



Allen & Overy LLP

Notarial Record of the meeting of shareholders of  
Ichor Coal N.V. held 31 October 2017

JL/AO/0103743-0000014

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## NOTARIAL RECORD OF PROCEEDINGS OF A MEETING

(*Ichor Coal N.V.*)

On the thirty-first day of October two thousand and seventeen, Joyce Johanna Cornelia Aurelia Leemrijse, civil law notary in Amsterdam, the Netherlands, at the request of the Chairperson (as defined below) of the extraordinary general meeting of shareholders of Ichor Coal N.V., a public company under Dutch law (*naamloze vennootschap*), having its official seat in Amsterdam, the Netherlands, its office address at 30 Jellicoe Avenue, third floor, Rosebank 2196, South Africa and registered in the Dutch Commercial Register under number 53748662 (**Ichor Coal** or the **Company**), attended the extraordinary general meeting of shareholders of Ichor Coal (the **EGM** or the **Meeting**), held at Schiphol Boulevard 127, G4.02, 1118 BG Schiphol, the Netherlands, for the purpose of taking minutes of the proceedings of the Meeting. \_\_\_\_\_

The civil law notary, established the following: \_\_\_\_\_

In absence of the chairperson of the supervisory board of Ichor Coal (the **Supervisory Board**), Ms. Nonkululeko Nyembezi, member of the management board of Ichor Coal (the **Management Board**), acts as chairperson of this Meeting (the **Chairperson**). \_\_\_\_\_



**Item 1. Opening and announcements.** \_\_\_\_\_

The Chairperson opens the EGM at noon (12:00 pm) and welcomes all present. The Chairperson states that the EGM was convened by a notice that was placed on the website of the Company on the thirteenth day of October two thousand and seventeen. The Meeting was also announced on the seventeenth day of October two thousand and seventeen in the electronic 'Bundesanzeiger'. The complete agenda for the Meeting and the explanatory notes thereto and the particulars of Mr M. Meister, were made available at the Company's website as of the day of the convocation of the Meeting. These documents were also available for inspection at the Company's head office in Rosebank, South Africa and via GFEI IR Aktiengesellschaft, a company under the laws of the Federal Republic of Germany (**GFEI IR AG**), which company was entrusted with the task of providing and operating the electronic voting system that is used to collect the votes that are cast in the Meeting. The Chairperson establishes that the formal requirements provided by Dutch law and German law, to the extent required, and the articles of association of the Company (the **Articles of Association**) for holding an extraordinary general meeting of shareholders, have been complied with. \_\_\_\_\_

Further, the Chairperson notes that on the thirty-first day of October two thousand and seventeen, the issued capital of the Company consists of seventy-four million seven hundred eighty-one thousand seventy-seven (74,781,077) shares with a nominal value of ten euro cent (EUR 0.10) each and that the Company does not hold shares in its own capital. She then informs the Meeting that, according to the attendance list, three (3) shareholders are present or represented. Together they are authorised to cast twenty-four million three hundred and twenty-three thousand nine hundred and forty-seven (24,323,947) votes. In respect of the entire issued capital thirty-two point five per cent (32.5%) of the share capital of the Company is represented. \_\_\_\_\_

The Chairperson then introduces the persons present at the Meeting, (i) Mr Lars Kuhnke, representative of GFEI IR AG, who will collect the votes on the proposals that will be voted on in this Meeting, (ii) Mr Lars Windhorst, member of the Supervisory Board (participating by phone), (iii) Mr Markus Meister, nominee for appointment as an independent member of the Supervisory Board, and (iv) Joyce Leemrijse, civil law notary and legal counsel to the Company and, acting in such capacity, available for any questions in relation to Dutch corporate law and entrusted with preparing the notarial record of the proceedings of the Meeting. —

The Chairperson informs those present at the Meeting that (i) the language of the Meeting will be English, and (ii) if someone wishes to make a comment or ask a question during the Meeting, this person will have to state his/her name and, if applicable, the name of the shareholder that he/she is representing, in view of recording the Meeting. The Chairperson then proceeds with the second agenda item.

