

Additional information



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Part VIII Additional information

- 1. Incorporation and activity** 3.2
- 1.1 Xstrata plc was incorporated and registered in England and Wales under the name Glassdesk Limited on 31 December 2001 with registered number 4345939 under the Companies Act as a private company limited by shares. By a written resolution passed on 9 February 2002, the Company resolved to change its name to Xstrata Limited. The change of name became effective on 18 February 2002. On 20 February 2002, the Company re-registered as a public limited company under the Companies Act. The principal legislation under which the Company operates is the Companies Act and the regulations made thereunder. 6.C.4
6.C.3
6.C.2
6.C.1
- 1.2 The Company's registered office is at Becket House, 1 Lambeth Palace Road, London SE1 7EU.
- 1.3 The Company's head office is at Bahnhofstrasse 2, 6301 Zug, Switzerland.
- 1.4 The Company has not traded since incorporation.
- 1.5 By a resolution of the directors dated 9 February 2002, Ernst & Young LLP, whose address is Becket House, 1 Lambeth Palace Road, London SE1 7EU, were appointed as the first auditors of the Company.
- 1.6 The Company is to be the holding company of the Group with effect from the Merger becoming effective.
- 1.7 The ISIN Code for the Ordinary Shares is GB0031411001.
- 1.8 The Swiss securities number of the Company's shares is 1386215.
- 2. Share capital** 6.B.4
- 2.1 The Company's authorised share capital on incorporation was £1,000 divided into 1,000 ordinary shares of £1 each, one of which was issued to the subscriber to the memorandum of association.
- 2.2 On 9 February 2002, the Company issued one ordinary share of £1 to Brian Azzopardi and the subscriber share was transferred to Benny Levene.
- 2.3 The authorised share capital of the Company was increased to £50,000 by a written resolution of all the members on 19 February 2002 and 24,999 ordinary shares were allotted and issued to each of Benny Levene and Brian Azzopardi, each of the ordinary shares being paid up as to a quarter of the nominal value.
- 2.4 By a written resolution of all the members of the Company on 19 March 2002, it was resolved to adopt the new Articles referred to in paragraph 3.2 and 3.3 below conditional upon and with effect from Admission.
- 2.5 At an extraordinary general meeting of the Company on 19 March 2002, it was resolved: 6.C.14
- (a) that the 50,000 ordinary shares of £1 each in the Company currently in issue be redesignated as 50,000 deferred shares of £1 each in the Company with the rights and restrictions relating to such deferred shares set out in the Articles;
- (b) to increase the authorised share capital of the Company to US\$175,000,000.50 and £50,000 by the creation of 350,000,000 Ordinary Shares of US\$0.50 each and one special voting share of US\$0.50;
- (c) generally and unconditionally to authorise the Directors pursuant to section 80 of the Companies Act to exercise all the powers of the Company to allot relevant securities (as defined in that section) up to an aggregate nominal amount of US\$166,140,650, such authority to expire on 19 March 2007 (save that the Company may, at any time prior to the expiry of such authority, make an offer or agreement which would or might require relevant securities to be allotted after the expiry of such authority and the Directors may allot relevant securities in pursuance of such an offer or agreement as if such authority had not expired); and
- (d) to empower the Directors pursuant to the section 80 authority described in paragraph 2.5(c) above to allot Ordinary Shares of the Company for cash for a period until the conclusion of the next annual general meeting of the Company after Admission as if section 89 of the Companies Act did not apply to such allotment but limiting such power to (i) the Ordinary Shares to be issued pursuant to the Acquisition Agreement and the Merger Agreement, (ii) the Ordinary Shares to be issued pursuant to the Global Offer and the Manager's Option, (iii) the allotment of equity securities in connection with a rights issue, and (iv) the allotment (otherwise than pursuant to (i), (ii) and (iii), of equity securities up to an aggregate nominal amount of US\$6,315,025 (being 5% of the issued ordinary share capital of the Company following the Acquisitions, the Merger and the Global Offer).
- 2.6 The provision of section 89(1) of the Companies Act (which confers on the holders of shares rights of pre-emption in respect of the allotment of equity securities which are, or are to be, paid up wholly in cash) will apply to the balance of the authorised but unissued ordinary share capital of the Company which is not the subject of disapplication of section 89 of the Companies Act referred to above. 6.B.15(a)
- 2.7 The Company's authorised share capital as at 19 March 2002, the latest practicable date prior to the publication of this document, was US\$175,000,000.50 and £50,000, comprising 350,000,000 Ordinary Shares, 50,000 deferred shares of £1 each and one special voting share of US\$0.50. As at 19 March 2002 the Company had 50,000 deferred shares of £1 each in issue, paid up as to a quarter of the nominal value. Immediately following Admission, assuming the Merger becomes effective and assuming that the Manager's Option is not exercised, it is expected that, as well as the 50,000 deferred shares, the Company's issued share capital will be approximately 227,601,000 Ordinary Shares and one special voting share each credited as fully paid. This is based on the assumption that the number of Xstrata AG Shares in issue immediately prior to Completion is not expected to exceed 5,900,000 shares, being the Xstrata AG Shares in issue on 18 March 2002 (the latest practicable date prior to the publication of this document). 6.C.9
6.C.10

Part VIII Additional information

- 2.8 No temporary documents of title have been or will be issued.
- 2.9 All existing Ordinary Shares are in registered form and, subject to the provisions of the CREST Regulations, the Directors may permit the holding of shares in any class of shares in uncertificated form and title to such shares may be transferred by means of a relevant system (as defined in the CREST Regulations). Where Ordinary Shares are held in certificated form, share certificates will be sent to the registered members by first class post. 6.B.24
- 2.10 Save as disclosed in this paragraph 2 and in paragraph 5.4 and paragraph 7 below, no share or loan capital of the Company or any of its subsidiary undertakings is under option or is agreed conditionally or unconditionally to be put under option. 6.C.19

3. Summary of the memorandum and articles of association 6.C.5

Memorandum of association 6.C.13

- 3.1 Clause 4 of the Company's memorandum of association provides that the Company's objects are, among other things, to carry on the business of a holding company and to carry on any trade or business which can, in the opinion of the Board, be advantageously carried on in connection with or ancillary to any of the Company's businesses and to do all such other things as may be deemed incidental or conducive to the attainment of the Company's objects or any of them. The Company's objects are set out in full in clause four of the Company's memorandum of association, which is available for inspection at the address specified in paragraph 24 below.

Articles of association

- 3.2 The Articles have been drafted so that certain rights that are inalienable under Swiss law and that holders of Xstrata AG Shares currently enjoy are preserved in the Company subject to the following arrangements. Under English law the Articles can always be amended by a special resolution (requiring a 75% majority of those present and voting, in person or by proxy). Consequently, a special voting share has been created which carries weighted voting rights sufficient to defeat any resolution which would amend certain of the Articles ("Entrenched Rights Actions"). The holder of the special voting share, The Law Debenture Trust Corporation p.l.c. (the "trustee company"), will separately agree, under a voting agreement with the Company (the "Voting Agreement"), to exercise its votes to vote against (and so defeat) any resolution to amend or remove an Entrenched Right Action except in limited circumstances as described in paragraph 3.4 below. This structure will have the effect of entrenching certain rights into the Articles. Those rights will include the following:

- the right not to have changes made to the Articles which would cause a member to cease to be a member or take away a member's rights to speak and vote at general meetings, to be paid a dividend if one is declared and to receive liquidation proceeds on a winding up;
- the right of shareholders to requisition a general meeting (if they hold Ordinary Shares whose nominal value is equivalent to CHF1 million or more);
- the right to at least 20 clear days' notice of all shareholder meetings;
- the right to have satellite general meetings in Switzerland;
- the right of members to appoint directors and alternate directors;
- the right not to have membership withdrawn by consolidation of share capital;
- a provision in a proxy appointment includes the right to demand a poll and confers the right to speak at a meeting;
- the right to inspect records;
- the right to a special examination of the transactions and other matters affecting shareholder rights; and
- a provision requiring the publication of notices relating to the Company in the Swiss Commercial Gazette and at least one leading Swiss newspaper.

- 3.3 The Articles include provisions to the following effect:

(a) Share rights

- (i) Subject to the provisions of the Companies Acts (as defined in the Articles) and without prejudice to any rights attached to any existing shares or class of shares, any share may be issued with such rights or restrictions as the Company may by ordinary resolution determine or, subject to and in default of such determination, as the Board shall determine.
- (ii) Subject to the Articles and to the Companies Acts (as defined in the Articles), and without prejudice to any rights attaching to any existing shares or class of shares, the Board may issue any shares which are to be redeemed, or which at the option of the Company or the holder are liable to be redeemed. The unissued shares of the Company (whether forming part of the original or any increased capital) are at the disposal of the Board.

(b) Voting rights

- (i) Subject to the rights and restrictions attached to any class of shares: 6.B.5(a)
- (a) on a show of hands, every member present in person or by proxy has one vote (save that neither the holder of the special voting share nor any holder of deferred share(s) shall be entitled to vote) and a proxy appointed by a member on behalf of such member's shareholding shall also have one vote; 6.B.7

Part VIII Additional information

- (b) on a poll:
 - (A) every member present in person or by proxy (except the holder of the special voting share and any holder of the deferred shares) shall have:
 - (i) one vote for each fully paid share; and
 - (ii) for each partly-paid share, such proportion of the votes attached to a fully paid share as would mean that such proportion is the same as the proportion of the amount paid up on the total issue price of that share;
 - (B) the holder of the special voting share shall, on an Entrenched Rights Action, have enough votes to defeat the resolution but, on all other decisions, shall have no votes; and
 - (C) the holders of the deferred shares shall not be entitled to vote.
- (ii) Unless the Board determines otherwise, a member who has been served with a direction notice after failure (whether by such member or by another person) to provide the Company with information concerning interests in those shares required to be provided under the Companies Act, shall (for so long as the information is not supplied and for up to 14 days thereafter) not be entitled to vote in respect of the shares in relation to which the information has not been supplied.

(c) Dividends and other distributions

- (i) Subject to the provisions of the Companies Acts (as defined in the Articles), the Company may by ordinary resolution declare dividends in accordance with the respective rights of the members, but no dividend shall exceed the amount recommended by the Board. The dividend shall be paid according to the amounts paid on shares in respect of which the dividend is paid, but no amount paid on a share in advance of calls shall be treated for these purposes as paid on the share. The special voting share and the deferred shares shall not carry the right to receive a dividend.
- (ii) Subject to the provisions of the Companies Acts (as defined in the Articles), the Board may pay interim dividends if it appears to the Board that they are justified by the profits of the Company available for distribution.
- (iii) The Board may also pay at intervals determined by it any dividend at a fixed rate if it appears to the Board that the profits available for distribution justify the payment. If the Board acts in good faith it shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on any shares having deferred or non-preferred rights.
- (iv) No dividend or other moneys payable in respect of a share shall bear interest against the Company unless otherwise provided by the rights attached to the share.
- (v) The Board may withhold payment from a person of any dividend in respect of shares in the Company if those shares represent at least a 0.25% interest in the Company's shares or any class thereof and if, in respect of those shares, such person has been served with a direction notice after failure (whether by such person or by another) to provide the Company with information concerning interests in those shares required to be provided under the Companies Act.
- (vi) Except as otherwise provided by the rights attached to any class of shares, all dividends will be declared and paid according to the amounts paid-up on the shares during any portion of the period in respect of which the dividend is paid.
- (vii) The Board may, if authorised by an ordinary resolution of the Company, offer any holder of shares the right to elect to receive shares by way of scrip dividend instead of cash in respect of the whole (or some part, to be determined by the Board) of any dividend.
- (viii) Any dividend which has remained unclaimed for 12 years from the date when it became due for payment shall, if the Board 6.B.8 so resolves, be forfeited and cease to remain owing by the Company.
- (ix) Except as provided by the rights and restrictions attached to any class of shares (as to which see paragraph 3.2(e) below), the holders of the Company's shares will under general law be entitled to participate in any surplus assets in a winding up in proportion to their shareholdings. A liquidator may, with the sanction of an extraordinary resolution and any other sanction required by the Insolvency Act 1986, divide among the members in specie the whole or any part of the assets of the Company and may, for that purpose, value any assets and determine how the division shall be carried out as between the members or different classes of members.

(d) Variation of rights

Except as set out in paragraphs 3.2 and 3.4 in the case of an Entrenched Rights Action and subject to the provisions of the Companies Acts (as defined in the Articles), rights attached to any class of shares may be varied or abrogated in such manner (if any) as may be provided by those rights, or in the absence of any provision, either with the written consent of the holders of not less than three-fourths in nominal value of the issued shares of that class, or the sanction of an extraordinary resolution passed at a separate general meeting of the holders of those shares.

(e) Rights of holders of deferred shares

The holders of deferred shares shall not have the right to receive notice of any general meeting of the Company nor the right to attend, speak or vote at any such general meeting. The deferred shares have no rights to dividends and, on a winding-up or other

Part VIII Additional information

return of capital entitle the holder only to the repayment of the amounts paid upon such shares after repayment of the nominal amount paid up on the Ordinary Shares, the nominal amount paid up on the special voting share plus the payment of £100,000 per Ordinary Share. The Company has irrevocable authority at any time to appoint any person to execute on behalf of the holders of any deferred shares a transfer of and/or an agreement to transfer the deferred shares to such persons as the Company may determine as custodian of the shares and/or purchase or cancel the deferred shares (in accordance with the provisions of the Companies Act) in any such case for not more than £1 for each share being transferred, purchased or cancelled to be paid to the registered relevant holder of the shares without obtaining the sanction of the holder or holders of the deferred shares for such a transfer and/or acquisition and, pending such transfer and/or acquisition, to retain the certificate for such deferred shares. The Company may, at its option, redeem all of the deferred shares in issue at any time (but subject to the minimum capital requirement of the Companies Act) at a price not exceeding £1 for each share redeemed to be paid to the relevant registered holders of the shares. The Company must provide the holders of the deferred shares with not less than 28 days' notice in writing of its intention to do so, fixing a time and place for the redemption.

(f) *Lien and forfeiture*

- (i) The Company will have a first and paramount lien on every share (not being a fully paid share) for all moneys payable by the Company (whether presently payable or not) called or payable in respect of that share. The Company may sell any share on which the Company has a lien if a sum in respect of which the lien exists is presently payable and is not paid within 14 clear days after notice has been sent to the holder of the share demanding payment and stating that if the notice is not complied with the share may be sold.
- (ii) The Company may from time to time make calls upon the members in respect of any moneys unpaid on their shares. Each member shall, subject to receiving at least 14 clear days' notice, pay to the Company the amount called on his shares. In the event of non-payment, the Board may give to the person from whom it is due not less than 14 clear days' notice requiring payment of the amount unpaid together with any interest which may have accrued and any costs, charges and expenses incurred by the Company by reason of such non-payment. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with the shares in respect of which the call was made will be liable to be forfeited.

(g) *Transfer of shares*

6.B.11

- (i) A member may transfer all or any of his certificated shares by an instrument of transfer in any usual form or in any other form, which the Board may approve. An instrument of transfer shall be signed by or on behalf of the transferor and, unless the share is fully paid, by or on behalf of the transferee. An instrument of transfer need not be under seal.
- (ii) The Board may, in its absolute discretion and without giving any reason, refuse to register the transfer of a certificated share which is not a fully paid share, provided that the refusal does not prevent dealings in shares of that class in the Company from taking place on an open and proper basis. The Board may also refuse to register the transfer of a certificated share unless the instrument of transfer:
 - (A) is lodged, duly stamped (if stampable), with the Company and (except where the shares are registered in the name of a recognised person (as defined in the Articles) and no certificate shall have been issued therefor) is accompanied by the relevant share certificate and such other evidence of the right to transfer as the Board may require;
 - (B) is in respect of one class of share only; and
 - (C) is in favour of not more than four persons.
- (iii) The Board may refuse to register a transfer of shares in the Company by a person if those shares represent at least a 0.25% interest in the Company's shares or any class thereof and if, in respect of those shares, such person has been served with a direction notice after failure (whether by such person or by another) to provide the Company with information concerning interests in those shares required to be provided under the Companies Act, unless (i) the transfer is an approved transfer (as defined in the Articles), (ii) the relevant member is not himself in default as regards supplying the information required and certifies that no person in default as regards supplying such information is interested in any of the shares the subject of the transfer, or (iii) the transfer of the shares is required to be registered by the CREST Regulations.
- (iv) Notice of refusal to register a transfer must be sent to the transferee within two months after the date on which the instrument of transfer was lodged with the Company or the instruction to transfer shares was received by the Company from the Operator of a Relevant System (in each case, as defined in the CREST Regulations), as the case may be.
- (v) No fee shall be charged for the registration of any instrument of transfer or other document relating to or affecting the title to any share.
- (vi) Shares may be transferred by means of a Relevant System, including the Relevant System of which CRESTCo Limited is the Operator (in each case, as defined in the CREST Regulations).
- (vii) The Board shall decline to register any transfer of the special voting share except where permitted in accordance with the Voting Agreement in place between the Company and the holder of the special voting share. The Voting Agreement is described in paragraph 3.4 below.

Part VIII Additional information

(viii) Save as provided above or as required by the Companies Act or other applicable law, the Company shall not impose restrictions on the transfer of shares.

(h) *Alteration of share capital*

The Company may from time to time by ordinary resolution increase, consolidate and divide or, subject to the Companies Acts (as defined in the Articles), subdivide its share capital. The Company may by ordinary resolution also cancel any shares which have not, at the date of the resolution, been taken or agreed to be taken by any person and diminish the amount of its authorised share capital by the amount of the shares so cancelled. Subject to the provisions of the Companies Acts (as defined in the Articles), the Company may by special resolution reduce its share capital, capital redemption reserve and share premium account in any way.

(i) *Purchase of own shares*

Subject to the Companies Acts (as defined in the Articles) and to any relevant special rights attached to any class of shares, the Company may purchase any of its own shares of any class in any way and at any price (whether at par or above or below par).

(j) *General meetings*

The Board shall convene and the Company shall hold general meetings as annual general meetings in accordance with the requirements of the Companies Acts (as defined in the Articles). The Board may call general meetings whenever and at such times and places as it shall determine.

