

# **DIRECTORS REPORT JUSTIFYING THE TRANSFER**

**21 October 2016**

## **BRAIT SE**

*(Registered in Malta as a European Company)*

*(Registration number SE1)*

*4th Floor, Aventech Building,*

*St Julian's Road,*

*San Gwann, SGN 2805, Malta*

*Listed in Luxembourg and South Africa*

*Share code: BAT ISIN: LU0011857645*

*Bond code: WKN: A1Z6XC ISIN: XS1292954812*

*(the “**Company**” or “**Brait**”)*

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## **TRANSFER REPORT**

in accordance with Article 8(3) of Council Regulation (EC) No. 2157/2001  
on the Statute for a European Company

prepared in connection with the proposed transfer of the registered  
office of Brait SE from Malta to the United Kingdom

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## 1 Background

- 1.1 This report has been prepared by the board of directors (the “**Board**”) of Brait SE (“**Brait**” or the “**Company**”) pursuant to Article 8(3) of Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European Company (the “**SE Regulation**”) in connection with the proposed transfer of the registered office of the Company from Malta to the UK (the “**Transfer Report**”).
- 1.2 The purpose of the Transfer Report is to explain and justify the legal and economic aspects of the proposed transfer of the Company’s registered office from Malta to the United Kingdom and to explain the implications of the Transfer on shareholders, creditors and employees.
- 1.3 The Company was incorporated on 5 May 1976 as a *société anonyme* in accordance with the laws of Luxembourg under the name Tolux S.A.; on 29 July 1998, the Company changed its name to Brait S.A.
- 1.4 On 29 August 2011, the Company took the form of a *Societas Europaea* (“**SE**”) through a merger of Brait S.A. with BM plc., a Maltese subsidiary, in accordance with the SE Regulation.
- 1.5 On 2 May 2012, the Company became registered under the laws of Malta with registered number SE 1 and with its registered office at 4th Floor, Avantech Building, St. Julian’s Road, San Gwann, SGN 2805, Malta, following a transfer of its registered office from Luxembourg to Malta.
- 1.6 The Company’s ordinary shares of €0.22 each are currently listed, with a primary listing on the EuroMTF market of the Luxembourg Stock Exchange (the “**LuxSE**”) and a secondary listing on the Main Board of the stock exchange operated by JSE Limited (the “**JSE**”).
- 1.7 It is proposed that the Company transfer its registered office from Malta to the United Kingdom (the “**Transfer**”) pursuant to Article 8 of the SE Regulation.
- 1.8 The Board has prepared a transfer proposal pursuant to Article 8(2) of the SE Regulation (the “**Transfer Proposal**”). The Transfer Proposal was submitted to the Maltese Registry of Companies on 13 September 2016 and the Maltese Registry of Companies published the Transfer Proposal on its website on 14 September 2016.
- 1.9 The Transfer will become effective when the registrar of companies in the UK (“**UK Companies House**”) issues a certificate of registration upon the registration of the Company as a UK-registered SE.
- 1.10 After the Transfer has become effective, the UK Companies House will notify the Maltese Registry of Companies, who will then remove the Company from the register of companies maintained by it. Additionally, the UK Companies House and the Maltese Registry of Companies will submit information about the new registration and the deletion of the old registration of the Company following the Transfer for publication in the Official Journal of the European Communities. Third parties will be bound by the Transfer with effect from such publication.

## 2 Legal aspects of the Transfer

- 2.1 According to Article 10 of the SE Regulation, subject to the provisions of the SE Regulation, an SE is treated in the same way as a public limited company formed in accordance with the laws of the Member State in which it has its registered office. Prior to the Transfer, the Company is subject to Maltese law and to the SE Regulation (the SE Regulation being directly applicable in all European Economic Area countries).

- 2.2 Under Article 8 of the SE Regulation, the registered office of an SE may be transferred to another Member State in accordance with that Article and such transfer shall not result in the winding up of the SE or in the creation of a new legal person. Accordingly, following the Transfer, the Company will continue in existence as an SE with its registered office in the UK, becoming subject to the Companies Act 2006 in the UK (“**UK Companies Act**”) in all respects, as if it were a public limited company incorporated under the laws of England and Wales. It will also continue to be subject to the SE Regulation which would, in principle, allow further transfers of its registered office to other EEA countries and it will be able, subject to further shareholder approval, to convert to a UK public limited company.
- 2.3 The Transfer will not impact the Company’s primary listing on the LuxSE or its secondary listing on the Main Board of the JSE. However, as described in paragraph 3.7 below, Brait’s intention, in due course, if it were to proceed with an LSE Listing, would be to change its primary listing from the LuxSE to the LSE (as defined below). The timing of the cancellation of the listing on the LuxSE would coincide with such an LSE Listing. Additionally, the share capital of the Company will not be affected as a consequence of the Transfer.
- 2.4 As part of the Transfer, it is proposed that the Company’s memorandum and articles of association (the “**Current Articles**”) be replaced by new articles of association (the “**New Articles**”), with such substitution to take effect upon the Transfer becoming effective. The adoption of the New Articles is required to reflect the Company’s new registered office being in the UK and to meet the relevant requirements of English law which will apply to the Company following the Transfer. As an SE, the Company and its statutes will also continue to be subject to the SE Regulation. The New Articles are in a form customary for investment companies with a premium listing in the United Kingdom. A summary and a copy of the New Articles are set out in Appendices A and B to the Transfer Proposal, respectively.

### 3 Economic aspects of the Transfer

- 3.1 The Board has given due and careful consideration to the proposal that the registered office of the Company be transferred from Malta to another appropriate jurisdiction in the European Economic Area pursuant to Article 8 of the SE Regulation.
- 3.2 The Company considers the transfer of its registered office to the United Kingdom to be a first step towards a Premium listing on the London Stock Exchange.
- 3.3 The Transfer will establish new headquarters for the Company in the UK, which across its portfolio companies is the largest market in which it is invested. The Board believes aligning its head office with the principal legal and governance environment of the main markets in which the majority of its portfolio companies operate will provide corporate and administrative benefits and support for the UK and international components of its investing activities.
- 3.4 The Board also believes that the Company is at a size and stage of development where it has become increasingly important that it can offer its existing investors the benefits of a listing on a major international developed market. As mentioned above, the Transfer is an important first step towards such a listing.
- 3.5 Brait is therefore also giving full consideration to seeking a listing on the Premium listing segment of the Official List maintained by the UK Listing Authority (as a Closed-Ended Investment Fund under Chapter 15 of the UK Listing Rules) and to be admitted to trading on the London Stock Exchange plc’s (the “**LSE**” or “**London Stock Exchange**”) main market for listed securities (“**LSE Listing**”). A Premium listing in London offers the opportunity for the Company to be eligible for inclusion in the FTSE UK Index Series. It will also require the

Company to comply with the governance requirements of a Premium listing in London. An LSE Listing will require, amongst other things, the publication of a prospectus and the adoption of a formal investment policy in accordance with Chapter 15 of the UK Listing Rules.

