

**Explanatory notes to the agenda of the Annual General Meeting of Shareholders (AGM) of Ichor Coal N.V. (the Company) on 7 January 2019**

**Agenda item 2(a)**

*Board report 2016*

Discussion item.

This agenda item includes an account of the financial year 2016, including the report of the supervisory board.

**Agenda item 2(b)**

*Implementation of the remuneration policy in 2016*

Discussion item.

In accordance with Section 2:135 paragraph 5a of the Dutch Civil Code the remuneration policy will be dealt with as a separate agenda item.

The remuneration policy for the members of the management board was adopted by the general meeting on 25 June 2015.

**Agenda item 2(c)**

*Adoption of the annual accounts 2016*

This item will be voted on.

It is proposed to the general meeting to adopt the statutory annual accounts drawn up by the management board of the Company. The supervisory board has approved the annual accounts on 14 November 2018. The auditor of the Company has audited the annual accounts and issued an unqualified audit opinion with an emphasis of matter. This can be found in the Company's statutory annual report for 2016 from page 155 to 167.

The annual accounts 2016 show a loss. Consequently, no profits are distributed, nor other distributions to shareholders are made. It is proposed to deduct the loss from the retained earnings.

**Agenda item 3(a)**

*Discharge of the management board members in office during the financial year 2016 from liability*

This item will be voted on.

In accordance with article 32.2 (f) of the articles of association of the Company, it is proposed to the general meeting to discharge all members of the management board from all liability in relation to the exercise of their duties in the financial year 2016, to the extent that such exercise is apparent from the statutory annual

report for the year 2016 or has been otherwise disclosed to the general meeting of shareholders prior to the adoption of the annual accounts 2016.

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

*Discharge of the supervisory board members in office during the financial year 2016 from liability*

This item will be voted on.

In accordance with article 32.2 (f) of the articles of association of the Company, it is proposed to release the members of the supervisory board from liability for their duties in the financial year 2016 insofar as the exercise of such duties is reflected in the annual report for the year 2016 or otherwise disclosed to the general meeting of shareholders prior to the adoption of the annual accounts 2016.

### **Agenda item 4**

*Re-appointment of Ms Nyembezi as member of the management board*

This item will be voted on.

Ms. Nyembezi was first appointed to the Management Board on 27 March 2014 and has served as a Managing Director since. Ms. Nyembezi's term as managing director ended on 31 December 2018. The supervisory board nominates Ms. Nyembezi for re-appointment as member of the management board with effect from 1 January 2019 to and including 31 December 2019.

Pursuant to article 13.2 of the articles of association the supervisory board nominates Ms. Nyembezi for re-appointment as a member of the management board of the Company (CEO). Ms Nyembezi is nominated on the basis of her relevant knowledge and wide experience in the resources sector as well as financial markets in South Africa.

It is proposed that the general meeting of the Company re-appoints Ms Nyembezi as a member of the management board, in accordance with Article 13.1 of the articles of association of the Company, with effect from the end of the AGM for a period starting on 1 January 2019 and ending on 31 December 2019.

Attached to these explanatory notes are the particulars of Ms. Nyembezi.

### **Agenda item 5**

*Re-appointment of the external auditor of the Company, KPMG Accountants N.V., for the financial year 2018*

This item will be voted on.

At the general meeting of shareholders held on 22 May 2017 KPMG Accountants N.V. were appointed as auditors for the financial years 2016 and 2017.

In accordance with the articles 28 and 32.2 (e) of the articles of association of the Company, it is now proposed to reappoint KPMG Accountants N.V. as the external auditor of the Company for the financial year ending on 31 December 2018.

### **Agenda item 6**

*Approval (within the meaning of Section 2:107a of the Dutch Civil Code) of the disposal of the Company's shareholding in Universal Coal PLC*

This item will be voted on.

#### *The transaction*

In its announcements of 18 September 2018 and 26 October 2018 the Company announced its intention to sell its interest in Universal Coal PLC (**Universal Coal**) (the **Transaction**) after the announcement by the board of Universal Coal of an offer it had received from Ata Resources to acquire 100% of the shares in Universal Coal for a cash consideration of A\$0.35 per share by way of a scheme of arrangement.

