

# **SHAREHOLDERS' CIRCULAR**

dated 29 September 2015

for the purpose of the

**Extraordinary General Meeting of**

**Ichor Coal N.V.**

to be held on

**4 November 2015**

at 12:00 hours pm (CET),

at the offices of World Trade Center Schiphol Business & Conference Center,

Schiphol Boulevard 127, 1118 BG Schiphol, the Netherlands

## **IMPORTANT INFORMATION**

This shareholders' circular does not constitute an offer or invitation to sell, purchase or subscribe for any securities, or the solicitation of an offer to buy or subscribe for securities, in any jurisdiction and is not a prospectus as defined in article 5:2 of the Dutch Financial Markets Supervision Act (*Wet op het financieel toezicht*).

This shareholders' circular has been published by Ichor Coal N.V. ("**IchorCoal**") for the sole purpose of informing IchorCoal's shareholders on the proposed acquisition by IchorCoal of all issued and outstanding shares in the capital of Universal Coal (the "**transaction**"). The IchorCoal shareholders will be asked to approve the transaction at the extraordinary general meeting of IchorCoal to be held on 4 November at 12:00 hours pm CET at the World Trade Center, Schiphol Business & Conference Center, Schiphol Boulevard 127, 1118 BG Schiphol, the Netherlands (the "**EGM**"). Copies of this shareholders' circular, the agenda and the invitation (including the explanatory notes) for the EGM are available at the registration agent GFEI's office (Address: Office Center Plaza, Mailänder Strasse 2, 30539 Hannover, Germany; eFax: +49 511 47402319) as well as at IchorCoal's website ([www.ichorcoal.com](http://www.ichorcoal.com)).

The information included in this shareholders' circular reflects the situation on the date of this document. Neither the issue nor the distribution of this shareholders' circular shall under any circumstances constitute a representation, confirmation or implication that the information contained herein is accurate and complete at any time subsequent to the date hereof and IchorCoal expressly disclaims any obligation or undertaking to update, amend or supplement the information contained herein in any way to reflect facts or circumstances arising or occurring after the date of this shareholders' circular.

Certain statements contained in this shareholders' circular that are not historical facts are "forward-looking statements". Such statements are based on IchorCoal's beliefs and projections and on information currently available to IchorCoal. These forward-looking statements are subject to a number of risks and uncertainties, many of which are beyond IchorCoal's control and all of which are based on IchorCoal's current beliefs and expectations about future events. Forward-looking statements are typically identified by the use of forward-looking terminology such as "believes", "expects", "may", "will", "could", "should", "intends", "estimates", "plans", "assumes", "anticipates", "annualised", "goal", "target" or "aim" or the negative thereof or other variations thereof or comparable terminology, or by discussions of strategy that involve risks and uncertainties.

Forward-looking statements involve inherent risks and uncertainties and speak only of the date they are made. IchorCoal undertakes no duty to and will not necessarily update any of the forward-looking statements in light of new information or future events, except to the extent required by applicable law.

This shareholders' circular is governed by Dutch law and must be read and interpreted in accordance therewith. Any dispute arising in connection with this shareholders' circular will be subject to the exclusive jurisdiction of the competent court in Amsterdam, the Netherlands.

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# INFORMATION ON THE TRANSACTION

## 1. BACKGROUND AND INFORMATION ON TRANSACTION AND RELEVANT PARTIES

### *Background*

In September 2014, IchorCoal announced a strategic investment of A\$24.5 million in Universal Coal plc, an ASX-listed junior coal producer with assets in South Africa. The strategic investment was the first part of a broader IchorCoal strategy to grow its operating presence in South Africa, and was used to accelerate the growth plans of Universal Coal through the acquisition and development of a second operating asset, the New Clydesdale Colliery. The investment comprised the following components:

- a subscription for 80,440,000 ordinary shares of Universal Coal (and CHESS Depository Interests to which the ordinary shares relate on a one for one basis) (“**ordinary shares**”) at a price of A\$0.145 per ordinary share for proceeds of approximately A\$11.7 million;
- a subscription for 71,220,000 non-voting, non-cumulative convertible preferred shares (the “**preferred shares**”) at a price of A\$0.18 per preferred share for proceeds of approximately A\$12.8 million; and
- warrants to subscribe for 71,220,000 ordinary shares, exercisable for a period of 18 months from the completion of the subscription agreement (“**completion**”) at a strike price of A\$0.36.

Following this initial investment, on 21 August 2015 IchorCoal announced a firm intention to make a cash offer for the shares in Universal Coal not already owned by it at an offer price of A\$0.16 per Universal Coal share subject to the terms and conditions as set out in Appendix 1 (the offer). This represents a premium of approximately 45.5% to the Universal Coal share price of A\$0.11 per Universal Coal share on 20 August 2015 and a premium of approximately 46.5% over the 60-day volume weighted average price of A\$0.109 on the ASX on that day, being the last trading date prior to the announcement.

IchorCoal owns 29.99% of Universal Coal’s issued ordinary shares (embodied by 151,660,000 CHESS Depository Receipts or CDI’s that, each represent a beneficial interest in one Share) following conversion of its preferred shares on 13 August 2015. The transaction values the whole of the ordinary share capital of Universal Coal (including existing issued shares and those shares which may be issued pursuant to the conversion of preferred shares and excluding all other options and warrants which are out of the money), at approximately A\$80.9 million.

### *Information on relevant parties*

*IchorCoal* is an international mining company focusing on thermal coal production in South Africa. The company owns and operates its own coal resources, owns minority stakes in other mining operations and sells the output coal both locally and in international markets.

With attributable minable resources of approximately 440 million metric tonnes of coal on 16 properties, IchorCoal has a stated long-term ambition to increase its attributable output of around 2.1 mt per annum to 15 mt per annum by 2017 through both organic and acquisitive growth. IchorCoal shares are traded on the Entry Standard segment on the Open Market of the Frankfurt Stock Exchange and has a market capitalisation of approximately €233.1 million as at 29 September 2015.

*Universal Coal* is a United Kingdom incorporated company focused on South African thermal coal and whose securities are listed on the ASX with a market capitalisation of approximately A\$91.0 million as at 29 September 2015.