- 3.6 The Board believes the Transfer and the establishment of new headquarters in the UK is a logical next step in the development of the Company. In addition, the Board believes that a premium listing in London (if the Company were to proceed with such a listing) and potential inclusion in the FTSE UK Index Series would enhance the profile of Brait, provide access to deeper pools of capital, improve access to a wider range of international investors and improve the liquidity of dealings in its shares.
- 3.7 Whilst the Transfer will not impact the Company's primary listing on the EuroMTF market of the LuxSE or its secondary listing on the Main Board of the JSE, Brait's intention, in due course, if it were to proceed with an LSE Listing, would be to change its primary listing from the EuroMTF market of the LuxSE to the LSE. The timing of the cancellation of the listing on the LuxSE would coincide with such an LSE Listing. This would not impact the Company's secondary listing on the JSE.
- 3.8 Following the Transfer, the Company will become tax resident in the UK. The Board believes that the transfer of the tax residency of the Company to the UK would be broadly neutral from a tax perspective.

#### **4 Implications of the Transfer for Shareholders**

- 4.1 Prior to the Transfer, the Company is subject to Maltese law and to the SE Regulation. Following the Transfer, the Company will continue in existence as a *Societas Europaea* ("SE") with its registered office in the UK, becoming subject to the Companies Act 2006 (the "**UK Companies Act**") in all respects as if it were a public limited company incorporated under the laws of England and Wales. It will also continue to be subject to the SE Regulation which would, in principle, allow further transfers of its registered office to other EEA countries and it will be able, subject to a further shareholder approval, to convert to a UK public limited company no longer subject to the SE Regulation. The Transfer will not impact the Company's primary listing on the LuxSE or its secondary listing on the Main Board of the JSE. However, as described in paragraph 3.7 above, Brait's intention, in due course, if it were to proceed with an LSE Listing, would be to change its primary listing from the LuxSE to the LSE. In addition, the share capital of the Company will not be affected as a consequence of the Transfer.
- 4.2 In connection with the Transfer, it is proposed that the Company adopt the New Articles, which will replace the Current Articles with effect from the Transfer becoming effective. As explained in paragraph 2.4 above, the adoption of the New Articles is required to reflect the Company's new registered office being in the UK and to meet the relevant requirements of English law which will apply to the Company following the Transfer. As an SE, the Company and its statutes will also continue to be subject to the SE Regulation. The New Articles are in a form customary for investment companies with a premium listing in the United Kingdom. A general comparison of certain relevant Maltese company law (which currently apply to the Company) and English company law (which will apply to the Company following the Transfer) and certain key differences between the Current Articles and the New Articles are set out in Schedule 1 to this Transfer Report. A summary and a copy of the New Articles are set out in Appendices A and B to the Transfer Proposal, respectively.
- 4.3 Shareholders should consult their own tax advisers for advice in respect of any tax consequences for them as a result of the Transfer. However, your attention is drawn to the non-

exhaustive summary of certain taxation considerations in the UK and South Africa set out in Schedule 2 (*Taxation Considerations*) to this Transfer Report. The information in Schedule 2 (*Taxation Considerations*) of this Transfer Report is intended only as a general guide to current UK and South African tax laws and practice.

## **5 Implications of the Transfer for employees**

The Company has no employees. Employees within the Company's group will not be affected as a result of the Transfer.

## **6 Implications of the Transfer for creditors**

- 6.1 The Transfer is not expected to have a material effect on the Company's creditors, although the Company will be governed by the laws of England and Wales, rather than Maltese law, following completion of the Transfer and therefore, for example, the insolvency law and procedure of England and Wales will apply to the Company.
- 6.2 It is not expected that the Transfer will require any amendments to be made to the terms and conditions of the GBP350 million Convertible Bonds issued by the Company on 18 September 2015, with a coupon of 2.75 per cent., due 2020.
- 6.3 In order to protect the interests of its creditors:
  - 6.3.1 the Company has submitted a copy of the Transfer Proposal to the Maltese Registry of Companies on 13 September 2016. As mentioned above, the Maltese Registry of Companies has published a copy of the Transfer Proposal on its website on 14 September 2016;
  - 6.3.2 in accordance with Article 8(4) of the SE Regulation, creditors of the Company are entitled to examine the Transfer Proposal and this Transfer Report at the Company's registered office and, on request, to obtain copies of the Transfer Proposal and this Transfer Report, at least one month before the Extraordinary General Meeting, in accordance with Article 8(4) of the SE Regulation; and
  - 6.3.3 creditors of the Company will have a statutory period of three months from the date of publication of receipt of a certified extract of the minutes of the Extraordinary General Meeting by the Maltese Registry of Companies on its website and in a daily newspaper in Malta within which they may object to the Transfer.

**Malta, 21 October 2016**

**JC Botts**

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**For and on behalf of the Board of Directors**

**Brait SE**

## SCHEDULE 1 TO TRANSFER REPORT

### Comparison between Maltese company law that currently applies to the Company and English company law which will apply to the Company following the Transfer

The Company is a European public limited liability company (*Societas Europaea*) registered in Malta. Subject to the provisions of the SE Regulation, an SE is generally treated as if it were a public limited liability company formed in accordance with the laws of the Member State in which it has its registered office. Prior to the transfer of its registered office to the United Kingdom (the “**Transfer**”), it is governed by Maltese law as well as the European Council Regulation (EC) No. 2157/2001 on the statute of a European Company of 8 October 2001 (the “**SE Regulation**”). Following the Transfer, it will be governed by the laws of England and Wales applicable to UK public limited companies incorporated under the Companies Act 2006 (the “**UK Companies Act**”) and, as an SE, it will continue to be subject to the SE Regulation.

The rights and status of shareholders of a public limited company incorporated in England and Wales are substantially comparable to those of shareholders in a public limited company incorporated in Malta, due to similarities between the company laws of these jurisdictions. Therefore, the Company believes that there are no material differences between the laws of Malta applicable to an SE registered in Malta and the laws of England and Wales applicable to an SE registered in the UK, in relation to shareholder rights.

The following is a comparison of certain key aspects of Maltese company law that currently applies to the Company and English company law (which will apply to the Company following the Transfer) as at the date of this document. Where applicable, this comparison also highlights certain key differences between the Current Articles and the New Articles proposed to be adopted upon the Transfer becoming effective.

With respect to English law, this comparison mainly focuses on the provisions of the UK Companies Act. With respect to Maltese law, this comparison focuses on the provisions of the Maltese Companies Act (Cap. 386 of the Laws of Malta) (the “**Maltese Act**”).

This comparison is not (and shall not be read as) a complete description of all differences in relation to rights of shareholders under Maltese law and English law, and is not a complete description of all differences or their specific rights under the Current Articles and (following their adoption) the New Articles. This comparison does not look at applicable insolvency law or practice, the rules of any applicable stock exchange, tax law and treatment or any law other than general company law as it currently applies, or will apply, to the Company.

A summary of the New Articles is set out in Appendix A to the Transfer Proposal. Shareholders should consider the full provisions of the New Articles, which are contained in Appendix B to the Transfer Proposal. Furthermore, the identification of some of the differences of these rights as material is not intended to indicate that other differences that may be equally important do not exist.