(k) *Special Voting Share*

The special voting share does not carry a right to receive dividends, has rights to vote in certain circumstances and carries a right to no more than the amount of capital paid up on such a share in the event of liquidation. As noted below, the special voting share carries enough votes to defeat any resolution deemed to be an Entrenched Rights Action. The special voting share will be redeemable by the Company on termination of the Voting Agreement.

(l) *Entrenched Rights Action*

If the Company proposes to take an Entrenched Rights Action, such action shall require approval by a special resolution passed at a general meeting. The holders of the Ordinary Share and the holder of the special voting share are entitled to vote as a single class on a poll. On such a resolution, the holder of the special voting share shall have sufficient votes to defeat the resolution. Entrenched Rights Actions are described in paragraph 3.2 above.

(m) *Directors*

(i) *Appointment of Directors*

Unless otherwise determined by ordinary resolution, the number of Directors shall be not less than two and shall not be subject to any maximum. Directors may be appointed by the Company by ordinary resolution of Shareholders. The Board may not appoint a Director (either to fill a vacancy or as an additional Director).

(ii) *Age of Directors*

The provisions of the Companies Act with regard to "Age limit for Directors" shall not apply to the Company but where the Board convenes any general meeting of the Company at which (to the knowledge of the Board) a Director will be proposed for appointment or re-appointment who at the date for which the meeting is convened will have attained the age of 70 or more, the Board shall give notice of his age in years in the notice convening the meeting. 6.F.13(d)

(iii) *No share qualification*

A director shall not be required to hold any shares in the capital of the Company by way of qualification.

(iv) *Retirement of Directors by rotation*

At the first general meeting after the date of adoption of these Articles all the Directors shall retire from office and at every subsequent annual general meeting of the Company, as near as possible to one-third of the Directors, but at least one, will retire by rotation. The Directors to retire will be those who have been longest in office and those who have at the start of the annual general meeting been in office for more than three years since their last appointment or re-appointment or in the case of those who were appointed or re-appointed on the same day, will be (unless they otherwise agree) determined by lot. A retiring Director shall be eligible for re-election.

(v) *Remuneration of Directors*

(A) The emoluments of any Director holding executive office for his services as such shall be determined by the Board, and may be of any description. 6.F.13(b)

(B) The total ordinary remuneration of the Directors who do not hold executive office for their services (excluding amounts payable under any other provision of the Articles) shall not exceed in aggregate £1,000,000 per annum or such higher amount as the Company may from time to time by ordinary resolution determine. Subject thereto, each such Director shall be paid a fee (which shall be deemed to accrue from day to day) at such rate as may from time to time be determined by the Board. In addition, any Director who does not hold executive office and who serves on any committee of the Board, goes or resides abroad for any purpose of the Company or performs services outside the scope of the ordinary duties of a Director may be paid such extra remuneration as the Board may determine.

Part VIII Additional information

- (C) In addition to any remuneration to which the Directors are entitled under the Articles, they may be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of the Board or committees of the Board, general meetings or separate meetings of the holders of any class of shares or of debentures of the Company or otherwise in connection with the discharge of their duties.
- (D) The Board may provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any past or present Director or employee of the Company or any of its subsidiary undertakings or any body corporate associated with, or any business acquired by, any of them, and for any member of his family or any person who is or was dependent on him.

(vi) Permitted interests of Directors

6.F.13(a)

Subject to the provisions of the Companies Acts (as defined in the Articles), and provided that he has disclosed to the Board the nature and extent of any material interest of his, a Director notwithstanding his office:

- (A) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;
- (B) may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor), and he or his firm shall be entitled to remuneration for professional services as if he were not a Director;
- (C) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested; and
- (D) shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

(vii) Restrictions on voting

6.F.13(a)

A Director shall not vote in respect of any matter in which he has an interest (other than by virtue of his interests in shares or debentures or other securities of, or otherwise in or through, the Company) which (together with any interest of any person connected with him) is to his knowledge material, unless his interest arises only because the resolution concerns one or more of the following matters:

- (A) the giving of a guarantee, security or indemnity in respect of money lent or obligations incurred by him or any other person at the request of, or for the benefit of, the Company or any of its subsidiary undertakings;
- (B) the giving of a guarantee, security or indemnity in respect of a debt or obligation of the Company or any of its subsidiary undertakings for which the Director has assumed responsibility (in whole or part and whether alone or jointly with others) under a guarantee or indemnity or by the giving of security;
- (C) a contract, arrangement, transaction or proposal concerning an offer of shares, debentures or other securities of the Company or any of its subsidiary undertakings for subscription or purchase, in which offer he is or may be entitled to participate as a holder of securities or in the underwriting or sub-underwriting of which he is to participate;
- (D) a contract, arrangement, transaction or proposal concerning any other body corporate in which he or any person connected with him is interested, directly or indirectly, and whether as an officer, shareholder, creditor or otherwise, if he and any persons connected with him do not to his knowledge hold an interest (as that term is used in sections 198 to 211 of the Companies Act) representing 1% or more of either any class of the equity share capital of such body corporate (or any other body corporate through which his interest is derived) or of the voting rights available to members of the relevant body corporate (any such interest being deemed for the purpose of this Article to be a material interest in all circumstances);
- (E) a contract, arrangement, transaction or proposal for the benefit of employees of the Company or of any of its subsidiary undertakings which does not award him any privilege or benefit not generally accorded to the employees to whom the arrangement relates; and
- (F) a contract, arrangement, transaction or proposal concerning any insurance which the Company is empowered to purchase or maintain for, or for the benefit of, any Directors or for persons who include Directors.

(viii) Borrowing powers

6.F.13(c)

The Board may exercise all the powers of the Company to borrow money, to guarantee, to indemnify, to mortgage or charge its undertaking, property, assets (present and future) and uncalled capital, and to issue debentures and other securities whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party. There is no requirement on the Directors to restrict the borrowings of the Company or its subsidiaries.

(ix) Indemnity of officers

Subject to the provisions of the Companies Acts (as defined in the Articles) but without prejudice to any indemnity to which a Director may otherwise be entitled, every Director or other officer of the Company shall be indemnified out of the assets

Part VIII Additional information

of the Company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour (or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part) or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company.

(n) Share Control Limits

Whilst the City Code does not apply to the Company, a person must not:

- (a) whether by himself, or with persons determined by the Board to be acting in concert with him, acquire shares which, taken together with shares held or acquired by persons determined by the Board to be acting in concert with him, carry 30% or more of the voting rights attributable to Ordinary Shares; or
- (b) whilst he, together with persons determined by the Board to be acting in concert with him, holds not less than 30% but not more than 50% of the voting rights attributable to Ordinary Shares, acquire, whether by himself or with persons determined by the Board to be acting in concert with him, additional shares which, taken together with shares held by persons determined by the Board to be acting in concert with him, increases his voting rights attributable to Ordinary Shares,

(each a "Limit") unless (i) the Board consents to the acquisition, or (ii) the acquisition is made in circumstances in which the City Code, if it applied to the Company, would require an offer to be made as a consequence and such offer is made in accordance with Rule 9 of the City Code as if it so applied or (iii) if the acquisition arises from repayment of a stock borrowing arrangement (on arm's length commercial terms) (a "Permitted Acquisition").

Where a person breaches any Limit, except as a Permitted Acquisition, that person is in breach of the Articles and the Board may, amongst other things:

- (a) determine that certain voting rights attached to shares held by such persons as the Board may determine to be held in breach of the Articles ("Excess Shares") are from a particular time incapable of being exercised for a definite or indefinite period;
- (b) determine that some or all of the Excess Shares must be sold; and
- (c) determine that some or all of the Excess Shares will not carry any right to dividends or other distributions from a particular time for a definite or indefinite period.

The Board has full authority to determine the application of such share control limits including as to the deemed application of Rule 9 of the City Code, such authority shall include all discretion vested in the Panel on Takeovers and Mergers as if Rule 9 of the City Code applied.

3.4 The Voting Agreement provides that the trustee company will vote against any Entrenched Rights Actions unless:

- (a) in the opinion of counsel, such resolutions can be passed without derogating in any material respect from the rights which the former Xstrata AG shareholders would enjoy if the shares in the Company were shares in a company incorporated in Switzerland; or
- (b) in the opinion of counsel, such resolutions would be permitted in relation to a merger between a Swiss corporation (Aktiengesellschaft) and an English plc under Swiss law and practice then in force and applicable, were the merger to take place at the time of the proposed resolutions; or
- (c) the Company has certified to the trustee company that after having invited all shareholders to object, no shareholder has objected to the adoption of the resolution or has voted against it.

The Voting Agreement is terminable and may be amended under certain limited circumstances including in circumstances broadly comparable to those mentioned in paragraphs 3.4(a) and 3.4(b) above.

4. Directors

4.1 The Directors and their functions are set out in "Information on the Group – Directors, senior management and employees" in Part I. 3.8
6.F.1(a)

4.2 The Directors' current directorships and partnerships and past directorships and partnerships within the last five years, if any, are as follows: 6.F.2(a)

Name of Director	Position	Company	6.A.1
Willy Strothotte	Director	Glencore International AG Century Aluminium Corporation Metaleurop SA Asturiana de Zinc, S.L. Anaconda Nickel Limited Xstrata AG	

Part VIII Additional information

Name of Director	Position	Company
Michael Davis	Director	Nedcor Investment Bank Limited Nedcor Investment Bank Holdings Limited Billiton Plc ⁽¹⁾ Billiton SA Limited ⁽¹⁾ Amalgamated Appliances Holdings Limited ⁽¹⁾ Specialised Outsourcing Limited ⁽¹⁾
Trevor Reid	Director	Warrior International Limited ⁽¹⁾
Santiago Zaldumbide	Director	Asturiana de Zinc, S.L. Carbuos Metálicos SA Fertiberia SA Sefanitro SA Energía e Industrias Aragonesas SA Rosticer SL Thyssen Krupp SA Sociedad Española del Acumulador Tudor SA ⁽¹⁾ Radiotronica SA ⁽¹⁾ Inmobiliaria Urbis SA ⁽¹⁾ Isolux – Wat SA ⁽¹⁾
Dr. Reto Domeniconi	Director	Bobst Group SA Genevoise, General Insurance Company Genevoise, Life Insurance Company Xstrata Holding AG Guccio Gucci NV Nestlé S.A. ⁽¹⁾ Coutts & Co. AG ⁽¹⁾ Banque Cantonale Vaudoise ⁽¹⁾ Sulzer AG Suez/Lyonnaise des Eaux ⁽¹⁾ Sulzer Medical AG ⁽¹⁾ Logitech International SA ⁽¹⁾ The Carlyle Group Swiss – American Chamber of Commerce
	Advisor European Advisory Board Member Honorary Member	
Ivan Glasenberg	Director	Glencore International AG Anaconda Nickel Limited Enx Resources Limited
Paul Hazen	Director	Accel-KKR Vodafone Group Plc Safeway, Inc. Phelps Dodge Corporation E.phiphany, Inc. Willis Group Ltd. KSL Recreation Corporation Shanghai Commercial Bank ⁽¹⁾ Epoch Partners ⁽¹⁾ Wells Fargo and Company ⁽¹⁾ Xstrata AG
David Issroff	Director	Xstrata AG Xstrata SA (Pty) Ltd Silicon Technology (Pty) Ltd Mange SW1 Ltd
Robert MacDonnell	Director	US Natural Resources, Inc. Safeway, Inc. Pac Trust Realty, Inc. Xstrata AG RIM AIR RIMSKI, Inc. Round Pond, Inc. MacDonnell Foundation Kohlberg Kravis Roberts & Co Owens-Illinois, Inc. Auto Zone, Inc. Vons Companies, Inc. Kohlberg Kravis Roberts & Co ⁽¹⁾
	General Partner	

Part VIII Additional information

Name of Director	Position	Company
Sir Steve Robson CB	Director	Partnerships UK plc Cazenove Group plc The Royal Bank of Scotland Group plc
Dr. Frederik Roux	Director	Fred Roux Investment Holdings (Pty) Limited Seacow Properties (Pty) Ltd Brakhoek Properties (Pty) Ltd Xstrata SA (Pty) Ltd Gencor Limited ⁽¹⁾ Alusaf Limited ⁽¹⁾ Richards Bay Minerals (Pty) Ltd ⁽¹⁾
David Rough ⁽²⁾	Director	Legal & General Insurance Limited Legal & General Property Limited Legal & General UK Select Investment Trust plc Legal & General Ventures Limited BBA Group plc EMAP plc Land Securities plc ⁽³⁾ Mithras Investment Trust plc Mithras Investments Limited Legal & General Group plc ⁽¹⁾ Group Trust plc ⁽¹⁾

⁽¹⁾ Past directorship/partnership.

⁽²⁾ David Rough has agreed to become a Non-executive Director and Deputy Chairman of the Company with effect from 1 April 2002.

⁽³⁾ David Rough has agreed to become a director of Land Securities plc with effect from 2 April 2002.

5. Directors' and other interests

- 5.1 Prior to the Merger becoming effective, none of the Directors or other connected persons (within the meaning of section 346 of the Companies Act) will have any interest in the Company's issued share capital. 6.F.4(a)
6.F.4(b)
6.F.4(c)
- 5.2 Immediately following the Merger becoming effective and on Admission, the interests of the Directors and their immediate families (all of which are beneficial unless otherwise stated) in the Company's issued share capital which: 19.4(b)
- (a) are required to be notified by each Director pursuant to section 324 or section 328 of the Companies Act;
 - (b) are required pursuant to section 325 of the Companies Act to be entered into the register referred to therein; or
 - (c) are interests of a connected person (within the meaning of section 346 of the Companies Act) of a Director which would, if the connected person were a Director, be required to be disclosed under paragraph (a) or (b) above and the existence of which is known to or could with reasonable diligence be ascertained by that Director, are expected to be as follows:

	Number of Ordinary Shares following Admission	Percentage of issued share capital following Admission ⁽¹⁾
Willy Strothotte	0	0%
Michael Davis	32,040	0.01%
Trevor Reid	16,180	0.01%
Santiago Zaldumbide	40,770	0.02%
Dr. Reto Domeniconi	1,900	0%
Ivan Glasenberg	0	0%
Paul Hazen	40,470	0.02%
David Issroff	0	0%
Robert MacDonnell	51,370	0.02%
Sir Steve Robson	0	0%
David Rough*	2,870	0%
Dr. Frederik Roux	42,170	0.02%

(1) Assuming the Manager's Option is not exercised.

* David Rough has agreed to become a Non-executive Director and Deputy Chairman of the Company with effect from 1 April 2002.

- 5.3 The interests of the Directors together represent approximately 0.10% of the Company's expected issued share capital on Admission (assuming the Manager's Option is not exercised).
- 5.4 Immediately following Admission, the Directors are expected to hold the following awards of restricted Ordinary Shares and options over Ordinary Shares subject to the terms of the employee share schemes described in paragraphs 7.2 to 7.6 below: 6.B.26

Part VIII Additional information

Name of Director	Number of Ordinary Shares under option	Number of restricted Ordinary Shares awarded but not yet vested
Willy Strothotte	–	10,200
Michael Davis	1,475,000 ⁽¹⁾	–
Trevor Reid	590,000	–
Dr. Reto Domeniconi	53,190	3,260
Paul Hazen	–	8,150
David Issroff	–	10,200
Robert MacDonnell	–	8,150
Dr. Frederik Roux	6,200	3,400
Eric Sarasin ⁽²⁾	45,750	–
Daniel Sauter ⁽³⁾	125,730	–
Thomas Schmidheiny ⁽⁴⁾	55,585	–
Santiago Zaldumbide	80,000	–

(1) 885,000 of these Ordinary Shares are held by Glencore International.

(2) Mr. Sarasin resigned from the board of Xstrata AG on 3 May 2000.

(3) Mr. Sauter resigned from the board of Xstrata AG on 9 May 2001.

(4) Mr. Schmidheiny resigned from the board of Xstrata AG on 9 May 2001.

- 5.5 Save as disclosed above, on Admission, none of the Directors will have any interest in the Company's share or loan capital. 6.F.4
- 5.6 Other than as described below, no Director has or has had any interest in any transactions which are or were unusual in their nature or conditions or are or were significant to the Company's business or any of the Company's subsidiary undertakings and which were effected by the Company or any of the Company's subsidiaries during the current or immediately preceding financial year or during an earlier financial year and which remain in any respect outstanding or unperformed. By virtue of their being shareholders and employees of Glencore International, Willy Strothotte and David Issroff were interested in the acquisition of Glencore's interest in Asturiana, the sale of the Xstrata AG Group's interest in the United coal mine and the Acquisitions and by virtue of being a shareholder and employee of Glencore International, Ivan Glasenberg was interested in the Acquisitions. 6.F.6
- 5.7 Save for any interests which may arise under the underwriting arrangements (see "Additional information - Underwriting arrangements in this Part VIII), immediately following the Merger becoming effective, each of the following persons (not being a Director of the Company) directly or indirectly, will be interested in 3% or more of the Company's ordinary share capital, and the amount of such person's interest will be as follows: 6.C.16

Shareholder	Number of Ordinary Shares following Admission	Percentage of issued share capital following Admission
Glencore International	91,040,400 ⁽¹⁾	40.0% ⁽¹⁾
Tuxedo Invest AG	7,800,000 ⁽²⁾	3.4% ⁽¹⁾

(1) Assuming the Manager's Option is not exercised.

(2) This is based on the notification made by Tuxedo Invest AG to Xstrata AG and SWX on 15 November 2001. The Company will not know the exact number of Ordinary Shares held by Tuxedo Invest AG until their Xstrata AG Shares are exchanged for Ordinary Shares.

