which the acquisition is made or, as the case may be, in which such entity becomes a subsidiary, be deemed to be a reference to the latest consolidated accounts of the Issuer adjusted in such manner as the Issuer shall consider appropriate to consolidate the latest audited accounts of such subsidiary in such accounts; and
1.82.5		a certificate signed by two directors of the issuer that in their opinion a subsidiary of the issuer is or is not or was or was not at any time or throughout any specified period a Material subsidiary shall, in the absence of manifest or proven error, be conclusive and binding;
1.83	<b>"Mixed Rate Notes"</b>	Notes which will bear interest over respective periods at differing interest rates applicable to any combination of Fixed Rate Notes, Floating Rate Notes, Zero Coupon Notes or Indexed Notes, each as indicated in the Applicable Pricing Supplement and as more fully described in Condition 7.3;
1.84	<b>"Noteholders"</b>	the holders of the Registered Notes (as recorded in the Register) and/or the Bearers of the Bearer Notes and/or the Payees of the Order Notes;
1.85	<b>"Noteholders' Exchange Right"</b>	if indicated in the Applicable Pricing Supplement, the right of Noteholders of Exchangeable Notes to elect to receive delivery of the Exchange Securities in lieu of cash from the Issuer upon redemption of such Notes;
1.86	<b>"Notes"</b>	the notes issued or to be issued by the Issuer under the Programme;
1.87	<b>"Optional Redemption Amount (Call)"</b>	in respect of any Note, its Principal Amount or such other amount as may be specified in, or determined in accordance with, the Applicable Pricing Supplement;
1.88	<b>"Optional Redemption Amount (Put)"</b>	in respect of any Unsubordinated Note, its Principal Amount or such other amount as may be specified in, or determined in accordance with, the Applicable Pricing Supplement;
1.89	<b>"Optional Redemption Date (Call)"</b>	has the meaning given in the Applicable Pricing Supplement;
1.90	<b>"Optional Redemption Date (Put)"</b>	has the meaning given in the Applicable Pricing Supplement;
1.91	<b>"Order Note"</b>	a Note payable to the Payee thereof, transferable by way of Endorsement and delivery in accordance with Condition 15.3 and the term "Order Note" shall include the rights to interest or principal represented by a Coupon or Receipt (if any) attached on issue to the Certificate evidencing such Order Note;
1.92	<b>"Ordinary Resolution"</b>	a resolution passed at a properly constituted meeting of Noteholders or Noteholders of the relevant Series of Notes, as the case may be, by a majority of the votes cast at a poll by Noteholders or Noteholders of the relevant Series of Notes, as the case may be, present in person or

by proxy;

1.93 **"Ordinary Shares"**

ordinary shares in the issued share capital of the Issuer;

1.94 **"Outstanding"**

in relation to the Notes, all the Notes issued other than:

1.94.1

those which have been redeemed in full;

1.94.2

those in respect of which the date for redemption in accordance with the Terms and Conditions has occurred and the redemption monies (including all interest (if any) accrued thereon to the date for such redemption and any interest (if any) payable under the Terms and Conditions after such date) remain available for payment against presentation of Certificates;

1.94.3

those which have been purchased and cancelled as provided in Condition 11.10;

1.94.4

those which have become prescribed under Condition 10;

1.94.5

Notes represented by those mutilated or defaced Certificates which have been surrendered in exchange for replacement Certificates pursuant to Condition 14;

1.94.6

(for the purpose only of determining how many Notes are Outstanding and without prejudice to their status for any other purpose) those Notes represented by Certificates alleged to have been lost, stolen or destroyed and in respect of which replacement Certificates have been issued pursuant to Condition 14,

provided that for each of the following purposes, namely:

- (a) the right to attend and vote at any meeting of the Noteholders; and
- (b) the determination of how many and which Notes are for the time being Outstanding for the purposes of Conditions 19 and 20,

all:

- (c) Notes (if any) which are for the time being held by the Issuer (subject to any applicable law) or by any person for the benefit of the Issuer and not cancelled (unless and until ceasing to be so held); and
- (d) Receipts and Coupons,

shall be deemed not to be Outstanding;

1.95 **"Parity Securities"**

any security issued by the Issuer or any other member of the Absa Group the proceeds of which qualify as Undated Secondary Capital from time to time outstanding or any other securities issued by the Issuer or any other member of the Absa Group ranking or expressed to rank equally as to payments with the Undated Tier 2 Notes and the proceeds of which qualify as Undated Secondary Capital or any securities issued by a member of the Absa Group that benefit from a guarantee or support agreement from the Issuer or any other member of the Absa Group which

ranks or is expressed to rank equally as to payments with the Undated Tier 2 Notes;

1.96	<b>"Participants"</b>	a person that holds in custody and administers securities or an interest in securities and that has been accepted by the Central Securities Depository as a participant in terms of the Securities Services Act;
1.97	<b>"Partly Paid Notes"</b>	Notes which are issued with the Issue Price partly paid and which Issue Price is paid up fully by the Noteholder in instalments (as indicated in the Applicable Pricing Supplement);
1.98	<b>"Payee"</b>	a person reflected (either as the subscriber or by way of Endorsement) as the payee on a Certificate evidencing an Order Note or a Receipt or Coupon attached thereto on issue and to whom such Certificate, Receipt or Coupon (as the case may be) has been delivered;
1.99	<b>"Paying Agent"</b>	the Issuer, unless the Issuer elects to appoint, in relation to a particular Tranche or Series of Notes, another entity as Paying Agent, in which event that other entity shall act as a Paying Agent in respect of that Tranche or Series of Notes;
1.100	<b>"Payment Day"</b>	any day which is a Business Day and upon which a payment is due by the Issuer in respect of any Notes;
1.101	<b>"Payment Issuer Shares"</b>	has the meaning given to it in Condition 6.4.2.1;
1.102	<b>"Payment Ordinary Shares"</b>	has the meaning given to it in Condition 6.4.2.2;
1.103	<b>"Primary Share Capital"</b>	<i>"primary share capital"</i> as defined in section 1(1) of the Banks Act;
1.104	<b>"Principal Amount"</b>	the nominal amount of each Note specified on the Certificate evidencing such Note;
1.105	<b>"Programme"</b>	the ZAR30,000,000,000 Domestic Medium Term Note Programme under which the Issuer may from time to time issue Notes;
1.106	<b>"Programme Memorandum"</b>	this document dated 11 August 2008, as amended and/or supplemented from time to time;
1.107	<b>"Put Option Notice"</b>	a notice which must be delivered to the Paying Agent by any Noteholder wanting to exercise a right to redeem an Unsubordinated Note at the option of the Noteholder;
1.108	<b>"Receipt"</b>	a receipt evidencing title to payment of an Instalment Amount payable on an Instalment Note which is a Bearer Note or Order Note, attached upon issue to the Certificate evidencing such Instalment Note;
1.109	<b>"Redemption Amount"</b>	as appropriate, the Final Redemption Amount, the Early Redemption Amount (Tax), the Early Redemption Amount (Regulatory), the Optional Redemption Amount (Call), the Optional Redemption Amount (Put), the Early Termination Amount or such other amount in the nature of a redemption amount as may be specified in, or determined in accordance with the provisions of, the Applicable Pricing Supplement;
1.110	<b>"Redemption Date"</b>	each date on which any Notes are to be redeemed, partially or finally, as the case may be, in terms of the Terms and Conditions;

1.111	<b>"Registrar of Banks"</b>	the Registrar of Banks in accordance with the Banks Act;
1.112	<b>"Register"</b>	the register maintained by the Transfer Agent in terms of Condition 16;
1.113	<b>"Registered Note"</b>	a Note issued in registered form and transferable in accordance with Condition 15.1;
1.114	<b>"Regulatory Change"</b>	a change in, or amendment to, the Capital Regulations or any change in the application of or official or generally published guidance or interpretation of the Capital Regulations, which change or amendment becomes, or would become, effective on or after the Issue Date;
1.115	<b>"Regulatory Event"</b>	an event which is deemed to have occurred if, with respect to the Notes of any Series which comprise a certain class of Eligible Capital on the Issue Date of the first Tranche of Notes of that Series, the proceeds of the issue of the Notes would, as a result of a Regulatory Change, no longer be eligible to qualify (save where such non-qualification is only as a result of any applicable limitation on the amount of such capital) for inclusion in that class of Eligible Capital of the Issuer or the Controlling Company on a solo and/or consolidated basis;
1.116	<b>"Relevant Date"</b>	in respect of any payment relating to the Notes, the date on which such payment first becomes due, except that, in relation to monies payable to the Central Securities Depository in accordance with these Terms and Conditions, it means the first date on which: (i) the full amount of such monies have been received by the Central Securities Depository, (ii) such monies are available for payment to the holders of Beneficial Interests, and (iii) notice to that effect has been duly given to such holders in accordance with the Applicable Procedures;
1.117	<b>"Relevant Indebtedness"</b>	means:
1.117.1		any present or future indebtedness (whether being principal, premium, interest or other amounts) for or in respect of any notes, bonds, debentures, debenture stock, loan stock or other securities (other than Covered Bonds) which are for the time being quoted, listed or ordinarily dealt in on any stock exchange, over the counter or other securities market and having a maturity in excess of one year, and denominated, payable or optionally payable in a currency other than in South African Rand; and
1.117.2		any guarantee or indemnity in respect of any such indebtedness;
1.118	<b>"Representative"</b>	a person duly authorised to act on behalf of a Noteholder, who may be regarded by the Issuer, the Transfer Agent and the Paying Agent (acting in good faith) as being duly authorised based upon the tacit or express representation thereof by such person, in the absence of express notice to the contrary from such Noteholder;
1.119	<b>"SARB"</b>	the South African Reserve Bank;
1.120	<b>"Secondary Capital"</b>	<i>"secondary capital"</i> as defined in section 1(1) of the Banks Act;
1.121	<b>"Securities Services Act"</b>	the Securities Services Act, 2004;
1.122	<b>"Security Interest"</b>	any mortgage, charge, lien, pledge or other security interest, but excluding any such security interest arising by

operation of law or under the standard or usual business condition of any person or entity with which the issuer or the relevant Material Subsidiary maintains a business relationship in the ordinary course of business;

1.123	<b>"Senior Creditors"</b>	means:
1.123.1		creditors of the Issuer who are unsubordinated creditors of the Issuer; and
1.123.2		creditors of the Issuer whose claims are, or are expressed to be, subordinated to the claims of other creditors, whether subordinated or unsubordinated, of the Issuer other than those whose claims rank, or are expressed to rank, <i>pari passu</i> with, or junior to, (1) the claims of the Undated Tier 2 Noteholders (in the case of Undated Tier 2 Notes) or (2) the claims of the Dated Tier 2 Noteholders (in the case of Dated Tier 2 Notes) or (3) the claims of the Tier 3 Noteholders (in the case of Tier 3 Notes), as the case may be;
1.124	<b>"Series"</b>	a Tranche of Notes together with any further Tranche or Tranches of Notes which are: (i) expressed to be consolidated and form a single series; and (ii) identical in all respects (including as to listing) except for their respective Issue Dates, Interest Commencement Dates and/or Issue Prices;
1.125	<b>"Settlement Agents"</b>	means those Participants which are approved by BESA or any other relevant financial exchange from time to time, in terms of the Applicable Procedures of BESA, as settlement agents to perform electronic settlement of funds and scrip on behalf of market participants;
1.126	<b>"Solvency Claims"</b>	has the meaning given to it in Condition 5.4.5 ( <i>Solvency Claims</i> );
1.127	<b>"Solvency Condition"</b>	has the meaning given to it in Condition 5.4.4 ( <i>Solvency Condition</i> );
1.128	<b>"Solvent Reconstruction"</b>	the event where an order is made or an effective resolution is passed for the winding-up of the Issuer, other than under or in connection with a scheme of amalgamation or reconstruction not involving a bankruptcy or insolvency where the obligations of the Issuer in relation to the outstanding Notes are assumed by the successor entity to which all, or substantially all, of the property, assets and undertaking of the Issuer are transferred or where an arrangement with similar effect not involving bankruptcy or insolvency is implemented;
1.129	<b>"South Africa"</b>	the Republic of South Africa;
1.130	<b>"Specified Currency"</b>	has the meaning given in the Applicable Pricing Supplement;
1.131	<b>"Specified Denomination"</b>	has the meaning given in the Applicable Pricing Supplement;
1.132	<b>"Specified Office"</b>	in relation to each of the Issuer, the Calculation Agent, Paying Agent and the Transfer Agent, the address of the office specified in respect of such entity at the end of the Programme Memorandum, or such other address as is notified by such entity (or, where applicable, a successor to such entity) to the Noteholders in accordance with the Terms and Conditions, as the case may be;

1.133	<b>"Subordinated Debt"</b>	in relation to Undated Tier 2 Notes, any subordinated term debt issued by the Issuer (including, without limitation, Dated Tier 2 Notes and Tier 3 Notes), the proceeds of which subordinated term debt qualify as Dated Secondary Capital or Tertiary Capital of the Issuer;
1.134	<b>"Subordinated Notes"</b>	any Tier 3 Notes, Dated Tier 2 Notes or Undated Tier 2 Notes;
1.135	<b>"Talon"</b>	a talon entitling the holder to receive further Coupons in relation to an interest bearing Bearer Note or Order Note, if indicated in the Applicable Pricing Supplement, attached to the Certificate evidencing such interest bearing Note;
1.136	<b>"Tax Jurisdiction"</b>	South Africa or any political subdivision or any authority thereof or therein having power to tax or any other jurisdiction in which payments by the Issuer become subject to tax;
1.137	<b>"Terms and Conditions"</b>	the terms and conditions incorporated in this section headed <i>"Terms and Conditions of the Unsubordinated, Tier 2 and Tier 3 Notes"</i> and in accordance with which the Notes will be issued;
1.138	<b>"Tertiary Capital"</b>	<i>"tertiary capital"</i> as defined in section 1(1) of the Banks Act;
1.139	<b>"Tier 2 Notes"</b>	collectively the Dated Tier 2 Notes and the Undated Tier 2 Notes;
1.140	<b>"Tier 3 Capital Regulations"</b>	Regulation 38(16) of the "Regulations Relating to Banks" promulgated under the Banks Act and such other provisions of the Capital Regulations with which Tier 3 Notes must comply in order for the proceeds of the issue of such Notes to qualify as Tertiary Capital;
1.141	<b>"Tier 3 Noteholder"</b>	a Holder of a Tier 3 Note;
1.142	<b>"Tier 3 Notes"</b>	Notes specified as such in the Applicable Pricing Supplement and complying with the Tier 3 Capital Regulations;
1.143	<b>"Tranche"</b>	in relation to any particular Series, all Notes which are identical in all respects (including as to listing);
1.144	<b>"Transfer Agent"</b>	Absa Secretarial Services (Proprietary) Limited (registration number 1973/014516/07), unless the Issuer elects to appoint, in relation to a particular Tranche or Series of Notes, another entity as Transfer Agent, in which event that other entity shall act as Transfer Agent in respect of that Tranche or Series of Notes;
1.145	<b>"Transfer Form"</b>	the written form for the transfer of a Registered Note, in the form approved by the Transfer Agent, and signed by the transferor and transferee;
1.146	<b>"Uncertificated Notes"</b>	a Note which is uncertificated as contemplated in Section 37 of the Securities Services Act;
1.147	<b>"Undated Secondary Capital"</b>	the proceeds of the issue of hybrid-debt instruments that combine features of equity instruments and debt instruments contemplated in section 1(1) of the Banks Act which proceeds are intended, upon issue of such hybrid-debt instruments, to qualify as Secondary Capital in accordance with the Undated Tier 2 Capital Regulations;

1.148	<b>"Undated Tier 2 Capital Regulations"</b>	Regulation 38(14)(a) of the "Regulations Relating to Banks" promulgated under the Banks Act and such other provisions of the Capital Regulations with which Undated Tier 2 Notes must comply in order for the proceeds of the issue of such Notes to qualify as Secondary Capital;
1.149	<b>"Undated Tier 2 Noteholder"</b>	a Holder of an Undated Tier 2 Note;
1.150	<b>"Undated Tier 2 Notes"</b>	Notes specified as such in the Applicable Pricing Supplement and complying with the Undated Tier 2 Capital Regulations;
1.151	<b>"Unsubordinated Notes"</b>	Notes issued with the status and characteristics set out in Condition 5.1 ( <i>Status of the Unsubordinated Notes</i> ) as specified in the Applicable Pricing Supplement;
1.152	<b>"ZAR"</b>	the lawful currency of South Africa, being South African Rand, or any successor currency;
1.153	<b>"ZAR-JIBAR-SAFEX"</b>	the mid-market rate for deposits in ZAR for a period of the Designated Maturity which appears on the Reuters Screen SAFEX Page as at 12h00, South African time, on the relevant date, or any successor rate; and
1.154	<b>"Zero Coupon Notes"</b>	Notes which will be offered and sold at a discount to their Principal Amount or at par and will not bear interest other than in the case of late payment.
1.155	In the Terms and Conditions, unless inconsistent with the context, any reference to:	
1.155.1	one gender include a reference to the others;	
1.155.2	the singular includes the plural and <i>vice versa</i> ;	
1.155.3	natural persons include juristic persons and vice versa;	
1.155.4	a <b>subsidiary</b> or <b>holding company</b> shall be interpreted in accordance with section 1 of the Companies Act;	
1.155.5	any agreement or instrument is a reference to that agreement or instrument as amended, supplemented, varied, novated, restated or replaced from time to time, and <b>amended</b> or <b>amendment</b> will be construed accordingly;	
1.155.6	a provision of law is a reference to that provision as amended or re-enacted, and includes any subordinate legislation;	
1.155.7	a <b>regulation</b> includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;	
1.155.8	<b>assets</b> includes present and future properties, revenues and rights of every description;	
1.155.9	<b>disposal</b> means a sale, transfer, grant, lease or other disposal (whether voluntary or involuntary);	
1.155.10	<b>indebtedness</b> includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;	
1.155.11	an <b>authorisation</b> includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration or notarisation;	
1.155.12	a Default being <b>continuing</b> means that it has not been remedied or waived;	
1.155.13	a Party or any other person includes that person's permitted successor, transferee, cessionary and/or delegate; and	
1.155.14	a time of day is a reference to South African time.	

- 1.156 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect must be given to it as if it were a substantive provision in the body of the agreement, notwithstanding that it is contained in the interpretation clause.
- 1.157 Headings are inserted for the sake of convenience only and do not in any way affect the interpretation of the Terms and Conditions.
- 1.158 The use of the word **including** followed by specific examples will not be construed as limiting the meaning of the general wording preceding it, and the *eiusdem generis* rule must not be applied in the interpretation of such general wording or such specific examples.
- 1.159 The rule of construction that an agreement is to be interpreted against the party responsible for the drafting or preparation thereof must not be used in the interpretation of the Terms and Conditions.

## 2. ISSUE

- 2.1 Subject to the prior consent of the Registrar of Banks (to the extent required by Applicable Laws), Notes may be issued by the Issuer in Tranches pursuant to the Programme. A Tranche of Notes may, together with a further Tranche or Tranches, form a Series of Notes issued under the Programme.
- 2.2 The Applicable Pricing Supplement for each Tranche of Notes is incorporated in these Terms and Conditions for the purposes of those Notes and supplements these Terms and Conditions. The Applicable Pricing Supplement may specify other terms and conditions (which may replace, modify or supplement these Terms and Conditions), in which event such other terms and conditions shall, to the extent so specified in the Applicable Pricing Supplement or to the extent inconsistent with these Terms and Conditions, replace, modify or supplement these Terms and Conditions for the purpose of such Tranche of Notes.
- 2.3 The Noteholders are deemed to have notice of, and are entitled to the benefit of, and are subject to, all the provisions of the Applicable Pricing Supplement.

## 3. FORM AND DENOMINATION

### 3.1 General

- 3.1.1 Notes will be issued as Registered Notes, Bearer Notes or Order Notes.
- 3.1.2 All payments in relation to the Notes will be made in the Specified Currency.
- 3.1.3 Each Note shall be an Unsubordinated Note or a Subordinated Note, as indicated in the Applicable Pricing Supplement. Any Note may be a Partly Paid Note, Instalment Note or an Exchangeable Note.
- 3.1.4 Each Note, whether an Unsubordinated Note or a Subordinated Note, may be a Fixed Rate Note, a Floating Rate Note, a Zero Coupon Note, an Indexed Interest Note, an Indexed Redemption Amount Note, a Mixed Rate Note or a combination of any of the foregoing or such other types of Note as may be determined by the Issuer, as indicated in the Applicable Pricing Supplement.
- 3.1.5 Notes will be issued in such denominations as may be determined by the Issuer and as specified in the Applicable Pricing Supplement, provided that the Notes shall not be issued in denominations of less than ZAR1,000,000.
- 3.1.6 Listed and/or unlisted Notes may be issued under the Programme.

### 3.2 Registered Notes

- 3.2.1 The Notes in a Tranche of Registered Notes will be issued in the form of (i) Definitive Certificates registered in the name, and for the account of, the relevant Noteholder or (ii) a Global Certificate which will be deposited in the Central Securities Depository and registered in the name, and for the account of, the Central Securities Depository's Nominee or (iii) uncertificated securities in terms of section 37 of the Securities Services Act which will be held in the Central Securities Depository and registered in the name of, and for the account of, the Central Securities Depository. The Central Securities Depository will hold the Notes subject to the Securities Services Act and the Applicable Procedures. A Global Certificate may be replaced by uncertificated securities in terms of section 37 of the Securities Services Act.
- 3.2.2 An owner of a Beneficial Interest in the Notes represented by the Global Certificate shall be entitled to exchange such Beneficial Interest for a Definitive Certificate in accordance with Condition 14.



### 3.3 **Bearer Notes and Order Notes**

Bearer Notes or Order Notes will be evidenced by Definitive Certificates. Bearer Notes or Order Notes, other than Zero Coupon Notes, may have Coupons and (if indicated in the Applicable Pricing Supplement), Talons attached to the Certificate on issue. Instalment Notes which are Bearer Notes or Order Notes may have Receipts attached to the Certificate on issue.

## 4. **TITLE**

### 4.1 **Registered Notes**

- 4.1.1 Subject as set out below, title to Registered Notes will pass upon registration of transfer in the Register in accordance with Condition 15.1.
- 4.1.2 The Issuer, the Transfer Agent and the Paying Agent shall recognise a Noteholder as the sole and absolute owner of the Notes registered in that Noteholder's name in the Register (notwithstanding any notice of ownership or writing thereon or notice of any previous loss or theft thereof) and shall not be bound to enter any trust in the Register or to take notice of or to accede to the execution of any trust, express, implied or constructive, to which any Note may be subject.
- 4.1.3 Beneficial Interests which are held by Participants will be held directly through the Central Securities Depository, and the Central Securities Depository will hold such Beneficial Interests, on behalf of such Participants, through the central securities accounts maintained by the Central Securities Depository for such Participants.
- 4.1.4 Beneficial Interests which are held by clients of Participants will be held indirectly through such Participants, and such Participants will hold such Beneficial Interests, on behalf of such clients, through the securities accounts maintained by such Participants for such clients. The clients of Participants may include the holders of Beneficial Interests or their custodians. The clients of Participants, as the holders of Beneficial Interests or as custodians for such holders, may exercise their rights in respect of the Notes held by them in the Central Securities Depository only through their Participants.
- 4.1.5 A certificate or other document issued by the Central Securities Depository or the relevant Participant, as the case may be, as to the Principal Amount of such Notes standing to the account of such person shall be prima facie proof of such Beneficial Interest.
- 4.1.6 Beneficial Interests may be transferred only in accordance with the Applicable Procedures. Such transfers will not be recorded in the Register and the Central Securities Depository's Nominee will continue to be reflected in the Register as the registered holder of the relevant Notes, notwithstanding such transfers.
- 4.1.7 Any reference in these Terms and Conditions to the relevant Participant shall, in respect of Beneficial Interests, be a reference to the Participant appointed to act as such by a holder of such Beneficial Interest.

### 4.2 **Bearer Notes**

- 4.2.1 Title to Bearer Notes (including rights to Instalment Amounts and/or interest thereon, as applicable) will pass by delivery of the Certificate evidencing such Note or of the Receipt and/or Coupon relating thereto, as the case may be, in accordance with Condition 15.2. The Issuer, the Transfer Agent and the Paying Agent may deem and treat the Bearer of any such Certificate, Receipt or Coupon as the absolute owner thereof (whether or not overdue and notwithstanding any notice of ownership or writing thereon or notice of any previous loss or theft thereof) for all purposes.
- 4.2.2 Title to Bearer Notes is subject to the Bearer obtaining the exemption from the National Treasury in respect of the prohibition on dealing in bearer securities as set out in regulation 15 of the Exchange Control Regulations.

### 4.3 **Order Notes**

- 4.3.1 Title to Order Notes (including rights to Instalment Amounts and/or interest thereon, as applicable) will initially pass by Endorsement and delivery of the Certificate evidencing such Note or of the Receipt and/or Coupon relating thereto, as the case may be, in accordance with Condition 15.3. Any Certificate evidencing an Order Note or such Receipt or Coupon upon which the last Endorsement is an Endorsement in Blank shall be treated as a Bearer Note, for so long as it is not subject to further Endorsement.

4.3.2 The Issuer, the Transfer Agent and the Paying Agent may deem and treat the person who from the face of the Certificate, Receipt or Coupon relating to an Order Note appears to be the Payee thereof as the absolute owner thereof (whether or not overdue and notwithstanding any notice of ownership or notice of any previous loss or theft thereof) for all purposes and payment to such person or their Representative shall discharge the Issuer from all liability to the Payee in relation to such Certificate, Receipt or Coupon, as the case may be, even if such Endorsement has been forged or made without authority.

4.3.3 Provided the Issuer pays any amount due upon presentation and surrender of a Certificate evidencing an Order Note, or any Receipt or Coupon attached thereto on issue, in good faith, it shall not be incumbent upon the Issuer or the Transfer Agent to determine or prove that the Endorsement of the Payee making such Endorsement was made by or under the authority of the person whose Endorsement it purports to be.

## 5. STATUS

### 5.1 Status of the Unsubordinated Notes

5.1.1 *Application:* This Condition 5.1 applies only to Unsubordinated Notes.

5.1.2 *Status of the Unsubordinated Notes:* The Unsubordinated Notes constitute direct, unconditional, unsubordinated and (subject to the provisions of Condition 23 (*Negative Pledge*)) unsecured obligations of the Issuer which will at all times rank *pari passu* without preference or priority among themselves and at least *pari passu* with all other present and future unsecured and unsubordinated obligations of the Issuer, save for such obligations as may be preferred by provisions of law that are both mandatory and of general application.

### 5.2 Status of the Tier 3 Notes

5.2.1 *Application:* This Condition 5.2 applies only to Tier 3 Notes.

5.2.2 *Status of the Tier 3 Notes:* The Tier 3 Notes constitute direct, unsecured and, in accordance with Condition 5.2.3 (*Subordination*) below, subordinated obligations of the Issuer and rank *pari passu* without any preference among themselves and (save for those that have been accorded by law preferential rights) at least *pari passu* with all other claims of creditors of the Issuer which rank or are expressed to rank (and which are entitled to rank) *pari passu* with the Dated Subordinated Notes.

5.2.3 *Subordination:* The claims of Tier 3 Noteholders entitled to be paid amounts due in respect of the Tier 3 Notes are subordinated to the claims of Depositors and Senior Creditors and, accordingly:

- (a) no Tier 3 Noteholder shall be entitled to prove or tender to prove a claim in respect of the Tier 3 Notes, in the event of the dissolution of the Issuer or if the Issuer is placed into liquidation or is wound-up or placed under judicial management or curatorship;
- (b) no amount due under the Tier 3 Notes shall be eligible for set-off, counterclaim, abatement or other similar remedy which a Tier 3 Noteholder might otherwise have under the laws of any jurisdiction in respect of the Tier 3 Notes nor shall any amount due under the Tier 3 Notes be payable to any Tier 3 Noteholder; and
- (c) subject to Applicable Law, a Tier 3 Noteholder may not exercise or claim any right of set-off in respect of any amount in respect of the principal of and/or interest on the Tier 3 Notes owed to it by the Issuer and each Tier 3 Noteholder shall, by virtue of its subscription, purchase or holding of any Tier 3 Notes, be deemed to have waived all such rights of set-off and, to the extent that any set-off takes place, whether by operation of law or otherwise, between: (aa) any amount in respect of the principal and/or interest on the Tier 3 Notes owed by the Issuer to a Tier 3 Noteholder; and (bb) any amount owed to the Issuer by such Tier 3 Noteholder, such Tier 3 Noteholder will immediately transfer such amount which is set-off to the Issuer or, in the event of its dissolution, winding-up, liquidation, judicial management or curatorship (as the case may be), the liquidator, administrator or other relevant insolvency official of the Issuer, to be held on trust for the Depositors and Senior Creditors,

until the claims of Depositors and Senior Creditors which are admissible in any such dissolution, liquidation, winding-up, judicial management or curatorship have been paid or discharged in full.

### 5.3 Status of the Dated Tier 2 Notes

5.3.1 *Application:* This Condition 5.3 applies only to Dated Tier 2 Notes.

5.3.2 *Status of the Dated Tier 2 Notes:* The Dated Tier 2 Notes constitute direct, unsecured and, in accordance with Condition 5.3.3 (*Subordination*) below, subordinated obligations of the Issuer and rank *pari passu* without any preference among themselves and (save for those that have been accorded by law preferential rights) at least *pari passu* with all other claims of creditors of the Issuer which rank or are expressed to rank (and which are entitled to rank) *pari passu* with the Dated Subordinated Notes.

5.3.3 *Subordination:* The claims of Tier 2 Noteholders entitled to be paid amounts due in respect of the Tier 2 Notes are subordinated to the claims of Depositors and Senior Creditors and, accordingly, in the event of the dissolution of the Issuer or if the Issuer is placed into liquidation or is wound-up or placed under judicial management or curatorship (in each case other than pursuant to a Solvent Reconstruction):

- (a) no Tier 2 Noteholder shall be entitled to prove or tender to prove a claim in respect of the Tier 2 Notes, in the event of the dissolution of the Issuer or if the Issuer is placed into liquidation or is wound-up or placed under judicial management or curatorship;
- (b) no amount due under the Tier 2 Notes shall be eligible for set-off, counterclaim, abatement or other similar remedy which a Tier 2 Noteholder might otherwise have under the laws of any jurisdiction in respect of the Tier 2 Notes nor shall any amount due under the Tier 2 Notes be payable to any Tier 2 Noteholder;
- (c) subject to Applicable Law, a Tier 2 Noteholder may not exercise or claim any right of set-off in respect of any amount in respect of the principal of and/or interest on the Tier 2 Notes owed to it by the Issuer and each Tier 2 Noteholder shall, by virtue of its subscription, purchase or holding of any Tier 2 Notes, be deemed to have waived all such rights of set-off and, to the extent that any set-off takes place, whether by operation of law or otherwise, between: (aa) any amount in respect of the principal and/or interest on the Tier 2 Notes owed by the Issuer to a Tier 2 Noteholder; and (bb) any amount owed to the Issuer by such Tier 2 Noteholder, such Tier 2 Noteholder will immediately transfer such amount which is set-off to the Issuer or, in the event of its dissolution, winding-up, liquidation, judicial management or curatorship (as the case may be), the liquidator, administrator or other relevant insolvency official of the Issuer, to be held on trust for the Depositors and Senior Creditors,

until the claims of Depositors and Senior Creditors which are admissible in any such dissolution, liquidation, winding-up, judicial management or curatorship have been paid or discharged in full.

#### 5.4 **Status of the Undated Tier 2 Notes**

5.4.1 *Application:* This Condition 5.4 applies only to Undated Tier 2 Notes.

5.4.2 *Status of the Undated Tier 2 Notes:* The Undated Tier 2 Notes constitute direct, unsecured and, in accordance with Condition 5.4.3 (*Subordination*) below, subordinated obligations of the Issuer and rank *pari passu* without any preference among themselves and (save for those that have been accorded by law preferential rights) at least *pari passu* with all other claims of creditors of the Issuer which rank or are expressed to rank (and which are entitled to rank) *pari passu* with the Undated Tier 2 Notes.

5.4.3 *Subordination:* The claims of Undated Tier 2 Noteholders entitled to be paid amounts due in respect of the Undated Tier 2 Notes are subordinated to the claims of Depositors, Senior Creditors and the holders of Subordinated Debt and, accordingly:

- (a) no Undated Tier 2 Noteholder shall be entitled to prove or tender to prove a claim in respect of the Undated Tier 2 Notes, in the event of the dissolution of the Issuer or if the Issuer is placed into liquidation, or is wound-up or placed under judicial management or curatorship;
- (b) no amount due under the Undated Tier 2 Notes shall be eligible for set-off, counterclaim, abatement or other similar remedy which an Undated Tier 2 Noteholder might otherwise have under the laws of any jurisdiction in respect of the Undated Tier 2 Notes nor shall any amount due under the Undated Tier 2 Notes be payable to any Undated Tier 2 Noteholder;
- (c) subject to Applicable Law, an Undated Tier 2 Noteholder may not exercise or claim any right of set-off in respect of any amount in respect of the principal of and/or interest on the Undated Tier 2 Notes owed to it by the Issuer and each Undated Tier 2 Noteholder shall, by virtue of its subscription, purchase or holding of any Undated Tier 2 Notes, be deemed to have waived all such rights of set-off and, to the extent that any set-off takes place, whether by operation of law or otherwise, between: (aa) any amount in respect of the principal and/or interest on the Undated Tier 2 Notes owed by the Issuer to an Undated Tier 2 Noteholder; and (bb) any amount owed to the Issuer by such Undated Tier 2 Noteholder, such Undated Tier 2 Noteholder will immediately transfer such amount which is set-off to the Issuer or, in the event of its dissolution, winding-up, liquidation, judicial management or curatorship (as the case may be), the liquidator, administrator

or other relevant insolvency official of the Issuer, to be held on trust for the Depositors, Senior Creditors and holders of Subordinated Debt,

until the claims of Depositors, Senior Creditors and the holders of Subordinated Debt which are admissible in any such dissolution, liquidation, winding-up, judicial management or curatorship have been paid or discharged in full.

5.4.4 **Solvency Condition:** Payments in respect of the principal of and interest (including any Arrears of Interest and payment of any additional amounts pursuant to Condition 13.3 (*Gross-up*) on the Undated Tier 2 Notes ) are, in addition to the right of the Issuer to defer interest in accordance with Condition 6.1 (*Optional deferral of interest on the Undated Tier 2 Notes*), conditional upon the Issuer being solvent at the time of payment by the Issuer, and no principal or interest on the Undated Tier 2 Notes (including any Arrears of Interest) shall be due and payable in respect of the Undated Tier 2 Notes except to the extent that the Issuer could make such payment and still be solvent immediately thereafter. For the purposes of this Condition 5.4, the Issuer shall be solvent if (1) it is able to pay its debts owed to Depositors, Senior Creditors and the holders of Subordinated Debt as they fall due and (2) its Assets exceed its Liabilities to Depositors, Senior Creditors and the holders of Subordinated Debt (the "**Solvency Condition**"). A report as to the solvency of the Issuer made by 2 directors of the Issuer or, if the Issuer is in liquidation, its liquidator or, if in judicial management, its judicial manager or, if under curatorship, its curator shall, in the absence of manifest error, be treated and accepted by the Issuer and the Noteholders as correct and sufficient evidence of such solvency.

5.4.5 **Solvency Claims:** Amounts representing any payments of principal or interest in respect of which the Solvency Condition is not satisfied on the date upon which the same would otherwise be due and payable ("**Solvency Claims**") will be payable by the Issuer (1) subject to Condition 5.4.3 (*Subordination*), in a winding-up, liquidation, judicial management or curatorship of the Issuer and (2) subject to satisfying the Solvency Condition, on any redemption pursuant to Condition 11.2 (*Redemption for tax reasons*), Condition 11.3 (*Redemption for regulatory reasons*) or Condition 11.4 (*Redemption at the option of the Issuer*), provided that in the event that, prior to any winding-up, liquidation, judicial management or curatorship of the Issuer, the Issuer shall again be solvent and would be solvent immediately after the making of such payment of Solvency Claims, then the Issuer shall promptly notify the Noteholders in accordance with Condition 18 (*Notices*), the Transfer Agent and the Paying Agent of such fact and the Solvency Claims shall, subject to satisfying the Solvency Condition, be due and payable on the 16th Business Day after the Issuer shall have given such notice. A Solvency Claim shall not bear interest unless and only so long as the Issuer shall be solvent once again, in which case interest shall accrue on any such Solvency Claim from (and including) the date on which the Issuer is so solvent again to (but excluding) the date on which such Solvency Claim is paid. Any such interest shall accrue at a rate equal to the then applicable rate of interest determined in accordance with Condition 7 (*Interest*). In the event that the Issuer shall be so solvent once again, the Issuer may not declare or pay a dividend (in accordance with Condition 6.2 (*Restrictions following non payment of interest on Undated Tier 2 Notes*)) from the date that the Issuer is so solvent again until the date on which the Solvency Claim and any relevant interest on the Solvency Claim is paid.

For the avoidance of doubt, if the Issuer would otherwise not be solvent for the purposes of the above, any sums which would otherwise be payable in respect of the Undated Tier 2 Notes will be available to be put towards the losses of the Issuer.

## 5.5 Capital Regulations and Additional Conditions

In order for the proceeds of the issuance of the Notes to qualify as Secondary Capital or Tertiary Capital, as the case may be, Subordinated Notes must comply with the applicable Capital Regulations (including the Additional Conditions (if any) prescribed by the Registrar of Banks in respect of a particular Tranche of Subordinated Notes). The Issuer will specify in the Applicable Pricing Supplement whether any issue of Notes is an issue of Dated Tier 2 Notes the proceeds of which are intended to qualify as Dated Secondary Capital or Undated Tier 2 Notes the proceeds of which are intended to qualify as Undated Secondary Capital or an issue of Tier 3 Notes the proceeds of which are intended to qualify as Tertiary Capital. The Additional Conditions (if any) prescribed by the Registrar of Banks in respect of Subordinated Notes will be specified in the Applicable Pricing Supplement or a supplement to the Programme Memorandum.

## 6. INTEREST AND PRINCIPAL PAYMENTS ON THE SUBORDINATED NOTES

### 6.1 Optional deferral of interest on the Undated Tier 2 Notes

This Condition 6.1 applies to Undated Tier 2 Notes only. Interest payments on the Undated Tier 2 Notes will be cumulative. The Issuer shall be obliged to pay interest on each Interest Payment Date unless:

6.1.1 the Issuer elects to defer the relevant Interest Amount on such Interest Payment Date;

6.1.2 the Issuer is in breach of either of the Capital Regulations or the Solvency Condition on the Business Day prior to such Interest Payment Date or would be in breach of the Capital Regulations or the Solvency Condition if the relevant Interest Amount were paid on such Interest Payment Date; or

6.1.3 at any time the Registrar of Banks imposes a mandatory prohibition on the payment of interest.

If the Issuer is not obliged to pay the relevant Interest Amount in respect of an Interest Period in accordance with this Condition 6.1 then any such failure to pay such Interest Amount shall not constitute a default by the Issuer or any other breach of obligations under the Undated Tier 2 Notes or for any other purpose and an Undated Tier 2 Noteholder will have no claim in respect of any such non-payment.

If the Issuer elects pursuant to the provisions of Condition 6.1.1 to defer the payment of interest on an Interest Payment Date, it shall give notice of such election to the Undated Tier 2 Noteholders in accordance with Condition 18 (*Notices*), to the Paying Agent and to the Transfer Agent not less than 30 days prior to the relevant Interest Payment Date (or such shorter notice period as may be required by the Capital Regulations or the Registrar of Banks). If the Issuer is not obliged, pursuant to the provisions of Condition 6.1.2 or Condition 6.1.3, to pay any interest on any Interest Payment Date, it shall give notice of such fact to the Undated Tier 2 Noteholders in accordance with Condition 18 (*Notices*) and, in respect of Condition 6.1.3, to the Registrar of Banks.