**Extraordinary Resolutions / Special Resolutions**

**English Law (which will apply to the Company once the Transfer is effective)**

Certain matters, generally those which are material to the nature of the company, require the passing of special resolutions. Special resolutions require the approval of not less than 75 per cent. of member votes cast at a general meeting (Section 283 of the UK Companies Act).

As the threshold for special resolutions under English law are set out in section 283 of the UK Companies Act, this is not set out in the New Articles.

The UK Companies Act requires certain matters to be approved by special resolution. Amongst other things, the following matters must be approved by special resolution:

- (a) change of the company's name;
- (b) variation of the company's articles of association;
- (c) disapplication of shareholders' statutory pre-emption rights (see below);
- (d) a solvent winding up or dissolution of the company; and
- (e) a reduction of the company's share capital.

Additionally, under the SE Regulation, a transfer of the registered office of a UK-registered SE to another EEA country will also require, amongst other things, a special resolution.

**Current Legal Requirements of Maltese Law (which currently apply to the Company)**

Extraordinary resolutions require the approval of:

- (a) not less than 75 per cent. in nominal value of the shares represented and entitled to vote at the general meeting; and
- (b) at least 51 per cent. (or possibly higher if required by the statutes) in nominal value of all the shares entitled to vote at the general meeting.

Provided that, if one of the aforesaid majorities is obtained, but not both, another meeting shall be convened within 30 days in accordance with the provisions for the calling of meetings to take a fresh vote on the proposed resolution. At the second meeting, the resolution may be passed by a shareholder or shareholders having the right to attend and vote at the meeting holding in the aggregate not less than 75 per cent. in nominal value of the shares represented and entitled to vote at the meeting. However, if more than half in nominal value of all the shares having the right to vote at the meeting is represented at that meeting, a simple majority in nominal value of such shares so represented shall suffice.

The threshold for extraordinary resolutions (described above) is set out in Article 20 of the Current Articles.

Amongst other things, extraordinary resolutions are required for:

- (a) the increase or decrease of the company's authorised share capital;
- (b) any changes to the memorandum or articles of association of the company, including any change of name of the company;
- (c) any reduction of the issued capital of the company;
- (d) the winding up of the company;
- (e) the registration of the company as

**English Law (which will apply to the Company once the Transfer is effective)**

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**Current Legal Requirements of Maltese Law (which currently apply to the Company)**

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**Ordinary Resolutions**

According to section 281(3) of the UK Companies Act, for any matter requiring shareholder approval where it is not specified that a special resolution is required, an ordinary resolution must be passed. Ordinary resolutions require the approval of a simple majority of members' votes cast at a general meeting (section 282(1) of the UK Companies Act).

As the threshold for ordinary resolutions under English law is set out in section 282(1) of the UK Companies Act, this threshold is not set out in the New Articles.

Amongst other things, the following matters will require approval of shareholders by ordinary resolution:

- (a) appointing or removing the company's auditors;
- (b) amending or revoking authorised share capital;
- (c) the sub-division or consolidation of share capital; and
- (d) authorising the directors to allot shares.

Removal of a member of the board can be effected by an ordinary resolution (section 168 of the UK Companies Act). However, at least 28 clear days before the meeting special notice must be given of the intention to do so. The director

continued/transferred in an approved country or jurisdiction as if it had been incorporated or registered under the laws of that other country or jurisdiction; and

- (f) the variation of shareholder rights (such as subdivision and consolidation).

The above matters for which an extraordinary resolution is required under Maltese law are also set out in the Current Articles.

Substantially the same as the English law position.

The threshold for ordinary resolutions under the Current Articles is a simple majority.

Examples when ordinary resolutions shall suffice include:

- (a) removal of directors;
- (b) appointment of auditors; and
- (c) remuneration of auditors.

**English Law (which will apply to the Company once the Transfer is effective)**

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will then have the right to be heard at a general meeting on such proposed resolution.

**Authorised Share Capital**

There is no longer a concept of “Authorised Share Capital” under English law.

The New Articles therefore do not contain an authorised share capital of the Company and, following their adoption, the Company shall not be subject to any limits by reference to authorised share capital.

**Current Legal Requirements of Maltese Law (which currently apply to the Company)**

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The concept of “Authorised Share Capital” still exists under Maltese law. Article 7.1 of the memorandum of association of the Company sets out the authorised share capital of the Company.

Shareholders may empower the directors to allot shares. The memorandum and articles of association or an extraordinary resolution of a company may permit either:

- (a) the Board to issue shares up to a maximum amount specified in the same memorandum and articles of association, or extraordinary resolution, which permission shall be for a maximum of five years, renewable by ordinary resolution for further maximum periods of five years each; or
- (b) the general meeting to authorise by ordinary resolution the Board to issue shares up to a maximum amount as may be specified in the same memorandum and articles of association, or in the extraordinary resolution, which permission shall be for a maximum of five years, renewable by ordinary resolution for further maximum periods of five years each.

**Classes of Shares**

The UK Companies Act (section 549(2)) requires that directors may only allot new shares if they are authorised to do so by either the company’s articles or by an ordinary resolution of the company.

Authority to allot shares for a public company is governed by section 551 of the UK Companies Act. Such authorisation can be granted for a maximum period of five years, but in relation to listed companies in the UK it is common to seek renewal of such

The memorandum of association of the Current Articles sets out the two classes of shares of the Company, ordinary shares as outlined in Article 8 and cumulative non-voting preference shares as outlined in Article 9. There are no preference shares in issue as at the date of this document.

The allotment of shares is governed by Article 3 of the Current Articles. Shares may be allotted with any rights or restrictions as the Company may by ordinary resolution determine.

**English Law (which will apply to the Company once the Transfer is effective)**

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authority under section 551 from shareholders annually. Such authority can be reviewed or revoked by a further ordinary resolution.

Disapplication of statutory pre-emption rights which apply to the allotment of new shares for cash requires a special resolution of the company (see below).

As at the date of this document, there are no cumulative non-voting preference shares in issue, therefore, the New Articles do not contain provisions in respect of the cumulative non-voting preference shares of the Company which are currently in the Current Articles. Under the New Articles, the Company may issue shares with such rights and restrictions as determined by either resolution or, if the Company passes an ordinary resolution so authorising them, the Directors. The Company may also issue redeemable shares.

**Alteration of Class Rights**

The New Articles provide that, if at any time there are different classes of shares, the rights attaching to a class of shares may (unless otherwise provided by the terms of issue of the shares of that class) be varied if not less than 75 per cent. of the holders of the relevant class consent by a special resolution passed at a separate general meeting of the holders of the class or by written consent.

**Shareholders' statutory pre-emption rights**

Section 561 of the UK Companies Act provides that, prior to an allotment of equity securities for cash, those securities must first be offered to existing shareholders in proportion to their existing holding. Section 563 of the UK Companies Act provides that a breach of the statutory pre-emption rights provisions renders the company

**Current Legal Requirements of Maltese Law (which currently apply to the Company)**

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The position is substantially the same under the Current Articles (except for the threshold required under Maltese law and the Current Articles to pass an extraordinary resolution as compared to the threshold for special resolutions under English law). The Current Articles provide that if at any time there are different classes of shares, the rights attached to any class may be varied with the sanction of an extraordinary resolution passed at separate meetings of the holders of the shares of the said class and of any other class affected thereby.