Universal Coal has stated its projects in South Africa contain over 2 billion tonnes (gross in-situ before losses) of JORC-compliant coal resources at three thermal coal projects in the Witbank coalfield and two coking coal assets in the emerging Soutpansberg and Tuli coalfields.

Universal Coal's first operation, the Kangala mine, is a South African thermal coal operation which commenced production in February 2014 and is targeting production of 1.7 - 2 million saleable tonnes per annum, primarily for Eskom, over an initial 8 year life of mine.

Universal Coal is in the process of developing NCC which it acquired from Exxaro in February 2015 and which was declared unconditional in August 2015. NCC is located on the southern margin of the Witbank coalfield and is currently being developed as one complex with Universal Coal's contiguous Roodekop project. The NCC/ Roodekop complex will be developed as a multi-product mine to service the domestic market through Eskom and the low phosphorus coal users.

## **2. RATIONALE FOR THE OFFER**

Universal Coal was listed on the ASX in December 2010 at an IPO price of A\$0.26 per share, with a target to achieve first coal at Kangala in 2011.

Kangala commenced first production in February 2014 and technical completion in December 2014. Universal Coal's next key asset is the NCC/Roodekop mine complex, where Universal Coal announced the acquisition of NCC in February 2014 and for which approval in terms of Section 11 of the South African Minerals and Petroleum Resources Development Act was received from the Department of Mineral Resources in July 2015. The transaction was declared unconditional in August 2015.

Universal Coal, along with other coal development companies, has been impacted by the decline in the price of seaborne thermal coal which has fallen by over 28% in the last 12 months from a price of approximately US\$71/t (Richards Bay API4) to approximately US\$50/t (Richards Bay API4), as well as by a worsening in investor sentiment for South African resources companies by global investors..

In this context, Universal Coal has seen a significant fall in its share price since listing and as at 20 August 2015, being the last business day prior to the date of the firm intention announcement, had a share price of A\$0.11 and a 30 day volume weighted average price of A\$0.109, on limited trading volumes equivalent to less than A\$21,000 per day on average over the period. Universal Coal has accordingly sought a series of strategic investments to finance the development of its project portfolio, including most recently the A\$24.5m investment by IchorCoal last year.

IchorCoal continues to believe in the long-term fundamentals of the South African thermal coal market and anticipates a recovery in the global seaborne market in the medium to long term. In the context of challenging market conditions, IchorCoal believes that the consolidation of its interests in Universal Coal with its existing South African coal mining interests provides the most robust platform to manage the uncertainty prevailing in the coal sector.

Accordingly, IchorCoal is making the offer to Universal Coal shareholders to increase its holding of Universal Coal and to provide an opportunity for Universal Coal shareholders to realise, in cash and at an attractive premium, their investment in a highly illiquid stock which has not paid a dividend since its listing on the ASX in 2010.

### **3. OFFER STRUCTURE**

The transaction comprises of the offer for shares that will be made on the following basis:

A\$0.16 (sixteen Australian cents) for each Universal Coal share in cash for the entire issued and to be issued share capital of Universal Coal

IchorCoal currently owns 151,660,000 Universal Coal CDIs representing an equal number of Universal Coal shares (representing 29.99% of Universal Coal's issued ordinary share capital), post conversion of its preferred shares and 71,220,000 Universal Coal warrants. The offer values the whole of the ordinary share capital of the company (including existing issued Universal Coal shares and excluding all other options and warrants which are out of the money), at approximately A\$80.9 million.

The Universal Coal shares will be acquired by IchorCoal, pursuant to the offer, fully paid with full title guarantee and free from all liens, charges, equities, encumbrances, options, rights of pre-emption and other third party rights and interests of whatsoever nature and together with all rights now attaching and to become attached thereto, including, without limitation, voting rights and the right to receive and retain in full all dividends and other distributions (if any) declared, paid or made on or at any time after the date of the firm intention announcement.

The offer will extend to Universal Coal shares in issue or unconditionally allotted (fully paid or credited as fully paid) on the date on which the offer is made and to any and all further Universal Coal shares issued or unconditionally allotted (fully paid or credited as fully paid) while the offer remains open for acceptance.

The offer will be subject to the conditions and further terms set out or referred to in the Appendix 1 to this circular, and to the further terms to be set out in the offer document and form of acceptance, which will be sent to Universal Coal shareholders on 30 September 2015.

A formal recommendation from the board of directors of Universal Coal has not been sought.

As Universal Coal does not have its place of central management and control in the United Kingdom, neither Universal Coal nor the Offer is subject to UK Takeover Code.

IchorCoal has applied for relief from the Australian Securities and Investments Commission ("ASIC") from certain aspects of Division 5A of Part 7.9 of the Australian Corporations Act 2001 (Cth) to permit it to make the Offer without being required to comply fully with the provisions contained in the Australian Corporations Act 2001 (Cth) which regulate unsolicited off-market offers to purchase financial products which are made in Australia. The application had not been fully determined as at the date that this Circular and the Offer Document was printed.

To the extent that those provisions apply to an offer, the offer may not be varied. Thus, except where relief from ASIC is obtained, it is not possible to extend the offer period or increase the offer price. It is also unclear whether offer conditions can be waived.

### **4. CONDITIONS TO THE OFFER**

The offer is subject to the conditions and further terms set out below and in Appendix I ("Conditions"), each of which will also be set out in the Offer document. The Offer document will include full details of the Offer and the expected timetable.

One of the conditions is the passing of the requisite resolutions at the extraordinary general meeting of IchorCoal's shareholders to approve the offer and IchorCoal's capital increase to fund the offer.

Whilst the conditions are customary for a transaction of this nature, as noted above the UK Code does not apply to Universal Coal or the offer. As such the rules of the UK Code, including in particular Rule 2.7 and 13, which would, if the UK Code applied, restrict the ability of IchorCoal not to proceed with the Offer or to invoke a condition or fail to waive a condition, does not apply.

For full details of the offer please refer to the Offer document available on IchorCoal's website.

## **5. FINANCING OF THE TRANSACTION**

The transaction will be funded through the completion of a rights issue/capital increase by IchorCoal. Sapinda Invest S.à.r.l. has irrevocably agreed to underwrite an equity capital raising sufficient to meet IchorCoal's obligations assuming 100% take-up of the offer and has provided substantiation that it has sufficient available cash resources to meet its commitments under this underwriting agreement. The proceeds raised from the private placing will provide IchorCoal with sufficient resources to satisfy in full the cash consideration payable by IchorCoal under the terms of the offer. A summary of the Underwriting Agreement is set out in Appendix 2 to this circular.