Any interest in respect of the Undated Tier 2 Notes not paid on any Interest Payment Date, together with any other interest in respect thereof not paid on any other Interest Payment Date, shall, so long as the same remains unpaid, constitute "**Arrears of Interest**". Arrears of Interest may, at the option of the Issuer but subject to the restrictions of this Condition 6.1 and subject to Condition 5.3.3 (*Subordination*), be paid in whole or in part at any time upon the expiration of not less than 14 days' notice to such effect given to the Undated Tier 2 Noteholders in accordance with Condition 18 (*Notices*), but all Arrears of Interest in respect of Undated Tier 2 Notes for the time being outstanding shall (subject to the restrictions of this Condition 6.1 and subject to Condition 5.3.3 (*Subordination*)) become due in full on whichever is the earlier of:

- (i) the date of redemption or substitution of the Undated Tier 2 Notes;
- (ii) subject to Condition 10 (*Prescription*), the Interest Payment Date falling on or nearest to the tenth anniversary of the date on which such amount was deferred;
- (iii) the commencement of a winding-up (other than pursuant to a Solvent Reconstruction) of the Issuer.

If notice is given by the Issuer of its intention to pay the whole or any part of any Arrears of Interest in respect of the Undated Tier 2 Notes, the Issuer shall be obliged (subject to the restrictions of this Condition 6.1 and subject to Condition 5.4.3 (*Subordination*)) to do so upon the expiration of such notice. Where Arrears of Interest are paid in part, each part payment shall be in respect of the full amount of the Arrears of Interest accrued due to the relevant Interest Payment Date or consecutive Interest Payment Dates furthest from the date of payment. Arrears of Interest shall not themselves bear interest.

## 6.2 **Restrictions following non payment of interest on Undated Tier 2 Notes**

If, on any Interest Payment Date (the "**Relevant Interest Payment Date**"), the Interest Amount in respect of any Undated Tier 2 Notes shall not have been paid in full pursuant to Condition 6.1 (*Optional deferral of interest on the Undated Tier 2 Notes*), then from such Relevant Interest Payment Date until the date on which the full amount of such Arrears of Interest has been received by the Undated Tier 2 Noteholders and is no longer outstanding and no other Arrears of Interest remains unpaid, neither the Issuer nor the Controlling Company (and the Controlling Company shall procure that no Absa Group Subsidiary shall) (a) declare or pay a distribution or dividend or pay any interest on Junior Securities or Parity Securities (other than an instrument under the terms of which the Issuer or other member of the Absa Group must declare or pay a distribution or dividend or pay interest or a final dividend declared by the Controlling Company before such Relevant Interest Payment Date, or intra-group dividends between wholly-owned Absa Group Subsidiaries and to Absa Group holding companies, which can be paid at any time), or (b) redeem, purchase, reduce or otherwise acquire any Junior Securities or Parity Securities or any securities of any of its subsidiary undertakings benefiting from a guarantee from any member of the Absa Group ranking, as to the right of repayment of principal, or in the case of any such guarantee, as to the payment of sums under such guarantee, *pari passu* with or junior to the Undated Tier 2 Notes.

## 6.3 **Deferral of Principal and Interest on Tier 3 Notes**

This Condition 6.3 applies to Tier 3 Notes only. If the Issuer's qualifying capital falls below or is likely to fall below the minimum amount prescribed by the Capital Regulations and as a consequence of this event the Registrar of Banks, pursuant to the Tier 3 Capital Regulations, requires the Issuer to defer the due date for payment of any principal (or any portion thereof) and/or any interest (or any portion thereof) payable in respect of such Tier 3 Notes (the "**Deferred Payment**"), the Issuer shall, by notice in writing (a "**Deferral Notice**") to

the Tier 3 Noteholders in accordance with Condition 18 (*Notices*), to the Paying Agent and to the Transfer Agent, defer the due date for payment of the Deferred Payment, until such date (the "**Deferred Payment Date**"), and subject to such conditions, as are prescribed by the Registrar of Banks. On the giving of the Deferral Notice, the due date for payment of the Deferred Payment shall be deferred to the Deferred Payment Date, and the Issuer shall not be obliged to make payment of the Deferred Payment on the date upon which the Deferred Payment would otherwise have become due and payable, and such deferral of payment shall not constitute a default under the Tier 3 Notes or for any other purpose and a Tier 3 Noteholder will have no claim in respect of any such Deferred Payment (save as set out below in this Condition 6.3). The Issuer may not give a Deferral Notice except where the Registrar of Banks so requires in accordance with the Tier 3 Capital Regulations. Interest will continue to accrue on the outstanding amount of the Deferred Payment at the rate of interest applicable on the date upon which the Deferred Payment would otherwise have become due and payable, from and including such date to but excluding the Deferred Payment Date. All Deferred Payments (together with any interest accrued thereon) which remain unpaid shall become due and payable upon the earlier to occur of (i) the Deferred Payment Date, and (ii) the Issuer being placed into liquidation or wound-up (other than pursuant to a Solvent Reconstruction). When more than one Deferred Payment remains unpaid, any payment in part thereof shall be made *pro rata* according to the proportion which each such Deferred Payment bears to the aggregate of all such Deferred Payments.

## 7. INTEREST

### 7.1 Interest on Fixed Rate Notes

- 7.1.1 Unless otherwise specified in the Applicable Pricing Supplement, interest on Fixed Rate Notes will be paid on a 6-monthly basis, on the Interest Payment Dates.
- 7.1.2 Each Fixed Rate Note bears interest on its Principal Amount (or, if it is a Partly Paid Note, the amount paid up) from (and including) the Interest Commencement Date to (but excluding) the Maturity Date at the rate(s) per annum equal to the Fixed Interest Rate. Such interest shall fall due for payment in arrear on the Interest Payment Date(s) in each year and on the Maturity Date if such date does not fall on an Interest Payment Date. The first payment of interest will be made on the Interest Payment Date following the Interest Commencement Date.
- 7.1.3 The Calculation Agent will calculate the Interest Amount payable in respect of each Tranche of Fixed Rate Notes for each Interest Period. Unless stated otherwise in the Applicable Pricing Supplement, the Interest Amount for half yearly interest payments shall be calculated by multiplying the Interest Rate by the Principal Amount (or, if it is a Partly Paid Note, the amount paid up) of the Fixed Rate Note and then dividing such product by 2 (the resultant sum will be rounded to the nearest smallest denomination of the Specified Currency, half of any such denomination being rounded upwards), provided that:
- 7.1.3.1 if an Initial Broken Amount is specified in the Applicable Pricing Supplement, then the first Interest Amount shall equal such Initial Broken Amount; and
- 7.1.3.2 if a Final Broken Amount is specified in the Applicable Pricing Supplement, then the final Interest Amount shall equal such Final Broken Amount.

Save as provided in the preceding paragraphs, if interest is required to be calculated for a period of other than one year (in the case of annual interest payments) or other than 6 months (in the case of semi-annual interest payments), as the case may be, such interest shall be calculated on the basis of the actual number of days (including the first day and excluding the last day) in such period divided by 365.

### 7.2 Interest on Floating Rate Notes

#### *A. Interest Rate*

The Interest Rate payable from time to time in respect of the Floating Rate Notes will be determined:

- (a) on the basis of ISDA Determination; or
- (b) on the basis of Screen Rate Determination; or
- (c) on such other basis as may be determined by the Issuer,

all as specified in the Applicable Pricing Supplement.

### *B. ISDA Determination*

Where ISDA Determination is specified in the Applicable Pricing Supplement as the manner in which the Interest Rate is to be determined, the Interest Rate for each Interest Period will be the relevant ISDA Rate (as defined below) plus or minus (as indicated in the Applicable Pricing Supplement) the Margin (if any).

For the purposes of this Condition 7.2B:

**"ISDA Rate"** for an Interest Period means a rate equal to the Floating Rate that would be determined by such agent as is specified in the Applicable Pricing Supplement under a notional interest rate swap transaction if that agent were acting as Calculation Agent for that swap transaction under the terms of an agreement incorporating the ISDA Definitions and under which:

- (a) the Floating Rate Option is as specified in the Applicable Pricing Supplement;
- (b) the Designated Maturity is the period specified in the Applicable Pricing Supplement; and
- (c) the relevant Reset Date is either: (i) if the applicable Floating Rate Option is based on the ZAR-JIBAR-SAFEX on the first day of that Interest Period; or (ii) in any other case, as specified in the Applicable Pricing Supplement.

**"Floating Rate", "Floating Rate Option", "Designated Maturity" and "Reset Date"** have the meanings given to those expressions in the ISDA Definitions.

When this Condition 7.2B applies, in respect of each Interest Period such agent as is specified in the Applicable Pricing Supplement will be deemed to have discharged its obligations under Condition 7.2F in respect of the determination of the Interest Rate if it has determined the Interest Rate in respect of such Interest Period in the manner provided in this Condition 7.2B.

### *C. Screen Rate Determination*

Where Screen Rate Determination is specified in the Applicable Pricing Supplement as the manner in which the Interest Rate is to be determined, the Interest Rate for each Interest Period will, subject as provided below, be either:

- (a) the offered quotation (if there is only one quotation on the Relevant Screen Page); or
- (b) the arithmetic mean (rounded if necessary to the fifth decimal place, with 0.000005 being rounded upwards) of the offered quotations,

for the Reference Rate(s) which appears or appear as the case may be, on the Relevant Screen Page as at 12h00 (South African time) on the Interest Determination Date in question, plus or minus (as indicated in the Applicable Pricing Supplement) the Margin (if any), all as determined by the Calculation Agent. If 5 or more such offered quotations are available on the Relevant Screen Page the highest (or, if there is more than one such highest quotation, one only of such quotations) and the lowest (or, if there is more than one such lowest quotation, one only of such quotations) shall be disregarded by such agent for the purpose of determining the arithmetic mean (rounded as provided above) of such offered quotations.

If the Relevant Screen Page is not available or if, in the case of (i) above, no such offered quotation appears or, in the case of (ii) above, fewer than 3 such offered quotations appear, in each case at the time specified in the preceding paragraph, the Calculation Agent shall request the principal Johannesburg office of each of the Reference Banks (as defined below) to provide the Calculation Agent with its offered quotation (expressed as a percentage rate per annum) for the Reference Rate at approximately 12h00 (South African time) on the Interest Determination Date in question. If 2 or more of the Reference Banks provide the Calculation Agent with such offered quotations, the Interest Rate for such Interest Period shall be the arithmetic mean (rounded if necessary to the fifth decimal place with 0.000005 being rounded upwards) of such offered quotations plus or minus (as appropriate) the Margin (if any), all as determined by the Calculation Agent.

If the Interest Rate cannot be determined by applying the provisions of the preceding paragraphs of this Condition 7.2C, the Interest Rate for the relevant Interest Period shall be the rate per annum which the Calculation Agent determines as being the arithmetic mean (rounded if necessary to the fifth decimal place, with 0.000005 being rounded upwards) of the rates, as communicated to (and at the request of) the Calculation Agent by the Reference Banks or any 2 or more of them, at which such banks offered, at approximately 12h00 (South African time) on the relevant Interest Determination Date, in respect of deposits in an amount approximately equal to the Principal Amount of the Notes of the relevant Series, for a period equal to that which would have been used for the Reference Rate, to Reference Banks in the Johannesburg inter-bank market plus or minus (as appropriate) the Margin (if any). If fewer than 2 of the Reference Banks

provide the Calculation Agent with such offered rates, the Interest Rate for the relevant Interest Period will be determined by the Calculation Agent as the arithmetic mean (rounded as provided above) of the rates for deposits in an amount approximately equal to the Principal Amount of the Notes of the relevant Series, for a period equal to that which would have been used for the Reference Rate, quoted at approximately 12h00 (South African time) on the relevant Interest Determination Date, by 4 leading banks in Johannesburg (selected by the Calculation Agent and approved by the Issuer) plus or minus (as appropriate) the Margin (if any). If the Interest Rate cannot be determined in accordance with the foregoing provisions of this paragraph, the Interest Rate shall be determined as at the last preceding Interest Determination Date (though substituting, where a different Margin is to be applied to the relevant Interest Period from that which applied to the last preceding Interest Period, the Margin relating to the relevant Interest Period, in place of the Margin relating to that last preceding Interest Period).

If the Reference Rate from time to time in respect of Floating Rate Notes is specified in the Applicable Pricing Supplement as being other than the ZAR-JIBAR-SAFEX rate, the Interest Rate in respect of such Notes will be determined, in the manner provided above, or as may be provided in the Applicable Pricing Supplement.

**"Reference Banks"** means for the purposes of this Condition 7.2C the 4 leading banks in the South African inter-bank market selected by the Calculation Agent and approved by the Issuer.

#### *D. Minimum and/or Maximum Interest Rate*

If the Applicable Pricing Supplement specifies a Minimum Interest Rate for any Interest Period, then the Interest Rate for such Interest Period shall in no event be less than such Minimum Interest Rate and/or if it specifies a Maximum Interest Rate for any Interest Period, then the Interest Rate for such Interest Period shall in no event be greater than such Maximum Interest Rate.

#### *E. Interest Payment Dates*

Each Floating Rate Note bears interest on its Principal Amount (or, if it is a Partly Paid Note, on the amount paid up) from (and including) the Interest Commencement Date up to (but excluding) the Maturity Date at the rate equal to the Interest Rate. Such interest shall fall due for payment in arrears on the Interest Payment Date(s).

#### *F. Determination of Interest Rate and calculation of Interest Amount*

The Calculation Agent will, in the case of Floating Rate Notes, at or as soon as practicable after each time at which the Interest Rate is to be determined, determine the Interest Rate and calculate the Interest Amount for the relevant Interest Period. Unless stated otherwise in the Applicable Pricing Supplement, each Interest Amount shall be calculated by multiplying the Interest Rate by the Principal Amount (or, if it is a Partly Paid Note, on the amount paid up), then multiplying the product by the applicable Day Count Fraction and rounding the resultant product to the nearest smallest denomination of the Specified Currency, half of any such denomination being rounded upwards.

**"Day Count Fraction"** means, in respect of the calculation of the Interest Amount for any Interest Period:

- (a) if **"Actual/365"** is specified in the Applicable Pricing Supplement, the actual number of elapsed days (including the first day and excluding the last day of such Interest Period) in the Interest Period divided by 365; or
- (b) such other calculation method as is specified in the Applicable Pricing Supplement.

#### *G. Notification of Interest Rate and Interest Amount*

The Calculation Agent (or such other agent as is specified in the Applicable Pricing Supplement) will cause the Interest Rate and each Interest Amount for each Interest Period and the relevant Interest Payment Date to be notified to the Issuer, the Paying Agent, the Transfer Agent, the Noteholders in respect of any Floating Rate Notes which are Bearer Notes or Order Notes, any Financial Exchange on which the relevant Floating Rate Notes are for the time being listed or settled and any central securities depository in which Certificates in respect of the notes are immobilised, as soon as possible after their determination but not later than the 4th Business Day thereafter. Each Interest Amount and Interest Payment Date so notified may subsequently be amended (or appropriate alternative arrangements made by way of adjustment) in the event of an extension or shortening of the Interest Period. Any such amendment will be promptly notified to the Issuer, the Paying Agent, the Transfer Agent, the Noteholders in respect of any Floating Rate Notes which are Bearer Notes or Order Notes, each Financial Exchange on which the relevant Floating Rate Notes are for the time being listed or settled and any central securities depository in which Certificates in respect of the Notes are immobilised.



#### *H. Certificates to be Final*

All certificates, communications, opinions, determinations, calculations, quotations and decisions given, expressed, made or obtained for the purposes of the provisions of this Condition 7.2 by the Calculation Agent shall, in the absence of wilful deceit, bad faith, manifest error or dispute as set out hereunder, be binding on the Issuer, the Calculation Agent, and all Noteholders, and no liability to the Issuer or the Noteholders shall attach to the Transfer Agent, the Calculation Agent or the Paying Agent (as the case may be) in connection with the exercise or non-exercise by it of its powers, duties and discretions pursuant to such provisions. Where the Issuer acts as the Calculation Agent and in the event that Noteholders holding not less than 25% in aggregate Principal Amount of the Notes for the time being Outstanding, deliver to the Issuer a written notice of objection to any determination made by the Issuer within 5 Business Days of notification of the Interest Rate and Interest Amount in accordance with Condition 7.2G, such determination shall not be regarded as final and upon such notification, the Issuer shall request the chief executive officer for the time being of BESA to appoint an independent third party to make such determination. Such independent third party shall make such determination promptly as an expert and not as an arbitrator and their determination, in the absence of wilful deceit, bad faith or manifest error, shall be binding on the Issuer and all Noteholders, and no liability to the Issuer or the Noteholders shall attach to such third party in connection with the exercise or non-exercise by them of their powers, duties and discretions pursuant to such provisions. The costs of procuring and effecting such determination shall be borne by the Issuer in the event that the determination of such third party differs from that of the Issuer as Calculation Agent and shall be borne by the Noteholders disputing such determination by the Issuer in the event that the determination of such third party confirms that of the Issuer as Calculation Agent.

#### **7.3 Mixed Rate Notes**

The Interest Rate payable from time to time on Mixed Rate Notes shall be the Interest Rate payable on any combination of Fixed Rate Notes, Floating Rate Notes, Zero Coupon Notes or Indexed Notes for respective periods, each as specified in the Applicable Pricing Supplement. During each such applicable period, the interest rate on the Mixed Rate Notes shall be determined and fall due for payment on the basis that such Mixed Rate Notes are Fixed Rate Notes, Floating Rate Notes, Zero Coupon Notes or Indexed Notes, as the case may be.

#### **7.4 Indexed Notes**

In the case of Indexed Notes, if the Interest Rate or Final Redemption Amount falls to be determined by reference to an index and/or a formula, such rate or amount payable in respect of each Interest Period shall be determined in the manner specified in the Applicable Pricing Supplement. Any interest payable shall fall due for payment on the Interest Payment Date(s).

#### **7.5 Partly Paid Notes**

In the case of Partly Paid Notes (other than Partly Paid Notes which are Zero Coupon Notes), interest will accrue on the paid-up Principal Amount of such Notes and otherwise as specified in the Applicable Pricing Supplement.

#### **7.6 Accrual of Interest**

Each Note (or in the case of the redemption of part only of a Note, that part only of such Note) will cease to bear interest (if any) from the date of its redemption unless, upon due presentation thereof, payment of principal is improperly withheld or refused. In such event, interest will continue to accrue at the SAFEX Overnight Deposit Rate (to be found on the Reuters Screen SAFEY page as at 12h00 (South African time) on the presentation date, or any successor rate) until whichever is the earlier of:

- (a) the date on which all amounts due in respect of such Note have been paid; and
- (b) the date on which the full amount of the monies payable has been received by the Paying Agent and notice to that effect has been given to Noteholders in accordance with Condition 18.

In the event that the SAFEX Overnight Deposit Rate is not ascertainable from the relevant screen page at the time contemplated above, the Calculation Agent shall follow the procedure contemplated in Condition 7.2C to ascertain a rate.

#### **7.7 Business Day Convention**

If any Interest Payment Date (or other date) which is specified in the Applicable Pricing Supplement to be subject to adjustment in accordance with a Business Day Convention would otherwise fall on a day which is not a Business Day, then, if the Business Day Convention specified is:

- (a) the "**Floating Rate Business Day Convention**", such Interest Payment Date (or other date) shall in any case where Interest Periods are specified in accordance with Condition 7.2E, be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event: (i) such Interest Payment Date (or other date) shall be brought forward to the first preceding Business Day; and (ii) each subsequent Interest Payment Date (or other date) shall be the last Business Day in the month which falls the number of months or other period specified as the Interest Period in the Applicable Pricing Supplement after the preceding applicable Interest Payment Date (or other date) has occurred; or
- (b) the "**Following Business Day Convention**", such Interest Payment Date (or other date) shall be postponed to the next day which is a Business; or
- (c) the "**Modified Following Business Day Convention**", such Interest Payment Date (or other date) shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event such Interest Payment Date (or other such date) shall be brought forward to the first preceding Business Day; or
- (d) the "**Preceding Business Day Convention**", such Interest Payment Date (or other date) shall be brought forward to the first preceding Business Day.

## 8. PAYMENTS

### 8.1 Registered Notes

- 8.1.1 Payments of interest and principal in respect of Notes represented by the Global Certificate and Uncertificated Notes will be made to the Central Securities Depository's Nominee, as the registered holder of such Notes, which in turn will transfer such funds, via the Participants, to the holders of Beneficial Interests. Each of the persons reflected in the records of the Central Securities Depository or the relevant Participants, as the case may be, as the holders of Beneficial Interests shall look solely to the Central Securities Depository or the relevant Participant, as the case may be, for such persons share of each payment so made by the Issuer to, or for the order of, the registered holder of the relevant Notes. The Issuer will not have any responsibility or liability for any aspect of the records relating to, or payments made on account of, Beneficial Interests, or for maintaining, supervising or reviewing any records relating to such Beneficial Interests. Payments of interest and principal in respect of Notes represented by the Global Certificate and Uncertificated Notes shall be recorded by the Central Securities Depository's Nominee, as the registered holder of such Notes, distinguishing between interest and principal, and such record of payments by the registered holder of such Notes shall be *prima facie* proof of such payments.
- 8.1.2 Payments of interest and principal in respect of Notes represented by Definitive Certificates shall be made to the person reflected as the registered holder of the Definitive Certificate in the Register on the Last Day to Register.

### 8.2 Bearer Notes

- 8.2.1 Payments of interest in respect of Bearer Notes will be made to the Bearer only against presentation and surrender by the Bearer or its Representative of the relevant Coupon or (in respect of interest bearing Bearer Notes issued without Coupons) only against presentation by the Bearer or its Representative of the relevant Certificate.
- 8.2.2 Payments of Instalment Amounts in respect of Bearer Notes will be made to the Bearer only following presentation and surrender by the Bearer or its Representative of the relevant Receipt. Payments of the final instalment of principal in respect of Bearer Notes which are Instalment Notes, or of the principal of all other Bearer Notes will be made to the Bearer only following presentation and surrender by the Bearer or its Representative of the Certificate evidencing such Bearer Notes.
- 8.2.3 Upon presentation and/or surrender as aforesaid, the Bearer or its Representative shall be required to nominate in writing to the Paying Agent a bank account within South Africa (or any Other Banking Jurisdiction specified in the Applicable Pricing Supplement) into which the relevant payment must be made and provide details of its address (being an address within South Africa or any Other Banking Jurisdiction specified in the Applicable Pricing Supplement).

### 8.3 Order Notes

- 8.3.1 Payments of interest in respect of Order Notes will be made to the Payee only following presentation and surrender by the Payee or its Representative of the relevant Coupon or (in respect of interest bearing Order Notes issued without Coupons) only against presentation by the Payee or its Representative of the relevant Certificate.

8.3.2 Payments of Instalment Amounts in respect of Order Notes will be made to the Noteholder only following presentation and surrender by the Payee or its Representative of the relevant Receipt. Payments of the final instalment of principal in respect of Order Notes which are Instalment Notes, or of the principal of all other Order Notes will be made to the Payee only following presentation and surrender by the Payee or its Representative of the Certificate evidencing such Order Notes.

8.3.3 Upon presentation and/or surrender as aforesaid, the Payee or its Representative shall be required to nominate in writing to the Paying Agent a bank account within South Africa (or any Other Banking Jurisdiction specified in the Applicable Pricing Supplement) into which the relevant payment must be made and provide details of its address (being an address within South Africa or any Other Banking Jurisdiction specified in the Applicable Pricing Supplement).

#### 8.4 **Method of Payment**

8.4.1 Payments of interest and principal will be made in the Specified Currency by electronic funds transfer.

8.4.2 If the Issuer is prevented or restricted directly or indirectly from making any payment by electronic funds transfer in accordance with the preceding paragraph (whether by reason of strike, lockout, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or breakdown in facilities, civil commotion, unrest or disturbances, cessation of labour, Government interference or control or any other cause or contingency beyond the control of the Issuer), the Issuer shall make such payment by cheque (or by such number of cheques as may be required in accordance with applicable banking law and practice) to make payment of any such amounts. Such payments by cheque shall be sent by post to:

- (a) the address of the Noteholder of Registered Notes as set forth in the Register or, in the case of joint Noteholders of Registered Notes, the address set forth in the Register of that one of them who is first named in the Register in respect of that Note; or
- (b) the address nominated by the Bearer or the Payee in respect of Bearer Notes or Order Notes, as the case may be, upon surrender in accordance with Condition 8.2 or Condition 8.3, as the case may be.

8.4.3 Each such cheque shall be made payable to the relevant Noteholder or, in the case of joint Noteholders of Registered Notes, the first one of them named in the Register. Cheques may be posted by ordinary post, provided that neither the Issuer nor the Paying Agent shall be responsible for any loss in transmission and the postal authorities shall be deemed to be the agent of the Noteholders for the purposes of all cheques posted in terms of this Condition 8.4.

8.4.4 In the case of joint Noteholders of Registered Notes payment by electronic funds transfer will be made to the account of the Noteholder first named in the Register. Payment by electronic transfer to the Noteholder first named in the Register shall discharge the Issuer of its relevant payment obligations under the Notes.

8.4.5 Payments will be subject in all cases to any taxation or other laws, directives and regulations applicable thereto in the place of payment, but without prejudice to the provisions of Condition 12.

#### 8.5 **Surrender of Certificates and Coupons**

8.5.1 On or before the Last Day to Register prior to any Redemption Date of a Registered Note (including a Redemption Date relating to redemption in part), the holder of a Certificate, in respect of a Note to be redeemed (in part or in whole, as the case may be) shall deliver to the Transfer Agent the Certificates to be redeemed. This will enable the Transfer Agent to endorse the partial redemption thereon or, in the case of final redemption, to cancel the relevant Certificates.

8.5.2 In the case of the Global Certificates, redemptions in part will be handled in accordance with the Applicable Procedures. In the case of final redemption, the Global Certificates must be delivered to the Transfer Agent on or before the Last Day to Register prior to the Final Redemption Date to enable the Transfer Agent to cancel the relevant Global Certificates.

8.5.3 Should the holder of a Certificate refuse or fail to surrender the Certificate for endorsement or cancellation on or before a Redemption Date, the amount payable to him in respect of such redemption, including any accrued interest, shall be retained by the Paying Agent for such Noteholder, at the latter's risk, until the Noteholder surrenders the necessary Certificate, and interest shall cease to accrue to such Noteholder from the Redemption Date in respect of the amount redeemed.

8.5.4 Payments of interest in respect of Bearer Notes or Order Notes shall be made in accordance with Condition 9.4 only following surrender of the relevant Coupon (if any) to the Paying Agent.

- 8.5.5 Payments of Instalment Amounts in respect of Instalment Notes which are Bearer Notes or Order Notes shall be made by the Issuer in accordance with Condition 8.4 only following surrender of the relevant Receipt to the Paying Agent.
- 8.5.6 No payment in respect of the final redemption of a Bearer Note or Order Note shall be made until the later of:
- (a) the Relevant Date; and
  - (b) the date on which the Certificate in respect of the Note to be redeemed has been surrendered to the Paying Agent.
- 8.5.7 Upon final redemption as aforesaid, all unmatured Coupons relating to Bearer Notes or Order Notes, as the case may be, (whether or not surrendered with the relevant Certificate) shall become void and no payment shall be made thereafter in respect of them.
- 8.5.8 Documents required to be presented and/or surrendered to the Paying Agent in accordance with these Terms and Conditions shall be so presented and/or surrendered at the Specified Office of the Paying Agent specified in the Applicable Pricing Supplement.

## 8.6 Payment Day

If the date for payment of any amount in respect of any Note is not a Business Day and is not subject to adjustment in accordance with a Business Day Convention, the holder thereof shall not be entitled to payment until the next following Payment Day in the relevant place for payment and shall not be entitled to further interest or other payment in respect of such delay.

## 8.7 Interpretation of principal and interest

Any reference in these Terms and Conditions to principal in respect of the Notes shall be deemed to include, as applicable:

- 8.7.1 any additional amounts which may be payable with respect to principal under Condition 12;
- 8.7.2 the Final Redemption Amount of the Notes or the Early Redemption Amount (Tax) of the Notes or the Early Redemption Amount (Regulatory) of the Notes or the Early Termination Amount of the Notes, as the case may be;
- 8.7.3 the Optional Redemption Amount(s) (if any) of the Notes;
- 8.7.4 in relation to Instalment Notes, the Instalment Amounts;
- 8.7.5 in relation to Zero Coupon Notes, the Amortised Face Amount (as defined under Condition 11.8); and
- 8.7.6 any premium and any other amounts which may be payable under or in respect of the Notes, but excluding for the avoidance of doubt, interest.

Any reference in these Terms and Conditions to interest in respect of the Notes shall be deemed to include, as applicable, any additional amounts which may be payable with respect to interest under Condition 12.

## 9. EXCHANGE OF TALONS

On or after the Interest Payment Date on which the final Coupon (comprising the Coupon attached to the relevant Certificate relating to the latest Interest Payment Date in respect of that series of Coupons) matures, but not later than the date for prescription (in accordance with Condition 10) of the Talon which may be exchanged for the respective Coupons, the Talon (if any) attached to the relevant Certificate upon issue, may be surrendered at the Specified Office of the Transfer Agent in exchange for further Coupons, including (if such further Coupons do not include Coupons to, and including, the final date for the payment of interest due in respect of the Notes to which they pertain) a further Talon, subject to the provisions of Condition 10. Each Talon shall, for the purposes of these Terms and Conditions, be deemed to mature on the Interest Payment Date on which the final Coupon issued relative to such Talon matures.

## 10. PRESCRIPTION

The Notes, Receipts and Coupons will become void unless presented for payment of principal and interest within a period of 3 years after the Relevant Date therefor, save that any Certificate, Receipt or Coupon constituting a "*bill of exchange or other negotiable instrument*" in accordance with section 11 of the Prescription Act, 1969 will

become void unless presented for payment of principal and interest within a period of 6 years from the Relevant Date thereof.

## 11. REDEMPTION AND PURCHASE

### 11.1 Scheduled redemption

11.1.1 Subject to Condition 11.5 (*Redemption of Subordinated Notes*), unless previously redeemed, or purchased and cancelled, the Dated Tier 2 Notes, the Tier 3 Notes and the Unsubordinated Notes will be redeemed at their Final Redemption Amount on the Maturity Date, subject as provided in Condition 8 (*Payments*).

11.1.2 Undated Tier 2 Notes have no maturity date and may only be redeemed or purchased (subject to Condition 11.5 (*Redemption of Subordinated Notes*) and subject to compliance with the Solvency Condition and Condition 5.4.3 (*Subordination*)) and without prejudice to Condition 5.4.5 (*Solvency Claims*) or Condition 13.3 (*Events of Default relating to the Undated Tier 2 Notes*) in accordance with the provisions of this Condition 11.

### 11.2 Redemption for tax reasons

The Notes may (subject to Condition 11.5 (*Redemption of Subordinated Notes*) and, in the case of Undated Tier 2 Notes, subject to the Issuer satisfying the Solvency Condition), be redeemed at the option of the Issuer in whole, but not in part, on or after the First Optional Redemption Date:

11.2.1 at any time (if neither the provisions applicable to Floating Rate Notes nor the provisions applicable to Index-Linked Interest Notes are specified in the Applicable Pricing Supplement as being applicable or, if they are, such provisions are not applicable at the time of redemption); or

11.2.2 on any Interest Payment Date (if the provisions applicable to Floating Rate Notes or Index-Linked Interest Notes are specified in the Applicable Pricing Supplement as being applicable and are applicable at the time of redemption),

on giving not less than 30 nor more than 60 days' notice to the Noteholders (which notice shall be irrevocable) in accordance with Condition 18 (*Notices*) and to the Transfer Agent and the Paying Agent, at their Early Redemption Amount (Tax) together with interest accrued (if any) to (but excluding) the date of redemption, if:

(i) on the occasion of the next payment due under the Notes, the Issuer has or will become obliged to pay additional amounts as provided or referred to in Condition 12 as a result of any change in, or amendment to, the laws or regulations of a Tax Jurisdiction (as defined in Condition 12) or any change in the application or official interpretation of such laws or regulations, which change or amendment becomes effective on or after the date on which agreement is reached to issue the first Tranche of the Notes; and

(ii) such obligation cannot be avoided by the Issuer taking reasonable measures available to it,

*provided, however, that no such notice of redemption shall be given earlier than:*

(a) where the Notes may be redeemed at any time, 90 days prior to the earliest date on which the Issuer would be obliged to pay such additional amounts; or

(b) where the Notes may be redeemed only on an Interest Payment Date, 60 days prior to the Interest Payment Date occurring immediately before the earliest date on which the Issuer would be obliged to pay such additional amounts.

Prior to the publication of any notice of redemption pursuant to this paragraph, the Issuer shall deliver to the Noteholders in accordance with Condition 18 (*Notices*) (A) a certificate signed by 2 authorised officers of the Issuer stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer so to redeem have occurred and (B) an opinion of independent legal advisers of recognised standing to the effect that the Issuer has or will become obliged to pay such additional amounts as a result of such change or amendment. Upon the expiry of any such notice as is referred to in this Condition 11.2, the Issuer shall be bound to redeem the Notes in accordance with this Condition 11.2.

### 11.3 Redemption for regulatory reasons

Any Series of Subordinated Notes may (subject to Condition 11.5 (*Redemption of Subordinated Notes*) and, in the case of Undated Tier 2 Notes, subject to the Issuer satisfying the Solvency Condition) be redeemed at the option of the Issuer in whole, but not in part:

- 11.3.1 at any time (if neither the provisions applicable to Floating Rate Notes nor the provisions applicable to Index-Linked Interest Notes are specified in the Applicable Pricing Supplement as being applicable or, if they are, such provisions are not applicable at the time of redemption); or
- 11.3.2 on any Interest Payment Date (if the provisions applicable to Floating Rate Notes or the provisions applicable to Index Linked Interest Notes are specified in the Applicable Pricing Supplement as being applicable and are applicable at the time of redemption),

on giving not less than 30 nor more than 60 days notice to the Noteholders (which notice shall be irrevocable) in accordance with Condition 18 (*Notices*) and to the Transfer Agent and the Paying Agent, at their Early Redemption Amount (Regulatory), together with interest accrued (if any) to (but excluding) the date fixed for redemption, if a Regulatory Event occurs and is continuing.

Prior to the publication of any notice of redemption pursuant to this Condition 11.3, the Issuer shall deliver to the Noteholders in accordance with Condition 18 (*Notices*) (A) a certificate signed by 2 authorised officers of the Issuer stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer so to redeem have occurred and (B) unless the Registrar of Banks has confirmed to the Issuer that the proceeds of the issue of the relevant Notes are not eligible to qualify as the relevant class of Eligible Capital of the Issuer on a solo and/or a consolidated basis, an opinion of independent advisers of recognised standing to the effect that a Regulatory Event has occurred. Upon the expiry of any such notice as is referred to in this Condition 11.3, the Issuer shall be bound to redeem the Notes in accordance with this Condition 11.3.

### 11.4 Redemption at the option of the Issuer (Issuer Call)

If the Call Option is specified in the Applicable Pricing Supplement as being applicable, the Notes may (subject to Condition 11.5 (*Redemption of Subordinated Notes*) in the case of Subordinated Notes and, in the case of Undated Tier 2 Notes, subject to the Issuer satisfying the Solvency Condition) be redeemed at the option of the Issuer in whole or, if so specified in the Applicable Pricing Supplement, in part on any Optional Redemption Date (Call) at the relevant Optional Redemption Amount (Call) together with accrued interest (if any) to such date upon the Issuer's giving not less than 15 nor more than 30 days' notice to the Noteholders (which notice shall be irrevocable and shall oblige the Issuer to redeem the Notes or, as the case may be, the relevant Notes on the relevant Optional Redemption Date (Call) at the Optional Redemption Amount (Call) plus accrued interest (if any) to such date). Any such redemption must be of a nominal amount not less than the Minimum Redemption Amount and not more than the Maximum Redemption Amount in each case as may be specified in the applicable final terms in the Applicable Pricing Supplement. In the case of a partial redemption of Notes, the Notes to be redeemed ("**Redeemed Notes**") will be selected individually by lot, in the case of Redeemed Notes represented by Definitive Certificates, and in accordance with the rules of the Central Securities Depository (to be reflected in the records of the Central Securities Depository as either a pool factor or a reduction in nominal amount, at their discretion), in the case of Redeemed Notes represented by a Global Certificate, not more than 30 days prior to the date fixed for redemption (such date of selection being hereinafter called the "**Selection Date**"). In the case of Redeemed Notes represented by Definitive Certificates, a list of the serial numbers of such Redeemed Notes will be published in accordance with Condition 18 not less than 15 days prior to the date fixed for redemption. No exchange of the relevant Global Certificate will be permitted during the period from (and including) the Selection Date to (and including) the date fixed for redemption pursuant to this paragraph (d) and notice to that effect shall be given by the Issuer to the Noteholders in accordance with Condition 18 at least five days prior to the Selection Date.

### 11.5 Redemption of Subordinated Notes

Subject to the applicable Capital Regulations, Subordinated Notes may be redeemed, or purchased and cancelled at the option of the Issuer only and provided that:

- 11.5.1 Dated Tier 2 Notes shall have a minimum Maturity Period of 5 years and one day;
- 11.5.2 Tier 3 Notes shall have a minimum Maturity Period of 2 years and one day;
- 11.5.3 Undated Tier 2 Notes may only be redeemed pursuant to Condition 11.4 (*Redemption at the option of the Issuer*) after a minimum initial period of issue of 5 years from the Issue Date of such Notes, provided that in any case unless the Registrar of Banks determines that the Issuer is duly capitalised the Issuer may not redeem such Undated Tier 2 Notes unless such Undated Tier 2 Notes are replaced by the Issuer with instruments of similar or better quality;

- 11.5.4 the Issuer has notified the Registrar of Banks of its intention to redeem, or purchase and cancel, the relevant Subordinated Notes at least one month (or such other period, longer or shorter, as the Registrar of Banks may then require or accept) prior to the date scheduled for such redemption or purchase and cancellation and written approval of the same has been received from the Registrar of Banks;
- 11.5.5 such redemption is effected in accordance with conditions (if any) approved by the Registrar of Banks in writing; and
- 11.5.6 both at the time when the notice of redemption is given and immediately following such redemption, the Issuer is or will be (as the case may be) in compliance with its capital adequacy requirements as provided in the Capital Regulations (except to the extent that the Registrar of Banks no longer so requires) and all other applicable regulatory requirements in relation to the redemption of such Subordinated Notes, as confirmed by an Independent Investment Bank or the Registrar of Banks.

#### 11.6 **Redemption at the option of Noteholders (Investor Put)**

This Condition 11.6 applies only to Unsubordinated Notes. If the Put Option is specified in the Applicable Pricing Supplement as being applicable, the Issuer shall, at the option of the holder of any Note redeem such Note on the Optional Redemption Date (Put) specified in the relevant Put Option Notice at the relevant Optional Redemption Amount (Put) together with interest (if any) accrued to such date. In order to exercise the option contained in this Condition 11.6, the holder of such Note must, give the Issuer not less than 15 nor more than 30 days before the relevant Optional Redemption Date (Put), of the exercise of the Put Option. Registered Notes may be redeemed under this Condition 11.6 in any multiple of their lowest Specified Denomination. It may be that before a Put Option can be exercised, certain conditions and/or circumstances will need to be satisfied. Where relevant, the provisions will be set out in the Applicable Pricing Supplement.