- 5.8 Save as set out in this paragraph and in paragraph 5.7 above, the Company is not aware of any person who, immediately following the Merger becoming effective, will be interested (within the meaning of the Companies Act), directly or indirectly, in 3% or more of the Company's issued share capital.
- 5.9 Save as detailed above, the Company is not aware of any person who, immediately following the Merger becoming effective, will exercise, or could exercise, directly or indirectly, jointly or severally, control over the Company. 6.C.15

6. Directors' service agreements

- 6.1 Mr. Michael Davis and Mr. Trevor Reid have employment agreements with Xstrata Services (UK) Limited ("XSL"), but their services as Chief Executive and Chief Financial Officer respectively are provided to the Company under a secondment agreement entered into between the Company and XSL on 19 March 2002. Each of Mr. Davis and Mr. Reid is seconded to the Company for a fixed term of two years thereafter renewable by the Company for further periods of two years. 6.F.12 16.11

Mr. Davis' employment agreement provides for a salary of US\$1,000,000 per annum and Mr. Reid's for a salary of US\$380,000 per annum. In addition, each of Mr. Davis and Mr. Reid is entitled to receive permanent health, life and private medical insurance, a housing allowance of US\$183,000 per annum and US\$141,666 per annum respectively (to enable each to maintain a residence in Switzerland so as to qualify under Swiss law for a work permit) and to participate in the pension arrangements which are described in paragraph 8 below. In addition, each of Mr. Davis and Mr. Reid is entitled to participate in share option and bonus schemes operated by the Company. Mr. Reid is entitled to receive bonus payments as compensation for bonus and share option benefits he lost when he left his previous employment to join XSL of US\$295,000 on 2 January 2003 and US\$221,000 on 2 January 2004 providing he is in employment on those dates.

Part VIII Additional information

The employment of Mr. Davis and Mr. Reid may be terminated by not less than 12 months' notice by XSL or the Director concerned. On a termination of the employment agreement by XSL in breach, or if Mr. Davis or Mr. Reid resign in circumstances where they cannot in good faith be expected to continue in employment, each Director is entitled to be paid a sum equal to 150% of his annual salary, an amount equal to his previous year's bonus and to have all entitlements under any retirement benefit arrangements in which they participate paid up to the date of termination of employment in accordance with the relevant plan rules.

- 6.2 Mr. Santiago Zaldumbide has a professional services agreement with Asturiana (dated 29 January 1998) to act as Chairman of Asturiana. The agreement expires on 29 January 2007 unless renewed by mutual agreement or terminated earlier either by Mr. Zaldumbide giving three months' notice or upon his removal as Chairman. Mr. Zaldumbide is entitled to a total fee for the term of his agreement of €3,005,060 payable at a rate of €601,012 per annum less any fees received from certain specified external directorships. On termination of the agreement, other than on his voluntary termination or termination for gross negligence, Mr. Zaldumbide is entitled to receive a sum from the redemption of an insurance policy (acquired by Asturiana for a premium of €3,005,060), including any with profits bonus payable under the policy less the compensation received by him during the term of the agreement. On termination of the agreement by expiry of the fixed term, Mr. Zaldumbide is entitled to receive the capital redemption value of the policy, including the with profit bonus element, minus the aforementioned amount of €3,005,060 which he will already have received. Mr. Zaldumbide's entitlements under the insurance policy are in lieu of his receiving pension benefits or any increase in his fee during the term of his agreement with Asturiana. In addition, Mr. Zaldumbide is entitled to participate in share option and bonus schemes operated by the Company. Mr. Zaldumbide is engaged as a Director on the terms of a letter of appointment dated 18 March 2002. The appointment is on an indefinite basis subject to the existence of the agreement between Mr. Zaldumbide and Asturiana. Mr. Zaldumbide will receive no additional remuneration for his position as Director.
- 6.3 Mr. Willy Strothotte is engaged by the Company as a Non-executive Director and Chairman on the terms of a letter of appointment. The appointment is for an initial fixed term of 36 months commencing on 25 February 2002 and is terminable thereafter by six months notice by Mr. Strothotte. The Company may terminate Mr. Strothotte's appointment at any time and on such termination Mr. Strothotte will not be entitled to any compensation for loss of office. The term may be renewed by the Board. Mr. Strothotte will receive an annual fee of US\$100,000 and is subject to confidentiality undertakings. Mr. Strothotte will receive an additional annual fee of US\$15,000 for his membership and chairmanship of the Company's remuneration committee.
- 6.4 Mr. David Rough will be engaged by the Company as a Non-executive Director and Deputy Chairman on the terms of a letter of appointment. The appointment is for an initial fixed term of 36 months commencing on 1 April 2002 and is terminable thereafter by six months notice by Mr. Rough. The Company may terminate Mr. Rough's appointment at any time and on such termination Mr. Rough will not be entitled to any compensation for loss of office. The term may be renewed by the Board. Mr. Rough will receive an annual fee of US\$80,000 and is subject to confidentiality undertakings. Mr. Rough will receive an additional annual fee of US\$25,000 for his membership of the Company's remuneration committee and his chairmanship and membership of the nominations committee. Mr. Rough shall each year be entitled to notify the Company (a 'notification') what proportion, if any, of the post tax amount of his fees for that year he wishes to apply to acquire Ordinary Shares. The price at which he may so acquire Ordinary Shares shall be equal to the higher of the nominal value of an Ordinary Share and the exercise price which is set in respect of the next grant of options under the Xstrata LTIP following his notification.
- 6.5 Mr. David Issroff is engaged by the Company as a Non-executive Director on the terms of a letter of appointment. The appointment is for an initial fixed term of 36 months commencing on 25 February 2002 and is terminable thereafter by six months notice by Mr. Issroff. The Company may terminate Mr. Issroff's appointment at any time and on such termination Mr. Issroff will not be entitled to any compensation for loss of office. The term may be renewed by the Board. Mr. Issroff will receive an annual fee of US\$60,000 and is subject to confidentiality undertakings.
- 6.6 Dr. Reto F. Domeniconi is engaged by the Company as a Non-executive Director on the terms of a letter of appointment. The appointment is for an initial fixed term of 36 months commencing on 25 February 2002 and is terminable thereafter by six months notice by Dr. Domeniconi. The Company may terminate Dr. Domeniconi's appointment at any time and on such termination Dr. Domeniconi will not be entitled to any compensation for loss of office. The term may be renewed by the Board. Dr. Domeniconi will receive an annual fee of US\$60,000 and is subject to confidentiality undertakings. Dr. Domeniconi will receive an additional annual fee of US\$15,000 for his membership and chairmanship of the Company's audit committee. Dr. Domeniconi shall each year be entitled to notify the Company (a 'notification') what proportion, if any, of the post tax amount of his fees for that year he wishes to apply to acquire Ordinary Shares. The price at which he may so acquire Ordinary Shares shall be equal to the higher of the nominal value of an Ordinary Share and the exercise price which is set in respect of the next grant of options under the Xstrata LTIP following his notification.
- 6.7 Mr. Ivan Glasenberg is engaged by the Company as a Non-executive Director on the terms of a letter of appointment. The appointment is for an initial fixed term of 36 months commencing on 25 February 2002 and is terminable thereafter by six months notice by Mr. Glasenberg. The Company may terminate Mr. Glasenberg's appointment at any time and on such termination Mr. Glasenberg will not be entitled to any compensation for loss of office. The term may be renewed by the Board. Mr. Glasenberg will receive an annual fee of US\$60,000 and is subject to confidentiality undertakings. Mr. Glasenberg will receive an additional annual fee of US\$10,000 for his membership of the Company's nominations committee.
- 6.8 Mr. Paul Hazen is engaged by the Company as a Non-executive Director on the terms of a letter of appointment. The appointment is for an initial fixed term of 36 months commencing on 25 February 2002 and is terminable thereafter by six months notice by

Part VIII Additional information

Mr. Hazen. The Company may terminate Mr. Hazen's appointment at any time and on such termination Mr. Hazen will not be entitled to any compensation for loss of office. The term may be renewed by the Board. Mr. Hazen will receive an annual fee of US\$60,000 and is subject to confidentiality undertakings. Mr. Hazen will receive an additional annual fee of US\$10,000 for his membership of the Company's remuneration committee. Mr. Hazen shall each year be entitled to notify the Company (a 'notification') what proportion, if any, of the post tax amount of his fees for that year he wishes to apply to acquire Ordinary Shares. The price at which he may so acquire Ordinary Shares shall be equal to the higher of the nominal value of an Ordinary Share and the exercise price which is set in respect of the next grant of options under the Xstrata LTIP following his notification.

- 6.9 Mr. Robert MacDonnell is engaged by the Company as a Non-executive Director on the terms of a letter of appointment. The appointment is for an initial fixed term of 36 months commencing on 25 February 2002 and is terminable thereafter by six months notice by Mr. MacDonnell. The Company may terminate Mr. MacDonnell's appointment at any time and on such termination Mr. MacDonnell will not be entitled to any compensation for loss of office. The term may be renewed by the Board. Mr. MacDonnell will receive an annual fee of US\$60,000 and is subject to confidentiality undertakings. Mr. MacDonnell will receive an additional annual fee of US\$10,000 for his membership of the Company's nominations committee. Mr. MacDonnell shall each year be entitled to notify the Company (a 'notification') what proportion, if any, of the post tax amount of his fees for that year he wishes to apply to acquire Ordinary Shares. The price at which he may so acquire Ordinary Shares shall be equal to the higher of the nominal value of an Ordinary Share and the exercise price which is set in respect of the next grant of options under the Xstrata LTIP following his notification.
- 6.10 Dr. Frederik Roux is engaged by the Company as a Non-executive Director on the terms of a letter of appointment. The appointment is for an initial fixed term of 36 months commencing on 25 February 2002 and is terminable thereafter by six months notice by Dr. Roux. The Company may terminate Dr. Roux's appointment at any time and on such termination Dr. Roux will not be entitled to any compensation for loss of office. The term may be renewed by the Board. Dr. Roux will receive an annual fee of US\$60,000 and is subject to confidentiality undertakings. Dr. Roux will receive an additional annual fee of US\$10,000 for his membership of the Company's audit committee. Dr. Roux shall each year be entitled to notify the Company (a 'notification') what proportion, if any, of the post tax amount of his fees for that year he wishes to apply to acquire Ordinary Shares. The price at which he may so acquire Ordinary Shares shall be equal to the higher of the nominal value of an Ordinary Share and the exercise price which is set in respect of the next grant of options under the Xstrata LTIP following his notification.
- 6.11 Sir Steve Robson is engaged by the Company as a Non-executive Director on the terms of a letter of appointment. The appointment is for an initial fixed term of 36 months commencing on 25 February 2002 and is terminable thereafter by six months notice by Sir Steve Robson. The Company may terminate Sir Steve Robson's appointment at any time and on such termination Sir Steve Robson will not be entitled to any compensation for loss of office. The term may be renewed by the Board. Sir Steve Robson will receive an annual fee of US\$60,000 and is subject to confidentiality undertakings. Sir Steve Robson will receive an additional annual fee of US\$10,000 for his membership of the Company's audit committee. Sir Steve Robson shall each year be entitled to notify the Company (a 'notification') what proportion, if any, of the post tax amount of his fees for that year he wishes to apply to acquire Ordinary Shares. The price at which he may so acquire Ordinary Shares shall be equal to the higher of the nominal value of an Ordinary Share and the exercise price which is set in respect of the next grant of options under the Xstrata LTIP following his notification.
- 6.12 In the year ended 31 December 2001, the total aggregate of the remuneration paid and benefits in kind granted (under any description whatsoever) to the Directors by members of the Group was US\$350,000. The aggregate of the remuneration payable (excluding benefits in kind) to the Directors by members of the Group in respect of the year ending 31 December 2002 under the arrangements in force at the date of this document is expected to amount to approximately US\$2,800,000. In addition, the Executive Directors may receive additional bonus payments at the discretion of the remuneration committee. 6.F.3
6.F.11
- 6.13 There is no arrangement under which a Director has agreed to waive future emoluments nor have there been any such waivers during the financial year immediately preceding the date of this document. 6.F.10
- 6.14 There are no outstanding loans or guarantees granted or provided by any member of the Group to or for the benefit of any of the Directors. 6.F.7
- 6.15 Save as set out above, the Directors: 6.F.2
- (a) have not been directors or partners of any companies or partnership at any time in the previous five years;
 - (b) have no unspent convictions relating to indictable offences;
 - (c) have had no bankruptcies or individual voluntary arrangements;
 - (d) have not been directors with an executive function of any company at the time of or within 12 months preceding any receivership, compulsory liquidation, creditors voluntary liquidation, administration, company voluntary arrangement or any composition or arrangement with creditors generally or any class of creditors of such company;
 - (e) have not been partners of any partnership at the time of or within 12 months preceding any compulsory liquidation, administration or partnership voluntary arrangements of such partnership;
 - (f) have not been partners of any partnership at the time of or within 12 months preceding a receivership of any assets of such partnership;
 - (g) have not had any of their assets subject to any receivership; and

Part VIII Additional information

- (h) have not received any public criticisms by statutory or regulatory authorities (including recognised professional bodies) and have not been disqualified by a court from acting as a director of a company or from acting in the management or conduct of the affairs of a company.

7. Details of share schemes

6.F.8

The Xstrata LTIP

6.C.19

7.1 (a) The Xstrata LTIP has two elements:

6.C.10(b)

6.C.10(c)

- (i) a long term incentive plan award, which is a free contingent award of Ordinary Shares that will vest after three years, subject to, and to the extent that, performance criteria determined at the time of grant have been satisfied; and
- (ii) a share option to acquire Ordinary Shares at a specified exercise price after the third anniversary of grant, to the extent that performance conditions have been satisfied.

6.B.26

LTIP awards may be granted in different forms to suit local regulatory and tax requirements, provided that the economic effect is the same. In countries where an award involving real shares is not appropriate or feasible for legal, regulatory or tax reasons, a phantom version of both elements of the Xstrata LTIP will be operated. This will deliver a cash payment equal to the net benefit a participant would have derived from the vesting or exercise of a share based LTIP award or option.

- (b) The remuneration committee may grant awards under the Xstrata LTIP at its discretion at any time during the period of 42 days following Admission and thereafter within 42 days after the announcement by the Company of its results for any period or within 42 days of any day on which the remuneration committee considers that exceptional circumstances exist which justify a grant. No payment will be required for the grant of a LTIP award or option.
- (c) Executive Directors and employees of the Company and its subsidiaries are eligible to participate at the discretion of the remuneration committee and selection will be based on agreed criteria, such as, for example, individual performance, role, skills and potential.
- (d) Options and LTIP awards may be granted over newly issued or existing Ordinary Shares. Any existing Ordinary Shares may be acquired and held by the Xstrata Employee Share Ownership Trust established to benefit employees and former employees of the Group. To the extent that new Ordinary Shares are to be issued to satisfy awards granted under the Xstrata LTIP, the aggregate number that may be capable of issue on exercise or vesting of such rights under the Xstrata LTIP, when added to the number of Ordinary Shares issued or issuable pursuant to subsisting rights to subscribe for Ordinary Shares granted in the preceding ten years under any other discretionary employees' share scheme of the Company shall not, on the date of grant, exceed 5% of the Company's issued share capital. The options and awards granted under the Xstrata AG Share Schemes, which will be replaced by rights over Ordinary Shares upon the Merger, will not be counted against this limit.
- (e) No consideration will be payable on the vesting of an LTIP award. On exercise of an option, a participant will be required to pay an exercise price which will not be less than the market value of an Ordinary Share on the date of grant or, if greater, and in the case of an option to subscribe for shares, the nominal value of an Ordinary Share. Market value will be based upon the average closing middle-market quotation of an Ordinary Share on the London Stock Exchange on the seven dealing days which immediately precede the date of grant.
- (f) The aggregate value of options and LTIP awards made to an individual under the Xstrata LTIP in any one year may not exceed an amount equal to two times base salary (other than in very exceptional circumstances where the limit may not exceed four times base salary). The value in the case of an option will be the Black Scholes (or similar) valuation of that option based on its expected life, but being subject to a lower and upper limit (expressed as a percentage of the market value of the underlying Ordinary Shares) determined by the remuneration committee. The value in the case of an LTIP award will be based on the value of the Ordinary Shares subject to that award.
- (g) LTIP awards and options will normally vest or be capable of exercise at the end of a three year performance period providing the employee has remained in employment with the Group. The number of Ordinary Shares that may be acquired will depend on the extent to which performance targets set by the remuneration committee at the time of grant have been satisfied. Options will remain exercisable for a maximum of seven years or such shorter period as the remuneration committee may specify (after which they will lapse). Performance targets are not capable of being retested at the end of the performance period, so that any proportion of a LTIP award or option which does not vest after three years will lapse.
- (h) Early vesting and exercise of options and LTIP awards will be permitted where the participant leaves employment in certain circumstances being death, ill health or disability and the sale of a business or company in which the participant is employed. Where participants leave employment for any other reason, vested options and LTIP awards will remain exercisable for a period of one year, after which they shall lapse; unvested options and LTIP awards shall lapse immediately unless the remuneration committee determines otherwise, in which case they shall vest to the extent to which the performance targets have been met.

Part VIII Additional information

- (i) If there is a change of control or any amalgamation or reconstruction or winding up of the Company, options and LTIP awards will automatically vest in full or (in certain circumstances) may be exchanged for equivalent options or LTIP awards over shares in the acquiring company.
- (j) LTIP awards and options are not pensionable nor are they transferable except as determined by the remuneration committee and on such terms and to such persons (or categories of person) as they shall specify. Such transfers will normally only be permitted where there will be no immediate realisation of economic benefit by means of a sale to an unconnected third party. In all other cases, awards may only be realised by persons to whom they are granted (or, in the case of death, by their personal representatives). Ordinary Shares allotted or transferred under the Xstrata LTIP will rank equally with Ordinary Shares then in issue except in respect of entitlements arising prior to the date of exercise or vesting (save that dividends or dividend equivalents may be payable prior to vesting at the discretion of the remuneration committee).
- (k) The numbers of Ordinary Shares subject to options and LTIP awards and the price (if any) payable on their exercise may be adjusted if there is a variation of the Company's share capital such as a capitalisation issue, sub-division, consolidation or reduction of the share capital.
- (l) The Board may amend the Xstrata LTIP, but any alterations to the provisions relating to eligibility, equity dilution, individual participation limits and the adjustments that may be made following a variation of the share capital cannot be altered to the advantage of actual or potential participants without the prior approval of Shareholders in general meeting (except for minor amendments to benefit the administration of the Xstrata LTIP, to take account of a change in legislation or developments in law affecting the Xstrata LTIP or to obtain or maintain favourable tax, exchange control or regulatory treatment for participants in the Xstrata LTIP or for any member of the Group). No amendment may operate to affect adversely any right already acquired by a participant without their prior consent. The Board has power to create sub-plans to the Xstrata LTIP to accommodate local variations in tax or regulatory treatment but such sub-plans must fall within the overall objectives and spirit of the Xstrata LTIP.
- (m) The Xstrata LTIP will terminate on the tenth anniversary of the date of Admission when no further awards will be granted, or such earlier time as the remuneration committee may consider appropriate, but the rights of existing participants will not thereby be affected.

