

## THIS CIRCULAR IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION

The definitions commencing on page 5 of this circular apply throughout this circular including this cover page.

If you are in any doubt as to the action you should take, please consult your CSDP, broker, attorney, accountant or other professional adviser.

### Action Required:

This circular is important and should be read with particular attention to the "Action required by Invicta shareholders" section of this circular, which sets out the action required of them with regard to this circular.

If you have disposed of all your ordinary shares in Invicta, then this circular should be forwarded to the purchaser to whom, or the broker, agent or CSDP through whom, you disposed of your shares.



### INVICTA HOLDINGS LIMITED

(Incorporated in the Republic of South Africa)

Registration number 1966/002182/06

Share code: IVT • ISIN: ZAE000029773

("Invicta" or "the Company")

## CIRCULAR TO INVICTA SHAREHOLDERS

relating to:

- an increase in the authorised share capital of Invicta by the creation of 10 000 000 cumulative, non-participating no par value preference shares ("Preference Shares");
- amendments to the Company's Memorandum of Incorporation to incorporate the rights, privileges, restrictions and conditions attaching to the Preference Shares;
- the authority for the issue of up to 10 000 000 of the Preference Shares, without having to respect pre-emption rights, over a maximum period of 18 months;
- an initial issue of 6 000 000 Preference Shares, with the ability to increase such initial issuance to 10 000 000 Preference Shares, subject to investor demand;
- a Subscription Price of ZAR100,00 per Preference Share for the initial issue;
- further issues of the authorised but unissued Preference Shares to the extent the full 10 000 000 Preference Shares are not issued in terms of the initial issue, at a Subscription Price to be determined by the directors;

and including

- a notice of Extraordinary General Meeting at the Company's registered office at 10:00 on 12 November 2012;
- the proposed amendments to the Memorandum of Incorporation; and
- a form of proxy (green) (for use by certificated and "own name" dematerialised shareholders only).

Corporate Advisers

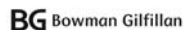


Sponsor to Invicta



Deloitte & Touche Sponsor Services (Pty) Limited  
(Incorporated in the Republic of South Africa)  
(Registration number 1996/000034/07)

Legal Advisers



Member of Bowman Giffillan Africa Group

Bowman Giffillan Inc

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## **CORPORATE INFORMATION AND ADVISORS IN RESPECT OF THE ISSUE OF THE PREFERENCE SHARES**

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### **DIRECTORS OF INVICTA**

Dr CH Wiese  
A Goldstone  
C Barnard  
AK Masuku  
JS Mthimunye  
DI Samuels  
LR Sherrell  
AM Sinclair  
CE Walters  
Adv JD Wiese

### **REGISTERED OFFICE**

3rd Floor, Pepkor House  
36 Stellenberg Road  
Parow Industria  
Cape Town, 7493

### **COMPANY SECRETARY**

C Barnard  
3rd Floor, Pepkor House  
36 Stellenberg Road  
Parow Industria, 7493  
(PO Box 6077, Parow East, 7501)

### **Date and place of incorporation**

Pretoria, 16 March 1966

### **ATTORNEYS**

Bowman Gilfillan Inc.  
SA Reserve Bank Building  
60 St Georges Mall  
Cape Town, 8000  
(PO Box 248, Cape Town, 8000)

### **TRANSFER SECRETARIES**

Computershare Investor Services Proprietary  
Limited  
Ground Floor  
70 Marshall Street  
Johannesburg, 2001  
(PO Box 61051, Marshalltown, 2107)

### **CORPORATE ADVISERS**

Bravura Equity Services Proprietary Limited  
23 Fricker Road  
Ground Floor, Office Suite 2  
Illovo Boulevard, 2196  
(PO Box 2070, Parklands, 2121)

### **SPONSORS**

Deloitte & Touche Sponsor Services Proprietary  
Limited  
Deloitte & Touche Place  
The Woodlands  
20 Woodlands Drive  
Woodmead, 2196  
(Private Bag X6, Gallo Manor, Johannesburg, 2052)

This circular is available in English only. Copies may be obtained from the registered office of the Company, the Transfer Secretaries and the Corporate Advisers at the addresses set out above. An electronic version of the circular shall be made available on the Company's website.

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## **ACTION REQUIRED BY INVICTA SHAREHOLDERS**

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The definitions and interpretations set out on pages 5 to 8 of this circular apply to this section on action required by Invicta shareholders.

**Please take careful note of the following provisions regarding the action required by Invicta shareholders:**

If you are in any doubt as to what action to take, please consult your CSDP, broker, attorney, banker or other professional adviser immediately.

The Extraordinary General Meeting of Invicta shareholders will be held at 10:00 on Monday, 12 November 2012 at the Company's registered office. Invicta shareholders are advised to take careful note of the following provisions relating to the actions required by Invicta shareholders relating to the proposed resolutions:

### **ACTION REQUIRED BY INVICTA SHAREHOLDERS**

**1. If you have dematerialised your Invicta shares other than with "own-name" registration:**

**1.1 Voting at the Extraordinary General Meeting**

- Your CSDP or broker should contact you to ascertain how you wish to cast your vote at the Extraordinary General Meeting and thereafter to cast your vote in accordance with your instructions.
- If you have not been contacted by your CSDP or broker, it is advisable for you to contact your CSDP or broker and furnish it with your voting instructions.
- If your CSDP or broker does not obtain voting instructions from you, it will be obliged to vote in accordance with the instructions contained in the custody agreement concluded between you and your CSDP or broker.
- You must not complete the attached form of proxy (green).

**1.2 Attendance and representation at the Extraordinary General Meeting**

In accordance with the mandate between you and your CSDP or broker, you must advise your CSDP or broker if you wish to attend the Extraordinary General Meeting and your CSDP or broker will issue the necessary letter of representation to you to attend the Extraordinary General Meeting.

**2. If you have not dematerialised your Invicta shares or have dematerialised your Invicta shares with "own-name" registration:**

**2.1 Voting and attendance at the Extraordinary General Meeting**

You may attend the Extraordinary General Meeting in person and may vote at the Extraordinary General Meeting.

Alternatively, you may appoint a proxy to represent you at the Extraordinary General Meeting by completing the attached form of proxy (green) in accordance with the instructions it contains and returning it to the registered office to be received by no later than 10:00 on Friday, 9 November 2012.

Should you wish, rather than sending your duly completed proxy form to the registered office, to send the proxy form to the Transfer Secretaries so that they can ensure the proxy form is sent to the registered office timeously, you must send the duly completed form of proxy (green) by 10:00 on Friday, 9 November 2012 to the Transfer Secretaries.

**If you wish to dematerialise your Invicta shares, please contact your CSDP or broker.**

If you have disposed of all of your Invicta shares, this circular should be handed to the purchaser of such Invicta shares or the CSDP, broker, banker or other agent who disposed of your Invicta shares for you.

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## IMPORTANT DATES AND TIMES

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The definitions and interpretations set out on pages 5 to 8 of this circular apply to this section on important dates and times.

**2012**

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Last day to trade to vote at the Extraordinary General Meeting	Friday 26 October
Record date to vote at the Extraordinary General Meeting	Friday 2 November
Last day for receipt of proxy forms for the Extraordinary General Meeting by the transfer agents by 10:00	Friday 9 November
Last day for receipt of proxy forms for the Extraordinary General Meeting by the registered office by 10:00 on	Friday 9 November
Extraordinary General Meeting to be held at 10:00 on	Monday 12 November
Results of the Extraordinary General Meeting released on SENS on	Monday 12 November
Results of the Extraordinary General Meeting published in the press on	Tuesday 13 November

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**Notes:**

1. *The above dates and times are subject to change. Any material changes will be released on SENS.*
2. *Any reference to time is a reference to South African time.*
3. *If the Extraordinary General Meeting is adjourned or postponed, forms of proxy must be received by no later than 24 hours prior to the time of the adjournment or postponed Extraordinary General Meeting (excluding Saturdays, Sundays and official public holidays in South Africa) by the registered office and 48 hours prior to such time by the Transfer Secretaries.*

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## DEFINITIONS

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In this circular, unless otherwise stated or the context otherwise indicates, the words and expressions in the first column shall have the meaning stated opposite them in the second column and words and expressions in the singular shall include the plural and *vice versa*, words importing natural persons shall include corporations and associations of persons and *vice versa* and any reference to one gender shall include the other gender:

“Accumulated Dividends”	in respect of each Preference Share and on any day, the aggregate of: <ul style="list-style-type: none"><li>• any Scheduled Dividend for any Dividend Period which ended prior to that day, to the extent to which that Scheduled Dividend has not been paid by the Company by the Dividend Payment Date in respect of that Dividend Period; plus</li><li>• any Additional Dividends which the Company should have paid in terms of clause 32.3.6 of the Preference Share Terms, but which the Company has failed to pay on the applicable day;</li></ul>
“Additional Dividends”	in respect of each Preference Share, the dividends (over and above the Scheduled Dividend in respect of that Preference Share) envisaged in clause 32.3.8 of the Preference Share Terms;
“Adjustment Event”	means a Tax Change Event or a Rate Event;
“Beneficiary”	in relation to a Preference Share, the beneficial owner of that Preference Share as reflected in the records of the applicable Programme Participant;
“Board”	means the board of directors of the Company;
“business day”	any day other than a Saturday, Sunday or statutory public holiday in South Africa;
“certificated shareholder”	an Invicta shareholder holding certificated shares;
“certificated shares”	Invicta shares represented by a paper share certificate or other physical document(s) of title, which shares have not been surrendered for dematerialisation;
“circular”	this circular to Invicta shareholders dated 15 October 2012 incorporating a Notice of Extraordinary General Meeting and a Form of Proxy;
“Closing”	17:00 on 19 November 2012 being the closing date of the Offer for Subscription or such later date on which the Offer for Subscription closes;
“Companies Act”	the South African Companies Act, 2008;
“CSDP”	a Participant, or a person that holds in custody and administers securities or an interest in securities and that has been accepted as a participant by the Central Securities Depository in terms of the Securities Services Act;
“Default Dividend Rate”	subject to adjustment in accordance with the rate adjustment clauses set out in clauses 32.3.9 to 32.3.10 of the Preference Share Terms, a rate equal to the Prime Rate plus 2%;
“dematerialised shareholder”	Invicta shareholder holding dematerialised shares;
“dematerialised shares”	Invicta shares which have been dematerialised;
“dematerialisation”	the process by which certificated shares are converted to or held in an electronic form as uncertificated shares and recorded in the subregister of shareholders maintained by a CSDP;
“directors” or “the Board”	the directors of Invicta as listed on page 9 of this circular;
“Distribution”	“distribution” as defined in the Companies Act;

“Dividend Declaration Date”	means the date on which the Board is scheduled to declare Preference Dividends in respect of the Outstanding Preference Shares and which date shall be, during each calendar year, a date in the first two weeks of June and a date in the first two weeks of November;
“Dividend Default”	means any failure by the Company to pay: <ul style="list-style-type: none"> <li>• the Scheduled Dividends (in respect of all the Outstanding Preference Shares) for any Dividend Period by the applicable Dividend Payment Date; and/or</li> <li>• any Additional Dividends by the date determined in accordance with clause 32.3.6 of the Preference Share Terms;</li> </ul>
“Dividend Payment Date”	means the date on which the Company is scheduled to pay Preference Dividends in respect of the Outstanding Preference Shares and which date shall be within a period not exceeding 30 days after each Dividend Declaration Date;
“Dividend Period”	each period which commences on the day after a Dividend Declaration Date and which ends on and includes the next Dividend Declaration Date provided that: <ul style="list-style-type: none"> <li>• the first Dividend Period in respect of any particular Preference Share shall (i) commence on the day after the Issue Date on which the Company issues that Preference Share to its first Holder, and (ii) end on and include the first Dividend Declaration Date which occurs after that Issue Date; and</li> <li>• the last Dividend Period in respect of any particular Preference Share shall be the period which (i) commences on the day after the last Dividend Declaration Date which occurs prior to the Redemption Date on which the Company redeems that Preference Share, and (ii) ends on and includes that Redemption Date;</li> </ul>
“Dividend Rate”	subject to adjustment in accordance with the rate adjustment clauses set out in clauses 32.3.9 to 32.3.10 of the Preference Share Terms, a rate equal to 102% of the Prime Rate;
“Dividend Tax”	the withholding tax on dividends imposed under Part VIII of Chapter II of the Income Tax Act;
“Dividend Tax Rate”	the rate at which the Dividends Tax is levied under the Income Tax Act from time to time;
“documents of title”	Invicta share certificates, duly completed transfer forms, balance receipts or any other documents of title to certificated Invicta shares acceptable to Invicta;
“Extraordinary General Meeting”	the meeting of Invicta shareholders expected to take place at 10:00 on Monday, 12 November 2012 at the Company’s registered office. The meeting has been convened in terms of the Notice of Extraordinary General Meeting attached to this circular;
“Holder”	in relation to a Preference Share, its registered holder as reflected in the Company’s share register;
“Income Tax Act”	the South African Income Tax Act, 1962 (Act 58 of 1962);
“Invicta” or “the Company”	Invicta Holdings Limited, registration number 1966/002182/06, a company incorporated in accordance with the laws of South Africa;
“Invicta shareholders” or “shareholders”	holders of Invicta shares;
“Invicta shares” or “Ordinary Shares”	an ordinary share with a nominal value of 5 cents in the Company’s issued share capital, all of which are listed on the JSE;
“Issue Date”	in relation to each Preference Share, the date on which the Company issues that Preference Share to its first Holder;

"JSE"	the securities exchange known as the JSE Limited (which has been licensed as an exchange under the Securities Services Act);
"JSE Listings Requirements"	the Listings Requirements of the JSE, as amended from time to time;
"last practicable date"	the last practicable date prior to the finalisation of this circular, being Friday, 12 October 2012;
"Listings Requirements"	the Listings Requirements of the JSE from time to time;
"MOI"	the Memorandum of Incorporation of the Company;
"Offer for Subscription"	the offer for subscription contained in the Pre-listing Statement in terms of a private placement, to subscribe for Preference Shares;
"Outstanding Preference Share"	a Preference Share which has been issued by the Company, and which has neither been redeemed nor repurchased by the Company;
"Participant"	a participant as defined in section 1 of the South African Securities Services Act;
"Pre-listing Statement"	the Pre-listing Statement in relation to the Preference Shares which has not been published but which shall be published prior to the listing of the Preference Shares on the JSE;
"Preference Dividend"	in respect of each Preference Share, the applicable Scheduled Dividends and Additional Dividends;
"Preference Share"	a cumulative, non-participating no par value preference share in the Company's share capital which confers, on its Holder, the rights, obligations and privileges set out in the Preference Share Terms;
"Preference Share Issue Programme"	a programme pursuant to which the Company, as a means of raising permanent capital intends to issue a maximum number of 10 000 000 Preference Shares and on the terms and conditions set out in the Preference Share Terms, subject to those Preference Shares being listed on the JSE;
"Preference Share Terms"	the terms of the Preference Shares contained in the MOI as it is proposed to be amended by Extraordinary Resolution Number 1 set out in the Notice of Extraordinary General Meeting forming part of this circular;
"Prime Rate"	the publicly quoted basic rate of interest levied by FirstRand Bank Limited ("FirstRand") from time to time on overdraft, calculated on a 365 day year, irrespective of whether the applicable year is a leap year, and proved, <i>prima facie</i> , in the event of a dispute and in the absence of manifest error, by a certificate under the hand of any director or manager of FirstRand, whose appointment and authority need not be proved;
"Programme Participant"	each Participant who holds any Preference Share in custody for the Beneficiary of such Preference Share;
"Rate Event"	means any increase in the Dividends Tax Rate above 15% (which is the rate at which the Dividends Tax was levied on the Tax Reference Date);
"Redemption Amount"	in respect of a Preference Share and without double counting, the aggregate of: <ul style="list-style-type: none"> <li>• the higher of (i) the Subscription Price of that Preference Share or (ii) the Market Price (as defined in clause 32.1.23 of the Preference Share Terms) of that Preference Share, on the date five business days prior to the publication of the applicable Redemption Announcement in terms of clause 32.4.3.1 of the Preference Share Terms; plus</li> <li>• an amount equal to 2,5% of the Subscription Price of that Preference Share; plus</li> </ul>



	<ul style="list-style-type: none"> <li>• the Scheduled Dividend for the Dividend Period which ends on the Redemption Date of that Preference Share; plus</li> <li>• any Accumulated Dividends in respect of that Preference Share on its Redemption Date;</li> </ul>
“Redemption Date”	in relation to each Preference Share, the date (if any) on which the Company redeems that Preference Share in accordance with the redemption provisions set out in clauses 32.4.2 to 32.4.4 of the Preference Share Terms;
“registered office”	the registered office of Invicta being 3rd Floor, Pepkor House, 36 Stellenberg Road, Parow Industria, Cape Town, 7493;
“Resident Beneficiary”	any Beneficiary of a Preference Share if that Beneficiary is a “resident” (of South Africa) as defined in the Income Tax Act;
“SA Corporate”	a Resident Beneficiary of a Preference Share which is a company (as defined in the Income Tax Act), other than a small business corporation, an employment company, a gold mining company, a long-term insurance company or a Tax holiday company;
“Scheduled Dividend”	in respect of each Preference Share and for each Dividend Period, the Preference Dividend calculated in accordance with the formula contained in clause 32.3.4 of the Preference Share Terms;
“Securities Services Act”	the South African Securities Services Act, 2004;
“SENS”	the “Stock Exchange News Service” of the JSE;
“South Africa”	the Republic of South Africa;
“Strate”	Strate Limited, registration number 1998/022242/06, a public company incorporated in South Africa and registered as a central securities depository in terms of the Securities Services Act responsible for the electronic custody and settlement system;
“Subscription Price”	in relation to each Preference Share, the price obtained by the Company for the allotment and issue of that Preference Share to its first Holder;
“Tax”	any tax, levy, impost, duty, or other charge or withholding of a similar nature, levied in accordance with any law and includes any additional tax, penalties and/or interest levied on any such tax, levy, impost, duty or other charge or withholding;
“Tax Change Event”	any amendment in the Income Tax Act (including, without limitation, the replacement of Income Tax Act with different legislation), which occurs after the Tax Reference Date, the Preference Dividends become subject to any SA Tax, other than the Dividends Tax or any other withholding Tax imposed under any law of South Africa, in the hands of all the SA Corporates who are the Resident Beneficiaries of any Outstanding Preference Shares. For clarity, it is specifically recorded that no Tax Change Event shall occur if (i) any amendment envisaged in clause 32.1.46 of the Preference Share Terms occurs, but (ii) the effect of such amendment is to subject Resident Beneficiaries who are not SA Corporates to the applicable Tax;
“Tax Reference Date”	means 1 November 2012;
“Transfer Secretaries”	Computershare Investor Services Proprietary Limited, registration number 2000/006082/06, a private company incorporated in South Africa; and
“ZAR” or “R” or “Rand”	South African Rand, the lawful currency of South Africa.