To exercise the right to require redemption of this Note the holder of this Note must, if this Note is in definitive form and held outside the Central Securities Depository, deliver, at the specified office of any Paying Agent (in the case of Bearer Notes) or the Transfer Agent (in the case of Registered Notes) at any time during normal business hours of such Paying Agent or, as the case may be, the Transfer Agent falling within the notice period, a duly completed and signed notice of exercise in the form (for the time being current) obtainable from any specified office of any Paying Agent or, as the case may be, the Transfer Agent (a "**Put Notice**") and in which the holder must specify a bank account (or, if payment is required to be made by cheque, an address) to which payment is to be made under this Condition and, in the case of Registered Notes, the nominal amount thereof to be redeemed and, if less than the full nominal amount of the Registered Notes so surrendered is to be redeemed, an address to which a new Registered Note in respect of the balance of such Registered Notes is to be sent subject to and in accordance with the provisions of Condition 15. If this Note is in definitive bearer form, the Put Notice must be accompanied by this Note or evidence satisfactory to the Paying Agent concerned that this Note will, following delivery of the Put Notice, be held to its order or under its control.

If this Note is represented by a Global Certificate or is in definitive form and held through the Central Securities Depository to exercise the right to require redemption of this Note the holder of this Note must, within the notice period, give notice to the Paying Agent of such exercise in accordance with the standard procedures of the Central Securities Depository (which may include notice being given on his instruction by the Central Securities Depository or any depository for them to the Paying Agent by electronic means) in a form acceptable to the Central Securities Depository from time to time and, if this Note is represented by a Global Certificate, at the same time present or procure the presentation of the relevant Global Certificate to the Paying Agent for notation accordingly.

Any Put Notice or other notice given in accordance with the standard procedures of the Central Securities Depository given by a holder of any Note pursuant to this Condition 11.6 shall be irrevocable except where, prior to the due date of redemption, an Event of Default has occurred, in which event such holder, at its option, may elect by notice to the Issuer to withdraw the notice given pursuant to this Condition 11.6.

#### 11.7 **No other redemption**

The Issuer shall not be entitled to redeem the Notes otherwise than as provided in paragraphs 11.1 to 11.6 above.

#### 11.8 **Early redemption of Zero Coupon Notes**

Unless otherwise specified in the Applicable Pricing Supplement, the Redemption Amount payable on redemption of a Zero Coupon Note at any time before the Maturity Date shall be an amount (the "**Amortised Face Amount**") equal to the sum of:

- 11.8.1 the Reference Price; and

- 11.8.2 the product of the Implied Yield (compounded annually) being applied to the Reference Price from (and including) the Issue Date to (but excluding) the date fixed for redemption or (as the case may be) the date upon which the Note becomes due and payable.

Where such calculation is to be made for a period which is not a whole number of years, the calculation in respect of the period of less than a full year shall be made on the basis of such Day Count Fraction as may be specified in the Applicable Pricing Supplement for the purposes of this Condition 11.8 or, if none is so specified, a Day Count Fraction of Actual/365.

#### 11.9 **Purchase**

Subject to Condition 11.5 (*Redemption of Subordinated Notes*) in the case of Subordinated Notes and, in the case of Undated Tier 2 Notes, compliance with the Solvency Condition, the Issuer or any of its subsidiaries may at any time purchase Notes in the open market or otherwise and at any price.

#### 11.10 **Cancellation**

All Notes so redeemed or purchased by the Issuer or any of its subsidiaries may, at its option, be cancelled and may, if cancelled, not be reissued or resold.

### 12. **TAXATION**

- 12.1 All payments of principal or interest in respect of the Notes will be made without withholding or deduction for or on account of any present or future taxes or duties of whatever nature imposed or levied by or on behalf of any Tax Jurisdiction, unless such withholding or deduction is required by Applicable Law.

- 12.2 In such event, the Issuer will, subject to the Issuer's right to redeem such Notes in terms of Condition 11.2, pay such additional amounts as shall be necessary in order that the net amounts received by the Noteholders after such withholding or deduction shall equal the respective amounts of principal and interest which would otherwise have been receivable in respect of the Notes, as the case may be, in the absence of such withholding or deduction; except that no such additional amounts shall be payable with respect to any Note:

- 12.2.1 presented for payment (to the extent presentation is required) in South Africa; or

- 12.2.2 presented for payment or (in the case of Registered Notes) held by or on behalf of a Noteholder, who is liable for such taxes in respect of such Note by reason of it having some connection with a Tax Jurisdiction other than the mere holding of such Note or the receipt of principal or interest in respect thereof; or

- 12.2.3 presented for payment or (in the case of Registered Notes) held by or on behalf of a Noteholder which would not be liable or subject to the withholding or deduction by complying with any statutory requirement or by making a declaration of non-residency or other similar claim for exemption to the relevant tax authority (the effect of which is not to require the disclosure of the identity of the relevant Noteholder); or

- 12.2.4 where (in the case of any payment of principal or interest which is conditional on surrender of the relevant Certificate in accordance with these Terms and Conditions) the relevant Certificate is surrendered for payment more than 30 days after the Relevant Date except to the extent that the relevant Noteholder would have been entitled to an additional amount on presenting the Certificate for payment on such thirtieth day assuming that day to have been a Payment Date; or

- 12.2.5 if such withholding or deduction arises through the exercise by revenue authorities of special powers in respect of tax defaulters.

### 13. **EVENTS OF DEFAULT**

#### 13.1 *Events of Default relating to Unsubordinated Notes*

This Condition 13.1 only applies to Unsubordinated Notes. If any one or more of the following events (each an Event of Default) shall occur and be continuing with respect to any Note:

- 13.1.1 if default is made in the payment of any principal or interest due in respect of the Notes or any of them and the default continues for a period of 7 days in the case of principal and 14 days in the case of interest; or

- 13.1.2 if the Issuer fails to perform or observe any of its other obligations under these Conditions and (except in any case where the failure is incapable of remedy when no such continuation or notice



as is hereinafter mentioned will be required) the failure continues for the period of 45 days next following the service by a Noteholder on the Issuer of written notice requiring the same to be remedied; or

- 13.1.3 if (i) any indebtedness for borrowed money of the Issuer or any Material Subsidiary (A) is not paid on the due date for payment, as extended by any applicable grace period, or (B) becomes due and payable prior to its stated maturity by reason of an event of default (howsoever described), or (ii) any guarantee of or indemnity in respect of any payment in respect of indebtedness for borrowed money of any third party given by the Issuer or any Material Subsidiary (other than a guarantee or indemnity in respect of indebtedness for borrowed money of a Subsidiary owing to the Issuer or any of other Subsidiary) is not honoured when it becomes due and is called upon (or within any applicable grace period) or (iii) any security given by the Issuer or any Material Subsidiary for any indebtedness becomes enforceable and the holder thereof takes any steps to enforce it, provided that no such event shall constitute an Event of Default unless the indebtedness or other relative liability either alone or when aggregated with the principal amount of other indebtedness for borrowed money or other relative liability shall amount to at least R500 000 000 and provided further that, for the purposes of this Condition 13.1.3, the Issuer shall not be deemed to be in default with respect to any such indebtedness, guarantee or indemnity if it is taking action in good faith in appropriate legal proceedings to dispute its liability to make payment thereunder and has been advised by independent legal advisers of recognised standing that it is reasonable to do so;

or

- 13.1.4 if any order is made by any competent court or resolution passed for the winding up or dissolution of the Issuer or any Material Subsidiary (other than solvent reorganisation of any Material Subsidiary), and any resulting winding up or dissolution process remains undismissed for 45 days save for the purposes of reorganisation, reconstruction, amalgamation, merger or consolidation on terms previously approved by an Extraordinary Resolution of the Noteholders; or

- 13.1.5 if the Issuer or any Material Subsidiary ceases or threatens to cease to carry on the whole or a substantial part of its business (other than solvent reorganisation of any Material Subsidiary), save for the purposes of reorganisation, reconstruction, amalgamation, merger or consolidation on terms previously approved by an Extraordinary Resolution of the Noteholders, or the Issuer or any Material Subsidiary stops or threatens to stop payment of, or is unable to, or admits inability to, pay, its debts (or any class of its debts) as they fall due, or is deemed unable to pay its debts within the meaning of section 344(f) of the South African Companies Act, 1973 (the "**SA Companies Act**") or is adjudicated or found bankrupt or insolvent in terms of the South African Insolvency Act, 1936 (the "**SA Insolvency Act**"); or

- 13.1.6 If (A) proceedings are initiated against the Issuer or any Material Subsidiary under any applicable liquidation, insolvency, composition, reorganisation or other similar laws or an administrator, manager, administrative receiver or other receiver is appointed in relation to the Issuer or any Material Subsidiary including, without limitation, the following:

- i. the Issuer becomes subject to a scheme of arrangement or compromise as envisaged in section 311 of the SA Companies Act, (other than a scheme of arrangement or compromise the terms of which have been previously approved by an Extraordinary Resolution of the Noteholders);
- ii. the Issuer is wound-up, liquidated, deregistered or placed under curatorship or judicial management, in any such event whether provisionally or finally and whether voluntarily or compulsorily, or passes a resolution providing for any such event;
- iii. the Issuer compromises or attempts to compromise with or defers or attempts to defer payment of debts owing by it to its creditors generally or any significant class of its creditors;
- iv. any procedural step is taken by the Issuer (including an application, a proposal or a convening of a meeting) with a view to a compromise or arrangement with any of its creditors generally or any significant class of its creditors;
- v. the Issuer commits any act which is or, if it were a natural person, would be an act of insolvency as defined in the SA Insolvency Act;
- vi. the Issuer is deemed to be unable to pay its debts in terms section 344(f) of the SA Companies Act; or

- vii. the members or creditors of the Issuer (other than the Noteholders) meet in order to pass a resolution providing for the Issuer to be wound-up, liquidated, deregistered or placed under judicial management or curatorship, or any resolution is passed to this effect; or

- 13.1.7 an administrative or other receiver, manager, administrator or other similar official is appointed in relation to the Issuer or any Material Subsidiary or, as the case may be, in relation to the whole or a major part of the undertaking or assets of any of the Issuer or any Material Subsidiary, or an encumbrancer takes possession of the whole or a major part of the undertaking or assets of any of them, or a distress, execution, attachment, sequestration or other process is levied, enforced or sued out on or against the whole or a major part of the undertaking or assets of any of them and (B) in any case (other than the appointment of an administrator) is not discharged or stayed within 45 days,

then any holder of a Note may, by written notice to the Issuer, effective upon the date of receipt thereof by the Issuer, declare any Notes held by the holder to be forthwith due and payable whereupon the same shall become forthwith due and payable at its Early Termination Amount, together with accrued interest (if any) to the date of repayment, without presentment, demand, protest or other notice of any kind.

### 13.2 *Events of Default relating to Dated Subordinated Notes*

- 13.2.1 Notwithstanding any of the provisions below in this Condition 13.2, the right to institute winding-up proceedings is limited to circumstances where payment of principal or interest (as the case may be) has become due and payable. If default shall be made in the payment of any principal or interest due on the Dated Subordinated Notes of the relevant Series for a period of seven days or more after any date on which the payment of principal is due or 14 days or more after any date on which the payment of interest is due (as the case may be), any Dated Subordinated Noteholder of that Series may, subject to Conditions 5.2.3 (*Subordination*) in the case of Tier 3 Notes and Condition 5.3.3 (*Subordination*) in the case of Dated Tier 2 Notes, and subject as provided below, at its discretion and without further notice, institute proceedings for the winding-up of the Issuer and/or prove in any winding-up of the Issuer, but take no other action in respect of that default; provided that no action may be taken by a Dated Subordinated Noteholder if the Issuer withholds or refuses to make any such payment in order to comply with any law or regulation of any relevant jurisdiction or to comply with any order of a court of competent jurisdiction. Where there is doubt as to the validity or applicability of any such law, regulation or order, the Issuer will not be in default if it acts on the advice given to it during such seven day period or fourteen day period (as the case may be) by independent legal advisers approved by the relevant Dated Subordinated Noteholders(s).
- 13.2.2 If an order is made or an effective resolution is passed for the winding-up of the Issuer (other than pursuant to a Solvent Reconstruction), each Dated Subordinated Note may, by written notice to the Issuer and delivered to the Issuer, be declared immediately due and payable, whereupon it shall become immediately due and payable at its Early Termination Amount together with accrued interest (if any) (subject to Condition 5.2.3) in the case of Tier 3 Notes and Dated Tier 2 Notes) without further action or formality.
- 13.2.3 Without prejudice to Conditions 13.2.1 or 13.2.2 above, if the Issuer breaches any of its obligations under the Dated Subordinated Notes of the relevant Series (other than any obligation in respect of the payment of principal or interest on such Notes) then each Dated Subordinated Noteholder may at its discretion and without further notice, bring such proceedings as it may think fit to enforce the obligation in question provided that the Issuer shall not, as a result of the bringing of any such proceedings, be obliged to pay any sum representing or measured by reference to principal or interest on or satisfy any other payment obligation in relation to such Series of Dated Subordinated Notes sooner than the same would otherwise have been payable by it.

### 13.3 *Events of Default relating to Undated Tier 2 Notes*

Notwithstanding any of the provisions below in this Condition 13.3, the right to institute winding-up proceedings is limited to circumstances where payment of principal or interest (as the case may be) has become due and payable. No principal, premium, interest or any other amount will be due unless the Solvency Condition is satisfied. Also, in the case of the payment of any Interest Amount, payment thereof will not be due if the Issuer has elected to defer that payment pursuant to Condition 6.1.1 or the Issuer is prohibited from making that payment pursuant to Condition 6.1.2 or 6.1.3.

This Condition 13.3 applies only to Undated Tier 2 Notes.

- (i) If default shall be made in the payment of any principal or any interest (or any other amount falling due under the terms of the Undated Tier 2 Notes) due on the Undated Tier 2 Notes of the relevant

Series for a period of seven days or more after any date on which the payment of principal is due and payable or 14 days or more after any date on which the payment of interest is due and payable (as the case may be) each Undated Tier 2 Noteholder of that Series may, subject to Condition 5.3.3 (*Subordination*) and subject as provided below, at its discretion and without further notice, institute proceedings for the winding-up of the Issuer and/or prove in any winding-up of the Issuer, but take no other action in respect of that default; provided that no such action may be taken by an Undated Tier 2 Noteholder if the Issuer withholds or refuses to make any such payment in order to comply with any law or regulation of any relevant jurisdiction or to comply with any order of a court of competent jurisdiction. Where there is doubt as to the validity or applicability of any such law regulation or order, the Issuer will not be in default if it acts on the advice given to it during such seven day period or fourteen day period (as the case may be) by independent legal advisers approved by the relevant Undated Tier 2 Noteholders(s).

- (ii) Without prejudice to paragraph 13.3.1 above, if the Issuer breaches any of its obligations under the Undated Tier 2 Notes of the relevant Series (other than any obligation in respect of the payment of principal or interest on such Notes) then each Undated Tier 2 Noteholder may, subject as provided below, at its discretion and without further notice, bring such proceedings as it may think fit to enforce the obligation in question provided that the Issuer shall not, as a result of the bringing of any such proceedings, be obliged to pay any sum representing or measured by reference to principal or interest on or satisfy any other payment obligation in relation to such Series of Undated Tier 2 Notes sooner than the same would otherwise have been payable by it.

#### 14. DELIVERY, EXCHANGE AND REPLACEMENT OF CERTIFICATES, RECEIPTS AND COUPONS

- 14.1 Upon the issue of Bearer Notes, Order Notes, unlisted Registered Notes or upon notice from a Participant pursuant to Condition 14.3 requesting the exchange or partial exchange of a Beneficial Interest in Notes represented by a Global Certificate(s) for a Definitive Certificate(s), the Transfer Agent shall deliver the relevant Definitive Certificate(s) in accordance with the Agency Agreement.
- 14.2 Notes of each Tranche listed on BESA will be issued in the form of the Global Certificate and will be lodged and immobilised in the Central Securities Depository.
- 14.3 Any person holding a Beneficial Interest in the Notes represented by the Global Certificate may, in terms of the Applicable Procedures and through its nominated Participant, direct a written request to the Transfer Agent for a Definitive Certificate representing the number of Notes to be delivered by the Issuer in exchange for such Beneficial Interest. The aggregate of the Principal Amounts of the Notes represented by such Definitive Certificate shall be equivalent to the amount of such Beneficial Interest. The Transfer Agent shall deliver such Definitive Certificate upon such written request no later than 14 days after receiving the written request of the holder of such Beneficial Interest in accordance with the Applicable Procedures, provided that, joint holders of a Beneficial Interest shall be entitled to receive only one Definitive Certificate in respect of that joint holding and delivery to one of those joint holders shall be delivery to all of them.
- 14.4 Upon the receipt of a written request for delivery of a Definitive Certificate in terms of Condition 14.3, the Global Certificate shall, in terms of the Applicable Procedures, be presented to the Transfer Agent for splitting and a new Global Certificate for the balance of the Notes (if any) still held by the Central Securities Depository shall be delivered to the Central Securities Depository. The original Global Certificate shall be cancelled and retained by the Transfer Agent.
- 14.5 Certificates, and any Receipts and/or Coupons in relation to Bearer Notes or Order Notes, shall be provided (whether by way of issue, delivery or exchange) by the Issuer without charge, save as otherwise provided in these Terms and Conditions. Separate costs and expenses relating to the provision of Certificates and/or the transfer of Notes may be levied by other persons, such as a Settlement Agent, under the Applicable Procedures and such costs and expenses shall not be borne by the Issuer. The costs and expenses of delivery of Certificates, Receipts and/or Coupons otherwise than by ordinary post (if any) and, if the Issuer shall so require, taxes or governmental charges or insurance charges that may be imposed in relation to such mode of delivery shall be borne by the Noteholder.
- 14.6 Any person becoming entitled to Registered Notes in consequence of the death, sequestration or liquidation of the holder of such Notes may upon producing such evidence that he holds the position in respect of which he proposes to act under this Condition 14 or of his title as the Issuer and the Transfer Agent shall require, be registered himself as the holder of such Notes or, subject to the requirements of the Applicable Procedures and of this Condition 14, may transfer such Notes. The Issuer and the Paying Agent shall be entitled to retain any amount payable upon the Notes to which any person is so entitled until such person shall be registered as aforesaid or shall duly transfer the Notes.
- 14.7 If any Certificate, Receipt or Coupon is mutilated, defaced, stolen, destroyed or lost it may be replaced at the Specified Office of the Issuer or the Specified Office of the Transfer Agent, on payment by the claimant of such costs and expenses as may be incurred in connection therewith and the provision of such indemnity as

the Issuer may reasonably require. Mutilated or defaced Certificates, Receipts or Coupons must be surrendered before replacements will be issued.

## 15. TRANSFER OF NOTES

### 15.1 Transfer of Registered Notes

- 15.1.1 Beneficial Interests in the Notes may be transferred in terms of the Applicable Procedures through the Central Securities Depository.
- 15.1.2 The Central Securities Depository maintains accounts only for its Participants. Beneficial Interests which are held by Participants (which are also Settlement Agents) may be held directly through the Central Securities Depository. Participants are in turn required to maintain securities accounts for their clients. Beneficial Interests which are not held by Participants may be held by clients of Participants indirectly through such Participants.
- 15.1.3 Transfers of Beneficial Interests to and from clients of Participants occur, in terms of existing law and practice, by way of electronic book entry in the securities accounts maintained by the Participants for their clients. Transfers of Beneficial Interests among Participants occur through electronic book entry in the central securities accounts maintained by the Central Securities Depository for the Participants. Such transfers of Beneficial Interests will not be recorded in the Register and the Central Securities Depository's Nominee will continue to be reflected in the Register as the Noteholder in respect of the Global Certificate notwithstanding such transfers. Beneficial Interests may be transferred only in accordance with these Terms and Conditions, and the Applicable Procedures.
- 15.1.4 In order for any transfer of Registered Notes to be recorded in the Register and for the transfer to be recognised by the Issuer, each transfer of a Registered Note:
- (a) must be embodied in a Transfer Form;
  - (b) must be signed by the relevant Noteholder and the transferee, or any authorised representatives of that registered Noteholder and/transferee;
  - (c) shall only be in the Specified Denomination or a multiple thereof and consequently the Issuer will not recognise any fraction of the Specified Denomination; and
  - (d) must be made by way of the delivery of the Transfer Form to the Transfer Agent together with the Certificate in question for cancellation or, if only part of the Notes represented by a Certificate is transferred, a new Certificate for the balance will be delivered to the transferor and the cancelled Certificate will be retained by the Transfer Agent.
- 15.1.5 The transferor of any Registered Notes represented by a Certificate shall be deemed to remain the owner thereof until the transferee is registered in the Register as the holder thereof.
- 15.1.6 Before any transfer is registered all relevant transfer taxes (if any) must have been paid and such evidence must be furnished as the Transfer Agent may reasonably require as to the identity and title of the transferor and the transferee.
- 15.1.7 The Transfer Agent will, within 3 Business Days of receipt by it of a valid Transfer Form (or such longer period as may be required to comply with any applicable taxation or other laws, regulations or Applicable Procedures), authenticate and deliver to the transferee (at the risk of the transferee) a new Certificate in respect of the Notes transferred.
- 15.1.8 No transfer will be registered while the Register is closed.
- 15.1.9 In the event of a partial redemption of Notes, the Issuer and the Transfer Agent shall not be required:
- (a) to register the transfer of any Notes during the period beginning on the tenth day before the date of the partial redemption and ending on date of the partial redemption (both inclusive); or
  - (b) to register the transfer of any Note, or part of a Note, called for partial redemption.

### 15.2 Transfer of Bearer Notes

Bearer Notes (including rights to Instalment Amounts and/or interest thereon, as applicable) may be transferred by the delivery of the Certificate evidencing such Bearer Note or the relevant Receipt or Coupon relating thereto, as the case may be. Where the last Endorsement on a Certificate evidencing an Order Note

or a Receipt or Coupon relating thereto is an Endorsement in Blank, then such Certificate, Receipt or Coupon, as the case may be, shall be treated as evidencing a Bearer Note.

### 15.3 **Transfer of Order Notes**

Order Notes (including rights to Instalment Amounts and/or interest thereon, as applicable) may be transferred by the Endorsement of the Certificate evidencing such Order Note or Receipt or Coupon relating thereto, as the case may be, by the old Payee and the delivery of such Certificate, Receipt or Coupon to the new Payee.

### 15.4 **Prohibition on stripping**

Where so specified in the Applicable Pricing Supplement, Bearer Notes or Order Notes which are issued with Receipts and/or Coupons attached and which are redeemable at the option of the Issuer and/or Noteholders shall be issued subject to the condition that the relevant Notes (including rights to Instalment Amounts and/or interest thereon, as applicable) may only be transferred to a single transferee at a time and accordingly that the various rights in respect of such Notes may not be stripped and transferred to various transferees at different times.

## 16. **REGISTER**

16.1 The Register shall be kept at the Specified Office of the Transfer Agent. The Register shall reflect the number of Notes issued and Outstanding and whether they are Registered Notes, Bearer Notes or Order Notes. The Register shall contain the name, address, and bank account details of the Noteholders of Registered Notes. The Register shall set out the Principal Amount of the Notes issued to such Noteholders and shall show the date of such issue. The Register shall show the serial number of Certificates issued in respect of Notes. The Register shall be open for inspection during the normal business hours of the Transfer Agent to any Noteholder or any person authorised in writing by any Noteholder. The Register shall be closed during the Books Closed Period. The Transfer Agent will only recognize, as registered holder of a Note, the Noteholder in the Register at 17h00 (South African time) on the relevant Last Day to Register. The Issuer and the Transfer Agent shall not be bound to enter any trust into the Register or to take notice of any or to accede to any trust executed, whether express or implied, to which any Note may be subject.

16.2 The Transfer Agent shall alter the Register in respect of any change of name, address or bank account number of any of the Noteholders of any Registered Notes of which it is notified in accordance with these Terms and Conditions.

## 17. **TRANSFER AGENT, CALCULATION AGENT AND PAYING AGENT**

17.1 The Issuer is entitled to vary or terminate the appointment of the Transfer Agent, the Calculation Agent and the Paying Agent and/or appoint additional or other agents and/or approve any change in the Specified Office through which any agent acts, provided that there will at all times be a Transfer Agent, Calculation Agent and a Paying Agent with an Specified Office in such place as may be required by the Applicable Procedures. Any third party appointed by the Issuer as Transfer Agent, Paying Agent and Calculation Agent shall act solely as the agents of the Issuer and do not assume any obligation towards or relationship of agency or trust for or with any Noteholders.

17.2 To the extent that the Issuer acts as the Transfer Agent, Calculation Agent or Paying Agent, all references in these Terms and Conditions to:

17.2.1 any action, conduct or functions in such role shall be understood to mean that the Issuer shall perform such action, conduct or function itself; and

17.2.2 requirements for consultation, indemnification by or of, payment by or to, delivery by or to, notice by or to, consent by or to or agreement between the Issuer and such Transfer Agent, Calculation Agent or Paying Agent (as the case may be) shall be disregarded to the extent that the Issuer performs such role.

## 18. **NOTICES**

18.1 All notices to be given to Noteholders shall:

18.1.1 be sent by registered mail or delivered by hand to their addresses appearing in the Register (in the case of Registered Notes) or shall be published in an English language daily newspaper of general circulation in South Africa (in the case of Registered Notes, Bearer Notes or Order Notes); and

- 18.1.2 for so long as any of the Notes are listed on BESA, shall be published in a daily newspaper of general circulation in Johannesburg or on any electronic news service of general distribution, as the case may be.

Any such notice shall be deemed to have been given on the 7th day after the day on which it is mailed or on the day of delivery if delivered or on the date of first publication, as the case may be.

- 18.2 For as long as any of the Notes are represented by a Global Certificate, all notices in respect of such Notes shall be by way of the delivery of the relevant notice to the Central Securities Depository, BESA and the Settlement Agents or such other exchange on which the Notes are listed for communication by them to holders of Beneficial Interests in Notes represented by the Global Certificate. For so long as the Notes are held in their entirety by the Central Securities Depository, there may be substituted for publication as contemplated in Condition 18.1 the delivery of the relevant notice to the Central Securities Depository's Nominee, the Participants and BESA for communication by them to the holders of Beneficial Interests in the Notes represented by the Global Certificate, in accordance with the Applicable Procedures.
- 18.3 A notice to be given by any Noteholder to the Issuer shall be in writing and given by lodging (either by hand delivery or posting by registered mail) that notice, together with a certified copy of the relevant Certificate, Coupon or Receipt at the Specified Office of the Transfer Agent. The Issuer may change its Specified Office upon prior written notice to the Noteholders specifying such new address. For so long as any of the Notes are represented by a Global Certificate, notice may be given by any holder of a Beneficial Interest in Notes represented by a Global Certificate to the Issuer via the relevant Settlement Agent in accordance with the Applicable Procedures, in such manner as the Issuer and the relevant Settlement Agent may approve for this purpose. Such notices shall be deemed to have been received by the Issuer, if delivered by hand, on the second Business Day after being hand delivered, or, if sent by registered mail, 7 days after posting.

## 19. MEETINGS OF NOTEHOLDERS

### 19.1 Directions of Noteholders

- 19.1.1 The provisions with regard to meetings of Noteholders are set out in this Condition 19.
- 19.1.2 Every director, the secretary of and the attorney to the Issuer and every other person authorised in writing by the Issuer, may attend and speak at a meeting of Noteholders, but will not be entitled to vote, other than as a Noteholder or proxy or duly authorised representative of a Noteholder.
- 19.1.3 A meeting of Noteholders will have power, in addition to all powers specifically conferred elsewhere in the Terms and Conditions:
- 19.1.3.1 by Ordinary Resolution of the Noteholders to give instructions to the Issuer in respect of any matter not covered by the Terms and Conditions (but without derogating from the powers or discretions expressly conferred upon the Issuer by the Terms and Conditions or imposing obligations on the Issuer not imposed or contemplated by the Terms and Conditions or otherwise conflicting with or inconsistent with the provisions of the Terms and Conditions);
- 19.1.3.2 by Extraordinary Resolution:
- 19.1.3.2.1 of the Noteholders to bind all of the Noteholders to any compromise or arrangement;
- 19.1.3.2.2 of a particular Series of Noteholders to agree to any variation or modification of any rights of that Series of Noteholders.
- 19.1.4 Unless otherwise specified, resolutions of Noteholders will require an Ordinary Resolution to be passed.

### 19.2 Convening of meetings

- 19.2.1 The Issuer may at any time convene a meeting of all Noteholders or separate meetings of holders of any Series of Notes (a "**meeting**" or the "**meeting**").
- 19.2.2 The Issuer will convene (i) a meeting of Noteholders upon the requisition in writing of Noteholders holding not less than 10% of the aggregate Principal Amount of all of the Notes Outstanding or (ii) a separate meeting of holders of any Series of Notes upon the requisition in writing of the Noteholders in that Series holding not less than 10% of the aggregate Principal Amount of the Notes Outstanding held by the holders of that Series, as the case may be (a "**requisition notice**").
- 19.2.3 Whenever the Issuer wishes to convene a meeting, it will forthwith give notice in writing to the Noteholders in the manner prescribed in Condition 18 of the place, day and hour of the meeting, the

nature of the business to be transacted at the meeting and the resolutions to be proposed and considered at the meeting.

19.2.4 All meetings of Noteholders will be held in South Africa.

### 19.3 Requisition

19.3.1 A requisition notice will state the nature of the business for which the meeting is to be held and the resolutions to be proposed and considered at the meeting and will be deposited at the Specified Office of the Issuer.

19.3.2 A requisition notice may consist of several documents in like form, each signed by one or more requisitionists.

### 19.4 Convening of meetings by requisitionists

If the Issuer does not convene a meeting to be held within 30 days of the deposit of a requisition notice, the requisitionists may themselves convene the meeting, but the meeting so convened will be held within 90 days from the date of such deposit and will be convened as nearly as possible in the same manner as that in which meetings may be convened by the Issuer. Whenever the requisitionists are about to so convene any such meeting, requisitionists shall forthwith give notice of the meeting to the Issuer.

### 19.5 Notice of meeting

19.5.1 Unless the holders of at least 90% of the aggregate Principal Amount of the Notes Outstanding or Series of Notes Outstanding, as the case may be, agree in writing to a shorter period, at least 21 days' written notice, specifying the place, day and time of the meeting, the nature of the business for which the meeting is to be held and the resolutions to be proposed and considered at the meeting, will be given to each Noteholder and to the Issuer if applicable.

19.5.2 The accidental omission to give such notice to any Noteholder or the Issuer, as the case may be, or the non-receipt of any such notice, will not invalidate the proceedings at a meeting.

### 19.6 Quorum

19.6.1 A quorum at a meeting shall:

19.6.1.1 for the purposes of considering an Ordinary Resolution, consist of Noteholders present in person or by proxy and holding in the aggregate not less than one-third of the aggregate Principal Amount of the Notes Outstanding or Series of Notes Outstanding, as the case may be;

19.6.1.2 for the purposes of considering an Extraordinary Resolution, consist of Noteholders present in person or by proxy and holding in the aggregate not less than a clear majority of the aggregate Principal Amount of the Notes Outstanding or Series of Notes Outstanding, as the case may be.

19.6.2 No business will be transacted at a meeting of the Noteholders unless a quorum is present at the time when the meeting proceeds to business.

19.6.3 If, within 15 minutes from the time appointed for the meeting, a quorum is not present, the meeting will, if it was convened on the requisition of Noteholders, be dissolved. In every other case the meeting will stand adjourned to the same day in the third week thereafter, at the same time and place, or if that day is not a Business Day, the next succeeding Business Day. If at such adjourned meeting a quorum is not present the Noteholders present in person or by proxy will constitute a quorum for the purpose of considering any resolution, including an Extraordinary Resolution.

### 19.7 Chairperson

The chairperson of the meeting shall be appointed by the Issuer. If the Issuer or the person appointed by the Issuer to preside as chairperson of the meeting is not present within 10 minutes of the time appointed for the holding of the meeting, the Noteholders then present will choose one of their own number to preside as chairman.

### 19.8 Adjournment

19.8.1 Subject to the provisions of this Condition 19, the chairperson may, with the consent of, and will on the direction of, the meeting adjourn the meeting from time to time and from place to place.

- 19.8.2 No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 19.8.3 At least 14 days' written notice of the place, day and time of an adjourned meeting will be given by the Issuer to each Noteholder. In the case of a meeting adjourned in terms of Condition 19.6.3, the notice will state that the Noteholders present in person or by proxy at the adjourned meeting will constitute a quorum.
- 19.9 **How questions are decided**
- 19.9.1 At a meeting, a resolution put to the vote will be decided on a poll.
- 19.9.2 In the case of an equality of votes, the chairperson will not be entitled to a casting vote in addition to the vote, if any, to which he is entitled.
- 19.10 **Votes**
- Voting shall only take place on a poll and not on a show of hands. On a poll every Noteholder, present in person or by proxy, will be entitled to that proportion of the total votes which the aggregate Principal Amount of the Notes Outstanding held by such Noteholder bears to the aggregate Principal Amount of all of the Notes Outstanding or Series of Notes, as the case may be. In relation to joint Noteholders, the vote may be exercised only by that Noteholder whose name appears first on the Register in the event that more than one of such Noteholders is present, in person or by proxy, at the meeting. The Noteholder in respect of Notes represented by the Global Certificate or Uncertificated Notes shall vote at any such meeting on behalf of the holders of Beneficial Interests in such Notes in accordance with the instructions to the Central Securities Depository's Nominee from the holders of Beneficial Interests conveyed through the Participants in accordance with the Applicable Procedures.
- 19.11 **Proxies and representatives**
- 19.11.1 Noteholders present either in person or by proxy may vote on a poll. A Noteholder may by an instrument in writing (a "**proxy form**") signed by the Noteholder (or his duly authorised agent) or, in the case of a juristic person, signed on its behalf by a duly authorised officer of the juristic person, appoint any person (a "**proxy**" or "**proxies**") to act on his or its behalf in connection with any meeting or proposed meeting.
- 19.11.2 A person appointed to act as proxy need not be a Noteholder.
- 19.11.3 The proxy form will be deposited at the Specified Office of the Issuer or at the Specified Office of the Transfer Agent, as the case may be, not less than 24 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in such proxy proposes to vote.
- 19.11.4 No proxy form will be valid after the expiration of 6 months from the date named in it as the date of its execution.
- 19.11.5 Notwithstanding Condition 19.11.4, a proxy form will be valid for any adjourned meeting, unless the contrary is stated thereon. A vote given in accordance with the terms of a proxy form will be valid notwithstanding the previous death or incapacity of the principal or revocation or amendment of the proxy form or of any of the Noteholder's instructions pursuant to which the proxy form was executed or of the authority under which the proxy form was executed or the transfer of Notes in respect of which the proxy was given, provided that no intimation in writing of such death, incapacity, revocation or amendment shall have been received by the Issuer at its Specified Office or the Transfer Agent at its Specified Office, as the case may be, more than, and that the transfer has been given effect to less than, 12 hours before the commencement of the meeting or adjourned meeting at which the proxy is to be used.
- 19.11.6 Any Noteholder which is a juristic person may authorise any person to act as its representative in connection with any meeting or proposed meeting of Noteholders by resolution of the directors or other governing body of the juristic person. Any reference in the Terms and Conditions to a Noteholder present in person includes the duly authorised representative of a Noteholder which is a juristic person.
- 19.12 **Minutes**
- 19.12.1 The Issuer will cause minutes of all resolutions and proceedings of meetings to be duly entered in the minute books of the Issuer.
- 19.12.2 Any such minutes as aforesaid, if purporting to be signed by the chairperson of the meeting at which such resolutions were passed or proceedings held or by the chairperson of the next succeeding



meeting, will be receivable in evidence without any further proof, and until the contrary is proved, a meeting of Noteholders or Series of Noteholders, as the case may be, in respect of the proceedings of which minutes have been so made will be deemed to have been duly held and convened and all resolutions passed thereat, or proceedings held, to have been duly passed and held.

## **20. AMENDMENT OF THESE CONDITIONS**

- 20.1 The Issuer may effect, without the consent of any Noteholder, any amendment to the Terms and Conditions which is of a formal, minor or technical nature or is made to correct a manifest error or to comply with mandatory provisions of the law of South Africa. Any such amendment will be binding on Noteholders and such amendment will be notified to Noteholders in accordance with Condition 16 as soon as practicable thereafter.
- 20.2 In respect of an amendment that is not of a formal, minor or technical nature, such amendment may be made only (i) with the prior authorisation of an Extraordinary Resolution of all of the Noteholders or (ii) the Noteholders of a particular Series of Notes, as the case may be. The Issuer will call a meeting of all of the Noteholders or a meeting of Noteholders of that Series of Notes, as the case may be. Such meeting or meetings will be regulated by the provisions set out in Condition 19. No proposed amendment will be made to the Terms and Conditions until such amendment has been approved by Extraordinary Resolution at such meeting or meetings.

## **21. FURTHER ISSUES**

The Issuer shall be at liberty from time to time without the consent of the Noteholders to create and issue further Notes having terms and conditions the same as any of the other Notes issued under the Programme or the same in all respects save for the amount and date of the first payment of interest thereon, the Issue Price and the Issue Date, so that the further Notes shall be consolidated to form a single Series with the Outstanding Notes.

## **22. GOVERNING LAW**

Unless otherwise specified in the Applicable Pricing Supplement, the provisions of the Programme Memorandum and the Notes are governed by, and shall be construed in accordance with, the laws of South Africa in force from time to time.

## **23. NEGATIVE PLEDGE**

This Condition 23 shall apply only to Unsubordinated Notes. For as long as any Unsubordinated Notes remain Outstanding, the Issuer will ensure that no Relevant Indebtedness of the Issuer or any Material Subsidiary will be secured by any Security Interest upon, or with respect to, any of the present or future business, undertaking, assets or revenues (including any uncalled capital) of the Issuer or any Material Subsidiary unless the Issuer, in the case of the creation of a Security Interest, before or at the same time and, in any other case, promptly, takes any and all action necessary to ensure that:

- (b) all amounts payable by it under the Unsubordinated Notes are secured by the Security Interest equally and rateably with the Relevant Indebtedness; or
- (c) such other Security Interest or guarantee or other arrangement (whether or not it includes the giving of a Security Interest) is provided as is approved by an Extraordinary Resolution of the Noteholders.

The Issuer shall be entitled but not obliged, to form, or procure the formation of, a trust or trusts or appoint, or procure the appointment of, an agent or agents to hold any such rights of security for the benefit or on behalf of such Noteholders.