Please refer to Appendix 3 "Agenda and explanatory notes" for further information.

## **6. SUPPORT AND RECOMMENDATION**

In reaching their decision to agree to the transaction and to recommend that the IchorCoal shareholders approve the transaction subject to the terms and conditions of the offer, the management board and the supervisory board extensively consulted their advisors and considered both the financial and non-financial consequences of the transaction.

Both the Supervisory board and the Management board of IchorCoal determined, having duly considered the strategic, economic, financial and social aspects of the transaction, that the transaction is in the best interests of IchorCoal and its shareholders. The Supervisory board and the Management board recommends that the IchorCoal shareholders approve the transaction subject to the terms and conditions as set out in Appendix 1 of this circular.

## **7. IRREVOCABLE UNDERTAKINGS**

IchorCoal's major shareholder, Sapinda Holding, which holds approximately 61.3% of all the shares in the issued share capital of IchorCoal, has provided IchorCoal with an irrevocable undertaking to vote in favour of all resolutions at the extraordinary general meeting that relate to the transaction.

## APPENDIX 1

### CONDITIONS AND FURTHER TERMS OF THE OFFER

#### 1 Conditions of the Offer

The Offer is subject to the following Conditions. The Conditions must, unless waived previously, be satisfied as at the end of the Offer Period:

##### Acceptance Condition

- (a) valid acceptances being received (and not, where permitted, withdrawn) which, taken together with Shares acquired or agreed to acquire by IchorCoal (whether pursuant to the Offer or otherwise), will result in IchorCoal holding Shares carrying in aggregate more than 50 per cent. of the voting rights then normally exercisable at general meetings of Universal Coal (including for this purpose any votes attributable to the Shares which are unconditionally allotted or issued before the Offer becomes or is declared wholly unconditional, whether pursuant to the exercise of conversion or subscription rights or otherwise).

For the purposes of this Condition, Shares which have been unconditionally allotted but not issued before the Offer becomes or is declared unconditional, whether pursuant to the exercise of any outstanding subscription or conversion rights or otherwise, shall be deemed to carry the voting rights they will carry upon issue;

##### UK Takeover Code

- (b) the following not having occurred, namely the UK Takeover Code becoming applicable, for any reason, to Universal Coal;

##### Antitrust

- (c) to the extent that IchorCoal has become aware as at the end of the Offer Period that the Offer constitutes a concentration or is otherwise subject to merger control filing, notification or approval in any jurisdiction or the approval of the competent agency in that jurisdiction is required before IchorCoal can acquire Shares pursuant to the Offer, the receipt of evidence, in a form and substance satisfactory to IchorCoal, that in relation to the Offer and the acquisition of any Shares in, or control of, Universal Coal by IchorCoal, all applicable filings and notifications have been made, all applicable waiting and/or other relevant time periods have expired, lapsed or been terminated and any required approvals have been obtained, unconditionally or, if subject to conditions, on terms reasonably satisfactory to IchorCoal;

##### Statutory obligations

- (d) all statutory or regulatory obligations that are material in the context of the Offer or the acquisition by IchorCoal of any Shares in, or control of, Universal Coal or any member of the Wider UNV Group in any applicable jurisdiction of which IchorCoal has become aware as at the end of the Offer Period having been complied with;

##### No Actions by regulatory authority

- (e) no central bank, government or governmental, quasi-governmental, supranational, statutory or regulatory or investigative body, trade agency, court or professional association, institution or professional body or other body or person having statutory or regulatory competence in any jurisdiction (each a "**Relevant Authority**") having instituted, implemented or threatened, or having decided to take, institute or threaten, any action, proceeding, suit, investigation, inquiry or reference, or having made, proposed or enacted any statute, regulation or order, or taken any other steps, and there not continuing to be outstanding any statute, regulation or order in any jurisdiction, in each case

which is likely to be material in the context of the Offer and which would or might reasonably be expected to:

- (i) make the Offer or its implementation or the acquisition of any Shares or other securities in, or control of, Universal Coal by IchorCoal or any member of the Wider IchorCoal Group void, illegal or unenforceable under the laws of any jurisdiction or, to an extent which is material, otherwise directly or indirectly restrain, prohibit, restrict or delay the implementation or performance of the Offer or impose additional conditions or obligations with respect to it, or otherwise materially challenge or interfere with the Offer or the acquisition of any Shares or other securities in, or control of, Universal Coal by IchorCoal or any member of the Wider IchorCoal Group;
  - (ii) require, prevent or delay the divestiture or alter the terms envisaged for such divestiture by any member of the Wider UNV Group or any member of the Wider UNV Group of all or any portion of their respective businesses, assets or property, or impose any limitation on the ability of any of them to conduct their respective businesses or own their assets or property or any part of them, in any case to an extent which is material in the context of the UNV Group, or the IchorCoal Group, as the case may be, taken as a whole;
  - (iii) impose any limitation on, or result in a delay in, the ability of any member of the Wider IchorCoal Group or the Wider UNV Group to acquire or to hold or exercise effectively, directly or indirectly, all or any rights of ownership of any Shares or other securities (whether acquired pursuant to the Offer or otherwise) in, or to exercise management control over, any member of the Wider UNV Group, in any case to an extent which is material in the context of the UNV Group, or the IchorCoal Group, as the case may be, taken as a whole;
  - (iv) save pursuant to the Offer require any member of the Wider IchorCoal Group or the Wider UNV Group to acquire or offer to acquire any Shares or other securities owned by any third party in the capital of any member of the Wider UNV Group or the Wider IchorCoal Group or any asset owned by any third party, in any case to an extent which is material in the context of the UNV Group, or the IchorCoal Group, as the case may be, taken as a whole;
  - (v) result in any member of the Wider UNV Group or the Wider IchorCoal Group ceasing to be able to carry on business under any name which it presently does so;
  - (vi) impose any limitation on the ability of any member of the Wider UNV Group or the Wider IchorCoal Group to integrate or co-ordinate its business, or any part of it, with all or any part of the businesses of any other member of the Wider UNV Group and/or Wider IchorCoal Group, in any case to an extent which is material in the context of the UNV Group, or the IchorCoal Group, as the case may be, taken as a whole; or
  - (vii) otherwise adversely affect any or all of the businesses, financial position, assets, trading results or prospects of any member of the Wider IchorCoal Group or the Wider UNV Group, in any case to an extent which is material in the context of the UNV Group, or the IchorCoal Group, as the case may be, taken as a whole;
- (f) all regulatory and statutory obligations of which IchorCoal has become aware as at the end of the Offer Period having been complied with and all applicable waiting and other time periods during which any such Relevant Authority could decide to take, institute, implement or threaten such action, proceeding, suit, investigation, inquiry or reference under the laws of any jurisdiction, in each case which would have a material adverse effect on the UNV Group or the IchorCoal Group, having expired, lapsed or been terminated;