The Xstrata AG Share Schemes

7.2 The Xstrata AG Share Schemes comprise the Xstrata AG Management and Employee Share Incentive Scheme (the "Management Scheme"), the Xstrata AG Directors' Option Scheme (the "Old Directors' Option Scheme") and the Xstrata AG Directors' Incentive Scheme (the "New Directors' Scheme"). Awards and options subsisting under these schemes will be converted into equivalent rights over Ordinary Shares upon the Merger becoming effective and after Admission will continue to be subject to the terms and conditions of the Xstrata AG Share Schemes which are detailed below. The number of Ordinary Shares over which the replacement rights will be granted will be proportionate to the number of Xstrata AG Shares under the existing awards and options on the basis of the Exchange Ratio.

It is intended that the replacement options will as far as possible be satisfied by the transfer of Ordinary Shares which will be held by the trustees of the Xstrata Employee Share Ownership Trust and the Xstrata Employee and Directors Share Ownership Trust. Upon the Merger becoming effective the trustees of these trusts will be entitled to receive 1,250,120 Ordinary Shares relating to 125,012 Xstrata AG Shares held by Xstrata AG in treasury for the purpose of the Xstrata AG Share Schemes. These Ordinary Shares will be available to satisfy the replacement options granted by the Company under the Xstrata AG Share Schemes and awards and options granted under other employees' share schemes established by the Company.

Xstrata AG Management and Employee Share Incentive Scheme

- 7.3 (a) The Management Scheme which was established in 1998 consists of two elements:
- (i) Xstrata AG Shares purchased by employees at a price equal to market value, which are restricted from dealings for a period of two years at the end of which period the participant may call for delivery of the Xstrata AG Shares; and
 - (ii) share options to acquire Xstrata AG Shares at an exercise price fixed at the date of grant which are granted to employees in proportion to the number of restricted Xstrata AG Shares purchased by them. A participant may request the payment of a cash sum equivalent to the net gain he would have received had he exercised the option and acquired Xstrata AG Shares on the exercise.
- (b) Upon the Merger becoming effective, holders of 1,077 restricted Xstrata AG Shares will become entitled (as other shareholders will) to a proportionate number of Ordinary Shares based upon the Exchange Ratio, which will be subject to the same restrictions as apply to their Xstrata AG Shares under the terms of the Management Scheme. Options over a total of 160,980 Xstrata AG Shares will be replaced by equivalent options over a proportionate number of Ordinary Shares based upon the Exchange Ratio. The replacement options will be subject to the same terms and conditions under the Management Scheme as the options they replace and will be exercisable between the same dates and at the same aggregate exercise price. The exercise price per Xstrata AG Share (which ranges from CHF 194.70 to CHF 432.45) will be adjusted by the inverse of the Exchange Ratio so that the intrinsic value of the options immediately before and after the Merger remains unaffected.

Part VIII Additional information

- (c) The replacement options will generally be exercisable between two and five years after the date on which the options they replace were granted and will lapse on the fifth anniversary of such grant. Options are treated as having become vested on the second anniversary of their grant.
- (d) If a participant ceases employment with the Group for any reason, he will remain entitled to exercise all of his vested options and a proportion of his unvested options (pro rated according to the proportion which the period since the date of grant bears to the two year vesting period) in accordance with the terms of the Management Scheme (except where cessation is by reason of gross negligence or misconduct when all unvested options will lapse). A participant's restricted Ordinary Shares will automatically vest and be released to him within five days of such cessation.
- (e) If a participant ceases to be employed by the Group by reason either of his employing company ceasing to be under the control of the Company or the business in which he is working is transferred out of the Group, all his options will automatically vest and become immediately exercisable and will remain exercisable for three years from vesting. A participant's restricted Ordinary Shares will automatically vest and be released to him.
- (f) In the case of a takeover, reconstruction, amalgamation or winding up of the Company, or a public offer (whether conditional or not) to acquire all the Ordinary Shares of the Company, all of a participant's options will automatically vest and become immediately exercisable and will remain exercisable for three years from vesting. All restricted Ordinary Shares will automatically vest and be released to participants.
- (g) The numbers of Ordinary Shares subject to options and the price payable on their exercise may be adjusted if there is a variation of the Company's share capital such as a capitalisation issue, sub-division, consolidation or reduction of share capital or a merger, or other similar transaction involving the Company.
- (h) Loans have been made to a number of participants in the Management Scheme to enable them to meet tax liabilities arising on the grant of their options. These loans are repayable to the extent that the associated options are exercised (or if options lapse on a participant ceasing to be in employment due to gross negligence or misconduct). The grant of the replacement options will not trigger repayment of these loans which will be acquired by Xstrata (Schweiz) AG conditional on the Merger becoming effective, to which repayment will be due in accordance with the original terms.

Xstrata AG Directors' Incentive Scheme

- 7.4 (a) The New Directors' Scheme was established in 1998 and its provisions are substantially the same as those of the Management Scheme described at paragraph 7.3 above. Executive and non-executive directors of the Xstrata AG Group have been granted options and have acquired restricted Xstrata AG Shares.
- (b) Upon the Merger becoming effective, holders of 4,336 restricted Xstrata AG Shares will become entitled (as other shareholders will) to a proportionate number of Ordinary Shares based upon the Exchange Ratio, which will be subject to the same restrictions as apply to their Xstrata AG Shares under the terms of the New Directors' Scheme. Options over a total of 16,099 Xstrata AG Shares will be replaced by equivalent options over a proportionate number of Ordinary Shares based upon the Exchange Ratio. The replacement options will be subject to the same terms and conditions under the New Directors' Scheme as the options they replace and will be exercisable between the same dates and at the same aggregate exercise price. The exercise price per Xstrata AG Share (which ranges from CHF 182.08 to CHF 432.45) will be adjusted by the inverse of the Exchange Ratio so that the intrinsic value of the options immediately before and after the Merger remains unaffected.

The Xstrata AG Directors' Option Scheme

- 7.5 (a) Options were granted to executive and non-executive directors of the Xstrata AG Group under the terms of the Old Directors' Scheme prior to the implementation of the Management Scheme and New Directors' Scheme in September 1998.
- (b) Subsisting options granted under this scheme relate to 2,220 Xstrata AG Shares exercisable at an exercise price per Xstrata AG Share of CHF 208.80 which are held by individuals who are no longer directors. These options have vested and are currently exercisable up until 5 September 2002. Option holders will not be offered the opportunity to exchange their original option for a replacement option over Ordinary Shares. If any options have not been exercised at the date of the Merger, the Company will exercise its right to satisfy the exercise of the options with a cash payment calculated by reference to the market price of a Xstrata AG Share on the trading day prior to the Merger becoming effective.

Options granted to Michael Davis and Trevor Reid

- 7.6 Michael Davis and Trevor Reid were each granted options to acquire 59,000 Xstrata AG Shares in September 2001 and in January 2002 respectively pursuant to the terms on which they were recruited. The principal terms of these options are summarised below. See " - Options granted to Michael Davis" and " - Options granted to Trevor Reid" in this Part VIII. Michael Davis was also granted an option to acquire 88,500 Xstrata AG Shares by Glencore International on 19 September 2001, the terms of which are summarised below (the "Glencore option"). See " - The Glencore option" in this Part VIII. All of these options will be replaced by new options over a proportionate number of Ordinary Shares based upon the Exchange Ratio upon the Merger becoming effective and thereafter will be subject to the same terms and conditions as applied before the Merger. Except as described below, the terms of the options are substantially the same as those of the Management Scheme described above.

Part VIII Additional information

Options granted to Michael Davis

- (a) Michael Davis has been granted options to acquire 59,000 Xstrata AG Shares. These options were granted in two tranches over an equal number of Xstrata AG Shares. The exercise price of the two tranches following the Merger is to be fixed on 1 October 2002 and 1 October 2003 respectively, by reference to the then market value of an Ordinary Share on those dates. Where an option vests and becomes exercisable early for example by virtue of a takeover of the Company or a cessation of employment as specified in (c) below, the exercise price for any tranche of the options for which the exercise price has not already been determined shall be the lower of (i) the market value of a share averaged over the three months prior to the date of vesting and (ii) in the case of a cessation of employment the date of that cessation, or in the case of a takeover or other event, the market value of a share on the date immediately prior to the completion of the relevant event as appropriate.
- (b) An option will vest, and become exercisable, on the third anniversary of the date by reference to which the exercise price for that option is fixed. The options will normally lapse on the seventh anniversary of the date of vesting.
- (c) If Michael Davis ceases to be employed by the Group for any reason he may exercise any vested options within six months of such cessation (after which time they will lapse). Any unvested options will lapse if he is dismissed lawfully under the terms of his employment contract or if he voluntarily resigns (except where he has valid reason to terminate his employment as defined in his employment contract, in which case all unvested options shall immediately vest and become exercisable for a period of six months). In all other cases, he will remain entitled to retain his unvested options which will vest in accordance with their terms, after which they will remain exercisable for a period of six months.
- (d) The options may be replaced by options over shares in the acquiring or successor company following a takeover, reconstruction or amalgamation of the Company. The replacement options shall be under the same terms, and be exercisable on the same dates, as the options for which they were exchanged, provided that where a replacement of options occurs prior to the date on which the exercise price of the options or tranche thereof has been determined, the number of shares over which the replacement options are granted and the exercise price shall be calculated by reference to the market value of a share in that acquiring or successor company.
- (e) The options are not transferable except on the same terms as apply under the Xstrata LTIP as described at paragraph 7.1(j) above.

The Glencore option

- (a) The 88,500 Xstrata AG Shares over which the Glencore option is granted are held by Glencore. The exercise price of the Glencore option is CHF205 per Xstrata AG Share and upon the Merger becoming effective this will be adjusted by the inverse of the Exchange Ratio so that the intrinsic value of the option immediately before and after the Merger remains unaffected.
- (b) The replacement option that will be granted will vest and become exercisable on the third anniversary of the original date of grant and will remain exercisable for seven years thereafter (after which time it will lapse).
- (c) Except as specified in (a) and (b) above the terms of the option will be substantially the same as those set out in " - Options granted to Michael Davis" above.

Options granted to Trevor Reid

- (a) Trevor Reid has been granted options to acquire 59,000 Xstrata AG Shares. These options were granted in three tranches. The first tranche relates to one half of the total number of Xstrata AG Shares and the second and third tranches to one quarter of the total number of Xstrata AG Shares. The exercise price of the first tranche is CHF189 which was the weighted average market price of an Xstrata AG Share during December 2001 and upon the Merger becoming effective this will be adjusted by the inverse of the Exchange Ratio so that the intrinsic value of the option immediately before and after the Merger remains unaffected. The exercise price of the second two tranches after the Merger is to be fixed on 15 January 2003 and 15 January 2004 respectively, by reference to the market value of an Ordinary Share on those dates. Where an option vests and becomes exercisable early for example by virtue of a takeover of the Company or a cessation of employment as specified in (c) below, the exercise price for any tranche of the options for which the exercise price has not already been determined shall be the lower of (i) the market value of a share averaged over the three months prior to the date of vesting and (ii) in the case of a cessation of employment the date of that cessation, or in the case of a takeover or other event, the market value of a share on the date immediately prior to the completion of the relevant event as appropriate.
- (b) The options will vest, and become exercisable, on the third anniversary of the date by reference to which the exercise price is fixed. The options will normally lapse on the seventh anniversary of the date of vesting.
- (c) If Trevor Reid ceases to be employed by the Group for any reason he may exercise any vested options within six months of such cessation (after which time they will lapse). Any unvested options will lapse if he is dismissed lawfully under the terms of his employment contract or if he voluntarily resigns (except where he has valid reason to terminate his employment as defined in his employment contract, in which case all unvested options shall immediately vest and become exercisable for a period of six months). In all other cases, he will remain entitled to retain his unvested options which will vest in accordance with their terms, after which they will remain exercisable for a period of six months.
- (d) The options may be replaced by options over shares in the acquiring or successor company following a takeover, reconstruction or amalgamation of the Company. The replacement options shall be under the same terms, and be exercisable on the same

Part VIII Additional information

dates, as the options for which they were exchanged, provided that where a replacement of options occurs prior to the date on which the exercise price of the options or tranche thereof has been determined, the number of shares over which the replacement options are granted and the exercise price shall be calculated by reference to the market value of a share in that acquiring or successor company.

- (e) The options are not transferable except on the same terms as apply under the Xstrata LTIP as described at paragraph 7.1(j) above.

The Xstrata Annual Bonus Plan (the "Bonus Plan")

- 7.7
- (a) The Executive Directors and certain other senior executives of the Group will be eligible to participate in the Bonus Plan.
 - (b) The maximum bonus pool available for distribution to participants in the Bonus Plan will be calculated by reference to a fixed proportion of the net profits of the Group during a performance period. This proportion will be determined by the remuneration committee and communicated to participants in advance of the performance period.
 - (c) The payment of any bonus under the Bonus Plan will be subject to a hurdle rate, such that the Group's return on capital should be at least equal to the Group's average cost of borrowing. If this hurdle is not reached, the bonus pool will be zero. The amount of the bonus pool that is distributed in any one year, and the relative proportions payable to each participant will be at the discretion of the remuneration committee. The remuneration committee will retain the discretion not to award a bonus to a participant, but instead make a contribution to a trust for the benefit of an employee (or employees) of an equivalent sum.
 - (d) The amount of bonus payable under the Bonus Plan that any one participant is eligible to receive in cash in any one year will be limited to 100% of the individual's basic salary.
 - (e) Any amount in excess of the limit that would otherwise be payable to an individual in any one year under the Bonus Plan will be deferred for a period of one year. Deferred amounts which may, at the discretion of the remuneration committee, be payable in the form of cash or Ordinary Shares having an equivalent value (measured by reference to the market value of an Ordinary Share at the date the bonus is determined) and will be paid at the end of the deferral period, provided that the employee has remained in employment throughout. The total cash received plus the value of any deferred element shall not exceed 200% of a participant's basic salary in the year in which that bonus is calculated.
 - (f) It is expected that any Ordinary Shares required to satisfy any deferred element of the bonus payments will be purchased in the market and held in the Xstrata Employee Share Ownership Trust for the deferral period. There is no intention to use newly issued Ordinary Shares for the Bonus Plan.

The Xstrata Employee Share Ownership Trust

- 7.8
- (a) The Xstrata Employee Share Ownership Trust is intended to be established by the Company with effect from the Merger becoming effective for the benefit of employees and former employees of the Group, and their spouses, widows, widowers and children or step-children under the age of 18. The trust will be used, inter alia, to co-ordinate the funding and manage the delivery of Ordinary Shares for option and LTIP awards granted under the LTIP and the options that will be granted by the Company to replace the options granted under the Xstrata AG Share Schemes as described above.
 - (b) The trustee will not be permitted to hold more than 5% of the issued share capital of the Company at any one time.
 - (c) The Company will have the power to appoint new and additional trustees or to remove any trustee. It will also have the power to amend the trust deed with the agreement of the trustee. The trustee will be entitled to an indemnity out of the assets of the trust fund and, if they are insufficient, from the Company against any claims, costs and liabilities which it may incur in carrying out its duties (other than where it has been fraudulent, negligent or guilty of gross misconduct).
 - (d) It is intended that the trust will be funded by contributions from employing companies in the Group and/or loans from the Group or from external sources.

The Xstrata Employee and Directors Share Ownership Trust

- 7.9
- (a) The Xstrata Employee and Directors Share Ownership Trust is intended to be established by the Company with effect from the Merger for the benefit of the same persons as are described in paragraph 7.8(a) above and, in addition, any existing or former non-executive directors of the Xstrata AG Group. The Trust will be used, inter alia, to co-ordinate the funding and manage the delivery of Ordinary Shares for the options that will be granted by the Company to replace the options granted under the Xstrata AG Share Schemes as described above where those have been granted to non-executive directors of Xstrata AG. It is not anticipated that the trust will be funded on an ongoing basis after Admission.
 - (b) Save as described in sub-paragraph (a) above, the terms of the trust will be substantially the same as those set out at paragraph 7.8 above.

8. Pensions

The Group operates a number of retirement and related benefit plans for its employees. The plans are operated by the Group in accordance with local custom and practice and, where funded, assets are invested externally from the Group and are regulated by local

Part VIII Additional information

legislation. The benefits provided by the retirement plans vary by jurisdiction and include retirement pensions, retirement lump sums, separation payments, risk benefits and post-retirement medical benefits.

The majority of the Group's employees are covered by defined contribution retirement arrangements where on retirement the employees receive benefits based on the value of their share of the fund. Contributions to the funds are made by the Group, as well as in some cases by employees, and are generally based on a fixed percentage of pensionable salary of up to 20%. Payments to the pension plans are recognised as an operating expense each year. The Group also operates a small number of defined benefit arrangements (which relate to a small proportion of employees) which, according to the most recent actuarial valuations, are fully funded or provided for as explained in "Financial Information" in Part VI. In some cases these defined benefit plans are in the process of being converted to defined contribution. There is an explanation of the retirement plans with financial information in "Financial Information" in Part VI.

The Group intends to establish money purchase retirement benefit plans for certain senior employees, whose participation will be at the invitation of the Group. Michael Davis and Trevor Reid have accepted the Group's invitation to participate from their respective dates of joining the Group.

The plans will be designed so as to optimise taxation implications, having regard to the taxation and employment status of each executive.