**Item 2. Proposal to approve the disposal of the Vunene and Penumbra mining operations (within the meaning of Section 2:107a of the Dutch Civil Code).** —



The Chairperson first provides background information on the disposal of the Vunene and Penumbra mining operations, for which approval is requested. The Company concluded a sale of shares and claims agreement for the sale of its seventy-four per cent (74%) interest in Vunene Mining (Pty) Ltd (**Vunene**) on the seventh day of August two thousand and seventeen. Furthermore the Company has reached an advanced stage of agreeing a sale of shares and claims agreement in respect of its seventy-four per cent (74%) interest in Penumbra Coal Mining (Pty) Ltd (**Penumbra**). The proposed disposals will be conditional upon shareholder approval in this Meeting and obtaining ministerial consent for the transfer of the mining rights in accordance with South African mining legislation. The Chairperson explains that the transaction has a strong strategic rationale as it allows the Company to focus on the remaining assets which are now cash generative and are both growing strongly. Furthermore, the surface coal reserves were largely mined out at Vunene and the capital expenditure requirement to complete the refurbishment of the underground mine was proving excessively high. Given the relatively small size of Penumbra, its proximity to Vunene and therefore strong synergies between the two, it made commercial sense to dispose of the two mines together. The sale of these two assets will lead to a fresh review of the Company's strategy to decide on the desired level of growth and participation in future acquisitions if any, which may lead to a change in the risk/return profile of the group. Then the Chairperson explains that the total consideration to be received for the disposal of Vunene and Penumbra amounts to three hundred and forty-five million South African rand (ZAR 345,000,000), which equals twenty-one million five hundred thousand euro (EUR 21,500,000), with two hundred and five million South African rand (ZAR 205,000,000), which equals twelve million eight hundred thousand euro (EUR 12,800,000), for the sale of shares and claims and one hundred and forty million South African rand (ZAR 140,000,000), which equals eight million seven hundred thousand euro (EUR 8,700,000), towards the working capital requirements of the two mines. The Chairperson adds that the purchase price is payable in cash with fifty per cent (50%) payable upon the fulfilment of all conditions precedent and the remainder three (3) months thereafter. The offer assumes the purchaser will acquire all rights, title and ownership to operate the mines including but not limited to the rehabilitation and closure obligations including the unfunded portion, which is estimated at two hundred and twenty million South African rand (ZAR 220,000,000) as at the end of December two thousand and sixteen. The Chairperson notes that the proceeds will be utilised to pay down debt and that approval is sought for the disposal of both assets on the understanding that it would also cover the scenario whereby only one of the assets is sold. Then she notes that the Management Board and the Supervisory Board fully and unequivocally recommend that the shareholders vote in favour of the transaction. She adds that, as the aggregate value of the assets of the two mines amounts to at least one third of the value of the total assets of the Company,



according to the consolidated balance sheet at year end two thousand and fifteen, being the last adopted annual accounts of the Company, the disposal of Vunene and Penumbra is submitted for approval to the Meeting within the meaning of Section 2:107a of the Dutch Civil Code.

The Chairperson then offers the possibility to ask questions about the proposal and, after having established that there are none, requests GFEI IR AG to start their voting procedure. Upon the close of the voting procedure, the Chairperson concludes that the proposal to approve the disposal of Vunene and Penumbra within the meaning of Section 2:107a of the Dutch Civil Code has been adopted with twenty-four million three hundred and twenty-three thousand nine hundred and forty-seven (24,323,947) votes in favour and no votes against.

**Item 3. Proposal to issue shares and exclude pre-emptive rights.**

The Chairperson explains that under this agenda item the proposal to issue twenty million four hundred and three thousand five hundred (20,403,500) shares to Sapinda Holding B.V. (**Sapinda Holding**) against the set-off of an eight million one hundred and sixty-one thousand four hundred euro (EUR 8,161,400) payable to Sapinda Holding and the proposal to exclude pre-emptive rights will both be discussed and voted on.