#### **Notifications and authorisations**

- (g) all necessary material notifications and filings having been made in connection with the Offer and all material statutory and regulatory obligations in connection with the Offer in any jurisdiction of which IchorCoal has become aware as at the end of the Offer Period having been complied with and all

material authorisations, orders, recognitions, grants, consents, clearances, confirmations, certificates, licences, permissions and approvals ("**Authorisations**") deemed reasonably necessary or appropriate by IchorCoal in any jurisdiction for, or in respect of, the Offer and the acquisition or the proposed acquisition of the Shares by IchorCoal or any member of the IchorCoal Group having been obtained in terms reasonably satisfactory to IchorCoal from all appropriate Relevant Authorities or from any persons or bodies with whom any member of the Wider IchorCoal Group or the Wider UNV Group has entered into contractual arrangements, all or any applicable waiting and other time periods having expired, lapsed or been terminated (as appropriate) and all such Authorisations (together with all material Authorisations deemed reasonably necessary or appropriate to carry on the business of any member of the Wider UNV Group) remaining in full force and effect at the time at which the Offer becomes otherwise unconditional and there being no notice of any intention to revoke, suspend, restrict, amend or not to renew any such Authorisations the effect of which will be material in the context of the UNV Group, or the IchorCoal Group, as the case may be, taken as a whole;

**Certain matters arising as a result of any arrangement, agreement etc.**

- (h) save as disclosed in the Annual Report, as publicly announced through a Regulatory Information Service under the code 'UNV' prior to the date of the Announcement or as disclosed in writing to IchorCoal or its advisers by or on behalf of Universal Coal prior to the date of the Announcement, there being no provision of any arrangement, agreement, licence, permit, franchise or other instrument to which any member of the Wider UNV Group is a party or by or to which any such member or any of their assets is or may be bound, entitled or subject which, in consequence of the Offer or the acquisition or proposed acquisition of any Shares or other securities in Universal Coal or any member of the UNV Group by any member of the Wider IchorCoal Group, or a change in the control or management of Universal Coal or any member of the UNV Group, could or might reasonably be expected to result in:
- (i) any material monies borrowed by or other material indebtedness or material liabilities, actual or contingent, of any member of the Wider UNV Group being or becoming repayable or being capable of being declared repayable immediately or prior to their stated maturity, or the ability of any such member to borrow or incur indebtedness being withdrawn, prohibited or adversely affected or being capable of being withdrawn, prohibited or adversely affected to a material extent;
  - (ii) the creation or enforcement of any mortgage, charge or other security interest over the whole or any material part of the business, property or assets of any member of the Wider UNV Group or any such mortgage, charge or security interest (whenever arising or having arisen) becoming enforceable;
  - (iii) any such arrangement, agreement, licence, permit, franchise or other instrument being, or becoming capable of being, terminated or adversely modified or affected or any action being taken of an adverse nature or any obligation or liability arising thereunder to a material extent;
  - (iv) any material assets or interests of any member of the Wider UNV Group being or falling to be disposed of or charged or any right arising under which any such asset or interest could be required to be disposed of or charged, other than in the ordinary course of business;
  - (v) any material member of the Wider UNV Group ceasing to be able to carry on business under any name which it presently does so or any person presently not able to carry on business under any name which any member of the Wider UNV Group presently does becoming able to do so;
  - (vi) material rights, liabilities, obligations or interests or business of any member of the Wider UNV Group in or with any firm or body or person, or any arrangements relating to such interests or business, being terminated or, to a material extent, being modified or adversely affected;
  - (vii) any material liability (actual, contingent or otherwise) being created; or

- (viii) the value or the business, financial or trading position, results or prospects of any member of the Wider UNV Group being prejudiced or adversely affected to a material extent,

and no event has occurred which, under any such provision, could result in any of the events or circumstances referred to in sub-paragraphs (h)(i) to (h)(viii) (in any such case to an extent which is material in the context of the UNV Group taken as a whole);

#### **Certain events occurring since 1 July 2014**

- (i) since 1 July 2014 and save as disclosed in the Annual Report, as publicly announced through a Regulatory Information Service under the code 'UNV' prior to the date of the Announcement, or as disclosed in writing to IchorCoal or its advisers by or on behalf of Universal Coal prior to the date of the Announcement, no member of the Wider UNV Group having:
  - (i) issued or agreed to issue or authorised or proposed the issue of additional shares of any class, or securities convertible into, or rights, warrants or options to subscribe for or acquire, any such shares or convertible securities, save as between Universal Coal and any wholly-owned subsidiaries of Universal Coal and except for any options granted, and Shares unconditionally issued upon or pursuant to the exercise of options granted, prior to the date of the Announcement under the Universal Coal Share Incentive Scheme;
  - (ii) recommended, declared, paid or made or proposed to recommend, declare, pay or make any bonus issue, dividend or other distribution whether in cash or otherwise (save to Universal Coal or a wholly-owned subsidiary of the Universal Coal);
  - (iii) made or authorised or proposed or announced any change in its loan capital, outside the ordinary course of business;
  - (iv) other than pursuant to the Offer and save for transactions between a wholly-owned subsidiary of Universal Coal and Universal Coal or another wholly-owned subsidiary of Universal Coal and other than in the ordinary course of business, implemented, effected, authorised or proposed or announced its intention to implement, effect, authorise or propose any merger, demerger, reconstruction, amalgamation, scheme, commitment or acquisition, disposal, transfer, mortgage, charge or creation of any security interest of or over any asset or shares in any undertaking, or any right, title or interest in any asset which is material in the context of the UNV Group taken as a whole;
  - (v) issued, authorised or proposed or announced an intention to authorise or propose, the issue of any debentures, or, save in the ordinary course of business, incurred or increased any indebtedness or contingent liability;
  - (vi) purchased, redeemed or repaid or proposed or announced any proposal to purchase, redeem or repay any of its own shares or other securities or the equivalent, or reduced or proposed the reduction of, or made or proposed the making of any other change to, any part of its share capital;
  - (vii) entered into or varied any contract, including any guarantee, transaction or binding commitment (whether in respect of capital expenditure or otherwise) which is of a long-term or unusual or onerous nature or magnitude or which would be restrictive of the business of any member of the Wider UNV Group in any way or which involves or could involve an obligation of such a nature or magnitude and which is other than in the ordinary course of business, or announced any intention to do so;
  - (viii) entered into or varied or made any offer which remains open for acceptance to enter into or vary the terms of any contract, including any service contract, with any of the directors or senior executives of any member of the Wider UNV Group;
  - (ix) entered into any contract or commitment restricting the ability of any member of the Wider UNV Group to compete with any other person;