It is intended that contributions will be calculated on actuarial advice with the objective of accumulating sufficient funds over the working lifetime of each executive to provide an overall target pension which will be equivalent to approximately 60% of final salary at normal retirement age, for executives who begin participating in the plans at the age of 40. The actual benefits payable will however be based on the amount which has accumulated in that member's money purchase account.

Such contributions are inclusive of contributions from the relevant individuals whose contracts of employment set out the rates, if any, that they are required to pay as members. In the case of Trevor Reid the rate of contribution will be 5% of base salary. For Michael Davis the contribution rate will be 0%.

It is intended that normal retirement age under the plans will be age 60. If a relevant individual leaves or retires early, the benefit is the amount that has accumulated in his money-purchase account.

It is also intended that risk benefit insurance plans will be established to provide benefits in respect of the relevant individual on death before retirement. The intention is that a lump sum benefit of four times base salary will be paid, and surviving dependants will receive pensions. In the case of a spouse, the lifetime pension is intended to be approximately 50% of base salary immediately prior to death, and for each eligible orphan a pension of approximately 10% of base salary will be paid until age 18, or if in full-time education, until age 21.

On permanent disability, it is intended that insurance will be established so that a relevant individual will receive a replacement income of approximately 75% of base salary until normal retirement age. Contributions to the relevant plans will continue to be paid on behalf of the relevant individual during any periods when the replacement income is paid.

Where it is mandatory for a relevant individual to participate in a pension scheme other than social security in the country in which he is employed, the Group will pay required contributions to such a scheme on behalf of the individual in addition to those described above.

Benefit scales defined above will be subject to revision where taxation or other legislation so requires or permits.

9. Underwriting arrangements

6.B.15(h)(i)

Underwriting Agreement

9.1 On 20 March 2002, the Company, Xstrata AG, the Underwriters and the Sponsor entered into the Underwriting Agreement. Under the Underwriting Agreement:

- (a) on the terms and subject to the conditions referred to in the Underwriting Agreement:
 - (i) the Underwriters have severally agreed to procure subscribers for, or failing which subscribe themselves, Ordinary Shares issued by the Company at the Offer Price; and
 - (ii) the Company has granted the Global Co-ordinator, on behalf of the Underwriters, the Manager's Option, *inter alia*, to cover over-allotments or further allotments, if any, arising in connection with the Global Offer and to cover short positions arising from stabilisation transactions;
- (b) the Global Co-ordinator, on behalf of the Underwriters, will deduct from the proceeds of the Global Offer certain costs, charges and fees in connection with the Global Offer (together with any related value added tax) as set out in the Underwriting Agreement, in total estimated to be £41 million (assuming no exercise of the Manager's Option) and, if the Manager's Option is exercised in full, in total estimated to be £46 million;
- (c) the Company has also agreed to pay the expenses of the Global Offer (together with any related value added tax) including (but not limited to) its own legal fees and expenses, fees of the registrar, other advisers fees and expenses, advertising charges and certain expenses of the Joint Bookrunners;
- (d) the underwriting obligations of the Underwriters to procure subscribers for, or failing which subscribe themselves, Ordinary Shares in the Global Offer are subject to certain conditions. These conditions include, among others, the absence of any breach

Part VIII Additional information

of representation or warranty under the Underwriting Agreement. In addition, the Global Co-ordinator, with the agreement of the other Joint Bookrunners, on behalf of the Underwriters, has the right to terminate the Underwriting Agreement, exercisable prior to Admission in certain specified circumstances which are typical for an agreement of this nature;

- (e) the Company has granted the Manager's Option. This option will be exercisable in whole or in part on one occasion only by the Global Co-ordinator, in consultation with the other Joint Bookrunners, on behalf of the Underwriters, for the period commencing on the date of the Underwriting Agreement and expiring on the 30th day following Admission;
 - (f) the Company has given certain customary representations, warranties and undertakings to the Underwriters and the Sponsor;
 - (g) the Company has given certain customary indemnities to the Underwriters and the Sponsor under which claims could be brought after Admission;
 - (h) the Company has agreed to restrictions, among other things, on the issue of Ordinary Shares and the grant of options or warrants over Ordinary Shares as further described in "The Global Offer and related matters – Lock-up arrangements" in Part III (other than a grant of options, in accordance with normal practice, or the exercise of options under the arrangements described in paragraph 7 of this Part VIII) for a period of six months from Admission without the prior written consent (not to be unreasonably withheld or delayed) of the Global Co-ordinator;
 - (i) the parties have given certain covenants to each other regarding compliance with laws and regulations affecting the making of the Global Offer in relevant jurisdictions;
 - (j) each Underwriter has agreed that, except as permitted by the Underwriting Agreement, it will not offer or sell the Ordinary Shares (i) as part of their distribution at any time or (ii) otherwise until 40 days after the later of the commencement of the Global Offer and the closing of the Global Offer, within the United States or to, or for the account or benefit of, US persons, and it will have sent to each dealer to which it sells Ordinary Shares during the distribution compliance period a confirmation or other notice setting forth the restrictions on offers and sales of the Ordinary Shares within the United States or to, or for the account or benefit of, US persons. Terms used in this paragraph have the meanings given to them by Regulations S;
 - (k) the Ordinary Shares are being offered outside the United States to non-US persons in reliance on Regulation S. The Underwriting Agreement provides that the Underwriters may, directly or through their US broker-dealer affiliates, arrange for the offer and resale of Ordinary Shares within the United States only to Qualified Institutional Buyers in reliance on the exemption from the registration requirements of the Securities Act provided by Rule 144A or another exemption from, or transaction not subject to, the registration requirements of the Securities Act; and
 - (l) the Company has appointed the Sponsor to act as sponsor for the purpose of the Company's application for Admission.
- 9.2 In connection with settlement and stabilisation, the Global Co-ordinator, as stabilising manager, has entered into a stock lending agreement with Glencore International. Pursuant to this agreement, the Global Co-ordinator will, from Admission, be able to borrow up to 15,000,000 Ordinary Shares. This agreement will allow the Global Co-ordinator to settle, on Admission, over-allotments, if any, to cover over-allotments or further allotments, if any, in each case made in connection with the Global Offer and to cover short positions arising from stabilisation transactions.

Lock-up Agreement

- 9.3 Pursuant to a Lock-up Agreement dated 20 March 2002, Glencore International has agreed with the Global Co-ordinator (on behalf of the Underwriters), subject to certain exceptions, among other things, not to offer, lend, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, mortgage, charge, assign, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Ordinary Shares or any securities exchangeable for or convertible into, or substantially similar to, Ordinary Shares (or any interest therein or in respect thereof) or any rights arising from or attaching to any such shares at any time, or enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership, of Ordinary Shares, or enter into any other transaction with the same economic effect as, or agree to do, or announce or otherwise publicise the intention to do any of the foregoing, until the date falling six months after Admission, without the prior written consent of the Global Co-ordinator.
- 9.4 The Lock-up Agreement allows Glencore International to lend Ordinary Shares to the Global Co-ordinator pursuant to the stock lending agreement described in paragraph 9.2 above.

10. Agreements relating to the Acquisitions and the Merger

6.C.20

The Acquisition Agreement

- 10.1 On 21 February 2002, the Purchasers, Xstrata AG and the Vendors entered into the Acquisition Agreement pursuant to which:
- (a) the Company agreed to acquire from Glencore International the entire issued share capital of Glencore Overseas AG;
 - (b) Xstrata (Schweiz) AG agreed to purchase from Glencore International the entire issued share capital of Duiker Marketing AG; and
 - (c) Xstrata South Africa (as to 272,935,214 shares) and the Company (as to 66,233,332 shares) agreed to purchase from the Duiker Mining Shareholders the entire issued share capital of Duiker.

Part VIII Additional information

- 10.2 Following the Merger, Xstrata (Schweiz) AG and Xstrata South Africa will be wholly-owned subsidiaries of the Company. The effective date of the Acquisitions is 1 January 2002. Under the terms of the Acquisition Agreement, Completion is scheduled to occur not later than 25 March 2002, or such later date as may be agreed between Glencore International and the Company.
- 10.3 Under the terms of the Acquisition Agreement, the Purchasers agreed to purchase the Coal Assets for cash and Ordinary Shares with an aggregate value of US\$2,067,910,000 (which includes an agreed amount relating to working capital of US\$73,000,000), in addition to which the Company has agreed to assume net indebtedness of the Enex and Duiker Groups and procure the repayment of shareholder loans to Glencore International, resulting in a total value of US\$2,573,000,000.
- 10.4 The purchase price comprises:
- (a) a compensation payment of US\$995,452,000 for the shares of Glencore Overseas AG, to be satisfied by the Company by the allotment to Glencore International of such number of Ordinary Shares at the Offer Price as will result in Glencore International owning (together with the Ordinary Shares received by it in the Merger and whether or not the Manager's Option is exercised) 40% of the issued Ordinary Shares, and as to the balance in cash;
 - (b) US\$150,000,000 in cash for the shares of Duiker Marketing AG, to be paid by Xstrata (Schweiz) AG to Glencore International; and
 - (c) US\$922,458,000 in cash for the shares of Duiker, to be paid by the Company and Xstrata South Africa to the Duiker Mining Shareholders.
- In the event that the Ravensworth Agreement is terminated:
- (a) at any time prior to Completion for any reason beyond the reasonable control of either Glencore International or the Company, the compensation payment for the shares of Glencore Overseas AG will be reduced by US\$10,000,000;
 - (b) at any time following Completion for any reason beyond the reasonable control of the Company, Glencore International will pay to the Company US\$10,000,000 (plus interest accrued thereon from the date of Completion to the date of payment).
- 10.5 The cash element of the purchase price will be satisfied in part from the proceeds of the Global Offer, and as to the balance from the Syndicated Loan Facility.
- 10.6 Completion of the Acquisitions is conditional upon:
- (a) the Merger becoming effective in accordance with Swiss law. The Merger will become effective simultaneously with Completion;
 - (b) the Company or Xstrata South Africa, as the case may be, having received, in terms satisfactory to it, confirmations and/or approvals from the requisite regulatory authorities under the Foreign Acquisitions and Takeovers Act, 1975 (Australia), the South African Competition Act No. 89 of 1998 and the South African Currency and Exchanges Act No. 9 of 1933;
 - (c) Admission, which will occur simultaneously with Completion; and
 - (d) the delivery to Glencore International of written consents, in terms satisfactory to the Company, from relevant third parties.
- 10.7 The Vendors have agreed to give a Tax Covenant (summarised at 10.8 below) and certain warranties and indemnities in relation to Glencore Overseas AG, Duiker Marketing AG and Duiker, including in relation to the truth, accuracy and completeness of the information provided in connection with the due diligence process, share title, corporate authorisations, financial matters, debt position, regulatory matters, the assets of the Group, mineral and mining rights, mining authorisations, environmental compliance (including rehabilitation), real property, labour, superannuation, intellectual property and information technology, material contracts (including in relation to joint venture agreements), litigation, directors and employees and insolvency. Liability for all claims concerning breaches of warranty or under the Tax Covenant are limited to: (i) US\$995,452,000 in respect of the Enex Group; (ii) US\$150,000,000 in respect of Duiker Marketing AG; and (iii) US\$922,458,000 in respect of Duiker and its subsidiaries and subsidiary undertakings. Claims for breach of any warranty must be brought on or before the expiry of 18 months from the date of Completion. Any claims under the Tax Covenant must be brought on or before the end of the two month period following the expiry of the statutory limitation (in the relevant jurisdiction) for any liability to the relevant tax charge giving rise to the claim. No claim for breach of warranty or under the Tax Covenant may be brought unless the aggregate liability of the Vendors exceeds US\$2.5 million and the Vendors are not liable for any individual claim unless the aggregate amount of the liability in respect of such claim exceeds US\$100,000.
- 10.8 Under the terms of the Tax Covenant, the Vendors have agreed to indemnify the Purchasers, subject to certain exceptions, against any tax liabilities of any company in the Glencore Overseas AG group, the Duiker Group or Duiker Marketing AG arising in respect of any period up to and including the year ended 31 December 2001 which were not provided for in the 31 December 2001 accounts of that company. The Tax Covenant contains provisions relating to the manner in which the Vendor and Purchaser will prepare and agree tax computations and returns, the basis on which certain claims and elections can be made, the conduct of negotiations and disputes with the tax authorities, and certain administrative matters.
- 10.9 Glencore International has agreed for a period of three years following Completion to cooperate with the Company to give it the opportunity to enter into any transaction which involves the mining of coal or any related processing business which is carried

Part VIII Additional information

on in whole or in part within Australia or South Africa in preference to Glencore International or a member of its group. Under the terms of the Acquisition Agreement, the Vendors are also prohibited for a period of 12 months from soliciting offers of employment with any senior executive of the Group.

- 10.10 The Company may terminate the Acquisition Agreement at any time prior to Completion if any fact, matter or event comes to the notice of the Purchasers which:
- (a) constitutes a material breach by any of the Vendors of the Acquisition Agreement and, if capable of rectification, is not rectified within seven days after notification by the Company or prior to Completion, whichever is earlier;
 - (b) would constitute a breach of any warranty if the warranties were repeated on or at any time before Completion and which has or may have the effect described in (c) below;
 - (c) affects or is likely to affect in a materially adverse manner the business, financial position or prospects of the Enex Group or the Duiker Group; or
 - (d) would cause any of the conditions precedent to be incapable of fulfilment in accordance with the terms of the Acquisition Agreement.
- 10.11 Each party is required to bear its own expenses incurred in connection with the Acquisition Agreement. The Purchasers will bear all stamp duties arising as a result of the Acquisitions (other than the Swiss Securities Turnover Tax, which will be borne equally as between the relevant Purchasers and the relevant Vendors).
- 10.12 Xstrata AG has unconditionally and irrevocably agreed to guarantee the obligations of Xstrata (Schweiz) AG and Xstrata South Africa and Glencore International has unconditionally and irrevocably agreed to guarantee the obligations of the Duiker Mining Shareholders, under the terms of the Acquisition Agreement.

The Merger Agreement

- 10.13 The Company and Xstrata AG entered into the Merger Agreement, dated as of 20 February 2002, pursuant to which the entire undertaking of Xstrata AG, including all of its assets, will be transferred to the Company in consideration for which the Company will issue shares to the former shareholders of Xstrata AG in proportion to their respective holdings of shares in Xstrata AG, on the basis of 10 Ordinary Shares for each Xstrata AG Share. In addition, the Company will assume all of Xstrata AG's liabilities. The Merger will become effective upon entry into the Commercial Register of the Canton of Zug, Switzerland, which will take place simultaneously with Completion.

Syndicated Loan Facility Agreement

- 10.14 On or about 20 March 2002 (but in any event prior to Admission) the Company, certain members of the Group, the underwriters of the syndicated loan and certain other banks entered into a Syndicated Loan Facility Agreement pursuant to which:
- (a) the banks will make available to certain members of the Group a five year committed multicurrency revolving credit facility up to the amount of US\$1,400,000,000;
 - (b) the purpose of the Syndicated Loan Facility is to finance the Acquisitions (other than the acquisition of Glencore Overseas AG), refinance existing financial indebtedness of certain members of the Group, finance the working capital requirements and general corporate purposes of certain members of the Group and permitted acquisitions. The existing financial indebtedness of certain members of the Group includes the indebtedness of Xstrata AG under a €600,000,000 credit agreement in connection with the acquisition of Asturiana and the indebtedness of the Enex Group under a US\$300,000,000 credit agreement;
 - (c) borrowings under the Syndicated Loan Facility will be guaranteed by the Company and certain members of the Group;
 - (d) the borrowings will bear interest at a rate equal to the aggregate of the London inter-bank offered rate plus 1.00 per cent. per annum for approximately six months after the date of the Syndicated Loan Facility Agreement and thereafter on a sliding scale determined by reference to a formula based on earnings; and
 - (e) the Company will be liable to pay the expenses of the underwriters and certain fees including, but not limited to, a commitment fee on the undrawn portion of the Syndicated Loan Facility at a rate per annum equal to 50% of the relevant margins noted above and payable in US\$ quarterly in arrear.

The Syndicated Loan Facility Agreement includes customary covenants and warranties given by the Company and certain members of the Group and events of default.

11. Securities laws

- 11.1 No action has been taken by the Company or the Underwriters that would permit, other than under the Global Offer, an offer of Ordinary Shares or possession or distribution of this document or any other offering material in any jurisdiction where action for that purpose is required.
- 11.2 The distribution of this document and the offer of Ordinary Shares in certain jurisdictions may be restricted by law and therefore persons into whose possession this document comes should inform themselves about and observe any such restrictions,

Part VIII Additional information

including those in the paragraphs that follow. Any failure to comply with these restrictions may constitute a violation of the securities laws of any such jurisdiction.

United States of America

- 11.3 The Ordinary Shares have not been and will not be registered under the Securities Act, and may not be offered or sold within the United States or to, or for the account or benefit of, US persons except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.
- 11.4 Until the expiration of the 40-day period referred to in paragraph 9.1(j) above, an offer or sale of the Ordinary Shares within the United States by a dealer that is not participating in the Global Offer may violate the registration requirements of the Securities Act if such offer or sale is made otherwise than in accordance with Rule 144A or another exemption from, or transaction not subject to, the registration requirements of the Securities Act.