**Directors of Invicta**

Dr CH Wiese (*Chairman*) \*, A Goldstone (*Managing*), C Barnard, AK Masuku ^\*, JS Mthimunya ^, DI Samuels ^ LR Sherrell \*, AM Sinclair, CE Walters, Adv JD Wiese \*

\* Non-executive

^ Independent non-executive

\* Alternate

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## CIRCULAR TO INVICTA SHAREHOLDERS

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### 1. INTRODUCTION AND PURPOSE OF THIS CIRCULAR

The directors are proposing that:

- the Company create 10 000 000 Preference Shares;
- the Company amend its MOI to reflect the new authorised share capital and to record the rights, privileges, restrictions, obligations and conditions attached to the Preference Shares; and
- in terms of the MOI, the shareholders provide the requisite authority to issue and list on the JSE up to 10 000 000 Preference Shares over a period of up to 18 months from the date of publication of the Pre-listing Statement, subject to regulatory requirements during this period, including the validity of the Pre-listing Statement and any supplements thereto, or a new Pre-listing Statement.

The purpose of this circular is to furnish the Company's shareholders with information relating to the proposed resolutions, in accordance with the JSE Listings Requirements, and to convene an Extraordinary General Meeting at which the Company's shareholders will be requested to approve the proposed resolutions contained in the Notice of Extraordinary General Meeting attached to and forming part of this circular.

### 2. CREATION OF THE PREFERENCE SHARES

#### 2.1 Rationale for the Preference Share Issue Programme and disapplication of pre-emption rights

Invicta intends entering into a capital raising programme to make capital available for investment purposes. Aligned to Invicta's growth strategy, the proposed capital raising provides the following benefits:

- diversified, cost-efficient permanent capital;
- further strengthens the Company's existing capital base; and
- non-dilutionary for ordinary shareholders.

The capital raising will be in the form of listed Preference Shares, to be issued over a period of 18 months for a maximum number of 10 000 000 Preference Shares. The initial issue is expected to be approximately 6 000 000 Preference Shares, with the ability to increase such initial issuance to 10 000 000 Preference Shares, subject to investor demand and by way of a private placement. The Subscription Price for the initial issue will be ZAR100,00. Any authorised, unissued Preference Shares that have not been issued in terms of the initial issuance shall be issued by the Company as and when opportune, at an issue price to be determined by the directors, subject to the maximum of 10 000 000 Preference Shares.

Dr CH Wiese, LR Sherrell and A Goldstone, who are each a related party to Invicta for purposes of the JSE Listings Requirements, have undertaken to subscribe either in their personal capacity or via a related entity for Preference Shares for an aggregate subscription price of R140 million.

The terms and conditions of the Preference Shares have been carefully considered by the Board. The Board believes that the Dividend Rate and the terms and conditions of the Preference Shares are market-related. This ensures that the benefits listed above should be achieved by the capital raising.

The Board has considered the pre-emption rights of shareholders and believes that the issue of the Preference Shares without having to offer each and every shareholder the Preference Shares but by means of a private placement, and by disapplying shareholders' pre-emption rights by means of a shareholder resolution, will allow Invicta to carry out the capital-raising programme with the necessary flexibility required to achieve the benefits set out above.

The disapplication of pre-emption rights given under the resolutions proposed below extends only to the Preference Share Issue Programme (including those shareholders who subscribe for Preference Shares upon the first issue who shall not have pre-emption rights for subsequent issues during the Preference Share Issue Programme) and does not extend to any other issues of ordinary or preference shares and is thus limited to what is necessary to ensure that the capital raising programme can be achieved.

The terms and conditions of the Preference Share Issue Programme mean that anyone who acquires Preference Shares pursuant to such programme shall not have pre-emption rights on issues of shares during the course of the Preference Share Issue Programme.

In addition, at the annual general meeting of the Company held on 14 August 2012, shareholders resolved to disapply pre-emption rights in relation to the issue of ordinary shares in certain circumstances. The Holders of Preference Shares therefore have the same rights in this regard as the holders of Ordinary Shares in that no pre-emption rights apply.

Bearing in mind the benefits that should arise from carrying out the capital-raising, the Board has concluded that the issue of the Preference Shares on the terms and conditions proposed is in the interests of the Company and that the shareholders be asked to approve the resolutions set out below.

## **2.2 Salient terms of the Preference Shares**

The Preference Shares are cumulative, non-participating no par value Preference Shares. The initial issue of up to 10 000 000 Preference Shares shall be at a Subscription Price of ZAR100,00. Thereafter, the directors are entitled to issue all or some of the authorised but unissued Preference Shares (ie any of the 10 000 000 Preference Shares which are not subscribed for during the initial issuance) as and when opportune, at a Subscription Price determined by the directors.

Invicta will apply for a primary listing of the Preference Shares on the JSE.

The full terms of the Preference Shares are set out in Annexure 1 to the Notice of Extraordinary General Meeting which forms part of this circular. The summary set out below is not conclusive or exhaustive, and potential investors should refer to the Notice of Extraordinary General Meeting and Pre-listing Statement for full particulars. In the case of any divergences between this summary and the full terms as contained in the aforementioned Annexure 1, the latter shall prevail.

### ***Entitlements to dividends***

Dividends are payable twice a year on a date which is the earlier of:

- five business days prior to the date on which Invicta makes any Distribution in respect of its ordinary shares, or
- 30 calendar days after the applicable Dividend Declaration Date.

For each Dividend Period, each Preference Share shall be entitled to a dividend in an amount equal to the aggregate of the amounts calculated in respect of each day during that Dividend Period in accordance with the following formula:

$$a = [(b + c) \times d] \div 365$$

*in which formula:*

a = the amount for the applicable day;

b = the Subscription Price;

c = the Accumulated Dividends in respect of that Preference Share at 17:00, Johannesburg time, on the calendar day immediately preceding the applicable day; and

d = if a Dividend Default (i) has not occurred, the Dividend Rate; or (ii) has occurred, the Default Dividend Rate.

### **Ordinary share distributions**

The Company shall not be permitted to pay any Distributions in respect of its Ordinary Shares if the Scheduled Dividends and any Additional Dividends in respect of the Outstanding Preference Shares have not been paid in full.

### **Adjustment Event**

*Tax Change Event:* the Company shall pay, in respect of the Outstanding Preference Shares, an Additional Dividend in accordance with the provisions and formulae set out in clauses 32.3.8 to 32.3.9 of the Preference Share Terms, if as a result of any amendment in the Income Tax Act (including, without limitation, the replacement of the Income Tax Act with different legislation), which occurs after the Tax Reference Date, the Preference Dividends become subject to any SA Tax, other than the Dividends Tax or any other withholding Tax imposed under any law of South Africa, in the hands of all the SA Corporates who are Resident Beneficiaries of any Outstanding Preference Shares.

*Rate Event:* if as a result of an increase in the Dividends Tax Rate above 15% (which is the rate at which the Dividends Tax was levied on the Tax Reference Date) then the Dividend Rate or the Default Dividend Rate, as the case may be, shall be adjusted to such a percentage of the Prime Rate, in accordance with the provisions and formula set out in clause 32.3.10 of the Preference Share Terms.

Post the Tax Change Event and/or the Rate Event occurring, the Company will be entitled to voluntarily redeem the Outstanding Preference Shares at the Redemption Amount.

### **Voting rights**

The Holders shall have the right to receive notice and to be present (either in person or by proxy) at any general meeting of the Company but shall not be entitled to vote at general meetings of the Company except:

- (i) when any resolution of the Company is proposed to amend the preferences, rights, limitations or any other terms of the Preference Shares; or
- (ii) when any resolution of the Company is proposed to issue any shares of any class in the Company's share capital after the Issue Date on which the Company issues any Preference Share under the Preference Share Issue Program, if such shares shall in any manner detract from the rights of the Preference Shares;

In relation to any of the aforementioned resolutions (i) and (ii):

- the Preference Shares shall vote as a separate class;
- in such a vote each Outstanding Preference Share shall carry one vote;
- no such resolution shall be passed unless at least 75% of the votes exercisable by all the Holders who attend and vote at the meeting convened to consider that resolution are cast in favour thereof;

- should the Holders vote against such resolution:
  - Invicta shall have the right to redeem all the Outstanding Preference Shares at the Redemption Amount in accordance with the redemption provisions set out in clauses 32.4.2 to 32.4.4 of the Preference Share Terms; or
  - should Invicta elect to not voluntarily redeem the Outstanding Preference Shares, Invicta shall not be permitted to proceed with the implementation of the relevant resolution.