In terms of Article 88 of the Maltese Act, whenever shares of a public company are proposed to be issued in cash, those shares are to be offered on a pre-emptive basis to shareholders in proportion to the share capital held by them. As a general rule, such pre-emption rights cannot be restricted or withdrawn by the memorandum or articles of a company,

**English Law (which will apply to the Company once the Transfer is effective)**

and every officer who knowingly permitted the breach jointly and severally liable to compensate any person to whom the offer should have been made for losses suffered as a result of the breach.

The UK Companies Act provides some limited exceptions to statutory pre-emption rights applying. These are:

- (a) allotment of shares for non-cash consideration;
- (b) allotment of shares under employee or bonus schemes; and/or
- (c) allotment of subscriber shares.

In relation to listed companies in the UK, it is common to see annual renewal of disapplication of pre-emption rights authority from shareholders.

Under section 570 of the UK Companies Act, these rights may be excluded or varied by a special resolution at a general meeting. Under this section, such disapplication of pre-emption rights must be limited in time to the length of the directors' corresponding authority to allot new shares (for cash or otherwise).

According to section 561 of the UK Companies Act, pre-emption rights apply to "equities securities" which are defined as ordinary shares or rights to subscribe for, or convert securities into, ordinary shares.

As pre-emption rights under English law are set out in the above mentioned sections of the UK Companies Act, they are not set out in the New Articles.

Purchase by a company of its own shares may only be carried out in accordance with the strict requirements of Part 18 of the UK Companies Act which include obtaining shareholder approval and making certain disclosures. This is subject to the company not being restricted or prohibited from doing so by

**Current Legal Requirements of Maltese Law (which currently apply to the Company)**

other than:

- (a) for a particular allotment, by extraordinary resolution of the general meeting. In such case, the Board is required to present to the general meeting a written report indicating the reasons for restriction or withdrawal of the right of pre-emption and justifying the proposed issue price;
- (b) the memorandum or articles of association of the company or an extraordinary resolution of the general meeting may authorise the Board to restrict or withdraw the right of pre-emption if the Board is provided with prior authority to issue shares and for as long as the Board remains so authorised.

Article 3(i) of the Current Articles reflects the above position at law with respect to pre-emption rights.

A company may acquire any of its shares other than by subscription if a number of conditions set out in Article 106 of the Maltese Act are met, namely:

- (a) authorisation in its memorandum and articles of association;
- (b) authorisation is given by an extraordinary resolution, which

**Purchases of own shares**

**English Law (which will apply to the Company once the Transfer is effective)**

its articles of association.

The UK Companies Act draws a distinction between “market purchases” and “off-market purchases”. “Market purchases” refers to the purchases of shares on a recognised investment exchange. Generally, shares listed on the Official List of the UK Listing Authority and purchased on the London Stock Exchange or another recognised investment exchange are considered to be market purchases. Those purchased from venues other than a recognised investment exchange are considered to be “off-market purchases”. The requirements for purchases of shares will be different depending on whether it is a “market purchase” or an “off-market purchase”.

The New Articles do not restrict or prohibit the purchase of own shares by the Company. As described above, shareholder approval, amongst other things, will be required in connection with the purchases of own shares by the Company.

**Notice of shareholder meetings**

Notice for annual general meetings (“AGMs”) is set down in the UK Companies Act. Section 307A requires at

**Current Legal Requirements of Maltese Law (which currently apply to the Company)**

resolution shall determine the terms and conditions of such acquisitions and in particular the maximum number of shares to be acquired, the duration of the period for which the authorisation is given and which may not exceed 18 months and, in the case of acquisition for valuable consideration, the maximum and minimum consideration;

- (c) the statutory rules regulating extraordinary resolutions apply to the aforesaid resolution subject, however, to the condition that treasury shares shall be treated as carrying no voting rights;
- (d) the nominal value of the acquired shares, including shares previously acquired by the company and held by it, shall not exceed 50 per cent. of the issued share capital;
- (e) no acquisitions by a company of its own shares shall be made when on the closing date of the last accounting period the net assets as set out in the company’s annual accounts are, or, following such distribution, would become, lower than the amount of called up issued share capital plus its undistributable reserves;
- (f) it shall not be possible for the company to acquire any of its own shares except out of the proceeds of a fresh issue of shares made specifically for the purpose or out of profits available for distribution;
- (g) the shares acquired shall be fully paid-up shares; and
- (h) a company may not as a result of the acquisition of any of its shares become the only holder of its ordinary shares.

Under Maltese law, there is a mandatory minimum notice period of 14 days for general meetings.

**English Law (which will apply to the Company once the Transfer is effective)**

least 21 clear days' notice for AGMs and general meetings may be called on 14 clear days' notice.

The notice for an AGM or general meeting must contain certain information such as the time and place of the meeting and the full text of each special resolution.

In accordance with section 336 of the UK Companies Act, the New Articles provide that an AGM must be held in each period of six months beginning with the day following the Company's accounting reference date.

**Quorum for general Shareholder meeting**

The New Articles provide that two persons entitled to attend and to vote on the business to be transacted, each being a shareholder present in person or a proxy for a shareholder or a duly authorised representative of a corporation which is a shareholder, shall be a quorum. This mirrors similar provisions in section 318 of the UK Companies Act (which is deferential to the articles of a company).

**Shareholder proposals**

Sections 303-305 of the UK Companies Act provide that the holders of 5 per cent. of the share capital in issue can requisition a shareholders' meeting. On receipt of a valid requisition request, the board must call a general meeting within 21 days (and hold the meeting not more than 28 days after the notice of the meeting).

Sections 338-340 of the UK Companies Act provide that shareholders who hold at least 5 per cent. of the total voting rights or not fewer than 100 shareholders holding shares (on which an average of £100 has been paid up), can requisition a resolution or "matter" to be considered at the company's annual general meeting and require the company to circulate notice of it and an accompanying 1,000-word statement to shareholders under

**Current Legal Requirements of Maltese Law (which currently apply to the Company)**

The Current Articles provide that not less than 14 days' notice is required for an AGM and for any other general meeting. The notice period may be waived if agreed to by all shareholders.

Substantially the same under the Maltese Act and the Current Articles.

The Maltese Act provides that, unless the memorandum and articles of association of the company provide otherwise, any two shareholders holding voting shares constitute a quorum.

Article 12(c) of the Current Articles provides that two persons entitled to vote and present in person or by proxy shall constitute a quorum.

The Maltese Act provides that the holders of 10 per cent. of the shares in issue which have voting rights can requisition an extraordinary shareholders' meeting.

Article 11(e) of the Current Articles provides that one or more shareholders who together hold at least 10 per cent. of the Company's issued share capital shall have the right to request that one or more additional items be put on the agenda of any general meeting of the Company. Any such request is to be accompanied by a justification or a draft resolution to be adopted at the general meeting.