(a) Rule 144A Ordinary Shares

Each purchaser of Ordinary Shares located within the United States by accepting delivery of this document, will be deemed to have represented, agreed and acknowledged that:

- (i) it is (A) a Qualified Institutional Buyer within the meaning of Rule 144A, (B) acquiring such Ordinary Shares for its own account or for the account of a Qualified Institutional Buyer and (C) aware, and each beneficial owner of such Ordinary Shares has been advised, that the sale of such Ordinary Shares to it is being made in reliance on the exemption from the registration requirements of the Securities Act provided by Rule 144A or another exemption from the registration requirements of the Securities Act;
- (ii) it understands that such Ordinary Shares have not been and will not be registered under the Securities Act and may not be offered, sold, pledged or otherwise transferred except (A) in accordance with Rule 144A, to a person that it and any person acting on its behalf reasonably believe is a Qualified Institutional Buyer purchasing for its own account or for the account of a Qualified Institutional Buyer, (B) in an offshore transaction in accordance with Rule 903 or Rule 904 of Regulation S or (C) pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if available), in each case in accordance with any applicable securities laws of any state of the United States. Such purchaser acknowledges that the Ordinary Shares offered and sold in accordance with Rule 144A or another exemption from, or transaction not subject to, the registration requirements of the Securities Act are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act and that no representation can be made as to the availability of the exemption provided by Rule 144 under the Securities Act for the resale of Ordinary Shares;
- (iii) the Company, the Registrar, the Underwriters and their affiliates, and others will rely upon the truth and accuracy of the foregoing acknowledgements, representations and agreements. If it is acquiring any Ordinary Shares for the account of one or more Qualified Institutional Buyers, it represents that it has sole investment discretion with respect to each such account and that it has full power to make the foregoing acknowledgements, representations and agreements on behalf of each such account; and
- (iv) the Ordinary Shares will bear a legend to the following effect, unless the Company determines otherwise in compliance with applicable law:

"THE SECURITY EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT") OR WITH ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A)(1) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER, IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT OR (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES. NO REPRESENTATION CAN BE MADE AS TO THE AVAILABILITY OF THE EXEMPTION PROVIDED BY RULE 144 FOR REALES OF THE ORDINARY SHARES.

Prospective purchasers are hereby notified that sellers of the Ordinary Shares may be relying on the exemption from the provisions of Section 5 of the Securities Act provided by Rule 144A or another exemption from the registration requirements of the Securities Act.

(b) Regulation S Ordinary Shares

Each purchaser of the Ordinary Shares offered in reliance on Regulation S (the "Regulation S Ordinary Shares") will be deemed to have represented and agreed as follows (terms used in this paragraph that are defined in Rule 144A or Regulation S are used herein as defined therein):

- (i) The purchaser (A) is, and the person, if any, for whose account it is acquiring the Regulation S Ordinary Share is, outside the United States and is not a US person and (B) is not an affiliate of the Company or a person acting on behalf of such an affiliate;

Part VIII Additional information

- (ii) The purchaser is aware that the Regulation S Ordinary Shares have not been and will not be registered under the Securities Act and are being offered outside the United States in reliance on Regulation S; and
- (iii) Any offer, sale, pledge or other transfer made other than in compliance with the above-stated restrictions shall not be recognised by the Company in respect of the Regulation S Ordinary Shares.

It is expected that delivery of the Ordinary Shares will be made against payment therefore on or about the date specified above under "The Global Offer and related matters – Dealing Arrangements" in Part III, which will be the third business day following the date of pricing of the Ordinary Shares. Pursuant to Rule 15c6-1 under the Exchange Act, trades in the secondary market generally are required to settle in three business days, unless the parties to any such trade expressly agree otherwise.

United Kingdom

- 11.5 Each Underwriter has represented and agreed that (a) it has not offered or sold and will not offer or sell any Ordinary Shares to persons in the United Kingdom prior to Admission except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995 or the FSMA, (b) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of section 21 of the FSMA) received by it in connection with the issue or sale of the Ordinary Shares in circumstances in which section 21(1) of the FSMA does not apply to the Company, and (c) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Ordinary Shares in, from or otherwise involving the United Kingdom.

Australia

- 11.6 This document does not constitute a disclosure document under Part 6D.2 of the Corporations Act 2001 of the Commonwealth of Australia (the "Corporations Act") and will not be lodged with the Australian Securities and Investments Commission. The Ordinary Shares will be offered to persons who receive offers in Australia only to the extent that such offers of shares for issue or sale do not need disclosure to investors under Part 6D.2 of the Corporations Act. Any offer of shares received in Australia is void to the extent that it needs disclosure to investors under the Corporations Act. In particular, offers for the issue or sale of Ordinary Shares will only be made in Australia in reliance on various exemptions from such disclosure to investors provided by section 708 of the Corporations Act. Any offer of shares received in Australia is void to the extent that it needs disclosure to investors under the Corporations Act. Any person to whom Ordinary Shares are issued or sold pursuant to an exemption provided by section 708 of the Corporations Act must not within 12 months after the issue offer those Ordinary Shares for sale in Australia unless that offer is itself made in reliance on an exemption from disclosure provided by that section.

Canada

- 11.7 **This document is not, and under no circumstances is to be construed as, a prospectus, an advertisement or a public offering of the securities described herein in Canada. No securities commission or similar authority in Canada has reviewed or in any way passed upon this document or the merits of the securities described herein, and any representation to the contrary is an offence.**

The Global Offer is being made in the Provinces of Ontario, Québec and British Columbia (the "Private Placement Provinces") by way of a private placement of Ordinary Shares. The Global Offer in the Private Placement Provinces is being made pursuant to this document through the Underwriters named in this document or through their selling agents who are permitted under applicable law to distribute such securities in Canada.

(a) Representations and Agreements by Purchasers

Confirmations of the acceptance of offers to purchase any Ordinary Shares will be sent to purchasers in the Private Placement Provinces who have not withdrawn their offers to purchase prior to the issuance of such confirmations. Each purchaser of Ordinary Shares in the Private Placement Provinces who receives a purchase confirmation regarding the purchase of Ordinary Shares will, by the purchaser's receipt thereof, be deemed to have represented to the Company and the dealer from which such purchase confirmation is received, that such purchaser and any ultimate purchaser for which such initial purchaser is acting as agent (a) is entitled under applicable provincial securities laws to purchase such Ordinary Shares without the benefit of a prospectus qualified under such securities laws and, in the case of purchasers in provinces other than Ontario, without the services of a dealer registered pursuant to such securities laws, (b) is basing its investment decision solely on this document and not on any other information concerning the Company or the Global Offer, (c) has reviewed the terms referred to below under the heading "Canadian Resale Restrictions", and (d) is in compliance with the following:

- (i) where the purchaser is purchasing in Ontario, such purchaser is either a "designated institution" within the meaning of Section 204 of the Regulation to the *Securities Act* (Ontario) purchasing from an International Dealer or is a purchaser purchasing from a fully registered dealer and, in either case, is purchasing the Ordinary Shares with the benefit of the prospectus exemption provided by Section 2.3 of Ontario Securities Commission Rule 45-501 ("Rule 45-501") (that is, such purchaser is purchasing the Ordinary Shares as a principal and is an "accredited investor" within the meaning of Section 1.1 of Rule 45-501);

Part VIII Additional information

- (ii) where the purchaser is purchasing in Québec, such purchaser is a “sophisticated purchaser” within the meaning of Section 44 of the *Securities Act* (Québec) purchasing the Ordinary Shares as principal, or is a “sophisticated purchaser” within the meaning of Section 45 of the *Securities Act* (Québec) purchasing for the portfolio of a person managed solely by it or is purchasing as principal Ordinary Shares with an aggregate acquisition cost to such purchaser of at least Cdn\$150,000 from a registered dealer with an unrestricted practice;
- (iii) where the purchaser is purchasing in British Columbia, such purchaser is not an individual and (a) such purchaser is purchasing the Ordinary Shares as principal, and is a financial or government institution as described in, and in accordance with, the registration and prospectus exemptions provided by Sections 45(2)(2) and 74(2)(1) of the *Securities Act* (British Columbia); (b) such purchaser is purchasing the Ordinary Shares as principal and has been designated as an exempt purchaser by an outstanding order of the Executive Director of the British Columbia Securities Commission in accordance with the registration and prospectus exemptions provided by Sections 45(2)(4) and 74(2)(3) of the *Securities Act* (British Columbia); (c) such purchaser is purchasing the Ordinary Shares as principal and the aggregate acquisition cost to such purchaser is not less than Cdn\$97,000, in accordance with the registration and prospectus exemptions provided by Sections 45(2)(5) and 74(2)(4) of the *Securities Act* (British Columbia);
- (iv) if the purchaser is a company, the purchaser was not established solely for the purpose of acquiring Ordinary Shares in reliance on an exemption from applicable prospectus requirements in the Private Placement Provinces;
- (v) such purchaser is either purchasing Ordinary Shares as principal for its own account, or is deemed to be purchasing Ordinary Shares as principal for its own account in accordance with the applicable securities laws of the province in which such purchaser is resident, by virtue of being either (i) a designated trust company; (ii) a designated insurance company; (iii) a portfolio manager; or (iv) another entity similarly deemed by those laws to be purchasing as principal for its own account when purchasing on behalf of other beneficial purchasers;
- (vi) such purchaser is purchasing in respect of a trade for which there is an exemption from the registration requirements of applicable Canadian securities laws or which is otherwise in compliance with such laws;
- (vii) such purchaser acknowledges and agrees that the offer and sale of Ordinary Shares was made exclusively through this document and was not made through an advertisement of the Ordinary Shares in any printed media of general and regular paid circulation, radio or television or any other form of advertising; and
- (viii) such purchaser acknowledges that the Ordinary Shares are being distributed in Canada on a private placement basis only and that any resale of Ordinary Shares must be in accordance with the requirements of applicable securities laws, which will vary depending on the relevant jurisdictions.

(b) *Language of Document*

Each purchaser of Ordinary Shares in Canada that receives a purchase confirmation hereby agrees that it is such purchaser’s express wish that all documents evidencing or relating in any way to the sale of such Ordinary Shares be drafted in the English language only. *Chaque acheteur au Canada des valeurs mobilières recevant un avis de confirmation à l’égard de son acquisition reconnaît que c’est sa volonté expresse que tous les documents faisant foi ou se rapportant de quelque manière à la vente des valeurs mobilières soient rédigés uniquement en anglais.*

(c) *Canadian Resale Restrictions*

The distribution of the Ordinary Shares in the Private Placement Provinces is being made on a private placement basis. Accordingly, any resale of the Ordinary Shares must be made (i) through an appropriately registered dealer or in accordance with an exemption from the dealer registration requirements of applicable provincial securities laws and (ii) in accordance with, or pursuant to an exemption from, the prospectus requirements of such laws. Such resale restrictions may not apply to resales made outside of Canada, depending on the circumstances. Purchasers of Ordinary Shares are advised to seek legal advice prior to any resale of Ordinary Shares.

(d) *Statutory Rights of Action (Ontario Purchasers)*

Section 4.2 of Rule 45-501 provides that when an offering memorandum, such as this document, is delivered to an investor to whom securities are distributed in reliance upon the “accredited investor” prospectus exemption in Section 2.3 of Rule 45-501, the right of action referred to in Section 130.1 of the *Securities Act* (Ontario) (“Section 130.1”) is applicable. Section 130.1 provides purchasers who purchase securities offered by an offering memorandum with a statutory right of action against the issuer of securities and any selling securityholder for rescission or damages in the event that the offering memorandum and any amendment to it contains a “misrepresentation”. “Misrepresentation” means an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make any statement not misleading or false in the light of the circumstances in which it was made.

Where this document, together with any amendment to it, is delivered to a prospective purchaser of Ordinary Shares in connection with a trade made in reliance on Section 2.3 of Rule 45-501, and this document contains a misrepresentation which

Part VIII Additional information

was a misrepresentation at the time of purchase of the Ordinary Shares, the purchaser will have a statutory right of action against the Company for damages or, while still the owner of the Ordinary Shares, for rescission, in which case, if the purchaser elects to exercise the right of rescission, the purchaser will have no right of action for damages, provided that the right of action for rescission will be exercisable by the purchaser only if the purchaser gives notice to the defendant, not more than 180 days after the date of the transaction that gave rise to the cause of action, that the purchaser is exercising this right; or, in the case of any action, other than an action for rescission, the earlier of: (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or (ii) three years after the date of the transaction that gave rise to the cause of action.

The defendant shall not be liable for a misrepresentation if it proves that the purchaser purchased the Ordinary Shares with knowledge of the misrepresentation.

In an action for damages, the defendant shall not be liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the Ordinary Shares as a result of the misrepresentation relied upon.

In no case shall the amount recoverable for the misrepresentation exceed the price at which the Ordinary Shares were offered.

The foregoing statutory right of action for rescission or damages is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express provisions of the *Securities Act* (Ontario) and the regulations and rules made under it, and you should refer to the complete text of those provisions.

(e) Enforcement of Legal Rights

All of the directors and officers (or their equivalents) of the Group, as well as any experts named herein may be located outside of Canada and, as a result, it may not be possible for purchasers to effect service of process within Canada upon the Group or such persons. All or a substantial portion of the assets of the Group and such persons may be located outside of Canada and, as a result, it may not be possible to satisfy a judgment against the Group or such persons in Canada or to enforce a judgment obtained in Canadian courts against the Group or such persons outside of Canada.

(f) Canadian Tax Considerations and Eligibility for Investment

This document does not address the Canadian tax consequences of ownership of the Ordinary Shares. Prospective purchasers of Ordinary Shares should consult their own tax advisers with respect to the Canadian and other tax considerations applicable to their individual circumstances and with respect to the eligibility of the Ordinary Shares for investment by purchasers under relevant Canadian legislation.

Japan

11.8 The Ordinary Shares have not been and will not be registered under the Securities and Exchange Law of Japan (Law No. 25 of 1948 as amended), and may not be offered or sold, directly or indirectly, in Japan or to a resident of Japan except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Securities and Exchange Law and other relevant laws and regulations of Japan.

South Africa

11.9 Residents of South Africa are subject to Exchange Control Regulations and are advised to seek independent advice regarding any permissions that may be required of the Exchange Control Authorities of the Reserve Bank of South Africa with regard to implementation of the transactions detailed herein.

To the extent that Ordinary Shares are offered for subscription or sale in South Africa, such offer is being effected in terms of section 144 of the South African Companies Act and does not constitute an offer to the public within the meaning of the South African Companies Act.

The Netherlands

11.10 The Ordinary Shares may not be offered, transferred, sold or delivered to any individual or legal entity other than to persons who trade or invest in securities in the conduct of their profession or trade (which includes banks, securities intermediaries (including dealers and brokers), insurance companies, pension funds, other institutional investors and commercial enterprises which as an ancillary activity regularly invest in securities).

General

11.11 No action has been or will be taken in any jurisdiction that would permit a public offering of the Ordinary Shares, or possession or distribution of this document or any other offering material, in any country or jurisdiction where action for that purpose is required. Accordingly, the Ordinary Shares may not be offered or sold, directly or indirectly, and neither this document nor any other offering material or advertisements in connection with the Ordinary Shares may be distributed or published in or from any country or jurisdiction except under circumstances that will result in compliance with any applicable rules and regulations of any such country or jurisdiction.

Part VIII Additional information

12. Summary of differences between GAAP

Summary of differences between UK GAAP and US GAAP

12.1 The consolidated financial information of Xstrata, the Xstrata AG Group, the Enex Group and the Duiker Group are presented in the Accountants' Reports in Part VI in accordance with UK GAAP which differ from US GAAP. The principal relevant differences between US GAAP and UK GAAP that the Directors believe would impact profit or shareholders' equity relate to the following:

(a) Associated entities

Investments in entities over which the Xstrata AG Group, the Enex Group and the Duiker Group do not exercise control (associates and joint ventures) are accounted for by the equity method.

UK GAAP requires the consolidated financial statements to show separately the Group proportion of operating profit or loss, exceptional items, inventory holding gains or losses, interest expense and taxation of associated undertakings and joint ventures. In addition the turnover of joint ventures should be disclosed. For US GAAP the after tax profits or losses (i.e. operating results after exceptional items, inventory holding gains or losses, interest expense and taxation) would be included in the income statement as a single line item.

UK GAAP requires the Xstrata AG Group's, the Enex Group's and the Duiker Group's share of the gross assets and gross liabilities of joint ventures to be shown on the face of the balance sheet whereas under US GAAP the net investment would be included as a single line item.

(b) Revenue recognition

The application of Staff Accounting Bulletin No. 101 (SAB 101) Revenue Recognition in Financial Statements, which summarises certain of the SEC staff's views in applying US GAAP to revenue recognition in financial statements has the result that, in some cases, sales recorded as revenue under UK GAAP would be deferred and not recognised as revenue under US GAAP until a future accounting period. Under UK GAAP certain sales contracts are recognised as revenue when the goods are delivered to the ship for export to the customer but would not qualify for recognition under US GAAP until they have reached the destination specified by the customer in the sales contract and title has passed.

(c) Impairment

Both UK GAAP and US GAAP require that long-lived assets and certain identifiable intangibles to be held and used by an entity be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. US GAAP requires, in performing the review for recoverability, the entity to estimate the future cash flows expected to result from the use of the asset and its eventual disposition. If the sum of the expected future cash flows (undiscounted and without interest charges) is less than the carrying amount of the asset, an impairment loss is recognised. Otherwise, no impairment loss is recognised. Measurement of an impairment loss for long-lived assets and identifiable intangibles that an entity expects to hold and use is based on the fair value of the assets.

An impairment review is undertaken on "income generating units" for UK GAAP purposes, income generating units may be defined as divisions or countries of operation in accordance with the relevant Statement of Recommended Practice. To the extent that the carrying amount exceeds the recoverable amount, that is the higher of net realisable value and value in use (fair value) the fixed asset is written down to its recoverable amount.

(d) Provisions

UK GAAP requires provisions for decommissioning, environmental liabilities and onerous contracts to be determined on a discounted basis if the effect of the time value of money is material. Under US GAAP (i) environmental liabilities would be discounted only where the timing and amounts of payments are fixed and reliably determinable and (ii) provisions for decommissioning are provided on a unit-of-production basis over the lives of the mines.

(e) Deferred taxation

Under UK GAAP, deferred tax is recognised in respect of all timing differences that have originated but not reversed at the balance sheet date, with the following exceptions:

- where fixed assets have been revalued, provision is made for deferred tax only to the extent that, at the balance sheet date, there is a binding agreement to dispose of the assets concerned. However, no provision is made where, on the basis of all available evidence at the balance sheet date, it is more likely than not that the taxable gain will be rolled over into replacement assets and charged to tax only where the replacement assets are sold;
- provision is made for deferred tax that would arise on remittance of the retained earnings of overseas subsidiaries only to the extent that, at the balance sheet date, dividends have been accrued as receivable; and
- deferred tax assets are recognised only to the extent that the directors consider that it is more likely than not that there will be suitable taxable profits from which the future reversal of the underlying timing differences can be deducted.