### ***Ranking and liquidation***

The Preference Shares will rank in priority to the Invicta shares with regard to dividends and repayment of capital on the winding-up of the Company. All the Preference Shares form part of the same class of share and all Preference Shares for which listing will be applied, will rank *pari passu* in respect of all rights.

Each Preference Share shall confer upon its Holder (for onward payment to the relevant Beneficiary in accordance with the agreement between the Holder and Beneficiary) the right of a return of capital on liquidation of the Company of an amount equal to the Redemption Amount of that Preference Share calculated up to the day on which that return of capital is paid.

### ***Regulatory redemption option***

Upon the occurrence of any one of the following “Regulatory Events” which has the effect of the Preference Shares becoming more expensive, Invicta shall be entitled to redeem all of the Outstanding Preference Shares at the Redemption Amount, in accordance with the procedure set out in clause 32.4.3 of the Preference Share Terms:

- any change in the JSE Listings Requirements;
- any change in the exchange control regulations of South Africa;
- any change in the Income Tax Act or any other legislation which: (i) imposes any taxation of any nature whatsoever on the Company in relation to the Preference Shares in South Africa; or (ii) in any other way impacts adversely on the Preference Shares; or
- any change in the Companies Act or any other legislation which deals with companies generally.

## **2.3 Procedure and effect**

The proposed resolutions will:

- effect an increase in the Company's share capital through the creation of 10 000 000 Preference Shares and will insert the rights, obligations and privileges of the Preference Shares into the MOI;
- authorise the issue of up to 10 000 000 Preference Shares over the next 18 months with the Company initially issuing such shares at a Subscription Price of ZAR100,00 subject to various conditions and with any shares which are not issued during the initial Offer for Subscription thereafter being placed under the authority of the directors for issue in compliance with all regulatory requirements during the Preference Share Issue Programme at a price to be determined by the directors. To the extent necessary, the Pre-listing Statement will be supplemented (or a new Pre-listing Statement issued), without shareholder approval, during the Preference Share Issue Programme to allow for the issue after a period of 12 months, which is the period of the Pre-listing Statement's initial validity; and
- amend provisions of the MOI that are in conflict with or have the potential to conflict with the provisions of the Preference Share Terms.

The terms of the Preference Shares will be incorporated in the MOI and will become effective on the date on which they are filed with the Companies and Intellectual Property Commission.

Invicta's authorised and issued share capital at the last practicable date before the creation and issue of the Preference Shares are as set out below:

	R'000
<b>Authorised</b>	
134 000 000 ordinary shares of 5 cents each	6 700

<b>Issued</b>	
74 112 523 ordinary shares of 5 cents each	3 706

**After** the creation and issue of the Preference Shares, Invicta's authorised and issued share capital are expected to be as set out below. The issue of the initial shares pursuant to the Preference Share Issue Programme shall take place only upon all the conditions set out in the Pre-listing Statement being met, which is expected to be on or about 22 November 2012:

	R'000
<b>Authorised</b>	
134 000 000 ordinary shares of 5 cents each	6 700
10 000 000 no par value preference shares	

**Issued shares assuming issue of 10 000 000 Preference Shares at a Subscription Price of ZAR100,00**

74 112 523 ordinary shares of 5 cents each	3 706
10 000 000 no par value preference shares	1 000 000

#### 2.4 Amendments to the MOI

The Board proposes that the MOI be amended to incorporate the rights, obligations and privileges attaching to the Preference Shares in terms of the amendments to the MOI contained in Annexure 1.

#### 2.5 Disapplication of pre-emption rights

In terms of Article 7 of the MOI, the Invicta shareholders may approve the issue of shares in the share capital of the Company without the need for the application of pre-emption rights. As such, it is proposed that shareholders provide requisite authority for the issue of up to 10 000 000 Preference Shares over the next 18 months subject to all regulatory requirements, including the validity of the Pre-listing Statement or a new or supplemented pre-listing statement.

### 3. OPINION AND RECOMMENDATION

The Invicta directors recommend that shareholders vote in favour of the resolutions as set out in this circular. The Invicta directors intend voting their shares in favour of the resolutions.

### 4. DIRECTORS' RESPONSIBILITY STATEMENTS

The directors, whose names appear on page 9 of this circular:

- have considered all statements of fact and opinion in this circular;
- collectively and individually accept full responsibility for the accuracy of the information given;
- certify that, to the best of their knowledge and belief, there are no other facts the omission of which would make any statement false or misleading;
- have made all reasonable enquiries in this regard; and
- certify that, to the best of their knowledge and belief, this circular contains all information required by law and the Listings Requirements.

## 5. CONSENTS

Each of Bravura Equity Services Proprietary Limited, Bowman Gilfillan Inc and Deloitte & Touche Sponsor Services Proprietary Limited has provided its written consent to act in the capacity stated and to its name being used in this circular and has not withdrawn its consent prior to the date of this circular.

## 6. DOCUMENTS AVAILABLE FOR INSPECTION

The following documents, or copies thereof, will be available for inspection during normal business hours at the registered office of Invicta as well as the Transfer Secretaries and the corporate advisers from the date of this circular up to and including the date of the Extraordinary General Meeting:

- this circular;
- the existing MOI;
- a draft of the resolutions amending the MOI; and
- the written consents as set out in paragraph 5 above.

By order of the Board

**Invicta Holdings Limited**

C Barnard

*Company Secretary*

15 October 2012

## PROPOSED AMENDMENTS TO THE MEMORANDUM OF INCORPORATION

The Board proposes the following amendments to the Memorandum of Incorporation of the Company ("MOI").

### 1. PROPOSED AMENDMENT NO 1 – SCHEDULE 1

The Board proposes the insertion of the following new paragraph at the end of Schedule 1 of the MOI for the purpose of creating the 10 000 000 Preference Shares:

- 10 000 000 Preference Shares of no par value having the preferences, rights limitations and other terms as set out in clause 32 of the MOI. The preference shares shall:
  - have the voting rights specified in clause 32.6;
  - rank ahead of the Ordinary Shares as regards Distributions and returns of capital, but save as envisaged in clause 32.5.1 shall not be entitled to participate in the excess capital of the Company upon its liquidation."

### 2. PROPOSED AMENDMENT NO 2 – CLAUSE 32

The Board proposes to insert the terms of the Preference Shares as a new clause 32 to the MOI as follows:

#### 32. Preference Shares

##### **32.1 In this clause 32, unless inconsistent with the context:**

- 32.1.1 **"Accumulated Dividends"** means, in respect of each Preference Share and on any day, the aggregate of:
- 32.1.1.1 *any Scheduled Dividend for any Dividend Period which ended prior to that day, to the extent to which that Scheduled Dividend has not been paid by the Company by the Dividend Payment Date in respect of that Dividend Period; plus*
  - 32.1.1.2 *any Additional Dividends which the Company should have paid in terms of clause 32.3.6 to 32.3.8, but which the Company has failed to pay on the applicable day;*
- 32.1.2 **"Additional Dividend"** means, in respect of each Preference Share, the dividends (over and above the Scheduled Dividend in respect of that Preference Share) envisaged in clause 32.3.6 to 32.3.8 of this Memorandum of Incorporation;
- 32.1.3 **"Adjustment Event"** means a Tax Change Event or a Rate Event;
- 32.1.4 **"Adjustment Notice"** means an Adjustment Notice as defined in clause 32.3.5.3 of this Memorandum of Incorporation;
- 32.1.5 **"Applicable Rate"** means the Dividend Rate or the Default Dividend Rate;
- 32.1.6 **"Beneficiary"** means, in relation to a Preference Share, the beneficial owner of that Preference Share as reflected in the records of the applicable Programme Participant;
- 32.1.7 **"Board"** means the board of directors of the Company;
- 32.1.8 **"Business Day"** means any day other than a Saturday, Sunday or statutory public holiday in the Republic of South Africa;
- 32.1.9 **"Companies Act"** means the Companies Act No. 71 of 2008, as amended;