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## TERMS AND CONDITIONS OF THE TIER 1 NOTES

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*The following are the Terms and Conditions of the Tier 1 Notes to be issued by the Issuer. Notes will be issued in individual Tranches which, together with other Tranches, may form a Series of Notes. Before the Issuer issues any Tranche of Notes, the Issuer shall complete, sign and deliver to BESA and the Central Securities Depository an Applicable Pricing Supplement, based on the pro forma Pricing Supplement included in the Programme Memorandum, setting out details of such Notes. The Applicable Pricing Supplement in relation to any Tranche of Notes may specify other terms and conditions which shall, to the extent so specified or to the extent inconsistent with the following Terms and Conditions, replace or modify the following Terms and Conditions for the purpose of such Tranche of Notes. The Terms and Conditions set out below and the Applicable Pricing Supplement will be deemed to be incorporated by reference into each Certificate evidencing any Notes.*

### 1. INTERPRETATION

In these Terms and Conditions, unless inconsistent with the context or separately defined in the Applicable Pricing Supplement, the following expressions shall have the following meanings:

1.1	" <b>Absa Capital</b> "	Absa Capital, a division of Absa Bank Limited;
1.2	" <b>Absa Group</b> "	the Controlling Company, the Issuer, any of the respective wholly-owned consolidated subsidiaries of the Controlling Company or the Issuer;
1.3	" <b>Absa Group Subsidiary</b> "	a subsidiary of the Absa Group;
1.4	" <b>ACSM</b> "	the mechanism set out in Condition 7;
1.5	" <b>ACSM Amount</b> "	the whole or any part of any Interest amount or Deferred Interest Amount the payment of which the Issuer has elected or is obliged to settle using the ACSM in accordance with Condition 6 (including any interest payable on such amounts in accordance with Condition 7.5);
1.6	" <b>ACSM Business Day</b> "	a day on which commercial banks and foreign exchange markets settle payments generally in London and Johannesburg;
1.7	" <b>ACSM Calculation Agency Agreement</b> "	any agreement entered into or to be entered into between the issuer and the ACSM Calculation Agent in respect of the appointment of the ACSM Calculation Agent to perform the functions expressed to be performed by the ACSM Calculation Agent under these Conditions;
1.8	" <b>ACSM Calculation Agent</b> "	the Independent Investment Bank appointed on the terms of an ACSM Calculation Agent Agreement, selected by the issuer, but acting for and on behalf of the Noteholders, for the purposes of performing the functions expressed to be performed by it under these Conditions;
1.9	" <b>ACSM Payment</b> "	any Deferred Interest Amount and/or any Interest Amount to be satisfied in accordance with Condition 6;
1.10	" <b>ACSM Payment Date</b> "	the date on which an ACSM Payment is due to be satisfied pursuant to these Conditions;
1.11	" <b>Additional Conditions</b> "	in relation to any issue of Notes, the proceeds of which are intended by the Issuer to qualify as Primary Share Capital, such conditions, in addition to the conditions specified in the applicable Capital Regulations, as may be prescribed by the Registrar of Banks for the proceeds of the issue of such Notes to qualify as Primary Share Capital, pursuant to the approval granted by the Registrar of Banks for the issue of such Notes,

		as specified in the Applicable Pricing Supplement;
1.12	<b>"Agency Agreement"</b>	the agreement concluded between the Issuer, the Paying Agent, the Calculation Agent and the Transfer Agent, or a separate agreement between the Issuer and each of the Paying Agent, the Calculation Agent and the Transfer Agent, unless the Issuer itself acts in any of the abovementioned capacities;
1.13	<b>"Applicable Laws"</b>	In relation to a person, all and any:
1.13.1		statutes and subordinate legislation;
1.13.2		regulations, ordinances and directives;
1.13.3		by-laws;
1.13.4		codes of practice, circulars, guidance notices, judgements and decisions of any competent authority; and
1.13.5		Other similar provisions, from time to time;
1.14	<b>"Applicable Pricing Supplement"</b>	in relation to a Tranche of Notes, the pricing supplement completed and signed by the Issuer in relation to the issue of that Tranche of Notes, setting out such additional and/or other terms and conditions as are applicable to that Tranche of Notes, based upon the <i>pro forma</i> pricing supplement which is set out in the section of the Programme Memorandum headed " <i>Pro Forma Pricing Supplement</i> ";
1.15	<b>"Applicable Procedures"</b>	the rules and operating procedures for the time being of the Central Securities Depository, Settlement Agents, BESA and/or any Financial Exchange, as the case may be;
1.16	<b>"Arranger"</b>	Absa Capital;
1.17	<b>"Assets"</b>	the total amount of the non consolidated gross assets of the Issuer as shown in the latest published audited non consolidated balance sheet of the Issuer, but adjusted for contingencies and subsequent events in such manner as the directors of the Issuer, the auditors of the Issuer or a liquidator, judicial manager, administrator or auditor of the Issuer (if applicable) may determine;
1.18	<b>"Banks Act"</b>	the South African Banks Act, 1990;
1.19	<b>"Bearer"</b>	he bearer of a Certificate evidencing a Bearer Note or of a Receipt or Coupon attached to such Certificate on issue;
1.20	<b>"Bearer Note"</b>	a Note payable to the Bearer thereof, transferable by way of delivery in accordance with Condition 17.2 and the term " <i>Bearer Note</i> " shall include the rights to payment of any interest or principal represented by a Coupon or Receipt (if any) attached on issue to the Certificate evidencing such Bearer Note;
1.21	<b>"Beneficial Interest"</b>	in relation to a Note, an interest as co-owner of an undivided share in a Note represented by a Global Certificate or an Uncertificated Note, in accordance with the Securities Services Act;
1.22	<b>"BESA"</b>	the Bond Exchange of South Africa (registration number 2007/034441/06), a duly licensed financial exchange in terms of the Securities Services Act, or any exchange which

operates as a successor exchange to BESA;

1.23	<b>"Books Closed Period"</b>	the period during which the Transfer Agent will not record any transfer of Notes in the Register, as specified in the Applicable Pricing Supplement;
1.24	<b>"Business Day"</b>	a day (other than a Saturday or Sunday or public holiday within the meaning of the Public Holidays Act, 1994) which is a day on which commercial banks settle ZAR payments in Johannesburg or any Additional Business Centre specified in the Applicable Pricing Supplement save that if the Specified Currency is not ZAR, " <i>Business Day</i> " shall mean a day (other than a Saturday or Sunday) which is a day on which commercial banks and foreign exchange markets settle payments in the principal financial centre of the Specified Currency and in each (if any) Additional Business Centre, save further that if the Applicable Pricing Supplement so provides, " <i>Business Day</i> " shall include a Saturday;
1.25	<b>"Calculation Agent"</b>	Absa Capital unless Dealer, or in the case of a syndicated issue, the lead manager, requests the Issuer to appoint or the Issuer elects to appoint, in relation to a particular Tranche or Series of Notes, another entity as Calculation Agent, in which event that other entity shall act, on execution of the Agency Agreement, as a Calculation Agent in respect of that Tranche or Series of Notes;
1.26	<b>"Capital Regulations"</b>	at any time, any legislation, regulations, requirements, guidelines and policies relating to capital adequacy then in effect in South Africa in relation to banks registered under the Banks Act and licensed to conduct the business of a bank in South Africa (including the Additional Conditions (if any)) (or if the Issuer becomes domiciled in a jurisdiction other than South Africa, any legislation, regulations, requirements, guidelines and policies relating to capital adequacy then in effect in such other jurisdiction in relation to banks registered in, and licensed to conduct the business of a bank in, such other jurisdiction);
1.27	<b>"Central Securities Depository"</b>	Strate Limited (registration number 1998/022242/06), or its nominee, operating in terms of the Securities Services Act as a central securities depository, or any additional or alternate depository approved by the Issuer, the Dealer(s) and BESA;
1.28	<b>"Central Securities Depository's Nominee"</b>	any wholly owned subsidiary (as defined in the Companies Act) of the Central Securities Depository approved by the Transfer Agent (as defined in the Securities Services Act) for purposes of, and as contemplated in, section 40 of the Securities Services Act and any reference to "Central Securities Depository's Nominee" shall, whenever the context permits, be deemed to include a reference to its successor operating in terms of the Securities Services Act;
1.29	<b>"Certificate"</b>	a Global Certificate or Definitive Certificate, as the case may be;
1.30	<b>"Companies Act"</b>	the Companies Act, 1973;
1.31	<b>"Controlling Company"</b>	Absa Group Limited (registration number 1986/003934/06) any other company which is a " <i>controlling company</i> " in relation to the Issuer as contemplated by the Banks Act;
1.32	<b>"Coupon"</b>	an interest coupon evidencing title to an interest payment in respect of an interest bearing Note which is a Bearer Note or an Order Note, attached on issue to the Certificate evidencing such interest bearing Note and any reference to a Coupon shall, unless the context otherwise requires, be deemed to

include a reference to a Talon;

1.33	<b>"Dealer"</b>	Absa Capital and/or any other additional Dealer appointed under the Programme from time to time, which appointment may be for a specific issue or on an ongoing basis, subject to the Issuer's right to terminate the appointment of any Dealer;
1.34	<b>"Deferred Interest Amount"</b>	has the meaning given in Condition 6.3;
1.35	<b>"Definitive Certificate"</b>	means:
1.35.1		in respect of Registered Notes: a Note in the definitive registered form of a single Certificate and, in respect of Registered Notes which are listed, being a Certificate exchanged for a Beneficial Interest in the Notes represented by the Global Certificate in accordance with Condition 16 and any further Certificate issued in consequence of a transfer thereof;
1.35.2		in respect of Bearer Notes: a Note in the definitive bearer form of a single Certificate together with Coupons and/or Receipts, if applicable;
1.35.3		in respect of Order Notes: a Note in the definitive order form of a single Certificate together with Coupons and/or Receipts, if applicable;
1.36	<b>"Deposit"</b>	a " <i>deposit</i> " as defined in section 1(1) of the Banks Act;
1.37	<b>"Depositor"</b>	any Person having a claim against the Issuer in respect of a Deposit;
1.38	<b>"Early Redemption Amount (Regulatory)"</b>	in respect of each Note in a Tranche of Notes, its Principal Amount (or the relevant part thereof) or such other amount as may be specified in, or determined in accordance with, the Applicable Pricing Supplement, as the case may be;
1.39	<b>"Early Redemption Amount (Tax)"</b>	in respect of each Note in a Tranche of Notes, its Principal Amount (or the relevant part thereof) to the date fixed for redemption or such other amount as may be specified in, or determined in accordance with, the Applicable Pricing Supplement, as the case may be;
1.40	<b>"Eligible Capital"</b>	Notes that are treated on issue by the Registrar of Banks for inclusion in the Primary Share Capital, Undated Secondary Capital, Dated Secondary Capital or Tertiary Capital, as the case may be, of the Issuer or the Controlling Company on a solo and/or consolidated basis, in accordance with the Capital Regulations;
1.41	<b>"Endorsement"</b>	an "indorsement", <i>mutatis mutandis</i> , within the meaning of the Bills of Exchange Act, 1964;
1.42	<b>"Endorsement in Blank"</b>	an Endorsement which specifies no named Payee;
1.43	<b>"Event of Default"</b>	any of the events described in Condition 15 ( <i>Events of Default</i> );
1.44	<b>"Exchangeable Notes"</b>	Notes which may be redeemed by the Issuer in the manner indicated in the Applicable Pricing Supplement by the delivery to the Noteholders of cash or of so many of the Exchange Securities as is determined in accordance with the Applicable Pricing Supplement;
1.45	<b>"Exchange Period"</b>	in respect of Exchangeable Notes to which the Noteholders' Exchange Right applies (as indicated in the Applicable Pricing Supplement), the period indicated in the Applicable Pricing

		Supplement during which such right may be exercised;
1.46	<b>"Exchange Price"</b>	the value indicated in the Applicable Pricing Supplement according to which the number of Exchange Securities which may be delivered in redemption of an Exchangeable Note will be determined;
1.47	<b>"Exchange Securities"</b>	the securities indicated in the Applicable Pricing Supplement which may be delivered by the Issuer in redemption of Exchangeable Notes to the value of the Exchange Price;
1.48	<b>"Extraordinary Resolution"</b>	a resolution passed at a properly constituted meeting of Noteholders or Noteholders of the relevant Series of Notes, as the case may be, by a majority consisting of not less than three-fourths of the votes cast at a poll by Noteholders or Noteholders of the relevant Series, as the case may be, present in person or by proxy;
1.49	<b>"Final Redemption Amount"</b>	In respect of any Note, its Principal Amount or such other amount as may be specified in, or determined in accordance with, the Applicable Pricing Supplement;
1.50	<b>"Financial Exchange"</b>	BESA or any other financial exchange(s) on which any Notes may be listed;
1.51	<b>"Fixed Interest Rate"</b>	the rate or rates of interest applicable to Fixed Rate Notes, as specified in the Applicable Pricing Supplement;
1.52	<b>"Fixed Rate Notes"</b>	Notes which will bear interest at the Fixed Interest Rate, as specified in the Applicable Pricing Supplement;
1.53	<b>"Floating Rate Notes"</b>	Notes which will bear interest at a floating Interest Rate, as specified in the Applicable Pricing Supplement;
1.54	<b>"Global Certificate"</b>	as contemplated in the Terms and Conditions, a single certificate for a Tranche of Notes (other than those Notes within the Tranche represented by Definitive Certificates), registered in each case in the name of the Central Securities Depository's Nominee and representing those Notes issued in terms of the Terms and Conditions which are lodged and immobilised in the Central Securities Depository. A Global Certificate may be replaced by the issue of uncertificated securities in terms of section 37 of the Securities Services Act;
1.55	<b>"Income Tax Act"</b>	the Income Tax Act, 1962;
1.56	<b>"Independent Investment Bank"</b>	the independent investment bank or financial institution of international repute selected and appointed by the Issuer (at the Issuer's expense) for the purposes of performing one or more of the functions expressed to be performed by it under these Terms and Conditions;
1.57	<b>"Instalment Amount"</b>	the amount expressed as a percentage of the Principal Amount of an Instalment Note, being an instalment of principal (other than the final instalment) on an Instalment Note;
1.58	<b>"Instalment Notes"</b>	Notes redeemable in Instalment Amounts by the Issuer on an amortised basis on different Instalment Dates, as indicated in the Applicable Pricing Supplement;
1.59	<b>"Interest Amount"</b>	the amount of interest payable in respect of each Principal Amount of Fixed Rate Notes and Floating Rate Notes, as determined in accordance with Condition 9.1 and 9.2 respectively;
1.60	<b>"Interest Commencement Date"</b>	the first date from which interest on the Notes will accrue, as

specified in the Applicable Pricing Supplement;

1.61	<b>"Interest Payment Date"</b>	the date(s) specified as such in the Applicable Pricing Supplement, or if no express such date(s) is/are specified in the Applicable Pricing Supplement, each date which occurs after a certain period following the preceding date upon which Interest Amounts are due and payable (such period as specified in the Applicable Pricing Supplement) or, in the case of the first Interest Payment Date, after the Interest Commencement Date;
1.62	<b>"Interest Period"</b>	the period(s) specified as such in the Applicable Pricing Supplement in respect of which interest accrues on Notes other than Zero Coupon Notes, commencing on and including the day of any Interest Payment Date and ending on but excluding the following Interest Payment Date provided that the first Interest Period shall be from and including the issue date of such Notes to but excluding the first Interest Payment Date thereafter;
1.63	<b>"Interest Rate"</b>	the rate or rates of interest applicable to Notes other than Fixed Rate Notes;
1.64	<b>"ISDA"</b>	International Swaps and Derivatives Association, Inc.;
1.65	<b>"ISDA Definitions"</b>	the 2000 ISDA Definitions as published by ISDA (as amended, supplemented, revised or republished from time to time);
1.66	<b>"Issuer"</b>	Absa Bank Limited (registration number 1986/004794/06);
1.67	<b>"Junior Securities"</b>	the Ordinary Shares, other share capital or any other securities of the Issuer or any other member of the Absa Group, the proceeds of which qualify as Primary Share Capital, ranking or expressed to rank junior to the Notes either issued directly by the Issuer or, where issued by a member of the Absa Group, where the terms of the securities benefit from a guarantee or support agreement entered into by the Issuer or any other member of the Absa Group which ranks or is expressed to rank junior to the Notes;
1.68	<b>"Last Day to Register"</b>	with respect to a particular Series of Notes (as reflected in the Applicable Pricing Supplement), the last date or dates preceding a Payment Day on which the Transfer Agent will accept Transfer Forms and record the transfer of Notes in the Register for that particular Series of Notes and whereafter the Register is closed for further transfers or entries until the Payment Day;
1.69	<b>"Liabilities"</b>	the total amount of the non consolidated gross liabilities of the Issuer as shown in the latest published audited non consolidated balance sheet of the Issuer, but adjusted for contingencies and subsequent events in such manner as the directors of the Issuer, the auditors of the Issuer or a liquidator or administrator of the Issuer (if applicable) may determine;
1.70	<b>"Mandatory Exchange"</b>	if indicated in the Applicable Pricing Supplement, the obligation of the Issuer to redeem Exchangeable Notes on the Maturity Date by delivery of Exchange Securities to the relevant Noteholders of Exchangeable Notes;
1.71	<b>"Market Disruption Event"</b>	means:
1.71.1		the occurrence or existence of any suspension of or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the JSE or such other principal exchange of the Controlling Company from time to time or otherwise) or on settlement procedures for transactions in the ordinary shares of the

Controlling Company on the JSE or such other principal exchange of the Controlling Company from time to time if, in any such case, the ACSM Calculation Agent has confirmed to the Issuer and the Controlling Company that the suspension or limitation is material in the context of the sale of the Payment Ordinary Shares; or

- 1.71.2 in the opinion of the issuer or the Controlling Company, there has been a substantial deterioration in the price and/or value of the relevant Payment Ordinary Shares or circumstances are such so as to prevent or to a material extent restrict the issue, allotment, sale, delivery or listing of the Payment Ordinary Shares, as the case may be, including the Controlling Company by entering a close period; or
- 1.71.3 where pursuant to these Conditions, moneys are required to be converted from one currency into another currency in respect of any ACSM Payment, the occurrence of any event that makes it impracticable to effect such conversion;
- 1.72 **"Mixed Rate Notes"** Notes which will bear interest over respective periods at differing interest rates applicable to any combination of Fixed Rate Notes or Floating Rate Notes, each as indicated in the Applicable Pricing Supplement and as more fully described in Condition 9.3;
- 1.73 **"Non-Redeemable Non-Cumulative Preference Shares"** non-redeemable non-cumulative preference shares in the issued share capital of the Issuer;
- 1.74 **"Noteholders"** the holders of the Registered Notes (as recorded in the Register) and/or the Bearers of the Bearer Notes and/or the Payees of the Order Notes;
- 1.75 **"Noteholders' Exchange Right"** if indicated in the Applicable Pricing Supplement, the right of Noteholders of Exchangeable Notes to elect to receive delivery of the Exchange Securities in lieu of cash from the Issuer upon redemption of such Notes;
- 1.76 **"Notes"** the notes issued or to be issued by the Issuer under the Programme;
- 1.77 **"Optional Redemption Amount"** in respect of any Note, its Principal Amount or such other amount as may be specified in, or determined in accordance with, the Applicable Pricing Supplement;
- 1.78 **"Order Note"** a Note payable to the Payee thereof, transferable by way of Endorsement and delivery in accordance with Condition 17.3 and the term "Order Note" shall include the rights to interest or principal represented by a Coupon or Receipt (if any) attached on issue to the Certificate evidencing such Order Note;
- 1.79 **"Ordinary Resolution"** a resolution passed at a properly constituted meeting of Noteholders or Noteholders of the relevant Series of Notes, as the case may be, by a majority of the votes cast at a poll by Noteholders or Noteholders of the relevant Series of Notes, as the case may be, present in person or by proxy;
- 1.80 **"Ordinary Shares"** ordinary shares in the issued share capital of the Issuer;
- 1.81 **"Outstanding"** in relation to the Notes, all the Notes issued other than:
- 1.81.1 those which have been redeemed in full;
- 1.81.2 those in respect of which the date for redemption in accordance with the Terms and Conditions has occurred



and the redemption monies (including all interest (if any) accrued thereon to the date for such redemption and any interest (if any) payable under the Terms and Conditions after such date) remain available for payment against presentation of Certificates;

1.81.3

those which have been purchased and cancelled as provided in Condition 12.9;

1.81.4

those which have become prescribed under Condition 14;

1.81.5

Notes represented by those mutilated or defaced Certificates which have been surrendered in exchange for replacement Certificates pursuant to Condition 16;

1.81.6

(for the purpose only of determining how many Notes are Outstanding and without prejudice to their status for any other purpose) those Notes represented by Certificates alleged to have been lost, stolen or destroyed and in respect of which replacement Certificates have been issued pursuant to Condition 16,

provided that for each of the following purposes, namely:

- (a) the right to attend and vote at any meeting of the Noteholders; and
- (b) the determination of how many and which Notes are for the time being Outstanding for the purposes of Condition 11 and 22,

all:

- (c) Notes (if any) which are for the time being held by the Issuer (subject to any applicable law) or by any person for the benefit of the Issuer and not cancelled (unless and until ceasing to be so held); and
- (d) Receipts and Coupons,

shall be deemed not to be Outstanding;

1.82 **"Parity Securities"**

Non-Redeemable Non-Cumulative Preference Shares qualifying as Primary Share Capital from time to time outstanding or any other securities issued by the Issuer or any other member of the Absa Group ranking or expressed to rank equally as to payments with Non-Redeemable Non-Cumulative Preference Shares and the proceeds of which qualify as Primary Share Capital or any securities issued by a member of the Absa Group that benefit from a guarantee or support agreement from the Issuer or any other member of the Absa Group which ranks or is expressed to rank equally as to payments with the Notes and the proceeds from the issue of which securities qualify as Primary Share Capital;

1.83 **"Participants"**

depository institutions accepted by the Central Securities Depository as participants in terms of the Securities Services Act;

1.84 **"Partly Paid Notes"**

Notes which are issued with the Issue Price partly paid and which Issue Price is paid up fully by the Noteholder in instalments (as indicated in the Applicable Pricing Supplement);

1.85	<b>"Payee"</b>	a person reflected (either as the subscriber or by way of Endorsement) as the payee on a Certificate evidencing an Order Note or a Receipt or Coupon attached thereto on issue and to whom such Certificate, Receipt or Coupon (as the case may be) has been delivered;
1.86	<b>"Paying Agent"</b>	the Issuer, unless the Issuer elects to appoint, in relation to a particular Tranche or Series of Notes, another entity as Paying Agent, in which event that other entity shall act as a Paying Agent in respect of that Tranche or Series of Notes;
1.87	<b>"Payment Day"</b>	any day which is a Business Day and upon which a payment is due by the Issuer in respect of any Notes;
1.88	<b>"Payment Issuer Shares"</b>	has the meaning given in Condition 7;
1.89	<b>"Payment Ordinary Shares"</b>	has the meaning given in Condition 7;
1.90	<b>"Primary Share Capital"</b>	<i>"primary share capital"</i> as defined in section 1(1) of the Banks Act;
1.91	<b>"Principal Amount"</b>	the nominal amount of each Note specified on the Certificate evidencing such Note;
1.92	<b>"Programme"</b>	the ZAR30 000 000 000 Domestic Medium Term Note Programme under which the Issuer may from time to time issue Notes;
1.93	<b>"Programme Memorandum"</b>	this document dated 11 August 2008, as amended, and/or supplemented from time to time;
1.94	<b>"Qualifying Primary Share Capital Securities"</b>	securities whether debt, equity, interests in limited partnerships or otherwise, issued directly or indirectly by the Issuer that:
1.94.1		have terms not materially less favourable to a holder of the Notes than the terms of the current Notes (as reasonably determined by the Issuer, and provided that a certification to such effect of 2 Directors of the Issuer and an opinion to such effect of an Independent Investment Bank shall have been delivered to the Issuer prior to the issue of the relevant securities and is so stated in the certificate) provided that they shall (1) include a ranking at least equal to that of the Notes, (2) have the same interest, dividend or distribution rate or rate of return and Interest Payment Dates from time to time applying to the Notes, (3) preserve any existing rights under these Terms and Conditions to any accrued interest which has not been satisfied, (4) have the same redemption dates as the Notes, (5) be issued in an amount at least equal to the total number of Notes multiplied by the Specified Denomination, (6) comply with the then current requirements of the SARB in relation to Primary Share Capital and (7) if not issued by the Issuer, then have the benefit of a guarantee by the Issuer; and
1.94.2		are listed on the JSE, BESA or any other internationally recognised exchange;
1.95	<b>"Qualifying Secondary Capital Securities"</b>	securities whether debt, equity, interests in limited partnerships or otherwise, issued directly or indirectly by the Issuer that:
1.95.1		have terms not materially less favourable to a holder of the Notes than the terms of the current Notes (as reasonably determined by the Issuer, and provided that a certification to such effect of 2 Directors of the Issuer

and an opinion to such effect of an Independent Investment Bank shall have been delivered to the Issuer prior to the issue of the relevant securities and is so stated in the certificate) provided that they shall (1) rank senior to, or *pari passu* with, the Notes, (2) have the same interest, dividend or distribution rate or rate of return and Interest Payment Dates from time to time applying to the Notes, (3) preserve any existing rights under these Terms and Conditions to any accrued interest which has not been satisfied, (4) have the same redemption dates as the Notes, (5) be issued in an amount at least equal to the total number of Notes multiplied by the Specified Denomination, (6) comply with the then current requirements of the SARB in relation to Secondary Capital and (7) if not issued by the Issuer, then have the benefit of a guarantee by the Issuer; and

1.95.2		are listed on the JSE, BESA or any other internationally recognised exchange;
1.96	<b>"Receipt"</b>	a receipt evidencing title to payment of an Instalment Amount payable on an Instalment Note which is a Bearer Note or Order Note, attached upon issue to the Certificate evidencing such Instalment Note;
1.97	<b>"Redemption Amount"</b>	as appropriate, the Early Redemption Amount (Tax), the Optional Redemption Amount or such other amount in the nature of a redemption amount as may be specified in, or determined in accordance with the provisions of, the Applicable Pricing Supplement;
1.98	<b>"Redemption Date"</b>	each date on which any Notes are to be redeemed, partially or finally, as the case may be, in terms of the Terms and Conditions;
1.99	<b>"Registrar of Banks"</b>	the Registrar of Banks in accordance with the Banks Act, 1990;
1.100	<b>"Register"</b>	the register maintained by the Transfer Agent in terms of Condition 18;
1.101	<b>"Registered Note"</b>	a Note issued in registered form and transferable in accordance with Condition 17.1;
1.102	<b>"Regulatory Change"</b>	a change in, or amendment to, the Capital Regulations or any change in the application of or official or generally published guidance or interpretation of the Capital Regulations, which change or amendment becomes, or would become, effective on or after the Issue Date;
1.103	<b>"Regulatory Event"</b>	an event which is deemed to have occurred if the proceeds of the issue of the Notes would, as a result of a Regulatory Change, no longer be eligible to qualify (save where such non-qualification is only as a result of any applicable limitation on the amount of such capital) for inclusion in the Primary Share Capital of the Issuer and the Controlling Company on a solo and/or consolidated basis;
1.104	<b>"Relevant Date"</b>	in respect of any payment relating to the Notes, the date on which such payment first becomes due, except that, in relation to monies payable to the Central Securities Depository in accordance with these Terms and Conditions, it means the first date on which: (i) the full amount of such monies have been received by the Central Securities Depository, (ii) such monies are available for payment to the holders of Beneficial Interests, and (iii) notice to that effect has been duly given to such holders in accordance with the

## Applicable Procedures;

1.105	<b>"Representative"</b>	a person duly authorised to act on behalf of a Noteholder, who may be regarded by the Issuer, the Transfer Agent and the Paying Agent (acting in good faith) as being duly authorised based upon the tacit or express representation thereof by such person, in the absence of express notice to the contrary from such Noteholder;
1.106	<b>"SARB"</b>	the South African Reserve Bank;
1.107	<b>"Secondary Capital"</b>	" <i>secondary capital</i> " as defined in section 1(1) of the Banks Act;
1.108	<b>"Securities Services Act"</b>	the Securities Services Act, 2004;
1.109	<b>"Senior Creditors"</b>	means;
1.109.1		creditors of the Issuer who are unsubordinated creditors of the Issuer; or
1.109.2		creditors of the Issuer whose claims are, or are expressed to be, subordinated to the claims of other creditors, whether subordinated or unsubordinated, of the Issuer other than those whose claims rank, or are expressed to rank, <i>pari passu</i> with, or junior to, the claims of the Noteholders;
1.110	<b>"Series"</b>	a Tranche of Notes together with any further Tranche or Tranches of Notes which are: (i) expressed to be consolidated and form a single series; and (ii) identical in all respects (including as to listing) except for their respective Issue Dates, Interest Commencement Dates and/or Issue Prices;
1.111	<b>"Settlement Agents"</b>	means those Participants which are approved by BESA or any other relevant Financial Exchange from time to time, in terms of the Applicable Procedures, as settlement agents to perform electronic settlement of funds and scrip on behalf of market participants;
1.112	<b>"Shortfall Interest Amount"</b>	has the meaning given to it in Condition 7;
1.113	<b>"Solvency Claims"</b>	has the meaning given in Condition 5.4 ( <i>Solvency Claims</i> );
1.114	<b>"Solvency Condition"</b>	has the meaning given in Condition 5.3 ( <i>Solvency Condition</i> );
1.115	<b>"Solvent Reconstruction"</b>	the event where an order is made or an effective resolution is passed for the winding-up of the Issuer, other than under or in connection with a scheme of amalgamation or reconstruction not involving a bankruptcy or insolvency where the obligations of the Issuer in relation to the outstanding Notes are assumed by the successor entity to which all, or substantially all, of the property, assets and undertaking of the Issuer are transferred or where an arrangement with similar effect not involving bankruptcy or insolvency is implemented;
1.116	<b>"South Africa"</b>	the Republic of South Africa;
1.117	<b>"Specified Currency"</b>	has the meaning given in the Applicable Pricing Supplement;
1.118	<b>"Specified Denomination"</b>	has the meaning given in the Applicable Pricing Supplement;
1.119	<b>"Specified Office"</b>	in relation to each of the Issuer, the Calculation Agent, Paying Agent and the Transfer Agent, the address of the office specified in respect of such entity at the end of the Programme Memorandum, or such other address as is notified by such entity (or, where applicable, a successor to such entity) to the

Noteholders in accordance with the Terms and Conditions, as the case may be;

1.120	<b>"Subordinated Debt"</b>	any subordinated debt issued by the Issuer, the proceeds of which subordinated debt qualify as Secondary Capital or Tertiary Capital of the Issuer;
1.121	<b>"Talon"</b>	a talon entitling the holder to receive further Coupons in relation to an interest bearing Bearer Note or Order Note, if indicated in the Applicable Pricing Supplement, attached to the Certificate evidencing such interest bearing Note;
1.122	<b>"Tax Event"</b>	an event where, (a) as a result of a Tax Law Change, (i) the Issuer has paid or will or would on the next Interest Payment Date be required to pay additional amounts as provided or referred to in Condition 13 ( <i>Taxation</i> ); or (ii) in respect of the Issuer's obligation to make any payment of interest on the next following Interest Payment Date or any subsequent Interest Payment Date, the Issuer would not be entitled to claim a deduction in respect of computing its taxation liabilities in South Africa, or such entitlement is materially reduced, or (b) other than as a result of a Tax Law Change, the Issuer's treatment of the interest payable by it on the Notes as a tax deductible expense for South African income tax purposes as reflected on the tax returns (including provisional tax returns) filed (or to be filed) by the Issuer is not accepted by the South African Revenue Service, and in each case the Issuer cannot avoid the foregoing in connection with the Notes by taking measures reasonably available to it (such reasonable measures to exclude any requirement to instigate litigation in respect of any decision or determination of the South African Revenue Service that any such interest does not constitute a tax deductible expense);
1.123	<b>"Tax Jurisdiction"</b>	South Africa or any political subdivision or any authority thereof or therein having power to tax or any other jurisdiction in which payments by the Issuer become subject to tax;
1.124	<b>"Tax Law Change"</b>	a change in or proposed change in, or amendment or proposed amendment to, the laws or regulations of South Africa, or any political subdivision or any authority thereof or therein having power to tax, or any change in the application or official interpretation of such laws or regulations (including a holding by a court of competent jurisdiction), whether or not having retrospective effect, which change or amendment is announced on or after the Issue Date;
1.125	<b>"Taxable Gain"</b>	any "taxable capital gain" as defined in paragraph 1 of Schedule 8 to the Income Tax Act;
1.126	<b>"Taxable Income"</b>	any "taxable income" as defined in section 1 of the Income Tax Act;
1.127	<b>"Taxes"</b>	all present and future taxes, levies, imposts, duties, charges, fees, deductions and withholdings imposed or levied by any governmental, fiscal or other competent authority in South Africa or any other jurisdiction from which any payment is made (and including any penalty payable in connection with any failure to pay, or delay in paying, any of the same) and <b>"Tax"</b> and <b>"Taxation"</b> shall be construed accordingly;
1.128	<b>"Terms and Conditions"</b>	the terms and conditions incorporated in this section headed "Terms and Conditions of the Tier 1 Notes" and in accordance with which the Notes will be issued;
1.129	<b>"Tertiary Capital"</b>	<i>"tertiary capital"</i> as defined in section 1(1) of the Banks Act;

1.130	"Tranche"	in relation to any particular Series, all Notes which are identical in all respects (including as to listing);
1.131	"Transfer Agent"	Absa Secretarial Services (Proprietary) Limited (registration number 1973/014516/07), unless the Issuer elects to appoint, in relation to a particular Tranche or Series of Notes, another entity as Transfer Agent, in which event that other entity shall act as Transfer Agent in respect of that Tranche or Series of Notes;
1.132	"Transfer Form"	the written form for the transfer of a Registered Note, in the form approved by the Transfer Agent, and signed by the transferor and transferee;
1.133	"Uncertificated Notes"	a Note which is uncertificated as contemplated in section 37 of the Securities Services Act;
1.134	"ZAR"	the lawful currency of South Africa, being South African Rand, or any successor currency; and
1.135	"ZAR-JIBAR-SAFEX"	the mid-market rate for deposits in ZAR for a period of the Designated Maturity which appears on the Reuters Screen SAFEY Page as at 12h00, South African time, on the relevant date, or any successor rate.
1.136	In the Terms and Conditions, unless inconsistent with the context, any reference to:	
1.136.1	one gender include a reference to the others;	
1.136.2	the singular includes the plural and <i>vice versa</i> ;	
1.136.3	natural persons include juristic persons and vice versa;	
1.136.4	a <b>subsidiary</b> or <b>holding company</b> shall be interpreted in accordance with section 1 of the Companies Act;	
1.136.5	any agreement or instrument is a reference to that agreement or instrument as amended, supplemented, varied, novated, restated or replaced from time to time, and <b>amended</b> or <b>amendment</b> will be construed accordingly;	
1.136.6	a provision of law is a reference to that provision as amended or re-enacted, and includes any subordinate legislation;	
1.136.7	a <b>regulation</b> includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;	
1.136.8	<b>assets</b> includes present and future properties, revenues and rights of every description;	
1.136.9	<b>disposal</b> means a sale, transfer, grant, lease or other disposal (whether voluntary or involuntary);	
1.136.10	<b>indebtedness</b> includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;	
1.136.11	an <b>authorisation</b> includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration or notarisation;	
1.136.12	a Default being <b>continuing</b> means that it has not been remedied or waived;	
1.136.13	a Party or any other person includes that person's permitted successor, transferee, cessionary and/or delegate; and	
1.136.14	a time of day is a reference to South African time.	

- 1.137 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect must be given to it as if it were a substantive provision in the body of the agreement, notwithstanding that it is contained in the interpretation clause.
- 1.138 Headings are inserted for the sake of convenience only and do not in any way affect the interpretation of the Terms and Conditions.
- 1.139 The use of the word **including** followed by specific examples will not be construed as limiting the meaning of the general wording preceding it, and the *eiusdem generis* rule must not be applied in the interpretation of such general wording or such specific examples.
- 1.140 The rule of construction that an agreement is to be interpreted against the party responsible for the drafting or preparation thereof must not be used in the interpretation of the Terms and Conditions.

## 2. ISSUE

- 2.1 Subject to the prior consent of the Registrar of Banks (to the extent required), Notes may be issued by the Issuer in Tranches pursuant to the Programme. A Tranche of Notes may, together with a further Tranche or Tranches, form a Series of Notes issued under the Programme.
- 2.2 The Applicable Pricing Supplement for each Tranche of Notes is incorporated in these Terms and Conditions for the purposes of those Notes and supplements these Terms and Conditions. The Applicable Pricing Supplement may specify other terms and conditions (which may replace, modify or supplement these Terms and Conditions), in which event such other terms and conditions shall, to the extent so specified in the Applicable Pricing Supplement or to the extent inconsistent with these Terms and Conditions, replace, modify or supplement these Terms and Conditions for the purpose of such Tranche of Notes.
- 2.3 The Noteholders are deemed to have notice of, and are entitled to the benefit of, and are subject to, all the provisions of the Applicable Pricing Supplement.

## 3. FORM AND DENOMINATION

### 3.1 General

- 3.1.1 Notes will be issued as Registered Notes, Bearer Notes or Order Notes.
- 3.1.2 All payments in relation to the Notes will be made in the Specified Currency.
- 3.1.3 Each Note shall be a Tier 1 Note. Any Note may be a Partly Paid Note, Instalment Note or an Exchangeable Note.
- 3.1.4 Each Note may be a Fixed Rate Note, a Floating Rate Note, a Mixed Rate Note or a combination of any of the foregoing or such other types of Note as may be determined by the Issuer, as indicated in the Applicable Pricing Supplement.
- 3.1.5 Notes will be issued in such denominations as may be determined by the Issuer and as specified in the Applicable Pricing Supplement, provided that Notes shall not be issued in denominations of less than ZAR1,000,000.
- 3.1.6 Listed and/or unlisted Notes may be issued under the Programme.

### 3.2 Registered Notes

- 3.2.1 The Notes in a Tranche of Registered Notes will be issued in the form of (i) Definitive Certificates registered in the name, and for the account of, the relevant Noteholder or (ii) a Global Certificate which will be deposited in the Central Securities Depository and registered in the name, and for the account of, the Central Securities Depository's Nominee or (iii) uncertificated securities in terms of S37 of the Securities Services Act which will be held in the Central Securities Depository and registered in the name of, and for the account of, the Central Securities Depository. The Central Securities Depository will hold the Notes subject to the Securities Services Act and the Applicable Procedures. A Global Certificate may be replaced by uncertificated securities in terms of section 37 of the Securities Services Act.
- 3.2.2 An owner of a Beneficial Interest in the Notes represented by the Global Certificate shall be entitled to exchange such Beneficial Interest for a Definitive Certificate in accordance with Condition 16.

### 3.3 **Bearer Notes and Order Notes**

Bearer Notes or Order Notes will be evidenced by Definitive Certificates. Bearer Notes or Order Notes may have Coupons and (if indicated in the Applicable Pricing Supplement), Talons attached to the Certificate on issue. Instalment Notes which are Bearer Notes or Order Notes may have Receipts attached to the Certificate on issue.

## 4. **TITLE**

### 4.1 **Registered Notes**

- 4.1.1 Subject as set out below, title to Registered Notes will pass upon registration of transfer in the Register in accordance with Condition 17.1.
- 4.1.2 The Issuer, the Transfer Agent and the Paying Agent shall recognise a Noteholder as the sole and absolute owner of the Notes registered in that Noteholder's name in the Register (notwithstanding any notice of ownership or writing thereon or notice of any previous loss or theft thereof) and shall not be bound to enter any trust in the Register or to take notice of or to accede to the execution of any trust, express, implied or constructive, to which any Note may be subject.
- 4.1.3 Beneficial Interests which are held by Participants will be held directly through the Central Securities Depository, and the Central Securities Depository will hold such Beneficial Interests, on behalf of such Participants, through the central securities accounts maintained by the Central Securities Depository for such Participants.
- 4.1.4 Beneficial Interests which are held by clients of Participants will be held indirectly through such Participants, and such Participants will hold such Beneficial Interests, on behalf of such clients, through the securities accounts maintained by such Participants for such clients. The clients of Participants may include the holders of Beneficial Interests or their custodians. The clients of Participants, as the holders of Beneficial Interests or as custodians for such holders, may exercise their rights in respect of the Notes held by them in the Central Securities Depository only through their Participants.
- 4.1.5 A certificate or other document issued by the Central Securities Depository or the relevant Participant, as the case may be, as to the Principal Amount of such Notes standing to the account of such person shall be prima facie proof of such Beneficial Interest.
- 4.1.6 Beneficial Interests may be transferred only in accordance with the Applicable Procedures. Such transfers will not be recorded in the Register and the Central Securities Depository's Nominee will continue to be reflected in the Register as the registered holder of the relevant Notes, notwithstanding such transfers.
- 4.1.7 Any reference in these Terms and Conditions to the relevant Participant shall, in respect of Beneficial Interests, be a reference to the Participant appointed to act as such by a holder of such Beneficial Interest.

### 4.2 **Bearer Notes**

- 4.2.1 Title to Bearer Notes (including rights to Instalment Amounts and/or interest thereon, as applicable) will pass by delivery of the Certificate evidencing such Note or of the Receipt and/or Coupon relating thereto, as the case may be, in accordance with Condition 16.2. The Issuer, the Transfer Agent and the Paying Agent may deem and treat the Bearer of any such Certificate, Receipt or Coupon as the absolute owner thereof (whether or not overdue and notwithstanding any notice of ownership or writing thereon or notice of any previous loss or theft thereof) for all purposes.
- 4.2.2 Title to Bearer Notes is subject to the Bearer obtaining the exemption from the National Treasury in respect of the prohibition on dealing in bearer securities as set out in regulation 15 of the Exchange Control Regulations.