	<b>English Law (which will apply to the Company once the Transfer is effective)</b>	<b>Current Legal Requirements of Maltese Law (which currently apply to the Company)</b>
<b>Registered Office</b>	<p>section 314 of the UK Companies Act.</p> <p>English law permits the company's registered office to be at any place in England and Wales and to be moved within England and Wales by a resolution of the Board.</p> <p>An SE can transfer its registered office to another EEA country, subject to approval of shareholders and satisfaction of the other conditions and requirements under the SE Regulation.</p>	<p>The position is substantially the same under Maltese law.</p>
<b>Directors and Board Meetings</b>	<p>Under the New Articles, the quorum necessary for the transaction of business by the Board shall be fixed by the Board, but, until determined, shall be a majority of directors (or a majority of non-interested directors, as applicable).</p> <p>Under Article 76 of the New Articles, directors must retire every three years and may stand for re-election.</p> <p>Under Article 78 of the New Articles, a director may be served a notice of termination by the Board with the agreement of 75 per cent. of the directors.</p>	<p>Under the Current Articles, the quorum necessary for the transaction of business by the Board shall be a majority of directors.</p> <p>Under Article 13(c) of the Current Articles, directors must retire every six years and may stand for re-election.</p>
<b>Major Interests in Shares</b>	<p>Under the UK Companies Act, a company can serve notice (a "section 793 notice") on anyone whom it reasonably considers may have an interest in its shares, requiring them to provide details of their interests.</p>	<p>There are no applicable "qualifying shareholder" thresholds for the Company under the Maltese Act.</p>
<b>Compulsory acquisition on a takeover</b>	<p>Under part 28 of the UK Companies Act, an offeror who acquires 90 per cent. or more of the shares of a public limited company (which must also be 90 per cent. of the voting rights) to which the offer relates may, subject to compliance with the relevant provisions of the UK Companies Act, become entitled to acquire the remaining outstanding shares, on the same terms as were offered to other shareholders, through a statutory squeeze-out procedure.</p>	<p>There are no mandatory 'squeeze out' requirements under Maltese law except in relation to takeovers of companies admitted to trading on a regulated market in Malta. Therefore, there is no "general" application of the Maltese takeover rules to the Company other than in limited circumstances contemplated by the Takeover Directive (Directive 2004/25/EC).</p>

**English Law (which will apply to the Company once the Transfer is effective)**

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The UK Companies Act provisions provide that, in such circumstances, a shareholder may require the offeror to acquire his or her shares under the terms of the offer by applying to the court within three months of the expiry of the offer. A dissenting shareholder may also apply to the court for an order either (i) that the bidder is not entitled to acquire shares or (ii) to specify terms of acquisition different from those in the offer. This is a high burden of proof to fulfil.

**Unfair prejudice action**

Under section 994 of the UK Companies Act, a shareholder may apply to the court by petition for an order on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its shareholders, including at least himself or herself or that any actual or proposed act or omission of the company is or would be so prejudicial.

The unfair prejudicial conduct must be in respect of the company's affairs and must relate to the shareholders' interest as members of the company.

**Dissenters' rights**

The UK Companies Act gives certain rights to minority shareholders under certain conditions.

In certain limited circumstances, shareholders may make an application to the court for the following relief:

- (a) where shareholders representing not less than 5 per cent. of the company's issued share capital object to an application by a public company to be re-registered as a private company. This is achieved by an application to the court under section 98 of the UK Companies Act within 28 days to cancel the special resolution for re-registration;
- (b) where shareholders of not less than

**Current Legal Requirements of Maltese Law (which currently apply to the Company)**

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The position is substantially the same under Maltese law.

The Maltese Act refers to dissenters' rights, including:

- (a) in the case of shareholders objecting to an application by a public company to be re-registered as a private company, the company shall be required to redeem the shares held by the dissenting members, if they so request, on such terms as may be agreed, or as the court, on a demand of either the company or the dissenting members, thinks fit to order;
- (b) where shareholders of not less than 15 per cent. of the class in question object to a proposed variation of the rights attaching to such class of shares; and

**English Law (which will apply to the Company once the Transfer is effective)**

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- 15 per cent. of the class in question object to a proposed variation of the rights attaching to such class, an application to the court can be made under section 663 of the UK Companies Act within 21 days of the consent being given. The courts then have the power to disallow the variation if the variation would unfairly prejudice the members of the class represented by the applicant; and
- (c) in a takeover situation where the offeror has acquired 90 per cent. of the issued share capital of a company and a shareholder can object to his or her shares being compulsorily acquired by the offeror (see above).

**Current Legal Requirements of Maltese Law (which currently apply to the Company)**

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- (c) a merger by acquisition or by formation of a new company requires an extraordinary resolution of each of the amalgamating companies. Each of such companies will, however, be required to redeem the shares held by any dissenting shareholder on such terms as may be agreed or as the court, on a demand by either the company or the dissenting shareholder thinks fit to order. Where the merger involves the acquisition of one company by another, which holds 90 per cent. or more of the shares of the former, the dissenting minority shareholders of the company or companies being acquired have the right to have their shares purchased by the acquiring company for a consideration corresponding to the fair value of their shares and in the event of disagreement regarding fair value of such consideration, as will be determined by the court.

**Derivative Actions**

In certain circumstances, section 260 of the UK Companies Act provides that shareholders can bring an action against a director on behalf of the company.

This is not a right for shareholders to recover damages themselves – it is a right to pursue an action on behalf of the company where the company has suffered or may suffer from a director's negligence or breach. Any financial benefit from the action will go to the company. Derivative actions are generally only permitted for negligence, default, breach of duty, or breach of trust by a member of the Board.

Permission to bring a claim must be granted by the court.

**Financial Assistance**

Section 678 of the UK Companies Act contains key provisions which prohibit financial assistance for the acquisition of

Derivative actions are possible under Maltese law where there is a fraud on the minority and the wrongdoers are in control of the company, thereby preventing the company itself bringing the action in its own name.

The prohibition on financial assistance under Maltese law applies to financial assistance involving both private and

**English Law (which will apply to the Company once the Transfer is effective)**

shares in public companies in a number of circumstances:

- (a) assistance given by a public company for the purpose of an acquisition of shares in that public company;
- (b) assistance given by a subsidiary (whether public or private) of a public company for the purpose of an acquisition of shares in the public company;
- (c) assistance given by a public subsidiary for the purpose of an acquisition of shares in its private holding company;
- (d) assistance given by a company or its subsidiaries to reduce or discharge a liability incurred for the purpose of an acquisition of shares in that company if, at the time the assistance is given, that company is a public company; and
- (e) assistance given by a public company subsidiary to reduce or discharge a liability incurred for the purpose of the acquisition of shares in its private holding company.

There are both civil and criminal penalties for breach of these provisions.

A whitewash procedure is not available under English law.

**Dividend distribution**

Dividends may only be paid out of a company's distributable profits available for this purpose and (except in the case of investment companies) may only be paid if the amount of the company's net assets is not less than the aggregate of its called-up share capital and undistributable reserves (section 830 of the UK Companies Act).