- 32.1.10 **"Default Dividend Rate"** means, subject to adjustment in accordance with the Rate Adjustment Clauses, a rate equal to the Prime Rate plus 2% (two per centum);
- 32.1.11 **"Distribution"** means "distribution" as defined in the Companies Act;
- 32.1.12 **"Dividend Default"** means any failure by the Company to pay:
- 32.1.12.1 *the Scheduled Dividends (in respect of all the Outstanding Preference Shares) for any Dividend Period by the applicable Dividend Payment Date; and/or*
- 32.1.12.2 *any Additional Dividends by the date determined in accordance with clause 32.3.6 of this Memorandum of Incorporation;*
- 32.1.13 **"Dividend Declaration Date"** means the date on which the Board is scheduled to declare Preference Dividends in respect of the Outstanding Preference Shares and which date shall be, during each calendar year, a date in the first two weeks of June and a date in the first two weeks of November;
- 32.1.14 **"Dividend Payment Date"** means the date on which the Company is scheduled to pay Preference Dividends in respect of the Outstanding Preference Shares and which date shall be within a period not exceeding 30 days after each Dividend Declaration Date;
- 32.1.15 **"Dividend Period"** means each period which commences the day after a Dividend Declaration Date and which ends on and includes the next Dividend Declaration Date provided that:
- 32.1.15.1 *the first Dividend Period in respect of any particular Preference Share shall (i) commence on the day after the Issue Date on which the Company issues that Preference Share to its first Holder, and (ii) end on and include the first Dividend Declaration Date which occurs after that Issue Date; and*
- 32.1.15.2 *the last Dividend Period in respect of any particular Preference Share shall be the period which, (i) commences on the day after the last Dividend Declaration Date which occurs prior to the Redemption Date on which the Company redeems that Preference Share, and (ii) ends on and includes that Redemption Date;*
- 32.1.16 **"Dividend Rate"** means, subject to adjustment in accordance with the Rate Adjustment Clauses, a rate equal to 102% (one hundred and two per centum) of the Prime Rate;
- 32.1.17 **"Dividends Tax"** means the withholding tax on dividends imposed under Part VIII of Chapter II of the SA Tax Act;
- 32.1.18 **"Dividends Tax Rate"** means the rate at which the Dividends Tax is levied under the SA Tax Act from time to time;
- 32.1.19 **"Holder"** means, in relation to a Preference Share, its registered holder as reflected in the Company's share register;
- 32.1.20 **"Issue Date"** means, in relation to each Preference Share, the date on which the Company issues that Preference Share to its first Holder;
- 32.1.21 **"JSE"** means the securities exchange known as the JSE, which has been licensed as an exchange under the South African Securities Services Act, 2004;
- 32.1.22 **"Last Day to Trade"** shall have same meaning as the meaning ascribed to the words "last day to trade" in the JSE Listings Requirements;

- 32.1.23 **“Market Price”** means, in relation to each Preference Share and on any day, the VWAP of 1 (one) Preference Share on that day after deducting the aggregate of:
- 32.1.23.1 *any Accumulated Dividends in respect of one Preference Share on the first day of the Dividend Period during which the Market Price is determined; and*
- 32.1.23.2 *the Scheduled Dividend in respect of one Preference Share for the period which commences on the first day of the Dividend Period during which the Market Price is determined and which ends on the day prior to the date on which the Market Price is determined (calculated as if the aforesaid period were a Dividend Period);*
- 32.1.24 **“Ordinary Share”** means an ordinary share with a nominal value of R0,05 (five cents) in the Company's issued share capital;
- 32.1.25 **“Outstanding Preference Share”** means a Preference Share which has been issued by the Company, and which has neither been redeemed nor repurchased by the Company;
- 32.1.26 **“Participant”** means a participant as defined in section 1 of the South African Securities Services Act, 2004;
- 32.1.27 **“Preference Share”** means a cumulative, non-participating preference share in the Company's share capital which confers, on its Holder, the rights, obligations and privileges set out in this clause 32;
- 32.1.28 **“Preference Dividends”** means, in respect of each Preference Share, the applicable Scheduled Dividends and Additional Dividends;
- 32.1.29 **“Preference Share Issue Programme”** means the programme pursuant to which the Company, as a means of raising permanent capital, intends to issue a maximum number of 10 000 000 (ten million) Preference Shares subject to those Preference Shares being listed on the JSE;
- 32.1.30 **“Prime Rate”** means the publicly quoted basic rate of interest levied by FirstRand Bank Limited (“FirstRand”) from time to time on overdraft, calculated on a 365 (three hundred and sixty five) day year, irrespective of whether the applicable year is a leap year, and proved, *prima facie*, in the event of a dispute and in the absence of manifest error, by a certificate under the hand of any director or manager of FirstRand, whose appointment and authority need not be proved;
- 32.1.31 **“Programme Participant”** means each Participant who holds any Preference Share in custody for the Beneficiary of such Preference Share;
- 32.1.32 **“Rate Adjustment Clauses”** means clauses 32.3.9 and 32.3.10 of this Memorandum of Incorporation;
- 32.1.33 **“Rate Event”** means any increase in the Dividends Tax Rate above 15% (fifteen per centum) (which is the rate at which the Dividends Tax was levied on the Tax Reference Date);
- 32.1.34 **“Redemption Amount”** means, in respect of a Preference Share and without double counting, the aggregate of:
- 32.1.34.1 *the higher of (i) the Subscription Price of that Preference Share, or (ii) the Market Price of that Preference Share on the date 5 (five) Business Days prior to the publication of the applicable Redemption Announcement in terms of clause 32.4.3.1 of this Memorandum of Incorporation; plus*
- 32.1.34.2 *an amount equal to 2,5% (two point five per centum) of the Subscription Price of that Preference Share; plus*

- 32.1.34.3 *the Scheduled Dividend for the Dividend Period which ends on the Redemption Date of that Preference Share; plus*
- 32.1.34.4 *any Accumulated Dividends in respect of that Preference Share on its Redemption Date;*
- 32.1.35 **“Redemption Date”** means, in relation to each Preference Share, the date (if any) on which the Company redeems that Preference Share in accordance with the Redemption Provisions;
- 32.1.36 **“Redemption Provisions”** means clauses 32.4.2 to 32.4.4 of this Memorandum of Incorporation;
- 32.1.37 **“Regulatory Event”** means any change in:
- 32.1.37.1 the Listings Requirements;
- 32.1.37.2 the exchange control regulations of the Republic of South Africa;
- 32.1.37.3 the SA Tax Act or any other legislation which (i) imposes any taxation of any nature whatsoever on the Company in relation to the Preference Shares, in South Africa; or (ii) in any other way impacts adversely on the Preference Shares; or
- 32.1.37.4 the South African Companies Act, 2008 and any other South African legislation which deals with companies generally;
- 32.1.38 **“Resident Beneficiary”** means any Beneficiary of a Preference Share if that Beneficiary is a “resident” (of South Africa) as defined in the SA Tax Act;
- 32.1.39 **“SA Corporate”** means a Resident Beneficiary of a Preference Share which is a company (as defined in the SA Tax Act), other than a small business corporation, an employment company, a gold mining company, a long term insurance company or a Tax holiday company;
- 32.1.40 **“SA Tax”** means any Tax imposed by any tier of the government of the Republic of South Africa;
- 32.1.41 **“SA Tax Act”** means the South African Income Tax Act, 1962;
- 32.1.42 **“Scheduled Dividend”** means, in respect of each Preference Share and for each Dividend Period, the Preference Dividend calculated in accordance with the formula contained in clause 32.3.4;
- 32.1.43 **“SENS”** means the “Securities Exchange News Service” of the JSE;
- 32.1.44 **“Subscription Price”** means, in relation to each Preference Share, the price obtained by the Company for the allotment and issue of that Preference Share to its first Holder;
- 32.1.45 **“Tax”** means any tax, levy, impost, duty or other charge or withholding of a similar nature, levied in accordance with any law and includes any additional tax, penalties and/or interest levied on any such tax, levy, impost, duty or other charge or withholding;
- 32.1.46 **“Tax Change Event”** means that, as a result of any amendment in the SA Tax Act (including, without limitation, the replacement of SA Tax Act with different legislation), which occurs after the Tax Reference Date, the Preference Dividends become subject to any SA Tax, (other than the Dividends Tax or any other withholding Tax imposed under any law of the Republic of South Africa) in the hands of all the SA Corporates who are Resident Beneficiaries of any Outstanding Preference Shares. For clarity, it is specifically recorded that no Tax Change Event shall occur if (i) any amendment envisaged in clause 32.1.46 of this Memorandum of Incorporation occurs, but (ii) the effect of such amendment is to subject Resident Beneficiaries who are not SA Corporates to the applicable Tax;

- 32.1.47 “**Tax Reference Date**” means 1 November 2012;
- 32.1.48 “**VWAP**” means, on any particular day, the volume weighted average traded price at which the Preference Shares traded on the JSE for the 15 (fifteen) most recent trading days, provided that in determining such volume weighted average traded price trades which (i) are effected other than through the normal trading systems of the JSE, but (ii) are nevertheless settled through the settlement systems of the JSE, shall be disregarded.

### **32.2 The Preference Share Issue Programme**

- 32.2.1 This clause 32 shall apply to each Preference Share which the Company issues as part of the Preference Share Issue Programme.
- 32.2.2 In terms of the Preference Share Issue Programme:
- 32.2.2.1 *the Company shall be entitled, during a period of 18 months after the issue by the Company of the Pre-listing Statement in respect of the Preference Share Issue Programme, to issue Preference Shares in such tranches and at such Subscription Prices as shall be determined by its Board of Directors from time to time provided that those Preference Shares are listed on the JSE;*
- 32.2.2.2 *should any Preference Shares be issued by the Company after the expiry of a period of 12 months after the issue by the Company of the Pre-listing Statement in respect of the Preference Share Issue Programme, the Company shall, if so required by the JSE, issue an updated or new Pre-listing Statement in respect of such Preference Shares.*

### **32.3 Dividends**

#### *Entitlement*

- 32.3.1 Each Preference Share shall entitle its Holder (for onward payment to the relevant Beneficiary in accordance with any agreement between the Beneficiary and the Holder) to the Preference Dividends calculated in accordance with the provisions of this clause 32.3.
- 32.3.2 The Preference Dividends shall rank prior to the dividend rights of any other classes of shares in the Company’s share capital (including, but without limitation, the Ordinary Shares).
- 32.3.3 After the payment of the Preference Dividends, the Preference Shares shall not be entitled to participate in the remaining profits of the Company.