### 4.3 **Order Notes**

- 4.3.1 Title to Order Notes (including rights to Instalment Amounts and/or interest thereon, as applicable) will initially pass by Endorsement and delivery of the Certificate evidencing such Note or of the Receipt and/or Coupon relating thereto, as the case may be, in accordance with Condition 16.3. Any Certificate evidencing an Order Note or such Receipt or Coupon upon which the last Endorsement is an Endorsement in Blank shall be treated as a Bearer Note, for so long as not subject to further Endorsement.



- 4.3.2 The Issuer, the Transfer Agent and the Paying Agent may deem and treat the person who from the face of the Certificate, Receipt or Coupon relating to an Order Note appears to be the Payee thereof as the absolute owner thereof (whether or not overdue and notwithstanding any notice of ownership or notice of any previous loss or theft thereof) for all purposes and payment to such person or their Representative shall discharge the Issuer from all liability to the Payee in relation to such Certificate, Receipt or Coupon, as the case may be, even if such Endorsement has been forged or made without authority.
- 4.3.3 Provided the Issuer pays any amount due upon presentation and surrender of a Certificate evidencing an Order Note, or any Receipt or Coupon attached thereto on issue, in good faith, it shall not be incumbent upon the Issuer or the Transfer Agent to determine or prove that the Endorsement of the Payee making such Endorsement was made by or under the authority of the person whose Endorsement it purports to be.

## 5. STATUS

### 5.1 Status of the Notes

The Notes constitute direct, unsecured and, in accordance with Condition 5.2 (*Subordination*), subordinated obligations of the Issuer and rank *pari passu* without any preference among themselves. The Notes rank *pari passu* with all subordinated securities issued by the Issuer the proceeds of which qualify as Primary Share Capital and all Non-Redeemable Non-Cumulative Preference Shares issued by the Issuer the proceeds of which qualify as Primary Share Capital in accordance with the Capital Regulations and senior in respect of the rights and claims of the holders of Ordinary Shares and the holders of any other Junior Securities.

### 5.2 Subordination

The claims of the Noteholders entitled to be paid amounts due in respect of the Notes (including amounts raised by way of the issuance of Payment Issuer Shares and Payment Ordinary Shares in accordance with Condition 7 (ACSM)) are subordinated to the claims of Depositors, Senior Creditors and the holders of Subordinated Debt and, accordingly:

- 5.2.1 no Noteholder shall be entitled to prove or tender to prove a claim in respect of the Notes in the event of the dissolution of the Issuer or if the Issuer is placed into liquidation, or is wound-up or placed under judicial management or curatorship;
- 5.2.2 no amount due under the Notes shall be eligible for set-off, counterclaim, abatement or other similar remedy which a Noteholder might otherwise have under the laws of any jurisdiction in respect of the Notes nor shall any amount due under the Notes be payable to any Noteholder; and
- 5.2.3 subject to Applicable Law, a Noteholder may not exercise or claim any right of set-off in respect of any amount in respect of the principal of and/or interest on the Notes owed to it by the Issuer and each Noteholder shall, by virtue of its subscription, purchase or holding of any Notes, be deemed to have waived all such rights of set-off and, to the extent that any set-off takes place, whether by operation of law or otherwise, between: (aa) any amount in respect of the principal and/or interest on the Notes owed by the Issuer to a Noteholder; and (bb) any amount owed to the Issuer by such Noteholder, such Noteholder will immediately transfer such amount which is set-off to the Issuer or, in the event of its dissolution, winding-up, liquidation, judicial management or curatorship (as the case may be), the liquidator, administrator or other relevant insolvency official of the Issuer, to hold in trust for the Depositors, the Senior Creditors and the holders of Subordinated Debt,

until the claims of Depositors, Senior Creditors and the holders of Subordinated Debt which are admissible in any such dissolution, liquidation, winding-up, judicial management or curatorship have been paid or discharged in full.

### 5.3 Solvency Condition

Payments in respect of the principal of and interest on the Notes (including payment of additional amounts pursuant to Condition 13.3 (*Gross up*)) are, in addition to the right of the Issuer to elect not to pay interest in accordance with Condition 6 (*Interest payments on the Notes*), conditional upon the Issuer being solvent at the time of payment by the Issuer, and, no principal of or interest on the Notes (including amounts raised by way of the issuance of Payment Issuer Shares and Payment Ordinary Shares in accordance with Condition 7 (ACSM)) shall be due and payable in respect of the Notes except to the extent that the Issuer could make such payment and still be solvent immediately thereafter. For the purposes of this Condition 5, the Issuer shall be solvent if (1) it is able to pay its debts owed to Depositors, Senior Creditors and the holders of Subordinated Debt as they fall due and (2) its Assets exceed its Liabilities to Depositors, Senior Creditors and the holders of Subordinated Debt (the "**Solvency Condition**"). A report as to the solvency of the Issuer made by 2 directors of the Issuer or, if the Issuer is in liquidation, its liquidator or, if in judicial management, its

judicial manager or if under curatorship, its curator shall, in the absence of manifest error, be treated and accepted by the Issuer and the Noteholders as correct and sufficient evidence of such solvency.

#### 5.4 Solvency Claims

Amounts representing any payments of principal in respect of which the Solvency Condition is not satisfied on the date upon which the same would otherwise be due and payable ("**Solvency Claims**") will be payable by the Issuer (i) subject to Condition 5.2 (*Subordination*), in a winding-up liquidation, judicial management or curatorship of the Issuer and (ii) subject to satisfying the Solvency Condition, on any redemption pursuant to Condition 8 (*Reorganisation*), Condition 12.2 (*Redemption for tax reasons*), Condition 12.3 (*Redemption for regulatory reasons*), Condition 12.4 (*Redemption at the option of the Issuer*) provided that in the event that, prior to any winding-up or liquidation, judicial management or curatorship of the Issuer, the Issuer shall again be solvent and would be solvent immediately after the making of such payment of Solvency Claims, then the Issuer shall promptly notify the Noteholders in accordance with Condition 20 (*Notices*), the Transfer Agent and the Paying Agent of such fact and the Solvency Claims shall, subject to satisfying the Solvency Condition, be due and payable on the 16<sup>th</sup> Business Day after the Issuer shall have given such notice. A Solvency Claim shall not bear interest unless and only so long as the Issuer shall be solvent once again, in which case interest shall accrue on any such Solvency Claim from (and including) the date on which the Issuer is so solvent again to (but excluding) the date on which such Solvency Claim is paid. Any such interest shall accrue at a rate equal to the then applicable rate of interest determined in accordance with Condition 9.1 (*Interest on Fixed Rate Notes*) or Condition 9.2 (*Interest on Floating Rate Notes*). In the event that the Issuer shall be so solvent once again, the Issuer may not declare or pay a dividend (in accordance with Condition 6.2 (*Restrictions following non payment of interest*)) from the date that the Issuer is so solvent again until the date on which the Solvency Claim and any relevant interest on the Solvency Claim is paid.

For the avoidance of doubt, if the Issuer would otherwise not be solvent for the purposes of the above, any sums which would otherwise be payable in respect of the Notes will be available to be put towards the losses of the Issuer.

#### 5.5 Capital Regulations and Additional Conditions

In order for the proceeds of the issuance of the Notes to qualify as Primary Share Capital, the Notes must comply with the applicable Capital Regulations, including the Additional Conditions (if any) prescribed by the Registrar of Banks in respect of a particular Tranche of Notes. The Additional Conditions (if any) prescribed by the Registrar of Banks in respect of the Notes will be specified in the Applicable Pricing Supplement or a supplement to the Programme Memorandum.

### 6. INTEREST PAYMENTS ON THE NOTES

#### 6.1 Non payment of interest

The Issuer shall be obliged to pay interest on each Interest Payment Date unless:

- 6.1.1 it elects not to pay the relevant Interest Amount on such Interest Payment Date;
- 6.1.2 it is in breach of either of the Capital Regulations or the Solvency Condition on the Business Day prior to such Interest Payment Date or would be in breach of the Capital Regulations or the Solvency Condition if the relevant Interest Amount were paid on such Interest Payment Date; or
- 6.1.3 at any time the Registrar of Banks imposes a mandatory prohibition on the payment by the Issuer of such Interest Amount.

If the Issuer is not obliged to pay the relevant Interest Amount in respect of an Interest Period in accordance with this Condition 6.1, then any such failure to pay such Interest Amount shall not constitute a default by the Issuer or any other breach of obligations under the Notes or for any other purpose and a Noteholder will have no claim in respect of any such non-payment.

If the Issuer elects pursuant to Condition 6.1.1 not to pay interest on an Interest Payment Date, it shall give notice of such election to the Noteholders in accordance with Condition 20 and to the Transfer Agent and the Paying Agent not less than 30 days prior to the relevant Interest Payment Date (or such shorter notice period as may be required by the Capital Regulations or the Registrar of Banks). If the Issuer is not obliged pursuant to the provisions of Condition 6.1.2 or 6.1.3 to pay any interest on any Interest Payment Date, it shall give notice of such fact to the Noteholders (in accordance with Condition 20) and the Paying Agent and, in respect of Condition 6.1.2, to the Registrar of Banks.

## 6.2 Restrictions following non payment of interest

If, on any Interest Payment Date (the "**Relevant Interest Payment Date**"), the Interest Amount in respect of the Notes shall not have been paid in full pursuant to Condition 6.1 (*Non payment of interest*), then from such Relevant Interest Payment Date until the date on which the Issuer next pays in full the Interest Amount due and payable on any succeeding Interest Payment Date on all outstanding Notes, neither the Issuer nor the Controlling Company shall (and the Controlling Company shall procure that no member of the Absa Group shall): (a) declare or pay a distribution or dividend or pay any interest on Junior Securities or Parity Securities (other than an instrument under the terms of which the Issuer or other member of the Absa Group must declare or pay a distribution or dividend or pay interest or a final dividend declared by the Controlling Company before such Relevant Interest Payment Date, or intra-group dividends between wholly-owned Absa Group subsidiaries and to Absa Group holding companies, which can be paid at any time); or (b) redeem, purchase, reduce or otherwise acquire any Junior Securities or Parity Securities or any securities of any of its subsidiary undertakings benefiting from a guarantee from any member of the Absa Group ranking, as to the right of repayment of principal, or in the case of any such guarantee, as to the payment of sums under such guarantee, *pari passu* with or junior to the Notes.

## 6.3 Payment of Deferred Interest Amounts

The Issuer may elect to satisfy any Interest Amount which is deferred in accordance with Condition 6.1.1 (a "**Deferred Interest Amount**") at any time, provided that the Issuer must, subject to Condition 5 and Condition 6.1.2 and 6.1.3, pay that Deferred Interest Amount on the earlier of:

- (i) the date of redemption or substitution of the Notes;
- (ii) subject to Condition 14 (*Prescription*), the Interest Payment Date falling on or nearest to the 10th anniversary of the date on which such amount was deferred; and
- (iii) the commencement of a winding-up (other than pursuant to a Solvent Reconstruction) of the Issuer,

and only in accordance with Condition 7 ("**ACSM**"). No amount will be payable by way of interest on any such Deferred Interest Amount, save as provided in Condition 7.5.

## 7. ALTERNATIVE COUPON SATISFACTION MECHANISM (ACSM)

### 7.1 Alternative Coupon Satisfaction Mechanism (ACSM)

In respect of any Interest Amount, the Issuer may elect to, and in respect of any Deferred Interest Amount must, satisfy its obligation to make such payment to Noteholders in full or in part through the issue of ordinary shares in accordance with this Condition 7.

The Payment of any relevant ACSM Amount will only be made by operation of the ACSM to the extent that proceeds raised in connection with the issue of the Payment Ordinary Shares are received no more than six months before the relevant ACSM Payment Date.

Each ACSM Amount, when due to be satisfied in accordance with these Conditions, will be satisfied by the Issuer only through the issue of ordinary shares in accordance with this Condition 7. The Issuer shall appoint an ACSM Calculation Agent (if it has not already done so) and notify the Noteholders, the Controlling Company, the Transfer Agent, the Paying Agent and the ACSM Calculation Agent not less than 30 days prior to the relevant Interest Payment Date that it shall endeavour to satisfy an Interest Amount through the ACSM.

### 7.2 Issue of Ordinary Shares

If the payment of any ACSM Amount is to be satisfied through the issue of ordinary shares in accordance with the provisions of this Condition 7 then (subject to the compliance by the Issuer and the Controlling Company with all applicable laws and regulations, including the rules of any relevant stock exchange):

- 7.2.1 by the close of business on or before the 14th ACSM Business Day prior to the relevant ACSM Payment Date, the ACSM Calculation Agent will determine the number of Ordinary Shares in the issued share capital of the Issuer (the "**Payment Issuer Shares**") that will have a market value as near as practicable to, but not less than, the relevant ACSM Amount to be satisfied in accordance with this Condition 7;

- 7.2.2 by the close of business on or before the 7th ACSM Business Day prior to the relevant ACSM Payment Date, the Issuer will issue to the Controlling Company the Payment Issuer Shares in consideration for which the Controlling Company will issue such number of ordinary shares in the issued share capital of the Controlling Company (the "**Payment Ordinary Shares**") as, in the determination of the ACSM Calculation Agent, have a market value as near as practicable to, but not less than, the relevant ACSM Amount to be satisfied in accordance with this Condition 7;
- 7.2.3 the ACSM Calculation Agent shall be required to agree in the ACSM Calculation Agency Agreement to use reasonable endeavours to procure subscribers for any Payment Ordinary Shares and the Issuer shall procure that the ACSM Calculation Agent does use such reasonable endeavours; and
- 7.2.4 by or before the close of business on the 6th ACSM Business Day prior to the relevant ACSM Payment Date, the Controlling Company will allot and issue to the subscribers procured by the ACSM Calculation Agent such number of Payment Ordinary Shares for which the ACSM Calculation Agent has procured subscribers for and the ACSM Calculation Agent shall receive the cash proceeds of the subscription for such Payment Ordinary Shares from the relevant subscribers. The ACSM Calculation Agent shall further be required to agree in the ACSM Calculation Agency Agreement to convert the proceeds of such sale, allotment and issue into the Specified Currency, if necessary, at prevailing market exchange rates and to pay such proceeds as it holds in respect of the relevant ACSM Amount on its due date to the Paying Agent for the purpose of paying such proceeds to the Noteholders.

If the Issuer is unable to raise the necessary amounts through the operation of the ACSM to satisfy the payment in full of the relevant ACSM Amount on the relevant ACSM Payment Date for any reason then the Issuer shall make payment to Noteholders on a *pro rata* basis of the amount raised through operation of the ACSM on the relevant ACSM Payment Date.

If, despite the operation of the provisions in this Condition 7, a shortfall exists on the Business Day preceding the intended ACSM Payment Date in respect of a Deferred Interest Amount, the Issuer shall, for a period of five years from such date, use all reasonable endeavours to settle such shortfall in accordance with this Condition 7.

The Issuer shall pay any Interest Amount due on the relevant ACSM Payment Date which cannot be satisfied by payment of the ACSM Amount (the "**Shortfall Interest Amount**") as though an election under Condition 7.1 had not been made in respect of such Shortfall Interest.

### 7.3 **Issue satisfies payment**

Where the Issuer either elects or is required to make a payment in full or in part hereunder by issuing Payment Issuer shares and issues such shares in accordance with this Condition 7 the issue of such Payment Issuer Shares (with the subsequent issue by the Controlling Company of the Payment Ordinary shares in accordance with this Condition 7 shall release and discharge the Issuer in full or in part from the requirement to satisfy the relevant ACSM Amount or, in the circumstances referred to in Condition 7.4 below, the relevant part of such ACSM Amount, if the issue of such Payment Issuer Shares is made in accordance with this Condition 7. The proceeds of sale of Payment Ordinary Share resulting from the mandatory exchange of Payment Issuer shares in accordance with this Condition 7 shall be paid by the Paying Agent or its agent to the Noteholders in respect of the relevant ACSM Amount.

### 7.4 **Insufficiency**

The Issuer will be able to satisfy ACSM Payments by issuing ordinary shares only to the extent that both it and the Controlling Company have sufficient authorised and unissued Payment Issuer Shares and Payment Ordinary Shares (as the case may be) on the relevant ACSM Payment Date to satisfy such ACSM Payment. Each of the Issuer and the Controlling Company will use all reasonable efforts to ensure that it has sufficient authorised and unissued Payment Issuer shares or Payment Ordinary Shares (as the case may be) for this purpose.

For the avoidance of doubt, no Note may be redeemed pursuant to these Conditions, unless all outstanding Interest Amounts are satisfied at the same time. In the event that either the Issuer or the Controlling Company does not have a sufficient number of Issuer Ordinary Shares or Payment Ordinary Shares (as the case may be) available for issue to satisfy the payment of all such outstanding payments which are required to be satisfied in accordance with Condition 7, or in the event that the Issuer or the Controlling Company would not be in compliance with applicable laws and regulations (including the rules of any relevant stock exchange) in so issuing the requisite number of Issuer Ordinary Shares or Payment Ordinary Shares under Condition 7, then the Issuer may not redeem any Note until such time as both the Issuer and the Controlling Company have so available sufficient Issuer Ordinary Shares or Payment Ordinary Shares (as the case may be).

## 7.5 Market Disruption

Notwithstanding the provisions of Condition 7.2, if there exists, in the opinion of the Issuer, a Market Disruption Event on or after the 15th business day preceding any date upon which the Issuer is due to make or satisfy an ACSM Amount, then the Issuer may give a notice to the Paying Agent, the ACSM Calculation Agent and the Noteholders as soon as possible after the Market Disruption Event has arisen or occurred, whereupon the relevant ACSM Amount may be deferred until such time as the Market Disruption Event no longer exists.

Any such deferred ACSM Amount will be satisfied as soon as practicable following such time as the Market Disruption Event no longer exists. Interest shall not accrue on such deferred ACSM Amount unless, solely as a consequent of the existence of a Market Disruption Event, the Issuer does not satisfy the relevant ACSM Amount for a period of 14 days or more after the due date therefore, in which case interest shall accrue on such deferred ACSM Amount from (and including) the date on which the relevant ACSM Amount was first due to be made to (but excluding) the date on which such ACSM Amount is made (and for so long as the sole reason for the Issuer not making the relevant ACSM Amount is the existence of the Market Disruption Event). Any such interest shall accrue at a rate determined in accordance with Condition 4 and shall be satisfied only through the issue of Payment Issuer shares in accordance with Condition 7.2, as soon as reasonably practicable after the relevant deferred ACSM Amount is satisfied.

## 8. REORGANISATION

If following any take-over offer or any reorganisation, restructuring or scheme of arrangement, Absa Group Limited ceases to be the Controlling Company or ceases to hold directly or indirectly a majority position in the share capital of the Issuer, then the Issuer shall be under no obligation, but shall use reasonable commercial endeavours to take such steps to replicate the ACSM in the context of the capital structure of the new Controlling Company. If such replicated ACSM cannot, in the opinion of the Issuer, be effected 30 days prior to a particular Interest Payment Date then the Issuer shall no longer be able to elect pursuant to Condition 7.1 to satisfy the payment of such Interest Amount in full or in part through the operation of the ACSM.

## 9. INTEREST

### 9.1 Interest on Fixed Rate Notes

9.1.1 Unless otherwise specified in the Applicable Pricing Supplement, interest on Fixed Rate Notes will be paid on a 6-monthly basis, on the Interest Payment Dates.

9.1.2 Each Fixed Rate Note bears interest on its Principal Amount (or, if it is a Partly Paid Note, the amount paid up) from (and including) the Interest Commencement Date to (but excluding) the Maturity Date at the rate(s) per annum equal to the Fixed Interest Rate. Such interest shall fall due for payment in arrear on the Interest Payment Date(s) in each year and on the Maturity Date if such date does not fall on an Interest Payment Date. The first payment of interest will be made on the Interest Payment Date following the Interest Commencement Date.

9.1.3 The Calculation Agent will calculate the Interest Amount payable in respect of each Tranche of Fixed Rate Notes for each Interest Period. Unless stated otherwise in the Applicable Pricing Supplement, the Interest Amount for half yearly interest payments shall be calculated by multiplying the Interest Rate by the Principal Amount (or, if it is a Partly Paid Note, the amount paid up) of the Fixed Rate Note and then dividing such product by 2 (the resultant sum will be rounded to the nearest smallest denomination of the Specified Currency, half of any such denomination being rounded upwards), provided that:

9.1.3.1 if an Initial Broken Amount is specified in the Applicable Pricing Supplement, then the first Interest Amount shall equal such Initial Broken Amount; and

9.1.3.2 if a Final Broken Amount is specified in the Applicable Pricing Supplement, then the final Interest Amount shall equal such Final Broken Amount.

Save as provided in the preceding paragraphs, if interest is required to be calculated for a period of other than one year (in the case of annual interest payments) or other than 6 months (in the case of semi-annual interest payments), as the case may be, such interest shall be calculated on the basis of the actual number of days (including the first day and excluding the last day) in such period divided by 365.

### 9.2 Interest on Floating Rate Notes

#### A. Interest Rate

The Interest Rate payable from time to time in respect of the Floating Rate Notes will be determined:

- (a) on the basis of ISDA Determination; or
- (b) on the basis of Screen Rate Determination; or
- (c) on such other basis as may be determined by the Issuer,

all as specified in the Applicable Pricing Supplement.

**B. *ISDA Determination***

Where ISDA Determination is specified in the Applicable Pricing Supplement as the manner in which the Interest Rate is to be determined, the Interest Rate for each Interest Period will be the relevant ISDA Rate (as defined below) plus or minus (as indicated in the Applicable Pricing Supplement) the Margin (if any).

For the purposes of this Condition 9.2 B:

**"ISDA Rate"** for an Interest Period means a rate equal to the Floating Rate that would be determined by such agent as is specified in the Applicable Pricing Supplement under a notional interest rate swap transaction if that agent were acting as Calculation Agent for that swap transaction under the terms of an agreement incorporating the ISDA Definitions and under which:

- (a) the Floating Rate Option is as specified in the Applicable Pricing Supplement;
- (b) the Designated Maturity is the period specified in the Applicable Pricing Supplement; and
- (c) the relevant Reset Date is either: (i) if the applicable Floating Rate Option is based on the ZAR-JIBAR-SAFEX on the first day of that Interest Period; or (ii) in any other case, as specified in the Applicable Pricing Supplement.

**"Floating Rate", "Floating Rate Option", "Designated Maturity" and "Reset Date"** have the meanings given to those expressions in the ISDA Definitions.

When this Condition 9.2 B applies, in respect of each Interest Period such agent as is specified in the Applicable Pricing Supplement will be deemed to have discharged its obligations under Condition 9.2 F in respect of the determination of the Interest Rate if it has determined the Interest Rate in respect of such Interest Period in the manner provided in this Condition 9.2 B.

**C. *Screen Rate Determination***

Where Screen Rate Determination is specified in the Applicable Pricing Supplement as the manner in which the Interest Rate is to be determined, the Interest Rate for each Interest Period will, subject as provided below, be either:

- (a) the offered quotation (if there is only one quotation on the Relevant Screen Page); or
- (b) the arithmetic mean (rounded if necessary to the fifth decimal place, with 0.00005 being rounded upwards) of the offered quotations,

for the Reference Rate(s) which appears or appear as the case may be, on the Relevant Screen Page as at 12h00 (South African time) on the Interest Determination Date in question, plus or minus (as indicated in the Applicable Pricing Supplement) the Margin (if any), all as determined by the Calculation Agent. If 5 or more such offered quotations are available on the Relevant Screen Page the highest (or, if there is more than one such highest quotation, one only of such quotations) and the lowest (or, if there is more than one such lowest quotation, one only of such quotations) shall be disregarded by such agent for the purpose of determining the arithmetic mean (rounded as provided above) of such offered quotations.

If the Relevant Screen Page is not available or if, in the case of (i) above, no such offered quotation appears or, in the case of (ii) above, fewer than 3 such offered quotations appear, in each case at the time specified in the preceding paragraph, the Calculation Agent shall request the principal Johannesburg Specified Office of each of the Reference Banks (as defined below) to provide the Calculation Agent with its offered quotation (expressed as a percentage rate per annum) for the Reference Rate at approximately 12h00 (South African time) on the Interest Determination Date in question. If 2 or more of the Reference Banks provide the Calculation Agent with such offered quotations, the Interest Rate for such Interest Period shall be the arithmetic mean (rounded if necessary to the fifth decimal place with 0.000005 being rounded upwards) of

such offered quotations plus or minus (as appropriate) the Margin (if any), all as determined by the Calculation Agent.

If the Interest Rate cannot be determined by applying the provisions of the preceding paragraphs of this Condition 9.2 C, the Interest Rate for the relevant Interest Period shall be the rate per annum which the Calculation Agent determines as being the arithmetic mean (rounded if necessary to the fifth decimal place, with 0,000005 being rounded upwards) of the rates, as communicated to (and at the request of) the Calculation Agent by the Reference Banks or any 2 or more of them, at which such banks offered, at approximately 12h00 (South African time) on the relevant Interest Determination Date, in respect of deposits in an amount approximately equal to the Principal Amount of the Notes of the relevant Series, for a period equal to that which would have been used for the Reference Rate, to Reference Banks in the Johannesburg inter-bank market plus or minus (as appropriate) the Margin (if any). If fewer than 2 of the Reference Banks provide the Calculation Agent with such offered rates, the Interest Rate for the relevant Interest Period will be determined by the Calculation Agent as the arithmetic mean (rounded as provided above) of the rates for deposits in an amount approximately equal to the Principal Amount of the Notes of the relevant Series, for a period equal to that which would have been used for the Reference Rate, quoted at approximately 12h00 (South African time) on the relevant Interest Determination Date, by 4 leading banks in Johannesburg (selected by the Calculation Agent and approved by the Issuer) plus or minus (as appropriate) the Margin (if any). If the Interest Rate cannot be determined in accordance with the foregoing provisions of this paragraph, the Interest Rate shall be determined as at the last preceding Interest Determination Date (though substituting, where a different Margin is to be applied to the relevant Interest Period from that which applied to the last preceding Interest Period, the Margin relating to the relevant Interest Period, in place of the Margin relating to that last preceding Interest Period).

If the Reference Rate from time to time in respect of Floating Rate Notes is specified in the Applicable Pricing Supplement as being other than the ZAR-JIBAR-SAFEX rate, the Interest Rate in respect of such Notes will be determined, in the manner provided above, or as may be provided in the Applicable Pricing Supplement.

**"Reference Banks"** means for the purposes of this Condition 9.2 C, the 4 leading banks in the South African inter-bank market selected by the Calculation Agent and approved by the Issuer.

D. *Minimum and/or Maximum Interest Rate*

If the Applicable Pricing Supplement specifies a Minimum Interest Rate for any Interest Period, then the Interest Rate for such Interest Period shall in no event be less than such Minimum Interest Rate and/or if it specifies a Maximum Interest Rate for any Interest Period, then the Interest Rate for such Interest Period shall in no event be greater than such Maximum Interest Rate.

E. *Interest Payment Dates*

Each Floating Rate Note bears interest on its Principal Amount (or, if it is a Partly Paid Note, on the amount paid up) from (and including) the Interest Commencement Date up to (but excluding) the Maturity Date at the rate equal to the Interest Rate. Such interest shall fall due for payment in arrears on the Interest Payment Date(s).

F. *Determination of Interest Rate and calculation of Interest Amount*

The Calculation Agent will, in the case of Floating Rate Notes, at or as soon as practicable after each time at which the Interest Rate is to be determined, determine the Interest Rate and calculate the Interest Amount for the relevant Interest Period. Unless stated otherwise in the Applicable Pricing Supplement, each Interest Amount shall be calculated by multiplying the Interest Rate by the Principal Amount (or, if it is a Partly Paid Note, on the amount paid up), then multiplying the product by the applicable Day Count Fraction and rounding the resultant product to the nearest smallest denomination of the Specified Currency, half of any such denomination being rounded upwards.

**"Day Count Fraction"** means, in respect of the calculation of the Interest Amount for any Interest Period:

- (a) if **"Actual/365"** is specified in the Applicable Pricing Supplement, the actual number of elapsed days (including the first day and excluding the last day of such Interest Period) in the Interest Period divided by 365; or
- (b) such other calculation method as is specified in the Applicable Pricing Supplement.

G. *Notification of Interest Rate and Interest Amount*

The Calculation Agent (or such other agent as is specified in the Applicable Pricing Supplement) will cause the Interest Rate and each Interest Amount for each Interest Period and the relevant Interest Payment Date to be notified to the Issuer, the Paying Agent, the Transfer Agent, the Noteholders in respect of any Floating Rate

Notes which are Bearer Notes or Order Notes, any Financial Exchange on which the relevant Floating Rate Notes are for the time being listed or settled and any central securities depository in which Certificates in respect of the notes are immobilised, as soon as possible after their determination but not later than the 4th Business Day thereafter. Each Interest Amount and Interest Payment Date so notified may subsequently be amended (or appropriate alternative arrangements made by way of adjustment) in the event of an extension or shortening of the Interest Period. Any such amendment will be promptly notified to the Issuer, the Paying Agent, the Transfer Agent, the Noteholders in respect of any Floating Rate Notes which are Bearer Notes or Order Notes, each Financial Exchange on which the relevant Floating Rate Notes are for the time being listed or settled and any central securities depository in which Certificates in respect of the Notes are immobilised.

#### H. *Certificates to be Final*

All certificates, communications, opinions, determinations, calculations, quotations and decisions given, expressed, made or obtained for the purposes of the provisions of this Condition 9.2 by the Calculation Agent shall, in the absence of wilful deceit, bad faith, manifest error or dispute as set out hereunder, be binding on the Issuer, the Calculation Agent, and all Noteholders, and no liability to the Issuer or the Noteholders shall attach to the Transfer Agent, the Calculation Agent or the Paying Agent (as the case may be) in connection with the exercise or non-exercise by it of its powers, duties and discretions pursuant to such provisions. Where the Issuer acts as the Calculation Agent and in the event that Noteholders holding not less than 25% in Aggregate Principal Amount of the Notes for the time being Outstanding, deliver to the Issuer a written notice of objection to any determination made by the Issuer within 5 Business Days of notification of the Interest Rate and Interest Amount in accordance with Condition 9.2G, such determination shall not be regarded as final and upon such notification, the Issuer shall request the chief executive officer for the time being of BESA to appoint an independent third party to make such determination. Such independent third party shall make such determination promptly as an expert and not as an arbitrator and their determination, in the absence of wilful deceit, bad faith or manifest error, shall be binding on the Issuer and all Noteholders, and no liability to the Issuer or the Noteholders shall attach to such third party in connection with the exercise or non-exercise by them of their powers, duties and discretions pursuant to such provisions. The costs of procuring and effecting such determination shall be borne by the Issuer in the event that the determination of such third party differs from that of the Issuer as Calculation Agent and shall be borne by the Noteholders disputing such determination by the Issuer in the event that the determination of such third party confirms that of the Issuer as Calculation Agent.

#### 9.3 **Mixed Rate Notes**

The Interest Rate payable from time to time on Mixed Rate Notes shall be the Interest Rate payable on any combination of Fixed Rate Notes or Floating Rate Notes for respective periods, each as specified in the Applicable Pricing Supplement. During each such applicable period, the interest rate on the Mixed Rate Notes shall be determined and fall due for payment on the basis that such Mixed Rate Notes are Fixed Rate Notes or Floating Rate Notes, as the case may be.

#### 9.4 **Partly Paid Notes**

In the case of Partly Paid Notes, interest will accrue on the paid-up Principal Amount of such Notes and otherwise as specified in the Applicable Pricing Supplement.

#### 9.5 **Accrual of Interest**

Each Note (or in the case of the redemption of part only of a Note, that part only of such Note) will cease to bear interest (if any) from the date of its redemption unless, upon due presentation thereof, payment of principal is improperly withheld or refused. In such event, interest will continue to accrue at the SAFEX Overnight Deposit Rate (to be found on the Reuters Screen SAFEX page as at 12h00 (South African time) on the presentation date, or any successor rate) until whichever is the earlier of:

- (a) the date on which all amounts due in respect of such Note have been paid; and
- (b) the date on which the full amount of the monies payable has been received by the Paying Agent and notice to that effect has been given to Noteholders in accordance with Condition 20.

In the event that the SAFEX Overnight Deposit Rate is not ascertainable from the relevant screen page at the time contemplated above, the Calculation Agent shall follow the procedure contemplated in Condition 9.2 C to ascertain a rate.

#### 9.6 **Business Day Convention**

If any Interest Payment Date (or other date) which is specified in the Applicable Pricing Supplement to be subject to adjustment in accordance with a Business Day Convention would otherwise fall on a day which is not a Business Day, then, if the Business Day Convention specified is:



- (a) the "**Floating Rate Business Day Convention**", such Interest Payment Date (or other date) shall in any case where Interest Periods are specified in accordance with Condition 9.2 E, be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event: (i) such Interest Payment Date (or other date) shall be brought forward to the first preceding Business Day; and (ii) each subsequent Interest Payment Date (or other date) shall be the last Business Day in the month which falls the number of months or other period specified as the Interest Period in the Applicable Pricing Supplement after the preceding applicable Interest Payment Date (or other date) has occurred; or
- (b) the "**Following Business Day Convention**", such Interest Payment Date (or other date) shall be postponed to the next day which is a Business Day; or
- (c) the "**Modified Following Business Day Convention**", such Interest Payment Date (or other date) shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event such Interest Payment Date (or other such date) shall be brought forward to the first preceding Business Day; or
- (d) the "**Preceding Business Day Convention**", such Interest Payment Date (or other date) shall be brought forward to the first preceding Business Day.

## 10. PAYMENTS

### 10.1 Registered Notes

- 10.1.1 Payments of interest and principal in respect of Notes represented by the Global Certificate and Uncertificated Notes will be made to the Central Securities Depository's Nominee, as the registered holder of such Notes, which in turn will transfer such funds, via the Participants, to the holders of Beneficial Interests. Each of the persons reflected in the records of the Central Securities Depository or the relevant Participants, as the case may be, as the holders of Beneficial Interests shall look solely to the Central Securities Depository or the relevant Participant, as the case may be, for such persons share of each payment so made by the Issuer to, or for the order of, the registered holder of the relevant Notes. The Issuer will not have any responsibility or liability for any aspect of the records relating to, or payments made on account of, Beneficial Interests, or for maintaining, supervising or reviewing any records relating to such Beneficial Interests. Payments of interest and principal in respect of Notes represented by the Global Certificate and Uncertificated Notes shall be recorded by the Central Securities Depository's Nominee, as the registered holder of such Notes, distinguishing between interest and principal, and such record of payments by the registered holder of such Notes shall be *prima facie* proof of such payments.
- 10.1.2 Payments of interest and principal in respect of Notes represented by Definitive Certificates shall be made to the person reflected as the registered holder of the Definitive Certificate in the Register on the Last Day to Register.

### 10.2 Bearer Notes

- 10.2.1 Payments of interest in respect of Bearer Notes will be made to the Bearer only against presentation and surrender by the Bearer or its Representative of the relevant Coupon or (in respect of interest bearing Bearer Notes issued without Coupons) only against presentation by the Bearer or its Representative of the relevant Certificate.
- 10.2.2 Payments of Instalment Amounts in respect of Bearer Notes will be made to the Bearer only following presentation and surrender by the Bearer or its Representative of the relevant Receipt. Payments of the final instalment of principal in respect of Bearer Notes which are Instalment Notes, or of the principal of all other Bearer Notes will be made to the Bearer only following presentation and surrender by the Bearer or its Representative of the Certificate evidencing such Bearer Notes.
- 10.2.3 Upon presentation and/or surrender as aforesaid, the Bearer or its Representative shall be required to nominate in writing to the Paying Agent a bank account within South Africa (or any Other Banking Jurisdiction specified in the Applicable Pricing Supplement) into which the relevant payment must be made and provide details of its address (being an address within South Africa or any Other Banking Jurisdiction specified in the Applicable Pricing Supplement).

### 10.3 Order Notes

- 10.3.1 Payments of interest in respect of Order Notes will be made to the Payee only following presentation and surrender by the Payee or its Representative of the relevant Coupon or (in respect of interest bearing Order Notes issued without Coupons) only against presentation by the Payee or its Representative of the relevant Certificate.

10.3.2 Payments of Instalment Amounts in respect of Order Notes will be made to the Noteholder only following presentation and surrender by the Payee or its Representative of the relevant Receipt. Payments of the final instalment of principal in respect of Order Notes which are Instalment Notes, or of the principal of all other Order Notes will be made to the Payee only following presentation and surrender by the Payee or its Representative of the Certificate evidencing such Order Notes.

10.3.3 Upon presentation and/or surrender as aforesaid, the Payee or its Representative shall be required to nominate in writing to the Paying Agent a bank account within South Africa (or any Other Banking Jurisdiction specified in the Applicable Pricing Supplement) into which the relevant payment must be made and provide details of its address (being an address within South Africa or any Other Banking Jurisdiction specified in the Applicable Pricing Supplement).

#### 10.4 **Method of Payment**

10.4.1 Payments of interest and principal will be made in the Specified Currency by electronic funds transfer.

10.4.2 If the Issuer is prevented or restricted directly or indirectly from making any payment by electronic funds transfer in accordance with the preceding paragraph (whether by reason of strike, lockout, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or breakdown in facilities, civil commotion, unrest or disturbances, cessation of labour, Government interference or control or any other cause or contingency beyond the control of the Issuer), the Issuer shall make such payment by cheque (or by such number of cheques as may be required in accordance with applicable banking law and practice) to make payment of any such amounts. Such payments by cheque shall be sent by post to:

- (a) the address of the Noteholder of Registered Notes as set forth in the Register or, in the case of joint Noteholders of Registered Notes, the address set forth in the Register of that one of them who is first named in the Register in respect of that Note; or
- (b) the address nominated by the Bearer or the Payee in respect of Bearer Notes or Order Notes, as the case may be, upon surrender in accordance with Condition 10.2 or Condition 10.3, as the case may be.

10.4.3 Each such cheque shall be made payable to the relevant Noteholder or, in the case of joint Noteholders of Registered Notes, the first one of them named in the Register. Cheques may be posted by ordinary post, provided that neither the Issuer nor the Paying Agent shall be responsible for any loss in transmission and the postal authorities shall be deemed to be the agent of the Noteholders for the purposes of all cheques posted in terms of this Condition 10.4.

10.4.4 In the case of joint Noteholders of Registered Notes payment by electronic funds transfer will be made to the account of the Noteholder first named in the Register. Payment by electronic transfer to the Noteholder first named in the Register shall discharge the Issuer of its relevant payment obligations under the Notes.

10.4.5 Payments will be subject in all cases to any taxation or other laws, directives and regulations applicable thereto in the place of payment, but without prejudice to the provisions of Condition 13.

#### 10.5 **Surrender of Certificates, Receipts and Coupons**

10.5.1 On or before the Last Day to Register prior to any Redemption Date of a Registered Note (including a Redemption Date relating to redemption in part), the holder of a Certificate, in respect of a Note to be redeemed (in part or in whole, as the case may be) shall deliver to the Transfer Agent the Certificates to be redeemed. This will enable the Transfer Agent to endorse the partial redemption thereon or, in the case of final redemption, to cancel the relevant Certificates.

10.5.2 In the case of the Global Certificates, redemptions in part will be handled in accordance with the Applicable Procedures. In the case of final redemption, the Global Certificates must be delivered to the Transfer Agent on or before the Last Day to Register prior to the Final Redemption Date to enable the Transfer Agent to cancel the relevant Global Certificates.

10.5.3 Should the holder of a Certificate refuse or fail to surrender the Certificate for endorsement or cancellation on or before a Redemption Date, the amount payable to him in respect of such redemption, including any accrued interest, shall be retained by the Paying Agent for such Noteholder, at the latter's risk, until the Noteholder surrenders the necessary Certificate, and interest shall cease to accrue to such Noteholder from the Redemption Date in respect of the amount redeemed.