A company that qualifies as an "investment company" within the meaning of section 832 and section 833 of the UK Companies Act may make a distribution out of its accumulated,

**Current Legal Requirements of Maltese Law (which currently apply to the Company)**

public companies. Otherwise, the position in relation to prohibition on financial assistance is substantially the same under Maltese law.

'Whitewash' provisions are available for private companies but not public companies by means of which the Board and shareholders may authorise transactions that would otherwise have been null and void for financial assistance.

The position is substantially the same under Maltese law in respect of the requirements of dividend distribution for public companies.

**English Law (which will apply to the Company once the Transfer is effective)**

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realised revenue profits even if it has capital losses. However, it may only make such a distribution if (a) its accumulated realised profits, so far as not previously utilised by a distribution or capitalisation, exceed its accumulated revenue losses (whether realised or unrealised), so far as not previously written off in a reduction or reorganisation of capital (i.e. no distributions out of capital profits), and (b) the amount of its assets is at least equal to one and a half times the aggregate of its liabilities to creditors and the distribution does not reduce that amount to less than one and a half times that aggregate. Additionally, the shares of the investment company must be admitted to trading on a regulated market (e.g. the London Stock Exchange) and it must not have applied any unrealised profits or capital profits (realised or unrealised) in paying up debentures or amounts unpaid on its unissued shares since the start of the previous accounting period (i.e. previous to that in which the dividend was proposed).

The New Articles contain customary provisions in relation to payment of dividend and other distributions, including by way of scrip shares.

The New Articles also contain provisions currently in the Current Articles which permit the Company to propose a distribution, by ordinary resolution at general meeting, by way of an issue of fully paid bonus shares (by capitalising on the Company's reserves) and if the Company so decides, the option for shareholders to elect to receive a cash alternative in place of their entitlement to such bonus shares.

Directors must have regard to their statutory duties, including their duty to act with reasonable care, skill and diligence and in a way likely to promote

**Current Legal Requirements of Maltese Law (which currently apply to the Company)**

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	<b>English Law (which will apply to the Company once the Transfer is effective)</b>	<b>Current Legal Requirements of Maltese Law (which currently apply to the Company)</b>
<b>Rights of Inspection</b>	<p>the success of the Company, when deciding whether to declare a dividend and when deciding how much such dividend should be.</p> <p>Under the New Articles, the shareholders have no right to inspect the accounts and records of the Company, except as provided by law, ordered by court or authorised by the directors.</p> <p>Further, the UK Companies Act provides that:</p> <ul style="list-style-type: none"> <li>(a) the Company is required to publish annual and interim accounts and to comply with certain filing requirements;</li> <li>(b) the annual accounts of the Company must be laid before shareholders at annual general meetings;</li> <li>(c) shareholders have the right to inspect the company's statutory registers, copies of directors' service contracts and minutes of general meetings; and</li> <li>(d) the Company must make statutory filings of certain information with UK Companies House, including its articles of association, annual accounts, annual returns, special resolutions adopted at general meeting and notices relating to changes in share capital and its directors.</li> </ul>	<p>The position is substantially the same under Maltese law.</p>
<b>Communications with Shareholders</b>	<p>The New Articles provide that notices may be served by hard copy or electronic means. Notices can also be served by making them available on a website, provided notification of the notice is given to shareholders.</p> <p>Any notice supplied in hard copy form is deemed to be received 24 hours after the time it was posted (or 48 hours where first class mail or registered mail or an equivalent service is not employed for members with a registered address in the</p>	<p>Under the Current Articles, notices may be served by post, fax or electronic mail. In the case of post, the notice will be deemed to be received seven calendar days after it was posted. In the case of fax or electronic mail, the notice will be deemed to be received on the day of transmission.</p>

**English Law (which will apply to the Company once the Transfer is effective)**

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UK or South Africa). Any notice supplied in electronic form shall be deemed to be delivered 24 hours after it is transmitted.

Any notice which is sent by means of a website shall be deemed to have been received when the material was first made available on the website or, if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website.

**Current Legal Requirements of Maltese Law (which currently apply to the Company)**

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## **SCHEDULE 2 TO TRANSFER REPORT: TAXATION CONSIDERATIONS**

### **PART A: UNITED KINGDOM**

#### **GENERAL**

THE FOLLOWING STATEMENTS ARE NOT EXHAUSTIVE, DO NOT CONSTITUTE TAX ADVICE AND ARE INTENDED ONLY AS A GENERAL GUIDE TO CURRENT UK LAW AND HMRC PUBLISHED PRACTICE (WHICH ARE BOTH SUBJECT TO CHANGE AT ANY TIME, POSSIBLY WITH RETROSPECTIVE EFFECT). THEY RELATE ONLY TO CERTAIN LIMITED ASPECTS OF THE UK TAXATION TREATMENT OF SHAREHOLDERS FOLLOWING THE COMPANY BECOMING UK TAX RESIDENT AND ARE INTENDED TO APPLY ONLY, EXCEPT TO THE EXTENT STATED BELOW, TO PERSONS WHO ARE RESIDENT AND, IF INDIVIDUALS, DOMICILED IN THE UNITED KINGDOM FOR UK TAX PURPOSES AND TO WHOM “SPLIT YEAR” TREATMENT DOES NOT APPLY (EXCEPT INsofar AS EXPRESS REFERENCE IS MADE TO THE TREATMENT OF NON-UNITED KINGDOM RESIDENTS), AND WHO ARE THE ABSOLUTE BENEFICIAL OWNERS OF THE SHARES (OTHERWISE THAN THROUGH AN INDIVIDUAL SAVINGS ACCOUNT OR A SELF-INVESTED PERSONAL PENSION) AND WHO HOLD THEM AS INVESTMENTS (AND NOT AS SECURITIES TO BE REALISED IN THE COURSE OF TRADE). THEY MAY NOT APPLY TO CERTAIN SHAREHOLDERS, SUCH AS DEALERS IN SECURITIES, INSURANCE COMPANIES AND COLLECTIVE INVESTMENT SCHEMES, SHAREHOLDERS WHO ARE EXEMPT FROM TAXATION AND SHAREHOLDERS WHO HAVE (OR ARE DEEMED TO HAVE) ACQUIRED THEIR SHARES BY VIRTUE OF AN OFFICE OF EMPLOYMENT. SUCH PERSONS MAY BE SUBJECT TO SPECIAL RULES.

ANY PERSON WHO IS IN ANY DOUBT AS TO THEIR TAX POSITION, OR WHO IS SUBJECT TO TAXATION IN ANY JURISDICTION OTHER THAN THE UNITED KINGDOM, SHOULD CONSULT THEIR OWN PROFESSIONAL ADVISERS WITHOUT DELAY.

THE COMMENTS SET OUT BELOW DO NOT INCLUDE A CONSIDERATION OF THE POTENTIAL UK INHERITANCE TAX CONSEQUENCES OF HOLDING SHARES. SHAREHOLDERS OR PROSPECTIVE SHAREHOLDERS SHOULD CONSULT THEIR OWN PROFESSIONAL ADVISERS IN RELATION TO POTENTIAL UK INHERITANCE TAX CONSEQUENCES OF HOLDING SHARES.