#### *Scheduled Dividends*

- 32.3.4 For each Dividend Period, each Preference Share shall be entitled to a Scheduled Dividend in an amount equal to the aggregate of the amounts calculated in respect of each day during that Dividend Period in accordance with the following formula:
- $$a = [(b + c) \times d] \div 365$$
- in which formula:
- a = the amount for the applicable day;
- b = the Subscription Price;
- c = the Accumulated Dividends in respect of that Preference Share at 17:00, Johannesburg time, on the calendar day immediately preceding the applicable day;
- d = if a Dividend Default (i) has not occurred, the Dividend Rate, or (ii) has occurred, the Default Dividend Rate.

#### *Additional Dividends*

- 32.3.5 If an Adjustment Event occurs the Company shall:
- 32.3.5.1 *determine whether, as a result of such occurrence (i) Additional Dividends must be declared and paid by the Company in respect of the Outstanding Preference Shares, and/or (ii) the Applicable Rates must be adjusted;*
  - 32.3.5.2 *calculate the amount of the Additional Dividends and/or the adjusted Applicable Rates (as the case may be);*
  - 32.3.5.3 *publish an announcement (an "Adjustment Notice") on SENS which sets out (i) the details and date of the Adjustment Event which has occurred, and (ii) whether, as a result of such occurrence, it will pay Additional Dividends and/or whether the Applicable Rates will be adjusted, and (iii) the amount of the Additional Dividends or the adjusted Applicable Rates (as the case may be).*
- 32.3.6 If the Company becomes obliged to pay Additional Dividends as a result of the occurrence of any Adjustment Event, the Company shall pay those dividends on the later of (i) the next Dividend Payment Date, or (ii) within 30 (thirty) calendar days after the date on which the applicable Adjustment Event occurs.
- 32.3.7 If the Applicable Rates must be adjusted as a result of the occurrence of an Adjustment Event, that adjustment shall take effect on the date reasonably determined by the Company (which date may be prior to the date on which the Company publishes the applicable Adjustment Notice).

#### *Tax Change Events*

- 32.3.8 If a Tax Change Event occurs in relation to any Scheduled Dividend which the Company has already paid in respect of any Outstanding Preference Share, the Company shall pay, in respect of each such Outstanding Preference Share, an Additional Dividend calculated in accordance with the following formula:

$$a = [b \div (1 - c)] - b$$

in which formula:

a = the Additional Dividend per Preference Share;

b = the amount of the Scheduled Dividends (in respect of one Preference Share) which has become subject to the applicable Tax; and

c = the rate at which the applicable Schedule Dividend has become subject to Tax in the hands of those of the Resident Beneficiaries which are SA Corporates.

- 32.3.9 If a Tax Change Event occurs, and as a result of such occurrence any Scheduled Dividends which have not yet been paid will become subject to Tax other than the Dividend Tax, each Applicable Rate shall be increased to such a percentage of the Prime Rate as is calculated in accordance with the following formula:

$$a = b \div (1 - c)$$

in which formula:

a = the increased Applicable Rate;

b = the Applicable Rate, prior to its adjustment in accordance with this clause 32.3.9; and

c = the rate at which the applicable Scheduled Dividends will become subject to Tax in the hands of Resident Beneficiaries which are SA Corporates.

If the Applicable Rates are increased in accordance with this clause 32.3.9, and after such increase the rate (the "Adjustment Rate") envisaged in the definition of "c" above increases or decreases, the Applicable Rates shall, with effect from the date on which the Adjustment Rate increases or decreases, be the rate calculated in accordance with the formula contained in this clause 32.3.9 on the basis that (i) the value of "b" in that formula shall be the Applicable Rates, immediately prior to the occurrence of the Tax Change Event, and (ii) the value of "c" in that formula shall be the increased or decreased Adjustment Rate.

#### *Rate Event*

32.3.10 If a Rate Event occurs, each Applicable Rate shall each be adjusted to such a percentage of the Prime Rate as is determined in accordance with the following formula:

$$a = b \times (1 - d) \div (1 - c)$$

in which formula:

a = the Applicable Rate, expressed as a percentage of the Prime Rate, after its adjustment in accordance with this clause 32.3.10;

b = the Applicable Rate, expressed as a percentage of the Prime Rate, prior to its adjustment in accordance with this clause 32.3.10;

c = the Dividends Tax Rate after the occurrence of the applicable Rate Event; and

d = the Dividends Tax Rate prior to the occurrence of the applicable Rate Event.

#### *Payment*

32.3.11 The Company shall, subject to compliance with the Companies Act, pay:

32.3.11.1 *the Scheduled Dividend for each Dividend Period on the first Dividend Payment Date which occurs after that Dividend Period;*

32.3.11.2 *any Additional Dividends which it becomes obliged to pay, by the date determined in accordance with clause 32.3.6 of the Memorandum of Incorporation; and*

32.3.11.3 *any Accumulated Dividends which remain as at the Redemption Date on which it redeems any Preference Share, on that Redemption Date.*

#### *Distribution in respect of Ordinary Shares*

32.3.12 The Company shall not make any Distributions in respect of its Ordinary Shares except if it has paid, in full, the Accumulated Dividends (if any) up to the last day of the last Dividend Period which occurs prior to the date on which the Company makes that Distribution.

### **32.4 Redemption and acquisition of own shares**

#### *No Redemption by Beneficiaries and Holders*

32.4.1 Neither the Beneficiaries nor the Holders of the Preference Shares shall be entitled to require the Company to redeem the Preference Shares.

#### *Company Redemption*

32.4.2 All (but not some) of the Outstanding Preference Shares may be redeemed at the option of the Company, subject to compliance with the Companies Act, in any of the following circumstances:

32.4.2.1 *an Adjustment Event occurs and, as a result of such Adjustment Event (i) the Company becomes obliged to pay any Additional Dividends, or (ii) the Applicable Rates are increased; or*

- 32.4.2.2 *a Regulatory Event occurs and, as a result of such occurrence, the continued compliance by the Company with this clause 32 becomes more expensive for the Company or any of its shareholders; or*
- 32.4.2.3 *the circumstances contemplated in clause 32.6.3.*

#### *Procedure*

- 32.4.3 If the Company wishes to redeem the Outstanding Preference Shares pursuant to the Redemption Provisions:
  - 32.4.3.1 *the Company shall publish, on SENS, an announcement (a "Redemption Announcement") (i) which sets out the grounds on which the Company is entitled to redeem the Outstanding Preference Shares; (ii) which complies in all respects in form and content with the provisions of the Listings Requirements; and (iii) which sets out the date (the "Company Redemption Date") on which the Company will redeem the Outstanding Preference Shares, the Company Redemption Date to be the first Dividend Payment Date which occurs after the publication of the Redemption Announcement or, if that first Dividend Payment Date will occur within 10 (ten) Business Days after the publication of the Redemption Announcement, the second Dividend Payment Date which occurs after that publication;*
  - 32.4.3.2 *the Company shall effect the redemption in compliance with any Listings Requirements applicable such as the relevant timetable in the relevant schedule of the Listings Requirements, as well as any other regulatory requirements;*
  - 32.4.3.3 *up until the commencement of the Business Day prior to the Last Day to Trade in respect of the redemption announced in the Redemption Announcement, the publication of a Redemption Announcement shall be revocable at the instance of the Company and shall not oblige the Company to redeem the Outstanding Preference Share whether on the Company Redemption Date set out in that Redemption Announcement or on any other date (but the Company shall not redeem some of the Outstanding Preference Shares without at the same time redeeming all the Outstanding Preference Shares); and*
  - 32.4.3.4 *if the Company publishes a Redemption Announcement and thereafter elects not to redeem the Outstanding Preference Shares the Company shall (i) make an announcement to such effect on SENS prior to the commencement of the Business Day prior to the Last Day to Trade in respect of the redemption announced in the Redemption Announcement and (ii) not thereafter be entitled to redeem the Outstanding Preference Shares without again publishing a Redemption Announcement.*

#### *Redemption Date*

- 32.4.4 If the Company elects to redeem the Outstanding Preference Shares the Company shall, on the applicable Company Redemption Date, pay the Redemption Amount of each Outstanding Preference Share to each Holder (for onward payment to the Beneficiary of that Preference Share).

#### *Acquisition of Own Shares*

- 32.4.5 The Outstanding Preference Shares may be acquired by the Company pursuant to clause 15 of the Memorandum of Incorporation.

### **32.5 Return of capital**

- 32.5.1 On the liquidation of the Company, each Preference Share shall confer on its Holder (for onward payment to the relevant Beneficiary in accordance with the agreement between the Holder and Beneficiary) a right to a return of capital in an amount equal to the Redemption Amount of that Preference Share calculated up to the day on which that return of capital is paid.
- 32.5.2 The Preference Shares' rights to a return of capital shall rank prior to the rights to a return of capital of all other classes of shares in the Company share capital including, but without limitation, the Ordinary Shares.
- 32.5.3 Save as envisaged in clause 32.5.1 of this Memorandum of Incorporation, the Preference Shares shall not be entitled to participate in the Company's excess assets on its liquidation.