**(3a). The proposal to issue 20,403,500 shares to Sapinda Holding against the set-off of an EUR 8,161,400 payable to Sapinda Holding.**

The Chairperson firstly discusses the proposal to issue twenty million four hundred and three thousand five hundred (20,403,500) shares to Sapinda Holding against the set-off of an eight million one hundred and sixty-one thousand four hundred euro (EUR 8,161,400) payable to Sapinda Holding.

The Chairperson says that the Company announced in its communication on the twenty-seventh day of July two thousand and seventeen that it had reached agreement with Sapinda Holding on the conversion of all of the outstanding shareholder loans to equity and that it concluded the first tranche of this debt to equity conversion which was effected following the issuance of six million seven hundred and fifty thousand (6,750,000) shares in the capital of the Company to Sapinda Holding against set-off of two million seven hundred thousand euro (EUR 2,700,000) of its loan receivable. This resolution to issue such shares was adopted by the Management Board, with the approval of the Supervisory Board, pursuant to its authority to issue shares and exclude pre-emptive rights delegated by the general meeting of shareholders on the twenty-eight day of June two thousand and fifteen. – The Chairperson says that it is now proposed to the Meeting to approve to convert the remainder of the loans by Sapinda Holding into twenty million four hundred and three thousand five hundred (20,403,500) new shares in the capital of the Company. The issue price of the new shares will be forty euro cent (EUR 0.40) per new share. The debt to equity transaction with Sapinda Holding is deemed to be in the best interest of the Company as it will improve the Company's debt to equity ratio and decreases the Company's interest payments. The Chairperson says that the





according to the consolidated balance sheet at year end two thousand and fifteen, being the last adopted annual accounts of the Company, the disposal of Vunene and Penumbra is submitted for approval to the Meeting within the meaning of Section 2:107a of the Dutch Civil Code.

The Chairperson then offers the possibility to ask questions about the proposal and, after having established that there are none, requests GFEI IR AG to start their voting procedure. Upon the close of the voting procedure, the Chairperson concludes that the proposal to approve the disposal of Vunene and Penumbra within the meaning of Section 2:107a of the Dutch Civil Code has been adopted with twenty-four million three hundred and twenty-three thousand nine hundred and forty-seven (24,323,947) votes in favour and no votes against.

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The Chairperson says that it is now proposed to the Meeting to approve to convert the remainder of the loans to Sapinda Holding into twenty million four hundred and three thousand five hundred (20,403,500) new shares in the capital of the Company. The issue price of the new shares will be forty euro cent (EUR 0.40) per new share. The debt to equity transaction with Sapinda Holding is deemed to be in the best interest of the Company as it will improve the Company's debt to equity ratio and decreases the Company's interest payments. The Chairperson says that the



Company does not currently hold any treasury shares that could have been used for the purpose of the debt to equity transaction. She adds that the amount by which the full amount of the subscription price for the new shares exceeds the aggregate nominal value of such shares, will be stipulated as a share premium (*bedongen agio*) and will be added to the general share premium reserve (*algemene agio reserve*) maintained in the books of the Company. Also the Chairperson says that, if after the issuance of these new shares to Sapinda Holding it is resolved to make distributions on shares in the capital of the Company, each new share shall have the same entitlement to such distribution as each existing share. Lastly she says that the Company will apply for the listing of the new shares for the purpose of trading on the open market (*freiverkehr*) on the Frankfurt Stock Exchange. —————

The Chairperson then invites the attendees to take the floor should they wish to ask questions about this proposal. After having established that there are no questions, she request GFEI IR AG to start their voting procedure. Upon the close of the voting procedure, the Chairperson concludes that the proposal to issue twenty million four hundred and three thousand five hundred (20,403,500) shares to Sapinda Holding against the set-off of an eight million one hundred and sixty-one thousand four hundred euro (EUR 8,161,400) payable to Sapinda Holding is adopted with twenty-four million three hundred and twenty-three thousand nine hundred and forty-seven (24,323,947) votes in favour and no votes against. —————