- (x) taken or proposed any corporate action or passed any resolution for or had any legal proceedings instituted against it for its winding-up (voluntarily or otherwise), dissolution or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of all or any of its assets and revenues or any analogous proceedings or steps in any jurisdiction or for the appointment of any analogous person in any jurisdiction;
- (xi) been unable or having admitted in writing that it is unable to pay its debts or having stopped or suspended, or threatened to stop or suspend, payment of its debts generally or ceased or threatened to cease carrying on all or a substantial part of its business;
- (xii) waived or compromised any material claim against any person otherwise than in the ordinary course of business;
- (xiii) terminated or varied the terms of any agreement or arrangement between any member of the UNV Group and any other person in a manner which would or might reasonably be expected to have a material adverse effect on the financial position of the UNV Group taken as a whole;
- (xiv) made or agreed or consented to any significant change to the terms of the trust deeds constituting the pension schemes (if any) established for its directors and/or employees and/or their dependents or to the benefits which accrue, or to the pensions which are payable under such schemes, or to the basis on which qualification for or accrual or entitlement to such benefits or pensions are calculated or determined or to the basis upon which the liabilities (including pensions) of such pension schemes are funded or made, or agreed or consented to any change to the trustees involving the appointment of a trust corporation;
- (xv) made any alteration to its articles of association, or other constitutional documents; or
- (xvi) entered into or made an offer which remains open for acceptance to enter into any agreement, commitment or arrangement or passed any resolution or announced any intention with respect to any of the transactions, matters or events referred to in this paragraph 1(i);

and in any such case, the effect of which is of very considerable significance striking at the central purpose of the Offer;

- (j) during the Offer Period, no member of the UNV Group having:
  - (i) while IchorCoal exercises or controls the exercise of 50% or less of the voting rights attaching to all the Shares:
    - (A) issued or agreed to issue or authorised or proposed the issue of additional shares of any class, or securities convertible into, or rights, warrants or options to subscribe for or acquire, any such shares or convertible securities, save as between Universal Coal and any wholly-owned subsidiaries of Universal Coal and except for any options granted, and Shares unconditionally issued upon or pursuant to the exercise of options granted, prior to the date of the Announcement under the Universal Coal Share Incentive Scheme;
    - (B) other than pursuant to the Offer and save for transactions between a wholly-owned subsidiary of Universal Coal and Universal Coal or another wholly-owned subsidiary of Universal Coal and other than in the ordinary course of business, implemented, effected, authorised or agreed to any disposal, transfer, mortgage, charge or creation of any security interest of or over any asset or shares in any undertaking, or any right, title or interest in any asset which is the whole or a substantial part of the business or property of the Group member and material in the context of the UNV Group taken as a whole; or
    - (C) purchased, redeemed or repaid or proposed or announced or resolved to purchase, redeem or repay any of its own shares or other securities or the equivalent, or reduced or proposed the reduction of, or made or proposed the making of any other change to, any part of its share capital; or

- (ii) taken or proposed any corporate action or passed any resolution for or had any legal proceedings instituted against it for its winding-up (voluntarily or otherwise), dissolution or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of all or any of its assets and revenues or any analogous proceedings or steps in any jurisdiction or for the appointment of any analogous person in any jurisdiction;

and in any such case, the effect of which is of very considerable significance striking at the central purpose of the Offer;

**No adverse change, litigation, regulatory enquiry or similar**

- (k) since 1 July 2014, and save as disclosed in the Annual Report, as publicly announced through a Regulatory Information Service under the code 'UNV' prior to the date of the Announcement or as disclosed in writing to IchorCoal or its advisers by or on behalf of Universal Coal prior to the date of the Announcement:
  - (i) no investigation or enquiry by any Relevant Authority having statutory or regulatory competence (save as a result of the Offer) and no litigation, arbitration proceedings, prosecution or other legal proceedings to which any member of the UNV Group is or may become a party, whether as plaintiff or defendant or otherwise, having been threatened in writing, announced or instituted by or remaining outstanding against or in respect of any member of the Wider UNV Group which, in any such case, is material in the context of the UNV Group taken as a whole;
  - (ii) there having been no material adverse change in the business, assets, financial position, trading results, profits or prospects of the UNV Group taken as a whole;
  - (iii) no contingent or other liability of any member of the Wider UNV Group having arisen or been created which would or might be likely materially and adversely to affect the UNV Group taken as a whole; or
  - (iv) no steps having been taken which would or are reasonable likely to result in the withdrawal, cancellation, termination or modification of any licence held by any member of the Wider UNV Group which is necessary for the proper carrying on of its business and which, in any case, is material in the context of the Wider UNV Group taken as a whole;