### **32.6 Voting**

#### *Voting Rights*

- 32.6.1 The Holders of the Preference Shares shall have the right to receive notice of and to be present (either in person or by proxy) at any general meeting of the Company, but shall not be entitled to vote at any such general meeting.
- 32.6.2 In accordance with clause 10.4, any amendment to this MOI relating to the variation of any preferences, rights, limitations and other terms attaching to the Preference Shares, must not be implemented without a Special Resolution taken by the Holders of the Preference Shares at a separate meeting. In such instances, the Holders of the Preference Shares may be allowed to vote at the meeting of Shareholders subject to clause 10.3 above. No resolution of Shareholders of the Company shall be proposed or passed, unless a Special Resolution of the Holders of the Preference Shares, have approved the amendment.

#### *Voting Resolution not passed*

- 32.6.3 If the Company proposes any amendment to this MOI relating to the variation of any preferences, rights, limitations and other terms attaching to the Preference Shares, and for the purpose of clause 32.6.2 insufficient Holders of Preference Shares vote to approve the amendment at a separate meeting, the Company shall be entitled to elect to redeem all (but not some) of the Outstanding Preference Shares in accordance with the Redemption Provisions.



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## NOTICE OF EXTRAORDINARY GENERAL MEETING (“EGM”) OF INVICTA SHAREHOLDERS

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Notice is hereby given to all the members, directors and auditors of Invicta Holdings Limited (the “Company”) of an Extraordinary General Meeting of the Company to be held at its registered office at 10:00 on 12 November 2012 to consider and, if deemed fit, approve the following resolutions:

**1. RESOLUTION 1: INCREASE IN THE AUTHORISED SHARE CAPITAL OF THE COMPANY AND AMENDMENTS TO THE MEMORANDUM OF INCORPORATION OF THE COMPANY (“MOI”).**

**Purpose**

The board of directors of the Company (“Board”) is proposing the Company raises new capital by embarking on a programme for the issue of a maximum number of 10 000 000 cumulative, non-participating no par value Preference Shares (“Preference Shares”) to be listed on the JSE Limited (“JSE”) (the “Preference Share Issue Programme”) pursuant to a pre-listing statement for JSE purposes (“Pre-listing Statement”).

For this purpose, the Board is proposing changes in the MOI consisting of the increase of the authorised share capital of the Company through the creation of 10 000 000 Preference Shares and other amendments to the MOI for the purpose of including the rights and obligations of the Preference Shares, to be approved by means of an extraordinary resolution. The full amendments to the MOI are set out in Annexure 1 to the circular to which this notice is attached.

**Resolved as a special resolution that:**

- (a) The Company’s current authorised share capital be hereby increased from R6 700 000 divided into 134 000 000 ordinary shares of 5 cents each to R6 700 000 divided into 134 000 000 ordinary shares of 5 cents each and 10 000 000 Preference Shares of no par value.
- (b) The MOI be amended to incorporate the changes as set out in Annexure 1 and which are approved by these resolutions.
- (c) The Company Secretary be authorised to authenticate as a certified true copy a revised and updated MOI and to file it with the Companies and Intellectual Property Commission (“CIPC”).

**2. RESOLUTION 2: ISSUE OF PREFERENCE SHARES**

Subject to the approval of Resolution 1 and the filing of the revised and updated MOI with CIPC, resolved as an ordinary resolution that the shareholders approve the issue of up to 10 000 000 new fully paid up no par value Preference Shares at a subscription price of ZAR100,00 per share by 17:00 on 19 November 2012, being the closing date of the offer for subscription for the initial issue of Preference Shares (or such later date as the offer closes) (“Closing”), as part of the Preference Share Issue Programme to those persons who duly meet the subscription conditions of the Pre-listing Statement.

### **3. RESOLUTION 3: WAIVER OF PRE-EMPTION RIGHTS IN RESPECT OF ISSUE OF PREFERENCE SHARES UNDER RESOLUTION 2**

#### **Purpose**

The Board is proposing that the Company's shareholders, in accordance with section 39 of the Companies Act and Article 7 of the MOI of the Company, waive by means of an ordinary resolution their pre-emption rights in relation to the Preference Shares issued under Resolution 2.

The Board, to the extent required by the JSE Listings Requirements, is circulating by means of paragraph 2.1 of the Circular to which this Notice is attached, the reasons for the proposed withdrawal of the shareholders' pre-emption rights in respect of the issue of the Preference Shares under Resolution 2 and explaining the rationale for the terms and conditions of the Preference Shares.

#### **Resolution**

Subject to the approval of Resolutions 1 and 2, all and any pre-emption rights which the shareholders of the Company may be entitled to under the Company's MOI in connection with the issue of up to 10 000 000 new no par value Preference Shares at a Subscription Price of ZAR100,00 per share as at Closing, as part of the Preference Share Issue Programme, are hereby waived to the fullest extent possible by all the shareholders of the Company.

### **4. RESOLUTION 4: GENERAL AUTHORITY TO DIRECTORS TO MAKE FURTHER ISSUES OF PREFERENCE SHARES PURSUANT TO THE PREFERENCE SHARE ISSUE PROGRAMME AND TO RESTRICT PRE-EMPTION RIGHTS**

#### **Purpose**

The Board is proposing that the shareholders by means of an ordinary resolution (i) delegate to the Board the power of the Company to issue any Preference Shares which for any reason whatsoever are not taken up in the issue authorised in Resolution 2 at a Subscription Price to be determined by the Board based on market conditions at the relevant time and (ii) withdraw the pre-emption rights of the Company's shareholders in relation to the Preference Shares for as long as the Board remains so authorised to issue the Preference Shares.

The Board is proposing that this authority to make further issues of Preference Shares as well as the withdrawal of the Company's shareholders' pre-emption rights in relation to the Preference Shares shall expire 18 months from the date of this resolution, provided that any offers and issue of the Preference Shares are made in compliance with all applicable legislation, including the issue of supplements to the Pre-listing Statement or the issue of a new pre-listing statement altogether. On the strength of such authority proposed to be given to the Board, and on the basis of paragraph 2.1 of the Circular, the Pre-listing Statement will alert prospective investors wishing to acquire the Preference Shares that they will have no pre-emption rights on any further issues of Preference Shares pursuant to the Preference Share Issue Programme.

#### **Resolution**

Subject to the approval of Resolutions 1, 2 and 3, and, without prejudice and in addition to the authority to issue and allot Ordinary Shares granted to the Board at the Annual General Meeting of the Company on 14 August 2012, the Board be generally and unconditionally authorised to exercise all the powers of the Company to make issues of Preference Shares, up to the maximum number of authorised but unissued Preference Shares under the Preference Share Issue Programme, including any Preference Shares which for any reason whatsoever are not taken up in the issue authorised in Resolution 2, at a subscription price to be determined by the Board based on market conditions at the relevant time, for a period expiring 18 months from the date of this resolution, provided that any offers and issue of said Preference Shares are made in compliance with all applicable legislation, including the issue of supplements to the Pre-listing Statement or the issue of a new pre-listing statement altogether.

Pursuant to section 39 of the Companies Act and in accordance with Article 7 of the MOI of the Company, the Board of Directors be generally authorised to restrict or withdraw the statutory pre-emption rights of the Company's shareholders for as long as the Board of Directors remains authorised to issue the Preference Shares.

**5. RESOLUTION 5: GENERAL AUTHORITY TO DIRECTORS TO DO ALL SUCH THINGS, SIGN ALL SUCH DOCUMENTS AND TAKE ALL SUCH ACTIONS AS MAY BE NECESSARY FOR OR INCIDENTAL TO THE IMPLEMENTATION OF ABOVE RESOLUTIONS**

**Purpose**

The Board is proposing that the shareholders by means of an ordinary resolution delegate to the Board the power of the Company to do all such things, sign all such documents and take all such actions as may be necessary for or incidental to the implementation of above resolutions.

**ELECTRONIC PARTICIPATION**

Should any Shareholder wish to participate in the general meeting by way of electronic participation, that Shareholder should make application in writing (including details as to how the Shareholder or its representative can be contacted) to so participate to the Transfer Secretaries at the address below, to be received by the Transfer Secretaries at least five Business Days prior to the general meeting in order for the Transfer Secretaries to arrange for the Shareholder (and its representative) to provide reasonably satisfactory identification to the Transfer Secretaries for the purposes of section 63(1) of the Companies Act and for the Transfer Secretaries to provide the Shareholder (or its representative) with details as to how to access any electronic participation to be provided. The Company reserves the right to elect not to provide for electronic participation at the general meeting in the event that it determines that it is not practical to do so. The costs of accessing any means of electronic participation provided by the Company will be borne by the Shareholder so accessing the electronic participation. Shareholders are advised that participation in the general meeting by way of electronic participation will not entitle a Shareholder to vote. Should a Shareholder wish to vote at the general meeting, he/she may do so by attending and voting at the general meeting either in person or by proxy.

**NOTES**

Any shareholder may, in writing, appoint a proxy, who need not be a shareholder, to represent him/her at any general meeting. Any company, being a shareholder, may execute a form of proxy under the hand of a duly authorised officer. The instrument appointing a proxy together with evidence of the authority of the person by whom the proxy is signed (except in the case of a proxy signed by the shareholder), shall be deposited at the registered office of the Company, 24 hours before the time for the holding of the meeting or adjourned meeting (as the case may be) at which the person named in such instrument proposes to vote. No instrument appointing a proxy shall be valid after the expiration of 12 months from the date of its execution. Any shareholder may, instead of sending the proxy form to the registered office, send the proxy form (completed in accordance with its instructions) to the appropriate Transfer Secretaries 48 hours prior to the EGM in order that the Transfer Secretaries may be able to send the proxy form on your behalf to the registered office 24 hours before the time for holding of the meeting.