Deferred tax is measured on an undiscounted basis at the tax rates that are expected to apply in the periods in which timing differences reverse, based on tax rates and laws enacted or substantively enacted at the balance sheet date.

Under US GAAP, full provision for deferred tax is required for temporary differences between the financial reporting basis and the tax basis of the Xstrata AG Group's, the Enex Group's and the Duiker Group's assets and liabilities at enacted tax rates.

Part VIII Additional information

(f) Ordinary shares held for future awards to employees

Under UK GAAP, company shares held by the Xstrata AG Group, the Enex Group and the Duiker Group to hedge future requirements of share option schemes are recorded in the balance sheet as fixed assets – investments. Under US GAAP, such shares would be recorded in the balance sheet as a reduction of shareholders' interest.

(g) Dividends

Under UK GAAP, dividends are recorded in the year in respect of which they are announced or declared by the board of directors to the shareholders. Under US GAAP, dividends are recorded in the period in which dividends are declared.

(h) Exchange differences

The Xstrata AG Group, the Enex Group and the Duiker Group are party to derivative contracts in respect of some of their future transactions in order to hedge their exposure to fluctuations between certain currencies. Under UK GAAP, these contracts are accounted for as hedges: gains and losses are deferred and subsequently recognised when the hedged transaction occurs. US GAAP, effective for Xstrata from 1 January 2001, requires all derivative instruments (including those embedded in other contracts) to be recognised on the balance sheet at their fair values. Changes in fair values are either recognised periodically in income or in shareholders' equity as a component of other comprehensive income depending on whether the derivative qualifies for hedge accounting and, if so, whether it qualifies as a fair value hedge or a cash flow hedge. Significant documentation is required to enable derivatives to qualify for hedge accounting. Changes in fair value of derivatives accounted for as fair value hedges are recorded in income along with the corresponding portions of the changes in the fair value of the hedged items, to the extent that they are effective as hedges. Changes in fair value of derivatives accounted for as cash flow hedges, to the extent they are effective as hedges, are recorded in other comprehensive income, net of income taxes. Changes in fair value of derivatives used as hedges of net investments in foreign operations are reported in other comprehensive income net of income taxes and reflected as part of the cumulative translation adjustment. Changes in fair value of derivatives not qualifying as hedges are reported in net income.

(i) Start-up costs

US GAAP requires that the costs of start-up activities are expensed as incurred. Under UK GAAP, certain start-up losses during the commissioning period of a new installation qualify for capitalisation and are amortised over the economic lives of the relevant assets.

(j) Unrealised holding gains and losses

UK GAAP requires current asset investments to be valued at the lower of cost and net realisable value with any losses recorded in the profit and loss account. Under US GAAP, FAS 115, unrealised holding gains and losses on investments classified as "available for sale" are excluded from earnings and reported instead within a separate component of shareholders' funds until realised.

(k) Mining expenditure

Under UK GAAP, mine development expenditure is deferred if it is probable that such costs will be recovered from future cash flows from the exploitation or sale of the mine asset. Exploration and evaluation expenditure may only be capitalised if there is sufficient certainty that the expenditure will be recoverable, either from disposal of, or successful exploitation of the mine to which the expenditure relates. Such expenditure is capitalised until the commencement of production, when it is depreciated over the life of the mine. When an area is abandoned or becomes non-viable, all deferred expenditure is written off.

Interest on borrowings used to fund the expenditure may be capitalised as part of the cost of the asset, provided the borrowing relates directly to the asset.

Under US GAAP, exploration and evaluation expenditure is generally expensed as incurred.

US GAAP require interest to be capitalised but does not require the borrowings to be directly attributable to the asset.

(l) Cash flow

Under UK GAAP, cash flows are presented for (i) operating activities; (ii) dividends from joint ventures; (iii) dividends from associated undertakings; (iv) servicing of finance and returns on investments; (v) taxation; (vi) capital expenditure and financial investment; (vii) acquisitions and disposals; (viii) dividends; (ix) financing; and (x) management of liquid resources. US GAAP only requires presentation of cash flows from operating, investing and financing activities.

Cash flows under UK GAAP in respect of dividends from joint ventures and associated undertakings, taxation and servicing of finance and returns on investments are included within operating activities under US GAAP. Interest paid includes payments in respect of capitalised interest, which under US GAAP is included in capital expenditure under investing activities. Cash flows under UK GAAP in respect of capital expenditure and acquisitions and disposals are included in investing activities under US GAAP. Dividends paid are included within financing activities. Under US GAAP short-term investments with original maturities of three months or less are classified as cash equivalents and aggregated with cash in the cash flow statement. Cash flows in respect of short-term investments with original maturities exceeding three months are included in operating activities. Under UK GAAP, only those short-term deposits which are repayable on demand or can be withdrawn at any time without notice and without penalty or where a maturity or period of notice of no more than 24 hours or one working day has been agreed, are

Part VIII Additional information

classified as cash equivalents. Short-term deposits not fulfilling these criteria are classified as liquid resources and disclosed separately within the cash flow statement.

Summary of differences between UK GAAP and IAS

12.2 The consolidated financial information of Xstrata, the Xstrata AG Group, the Enex Group and the Duiker Group are presented in the Accountants' Reports in accordance with UK GAAP which differs in certain respects from IAS. The principal relevant differences between IAS and UK GAAP that the Directors believe would impact profit or shareholders' equity, relate to the following:

(a) Associated entities

Investments in entities over which the Xstrata AG Group, the Enex Group and the Duiker Group do not exercise control (associates and joint ventures) are accounted for by the equity method by the Xstrata AG Group, the Enex Group and the Duiker Group.

UK GAAP requires the consolidated financial statements to show separately the Xstrata AG Group, the Enex Group and the Duiker Group proportion of operating profit or loss, exceptional items, inventory holding gains or losses, interest expense and taxation of associated undertakings and joint ventures. In addition the turnover of joint ventures should be disclosed.

UK GAAP also requires the Xstrata AG Group's, the Enex Group's and the Duiker Group's share of the gross assets and gross liabilities of joint ventures to be shown on the face of the balance sheet. Under IAS the investments would be proportionally consolidated on a line by line basis through both the balance sheet and profit and loss statement, and not be separately identifiable in any primary statement.

(b) Deferred taxation

Under UK GAAP deferred tax is recognised in respect of all timing differences that have originated but not reversed at the balance sheet date, with the following exceptions:

- where fixed assets have been revalued, provision is made for deferred tax only to the extent that, at the balance sheet date, there is a binding agreement to dispose of the assets concerned. However, no provision is made where, on the basis of all available evidence at the balance sheet date, it is more likely than not that the taxable gain will be rolled over into replacement assets and charged to tax only where the replacement assets are sold;
- provision is made for deferred tax that would arise on remittance of the retained earnings of overseas subsidiaries only to the extent that, at the balance sheet date, dividends have been accrued as receivable; and
- deferred tax assets are recognised only to the extent that the directors consider that it is more likely than not that there will be suitable taxable profits from which the future reversal of the underlying timing differences can be deducted.

Deferred tax is measured on an undiscounted basis at the tax rates that are expected to apply in the periods in which timing differences reverse, based on tax rates and laws enacted or substantively enacted at the balance sheet date.

Under IAS, deferred taxation would be provided for temporary differences between the financial reporting basis and the tax basis of the Xstrata AG Group's, the Enex Group's and the Duiker Group's assets and liabilities at enacted tax rates.

(c) Ordinary shares held for future awards to employees

Under UK GAAP, company shares held by the Xstrata AG Group, the Enex Group and the Duiker Group to hedge future requirements of share option schemes are recorded in the balance sheet as fixed assets – investments. Under IAS, such shares are recorded in the balance sheet as a reduction of shareholders' interest.

(d) Cash flow

Under UK GAAP, cash flows are presented for (i) operating activities; (ii) dividends from joint ventures; (iii) dividends from associated undertakings; (iv) servicing of finance and returns on investments; (v) taxation; (vi) capital expenditure and financial investment; (vii) acquisitions and disposals; (viii) dividends; (ix) financing; and (x) management of liquid resources. IAS only require presentation of cash flows from operating, investing and financing activities.

Under IAS, cash flows in respect of taxation and interest form part of the operating activities, whereas UK GAAP requires these cash flows to be shown separately on the face of the cash flow.

IAS defines cash and cash equivalents, which includes cash and deposits with less than three months to maturity. Under UK GAAP, only those short-term deposits which are repayable on demand or can be withdrawn at any time without notice and without penalty or where a maturity or period of notice of no more than 24 hours or one working day has been agreed, are classified as cash equivalents. Short-term deposits not fulfilling these criteria are classified as liquid resources and disclosed separately within the cash flow statement.

Part VIII Additional information

13. Principal establishments

On Admission the principal establishments occupied by the Group, being those which account for more than 10% of net turnover or production, will be as follows:

Name	Tenure	Approximate area (square feet)	
Asturias Industrial Zone One, San Juan de Nieva, "Castrillon", Spain	Freehold	6.0 million	6.D.4

14. Principal subsidiary and associated undertakings

Immediately following the Merger becoming effective, the Company will be the holding company of the Group. The following table shows the principal subsidiaries of the Company once the Merger becomes effective, being those that the Company considers are likely to have a significant effect on the assessment of the Company's assets and liabilities, financial position or profits or losses. Other than those marked below with a *, each of these subsidiaries is included in the consolidated accounts of the Group:

Name and address	Country of incorporation and registered number	Nature of business	Interest in share capital	
Xstrata [Schweiz] AG* Bahnhofstrasse 2 P.O.Box 102 6301 Zug Switzerland	Switzerland – CH-170.3.025.302-8	Holding company	100%	6.C.17 6.E.11 6.E.12 6.E.11(a)(i) 6.E.11(a)(ii) 6.E.11(a)(iii) 6.E.11(b) 6.E.13(b) 6.E.13(c)(i) 6.E.13(c)(ii)
Glencore Overseas AG* Baarermttstrasse 3 6340 Baar Switzerland	Switzerland – CH-170.3.017.081-8	Holding company	100%	
Duiker Marketing AG Zugerstrasse 15 6330 Cham Switzerland	Switzerland – CH-170.3.024.285-1	Trading	100%	
Xstrata Capital Corporation A.V.V. c/o IMC International Management & Trust Company N.V. 62 Lloyd G. Smith Boulevard P.O.Box 1216 Oranjestad/Aruba	Aruba Chamber of Commerce and Industry serial no. 13174.0	Marketing	100%	
Duiker Mining (Proprietary) Limited 19 Girtton Road Parktown Johannesburg South Africa	South Africa – 1946/022288/07	Coal	100%	
Xstrata South Africa (Proprietary) Limited 44 Vanadium Street Rustenburg South Africa	South Africa – 1997/017998/07	Ferrous alloys	100%	
Xstrata Zinc B.V. De Boelelaan Officia 1 1083 HJ Amsterdam The Netherlands	The Netherlands – 34143409	Holding company	100%	
Asturiana de Zinc, SL. Asturias Industrial Zone One San Juan de Nieva "Castrillon" Spain	Spain – B 82689753	Zinc	93.18%	
Enex Coal Pty Limited Level 41 Gateway 1 Macquarie Place Sydney NSW Australia	Australia – ACN 082 271 930	Coal	100%	
Enex Resources Ltd. Level 41 Gateway 1 Macquarie Place Sydney NSW Australia	Australia – ACN 082 271 912	Coal	100%	

Part VIII Additional information

Name and address	Country of incorporation and registered number	Nature of business	Interest in share capital
Oceanic Coal Australia Ltd. Level 41 Gateway 1 Macquarie Place Sydney NSW Australia	Australia – ACN 003 856 782	Coal	100%
Hunter Valley Coal Corporation Pty Limited (“HVCC”) Level 41 Gateway 1 Macquarie Place Sydney NSW Australia	Australia – ACN 003 827 361	Coal	100%
ENEX Oakbridge Pty Ltd. Level 41 Gateway 1 Macquarie Place Sydney NSW Australia	Australia – ACN 097 590 479	Coal	100%
Jonsha Pty Limited Level 41 Gateway 1 Macquarie Place Sydney NSW Australia	Australia – ACN 095 433 935	Coal	100%
Oakbridge Pty Ltd. Level 41 Gateway 1 Macquarie Place Sydney NSW Australia	Australia – ACN 000 230 419	Coal	66.5%
Saxonvale Coal Pty Limited Level 41 Gateway 1 Macquarie Place Sydney NSW Australia	Australia – ACN 003 526 467	Coal	100%
The Newcastle Wallsend Coal Co Pty Ltd Level 41 Gateway 1 Macquarie Place Sydney NSW Australia	Australia – ACN 000 245 901	Coal	100%

15. UK Taxation

The following paragraphs, which are intended as a general guide only, are based on current UK tax legislation and Inland Revenue practice. They may not apply to certain categories of shareholders such as dealers. The statements are a general guide, and should be treated with appropriate caution. If you are in any doubt as to your taxation position or if you are subject to tax in any jurisdiction other than the UK, you should consult an appropriate professional adviser immediately.

Prospective investors in Ordinary Shares should note that this paragraph 15 deals only with UK taxation. Due to the status of the Company as a resident of Switzerland, certain parts of paragraph 16 below (“Swiss Taxation”) are potentially relevant to all holders of Ordinary Shares, regardless of the jurisdiction in which any such holder is resident for tax purposes. Prospective investors resident in the UK are referred in particular to paragraphs 16.1, 16.6 and 16.7 for information relating to Swiss withholding tax which will be deducted from dividends paid, and other distributions made by the Company. Investors are also referred to paragraph 16.5 for information on Swiss securities transfer tax which may arise in certain circumstances.

The summary set forth below is intended as a general guide and does not purport to constitute a comprehensive analysis of the tax consequences under UK law of the acquisition, ownership and sale of the Ordinary Shares by certain classes of investors. It is not intended to be, nor should it be considered, legal or tax advice.

The taxation summaries apply only to shareholders who are the beneficial owners of the Ordinary Shares and hold such Ordinary Shares for investment purposes, and not to dealers in securities.

Prospective investors should consult their own professional advisers on the tax consequences of the acquisition, ownership and sale of the Ordinary Shares.

General

15.1 The Swiss tax authorities have confirmed that, on the assumption that the affairs of the Company are conducted as the Directors intend, they will regard the Company as a resident of Switzerland for the purposes of Swiss taxation law and application of the

Part VIII Additional information

Switzerland/UK Double Taxation convention. The UK Inland Revenue has indicated that, based on the proposed location and structure of management as described to it by the Directors, and on the assumption that the affairs of the Company are conducted as the Directors intend and on the basis of the Swiss ruling noted above, it will not regard the Company as resident in the UK for purposes of UK taxation law. The Directors intend to conduct the Company's affairs as described to the Inland Revenue. Accordingly, assuming the affairs are so conducted, the Company should be treated as resident in Switzerland and not in the UK for tax purposes. This position will, however, be reviewed from time to time and it is possible that the Company could in the future become resident for the purposes of taxation in the UK or elsewhere.

This section is written on the basis that the Company is and remains resident in Switzerland and will therefore be subject to the Swiss tax regime and not (save in respect of UK source income) the UK tax regime. Dividends paid by the Company will, on this basis, be regarded as Swiss dividends rather than UK dividends. Since the Company is incorporated in England and Wales, however, the UK stamp duty and stamp duty reserve tax regimes will be relevant to transfers of Ordinary Shares.

All potential investors (wherever resident) are referred to the sections below headed "UK Stamp Duty and Stamp Duty Reserve Tax (SDRT)" and "United Kingdom inheritance tax".

The following is intended only as a general guide and is not intended to be, nor should it be considered to be, legal or tax advice to any particular UK holder. Persons who are in any doubt about their tax position should consult their own professional advisers.

UK taxation of income and gains

- 15.2 The comments below are of a general nature and are based on current UK law and Inland Revenue practice at the date of this document. Except where indicated, the summary in 15.3 and 15.4 only covers the principal UK tax consequences of holding Ordinary Shares for holders of shares (a) who are resident in the UK for tax purposes (although it should be noted that special rules, which are not covered, apply to such holders of Ordinary Shares who are not domiciled in the UK); (b) who are not resident in Switzerland; and (c) who do not have a permanent establishment in Switzerland with which the holding of Ordinary Shares is connected ("UK holders"). In addition, the summary (a) only addresses the tax consequences for UK holders who hold the Ordinary Shares as capital assets, and does not address the tax consequences which may be relevant to certain other categories of UK holders, for example, dealers in securities; and (b) assumes that the UK holder is not a company which either directly or indirectly controls 10% or more of the voting power of the Company.

Taxation of dividends

6.B.9(b)

- 15.3 A UK holder, or a holder of Ordinary Shares who is carrying on a trade, profession or vocation in the UK through a branch or agency in connection with which the Ordinary Shares are held, will generally, depending upon the holder's particular circumstances, be subject to UK income tax or corporation tax as the case may be, on the gross amount of any dividends paid by the Company before deduction of any Swiss withholding tax. Paragraphs 16.1, 16.6 and 16.7 below contain information on the Swiss withholding tax which will be deducted from dividends paid, and other distributions made, by the Company, and the procedure under which a UK resident shareholder may claim a refund of part of that withholding tax. A credit for Swiss withholding tax would generally be given against any UK tax liability in respect of the dividends. For a UK individual who is liable to UK income tax, the dividends will be taxable at the Schedule F ordinary rate (10% in 2001-2002) and/or (depending on the amount of the holder's overall taxable income) the Schedule F upper rate (32.5% in 2001-2002).

Taxation of capital gains

- 15.4 A disposal or deemed disposal of shares by a UK holder or, in certain circumstances by a holder who is carrying on a trade, profession or vocation in the UK through a branch or agency in connection with which the shares are held, may give rise to a chargeable gain or an allowable loss for the purposes of UK taxation of capital gains. A shareholder who is an individual and who is temporarily non-UK resident may, in certain circumstances, be subject to tax in respect of gains realised whilst he or she is not resident in the UK.