**(3b). The proposal to exclude pre-emptive rights.** —————

Then the Chairperson proceeds with the second part of this agenda item. Under this agenda item it is proposed to exclude pre-emptive rights of existing shareholders in connection with the issuance of shares as just adopted under the first part of this agenda item. She adds that pre-emptive rights of shareholders will be excluded for the purpose of this issuance of shares, because of the specific purpose of converting debt owed to Sapinda Holding into equity. Also she adds that the resolution which 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 (AGM) of two thousand and sixteen that was held on the twenty-second day of May two thousand and seventeen. —————

After offering the attendees the opportunity to take the floor regarding this agenda item, the Chairperson establishes that there are no questions or comments and asks GFEI IR AG to start their voting procedure. Upon the close of the voting procedure the Chairperson concludes that the proposal to exclude pre-emptive rights of existing shareholders in connection with the issuance of shares as just adopted under (3a). is adopted with twenty-four million three hundred and twenty-three thousand nine hundred and forty-seven (24,323,947) votes in favour and no votes against and continues with the fourth item on the agenda of this Meeting. —————

**Item 4. Composition of the Supervisory Board.** —————

The Chairperson explains that this agenda item is divided in three (3) separate



proposals that all relate to the appointment and reappointment of Supervisory Board members and that all three items will be voted on separately. \_\_\_\_\_

**(4a). The proposal to reappoint Mr L. Windhorst as a member of the Supervisory Board.** \_\_\_\_\_

Firstly the Chairperson proposes to the Meeting to reappoint Mr Lars Windhorst as member of the Supervisory Board. The Chairperson first gives some background information. She states that Mr Windhorst was first appointed to the Supervisory Board on the twenty-ninth day of December two thousand and eleven and has served as a Supervisory Director since. Mr Windhorst's first term as Supervisory Director ended at the two thousand and fifteen AGM, which was held on the twenty-fifth day of June two thousand and fifteen. She says that it has always been the intention of the Supervisory Board that Mr Windhorst would be nominated for reappointment for a second term at the two thousand and fifteen AGM but as no proposal was made to the general meeting of shareholders at that time, Mr Windhorst is now nominated, in accordance with article twenty section two of the Articles of Association, for a new term as member of the Supervisory Board for a term ending at the close of the two thousand and nineteen AGM. She adds that, to the extent that Mr Windhorst continued to serve on the Supervisory Board from the close of the two thousand and fifteen AGM until today, he has filled a vacancy in the Supervisory Board meetings in accordance with article twenty-five section one of the Articles of Association. Then she says that the Supervisory Board nominates Mr Windhorst for reappointment as a member of the Supervisory Board of the Company on the basis of his continuous oversight over and contribution to the Company over the last six years. During this period he has discharged his responsibilities as a member of the Supervisory Board, actively participated in Supervisory Board meetings and fully supported the Management Board. Lastly she says that Mr Windhorst does not hold any shares or rights to subscribe for shares in the Company and that he will not receive remuneration for his services as member of the Supervisory Board. \_\_\_\_\_

After having established that there are no comments or questions on the reappointment of Mr Windhorst, the Chairperson asks GFEI IR AG to start their voting procedure. The Chairperson concludes that the proposal is adopted with twenty-one million one hundred and eight thousand five hundred and seventy-two (21,108,572) votes in favour, no votes against and three million two hundred and fifteen thousand three hundred and seventy-five (3,215,375) abstentions. Then the Chairperson continues to the next part of this agenda item. \_\_\_\_\_