A form of proxy is enclosed with this notice, the completion of which will not preclude a shareholder from attending and voting at the meeting in person to the exclusion of any proxy appointed. Resolution 1 is to be proposed as a special resolution and Resolutions 2, 3 and 4 are to be proposed as ordinary resolutions.

Ordinary resolutions may be passed at the EGM by a simple majority representing more than 50% of the voting rights exercised on the resolutions. Special resolutions require more than 75% of the voting rights exercised on the resolution. The quorum requirement in relation to both ordinary resolutions and special resolutions is at least three members holding shares granting the right to vote in the Company who are present or represented at the EGM, and there are sufficient persons present to exercise in aggregate at least 25% of all the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting.

By order of the Board

**C Barnard**  
*Company Secretary*

15 October 2012



**INVICTA HOLDINGS LIMITED**  
(Incorporated in the Republic of South Africa)  
(Registration number: 1966/002182/06)  
Share code: IVT ISIN: ZAE00029773  
("Invicta" or "the Company")

## FORM OF PROXY FOR USE BY CERTIFICATED INVICTA SHAREHOLDERS AND "OWN-NAME" DEMATERIALIZED INVICTA SHAREHOLDERS ONLY

### CREATION OF 10 000 000 CUMULATIVE, NON-PARTICIPATING PREFERENCE SHARES

For use only:

- by holders of certificated shares of the Company; and
- holders of dematerialised shares in the Company held through a Central Securities Depository Participant ("CSDP") or broker and who have selected "own-name" registration;
- at the Extraordinary General Meeting of the Company to be held at 10:00 on Monday, 12 November 2012 at the Company's registered office, or at any adjournment thereof ("Extraordinary General Meeting").

If you are an Invicta shareholder entitled to attend and vote at the Extraordinary General Meeting you can appoint a proxy or proxies to attend, vote and speak in your stead. A proxy need not be a shareholder of the Company.

If you are an Invicta shareholder and have dematerialised your share certificates through a CSDP (and have not selected "own-name" registration in the sub-register maintained by a CSDP), do not complete this form of proxy (green) but instruct your CSDP to issue you with the necessary letter of representation to attend the Extraordinary General Meeting, or if you do not wish to attend, provide your CSDP with your voting instructions in terms of your custody agreement entered into with them.

I/We \_\_\_\_\_

(full names in BLOCK LETTERS)

of (address) \_\_\_\_\_

being the holder(s) of  shares in the Company, hereby appoint (see note 2):

1. \_\_\_\_\_ or failing him/her,
2. \_\_\_\_\_ or failing him/her,
3. the Chairman of the Company or failing him the Chairman of the Extraordinary General Meeting

as my/our proxy to attend, speak, and on a poll to vote or abstain from voting on my/our behalf at the Extraordinary General Meeting which will be held for the purpose of considering and, if deemed fit, passing, with or without modification, the extraordinary resolution to be proposed thereat and at any adjournment thereof.

	In favour	Against	Abstain
1. <b>RESOLUTION NUMBER 1</b> Increase in authorised share capital and other amendment to the MOI in regards to Preference Shares			
2. <b>RESOLUTION NUMBER 2</b> Issue of Preference Shares			
3. <b>RESOLUTION NUMBER 3</b> Waiver of pre-emption rights in respect of issue of Preference Shares			
4. <b>RESOLUTION NUMBER 4</b> General authority to directors to make further issues of Preference Shares pursuant to the Preference Share Issue Programme and to restrict pre-emption rights			
5. <b>RESOLUTION NUMBER 5</b> General authority to directors to do all such things, sign all such documents and take all such actions as may be necessary for or incidental to the implementation of above resolutions			

**Note:** Please indicate with an "x" in the spaces above how you wish your votes to be cast.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2012

Signature \_\_\_\_\_

Assisted by (if applicable) \_\_\_\_\_

**Notes:**

- (i) The following dates are applicable to all shareholders. This notice is being mailed to the members on the Register of Members of the Company as at Friday, 5 October 2012. Members registered on the Register of Members as at Friday, 2 November 2012 ("the Record Date") shall have the right to participate and vote at the meeting. Accordingly, the last day to trade for shareholders in order to be able to participate and vote at the meeting is Friday, 26 October 2012. Any change to an entry on the Register after the Record Date shall be disregarded in determining the right of any person to attend and vote at the Extraordinary General Meeting.
- (ii) A member entitled to vote may appoint a proxy to attend and vote instead of him/her using the enclosed Form of Proxy; the appointed proxy need not be a member. To be valid the Form of Proxy must be signed and must reach the office of the Company Secretary at Invicta, 3rd Floor Pepkor House, 36 Stellenberg Road, Parow Industria by not later than Friday, 9 November 2012 at 10.00.
- (iii) Should you not wish to send the duly-completed proxy directly to the Company Secretary you may send it to the Transfer Secretaries, Computershare Investor Services Proprietary Limited, PO Box 61051, Marshalltown, 2107, Tel +27 11 370 5000, Fax: +27 11 668 5200, by not later than Friday, 9 November 2012 at 10:00.
- (iv) To participate and to vote at the meeting, a member or his/her proxy is to present his/her Identity Card or other means of identification. In the case of a member being a body corporate, association of persons, foundation or other body of person, a representative thereof will only be eligible to attend and be admitted to, the meeting, and to vote there at, if a Form of Proxy has been (a) duly executed in his/her favour by the competent organ of the entity which he/she represents, and (b) submitted to the Company Secretary in accordance with the procedures set out under (ii) above.
- (v) In the case of shares held jointly by several persons, the person who had been nominated by the joint holders to be the registered holder of such shares shall be entitled to attend and vote at the meeting. In the event that the joint holders failed to nominate such person, the first named joint holder on the register of members of the Company shall be entitled to attend and vote at the meeting.
- (vi) A member who is a minor may be represented at the meeting by his/her Legal Guardian who will be required to present his/her Identity Card.
- (vii) Admission to the meeting will commence one hour before the advertised and appointed time.
- (viii) After the meeting has proceeded to business, voting documents will continue to be issued until such time as the meeting proceeds to vote on the first resolution of the agenda whether by show of hands or by poll. Thereafter no further voting documents will be issued and admittance to the meeting will be discontinued.
- (ix) The following information is also made available to the members on [www.Invicta.com](http://www.Invicta.com) in the Investor Relations section:
  - (a) a copy of this notice;
  - (b) the total number of shares and voting rights at the date of the notice (including separate totals for each Class of Shares where the Issuer's capital is divided into two or more Classes of Shares);
  - (c) the documents to be submitted to the general meeting;
  - (d) the proxy forms.
- (x) Shareholders' rights

Shareholders rights regarding proxies in terms of section 58 of the Companies Act are as follows:

- (1) At any time, a shareholder of a company may appoint any individual, including an individual who is not a shareholder of that company, as a proxy to –
  - (a) participate in, and speak and vote at, a shareholders meeting on behalf of the shareholder; or
  - (b) give or withhold written consent on behalf of the shareholder to a decision contemplated in section 60.
- (2) A proxy appointment –
  - (a) must be in writing, dated and signed by the shareholder; and
  - (b) remains valid for –
    - (i) one year after the date on which it was signed; or
    - (ii) any longer or shorter period expressly set out in the appointment, unless it is revoked in a manner contemplated in subsection (4)(c), or expires earlier as contemplated in subsection (8)(d).
- (3) Except to the extent that the Memorandum of Incorporation of a company provides otherwise –
  - (a) a shareholder of that company may appoint two or more persons concurrently as proxies, and may appoint more than one proxy to exercise voting rights attached to different securities held by the shareholder;
  - (b) a proxy may delegate the proxy's authority to act on behalf of the shareholder to another person, subject to any restriction set out in the instrument appointing the proxy; and
  - (c) a copy of the instrument appointing a proxy must be delivered to the company, or to any other person on behalf of the company, before the proxy exercises any rights of the shareholder at a shareholders meeting.
- (4) Irrespective of the form of instrument used to appoint a proxy –
  - (a) the appointment is suspended at any time and to the extent that the shareholder chooses to act directly and in person in the exercise of any rights as a shareholder;
  - (b) the appointment is revocable unless the proxy appointment expressly states otherwise; and
  - (c) if the appointment is revocable, a shareholder may revoke the proxy appointment by –
    - (i) cancelling it in writing, or making a later inconsistent appointment of a proxy; and
    - (ii) delivering a copy of the revocation instrument to the proxy, and to the company.
- (5) The revocation of a proxy appointment constitutes a complete and final cancellation of the proxy's authority to act on behalf of the shareholder as of the later of –
  - (a) the date stated in the revocation instrument, if any; or
  - (b) the date on which the revocation instrument was delivered as required in subsection(4)(c)(ii).
- (6) A proxy is entitled to exercise, or abstain from exercising, any voting right of the shareholder without direction, except to the extent that the instrument appointing the proxy otherwise provides.