#### **FUTURE DEVELOPMENTS**

There can be no assurance that future changes in taxation (or interpretation of fiscal policies and laws) will not adversely affect Shareholders and/or the Company. Fiscal policy and practice is constantly evolving, and at present, the pace of evolution has been quickened due to a number of developments which include, but are not limited to, the Organisation for Economic Co-operation and Development (the “OECD”) base erosion and profit shifting project. Fiscal policy and legislation may change, or has or will be implemented, and such changes may or may not be accompanied by a formal announcement by any fiscal authority or the OECD. As a result, there can be no certainty of the tax treatment of the issuer generally or in the construction of double tax treaties and the operation of the administrative processes surrounding those treaties, which may also be subject to change.

#### **1 Consequence of the Transfer**

It is not expected that the Transfer will be regarded as a disposal of Shares in the Company by a United Kingdom resident Shareholder beneficially holding Shares in the Company (“UK Shareholder”).

Accordingly, the base cost of the Shares should remain the same before and after the Transfer for UK Shareholders.

## **2 Dividends**

The Company will not be required to withhold amounts on account of United Kingdom tax at source when paying a dividend.

### **2.1 Individual Shareholders within the charge to UK income tax**

With effect for the tax year beginning 6 April 2016, a United Kingdom resident individual Shareholder will not be subject to income tax on a dividend such individual Shareholder receives from the Company if the total amount of dividend income received by the individual in the tax year (including the dividend from the Company) does not exceed a dividend allowance of £5,000, which will be taxed at a nil rate (the “**Dividend Allowance**”).

In determining the income tax rate or rates applicable to a United Kingdom resident individual Shareholder’s taxable income, dividend income is treated as the highest part of such individual Shareholder’s income. Dividend income that falls within the allowance allowed under UK tax law (“**Dividend Allowance**”) will count towards the basic or higher rate limits (as applicable) which may affect the rate of tax due on any dividend income in excess of the Dividend Allowance.

To the extent that a United Kingdom resident individual Shareholder’s dividend income for the tax year exceeds the Dividend Allowance and, when treated as the highest part of such individual Shareholder’s income, falls above such individual Shareholder’s personal allowance but below the basic rate limit, such an individual Shareholder will be subject to tax on that dividend income at the dividend basic rate of 7.5 per cent.

To the extent that such dividend income falls above the basic rate limit but below the higher rate limit, such an individual Shareholder will be subject to tax on that dividend income at the dividend upper rate of 32.5 per cent.

To the extent that such dividend income falls above the higher rate limit, such an individual Shareholder will be subject to tax on that dividend income at the dividend additional rate of 38.1 per cent.

### **2.2 Corporate Shareholders within the charge to UK Corporation Tax**

United Kingdom resident corporate Shareholders will generally not be subject to corporation tax on dividends assuming one of the dividend exemption criteria is met and they do not fall within certain anti-avoidance rules. UK corporate Shareholders which are “small companies” (as that term is defined in section 931S of the Corporation Tax Act 2009) may be liable to corporation tax (at a rate of 20 per cent. for the 2016/17 tax year) on dividends paid by the Company, subject to any exemptions or reliefs available. Ordinary Shareholders within the charge to corporation tax should consult their own professional advisers.

### **2.3 Non-UK Shareholders**

A Shareholder resident or otherwise subject to tax outside the United Kingdom (whether an individual or a body corporate) may be subject to foreign taxation on dividend income under local law. Shareholders to whom this may apply should obtain their own professional advice concerning tax liabilities on dividends received from the Company.

### **3 Chargeable gains**

A disposal of Shares by a UK Shareholder may, depending on the Shareholder's circumstances, and subject to any available exemption or relief, give rise to a chargeable gain or an allowable loss for the purposes of UK taxation of chargeable gains.

#### **3.1 Individual Shareholders within the charge to UK capital gains tax**

With effect for the tax year beginning 6 April 2016, a chargeable gain or an allowable loss arising on the disposal of a chargeable asset by a United Kingdom resident individual Shareholder would ordinarily be subject to capital gains tax at a rate of 10% for basic rate payers and 20% for higher rate taxpayers, subject to exemptions or reliefs. The aforementioned rates are not applicable to the disposal of residential property or carried interest (as defined). A United Kingdom resident individual Shareholder is not chargeable to capital gains tax on taxable gains up to an annual exempt amount of £11,100.

#### **3.2 Corporate Shareholders within the charge to UK Corporation Tax**

With effect for the tax year beginning 6 April 2016, depending on their tax status for corporation tax purposes, United Kingdom resident corporate Shareholders are in principle subject to corporation tax on a chargeable gain or an allowable loss arising on the disposal at a rate of 20%. The corporation tax rate will decrease to 19% for tax years 2017/18, 2018/19, and 2019/20, and decrease further to 17% for 2020/21.

#### **3.3 Non-UK Shareholders**

Shareholders who are not resident in the United Kingdom for UK tax purposes will not generally be subject to UK taxation of chargeable gains on the disposal or deemed disposal of Shares unless they are carrying on a trade, profession or vocation in the UK through a branch or agency (or, in the case of a corporate Shareholder, a permanent establishment) in connection with which the Shares are used, held or acquired.

A Shareholder who is an individual and who acquired the Shares whilst a United Kingdom resident, and subsequently ceased to be UK resident for taxation purposes, or is treated as resident outside the UK for the purposes of a double tax treaty, for a period of five complete tax years of assessment or less, and who disposes of all or part of his Shares during the period, may be liable to UK capital gains tax on his return to the UK, subject to any available exemptions and reliefs.

### **4 Stamp Duty and Stamp Duty Reserve Tax (“SDRT”)**

#### **4.1 General**

Instruments transferring Shares will generally be subject to stamp duty at the rate of 0.5 per cent. of the amount or value of the consideration given for the transfer (rounded up to the nearest £5.00 where applicable). The transferee normally pays the stamp duty. An exemption from stamp duty is available on an instrument transferring the Shares where the amount or value of the consideration is £1,000 or less and it is certified on the instrument that the transaction effected does not form part of a larger transaction or series of transactions in respect of which the aggregate amount or value of the consideration exceeds £1,000.

An unconditional agreement to transfer Shares will normally give rise to a charge to SDRT at the rate of 0.5 per cent. of the amount or value of the consideration payable for the transfer, but such liability will be cancelled, or a right to repayment (normally with interest) will arise in respect of the SDRT liability, if the agreement is completed by a duly stamped instrument or an exempt transfer

within six years of the date on which the agreement is made (or, if the agreement is conditional, the date on which the agreement becomes unconditional). The purchaser is liable for any SDRT arising.

The transfer of Shares registered in an overseas branch register in a jurisdiction such as South Africa would be exempt from stamp duty as long as the instrument of transfer is executed outside the UK. In addition, no SDRT should be levied on any transfer of Shares maintained on an overseas branch register in such a jurisdiction.