**No discovery of certain matters regarding information, liabilities and environmental issues**

- (l) save as disclosed in the Annual Report, as publicly announced through a Regulatory Information Service under the code 'UNV' prior to the date of the Announcement or as disclosed in writing to IchorCoal or its advisers by or on behalf of Universal Coal prior to the date of the Announcement, IchorCoal not having discovered that:
  - (i) any financial, business or other information concerning the Wider UNV Group which has been disclosed at any time by any member of the Wider UNV Group, whether publicly or, in the context of the Offer, to any member of the Wider IchorCoal Group or its advisers, is misleading or contains misrepresentations of fact or omits to state a fact necessary to make the information contained therein not misleading, in any such case to an extent which is material;
  - (ii) any member of the Wider UNV Group is subject to any liability, contingent or otherwise, arising other than in the ordinary course of business and which is material in the context of the UNV Group taken as a whole;
  - (iii) any past or present member of the Wider UNV Group or predecessor of any member of the Wider UNV Group has not complied with all applicable laws, statutes, ordinances or regulations of any jurisdiction or other requirement of any Relevant Authority with regard to environmental matters including, without limitation, to the emission, disposal, discharge, spillage or leakage of any waste or hazardous substance or any substance likely to impair the environment or harm human health, or there has otherwise been any such activity, which non-compliance or any other

emission, disposal, discharge, spillage or leakage which has occurred would be likely to give rise to any liability (whether actual or contingent) on the part of any member of the Wider UNV Group which would be material in the context of the UNV Group taken as a whole;

- (iv) there is, or is likely to be, any liability (whether actual or contingent) to make good, remediate, repair, reinstate or clean up any property now or previously owned, occupied, made use of, or harmed, contaminated or in any way affected by any past or present member of the Wider UNV Group or any predecessor of any member of the Wider UNV Group or any controlled waters under any environmental legislation, regulation, notice, circular or order of any Relevant Authority or any common law liability (including, without limitation, contractual) which, in any such case, would be material in the context of the UNV Group taken as a whole;
- (v) that circumstances exist whereby a person or class of persons or any entity or entities would be likely to have any claim or claims in respect of any product, by-product or process or materials used or existing now or previously sold or carried out by or in any way dealt with or handled by or resulting from any past or present member of the Wider UNV Group which claim or claims would be likely to give rise to any liability, whether actual or contingent, which would be material in the context of the UNV Group taken as a whole; or
- (vi) that the Wider UNV Group has not complied with any applicable law or regulation governing the conduct of its business in any respect which would or might be likely materially and adversely to affect the UNV Group taken as a whole;

#### **IchorCoal Shareholder matters**

- (m) the passing at a general meeting of IchorCoal (or at any adjournment thereof) of the resolution to approve (within the meaning of Section 2:107a of the Dutch Civil Code) the acquisition of Shares pursuant to the Offer;
- (n) the passing of (i) a resolution of the shareholders of IchorCoal to issue the Placing Shares and granting authority to the directors of IchorCoal to allot the Placing Shares pursuant to the Underwriting Agreement and (ii) such other resolutions as may be required in relation thereto;

#### **Anti-corruption**

- (o) neither of the following having occurred:
  - (i) any member of the Wider UNV Group or any person that performs or has performed services for or on behalf of any such company is or has engaged in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010, the Prevention and Combating of Corrupt Practices Act 12 of 2004 of the Republic of South Africa or any other applicable anti-corruption legislation; or
  - (ii) any member of the Wider UNV Group is ineligible to be awarded any contract or business under section 23 of the Public Contracts Regulations 2006 or section 26 of the Utilities Contracts Regulations (2006) (each as amended).

#### **No criminal property**

- (p) it not being the case that any asset of any member of the Wider UNV Group constitutes criminal property as defined by section 340(3) of the Proceeds of Crime Act 2002 (but disregarding paragraph (b) of that definition).

## **2 Waiver of Conditions**

To the extent permitted by law, IchorCoal reserves the right to waive, in whole or in part, all or any of the Conditions in paragraph 1 above with the exception of the Conditions in paragraphs 1(m) and 1(n).

## APPENDIX 2

### SUMMARY OF UNDERWRITING AGREEMENT

On 20 August 2015, IchorCoal N.V. (“**IchorCoal**”) and Sapinda Invest S.á r.l. (“**Sapinda**”) entered into an Underwriting Agreement (the “**Agreement**”).

The Agreement provides that IchorCoal will issue ordinary bearer shares with a nominal value of EUR 0.10 each in the capital of IchorCoal at a price to be determined to existing shareholders. Should the shareholders fail to subscribe for these shares, Sapinda will subscribe for such shares, up to a maximum aggregate subscription price of EUR 48,000,000, in order that IchorCoal may satisfy its payment obligations to Universal Coal Plc shareholders accepting IchorCoal’s offer to acquire the entire issued share capital of Universal Coal Plc (“**Offer**”).

The obligations of Sapinda under the Agreement are conditional on IchorCoal procuring the following within 90 days of the date of the Agreement:

- 1) the distribution of a circular to its shareholders informing them of the share issuance and the Offer; and
- 2) the holding of a general meeting and the passing of the following resolutions:
  - a) granting IchorCoal authority to issue the ordinary bearer shares under the condition precedent that IchorCoal’s management and supervisory boards resolve the precise number of the ordinary bearer shares and the price at which such shares are to be offered;
  - b) that the Offer be approved; and
  - c) that pre-emptive rights be disapplied.

The Agreement contains typical warranties including (i) that all statements of fact contained in the circular, the announcement of the Offer and the offer document are true and accurate in all material respects and not incomplete or misleading in any material respect; and (ii) that there are no facts known or which could on reasonable enquiry have been known to IchorCoal which are not disclosed in the offer document and which by their omission would or might reasonably be considered to make any statement therein inaccurate or misleading in any material respect.

## APPENDIX 3

### Notice of the Extraordinary General Meeting of Shareholders of Ichor Coal N.V. to be held on 4 November 2015

Ichor Coal N.V. (the **Company**) invites its shareholders to its Extraordinary General Meeting of Shareholders (**EGM**) to be held at the World Trade Center Schiphol Business & Conference Center, Schiphol Boulevard 127, 1118 BG Schiphol, the Netherlands, on 4 November 2015, at 12.00 hours (CET). The language of the meeting shall be in English.