10.5.4 Payments of interest in respect of Bearer Notes or Order Notes shall be made in accordance with Condition 10.4 only following surrender of the relevant Coupon (if any) to the Paying Agent.

- 10.5.5 Payments of Instalment Amounts in respect of Instalment Notes which are Bearer Notes or Order Notes shall be made by the Issuer in accordance with Condition 10.4 only following surrender of the relevant Receipt to the Paying Agent.
- 10.5.6 No payment in respect of the final redemption of a Bearer Note or Order Note shall be made until the later of:
- (a) the Relevant Date; and
  - (b) the date on which the Certificate in respect of the Note to be redeemed has been surrendered to the Paying Agent.
- 10.5.7 Upon final redemption as aforesaid, all unmatured Coupons relating to Bearer Notes or Order Notes, as the case may be, (whether or not surrendered with the relevant Certificate) shall become void and no payment shall be made thereafter in respect of them.
- 10.5.8 Documents required to be presented and/or surrendered to the Paying Agent in accordance with these Terms and Conditions shall be so presented and/or surrendered at the Specified Office of the Paying Agent specified in the Applicable Pricing Supplement.

## 10.6 **Payment Day**

If the date for payment of any amount in respect of any Note is not a Business Day and is not subject to adjustment in accordance with a Business Day Convention, the holder thereof shall not be entitled to payment until the next following Payment Day in the relevant place for payment and shall not be entitled to further interest or other payment in respect of such delay.

## 10.7 **Interpretation of principal and interest**

Any reference in these Terms and Conditions to principal in respect of the Notes shall be deemed to include, as applicable:

- 10.7.1 any additional amounts which may be payable with respect to principal under Condition 13.3;
- 10.7.2 the Final Redemption Amount of the Notes or the Early Redemption Amount (Tax) of the Notes or Early Redemption Amount (Regulatory), as the case may be;
- 10.7.3 the Optional Redemption Amount(s) (if any) of the Notes;
- 10.7.4 in relation to Instalment Notes, the Instalment Amounts;
- 10.7.5 any premium and any other amounts which may be payable under or in respect of the Notes, but excluding for the avoidance of doubt, interest.

Any reference in these Terms and Conditions to interest in respect of the Notes shall be deemed to include, as applicable, any additional amounts which may be payable with respect to interest under Condition 13.3.

## 11. **EXCHANGE OF TALONS**

On or after the Interest Payment Date on which the final Coupon (comprising the Coupon attached to the relevant Certificate relating to the latest Interest Payment Date in respect of that series of Coupons) matures, but not later than the date for prescription (in accordance with Condition 14) of the Talon which may be exchanged for the respective Coupons, the Talon (if any) attached to the relevant Certificate upon issue, may be surrendered at the Specified Office of the Transfer Agent in exchange for further Coupons, including (if such further Coupons do not include Coupons to, and including, the final date for the payment of interest due in respect of the Notes to which they pertain) a further Talon, subject to the provisions of Condition 14. Each Talon shall, for the purposes of these Terms and Conditions, be deemed to mature on the Interest Payment Date on which the final Coupon issued relative to such Talon matures.

## 12. **REDEMPTION AND PURCHASE**

### 12.1 **No maturity date**

The Notes have no maturity date and are only redeemable or may only be redeemed, substituted, varied or purchased (subject to the provisions of Condition 5.3 (*Solvency Condition*) and Condition 5.2 (*Subordination*) and without prejudice to the provisions of Condition 15 (*Events of Default*)) in accordance with the provisions of Condition 5.2 (*Subordination*) or the following provisions of this Condition 12.

## 12.2 Redemption for tax reasons

The Notes may, subject to the Solvency Condition and to Condition 12.6 (*Conditions to Redemption, Substitution or Variation*), be redeemed at the option of the Issuer in whole, but not in part, on or after the First Optional Redemption Date:

- 12.2.1 at any time (if the provisions applicable to Floating Rate Notes are not specified in the relevant Applicable Pricing Supplement as being applicable or, if they are, such provisions are not applicable at the time of redemption); or
- 12.2.2 on any Interest Payment Date (if the provisions applicable to Floating Rate Notes are specified in the relevant Applicable Pricing Supplement as being applicable and are applicable at the time of redemption),

on giving not less than 30 nor more than 60 days notice to the Noteholders (which notice shall be irrevocable) in accordance with Condition 20 (*Notices*) and to the Transfer Agent, at their Early Redemption Amount (Tax), if a Tax Event occurs and is continuing

*provided, however, that no such notice of redemption shall be given earlier than:*

- (a) where the Notes may be redeemed at any time, 90 days prior to the earliest date on which the Issuer would be obliged to pay such additional amounts or would not be entitled (or such entitlement is materially reduced) to claim a deduction in respect of computing its taxation liabilities; or
- (b) where the Notes may be redeemed only on an Interest Payment Date, 60 days prior to the Interest Payment Date occurring immediately before the earliest date on which the Issuer would be obliged to pay such additional amounts or would not be entitled (or such entitlement is materially reduced) to claim a deduction in respect of computing its taxation liabilities.

Prior to the publication of any notice of redemption pursuant to this paragraph, the Issuer shall deliver to the Noteholders in accordance with Condition 20 (*Notices*) (A) a certificate signed by 2 authorised officers of the Issuer stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer so to redeem have occurred and (B) an opinion of independent advisers of recognised standing to the effect that a Tax Event has occurred. Upon the expiry of any such notice as is referred to in this Condition 12.2, the Issuer shall be bound to redeem the Notes in accordance with this Condition 12.2.

## 12.3 Redemption for regulatory reasons

- 12.3.1 The Notes may, subject to the Solvency Condition and to the requirements of Condition 12.6 (*Conditions to Redemption, Substitution or Variation*), be redeemed at the option of the Issuer in whole, but not in part:

- (a) at any time (if the provisions applicable to Floating Rate Notes are not specified in the relevant Applicable Pricing Supplement as being applicable or, if they are, such provisions are not applicable at the time of redemption); or
- (b) on any Interest Payment Date (if the provisions applicable to Floating Rate Notes are specified in the relevant Applicable Pricing Supplement as being applicable and are applicable at the time of redemption),

on giving not less than 30 nor more than 60 days notice to the Noteholders (which notice shall be irrevocable) in accordance with Condition 20 (*Notices*) and to the Transfer Agent, at their Early Redemption Amount (Regulatory), together with interest accrued (if any) to the date fixed for redemption, if a Regulatory Event occurs and is continuing.

- 12.3.2 Prior to the publication of any notice of redemption pursuant to this Condition 12.3, the Issuer shall deliver to the Noteholders in accordance with Condition 20 (*Notices*) (A) a certificate signed by 2 authorised officers of the Issuer stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer so to redeem have occurred and (B) unless the Registrar of Banks has confirmed to the Issuer that the proceeds of the issue of the relevant Notes are not eligible to qualify as the Primary Share Capital of the Issuer on a solo and/or a consolidated basis, an opinion of independent advisers of recognised standing to the effect that a Regulatory Event has occurred. Upon the expiry of any such notice as is referred to in this Condition 12.3, the Issuer shall be bound to redeem the Notes in accordance with this Condition 12.3.

## 12.4 **Redemption at the option of the Issuer (Issuer Call)**

The Notes may, subject to the Solvency Condition and the requirements of Condition 12.6 (*Conditions to Redemption, Substitution or Variation*), be redeemed at the option of the Issuer in whole, but not in part, on the First Optional Redemption Date and on any Interest Payment Date thereafter at the Optional Redemption Amount plus accrued interest (if any) to such date upon the Issuer's giving not less than 30 nor more than 60 days notice to the Noteholders (which notice shall be irrevocable and shall oblige the Issuer to redeem the Notes).

## 12.5 **Substitution or variation instead of redemption**

12.5.1 If a Tax Event or Regulatory Event has occurred and is continuing, then the Issuer may instead of giving notice to redeem, subject to the Solvency Condition and Condition 12.6 (*Conditions to Redemption, Substitution or Variation*) (but without any requirement for the consent or approval of the Noteholders) and having given not less than 60 nor more than 90 days' notice to the Paying Agent (ACSM), the Calculation Agent (if any) and, in accordance with Condition 20 (*Notices*), to the Noteholders (which notice shall be irrevocable), substitute at any time all (but not some only) of the Notes for, or vary the terms of the Notes so that they remain, Qualifying Primary Share Capital Securities or become Qualifying Secondary Capital Securities, and subject to the following provisions of this Condition 12.5 and subject to the issue of the certificate of the 2 directors referred to in the definition of Qualifying Primary Share Capital Securities or (as the case may be) Qualifying Secondary Capital Securities and subject further to the receipt by the Issuer of the opinion of the Independent Investment Bank referred to therein such substitution or variation shall be effected.

12.5.2 Upon expiry of such notice, the Issuer shall vary the terms of or substitute, as the case may be, the Notes in accordance with this Condition 12.5.

12.5.3 In connection with any substitution or variation in accordance with this Condition 12.5, the Issuer shall comply with the rules of any stock exchange on which the Notes are for the time being listed or admitted to trading.

## 12.6 **Conditions to redemption, substitution or variation**

Notes may only be redeemed, substituted or varied by the Issuer pursuant to Condition 12.2 (*Redemption for tax reasons*), Condition 12.3 (*Redemption for regulatory reasons*), Condition 12.4 (*Redemption at the option of the Issuer*) or Condition 12.5 (*Substitution or Variation Instead of Redemption*) provided that:

12.6.1 in the case of redemption pursuant to Condition 12.4, Notes may only be redeemed after a minimum initial period of issue of 5 years from the date of issue; provided that in any case unless the Registrar of Banks determines that the Issuer is duly capitalised the Issuer may not redeem such Notes unless such Notes are replaced by the Issuer with instruments of similar or better quality;

12.6.2 the Issuer has notified the Registrar of Banks of its intention to redeem, substitute or vary the Notes at least one month (or such other period, longer or shorter, as the Registrar of Banks may then require or accept) prior to the date scheduled for redemption, substitution or variation and written approval has been received from the Registrar of Banks;

12.6.3 such redemption is effected in accordance with conditions (if any) approved by the Registrar of Banks in writing;

12.6.4 both at the time when the notice of redemption, substitution or variation is given and immediately following such redemption, substitution or variation, as the case may be, the Issuer is or will be (as the case may be) in compliance with its capital adequacy requirements as provided in the Capital Regulations (except to the extent that the Registrar of Banks no longer so requires) as confirmed by an Independent Investment Bank to be appropriate; and

12.6.5 all other regulatory requirements then applicable to the Issuer in relation to the redemption of the Notes are complied with.

## 12.7 **No other redemption, substitution or variation**

The Issuer shall not be entitled to redeem, substitute or vary the terms of the Notes otherwise than as provided in paragraphs 12.1 to 12.6 above.

**12.8 Purchase**

Subject to giving written notice to, and receiving prior written approval from, the Registrar of Banks, the Issuer or any of its subsidiaries may at any time purchase Notes in the open market or otherwise and at any price.

**12.9 Cancellation**

All Notes so redeemed or purchased by the Issuer or any of its subsidiaries may, at its option, be cancelled and may, if cancelled, not be reissued or resold.

*It is the intention of the Issuer that the Notes will constitute permanent group funding. In case of redemption of the Notes, the Issuer intends to make available for the purposes of redemption of the Notes proceeds raised through the issuance of new Primary Share Capital within a period of 6 months prior to the redemption date of the Notes.*

**13. TAXATION**

13.1 All payments of principal or interest in respect of the Notes will be made without withholding or deduction for or on account of any present or future taxes or duties of whatever nature imposed or levied by or on behalf of any Tax Jurisdiction, unless such withholding or deduction is required by Applicable Law.

13.2 In such event, the Issuer will, subject to the Issuer's right to redeem such Notes in terms of Condition 12.2, pay such additional amounts as shall be necessary in order that the net amounts received by the Noteholders after such withholding or deduction shall equal the respective amounts of principal and interest which would otherwise have been receivable in respect of the Notes, as the case may be, in the absence of such withholding or deduction; except that no such additional amounts shall be payable with respect to any Note:

13.2.1 presented for payment (to the extent presentation is required) in South Africa; or

13.2.2 presented for payment or (in the case of Registered Notes) held by or on behalf of a Noteholder, who is liable for such taxes in respect of such Note by reason of it having some connection with a Tax Jurisdiction other than the mere holding of such Note or the receipt of principal or interest in respect thereof; or

13.2.3 presented for payment or (in the case of Registered Notes) held by or on behalf of a Noteholder which would not be liable or subject to the withholding or deduction by complying with any statutory requirement or by making a declaration of non-residency or other similar claim for exemption to the relevant tax authority (the effect of which is not to require the disclosure of the identity of the relevant Noteholder); or

13.2.4 where (in the case of any payment of principal or interest which is conditional on surrender of the relevant Certificate in accordance with these Terms and Conditions) the relevant Certificate is surrendered for payment more than 30 days after the Relevant Date except to the extent that the relevant Noteholder would have been entitled to an additional amount on presenting the Certificate for payment on such thirtieth day assuming that day to have been a Payment Date; or

13.2.5 if such withholding or deduction arises through the exercise by revenue authorities of special powers in respect of tax defaulters.

**14. PRESCRIPTION**

The Notes will become void unless presented for payment within a period of 10 years (in the case of principal) and five years (in the case of interest) after the Relevant Date therefor.

**15. EVENTS OF DEFAULT**

*Notwithstanding any of the provisions in this Condition 15, the right to institute winding up proceedings is limited to circumstances where payment has become due and payable. No principal, premium, interest or any other amount will be due unless the Solvency Condition is satisfied. Also, in the case of any Interest Amount, payment thereof will not be due if the Issuer has elected not to pay interest or is prohibited from paying interest pursuant to Condition 6 (Interest payments on the Notes).*

15.1 If the default shall be made in the payment of any principal or any interest (or any other amount in respect of the Notes) due on the Notes of the relevant Series for a period of 7 days (in the case of principal) or 14 days (in the case of interest) or more after any date on which such payment became due and payable each Noteholder of that Series may, subject as provided below, at its discretion and without further notice, institute proceedings for the winding-up of the Issuer and/or prove in any winding-up of the Issuer, but may take no

other action in respect of such default, provided that no such action may be taken by a Noteholder if the Issuer withholds or refuses to make any such payment in order to comply with any law or regulation of any relevant jurisdiction or to comply with any order of a court of competent jurisdiction. Where there is doubt as to the validity or applicability of any such law, regulation or order, the issuer will not be in default if it acts on the advice given to it during such seven day period or 14 day period (as the case may be) by independent legal advisers approved by the relevant Noteholder(s).

- 15.2 Without prejudice to Condition 15.1 above, if the Issuer breaches any of its obligations under the Notes of the relevant Series (other than any obligation in respect of the payment of principal or interest on such Notes) then each Noteholder may, subject as provided below, at its discretion and without further notice, bring such proceedings as it may think fit to enforce the obligation in question provided that the Issuer shall not, as a result of the bringing of any such proceedings, be obliged to pay any sum representing or measured by reference to principal or interest on such Series of Notes sooner than the same would otherwise have been payable by it.

## **16. DELIVERY, EXCHANGE AND REPLACEMENT OF CERTIFICATES, RECEIPTS AND COUPONS**

- 16.1 Upon the issue of Bearer Notes, Order Notes or unlisted Registered Notes or upon notice from a Participant pursuant to Condition 16.3 requesting the exchange or partial exchange of a Beneficial Interest in Notes represented by a Global Certificate(s) for a Definitive Certificate(s), the Transfer Agent shall deliver the relevant Definitive Certificate(s) in accordance with the Agency Agreement.
- 16.2 Notes of each Tranche listed on BESA will be issued in the form of the Global Certificate and will be lodged and immobilised in the Central Securities Depository.
- 16.3 Any person holding a Beneficial Interest in the Notes represented by the Global Certificate may, in terms of the Applicable Procedures and through its nominated Participant, direct a written request to the Transfer Agent for a Definitive Certificate representing the number of Notes to be delivered by the Issuer in exchange for such Beneficial Interest. The aggregate of the Principal Amounts of the Notes represented by such Definitive Certificate shall be equivalent to the amount of such Beneficial Interest. The Transfer Agent shall deliver such Definitive Certificate upon such written request no later than 14 days after receiving the written request of the holder of such Beneficial Interest in accordance with the Applicable Procedures, provided that, joint holders of a Beneficial Interest shall be entitled to receive only one Definitive Certificate in respect of that joint holding and delivery to one of those joint holders shall be delivery to all of them.
- 16.4 Upon the receipt of a written request for delivery of a Definitive Certificate in terms of Condition 16.3, the Global Certificate shall, in terms of the Applicable Procedures, be presented to the Transfer Agent for splitting and a new Global Certificate for the balance of the Notes (if any) still held by the Central Securities Depository shall be delivered to the Central Securities Depository. The original Global Certificate shall be cancelled and retained by the Transfer Agent.
- 16.5 Certificates, and any Receipts and/or Coupons in relation to Bearer Notes or Order Notes, shall be provided (whether by way of issue, delivery or exchange) by the Issuer without charge, save as otherwise provided in these Terms and Conditions. Separate costs and expenses relating to the provision of Certificates and/or the transfer of Notes may be levied by other persons, such as a Settlement Agent, under the Applicable Procedures and such costs and expenses shall not be borne by the Issuer. The costs and expenses of delivery of Certificates, Receipts and/or Coupons otherwise than by ordinary post (if any) and, if the Issuer shall so require, taxes or governmental charges or insurance charges that may be imposed in relation to such mode of delivery shall be borne by the Noteholder.
- 16.6 Any person becoming entitled to Registered Notes in consequence of the death, sequestration or liquidation of the holder of such Notes may upon producing such evidence that he holds the position in respect of which he proposes to act under this Condition 16 or of his title as the Issuer and the Transfer Agent shall require, be registered himself as the holder of such Notes or, subject to the requirements of the Applicable Procedures and of this Condition 16, may transfer such Notes. The Issuer and the Paying Agent shall be entitled to retain any amount payable upon the Notes to which any person is so entitled until such person shall be registered as aforesaid or shall duly transfer the Notes.
- 16.7 If any Certificate, Receipt or Coupon is mutilated, defaced, stolen, destroyed or lost it may be replaced at the Specified Office of the Issuer or the Specified Office of the Transfer Agent specified in the Applicable Pricing Supplement, on payment by the claimant of such costs and expenses as may be incurred in connection therewith and the provision of such indemnity as the Issuer may reasonably require. Mutilated or defaced Certificates, Receipts or Coupons must be surrendered before replacements will be issued.

## 17. TRANSFER OF NOTES

### 17.1 Transfer of Registered Notes

- 17.1.1 Beneficial Interests in the Notes may be transferred in terms of the Applicable Procedures through the Central Securities Depository.
- 17.1.2 The Central Securities Depository maintains accounts only for its Participants. Beneficial Interests which are held by Participants (which are also Settlement Agents) may be held directly through the Central Securities Depository. Participants are in turn required to maintain securities accounts for their clients. Beneficial Interests which are not held by Participants may be held by clients of Participants indirectly through such Participants.
- 17.1.3 Transfers of Beneficial Interests to and from clients of Participants occur, in terms of existing law and practice, by way of electronic book entry in the securities accounts maintained by the Participants for their clients. Transfers of Beneficial Interests among Participants occur through electronic book entry in the central securities accounts maintained by the Central Securities Depository for the Participants. Such transfers of Beneficial Interests will not be recorded in the Register and the Central Securities Depository's Nominee will continue to be reflected in the Register as the Noteholder in respect of the Global Certificate notwithstanding such transfers. Beneficial Interests may be transferred only in accordance with these Terms and Conditions, and the Applicable Procedures.
- 17.1.4 In order for any transfer of Registered Notes to be effected through the Register and for the transfer to be recognised by the Issuer, each transfer of a Registered Note:
- (a) must be embodied in a Transfer Form;
  - (b) must be signed by the relevant Noteholder and the transferee, or any authorised representatives of that registered Noteholder and/or transferee;
  - (c) shall only be in the Specified Denomination or a multiple thereof and consequently the Issuer will not recognise any fraction of the Specified Denomination; and
  - (d) must be made by way of the delivery of the Transfer Form to the Transfer Agent together with the Certificate in question for cancellation or, if only part of the Notes represented by a Certificate is transferred, a new Certificate for the balance will be delivered to the transferor and the cancelled Certificate will be retained by the Transfer Agent.
- 17.1.5 The transferor of any Registered Notes represented by a Certificate shall be deemed to remain the owner thereof until the transferee is registered in the Register as the holder thereof.
- 17.1.6 Before any transfer is registered all relevant transfer taxes (if any) must have been paid and such evidence must be furnished as the Transfer Agent may reasonably require as to the identity and title of the transferor and the transferee.
- 17.1.7 The Transfer Agent will, within 3 Business Days of receipt by it of a valid Transfer Form (or such longer period as may be required to comply with any applicable taxation or other laws, regulations or Applicable Procedures), authenticate and deliver to the transferee (at the risk of the transferee) a new Certificate in respect of the Notes transferred.
- 17.1.8 No transfer will be registered while the Register is closed.
- 17.1.9 In the event of a partial redemption of Notes, the Issuer and the Transfer Agent shall not be required:
- (a) to register the transfer of any Notes during the period beginning on the tenth day before the date of the partial redemption and ending on date of the partial redemption (both inclusive) or
  - (b) to register the transfer of any Note, or part of a Note, called for partial redemption.

### 17.2 Transfer of Bearer Notes

Bearer Notes (including rights to Installment Amounts and/or interest thereon, as applicable) may be transferred by the delivery of the Certificate evidencing such Bearer Note or the relevant Receipt or Coupon relating thereto, as the case may be. Where the last Endorsement on a Certificate evidencing an Order Note or a Receipt or Coupon relating thereto is an Endorsement in Blank, then such Certificate, Receipt or Coupon, as the case may be, shall be treated as evidencing a Bearer Note.



### 17.3 **Transfer of Order Notes**

Order Notes (including rights to Installment Amounts and/or interest thereon, as applicable) may be transferred by the Endorsement of the Certificate evidencing such Order Note or Receipt or Coupon relating thereto, as the case may be, by the old Payee and the delivery of such Certificate, Receipt or Coupon to the new Payee.

### 17.4 **Prohibition on stripping**

Where so specified in the Applicable Pricing Supplement, Bearer Notes or Order Notes which are issued with Receipts and/or Coupons attached and which are redeemable at the option of the Issuer and/or Noteholders shall be issued subject to the condition that the relevant Notes (including rights to Installment Amounts and/or interest thereon, as applicable) may only be transferred to a single transferee at a time and accordingly that the various rights in respect of such Notes may not be stripped and transferred to various transferees at different times.

## 18. **REGISTER**

- 18.1 The Register shall be kept at the Specified Office of the Transfer Agent. The Register shall reflect the number of Notes issued and Outstanding and whether they are Registered Notes, Bearer Notes or Order Notes. The Register shall contain the name, address, and bank account details of the Noteholders of Registered Notes. The Register shall set out the Principal Amount of the Notes issued to such Noteholders and shall show the date of such issue. The Register shall show the serial number of Certificates issued in respect of Notes. The Register shall be open for inspection during the normal business hours of the Transfer Agent to any Noteholder or any person authorised in writing by any Noteholder. The Register shall be closed during the Books Closed Period. The Transfer Agent will only recognize, as registered holder of a Note, the Noteholder reflected in the Register at 17h00 (South African time) on the relevant Last Day to Register. The Issuer and the Transfer Agent shall not be bound to enter any trust into the Register or to take notice of any or to accede to any trust executed, whether express or implied, to which any Note may be subject.
- 18.2 The Transfer Agent shall alter the Register in respect of any change of name, address or bank account number of any of the Noteholders of any Registered Notes of which it is notified in accordance with these Terms and Conditions.

## 19. **TRANSFER AGENT, CALCULATION AGENT AND PAYING AGENT**

- 19.1 The Issuer is entitled to vary or terminate the appointment of the Transfer Agent, the Calculation Agent and the Paying Agent and/or appoint additional or other agents and/or approve any change in the Specified Office through which any agent acts, provided that there will at all times be a Transfer Agent, Calculation Agent and a Paying Agent with an office in such place as may be required by the Applicable Procedures. Any third party appointed by the Issuer as Transfer Agent, Paying Agent and Calculation Agent shall act solely as the agents of the Issuer and do not assume any obligation towards or relationship of agency or trust for or with any Noteholders.
- 19.2 To the extent that the Issuer acts as the Transfer Agent, Calculation Agent or Paying Agent, all references in these Terms and Conditions to:
- 19.2.1 any action, conduct or functions in such role shall be understood to mean that the Issuer shall perform such action, conduct or function itself; and
- 19.2.2 requirements for consultation, indemnification by or of, payment by or to, delivery by or to, notice by or to, consent by or to or agreement between the Issuer and such Transfer Agent, Calculation Agent or Paying Agent (as the case may be) shall be disregarded to the extent that the Issuer performs such role.

## 20. **NOTICES**

- 20.1 All notices to be given to Noteholders shall:
- 20.1.1 be sent by registered mail or delivered by hand to their addresses appearing in the Register (in the case of Registered Notes) or shall be published in an English language daily newspaper of general circulation in South Africa (in the case of Registered Notes, Bearer Notes or Order Notes); and
- 20.1.2 for so long as any of the Notes are listed on BESA, shall be published in a daily newspaper of general circulation in Johannesburg or on any electronic news service of general distribution, as the case may be.

Any such notice shall be deemed to have been given on the 7th day after the day on which it is mailed or on the day of delivery if delivered or on the date of first publication, as the case may be.

- 20.2 For as long as any of the Notes are represented by a Global Certificate, all notices in respect of such Notes shall be by way of the delivery of the relevant notice to the Central Securities Depository, BESA and the Settlement Agents or such other exchange on which the Notes are listed for communication by them to holders of Beneficial Interests in Notes represented by the Global Certificate. For so long as the Notes are held in their entirety by the Central Securities Depository, there may be substituted for publication as contemplated in Condition 20.1 the delivery of the relevant notice to the Central Securities Depository's Nominee, the Participants and BESA for communication by them to the holders of Beneficial Interests in the Notes represented by the Global Certificate, in accordance with the Applicable Procedures.
- 20.3 A notice to be given by any Noteholder to the Issuer shall be in writing and given by lodging (either by hand delivery or posting by registered mail) that notice, together with a certified copy of the relevant Certificate, Coupon or Receipt at the office of the Transfer Agent. The Issuer may change its Specified Office upon prior written notice to the Noteholders specifying such new address. For so long as any of the Notes are represented by a Global Certificate, notice may be given by any holder of a Beneficial Interest in Notes represented by a Global Certificate to the Issuer via the relevant Settlement Agent in accordance with the Applicable Procedures, in such manner as the Issuer and the relevant Settlement Agent may approve for this purpose. Such notices shall be deemed to have been received by the Issuer, if delivered by hand, on the second Business Day after being hand delivered, or, if sent by registered mail, 7 days after posting.

## 21. MEETINGS OF NOTEHOLDERS

### 21.1 Directions of Noteholders

- 21.1.1 The provisions with regard to meetings of Noteholders are set out in this Condition 21.
- 21.1.2 Every director, the secretary of and the attorney to the Issuer and every other person authorised in writing by the Issuer, may attend and speak at a meeting of Noteholders, but will not be entitled to vote, other than as a Noteholder or proxy or duly authorised representative of a Noteholder.
- 21.1.3 A meeting of Noteholders will have power, in addition to all powers specifically conferred elsewhere in the Terms and Conditions:
- 21.1.3.1 by Ordinary Resolution of the Noteholders to give instructions to the Issuer in respect of any matter not covered by the Terms and Conditions (but without derogating from the powers or discretions expressly conferred upon the Issuer by the Terms and Conditions or imposing obligations on the Issuer not imposed or contemplated by the Terms and Conditions or otherwise conflicting with or inconsistent with the provisions of the Terms and Conditions);
- 21.1.3.2 by Extraordinary Resolution:
- 21.1.3.2.1 of the Noteholders to bind all of the Noteholders to any compromise or arrangement;
- 21.1.3.2.2 of a particular Series of Noteholders to agree to any variation or modification of any rights of that Series of Noteholders.
- 21.1.4 Unless otherwise specified, resolutions of Noteholders will require an Ordinary Resolution to be passed.

### 21.2 Convening of meetings

- 21.2.1 The Issuer may at any time convene a meeting of all Noteholders or separate meetings of holders of any Series of Notes (a "**meeting**" or the "**meeting**").
- 21.2.2 The Issuer will convene (i) a meeting of Noteholders upon the requisition in writing of Noteholders holding not less than 10% of the aggregate Principal Amount of all of the Notes Outstanding or (ii) a separate meeting of holders of any Series of Notes upon the requisition in writing of the Noteholders in that Series holding not less than 10% of the aggregate Principal Amount of the Notes Outstanding held by the holders of that Series, as the case may be (a "**requisition notice**").
- 21.2.3 Whenever the Issuer wishes to convene a meeting, it will forthwith give notice in writing to the Noteholders in the manner prescribed in Condition 20 if the place, day and hour of the meeting, the nature of the business to be transacted at the meeting and the resolutions to be proposed and considered at the meeting.
- 21.2.4 All meetings of Noteholders will be held in South Africa.

### 21.3 Requisition

- 21.3.1 A requisition notice will state the nature of the business for which the meeting is to be held and the resolutions to be proposed and considered at the meeting and will be deposited at the Specified Office of the Issuer.
- 21.3.2 A requisition notice may consist of several documents in like form, each signed by one or more requisitionists.

### 21.4 Convening of meetings by requisitionists

If the Issuer does not convene a meeting to be held within 30 days of the deposit of a requisition notice, the requisitionists may themselves convene the meeting, but the meeting so convened will be held within 90 days from the date of such deposit and will be convened as nearly as possible in the same manner as that in which meetings may be convened by the Issuer. Whenever the requisitionists are about to so convene any such meeting, requisitionists shall forthwith give notice of the meeting to the Issuer.

### 21.5 Notice of meeting

- 21.5.1 Unless the holders of at least 90% of the aggregate Principal Amount of the Notes Outstanding or Series of Notes Outstanding, as the case may be, agree in writing to a shorter period, at least 21 days' written notice, specifying the place, day and time of the meeting, the nature of the business for which the meeting is to be held and the resolutions to be proposed and considered at the meeting, will be given to each Noteholder and to the Issuer if applicable.
- 21.5.2 The accidental omission to give such notice to any Noteholder or the Issuer, as the case may be, or the non-receipt of any such notice, will not invalidate the proceedings at a meeting.

### 21.6 Quorum

- 21.6.1 A quorum at a meeting shall:
- 21.6.1.1 for the purposes of considering an Ordinary Resolution, consist of Noteholders present in person or by proxy and holding in the aggregate not less than one-third of the aggregate Principal Amount of the Notes Outstanding or Series of Notes Outstanding, as the case may be;
- 21.6.1.2 for the purposes of considering an Extraordinary Resolution, consist of Noteholders present in person or by proxy and holding in the aggregate not less than a clear majority of the aggregate Principal Amount of the Notes Outstanding or Series of Notes Outstanding, as the case may be.
- 21.6.2 No business will be transacted at a meeting of the Noteholders unless a quorum is present at the time when the meeting proceeds to business.
- 21.6.3 If, within 15 minutes from the time appointed for the meeting, a quorum is not present, the meeting will, if it was convened on the requisition of Noteholders, be dissolved. In every other case the meeting will stand adjourned to the same day in the 3rd week thereafter, at the same time and place, or if that day is not a Business Day, the next succeeding Business Day. If at such adjourned meeting a quorum is not present the Noteholders present in person or by proxy will constitute a quorum for the purpose of considering any resolution, including an Extraordinary Resolution.

### 21.7 Chairperson

The chairperson of the meeting shall be appointed by the Issuer. If the Issuer or the person appointed by the Issuer to preside as chairperson of the meeting is not present within 10 minutes of the time appointed for the holding of the meeting, the Noteholders then present will choose one of their own number to preside as chairperson.

### 21.8 Adjournment

- 21.8.1 Subject to the provisions of this Condition 21 the chairperson may, with the consent of, and will on the direction of, the meeting adjourn the meeting from time to time and from place to place.
- 21.8.2 No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 21.8.3 At least 14 days' written notice of the place, day and time of an adjourned meeting will be given by the Issuer to each Noteholder. In the case of a meeting adjourned in terms of Condition 21.6.3, the notice

will state that the Noteholders present in person or by proxy at the adjourned meeting will constitute a quorum.

## 21.9 **How questions are decided**

21.9.1 At a meeting, a resolution put to the vote will be decided on a poll.

21.9.2 In the case of an equality of votes, the chairperson will not be entitled to a casting vote in addition to the vote, if any, to which he is entitled.

## 21.10 **Votes**

Voting shall only take place on a poll and not on a show of hands. On a poll every Noteholder, present in person or by proxy, will be entitled to that proportion of the total votes which the aggregate Principal Amount of the Notes Outstanding held by such Noteholder bears to the aggregate Principal Amount of all of the Notes Outstanding or Series of Notes, as the case may be. In relation to joint Noteholders, the vote may be exercised only by that Noteholder whose name appears first on the Register in the event that more than one of such Noteholders is present, in person or by proxy, at the meeting. The Noteholder in respect of Notes represented by the Global Certificate or Uncertificated Notes shall vote at any such meeting on behalf of the holders of Beneficial Interests in such Notes in accordance with the instructions to the Central Securities Depository's Nominee from the holders of Beneficial Interests conveyed through the Participants in accordance with the Applicable Procedures.

## 21.11 **Proxies and representatives**

21.11.1 Noteholders present either in person or by proxy may vote on a poll. A Noteholder may by an instrument in writing (a "**proxy form**") signed by the Noteholder (or his duly authorised agent) or, in the case of a juristic person, signed on its behalf by a duly authorised officer of the juristic person, appoint any person (a "**proxy**" or "**proxies**") to act on his or its behalf in connection with any meeting or proposed meeting.

21.11.2 A person appointed to act as proxy need not be a Noteholder.

21.11.3 The proxy form will be deposited at the Specified Office of the Issuer or at the Specified Office of the Transfer Agent, as the case may be, not less than 24 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in such proxy proposes to vote.

21.11.4 No proxy form will be valid after the expiration of 6 months from the date named in it as the date of its execution.

21.11.5 Notwithstanding Condition 21.11.4, a proxy form will be valid for any adjourned meeting, unless the contrary is stated thereon. A vote given in accordance with the terms of a proxy form will be valid notwithstanding the previous death or incapacity of the principal or revocation or amendment of the proxy form or of any of the Noteholder's instructions pursuant to which the proxy form was executed or of the authority under which the proxy form was executed or the transfer of Notes in respect of which the proxy was given, provided that no intimation in writing of such death, incapacity, revocation or amendment shall have been received by the Issuer at its Specified Office or the Transfer Agent at its Specified Office, as the case may be, more than, and that the transfer has been given effect to less than, 12 hours before the commencement of the meeting or adjourned meeting at which the proxy is to be used.

21.11.6 Any Noteholder which is a juristic person may authorise any person to act as its representative in connection with any meeting or proposed meeting of Noteholders by resolution of the directors or other governing body of the juristic person. Any reference in the Terms and Conditions to a Noteholder present in person includes the duly authorised representative of a Noteholder which is a juristic person.

## 21.12 **Minutes**

21.12.1 The Issuer will cause minutes of all resolutions and proceedings of meetings to be duly entered in the minute books of the Issuer.

21.12.2 Any such minutes as aforesaid, if purporting to be signed by the chairperson of the meeting at which such resolutions were passed or proceedings held or by the chairperson of the next succeeding meeting, will be receivable in evidence without any further proof, and until the contrary is proved, a meeting of Noteholders or Series of Noteholders, as the case may be, in respect of the proceedings of which minutes have been so made will be deemed to have been duly held and convened and all resolutions passed thereat, or proceedings held, to have been duly passed and held.

**22. AMENDMENT OF THESE CONDITIONS**

- 22.1 The Issuer may effect, without the consent of any Noteholder, any amendment to the Terms and Conditions which is of a formal, minor or technical nature or is made to correct a manifest error or to comply with mandatory provisions of the law of South Africa. Any such amendment will be binding on Noteholders and such amendment will be notified to Noteholders in accordance with Condition 16 as soon as practicable thereafter.
- 22.2 In respect of an amendment that is not of a formal, minor or technical nature, such amendment may be made only (i) with the prior authorisation of a Extraordinary Resolution of all of the Noteholders or (ii) the Noteholders of a particular Series of Notes, as the case may be. The Issuer will call a meeting of all of the Noteholders or a meeting of Noteholders of that Series of Notes, as the case may be. Such meeting or meetings will be regulated by the provisions set out in Condition 20. No proposed amendment will be made to the Terms and Conditions until such amendment has been approved by Extraordinary Resolution at such meeting or meetings.

**23. FURTHER ISSUES**

The Issuer shall be at liberty from time to time without the consent of the Noteholders to create and issue further Notes having terms and conditions the same as any of the other Notes issued under the Programme or the same in all respects save for the amount and date of the first payment of interest thereon, the Issue Price and the Issue Date, so that the further Notes shall be consolidated to form a single Series with the Outstanding Notes.

**24. GOVERNING LAW**

Unless otherwise specified in the Applicable Pricing Supplement, the provisions of the Programme Memorandum and the Notes are governed by, and shall be construed in accordance with, the laws of South Africa in force from time to time.

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**USE OF PROCEEDS**

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The net proceeds from each issue of Notes will be applied by the Issuer for its general corporate purposes or as otherwise may be described in the Applicable Pricing Supplement.

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## DESCRIPTION OF THE ISSUER

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### INTRODUCTION

Absa Group Limited ("**Absa**" or the "**Group**"), listed on the Johannesburg Stock Exchange (JSE Limited), is one of South Africa's largest financial services groups offering a complete range of banking, bancassurance and wealth management products and services.

The Group is a member of Barclays Bank PLC ("**Barclays**"), following Barclays' acquisition of a controlling stake in the Group in July 2005. Barclays is a major global financial service provider engaged in retail and commercial banking, credit cards, investment banking, wealth management and investment management services. Barclays is one of the largest financial service providers in the world in terms of market capitalisation. Operating in over 50 countries and employing more than 123,000 people, Barclay's moves, lends, invests and protects money for over 27 million customers world-wide.

Batho Bonke Capital (Proprietary) Limited, the Group's black economic empowerment partner, and Absa Group Employee Share Ownership Administrative Trust, collectively, hold 75,619,500 redeemable cumulative option-holding preference shares in the Group. These preference shares are not listed on any securities exchange.

The Group's business is conducted primarily in South Africa. In addition to this, the Group has equity holdings in banks in Mozambique, Angola and Tanzania.

At 31 December 2007, the Group had total assets of R640,9 billion, 892 physical outlets in South Africa, 9 million South African customers, 7 693 automated teller machines (in South Africa) and approximately 36 893 permanent employees. Total attributable income for the year ended 31 December 2007 amounted to R9,595 million, up 18.4% from the corresponding period in 2006.

Absa Bank Limited ("**Absa Bank**" or the "**Issuer**"), a wholly owned subsidiary of the Group, houses the Group's banking activities (retail, commercial, corporate and investment banking). Absa Bank is planning to use the Programme as part of diversifying and growing its funding base to support asset growth.