The offer for the shares in the capital of Universal Coal remains conditional upon the negotiation and execution of a transaction implementation agreement between the parties. The completion of the Transaction would be conditional upon several items such as:

- the approval by a majority in number of shareholders who vote, representing not less than 75% in value of the Universal shares voted, either in person or by proxy, at a meeting of shareholders to be convened in accordance with section 896 of the UK Companies Act;
- the receipt of all required regulatory and statutory approvals, including approvals by the relevant competition authorities;
- the conclusion of certain ongoing commercial transactions including completion of the North Block Complex and Eloff acquisition transactions by Universal Coal.

The Company believes that the sale of its interest in Universal Coal under the scheme of arrangement will create significant shareholder value given the positive sentiment in the coal industry and the current share price for Universal Coal. The offered price represents a circa 118% return on the Company's initial capital outlay to purchase Universal Coal shares in 2014. The proceeds amounting to A\$53m (€33m) will be used to reduce the level of debt on the balance sheet.

The management board and the supervisory board of the Company determined, having duly considered the strategic, economic, financial and social aspects of the Transaction, that the Transaction is in the best interests of the Company and all its stakeholders. The management board and the supervisory board therefore fully and unequivocally recommend that the Company's shareholders vote in favour of the proposal to approve the Transaction.

#### *Proposal*

Pursuant to Section 2:107a of the Dutch Civil Code, the management board and the supervisory board request the general meeting to approve the sale by the Company of its stake in Universal Coal.

#### **Agenda item 7(a)**

##### *Approval of the 2017 amendment of the Convertible Bond terms*

This item will be voted on.

On 3 May 2012 the general meeting designated the management board to, with the approval of the supervisory board, offer up to 800 convertible bonds with a nominal amount of EUR 100,000 each, due in 2017 and convertible into shares in the capital of the Company (the **Convertible Bonds**).

The Convertible Bonds were originally issued with a minimum conversion price of EUR 4.50 per share, which could have resulted in a maximum number of 17,777,777 ordinary shares into which the Convertible Bonds could be converted.

On 21 June 2017 the Company announced that at a meeting of its bondholders on 20 June 2017, bondholders voted in favour of an extraordinary resolution to amend certain terms and conditions of the Convertible Bonds. In terms of this resolution, with effect from 7 June 2017:

- the fixed interest payable on the bonds was reduced from 8% per annum to 5%;
- the conversion price of the bonds was reduced from EUR 4.50 to EUR 0.70; and
- the maturity of the bonds was extended by 2 years to 7 June 2019,

(the **Amendment**).

The Convertible Bonds are convertible to a maximum of 110,857,143 shares under the terms of the Amendment.

In accordance with articles 6.2 and 6.3 and articles 7.2 and 7.3 of the articles of association of the Company, the management board, with the approval of the supervisory board, therefore proposes to the general meeting to ratify and confirm the Amendment by the management board, which, for the avoidance of doubt, includes (i) the designation of the management board as the corporate body competent to grant rights to subscribe for a maximum of 110,857,143 shares of EUR 0.10 each against an issue price of EUR 0.70 per share, to be paid up by conversion of the Convertible Bonds (one Convertible Bond equals 142,857.143 shares with fractions rounded down to 142,857 shares issued) and (ii) to designate the management board as the competent body to, with approval of the supervisory board, resolve to restrict or exclude pre-emptive rights of shareholders with respect to the granting of rights to subscribe for shares, all in accordance with terms and conditions of the Convertible Bonds.

#### **Agenda item 7(b)**

*Approval of the further potential amendment of the Convertible Bond terms*

This item will be voted on.

The Company is seeking flexibility for potential discussions with its bondholders about a possible further restructuring and/or repurchase of its debt. For the purpose of agreeing on new terms and conditions for the Convertible Bonds the conversion price would need to be brought in line with the current share price. In order to provide the management board with the flexibility it needs to negotiate and agree on amended Convertible Bond terms, the general meeting is requested to authorise the management board to, with the approval of the supervisory board, amend the terms and conditions of the Convertible Bonds, among other things, by agreeing on a different conversion price not lower than EUR 0.10, which could result in a conversion of the Convertible Bonds to the maximum number of shares allowed under the Company's authorised capital. The maximum number of shares to which the Convertible Bonds can convert pursuant to this authorisation will be equal to the authorised capital (at the time of the conversion of the Convertible Bonds (and therefore taking into account the authorised capital referred to in agenda item 7(c)) minus the number of shares in issuance at that time. To the extent that such recalibration qualifies as an issuance of a new right to subscribe for shares, the pre-emptive rights of existing shareholders are excluded relating to such issuance.