The agenda items of the EGM will be as follows:

#### Agenda

1. **Opening and announcements**
2. **Approval (within the meaning of Section 2:107a of the Dutch Civil Code) of the acquisition of the remaining shares in Universal Coal plc (the Transaction) (vote)**
3. **Issuance of shares and exclusion of pre-emptive rights**
  - (a) Issuance of shares against payment in cash (vote)
  - (b) Exclusion of pre-emptive rights (vote)
4. **Proposal to amend the Articles of Association (vote)**
5. **Appointment of Mr Malak as member of the Supervisory Board (vote)**
6. **Any other business and close of the meeting**

#### Meeting documents

The agenda above and the explanatory notes thereto, a proposal for the amendment of the Articles of Association and explanatory notes thereto, as well as the shareholders' circular describing the Transaction and the particulars of Mr Malak, are available at the Company's website: [www.ichorcoal.com](http://www.ichorcoal.com). The documents are also available for inspection and can be obtained free of charge at the offices of the Company and via GFEI IR Services GmbH referred to below.

#### Record Date / Registration to Vote

Recognised as persons entitled to attend the meeting will be those persons who hold shares of the Company on 7 October 2015 (the **Record Date**), following the processing of all additions and withdrawals as at the Record Date. The foregoing applies by analogy to usufructuaries of bearer shares if they hold the voting rights to such shares.

Holders of bearer shares intending to attend the EGM in person or by proxy are asked to apply for registration of their shares for attendance from 30 September 2015 to 28 October 2015 via their custodian bank at GFEI IR Services GmbH (Address: Office Center Plaza, Mailänder Strasse 2, 30539 Hannover, Germany; eFax: +49 511 47402319) as the registration agent. The registration application needs to be accompanied by a certification of the relevant custodian bank stating the number of shares held by the shareholder at the Record Date. The registration will be confirmed by the registration statement issued by GFEI IR Services GmbH, which will serve as the admission ticket to the meeting. The Company will have the right not to accept any registrations that are not made in accordance with the instructions in this notice and the Company is not obliged to contact a shareholder who otherwise files any incomplete or otherwise incorrect meeting notice.

## **Voting by Proxy**

The right to attend and to vote at the meeting may be exercised by a written proxy. A form of a written proxy is available at the Company's website. The following must be received by the Management Board no later than 28 October 2015 at 17:00 hours (CET): (i) the written proxy; (ii) a photocopy of the passport of the signatory; and (iii) if the proxy is granted by a legal entity: an excerpt from the trade register showing the signatory's authority to represent the shareholder. The proxy to represent a shareholder may (but needs not) be granted to Ms J.J.C.A. Leemrijse, civil law notary with Allen & Overy LLP, by sending an email with proxy and voting instructions to [hv@gfei.de](mailto:hv@gfei.de) no later than 28 October 2015 at 17:00 hours (CET). A copy of the written proxy must be shown at the registration prior to the start of the meeting.

As at 29 September 2015 the issued share capital of the Company amounts to EUR 6,791,996.60, divided into 67,919,966 ordinary shares of EUR 0.10 each.

For further information please see the Company's website [www.ichorcoal.com](http://www.ichorcoal.com).

All communications to the Company or the Management Board in connection with the foregoing must be addressed as follows: Ichor Coal N.V., 30 Jellicoe Avenue, 3rd Floor, Rosebank 2196, South Africa, tel: +27 (11) 268 11 00; fax: +27 (11) 268 03 78; email: [info@ichorcoal.com](mailto:info@ichorcoal.com).

The Management Board and the Supervisory Board

Rosebank, South Africa, 30 September.

## APPENDIX 4

### **Explanatory notes to the agenda of the Extraordinary General Meeting of Shareholders (EGM) of Ichor Coal N.V. (the Company) to be held on 4 November 2015**

#### **Agenda item 2**

*Approval (within the meaning of Section 2:107a of the Dutch Civil Code) of the acquisition of the remaining shares in Universal Coal plc (the **Transaction**).*

This item will be voted on.

Reference is made to the Shareholders Circular for an explanation of the Transaction. For the avoidance of doubt it is hereby noted that on 20 August 2015 the Company announced its intention to make an offer for the shares in Universal Coal plc but that any actual offer will be made on or around 29 September 2015. Non-material terms and conditions of the actual offer may differ from the information included in the Shareholders Circular. Further information about the offer can be found in the investor presentation and offer document that are available on the website of the Company ([www.ichorcoal.com](http://www.ichorcoal.com)).

#### **Agenda item 3(a)**

*Issuance of shares against payment in cash.*

The Company intends to raise funds up to EUR 48,000,000, in order to fund the Transaction and/or for any other purpose, by means of a share issue to certain qualified investors by way of a private placement. The shares will be issued at an approximate issue price of EUR 3.40 and subject to the terms and conditions of a subscription agreement between the Company and the investors or, as the case may be, the listing agent or the underwriter. The final issue price will be equal to the average closing price of the shares during 5 to 10 trading days before the date of the issue of the new shares.

Therefore it is proposed to issue new bearer shares in the capital of the Company against an issue price to be determined by the Management Board, taking into account the above. The share issue therefore takes place subject to the condition precedent that the Management Board, with the approval of the Supervisory Board, resolves on the precise number of new shares to be issued.

For the avoidance of any doubt it is noted that the share issue is not intrinsically linked to the Company effecting the Transaction (i.e. if the Transaction would for any reason not take place, the Company can, but is under no obligation, to use the proceeds for one or more other mergers or acquisitions).

The Company will apply for listing of the new shares on the Entry Standard segment on the Open Market of the Frankfurt Stock Exchange.

The resolution that will be adopted on the basis of this proposal does not affect the designation of the Management Board as the competent body of the Company to issue shares and to grant rights to subscribe for shares in relation to such an issuance or grant, as resolved in the Annual General Meeting on 25 June 2015. The number of new shares that will be issued exceeds the current mandate of the Management Board. The aforementioned designation will remain in full force and effect.

#### **Agenda item 3(b)**

*Exclusion of pre-emptive rights.*

This item will be voted on.

It is proposed to exclude pre-emptive rights of existing shareholders in connection with the issuance of shares or grant of rights to subscribe for shares as proposed under agenda item 3(a), in order to effect the capital increase in a time and cost efficient manner. The new shares will be issued by way of a private placement with institutional and other types of professional investors. Completing the capital raise by way of a private placement considerably increases the certainty of the Transaction, which is deemed in the best interest of the Company and its shareholders. The issue price of the new shares will be negotiated with the subscribers for the shares and could, but need not be, below the price for which the Company's shares are then traded if this would allow the Company to raise the funds it then requires from one or more subscribers.