**(4b). The proposal to reappoint Mr P. Barbieri as a member of the Supervisory Board.** \_\_\_\_\_

Under this agenda item the Chairperson proposed to reappoint Mr Paolo Barbieri as member of the Supervisory Board. First the Chairperson gives some background information. Mr Barbieri was appointed on the twenty-sixth day of June two thousand and thirteen as a member of the Supervisory Board of the Company for a



period until the close of the two thousand and seventeen AGM. Therefore, it is proposed to reappoint Mr Barbieri as a member of the Supervisory Board with effect as of the end of this EGM for a period ending immediately following the two thousand and twenty-one AGM. The term of office of four (4) years is in accordance with article twenty section one of the Articles of Association. Then she says that the Supervisory Board nominates Mr Barbieri for reappointment as a member of the Supervisory Board of the Company on the basis of his relevant knowledge and wide experience with activities on capital markets and in financial matters more broadly. She adds that Mr Barbieri has been an active member of the Supervisory Board, fulfilling his tasks and giving of his time in attendance and contribution in Supervisory Board meetings. Lastly the Chairperson says that Mr Barbieri is entitled to receive remuneration of one hundred and forty thousand South African rand (ZAR 140,000) per annum for his services as Supervisory Board member, which equals eight thousand seven hundred and fifty euro (EUR 8,750).— After having established that no one would like to take the floor on this proposal, the Chairperson asks GFEI IR AG to start their voting procedure. —

The Chairperson concludes that the proposal is adopted with twenty-one million one hundred and eight thousand five hundred and seventy-two (21,108,572) votes in favour, no votes against and three million two hundred and fifteen thousand three hundred and seventy-five (3,215,375) abstentions. Then the Chairperson continues to the last part of this agenda item. —

**(4c). The proposal to appoint Mr M. Meister as a member of the Supervisory Board.** —

The Chairperson proceeds with the last part of this agenda item, under which it is proposed to appoint Mr Markus Meister as a member of the Supervisory Board with effect from the end of this EGM for a period ending immediately following the two thousand and twenty-one AGM. The term of office of four (4) years is in accordance with article twenty section one of the Articles of Association. She explains that the Supervisory Board nominates Mr Meister for appointment as an independent member of the Supervisory Board of the Company on the basis of his relevant knowledge, wide experience and familiarity with the Company's business. As a member of the Supervisory Board, Mr Meister will bring his management and financial expertise, experience in international business, his knowledge and experience in social and employment related matters, his understanding of corporate responsibility and his experience in disclosure and communication matters. Then the Chairperson gives Mr Meister the opportunity to introduce himself. Mr Meister thanks for the opportunity and gives some additional information considering his appointment. The Chairperson thanks Mr Meister for his introduction and says that Mr Meister does not hold any shares or rights to subscribe for shares in the Company and that the appointment of Mr Meister, as an independent member of the Supervisory Board, also includes the approval of his remuneration of one hundred and forty thousand South African rand (ZAR 140,000) per annum, which equals





eight thousand seven hundred and fifty euro (EUR 8,750). She says that this is in line with the proposal for remuneration of Supervisory Board members which was adopted at the AGM on the twenty-fifth day of June two thousand and fifteen. — After having established that there are no questions or comments on the proposal to appoint Mr Meister as a member of the Supervisory Board, the Chairperson asks GFEI IR AG to start the voting procedure. —

The Chairperson concludes that the proposal is adopted with twenty-four million three hundred and twenty-three thousand nine hundred and forty-seven (24,323,947) votes in favour and no votes against. The Chairperson continues to the last agenda item. —

**Item 5. Miscellaneous.** —

Since there are no further comments or questions, the Chairperson closed the Meeting at twelve hours and thirty-eight minutes in the afternoon (12:38 pm). —

This notarial record of proceedings of the Meeting was drawn up in Amsterdam, the Netherlands, on the twenty-fourth day of January two thousand and eighteen and signed by Arwien Rajeev Oemrawsingh, born in Nieuwegein, the Netherlands, on the thirtieth day of May nineteen hundred and eighty-eight, employed by Allen & Overy LLP (Amsterdam office), Apollolaan 15, 1077 AB Amsterdam, the Netherlands, on behalf of the Chairperson as appears from a written power of attorney, attached to this deed (Annex), and by me, civil law notary. —

(Follow signatures)

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