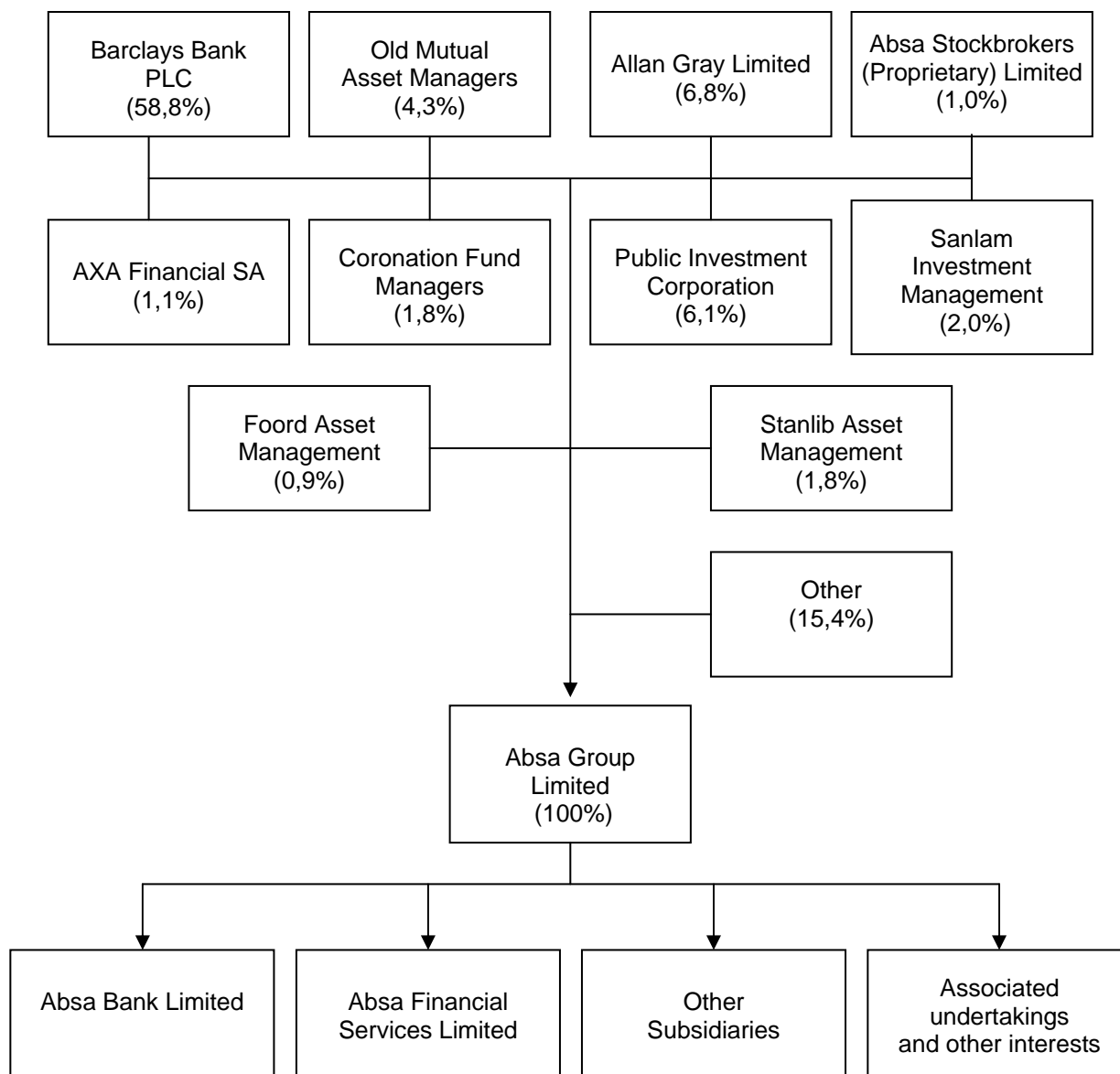
Absa Bank (registration number 1986/004794/06) is a public company duly established and registered in South Africa as a bank in accordance with the laws of South Africa (the Companies Act, 1973 and the Banks Act, 1990) and having its registered office at 3<sup>rd</sup> Floor, Absa Towers East, 160 Main Street, Johannesburg, 2001 and telephone contact details as +27 11 350 6347.

### BACKGROUND

The Group was formed in April 1991, when UBS Holdings Limited, the holding company of, *inter alia*, United Building Society Limited (the largest building society in South Africa at the time) and United Bank Limited, merged:

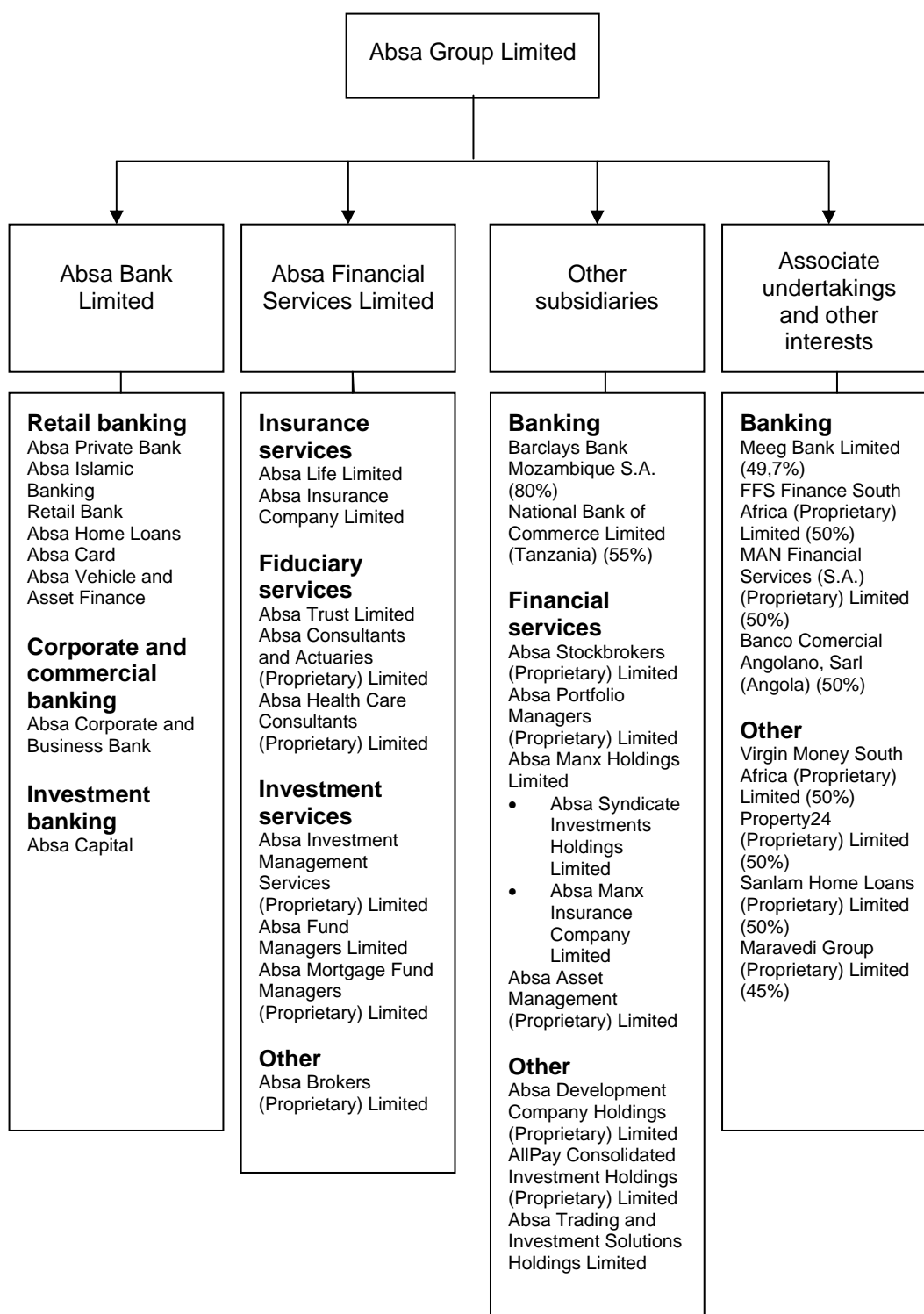
- all the assets of the Allied Group Limited, the holding company of, *inter alia*, Allied Building Society Limited (one of the largest building societies in South Africa at the time) and Allied Bank Limited;
- all the assets of Volkskas Group Limited, the holding company of, *inter alia*, Volkskas Bank Limited (one of the largest commercial banks in South Africa at the time), MLS Bank Limited and Volkskas Motorbank Limited (which later changed its name to Absa Motorbank Limited); and
- a large percentage of the assets of Sage Financial Services Limited, a holding company with interests in the insurance and related industries.

In April 1992, all the assets of Bankorp Holdings Limited, the holding company of, *inter alia*, TrustBank Limited (one of the largest commercial banks in South Africa at that time), Senbank and Bankfin, were incorporated. UBS Holdings Limited changed its name to Amalgamated Banks of South Africa Limited. A banking group with assets exceeding R52 billion (as at March 1991) was formed and Absa Bank traded as a bank under the names Allied Bank, TrustBank, United Bank, Volkskas Bank, Absa Corporate and Merchant Bank and Bankfin. Amalgamated Banks of South Africa Limited changed its name to Absa Group Limited (as it is known today) in 1997. From November 1998, the Group's retail, corporate and investment banking operations have traded as Absa Bank Limited.

**Absa Group Limited – Shareholders structure as at 31 December 2007**




## Absa Group Limited – Structure as at 31 December 2007



## NATURE OF BUSINESS

Absa Bank is a leading player in the home loan, instalment finance and the debit and credit card markets. Absa Bank contributes the majority of the Group's headline earnings.

Absa Bank was voted the number one banking brand in South Africa in the 2006 Sunday Times/Markinor Top Brands survey. This survey is considered to be the country's leading study of an organisation's brand strength and competitiveness.

Absa Bank's major businesses or divisions are described in more detail below. Please note that the business units are grouped according to the Group's financial reporting structure, which is not exactly the same as the Group structure indicated above:

### Retail banking

Provides banking services to personal customers and small businesses.

Retail banking segment consists of a number business units, namely:

- Absa Private Bank;
- Absa Islamic Banking;
- Retail Bank;
- Absa Vehicle and Asset Finance<sup>1</sup>;
- Absa Home Loans;
- Absa Card; and
- AllPay consolidated Investment Holdings (Proprietary) Limited

**Absa Private Bank** is "working towards becoming" the country's leading provider of banking and wealth solutions to affluent individuals. With our heritage as a true South African bank and with roots firmly entrenched in South Africa as well as the powerful international influence of Barclays, we offer our customers the best of both worlds. Through dedicated personal bankers and wealth planners, Absa Private Bank can cater for both the banking and wealth creation needs of customers delivered through digital, telephony as well as an expanding range of exclusive private bank suites nationally.

**Absa Islamic Banking** provides the end-to end Shariah requirements for the Group's products. The Shariah process covered product development, execution and monitoring, which includes an internal Shariah review, an annual Shariah audit and oversight by the Audit and Governance Committee..

**Absa Retail Bank** is offering financial solutions to individuals ranging from those who are just entering the banking market with basic formal banking needs up to affluent individuals who require more sophisticated banking solutions. Retail Bank's diverse product range is delivered through an integrated multi-delivery approach including a diverse range of physical outlets, remote sales points and digital channels.

**Absa Vehicle and Asset Finance ("AVAF")** offers customised vehicle and asset finance products (ranging from the financing of private vehicles, manufacturing and mining equipment, to leases and office automation) and services to customers in the corporate, commercial and personal markets. AVAF also offers vehicle management solutions (such as fleet management and administration) to these markets and fleet partners. With the aim of being the leading asset finance solution provider in its chosen markets, AVAF accesses customers through a multi-channel approach. Electronic capturing, application and delivery remain a strategic focus area. Channels include "AVAF's Managed Sales Force situation in" Absa Bank branches and business centres, approved motor dealers, the contact centre, suppliers and manufacturers and the Internet.

**Absa Home Loans** offers innovative residential property-related ownership solutions to Absa Bank's target market segments "and aims to be the pre-eminent sole loan provider in Africa". The mortgage product is offered through the Group's internal channels (specialist and generic branch sales consultants, branch sales outlets, telephone, internet and mobile express agents) as well as through external intermediaries (estate agents, aggregators, mortgage originators, developers and lead generators).

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<sup>1</sup> A portion of Absa Vehicle and Asset Finance's business is undertaken in the commercial and wholesale markets.

**Absa Card** provides global card acceptance, electronic payment and financial solutions in selected market segments. Services are distributed through Absa Bank's branch network, corporate and business bankers, over the internet and through direct sales channels – including a new "Face to Face" channel that was launched "air side" at OR Tambo International Airport.. Product users include individuals and businesses from small and medium enterprises to corporates. The division also provides generally accepted electronic payment and financial solutions in selected market segments.

**AllPay Consolidated Investment Holdings (Proprietary) Limited** (AllPay) has a compelling social grant market offering backed by years of solid service experience. It provides a business solution which, supported by enabling technology, a strong workforce and a proven management system, provides high service standards and added value to customers. AllPay's service offering includes the distribution of:

- social grants via cash distribution;
- social grants via an Absa bank account, the Absa Sekulula debit card, which makes use of remote opening technology;
- on a project basis, wage payments to individuals without bank accounts or in areas without a formal financial services infrastructure;
- on a project basis, disaster relief payments; and
- other payment and distribution-related services.

### **Corporate and commercial banking**

Absa's corporate and commercial banking operations are undertaken by Absa Corporate and Business Bank and Absa Development Company Holdings (Proprietary) Limited

**Absa Corporate and Business Bank ("ACBB")** offers a comprehensive range of corporate and commercial banking products and specialised services ranging from off the shelf transactional products to complex financial solutions to meet corporate and commercial customer needs. A relationship management model is used to serve customers through business centres for corporate and large business and business cells for medium businesses.

ACBB is active in the commercial property finance market as well the debtor financing arena. There is also a strong focus on black economic empowerment transactions through a strong sector focus on black business focuses include agriculture, the public sector, franchising, tourism, professional services and retail. In these areas ACBB has developed specialist expertise to assist customer interactions.

Absa Development Company Holdings (Proprietary) Limited specialises in middle market and sustainable integrated township development and the sale of primarily serviced residential erven.

### **Investment banking**

Absa Bank offers investment banking services through its division, Absa Capital, whose primary business is to act as an intermediary between suppliers and users of capital. Absa Capital has a unique business model, representing a combination of fully local specialist knowledge (as a part of Absa) and fully global expertise (through its alliance with Barclays Capital).

The business model is centred on delivering specialist investment banking financing, risk management and advisory solutions across asset classes to corporations, financial institutions, and government clients. These capabilities are delivered through a client-centric approach, with an emphasis on origination and distribution of risk.

### **Other activities**

In addition to the banking services described above, Absa Bank has various support functions. These divisions focus on assisting business units to achieve their goals and objectives while ensuring continued alignment with Bank's corporate and financial strategies.

### **RISK MANAGEMENT**

Risk management is fundamental to Absa's business and plays a crucial role in enabling management to operate more effectively in a changing environment. Over time it has evolved into one of Absa's core capabilities. It is integral to the evaluation of strategic alternatives and the setting of objectives, all within a risk management framework that ensures alignment with the Group's risk appetite and overall strategy.

Credit risk measurement in particular forms an integral part of the management of credit risk. Through the implementation of the Basel II requirements for the advanced internal ratings based approach for credit risk in the Group,

the rating systems used provide a consistent focus on credit risk measurement. These risk parameters are being used in the calculation of regulatory capital for Absa Bank from the live date of Basel II, being 1 January 2008.

The responsibility for risk management resides with management at all levels, from members of the board to individuals throughout the Group. Overall, risk management policies and risk appetite are established on a comprehensive, organisation-wide basis by senior management, reviewed and where appropriate, approved by the board of directors. These are clearly communicated throughout the Group and apply to all business units in the various divisions and wholly owned subsidiaries, as well as non-wholly owned subsidiaries and majority equity stakes over which Absa has management control.

Oversight of risk management is the responsibility of two board committees: the Group Audit and Compliance Committee (GACC) and the Group Risk and Capital Management Committee (GRCMC). The GACC assists the board with regard to financial information, accounting policies, internal control and compliance matters. The GRCMC's function is to assist the board in fulfilling its responsibilities with regard to risk management and to ensure compliance with the requirements of the Banks Act regarding risk and capital management.

Generally speaking, the approach followed by Absa in managing risk is to ensure that all significant risks are identified and managed. The board-approved principal risk policy defines the major risks that Absa is exposed to by setting a clear scope around these risks, and setting out high-level policy and accountabilities as to how these should be managed. A total of 18 principal risks are identified as relevant to Absa's business, and forms the cornerstone for the internal control environment. They are grouped in the following list according to the main risk types which are in line with the Basel II Capital Accord (Basel II) classifications:

- **Capital risk**
  - The risk that Absa's total capital base is not properly managed in a prudent manner.
- **Credit risk**
  - Wholesale credit risk – Failure by corporate borrowers or counterparties to perform their payment, guarantee and/or other obligations.
  - Retail credit risk – Failure by retail borrowers or counterparties to perform their payment, guarantee and/or other obligations.
- **Market risk**
  - Business objectives are adversely affected by changes in the level of volatility of market rates or prices.
- **Liquidity risk**
  - Failure to meet payment obligations when they fall due and to replace funds when they are withdrawn.
- **Operational risk**
  - Financial crime risk – Failure to monitor, report and act on financial crime and money laundering exposing Absa to losses, penalties and reputation damage.
  - Financial reporting risk – Failure to monitor and report on statutory financial requirements in line with Group requirements, leading to penalties.
  - Tax risk – Failure to comply with tax laws and practice (or provide accordingly, where appropriate) leading to a financial loss and/or separately a damage to reputation.
  - Legal risk – Exposure of Absa to legal risk arising from business not conducted in accordance with the applicable laws.
  - Operations risk – Failure to deliver the intended outcome, including business continuity, data management, process management, premises risk, sourcing, supplier and service management.
  - People risk – Failure to achieve Absa's business objectives owing to problems that may arise because of people issues.
  - Regulatory risk – Failure to comply with applicable financial services regulatory rules and regulations exposing Absa to penalties and reputation damage.

- Technology risk – The risk of catastrophic failure of technology to deliver secure IT services that provide critical business services.
- Brand risk – Failure to understand, identify or subsequently manage developments that could negatively impact the Absa or Barclays brands.
- Major change programme risk – Failure to control requirements relating to strategic and significant change.
- Corporate responsibility risk – Failure to consider corporate and social responsibility (CSR) issues that could result in the Group suffering reputation damage, financial penalties and loss of credibility in the eyes of stakeholders.
- **Strategic risk**
  - The risk that the achievement of Absa's business objectives will be adversely affected by defective strategic planning.
- **Insurance underwriting and investment risk**
  - The risk associated with the short-term underwriting of fixed and/or moveable assets, accidents, guarantees and liabilities; insuring the life and/or health of an individual or groups of individuals, or the risk that the earnings of the insurance operations are adversely impacted by changes in the value of the insurance investment assets.

Each of these principal risks is assigned to an executive, known as the principal risk owner (PRO), who has the responsibility to implement the principal risk policy (PRP) in business. This is done in conjunction with business units according to the delineated responsibilities specified in the PRP, via a comprehensive set of risk management control frameworks that is maintained and mandated through the entrenched Absa risk governance structures. Integrated, structured risk assessments take place across all risk types and businesses in accordance with the established risk management framework.

The risks are managed using the five-step process of:

- Direct
- Assess
- Control
- Report
- Manage/challenge

Risk appetite is the Group's chosen method of balancing return and risks by recognising a range of possible outcomes, as business plans are implemented. Absa's framework, approved by the GRCMC, is based on advanced risk quantitative analysis. The risk appetite is set annually by the Absa Group board.

Risk appetite is the level of risk that Absa is willing to accept in fulfilling business objectives. To determine this acceptable level of risk, potential earnings volatility is first considered against financial objectives. As part of the planning process, management estimates the potential earnings volatility from different businesses under various scenarios. Absa estimates the capacity to absorb unexpected losses in terms of the tolerable level of variance from financial targets, by considering the ability to support business growth, desired dividend payout levels and capital ratio targets. If the projections entail too high a level of risk, management will challenge each area to find new ways to rebalance the business mix to reduce risk exposure on a diversified basis.

Absa remains committed to the objective of increasing shareholder value by developing and growing business that is consistent with the chosen risk appetite, and by building more effective risk management capabilities.

Credit risk measurement forms an integral part of the management of credit risk. Through the implementation of the Basel II requirements for the advanced internal ratings based approach for credit risk in the Bank, the rating systems are used provide a consistent focus on credit risk measurement. These risk parameters will be used in the calculation of regulatory capital for the Bank from the live date of Basel II, being 1 January 2008.

## **Risk governance**

Risk governance refers to the approach that balances the demands for entrepreneurship, control and transparency, while supporting Absa's objectives with an efficient decision-making process. Formal risk governance processes are established in Absa, whereby the management of risk in Absa is guided and monitored by a number of committees.

The most influential role players in the risk management framework (as indicated in the governance structure) and their responsibilities are:

### **Absa Group board and board committees**

The Absa board has an appropriate balance, with a majority of independent directors (non-executive directors who are independent, as defined by King II Report on Corporate Governance, the South African equivalent to the Sarbanes Oxley Act). The Chairperson of the Absa board is an independent director.

A number of board-appointed committees have been established to assist the board in discharging its responsibilities. The board recognises that it is ultimately accountable and responsible for the performance and affairs of the Group and that the use of delegated authorities to board committees and management in no way mitigates or dissipates the discharge by the board and its directors of their duties and responsibilities.

Specific responsibilities have been delegated to these committees, which operate under written terms of reference confirmed by the board. There is transparency and full disclosure from board committees to the board. In this regard, the minutes of committees are submitted to the Absa board for noting. In addition, written summaries of key issues and decisions taken at committee meetings are tabled at each board meeting, and committee chairpersons also provide the board with a verbal report on recent committee activities.

Notwithstanding the establishment of the various board committees and delegated authorities, the Absa board reserves to itself a range of key decisions to ensure that it retains proper direction and control of the Group (supported by any recommendation that may be made by the relevant board committee and/or management). A comprehensive framework, setting out authorities and responsibilities with regard to matters affecting the businesses of the boards and committees in the Group, assists in the control of the decision-making process and ensures that there is a balance of power and authority to ensure that no individual has unfettered powers of decision-making. All board-delegated authorities are reviewed and updated annually by the board.

A process is in place to ensure that board committees are subjected to annual evaluation by the board to ascertain their performance and effectiveness.

Although the Absa board still retains overall responsibility for the affairs of the Group, subsidiary boards play an important role in the Group's overall governance approach. Absa directors have full access to subsidiary board documentation. These boards meet five times a year, usually prior to the Absa board meetings. The level of detail dealt with by subsidiary boards is generally greater than that dealt with by the Absa board and is specific to the relevant subsidiary.

### **Group Chief Executive**

Absa's Group Chief Executive ("GCE") is appointed by the Absa Group board to manage, with the assistance of Group Exco, Absa's business within an acceptable risk profile, while achieving sustainable profits. From a risk control perspective, the Absa GCE is required to ensure that the PRP is adhered to. From a risk management perspective he is responsible to monitor and ensure that (*inter alia*):

- all risks are managed within the approved risk appetite;
- the various risk profiles of Absa are understood and appropriately managed (including the risk profiles of proposed new initiatives, ventures, products/services and major projects which may impact on Absa's risk/reward profile);
- appropriate internal controls are in place, which are achieved by developing and providing a strong control environment;
- risk control frameworks and supporting risk management policies are approved and are in place from a Group and divisional/subsidiary perspective;
- reporting systems pertaining to risk management and control are adequate, accurate and effective;
- risk is taken into account in long-term plans and investments; and
- risks are reported to the GRCMC, GACC and the board on a regular basis.

### **Group Governance and Control Committee ("GGCC")**

The GGCC is a Group Exco committee that assists Group Exco and the GACC through oversight of the design and operation of the internal control framework in Absa. The committee meets quarterly and is responsible for the design and operation of Absa's control framework, communication of the framework and its contents, independent assurance and

escalation of issues. The GGCC reviews control issues escalated from the divisional risk governance and control committees (DRG&CCs) incorporated in the control issues of Group significance (CIGLS) report.

#### ***Divisional/subsidiary risk, governance and control committees***

DRG&CCs were established by the Absa GCE to assist Group Exco, the GACC and the GRMC to discharge their responsibilities from a business unit perspective. It is the overall responsibility of Absa's independent risk management division (**Group Risk**) to assist business unit heads with the effective functioning of the divisional/subsidiary risk governance structures in accordance with Absa's risk management framework.

#### ***Group Exco risk-type committees***

The Credit Risk Committee ("CRC"), Market Risk Committee ("MRC") and Operational Risk Committee ("ORC") are committees established by Group Exco to manage the credit, market and operational risk-reward profiles of the Absa Group respectively. The committees convene monthly with the overall objective of aligning developments in the three risk areas with the requirements of Basel II and ensuring that the risk type risk-reward profile supports the overall risk appetite of Absa.

#### ***Other oversight committees***

Absa has established a number of committees with oversight of specialised areas such as investments, taxation and actuarial valuation in the long-term insurance business. These committees convene either monthly or quarterly.

#### ***Specialist functions and shared services***

Absa's operating model is designed to obtain maximum operational efficiency from a number of shared services in the Group. Specialist functions, aided by specialist committees, assist with risk management, including strategic investment activities. These operate according to clear governance guidelines.

#### ***Risk management responsibility and accountability***

The responsibility for risk management resides at various levels, from members of the board to individuals throughout Absa, and is governed by the principle risk policy. Associated risk management control frameworks and policies are established on a comprehensive, organisation-wide basis by senior management, reviewed and where appropriate, approved by the board of directors.

The control frameworks, policies, appetites and tolerances are clearly communicated throughout Absa and apply to all business units in the various divisions, wholly owned subsidiaries, as well as non-wholly owned subsidiaries and majority equity stakes over which Absa has management control.

#### ***Board and executive management responsibility***

The Absa Group board is responsible for annually approving Absa's risk appetite. This risk appetite is translated into risk limits per business unit and per risk type. Adherence to these limits is monitored and reported monthly and culminates in a risk-reward profile for Absa. Risk appetite does not specifically address all types of operational risk, inadequate corporate governance processes, reputation risk and long-term strategic risk. These risks are addressed in Absa's risk management framework.

#### ***Business unit/subsidiary accountability***

Business units/subsidiaries are accountable for managing the risks associated with their activities within established and approved tolerance limits, as well as for the results, both positive and negative, of taking those risks. In discharging this responsibility, business units are assisted by Group Risk. Oversight is provided by the DRG&CCs.

#### ***Independent risk function***

Group Risk is an independent specialist function accountable to the GRMC, and in certain areas to the GACC. The activities of this division are evaluated and governed by the Absa GCE through the effective functioning of the CRC, MRC, ORC and the DRG&CCs.

The risk division is responsible for ensuring that an integrated and effective risk management framework is maintained throughout Absa. Group Risk comprises a number of specialist risk management areas, chiefly credit, market, operational, insurance and investment risk, as well as the compliance and forensic services functions. External validations of Group Risk and Absa's risk management frameworks are performed by independent external parties.

#### ***ABSA BANK BOARD OF DIRECTORS***

The Absa Bank board of directors (the Directors) has an appropriate balance with a majority of independent directors. The chairperson of the Absa board is an independent director. As at 12 June 2008, the Bank had 19 directors, of which four were executive, five were non-executive and ten were considered to be independent.

The Directors of the Issuer, each of whose business address is 3<sup>rd</sup> Floor, Absa Towers East, 160 Main Street, Johannesburg, 2001 and their functions in relation to AGL and their principal outside activities (if any) of significance to the Issuer are as follows:

### Board membership

Independent directors	D C Arnold, D C Brink (Deputy Chairperson), B P Connellan, S A Fakie, G Griffin, M W Hlahla, G Marcus (Chairperson), T S Munday, F A Sonn and B J Willemse.
Non-executive directors	Y Z Cuba, R A Jenkins*, R Le Blanc*, E C Mondlane, Jr <sup>\$</sup> . and F F Seegers <sup>#</sup> .
Group executive directors	S F Booysen (Group Chief Executive), N P Mageza, J H Schindehütte and L L von Zeuner.

Group Remuneration and Human Resource Committee	D C Brink (Chairperson), B P Connellan, G Marcus, F F Seegers <sup>#</sup> and F A Sonn.
Group Audit and Compliance Committee	D C Arnold (Chairperson), Y Z Cuba, S A Fakie, R Le Blanc*, G Griffin, G Marcus and T S Munday.
Group Risk and Capital Management Committee	D C Arnold, M W Hlahla, G Griffin (Chairperson), R Le Blanc*, G Marcus, E C Mondlane, Jr <sup>\$</sup> and B J Willemse.
Directors' Affairs Committee	D C Arnold, D C Brink, G Griffin, G Marcus (Chairperson), F F Seegers <sup>#</sup> and F A Sonn.
Group Credit Committee	D C Brink, B P Connellan, Y Z Cuba, S A Fakie, G Marcus, T S Munday and B J Willemse.
Credit Committee: Large Exposures	S F Booysen, D C Brink, B P Connellan, S A Fakie, G Marcus (Chairperson), T S Munday, J H Schindehütte and B J Willemse.
Board Finance Committee	D C Arnold, D C Brink, Y Z Cuba, R A Jenkins*, G Marcus (Chairperson) and T S Munday

\*British

#Dutch

\$Mozambican

<u>Name</u>	<u>Age at 31 December 2007</u>	<u>Qualifications</u>	<u>Absa Board committee memberships</u>	<u>Other directorships/trusteeships</u>	<u>Skills, expertise and experience</u>
D C Arnold	67	CA(SA) FCMA AMP	Group Audit and Compliance Committee (Chairperson) Group Risk and Capital Management Committee Directors' Affairs Committee Board Finance Committee	Mr Arnold is a director of the Wits Health Consortium (Proprietary) Limited and Chairperson of its audit committee. He is Chairperson of the Barlow's Pension Fund, a trustee of the Absa Group Retirement Fund and is also Project Manager of The South African Institute of Chartered Accountants /	Mr Arnold was formerly the Executive Director: Finance and Administration of Barloworld Limited. He joined the Barlows Group in 1967 and held a number of senior financial positions in the Barlows Group, which culminated in his appointment to the board in 1993. He retired from Barloworld at the end of March 2003.  Mr Arnold is a former President of the Eastern, Central and Southern African Federation of Accountants (ECSAFA)



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				Gauteng Government Municipalities Project. He is a Director of Absa Group Limited	and represented ECSAFA on the Council of the International Federation of Accountants (IFAC). He is also a former President of the South African Institute of Chartered Accountants (SAICA) and is also an honorary life member of SAICA. He has represented SAICA on the Financial and Management Accounting Committee of IFAC.
S F Booysen	45	DCom (Acc) CA(SA)	Credit Committee: Large Exposures  Attends various other board committee meetings <i>ex officio</i> .	Dr Booysen is a director of various companies in the Absa Group and a Council member at the University of Pretoria.	After completing his articles with Ernst & Young (1980-1983), Dr Booysen became a senior lecturer in accounting at the University of South Africa (1983-1988). He joined Absa in 1988 and held various positions in the Group until he was appointed as Group Chief Executive of Absa in August 2004. He is an honorary professor in the School of Accountancy at the University of Pretoria.
D C Brink	68	MSc Eng (Mining)  Diploma in Business Administration  Graduate Diploma in Company Direction	Directors' Affairs Committee  Group Remuneration and Human Resource Committee (Chairperson)  Group Credit Committee  Credit Committee: Large Exposures  Board Finance Committee	Mr Brink is a director of Sappi Limited. He is the Deputy Chairperson of Absa Group Limited. He is a trustee of the Absa Foundation and Chairperson of the Absa Group Retirement Fund. He is Co-Chairperson of the Business Trust, a director of the National Business Initiative and Vice-President of the South African Institute of Directors.	Mr Brink joined Murray & Roberts Limited in 1970 after eight years in the gold industry with Anglo American Corporation of South Africa Limited. He was appointed Chief Executive Officer of Murray & Roberts Holdings Limited in 1986 and Chairperson in 1994. Mr Brink was Chief Executive Officer of Sankorp Limited from 1994 to 1997.
B P Connellan	67	CA(SA)	Group Remuneration and Human Resource Committee  Group Credit Committee  Credit Committee:	Mr Connellan is a Director of Absa Group Limited, Director of Illovo Sugar Limited, Tiger Brands Limited, Reunert Limited and Sasol Limited.	After qualifying as a chartered accountant, Mr Connellan joined the Barlows Group in 1964. He managed a number of subsidiaries and was appointed as a director of Barlow Rand Limited in 1985. Mr Connellan was Executive Chairperson of

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			Large Exposures		the building materials, steel and paint division until 1990. Thereafter he was appointed as Executive Chairperson of Nampak Limited, a position he held until retirement in 2000.
Y Z Cuba	30	BCom (Stats) BCom (Hons) (Acc) CA(SA)	Group Credit Committee Board Finance Committee	Ms Cuba is a director of Absa Group Limited, Mvelaphanda Group Limited, Total Facilities Management Company (Proprietary) Limited and Life Healthcare (Proprietary) Limited. She is a member of the Nelson Mandela Foundation Investment and Endowment Committee.	In 1999, Ms Cuba commenced her career in marketing with Robertsons Foods. Thereafter, she moved to Fisher Hoffman, an auditing firm, where she completed her articles in 2002. She then joined Mvelaphanda in January 2003 in its corporate finance division. She was appointed as Deputy Chief Executive Officer prior to being appointed as Chief Executive Officer of Mvelaphanda Group Limited in July 2007.
S A Fakie	54	BCom	Group Audit and Compliance Committee Group Credit Committee Credit Committee: Large Exposures	Mr Fakie is a member of the following professional bodies: the Independent Regulatory Board of Auditors; the South African Institute of Chartered Accountants; the Australian Institute of Chartered Accountants and the Institute of Public Finance and Audit. He serves as a director on several MTN (Mobile Telephone Networks SA) subsidiary companies in Africa.  He is also a Director of Absa Group Limited	Mr Fakie was the Auditor General of South Africa for a period of seven years and served as Chairperson of the UN Panel of External Auditors and Secretary General for the Auditor's General Association in the African Continent.  He currently serves on the boards of various companies and the executive committees of several community and non-profit organisations. He is a member of the Public Accountants and Auditors Board and is the past Treasurer and Chairperson of the Education Committee at the Association for the Advancement of Black Accountants in Southern Africa. He was also a member of the RDP Sub-Committee at the Western Cape Society of Chartered Accountants and the Education Committee of the Institute of Chartered Accountants in Australia.

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G Griffin	58	BSc FIA FASSA	Group Risk and Capital Management Committee (Chairperson) Group Audit and Compliance Committee Directors' Affairs Committee Also serves on the boards of Absa Financial Services and its insurance subsidiaries and is the Chairperson of the Absa Life Actuarial Committee	Mr Griffin is a Chairperson of two privately held companies based in Cape Town and is a trustee of the University of Cape Town Foundation.  He is also a Director of Absa Group Limited	An actuary, Mr Griffin has wide experience in the financial services industry, both locally and internationally. He worked for Old Mutual from 1970 to 1999, at which time he was Managing Director responsible for Old Mutual's worldwide asset management and unit trust businesses, as well as all activities outside South Africa.  He has consulted to a number of South African and international businesses, including Orbis, Investec Asset Management and Old Mutual plc and served as a non-executive director on a number of boards in the financial services sector, including Sage Group plc, Swiss Re of South Africa and Citadel Holdings. Mr Griffin was Group Chief Executive Officer of the Sage Group from April 2003 to May 2005.  He is currently President of the Actuarial Society of South Africa.
M W Hlahla	44	BA (Hons) (Economics) MA (Urban and regional planning)	Group Risk and Capital Management Committee	Ms Hlahla is a Director of Absa Group Limited, a Non-executive director of Air Traffic and Navigation Services and the Industrial Development Corporation. She is the second Vice-Chairperson and special adviser to the chairperson of the Airports Council International World Governing Body.	Ms Hlahla completed her studies in the United States of America. During her studies she also worked at the Coalition for Woman's Economic Development in Los Angeles, a provider of micro loans to women entrepreneurs in the greater Los Angeles area.  In 1994, she reinvested her expertise in South Africa and joined the Development Bank of Southern Africa, where she successfully managed several large infrastructure projects. In 2000, Ms Hlahla joined Old Mutual Employee Benefits as Regional Manager: Northern Region, a position she held until her appointment as Chief Executive officer of the

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					Airports Company South Africa (ACSA) in 2001.
R A Jenkins	52	BA (Economics) He is a member of the Institute of Bankers (ACIB, DipFS)	Board Finance Committee	Mr Jenkins is a director of Absa Group Limited. He is the Managing Director and head of Barclays Private Equity, Principal Investments and Structured Capital Markets at Barclays Capital in London. He is a member of Barclays Executive Committee and Management Committee and was Chairperson of the Barclays Recruitment Committee (2002-2007). He is also the Chairman of Investment Banking Management (IBIM) for the Middle East.	Mr Jenkins started his career with BP in Paris. He joined Barclays International in 1978 and went to New York in 1980 as Senior Vice President and head of Private Placements until 1984. He then moved to Barclays Treasurers Group (1985-1986) where he was involved in the establishment of Barclays Futures and was the Manager of the Overseas Investment Group. In 1987, Mr Jenkins joined Kleinwort Benson, New York as head of Global Private Placements and Bank Syndications. He moved to London in 1990 to become the co-head of the Global Financial Markets division and in 1994 Mr Jenkins joined Barclays to head up Structured Capital Markets.
R le Blanc	51	MSc MBA	Group Risk and Capital Management Committee	Mr Le Blanc is a member of the board of directors of Barclays Global Investors and Absa Group Limited.	Mr Le Blanc has been the Risk Director for Barclays Group, based in London, since 2004. He joined Barclays in 2002 as the head of Risk Management at Barclays Capital. Prior to joining Barclays, Mr Le bla spent most of his career at JP Morgan in the capital market, fixed income, emerging market, and credit areas, and ultimately in the risk management function.
N P Mageza	53	ACCA	None, but attends various board committee meetings ex officio.	<u>Mr Mageza is a fellow of the Association of Chartered Accountants.</u>  <u>He is a Director of Absa Group Limited</u>	Mr Mageza started his career within the audit environment in 1988 with Coopers & Lybrand Chartered Accountants (SA) where he was an audit senior to supervisor and manage. He was then appointed as a manager at Transnet Limited Group Internal Audit Services. In 1993, he moved into general management at

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					<p>Autonet, the road passenger and freight logistics division of Transnet Limited. There he held various positions, including General Manager: Passenger Businesses. He became Chief Executive Officer: Autonet in 1995.</p> <p>In 1998, Mr Mageza moved to the financial services sector joining Nedcor Bank Limited's Technology and Operations Process Management division.</p> <p>He joined Absa in January 2000, taking responsibility for a number of executive functions within Bankfin (rebranded Absa Vehicle and Asset Finance). He became Managing Executive of that division in 2001. He was appointed to the Group Executive Committee in 2003.</p> <p>From 2004 he was responsible for Absa's African operations as well as the Absa Vehicle and Asset Finance. He relinquished operational responsibility of these portfolios from July 2006, owing to his appointment as Group Chief Operating Officer. He was appointed as a Group executive director of Absa in September 2007.</p>
G Marcus (Chairperson)	58	BCom	<p>Group Risk and Capital Management Committee</p> <p>Group Remuneration and Human Resources Committee</p> <p>Directors' Affairs Committee (Chairperson)</p> <p>Group Credit Committee</p> <p>Credit Committee: Large</p>	<p>Professor Marcus is a non-executive director of Gold Fields, a non-executive member of the Auditor General's Advisory Board, the International Marketing Council of SA (IMC) and the Independent Board for the Regulation of Auditors. She is the Chairperson of Absa Group Limited.</p>	<p>Professor Marcus is the former Deputy Minister of Finance, former Deputy Governor of the South African Reserve Bank and was also Professor of Policy, Leadership and Gender Studies at the Gordon Institute of Business Science (GIBS). She has chaired numerous regulatory and policy committees, including the Financial Services Board and the Standing Committee for the Revision of the Banks Act.</p> <p>Professor Marcus is a patron of the Pretoria Sun</p>