The resolution that will be adopted on the basis of this proposal does not affect the designation of the Management Board as the competent body of the Company to exclude or restrict pre-emptive rights of existing shareholders of the Company as resolved in the Annual General Meeting on 25 June 2015.

#### **Agenda item 4**

*Proposal to amend the Articles of Association.*

This item will be voted on.

It is proposed to amend the articles of association of the Company, among other things to reflect certain changes that were introduced in Dutch company law following the enactment of the Dutch law on Management and Supervision. For a detailed explanation of the proposed amendments reference is made to the explanatory notes to the amendment that form part of the meeting documents for this EGM and which can be found at the website of the Company ([www.ichorcoal.com](http://www.ichorcoal.com)), in the electronic Bundesanzeiger and at the registered office of the Company. The amendment of the articles of association will be in accordance with the proposal for amendment of the articles that also forms part of the aforementioned meeting documents for the EGM.

This proposal includes granting a power of attorney to every member of the Management Board and every civil-law notary, deputy civil-law notary, paralegal and notarial assistant at Allen & Overy LLP, Attorneys at Law, Civil-Law Notaries and Tax Consultants, in Amsterdam, the Netherlands, to have the notarial deed of amendment of the Articles of Association executed.

#### **Agenda item 5**

*Appointment of Mr Malak as member of the Supervisory Board.*

This item will be voted on.

The Supervisory Board proposes to appoint Mr Tarek Malak as member of the Supervisory Board with effect as of the end of this meeting for a period of approximately four (4) years ending immediately following the Annual General Meeting of 2019. The term of office of four (4) years is in accordance with article 20.1 of the Company's articles of association.

The Supervisory Board nominates Mr Tarek Malak for appointment as a member of the Supervisory Board of the Company on the basis of his relevant knowledge and wide experience. Mr. Malak has been a senior member of the portfolio management team of Sapinda since 2011.

Mr. Malak joined Sapinda from N.M. Rothschild & Sons, where he worked in the bank's Financial Advisory Group, specializing in M&A and debt restructuring transactions for large and mid-cap clients.

In 2002, Mr Malak graduated from the University of St. Gallen, Switzerland, with a Masters' Degree in Business and Economics.

Mr Malak will receive no remuneration for his services during 2015. This is in line with the proposal for remuneration of Supervisory Board members that was adopted at the Annual General Meeting on 25 June 2015.

Attached to these explanatory notes are the particulars of Mr Malak.

## GLOSSARY

<b>Announcement</b>	the announcement of IchorCoal's firm intention to make an offer for Universal Coal dated 21 August 2015;
<b>Annual Report</b>	the annual report and accounts of Universal Coal for the year ended 30 June 2014;
<b>ASIC</b>	the Australian Securities and Investments Commission;
<b>ASIC Relief</b>	the ASIC relief described in the document;
<b>ASX</b>	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates which is known as the Australian Securities Exchange;
<b>CDI</b>	a unit of beneficial interest in one Share known as a CHESSE Depositary Interest;
<b>Conditions</b>	the conditions of the Offer set out in Appendix 1 to this document, and <b>Condition</b> means any one of them;
<b>IchorCoal</b>	Ichor Coal N.V., a public limited company under the Dutch law ( <i>naamloze vennootschap</i> ), having its official seat in Amsterdam, the Netherlands, its office address at 30 Jellicoe Avenue, 3rd Floor, Rosebank 2196, South Africa and registered in the Dutch Commercial Register under number 53748662;
<b>IchorCoal Group</b>	IchorCoal and its subsidiary undertakings and, where the context permits, each of them;
<b>Offer Period</b>	the period beginning on and including 21 August 2015 (being the date of the Announcement) and ending on 1.00 p.m. (London time) on 3 December 2015, except to the extent that ASIC Relief is obtained and permits the Offer Period to be extended in which case the Offer Period will end on the latest date notified as the end of the Offer Period by IchorCoal on a Regulatory Information Service;
<b>Placing Shares</b>	the shares of IchorCoal to be issued and subscribed for in accordance with the terms of the Underwriting Agreement;
<b>Regulatory Information Service</b>	the ASX Markets Announcements Platform administered by the ASX Market Announcements Office;
<b>Sapinda Holding</b>	Sapinda Holding B.V., (RSIN 821145447) a company registered in the Netherlands with official office address at World Trade Center, Schipol Boulevard 127, G4.02, 1118 BG Schipol, Netherlands;
<b>Sapinda Invest</b>	Sapinda Invest S.a.r.l., (registered number B187176) a limited liability company registered in the city of Luxembourg, Grand

Duchy of Luxembourg with official office address at 2-4 avenue Marie-Therese L-2132, Luxembourg;

<b>Shares</b>	the existing unconditionally allotted and/or issued and fully paid ordinary shares of 5 pence each in the capital of Universal Coal (including such shares represented by CDIs) and any further such shares which are unconditionally allotted or issued while the Offer remains open for acceptance and “ <b>Share</b> ” means one of them;
<b>UK Takeover Code</b>	the City Code on Takeovers and Mergers;
<b>Underwriting Agreement</b>	the underwriting agreement entered into on 20 August 2015 between Sapinda Invest and IchorCoal in connection with the financing of the Offer;
<b>Universal Coal or the Company</b>	Universal Coal PLC, a public company incorporated in England and Wales with registered number 4482856;
<b>UNV Group</b>	Universal Coal and its subsidiary undertakings and, where the context permits, each of them;
<b>UNV Share Incentive Scheme</b>	the Employee Share and Option Plan referred to in the Annual Report;
<b>Wider IchorCoal Group</b>	IchorCoal and its associated undertakings and any other body corporate, partnership, joint venture or person in which IchorCoal and all such undertakings (aggregating their interests) have a Significant Interest; and
<b>Wider UNV Group</b>	Universal Coal and associated undertakings and any other body corporate, partnership, joint venture or person in which Universal Coal and such undertakings (aggregating their interests) have a Significant Interest.