The statements above are intended as a general guide to the current position. Certain categories of person, including market makers, brokers, dealers and persons connected with depositary arrangements and clearance services are not liable to stamp duty or SDRT and/or may be liable at a higher rate, or may, although not primarily liable for the tax, be required to notify and account for it under the Stamp Duty Reserve Tax Regulations 1986.

#### **4.2 CREST**

Deposits of Shares into CREST will not generally be subject to SDRT or stamp duty, unless the transfer into CREST is itself for consideration in money or money's worth. Paperless transfers of Shares within the CREST system are generally liable to SDRT, rather than stamp duty, at the rate of 0.5 per cent. of the amount or value of the consideration payable. CREST is obliged to collect SDRT on relevant transactions settled within the CREST system.

## **PART B: SOUTH AFRICA**

### **GENERAL**

THE STATEMENTS SET OUT BELOW ARE INTENDED ONLY AS A GENERAL AND NON-EXHAUSTIVE GUIDE TO CURRENT SOUTH AFRICAN TAX LAW AND PRACTICE AND APPLY ONLY TO CERTAIN CATEGORIES OF PERSONS. THE SUMMARY DOES NOT PURPORT TO BE A COMPLETE ANALYSIS OR LISTING OF ALL THE POTENTIAL TAX CONSEQUENCES OF HOLDING BRAIT SHARES. PROSPECTIVE ACQUIRERS OF BRAIT SHARES ARE ADVISED TO CONSULT THEIR OWN PROFESSIONAL TAX ADVISERS CONCERNING THE CONSEQUENCES OF THE ACQUISITION, OWNERSHIP AND DISPOSITION OF BRAIT SHARES. THIS SUMMARY IS BASED UPON CURRENT SOUTH AFRICAN LAW AND SOUTH AFRICAN REVENUE SERVICE PUBLISHED PRACTICE, AS AT THE DATE OF THIS DOCUMENT, EACH OF WHICH MAY BE SUBJECT TO CHANGE, POSSIBLY WITH RETROACTIVE EFFECT. UNLESS SPECIFIED OTHERWISE, THE STATEMENTS APPLY ONLY TO HOLDERS OF BRAIT SHARES WHO ARE RESIDENT SOLELY IN SOUTH AFRICA FOR TAX PURPOSES (“**SOUTH AFRICAN TAX RESIDENT SHAREHOLDERS**”), WHO HOLD THE BRAIT SHARES AS AN INVESTMENT AND WHO ARE THE ABSOLUTE BENEFICIAL OWNERS OF THE BRAIT SHARES AND ANY DIVIDENDS PAID IN RESPECT OF THEM. THE STATEMENTS ARE NOT ADDRESSED TO (I) SPECIAL CLASSES OF SHAREHOLDERS SUCH AS, FOR EXAMPLE, DEALERS IN SECURITIES, BROKER-DEALERS, INSURANCE COMPANIES AND COLLECTIVE INVESTMENTS SCHEMES; (II) SHAREHOLDERS WHO HOLD BRAIT SHARES AS PART OF HEDGING OR CONVERSION TRANSACTIONS; (III) SHAREHOLDERS WHO HAVE (OR ARE DEEMED TO HAVE) ACQUIRED THEIR BRAIT SHARES BY VIRTUE OF AN OFFICE OR EMPLOYMENT; OR (IV) SHAREHOLDERS WHO, DIRECTLY OR INDIRECTLY, CONTROL 10 PER CENT. OR MORE OF THE VOTING POWER OF THE COMPANY. SHAREHOLDERS WHO ARE IN ANY DOUBT ABOUT THEIR TAXATION POSITION AND SHAREHOLDERS WHO ARE NOT RESIDENT FOR TAX PURPOSES IN SOUTH AFRICA SHOULD CONSULT THEIR OWN PROFESSIONAL TAX ADVISERS.

#### **1 Consequence of the Transfer**

Given the fact that the Transfer of the Company from Malta to the United Kingdom does not result in the winding up of the SE or in the creation of a new legal person, the Transfer should not give rise to a disposal event for capital gains tax purposes.

#### **2 Taxation of Dividends**

Dividends received by South African Tax Resident Shareholders on shares of the Company (“**Brait Shares**”) constitute foreign dividends under South African tax law and are exempt from South African normal income tax on the basis that Brait is listed on both the London Stock Exchange and the JSE.

#### **3 Dividends tax**

Dividends declared off the South African share register to South African Tax Resident Shareholders will be subject to 15 per cent. dividends tax subject to certain exemptions. For example, if the beneficial owner of the dividend is a South African resident company, such dividend will be exempt from dividends tax.

## **4 Taxation of Capital Gains**

South African capital gains tax is only leviable on a disposal event as defined and the receipt of proceeds. South Africa will tax capital gains arising on Brait Shares sold by South African Tax Resident Shareholders. Tax is payable on the excess of the proceeds realised on the sale of Brait Shares over the cost of acquiring such shares. Where the proceeds realised are less than the base cost of the Brait Shares sold, a capital loss will be available (subject to certain restrictions) to reduce other capital gains realised by the taxpayer in the year of assessment in which the sale takes place. Any remaining loss may be carried forward and set off against capital gains in subsequent years of assessment. In the case of individual taxpayers, 40 per cent. of the capital gain is liable to income tax at the person's maximum marginal tax rate, which cannot exceed 41 per cent., with the result that capital gains are generally taxed at an effective rate of 16.4 per cent. Natural persons are entitled to an annual exclusion of ZAR40,000 for the tax year commencing on or after 1 March 2016. This amount is deducted from the net capital gain or loss realised in the year of assessment, prior to the 40 per cent. of the capital gain being included in taxable income. In the case of South African companies, the inclusion rate will be 80 per cent. and therefore the effective capital gains rate will be 22.4 per cent. In the case of a trust other than a special trust, the effective capital gains tax rate will be 32.8 per cent. (i.e. 41 per cent. multiplied by the 80 per cent. inclusion rate).

## **5 South African securities transfer tax**

### **5.1 Brait Shares registered on the main register of members (the "UK Register")**

Brait Shares registered on the UK Register and that continue to be registered on the UK Register will not be subject to South African securities transfer tax when such shares are issued or transferred. If a Shareholder wishes to transfer Brait Shares from the UK Register to the South African Register, such shares continuing to be held by such Shareholder for itself, then generally (provided the transfer is neither in contemplation of, nor part of a wider transaction involving a sale or transfer of the Brait Shares to a third party) no South African securities transfer tax should arise in respect of such transfer.

### **5.2 Brait Shares registered on the South African Register**

The transfer of Brait Shares that are registered on the South African Register to any other person will attract South African securities transfer tax. This is payable by the purchaser at the rate of 0.25 per cent. on the amount of consideration paid for that share declared by the purchaser. Where no amount is declared or where the amount is less than the lowest price of that share, the 0.25 per cent. is payable on the closing price of that share.

## **6 Donations tax**

Where a South African Tax Resident Shareholder donates or transfers Brait Shares for an inadequate consideration, donations tax at the rate of 20 per cent. will generally be payable on the differential between the market value of the Brait Shares donated and the consideration received, if any. There is an annual exemption from South African donations tax of ZAR100,000 per annum available to natural persons.