#### **Agenda item 7(c)**

*Partial amendment of the articles of association of the Company*

This item will be voted on.

In order to allow the Company to issue shares pursuant to its obligation under the Convertible Bonds and maintain sufficient flexibility for any future issuances, it is proposed to increase the authorised capital from EUR 25 million to EUR 47.5 million, which is a little below the maximum of five times the Company's issued capital as allowed by Dutch law. Such an amendment would require an amendment of the articles of

association of the Company as described in the proposal for the amendment of the articles of association that forms a part of the meeting documents for this AGM.

The proposed amendment of the articles of association also includes the authorization of each member of the management board and each civil law notary (and deputy civil law notary), paralegal and notarial assistant at Allen & Overy LLP, Attorneys at Law, Civil Law Notaries and Tax Consultants, in Amsterdam to have the deed of amendment of the articles of association executed.

#### **Agenda item 8(a)**

*Extension of the designation of the management board as the competent body authorised to resolve to issue shares in the capital of the Company*

This item will be voted on.

It is proposed to the general meeting to extend the designation of the management board as the competent body to resolve to issue new shares and to grant rights to subscribe for shares in the capital of the Company, with a nominal value of EUR 0.10 each, for a period of five (5) years until 7 January 2024, such in accordance with article 6.2 of the articles of association of the Company. This authority was already granted to the management board for a five (5) year period as of 22 May 2017. The management board would like to confirm this authority for a new period ending on 7 January 2024. The management board resolution to issue shares or to grant rights to subscribe for shares will require the approval of the supervisory board.

The designation of the management board as the competent body to resolve to issue shares in the capital of the Company and grant rights to subscribe for shares in the capital of the Company contemplates flexibility with regard to the financing of the Company and attracting new capital.

The authority of the management board to resolve to issue shares and to grant rights to subscribe to shares will be restricted to:

- 10% of the entire issued capital of the Company on a fully diluted basis at the time of the first issuance of shares or the first granting of rights to subscribe for shares under this mandate; and
- an additional 10% of the entire issued capital of the Company on a fully diluted basis in the event of a merger or acquisition.

Upon the approval of the new extended designation, the mandate granted on 22 May 2017 will be terminated.

#### **Agenda item 8(b)**

*Extension of the designation of the management board as the competent body authorised to resolve to restrict or exclude pre-emptive rights upon the issuance of shares*

This item will be voted on.

In accordance with article 7.2 of the articles of association of the Company, it is proposed to the general meeting to extend the designation of the management board as the competent body to resolve to restrict or to exclude pre-emptive rights upon the issuance of shares or granting of rights to subscribe for shares for a period of five (5) years until 7 January 2024. This authority was already granted to the management board for a five (5) year period as of 22 May 2017. The management board would like to confirm this authority for a new period ending on 7 January 2024. The authority of the management board to resolve to restrict or to exclude pre-emptive rights upon the issuance of shares will be restricted to:

- 10% of the entire issued capital of the Company on a fully diluted basis; and
- an additional 10% of the entire issued capital of the Company on a fully diluted basis in the event of a merger or acquisition,

both as referred to under agenda item 8(a). The management board resolution to resolve to restrict or to exclude pre-emptive rights will require the approval of the supervisory board.

#### **Agenda item 8(c)**

##### *Authorisation of the management board to repurchase shares*

This item will be voted on.

In accordance with Section 2:98(4) of the Dutch Civil Code and article 9.3 of the articles of association of the Company, it is proposed to the general meeting to authorise the management board to have the Company acquire its own shares for a valuable consideration.

The authority to repurchase shares was already granted to the management board for a period of eighteen (18) months as of 22 May 2017. The management board would like to confirm this authority for a new period not exceeding eighteen (18) months until 7 July 2020. The authority of the management board will be restricted to a maximum of 10% of the entire issued share capital of the Company on a fully diluted basis at the time of the acquisition. The price per share will range between EUR 0.01 and a maximum of 10% above the closing share price on the last business day before the date of the acquisition. The approval of the supervisory board will be required for the acquisition of the Company's own shares.