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			Exposures (Chairperson) Board Finance Committee (Chairperson)		Gardens Hospice and the Working on Fire Programme, as well as a supporter of the Johannesburg Children's Home.
E C Mondlane, Jr.	50	Political Science Extension Student UCLA	Group Risk and Capital Management Committee	Mr Mondlane is the Managing Director of Ninham Shand Mozambique Lda. He is also a Director of Absa Group Limited.	<p>Mr Mondlane left university to pursue a passion for African development, which included the establishment and operating of an African trading company based in New York to setting up the Mozambique Business Council in Washington D.C.</p> <p>Mr Mondlane also worked with a number of Italian companies, assisting them in the identification and development of strategically important infrastructure projects in Mozambique.</p> <p>In 1994, he returned to the infrastructure development industry. He is currently an adviser in the infrastructure, logistics, engineering and mining industries to various South African and multinational companies operating in sub-Saharan Africa.</p>
T S Munday	58	BCom	Group Audit and Compliance Committee  Credit Committee: Large Exposures  Group Credit Committee  Board Finance Committee	Mr Munday is a director of Absa Group Limited, and a member of the boards of Sasol Petroleum International (Proprietary) Limited, Sasol Synfuels International (Proprietary) Limited and Sasol Nitro and Sasol Polymers The latter two companies are divisions of Sasol Chemical Industries Limited. He is also a non-executive member of certain Sasol subsidiary companies or divisions.	<p>Mr Munday's career began in 1971 and was spent in a large number of different roles. These included financial and commercial management positions both in southern African and in Europe. In the late 1980s, he was the Finance and Commercial Director of AECl Explosives Chemicals Limited. In the early 1990s, he was appointed as the Managing Director of Dulux Paints.</p> <p>From 1996 to 2000, Mr Munday was the Managing Director of Polifin Limited, and then in 2001 he was appointed as an executive director of Sasol Limited with the global responsibility for finance and accounting, risk management, internal</p>

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					<p>audit, corporate affairs (including communications, brand management, corporate social investment and sports sponsorships) and planning. In 2003 he also assumed responsibility for the group's global chemical businesses, with operations in South Africa, Europe, the United States of America, the Middle East, South East Asia and China.</p> <p>He was appointed as Deputy Chief Executive of Sasol Petroleum International (Proprietary) Limited on 1 July 2005. He retired from his executive responsibilities at Sasol on 31 December 2006.</p>
J H Schindehütte	48	BCom (Hons) CA(SA) HDip Tax	<p>Credit Committee: Large Exposures</p> <p>Attends various other board committee meetings <i>ex officio</i>.</p>	Mr Schindehütte is a director of Absa Group Limited and various companies in Absa.	Mr Schindehütte commenced his career with accounting firm Ernst & Young en route to qualifying as a chartered accountant. He served in various managerial positions at Transnet Limited until 1999. Mr Schindehütte joined Absa as Group Executive: Group Finance during 1999. He was appointed as an executive director in January 2005.
F F Seegers	49	Master's degrees in engineering and finance	<p>Group Remuneration and Human Resource Committee</p> <p>Directors' Affairs Committee</p>	Mr Seegers is an executive director on the boards of Absa Group Limited, Barclays PLC and Barclays Bank PLC.	Mr Seegers is Chief Executive Officer of Barclays Global Retail and Commercial Banking. He joined Barclays in July 2006 after 17 years at Citigroup where he was Chief Executive Officer of Global Consumer Group with a remit covering all retail operations in Europe, the Middle East and Africa. Prior to this he was Chief Executive Officer of Consumer Banking for Asia Pacific covering 11 consumer markets. Under his leadership, this region was the fastest growing business of Citigroup.
F A Sonn	68	BA (Hons) PTD	Directors' Affairs Committee Group	Dr Sonn is Chairperson of Airports Company	Dr Sonn was the Rector of the Peninsula Technikon from 1978 to 1994. He

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		FIAC	Remuneration and Human Resource Committee	<p>South Africa Limited (ACSA), African Star Ventures (Proprietary) Limited, Imalivest (Proprietary) Limited, Xinergistix Limited, Kwezi V3 Engineers (Proprietary) Limited and Ekapa Mining (Proprietary) Limited. He is a director of Absa Group Limited, Sappi Limited, Safmarine (Proprietary) Limited, Steinhoff International Holdings Limited, Macsteel Service Centres S.A (Proprietary) Limited., Metropolitan Holdings Limited, RGA Reinsurance Company of South Africa Limited and RGA SA Holdings (Proprietary) Limited, Esor Limited, Pioneer Food Group (Proprietary) Limited, Piazza Park (Proprietary) Limited, the holding company for Airport Sun Inter-Continental Hotel at OR Tambo International Airport. He serves as a member of the Nelson Mandela Foundation Advisory Board and the Legal Resources Trust. He is also the Chancellor of the University of the Free State and Executive in Residence at the University of Cape Town Graduate School of</p>	<p>served as democratic South Africa's first ambassador to the United States of America from 1995 to 1998. He is a former President of the Afrikaanse Handelsinstituut, and was the President of the Union of Teachers Associations of South Africa for 16 years.</p>



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				Business.	
L L von Zeuner	46	BEcon	None, but attends various board committee meetings <i>ex officio</i> .	Mr von Zeuner serves on the boards of Absa Group Limited, the Banking Association South Africa, Section 21 Housing Company, Mastercard, and the SA Payments Strategy Association.	Mr von Zeuner's first position was that of a clerk in the Goodwood branch of Volkskas in 1981. He worked in the branch system until 1995, by which time he had been branch manager of four branches, namely Wynberg (1989-1990), Cape Town (1990-1991), Old Paarl Road (1991-1992) and Stellenbosch (1992-1995). His appointment as Regional Manager for the Northern Cape in Kimberley (1995-1996) elevated him to Absa's general management. He then became Provincial General Manager of the Northern Province (1996-1998) and the Free State (1998-1999). In 2000, he moved to Absa's head office, where he became the operating executive of Absa Commercial Bank. He was appointed as an executive director in September 2004.
B J Willemse	54	BCom BCom (Hons) Economics MCom (Economics) PhD (Agricultural Economics)	Group Risk and Capital Management Committee Group Credit Committee Credit Committee: Large Exposures	Professor Willemse is the Vice-Chairperson: Agricultural Economics Association of Southern Africa. He is also the Chairperson of the Department of Agricultural Economics at the University of the Free State.  He is a Director of Absa Group Limited.	As Chief Economist of the South African Agricultural Union (SAAU), as well as the Maize Board, consulting to Agri business, and as member of the National Agricultural Marketing Council (NAMC), Professor Willemse gained experience on a wide variety of economic and agricultural issues, including price and marketing policies, broad agricultural policy issues, pricing policies, and strategies and international trade and futures markets.

The Issuer is not aware of any potential conflicts of interest between the duties owed to the Issuer by the Directors listed above and their private interests or other duties.

#### IMPLEMENTATION OF BASEL II FRAMEWORK

The Issuer is subject to capital adequacy guidelines adopted by the South African Reserve Bank, which provide for a minimum target ratio of capital to risk-adjusted assets. Any failure by the Issuer to maintain its ratios may result in sanctions against the Issuer which may in turn impact on its ability to fulfill its obligations under the Notes. In addition, the Basel Committee on banking Supervision has issued proposals for reform of the 1988 Basel Capital Accord and has proposed a framework, which places enhanced emphasis on market discipline and sensitivity to risk. The new Basel

Capital Accord proposals have been substantially implemented in the South African bank regulatory framework from 1 January 2008.

In particular, certain provisions of the Banks Act have been amended with effect from 1 January 2008, as set out in the Banks Amendment Act, 2007, as read with the "Regulations Relating to Banks" promulgated under the Banks Act (the **Regulations**), in order, among other things, to provide for the issue by a bank of:

- "hybrid-debt instrument", on the terms and conditions set out in Regulation 38(13) (as amended) of the Regulations, and for the proceeds of the issue of such "hybrid-debt instruments" to qualify as Primary Share Capital;
- "hybrid-debt instruments", on the terms and conditions set out in Regulation 38(14) (a) of the Regulations, and for the proceeds of the issue of such "hybrid-debt instruments" to qualify as Undated Secondary Capital;
- term debt instruments, on the terms and conditions set out in Regulation 38(14) (b) of the Regulations, and for the proceeds of the issue of such term debt instruments to qualify as Dated Secondary Capital;
- debt instruments, on the terms and conditions set out in Regulation 38(16) of the Regulations, and for the proceeds of the issue of such debt instruments to qualify as Tertiary Capital.

It is intended (on the basis of the Regulations) that issues of, respectively, Tier 1 Notes, Undated Tier 2 Notes, Dated Tier 2 Notes and Tier 3 Notes will comply with the applicable provisions of the Regulations, as set out above, and that the respective proceeds of such issues will qualify as, respectively, Primary Share Capital, Undated Secondary Capital, Dated Secondary Capital and Tertiary Capital.

Absa successfully implemented the Basel II Accord on 1 January 2008. Absa implemented numerous initiatives and invested over R300 million in preparation for the framework transition. The Group has received approval from the South African Reserve Bank to implement the advanced internal rating-based approach for retail credit, whilst the foundation internal rating-based approach will be implemented for wholesale and corporate credit. The advanced measurement approach will be implemented for operational risk. The standardised approach for credit risk will be implemented for all African entities within the Group.

Absa has participated in the Quantitative Impact Studies and the parallel run processes initiated by the South African Reserve Bank to determine the impact of Basel II on the capital position of the Group. Management has refined the assumption of the risk models and obtained guidance on the interpretation of the Regulations. The Group has been in a position to comply with the requirements of the Regulations from 1 January 2008.

The capital requirements of Absa Bank are expected to reduce while the net qualifying capital will also decrease as a result of:

- the deduction of the excess of expected loss (Basel II) above accounting impairments (IFRS) from qualifying capital; and
- portfolio impairments and general credit risk reserve no longer qualifying as regulatory capital.

The impact therefore of Basel II on the capital adequacy ratio of Absa Bank is expected to be marginally positive.

The impact on the capital adequacy ratio of Absa Group will be more profound due to the fact that the excess capital of insurance entities that is held above the minimum regulatory requirement is excluded from the capital base of Absa Group, resulting in a reduction in the capital adequacy ratio of the Group.

The following table sets out the Group's and the Issuer's regulatory capital adequacy position as at 31 December 2007.

#### CAPITAL MANAGEMENT

	<i>Absa Bank</i>			<i>Absa Group</i>		
	<i>Tier I</i>	<i>Tier II</i>	<i>Total</i>	<i>Tier I</i>	<i>Tier II</i>	<i>Total</i>
Basel I (%)	9.21	3.32	12.53	10.14	2.95	13.09
Basel II (%)	10.10	2.91	13.01	10.37	2.30	12.67
Target (%)	8.75	3.25	12.00	8.75	3.25	12.00
Surplus capital (Rand bn)	0.50	-	-	2.00	-	-

#### RECENT DEVELOPMENTS

In August 2006, the South African Competition Commission (the **Competition Commission**) launched an enquiry in respect of the South African retail banking sector. In particular, the enquiry has focused on the transparency and level of fees and charges imposed on consumers as well as the need for interchange fees for ATM transactions and the level of interchange fees for payment card transactions. After a number of information requests to South African banks and a number of public hearings in the first half of 2007, the Competition Commission held a number of working group sessions in the fourth quarter of 2007, focusing on the possible introduction of a direct charging model for ATM transactions and a methodology for revising the level of interchange fees for payment card transactions. The Competition Commission is expected to publish its final report during the first half of 2008, which will contain a series of findings and recommendations to address any competition concerns. These recommendations may lead to a number of follow-up actions, such as the initiation of antitrust investigations against individual banks or on a market-wide basis in relation to

specific competition concerns and/or the adoption of remedial regulations/legislation to counter perceived consumer detriment.

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## SETTLEMENT, CLEARING AND TRANSFER OF NOTES

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### Notes listed on BESA and/or lodged in the Central Securities Depository

Each Tranche of Notes which is listed on BESA and either represented by the Global Certificate or issued in uncertificated form, will be held in the Central Securities Depository. A Tranche of unlisted Notes may also be held in the Central Securities Depository.

#### *Clearing systems*

Each Tranche of Notes, which is listed on BESA and/or held in the Central Securities Depository under the Global Certificate will be cleared through the Central Securities Depository which, as the operator of an electronic clearing system, has been appointed by BESA to match, clear and facilitate the settlement of transactions concluded on BESA. Each such Tranche of Notes will be issued, cleared and transferred in accordance with the Applicable Procedures and the Terms and Conditions. Each such Tranche of Notes will be settled through Participants who will comply with the electronic settlement procedures prescribed by BESA and the Central Securities Depository. The Notes may be accepted for clearance through any additional clearing system as may be agreed between BESA, the Issuer and the Dealer(s).

#### *Participants*

The Central Securities Depository maintains accounts only for Participants. As at the Programme Date, the Participants which are approved by BESA, in terms of the rules of BESA, as settlement agents to perform electronic settlement of funds and scrip are the South African Reserve Bank, Absa Bank Limited, FirstRand Bank Limited, Nedbank Limited and The Standard Bank of South Africa Limited. Euroclear Bank S.A./N.V., as operator of the Euroclear System and Clearstream Banking société anonyme will settle offshore transfers through their South African Participant.

#### *Settlement and clearing*

Participants will be responsible for the settlement of scrip and payment transfers through the Central Securities Depository, BESA and the South African Reserve Bank.

While a Tranche of Notes is held in its entirety in the Central Securities Depository, the Central Securities Depository's Nominee will be named in the Register as the sole Noteholder of the Notes in that Tranche. All amounts to be paid and all rights to be exercised in respect of Notes held in the Central Securities Depository will be paid to and may be exercised only by the Central Securities Depository's Nominee for the holders of Beneficial Interests in such Notes.

In relation to each person shown in the records of the Central Securities Depository or the relevant Participant, as the case may be, as the holder of a Beneficial Interest in a particular Principal Amount of Notes, a certificate or other document issued by the Central Securities Depository or the relevant Participant, as the case may be, as to the Principal Amount of such Notes standing to the account of such person shall be *prima facie* proof of such Beneficial Interest. The Central Securities Depository's Nominee (as the registered holder of such Notes named in the Register) will be treated by the Issuer, the Paying Agent, the Transfer Agent and the relevant Participant as the holder of that aggregate Principal Amount of such Notes for all purposes.

Payments of interest and principal in respect of Notes represented by the Global Certificate and Notes issued in uncertificated form will be made to the Central Securities Depository's Nominee, as the registered holder of such Notes, which in turn will transfer such funds, via the Participants, to the holders of Beneficial Interests. Each of the persons reflected in the records of the Central Securities Depository or the relevant Participant, as the case may be, as the holders of Beneficial Interests in Notes shall look solely to the Central Securities Depository or the relevant Participant, as the case may be, for such persons share of each payment so made by the Issuer to, or for the order of, the Central Securities Depository's Nominee, as the registered holder of such Notes. The Issuer will not have any responsibility or liability for any aspect of the records relating to, or payments made on account of, Beneficial Interests, or for maintaining, supervising or reviewing any records relating to Beneficial Interests. Payments of interest and principal in respect of Notes represented by the Global Certificate and Notes issued in uncertificated form shall be recorded by the Central Securities Depository's Nominee, as the registered holder of such Notes, distinguishing between interest and principal, and such record of payments by the Central Securities Depository's Nominee, as the registered holder of such Notes shall be *prima facie* proof of such payments.

#### *Transfers and exchanges*

Title to Beneficial Interests held by clients of Participants indirectly through such Participants will pass on transfer thereof by electronic book entry in the securities accounts maintained by such Participants for such clients. Title to Beneficial

Interests held by Participants directly through the Central Securities Depository will pass on transfer thereof by electronic book entry in the central securities accounts maintained by the Central Securities Depository for such Participants. Beneficial Interests may be transferred only in accordance with the Applicable Procedures.

Beneficial Interests may be exchanged for Notes represented by Individual Certificates in accordance with Condition 14.1 (*Exchange of Beneficial Interests*) of the Ordinary Conditions or Condition 14.1 (*Exchange of Beneficial Interests*) of the Tier 1 Conditions, as the case may be.

#### *BESA Guarantee Fund*

The holders of Notes that are listed on BESA may claim against the BESA Guarantee Fund (in accordance with the rules of the BESA Guarantee Fund) only if such Notes are traded by or through members of BESA in accordance with the rules and operating procedures for the time being of BESA and the Central Securities Depository. The holders of Notes that are not listed on BESA will have no recourse against the BESA Guarantee Fund.

#### **Notes listed on any Financial Exchange other than (or in addition to) BESA**

Each Tranche of Notes which is listed on any Financial Exchange other than (or in addition to) BESA will be issued, cleared and settled in accordance with the rules and settlement procedures of that Financial Exchange. The settlement, clearing and redemption procedures for trades of a Tranche of Notes issued on a Financial Exchange other than (or in addition to) BESA will be specified in the Applicable Pricing Supplement.

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## SOUTH AFRICAN TAXATION

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*The following summary is of a general nature and is included herein solely for information purposes. It is based on the laws presently in force in South Africa, though it is not intended to be, nor should it be construed to be, legal or tax advice. Prospective investors in the Notes should therefore consult their own professional advisers as to the effects of the state, local or foreign laws, including South African tax law, to which they may be subject.*

### (i) Income Tax

Under current taxation law in South Africa persons who or which are tax Residents will, subject to any available exemptions, be taxed in South Africa on their world-wide income. A tax Resident is a person who or which is a "resident" as defined in section 1 of the South African Income Tax Act, 1962 (the Income Tax Act). Any income received by or accrued to a Resident in respect of the Notes will accordingly be subject to income taxes imposed or assessed under the Income Tax Act.

#### **Notes other than Tier 1 and Undated Tier 2 Notes**

Any original issue at a discount to the nominal amount of the Notes will, in terms of Section 24J of the Income Tax Act, be treated as interest for tax purposes, and the discount amount will be deemed to accrue to the Noteholder on a yield to maturity basis as if such Noteholder were to hold the Notes until maturity.

Any original issue premium or redemption premium will be added to the nominal amount of the Notes to determine the initial amount which will be used to determine the interest which is deemed, under Section 24J of the Income Tax Act, to have been incurred or to have accrued in respect of the Notes.

Interest is taxed on the basis of type yield to maturity unless an election has been made by the Noteholder (if the Noteholder is entitled to make such election) to treat the Notes as trading stock on a mark-to market basis.

If the Notes are disposed of prior to maturity or are subject to early redemption, then the yield to maturity is re-calculated at that time, and an adjustment to taxable income may be necessary.

#### **Tier 1 and Undated Tier 2 Notes**

It is considered that the provisions of Section 24J of the Income Tax Act may not apply to determine the taxable amount as Tier 1 and Undated Tier 2 Notes are issued without a maturity date. Any coupon payments received in respect of Tier 1 and Undated Tier 2 Notes will then be taxable in terms of the normal accrual rules.

A Non-Resident is taxed in South Africa under the Income Tax Act only on income from a source within or deemed to be within South Africa. A Non-Resident is a person who or which is not a "resident" as defined in the Income Tax Act. Interest (as defined in Section 24J of the Income Tax Act) which is received or accrued in respect of the Notes during any year of assessment to any Non-Resident will be exempt from taxation under the Income Tax Act, unless that Non-Resident is a natural person who was physically present in South Africa for a period exceeding 183 days in aggregate in that year or, if that Non-Resident (whether or not a natural person) carried on business in South Africa at any time during that year through a permanent establishment located in South Africa.

Where the above exemption does not apply, relief from double taxation may be provided for in terms of an appropriate provision of any applicable double taxation treaty.

Noteholders should note that where any interest on Notes is paid to them (or to any person acting on their behalf) by any person in South Africa, then the company may be required to supply to the South African Revenue Service ("**SARS**") details of the payment and certain details relating to the Noteholder (including the Noteholder's name, address and identification or registration number). These provisions will apply whether or not the interest has been paid subject to withholding or deduction for or on account of South African income tax and whether or not the Noteholder is resident in South Africa for South African taxation purposes. In certain circumstances, the details provided to SARS may be passed by SARS to the tax authorities of certain other jurisdictions.

### (ii) Capital Gains Tax

Capital gains tax applies to any capital gain earned on the disposal or deemed disposal of a capital asset by Residents, as well as to any capital gain resulting from the disposal of immovable property, interests in immovable property, and any assets attributable to a permanent establishment of a Non-Resident located in South Africa.

A gain made on the disposal of the Notes, held on capital account, by a Resident Noteholder may be subject to capital gains tax.

A Non-Resident Noteholder may be subject to capital gains tax on a gain made on the disposal of the Notes if the Notes comprise assets held on capital account which are attributable to a permanent establishment of such Non-Resident Noteholder located in South Africa.

*(iii) Securities transfer tax*

No securities transfer tax will be payable, in terms of the South African Securities Transfer Tax Act, 2007, in respect of either the issue of the Notes or on the subsequent transfer of the Notes on the basis that the Notes will not comprise a "security" as defined in section 1 of the Securities Transfer Tax Act.

*(iv) Withholding tax*

Under current taxation law in South Africa, all payments made under the notes to Resident and Non-Resident Noteholders will be made free of withholding or deduction for or on account of any taxes, duties, assessments or governmental charges.

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## SOUTH AFRICAN BANKING SECTOR

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### Introduction

The South African banking system is well developed, remains stable and is adequately capitalized largely owing to effective regulation. The general structure of the banking sector in South Africa comprises a central bank, namely the South African Reserve Bank (the "**SARB**"), a few large financially strong banks and investment institutions and a number of smaller banks. Through time there has been a moderate influx of foreign banks and investment institutions that have entered the South African banking sector. The South African government has taken up membership with various international bodies, including the World Bank and the International Monetary Fund (the "**IMF**"), South Africa's banking sector benefits from the policy advice through the monitoring of economic and financial developments by these international institutions with the aim of strengthening the international financial system.

There are currently 14 banks that are locally controlled, 6 banks that are foreign controlled, 14 registered branches, 2 registered mutual banks and 44 foreign banks' representative offices. Over 80% of the total banking assets are held by the top 4 banks, namely Absa Bank Limited, FirstRand Bank Limited, Nedbank Limited and The Standard Bank of South Africa Limited.

There has been a steady decline in the total loans and advances (comprising of instalment, sale, credit, leasing, financing, mortgage advances, overdrafts, credit card and general advances), extended to the domestic private sector by banks in South Africa. The downward driver of the decline in loans and advances has been the tighter lending standards set by the National Credit Act, 2005 (the "**NCA**"), which became fully operational as at June 2007.

The purpose of the NCA is primarily aimed at protecting consumers against unscrupulous credit providers by establishing stringent credit granting standards. It also aims to:

- establish the National Credit Regulator and the National Consumer Tribunal;
- promote a fair and non-discriminatory market place for access to consumer credit and for that purpose to provide for the general regulation of consumer credit and improved standards of consumer information;
- prohibit certain unfair credit and credit-marketing practices;
- promote responsible credit granting and use and for that purpose, to prohibit reckless credit granting;
- provide for debt re-organisation in cases of over-indebtedness;
- regulate credit information; and
- provide for registration of credit bureaux, credit providers and debt counseling services.

### Regulatory Framework

Banks and the business of banking in South Africa are principally regulated by the Banks Act, the regulations promulgated under the Banks Act and circulars issued by the Registrar of Banks. The Banks Act provides for the regulation and supervision of the business of public companies taking deposits from the public, amongst other activities of a bank. The Banks Act also sets out various extensive supervisory and regulatory powers which are conferred upon the Registrar of Banks.

### The SARB

The SARB is the central bank of South Africa. It regards its primary goal in the South African economic system as "the achievement and maintenance of price stability". It is responsible for:

- formulating and implementing monetary policy;
- ensuring that the South African money, banking and financial systems as a whole is sound and meets the requirements of a community and keeps abreast of international development;
- assisting the South African government in the formulation and implementation of macro-economic policy as well as informing the South African community and all interested stakeholders abroad about monetary policy in the south African economic environment.



The SARB performs its functions through the office of the Registrar of Banks who is duly assisted by 3 deputy Registrars. The Registrar of Banks is responsible for issuing licences to conduct the business of a bank as well as any cancellation or suspension of such licences. The SARB, through the Registrar of Banks, also regularly conducts both on and off site compliance monitoring of all registered banks. The qualitative aspect of supervisory work is undertaken mainly on-site at the premises of a bank and consists of assessing the adequacy and effectiveness of the corporate governance and internal control systems of a bank. The on-site work is aimed at forming a high level opinion about the adequacy of a bank's risk management controls.

The quantitative analysis of a bank's ongoing financial condition is performed off-site at the offices of the SARB. Banks are statutorily required to provide the SARB with certain data on a monthly basis. This data would have to be corrected by external auditors of a bank, electronically entered into a database and converted into meaningful information. The information or data supplied by banks to the SARB includes published annual financial statements. The submission of all this data is aimed at ensuring that banks comply with the stated prudential requirements as set out in the Banks Act. The SARB also holds various meetings, including a quarterly prudential meeting with the executive management and various risk managers of each bank, a bilateral meeting with the external auditors of each bank, an annual tri-lateral discussion with the management and auditors of a bank and annual presentations to a bank's entire board of directors.

Another key focus of the SARB is the combating of money laundering schemes that fund terrorist activities around the world. The office of the Registrar of Banks, together with the Financial Intelligence Centre (the "**FIC**") have continuously made advances in getting banks to comply with the Financial Intelligence Centre Act, 2001 ("**FICA**"). In 2006, the SARB commissioned a review to verify the compliance of banks with the requirements of FICA. The Registrar of Banks, together with FIC, has concluded that the relevant banks have made a concerted effort to discharge their duties and responsibilities in terms of FICA.

The international nature of the South African banking sector requires that best international standards of banking regulations and supervision be applied. South Africa's banks are regulated in accordance with the principles laid down by the Basel Committee on Banking Supervision (the "**Basel Committee**"). The Basel Committee originally published the core principles and methodology in 1997. The core principles have been used by countries (including South African) as a benchmark for assessing the quality of their supervisory systems and for identifying future work to be done to achieve a baseline level of sound supervisory practices. As mentioned above, the SARB's responsibility includes ensuring that the domestic banking regulatory framework stays ahead of international best practice. A focus area has been the implementation of Basel II: International Convergence of Capital Measurement and Capital Standards ("**Basel II**"). The changes brought by Basel II can be summarized into 3 pillars.

- Pillar 1 specifies the methodologies to arrive at minimum capital requirements for credit risk, operational risk and market risk;
- Pillar 2 deals with the supervisory review process which is guided by the principle that banks must have risk control and management processes that are adequate to their business structure and risk profile. It is proposed that supervisory review would be in the form of on-site inspections, off-site reviews, discussions with the bank's management, review of work done by external auditors, etc.;
- Pillar 3 deals with market disclosure and the purpose of which is to impose market discipline in order to reinforce minimum capital requirements; to impose incentives for firms that behave prudently, and to promote safety and soundness in banks and financial systems.

Capital adequacy is a measure of the adequacy of a banking institution's capital resources in relation to its current liabilities and to the risks associated with its assets. Under the guidelines of the Basel Committee, banking institutions are required to maintain a certain level of capital against their risk-adjusted assets. In South Africa these guidelines have been adopted but with a higher minimum capital-adequacy ratio requirement of 10% in comparison to the Basel Committee's guideline of 8%.

The National Payment System Act, 1998 (the "**NPSA**"), was introduced to bring the South African Financial Settlement System in line with international best practice regarding the Settlement Systems and Systems Risk Management Procedures. The NPSA confers greater powers and duties on the SARB in respect of providing clearing and settlement facilities. The Payment Association of South Africa, under the supervision of the SARB has facilitated the introduction of payment clearing house agreements and has introduced agreements pertaining to settlement, clearing and netting agreements, and netting rules to create certainty and reduce systematic and other risks in inter-bank settlement. These developments have brought South Africa in line with international inter-bank settlement practice.

## Monetary Policy

The SARB conducts monetary policy within an inflation targeting framework. The current target is for the Consumer Price Index inflation (the "**CPIX inflation**") to be within a target range of 3% to 6% on a continuous basis. The SARB has a floatation exchange rate policy and there is no exchange rate target. The inflation rate is presently in the region of 11,6% and the SARB's repurchase rate is currently in the region of 12%, driven up by the rising inflation rate. The SARB's targeted inflation rate, as determined by the Monetary Policy Committee (the "**MPC**") of 3% to 6% has over the

last 15 months been breached. This is largely due to the adverse impact of the rise in food prices as well as oil prices which (to a large extent) remain outside the control of the SARB.

### **Amendments to the Banks Act**

The Banks Amendment Act, 2007 (the "**Amendment Act**") which came into effect on 1 January 2008, together with amended regulations to the Banks Act, brings with it certain changes which are also contained in Basel II. Amongst many of the amendments brought by the Amendment Act, is the possibility pertaining to the issue of certain financial instruments by a bank. Regulation 38 deals with capital adequacy and makes it possible for a bank to issue:

- preferred securities such as specified hybrid-debt instruments, the proceeds of which rank as Primary Share Capital. The conditions for the issue of such instruments are set out in Regulation 38(13);
- debt instruments, the proceeds of which rank as Undated Secondary Capital. The conditions for the issue of such instruments are set out in Regulation 38(14)(a);
- term, debt instruments, the proceeds of which rank as Dated Secondary Capital. The conditions for the issue of such instruments are set out in Regulation 38(14)(b); and
- debt instruments, the proceeds of which rank as Tertiary Capital. The conditions for the issue of such instruments are set out in Regulation 38(16).

Another significant amendment that was introduced is the expansion of the Banks Act circulars to include the issuance of directives as well as guidance notes by the regulator. These are meant to provide for more flexibility in the clarification and interpretation of the agreed market practice subject to being effected within the confines of both the regulations and the Amendment Act.

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## SUBSCRIPTION AND SALE

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In terms of (and subject to) the Programme Agreement, Absa Capital, a division of Absa Bank ("**Absa Capital**") has been appointed as a Dealer on an ongoing basis for the duration of the Programme. The Issuer may appoint one or more Dealers for a specific issue of one or more Tranches of Notes or on an ongoing basis. In terms of (and subject to) the Programme Agreement, the Issuer may from time to time agree with any Dealer(s) to issue, and any Dealer(s) may agree to place, one or more Tranches of Notes.

### South Africa

Prior to the issue of any Tranche of Notes under the Programme by the Issuer, each Dealer for that Tranche of Notes will be required to represent and agree that it will not solicit any offers for subscription for or sale of the Notes in that Tranche of Notes, and will itself not sell Notes, in South Africa, in contravention of the Companies Act, 1973, the Banks Act, 1990 and any regulations promulgated thereunder. Notes will not be offered for subscription to any single addressee for an amount of less than R1 000 000.

### United States of America

The Notes have not been and will not be registered under the United States Securities Act, 1933, as amended (the "**Securities Act**") and may not be offered or sold within the United States or to, or for the account of or benefit of, U.S. persons except in certain transactions exempt from the registration requirements of the Securities Act. Terms used in this paragraph have the meanings given to them by Regulation S under the Securities Act.

Prior to the issue of any Tranche of Notes under the Programme by the Issuer, each Dealer for that Tranche of Notes will be required to represent and agree that:

- (i) the Notes in that Tranche have not been and will not be registered under the Securities Act and may not be offered or sold within the United States or to, or for the account of or benefit of, U.S. persons except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act;
- (ii) it has not offered, sold or delivered any Notes in that Tranche and will not offer, sell or deliver, any Notes in that Tranche within the United States except in accordance with Rule 903 of Regulation S under the Securities Act or pursuant to an available exemption from the registration requirements of the Securities Act; and
- (ii) it, its affiliates and any persons acting on its or any of its affiliates behalf have not engaged and will not engage in any directed selling efforts with respect to the Notes in that Tranche and it, its affiliates and any persons acting on its or any of its affiliates' behalf have complied and will comply with the offering restrictions requirements of Regulation S.

Each issuance of Index Linked Notes or Dual Currency Notes shall be subject to such additional U.S. selling restrictions as the Issuer and the relevant Dealer may agree and specified in the Applicable Pricing Supplement.

### United Kingdom

Prior to the issue of any Tranche of Notes under the Programme by the Issuer, each Dealer for that Tranche of Notes will be required to represent and agree that:

- (i) it has not offered or sold, and prior to the expiry of a period 6 months from the Issue Date in respect of each Tranche of Notes will not offer or sell, any Notes in that Tranche to persons in the United Kingdom, except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations, 1995 of the United Kingdom;
- (ii) it has complied with and will comply with all applicable provisions of the Financial Services and Markets Act, 2000 (the "**FSMA**") with respect to anything done by it in relation to the Notes in that Tranche in, from or otherwise involving the United Kingdom; and
- (iii) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of section 21 of the FSMA) received by it in connection with the issue or sale of any Notes in that Tranche in circumstances in which section 21(1) of the FSMA does not apply to the Issuer.

## European Economic Area

Prior to the issue of any Tranche of Notes under the Programme, each Dealer who has (or will have) agreed to place that Tranche of Notes will be required to represent and agree that, in relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each a **"Relevant Member State"**), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the **"Relevant Implementation Date"**) it has not made and will not make an offer of any of such Notes to the public in that Relevant Member State except that it may, with effect from and including the Relevant Implementation Date, make an offer of any of such Notes to the public in that Relevant Member State:

- a) in the period beginning on the date of publication of a prospectus in relation to those Notes which has been approved by the competent authority in that Relevant Member State in accordance with the Prospectus Directive and/or, where appropriate, published in another Relevant Member State and notified to the competent authority in that Relevant Member State in accordance with Article 18 of the Prospectus Directive and ending on the date which is 12 months after the date of such publication;
- b) at any time to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;
- c) at any time to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43 000 000.00 and (3) an annual turnover of more than €50 000 000.00 as shown in its last annual or consolidated accounts; or
- d) at any time in any other circumstances which do not require the publication by the Issuer of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an "offer of Notes to the public" in relation to any Notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Notes to be offered so as to enable an investor to decide to purchase or subscribe the Notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression "Prospectus Directive" means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

## Japan

The Notes have not been and will not be registered under the Financial Instruments and Exchange Law of Japan, Law No. 25 of 1948, as amended, (the **"FIEL"**) and the Dealer has agreed, and each further Dealer appointed under the Programme will be required to agree, that it will not offer or sell any Notes, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organised under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the FIEL and any other applicable laws, regulations and ministerial guidelines of Japan.

## General

Prior to the issue of any Tranche of Notes under the Programme, each Dealer for that Tranche of Notes will be required to represent and agree that it will (to the best of its knowledge and belief) comply with all applicable laws and regulations in force in each jurisdiction in which it purchases, subscribes or procures subscriptions for, offers or sells Notes in that Tranche or has in its possession or distributes the Programme Memorandum and will obtain any consent, approval or permission required by it for the purchase, subscription, offer or sale by it of Notes in that Tranche under the laws and regulations in force in any jurisdiction to which it is subject or in which it makes such purchases, subscriptions, offers or sales.

Each Dealer for a Tranche of Notes will be required to represent and agree that it will comply with such other or additional restrictions in relation to that Tranche of Notes as the Issuer and such Dealer agree and as are set out in the Applicable Pricing Supplement.

Neither the Issuer nor any of the Dealers represent that Notes may at any time lawfully be subscribed for or sold in compliance with any applicable registration or other requirements in any jurisdiction or pursuant to any exemption available thereunder or assumes any responsibility for facilitating such subscription or sale.

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## EXCHANGE CONTROL

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*The comments below are intended as a general guide to the current position under the Exchange Control Regulations, 1961 as promulgated under the Currency and Exchanges Act, 1933, as amended, (the "Regulations") and are not a comprehensive statement of the Regulations. The information below is not intended as advice and it does not purport to describe all of the considerations that may be relevant to a prospective subscriber for, or purchaser of any Notes. Prospective subscribers for, or purchasers of any Notes who are non-South African residents or who are emigrants from the Common Monetary Area are urged to seek further professional advice in regard to the subscription for, or purchase of any Notes.*

### **Non-South African Resident Noteholders and Emigrants from the Common Monetary Area**

Dealings in the Notes and the performance by the Issuer of its obligations under the Notes may be subject to the Regulations.

### **Blocked Rand**

Blocked Rands may be used for the subscription for or purchase of Notes. Any amounts payable by the Issuer in respect of the Notes subscribed for or purchased with Blocked Rands may not, in terms of the Regulations, be remitted out of South Africa or paid into any non-South African bank account. For the purposes of this clause, "Blocked Rands" are defined as funds which may not be remitted out of South Africa or paid into a non-South African resident's bank account. The relevant legislation relating to Blocked Rand is the Regulations promulgated under the Currency and Exchanges Act, 1933, as amended.

### **Emigrants from the Common Monetary Area**

Any Definitive Certificates issued to Noteholders who are emigrants from the Common Monetary Area will be endorsed "emigrant". Such restrictively endorsed Definitive Certificates will be deposited with an authorised foreign exchange dealer controlling such emigrant's blocked assets.

In the event that a Beneficial Interest in Notes is held by an emigrant from the Common Monetary Area through the Central Securities Depository and its relevant Participants, the securities account of such emigrant will be designated as an "emigrant" account.

Any payments of interest and/or principal due to an emigrant Noteholder will be deposited into such emigrant's Blocked Rands account, as maintained by an authorised foreign exchange dealer. The amounts are not freely transferable from the Common Monetary Area and may only be dealt with in terms of the Regulations.

### **Non-residents of the Common Monetary Area**

Any Definitive Certificates issued to Noteholders who are not resident in the Common Monetary Area will be endorsed "non-resident". In the event that a Beneficial Interest in Notes is held by a non-resident of the Common Monetary Area through the Central Securities Depository and its relevant Participants, the securities account of such Noteholder will be designated as a "non-resident" account.

It will be incumbent on any such non-resident to instruct the non-resident's nominated or authorised dealer in foreign exchange as to how any funds due to such non-resident in respect of Notes are to be dealt with. Such funds may, in terms of the Regulations, be remitted abroad only if the relevant Notes are acquired with foreign currency introduced into South Africa and provided that the relevant Certificate or securities account is designated "non-resident".

For the purposes of these paragraphs, the Common Monetary Area comprises South Africa, the Republic of Namibia, the Kingdom of Lesotho and the Kingdom of Swaziland.

### **South African Reserve Bank Approval**

The issuance and sale of Notes that will qualify as Primary Share Capital, Secondary Capital or Tertiary Capital, as the case may be, under the Programme and any payment of interest or principal in respect thereof, requires the approval of SARB in terms of section 79(1) (b) of the Banks Act.

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## GENERAL INFORMATION

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### AUTHORISATION

All consents, approvals, authorisations or other orders of all regulatory authorities required by the Issuer under the laws of South Africa have been given for the establishment of the Programme and will be obtained from time to time for the issue of Notes under the Programme, and for the Issuer, Transfer Agent, Calculation Agent and Paying Agent to undertake and perform their respective obligations under the Notes and the Programme Memorandum.

The update of this Programme Memorandum has been duly authorised in terms of a resolution of the board of directors of the Issuer passed at a meeting of the board of directors on 12 February 2008.

### LISTING

This Programme has been registered by BESA. Notes to be issued under the Programme may be listed on BESA or any successor exchange and/or such other or further exchange(s) as may be agreed between the Issuer and the Dealer(s) and subject to any relevant ruling law. Unlisted Notes may also be issued.

### AUDITORS

The auditors of the Issuer are Ernst & Young Inc. and PricewaterhouseCoopers Inc., who audited the Issuer's accounts, for the years ended 31 December 2006 and 31 December 2007, in accordance with International Standards on Auditing. For both years the auditors issued an unqualified report.

### LITIGATION

The Issuer is not engaged (whether as defendant or otherwise) in any legal, arbitration, administration or other proceedings other than those disclosed in this Programme Memorandum, if any, the results of which might have or have had a material adverse effect on the financial position or the operations of the Issuer, nor is it aware of any such proceedings being threatened or pending.

### DOCUMENTS

So long as any Note remains outstanding, one copy of this Programme Memorandum and each of the documents referred to in the section of this Programme Memorandum headed "*Documents Incorporated by Reference*" will be available for inspection by the Noteholders at the Specified Office of the Issuer.

### CONDITIONS FOR DETERMINING PRICE

The price and amount of Notes to be issued under the Programme will be determined by the Issuer and the relevant Dealer at the time of issue in accordance with prevailing market conditions.

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