UK Stamp Duty and Stamp Duty Reserve Tax (SDRT)

- 15.5 A transfer on sale of Ordinary Shares will be liable to ad valorem UK stamp duty, generally at the rate of 0.5% (rounded up to the nearest £5) of the consideration paid. An agreement to transfer Ordinary Shares will normally give rise to a charge to SDRT at the rate of 0.5% of the amount or value of the consideration for the Ordinary Shares. The liability to SDRT will arise on the date the contract is made (or, in the case of a conditional agreement, on the date on which such condition is satisfied) although the liability will generally be cancelled, and any SDRT already paid repaid, generally with interest, if an instrument of transfer is executed in pursuance of the agreement and duly stamped within six years of the date on which the liability arises.

Under the CREST system for paperless share transfers, no stamp duty or SDRT will arise on a transfer of shares into the system, unless the transfer into CREST is itself for consideration in money or money's worth, in which case a liability to SDRT will arise, usually at the rate of 0.5% of the amount or value of consideration given. Transfers of shares within CREST are generally liable to SDRT (at a rate of 0.5% of the consideration paid) rather than stamp duty, and SDRT on relevant transactions settled within the system or reported through it for regulatory purposes will be collected and accounted for to the Inland Revenue by CRESTCo Limited.

Where Ordinary Shares are issued or transferred (a) to, or to a nominee or agent for, a person whose business is or includes the provision of clearance services or (b) to, or to a nominee or agent for, a person whose business is or includes issuing depository

Part VIII Additional information

receipts, UK stamp duty or SDRT will be payable. The UK stamp duty and/or SDRT is generally payable at the rate of 1.5% (rounded up to the nearest £5 in the case of stamp duty) of the consideration payable, or in certain circumstances, the value of the Ordinary Shares. Clearance services may opt, provided certain conditions are satisfied, for the normal rate of UK stamp duty or SDRT (0.5%) to apply to issues or transfers of shares into, and to transactions within, such services instead of the higher rate applying to an issue or a transfer of shares into the clearance service.

The UK stamp duty and/or SDRT charges summarised above are in addition to any Swiss securities transfer tax which may arise in the circumstances described at 16.5 below.

United Kingdom inheritance tax

15.6 The Ordinary Shares will be assets situated in the UK for the purposes of UK inheritance tax. A gift of such assets by, or the death of, an individual holder of such assets may (subject to certain exemptions and reliefs) give rise to a liability to UK inheritance tax even if the holder is neither domiciled in the UK nor deemed to be domiciled there under certain rules relating to long residence or previous domicile. For inheritance tax purposes, a transfer of assets at less than full market value may be treated as a gift and particular rules apply to gifts where the donor reserves or retains some benefit.

Special rules also apply to close companies and to trustees of settlements who hold Ordinary Shares bringing them within the charge to inheritance tax. Shareholders should consult an appropriate professional adviser if they make a gift of any kind or intend to hold any Ordinary Shares through trust arrangements.

UK-US estate tax treaty

15.7 An individual who is domiciled in the US for purposes of the UK-USA (Inheritance) Tax Treaty concluded on 19 October 1978 (the "UK-US Estate Tax Treaty") and who is not a national of the UK for the purposes of the UK-US Estate Tax Treaty will generally not be subject to UK inheritance tax in respect of the Ordinary Shares on the individual's death or on a gift of the Ordinary Shares during the individual's lifetime provided that any applicable US federal gift or estate tax liability is paid, unless the Ordinary Shares are part of the business property of a permanent establishment in the UK of an enterprise or pertain to a fixed base in the UK of an individual used for the performance of independent personal services. Where the Ordinary Shares have been placed in trust by a settlor who, at the time of settlement, was domiciled in the US for the purposes of the UK-US Estate Tax Treaty and was not a national of the UK for the purposes of the UK-US Estate Tax Treaty, the Ordinary Shares will generally not be subject to UK inheritance tax (provided that the Ordinary Shares are not part of the business property of a permanent establishment in the UK and do not pertain to a fixed base in the UK as more fully summarised above). In the exceptional case where the Ordinary Shares are subject both to UK inheritance tax and to US federal gift or estate tax, the UK-US Estate Tax Treaty generally provides for the tax paid in the UK to be credited against tax paid in the US and for the tax paid in the US to be credited against tax payable in the UK based on priority rules set out in the UK-US Estate Tax Treaty.

UK-Swiss Estate Tax Treaty

15.8 The United Kingdom-Switzerland (Inheritance and Estates) Tax Treaty concluded on 17 December 1993 (the "UK-Swiss Estate Tax Treaty") does not exclude shares issued by a UK incorporated company from the charge to UK inheritance tax even where an individual holder of such shares is domiciled solely in Switzerland for the purposes of the UK-Swiss Estate Tax Treaty. Accordingly, UK inheritance tax may be payable in respect of a gift of the Ordinary Shares by, or the death of, an individual holder domiciled in Switzerland for the purposes of the UK-Swiss Estate Tax Treaty.

Where an individual holder of the Ordinary Shares is domiciled in both the UK and Switzerland for the purposes of the UK-Swiss Estate Tax Treaty, the Ordinary Shares will be subject to UK inheritance tax only.

In a case where the Ordinary Shares are subject to both UK inheritance tax and Swiss cantonal and communal taxes on estates and inheritances, the UK-Swiss Estate Tax Treaty provides for an amount equal to such taxes paid in Switzerland to be credited against tax payable in the UK by reference to the same property in connection with the same event.

16. Swiss Taxation

Prospective investors in Ordinary Shares should note that this paragraph 16 deals only with Swiss taxation. As the Company is incorporated in England and Wales, sales and transfers of Ordinary Shares will, regardless of the tax residence of the transferor or transferee, the place of execution of any transfer documentation, and the exchange on which the sale occurs, be subject to UK stamp duty or stamp duty reserve tax (as summarised at 15.5 above) in addition to any applicable Swiss securities issue and transfer tax (summarised at 16.5 below).

Further, a registered holding of Ordinary Shares will have a UK situs for UK inheritance tax purposes. Therefore, a gift of Ordinary Shares, or a transfer of Ordinary Shares on the death of the holder, may attract a liability to UK inheritance tax even where the transferring shareholder is domiciled solely in Switzerland. Prospective investors domiciled in Switzerland are referred to paragraphs 15.6 and 15.8 for further information.

Withholding Tax on Dividends and other Distributions

16.1 Dividends paid and similar cash or in kind distributions made by the Company to a holder of Ordinary Shares (including dividends on liquidation and stock dividends) are subject to a Swiss federal withholding tax (the "Withholding Tax") at the rate of 35%. The Withholding Tax must be withheld by the Company from the gross distribution and paid to the Swiss Federal Tax Administration.

6.B.9

6.B.10

Part VIII Additional information

The Withholding Tax withheld is refundable in full to – or as the case may be fully creditable against the income tax liability of – a Swiss resident recipient of a distribution, if he is the beneficial owner of the Ordinary Shares at the time of the payment and duly reports the gross distribution received on his personal tax return.

A recipient of a distribution of the Company who is not a resident of Switzerland for tax purposes and does not hold the Ordinary Shares in connection with the conduct of a trade or business in Switzerland through a permanent establishment or a fixed place of business (a “non-resident holder”) and qualifies as a resident of a country which maintains a bilateral treaty for the avoidance of double taxation with Switzerland may be entitled to a full or partial refund of the Withholding Tax under the provisions of the applicable treaty. Non-resident holders should be aware that the procedures for claiming treaty refunds (and the time frame required for obtaining a refund) may differ from country to country. Non-resident holders should consult their own tax advisers regarding the procedures for claiming any refund of the Withholding Tax.

Income Tax on Distributions

16.2 A Swiss resident recipient of dividends and similar distributions (including dividends on liquidation and stock dividends) of the Company generally is required to include such amounts in his personal income tax return. A Swiss corporate entity that owns at least 20% of the capital of the Company or Ordinary Shares with a market value of at least CHF2 million may qualify for the participation exemption. The dividends received which qualify for the participation exemption, after certain expense allocation as defined by the applicable legislation are in essence tax exempt.

A non-resident holder is not liable for any Swiss federal, cantonal or municipal income taxes with respect to dividends or other distributions paid on the Ordinary Shares merely as a result of holding the Shares other than the Withholding Tax to be withheld by the Company from such dividends or other distributions.

Capital Gains on Disposals of Shares

16.3 A Swiss resident who holds Shares as part of his private property is generally not subject to any Swiss federal, cantonal or municipal income taxation on gains realised upon the sale or other disposal of Ordinary Shares. Private gains realised upon a repurchase of Ordinary Shares by the Company may, however, be re-characterised as taxable income if certain conditions are met. Book gains realised on Ordinary Shares held as a business asset of a Swiss resident are included in the taxable income of such person.

Capital gains realised by a Swiss corporation owning at least 20% of the capital may be exempt under the participation exemption subject to conditions. Any such corporation should take its own professional advice on its tax position in respect of its holding of Ordinary Shares.

A non-resident holder of Ordinary Shares is generally not subject to any Swiss federal, cantonal or municipal taxation on gains realised on a sale or other disposal of Ordinary Shares unless the Ordinary Shares so disposed of can be attributed to a permanent establishment or fixed place of business maintained by such person within Switzerland during the relevant tax year.

Wealth and Capital Taxes

16.4 Holders of Ordinary Shares resident in Switzerland or otherwise subject to Swiss taxation (individuals or legal entities) are generally subject to annual wealth or annual capital taxes on this shareholding.

Securities Issue and Transfer Tax

16.5 The issue of Ordinary Shares by a Swiss legal entity is generally subject to a 1.0% one-time capital duty (issuance stamp tax). In the case at hand, the shares will be issued by a UK legal entity being managed and controlled in Switzerland. Accordingly, at least for the initial capital increase, it is possible that such increase should escape the capital duty. Any subsequent sale of Shares is subject to the Swiss security transfer tax, currently 0.3%, if such sale or transfer occurs through or with a Swiss bank or another Swiss securities dealer, as defined in the Swiss Federal Stamp Duty Law. In addition to this stamp duty, the sale of shares through or by a member of SWX may be subject to a stock exchange levy of 0.02%. The Swiss securities transfer tax charges summarised above are in addition to the UK stamp duty and/or SDRT which will arise on sales or transfers of Ordinary Shares regardless of the tax residence of the transferor or transferee, the place of execution of any transfer documentation, or the exchange on which the sale occurs. For further information on those UK charges, please see 15.5 above.

Reclaim procedure for UK residents

(a) Procedure

16.6 Three copies of the Form 86 (the “Form”) duly completed and signed, must be sent to the Inspector of Taxes in the United Kingdom to whom the claimant makes his income tax return (or to the Inspector of Taxes for the district in which the claimant resides, if he has not made such a return).

The Form may be filed immediately after the due date of the income, but not later than 31 December of the third year following the calendar year in which the income became due.

Rights to repayment arising in one calendar year must be claimed in a single claim.

Part VIII Additional information

The claim must be accompanied by evidence of deduction of Swiss tax withheld at source. In general, a certificate of deduction, signed bank voucher or credit slip will satisfy this requirement. However, the Swiss government reserves the right to request further evidence and information.

The claim Form may be filed by a representative on behalf of the beneficial owner, provided that the representative is formally authorised by a power of attorney (which must be attached to the Form).

Two copies of the Forms will be sent by H.M. Inspector of Taxes to the Federal Tax Administration of Switzerland, CH-3003 Berne.

(b) Rates

- 16.7 UK residents owning shares of a Swiss corporation (other than a corporation which controls at least 25% of the voting power in the Company) may reclaim four sevenths of the 35% Swiss withholding tax, leaving a net Swiss tax cost of 15%.

17. US Taxation

- 17.1 The following discussion is a summary based on present law of certain US federal income tax considerations relevant to the purchase, ownership and disposition of Ordinary Shares. The discussion addresses only US Holders that will purchase Ordinary Shares in the Global Offer, hold Ordinary Shares as capital assets and use the US dollar as their functional currency. It does not address the tax treatment of US Holders subject to special rules, such as banks, dealers traders in securities that elect to mark to market, insurance companies, tax-exempt entities, holders of 10% or more of the Company's voting shares, persons holding Ordinary Shares as part of a hedge, straddle, conversion, or other integrated financial transaction, or constructive sale transaction and persons that are resident or ordinarily resident in the United Kingdom.

This summary does not address US state or local taxes. It does not consider any investor's particular circumstances. It is not a substitute for tax advice. The Company urges investors to consult their own tax advisers about the tax consequences of purchasing, holding and disposing of Ordinary Shares.

As used in this paragraph 17, "US Holder" means a beneficial owner of Ordinary Shares that is (a) a citizen or resident of the United States for US Federal income tax purposes, (b) a corporation, partnership or other business entity organised under the laws of the United States, (c) a trust subject to the control of a US person and the primary supervision of a US court, (d) an estate the income of which is subject to US federal income tax regardless of its source.

Prospective investors in Ordinary Shares should note that this paragraph 17 deals only with US taxation. Due to the status of the Company as a resident of Switzerland, certain parts of paragraph 16 above ("Swiss Taxation") are potentially relevant to all holders of Ordinary Shares, regardless of the jurisdiction in which any such holder is resident for tax purposes. Prospective investors are referred in particular to paragraph 16.1 for information relating to Swiss withholding tax which will be deducted from dividends paid, and other distributions made, by the Company.

Investors should also note that, as the Company is incorporated in England and Wales, sales and transfers of Ordinary Shares will, regardless of the tax residence of the transferor or transferee, the place of execution of any transfer documentation, or the exchange on which the sale occurs, be subject to UK stamp duty or stamp duty reserve tax (as summarised at 15.5 above) in addition to any applicable Swiss securities issue and transfer tax (summarised at 16.5 above).

Further, a registered holding of Ordinary Shares will have a UK situs for UK inheritance tax purposes. Prospective investors domiciled in the US are referred to paragraphs 15.6 and 15.7 for further information on UK inheritance tax and on relief from such tax under the relevant UK/US treaty.

Dividends

- 17.2 Subject to the Passive Foreign Investment Company rules discussed below, US Holders generally must include dividends (including the amount of any Swiss or other foreign tax withheld, if any) paid on Ordinary Shares in their gross income as ordinary income from foreign sources. Dividends will not be eligible for the dividends-received deduction generally available to US corporations. Dividends paid to US Holders in pounds sterling will be includable in income in a US dollar amount based on the exchange rate in effect on the date of receipt whether or not the payment is converted into US dollars at that time. Any gain or loss that a US Holder recognises on a subsequent conversion of pounds sterling into US dollars generally will be US source ordinary income or loss.

Subject to generally applicable limitations, a US Holder may be entitled to a credit against its US federal income tax liability, or a deduction in computing its US federal taxable income, for Swiss or other foreign taxes withheld. A US Holder entitled to the benefits of the Switzerland-US income tax treaty may be entitled to claim a partial refund of the Swiss withholding tax generally so as to leave a net Swiss tax cost of 15%. US holders should refer to the discussion of Swiss tax in paragraph 16.1 of this Part VIII for information regarding Swiss withholding taxes.

Dispositions

- 17.3 Subject to the Passive Foreign Investment Company rules discussed below, US Holders will recognise capital gain or loss on the sale or other disposition of Ordinary Shares in an amount equal to the difference between their adjusted tax basis in the Ordinary Shares determined in US dollars and the US dollar value of the amount realised on sale or other disposition. The gain or loss will be long-term gain or loss if the US Holder has held the Ordinary Shares for more than one year at the time of sale or other

Part VIII Additional information

disposition. The deductibility of capital losses is subject to limitations. Any gain or loss will generally be treated as arising from US sources.

A US Holder's basis in Ordinary Shares purchased with pounds sterling generally will be equal to the US dollar value of the pounds sterling on the date of purchase. A US Holder that receives pounds sterling upon sale or other disposition of the Ordinary Shares will realise an amount equal to the US dollar value of the pounds sterling on the date of sale or other disposition (or in the case of cash basis and electing accrual basis taxpayers, the settlement date). A US Holder will have a tax basis in the pounds sterling received equal to the US dollar amount realised. Any gain or loss realised by a US Holder on a subsequent conversion of pounds sterling into US dollars will be US source ordinary income or loss.

Passive Foreign Investment Company rules

17.4 The Company believes that it will not be treated as a Passive Foreign Investment Company, or PFIC, in the current or subsequent taxable years. However, because the PFIC determination is made annually on the basis of the Company's income and assets, including goodwill, the Company cannot assure you that it will not be a PFIC in the current or subsequent taxable years.

In general, the Company will be a PFIC with respect to US Holders for any taxable year in which such US Holder holds Ordinary Shares if 75% or more of the Company's gross income consists of passive income, such as dividends, interest, rents, royalties and gains from assets which produce passive income or 50% or more of the average quarterly value of the Company's assets consists of assets that produce, or are held for the production of, passive income. Passive income generally includes gains from transactions in commodities. The principal products of the Group are considered commodities for this purpose, but passive income does not include active gains from commodities realised by an active producer, processor, merchant, or handler of commodities. Any commodity sale by a company other than in its capacity as an active producer, processor, merchant or handler of commodities is not a qualified active sale. At this time the Company believes that its principal subsidiaries qualify as active producers, processors, merchants or handlers of commodities, and expects that active gains from commodities will be sufficient to enable the Company to avoid PFIC status for the current year. The Company, however, cannot assure that these active producer requirements will be met in future years.

If the Company were a PFIC in any year during which a US Holder owned Ordinary Shares, the US Holder would be subject to a special tax regime that would apply to both (a) any "excess distribution," which would be such US Holder's share of distributions in any year that are greater than 125% of the average annual distributions received by such holder in the three preceding years or such holder's holding period, if shorter; and (b) any gain realised on the sale or other disposition of the Ordinary Shares (whether or not the Company continues to be a PFIC). Under this regime, any excess distribution and realised gain would be treated as ordinary income and would be subject to tax as if the excess distribution or gain had been realised ratably over the US Holder's holding period, the amount deemed realised had been subject to tax in each year of that holding period at the highest applicable tax rate, and the interest charge generally applicable to underpayments of tax had been imposed on the taxes deemed to have been payable in those years. If the Company were a PFIC, and provided the Ordinary Shares are marketable, a US Holder could make a mark-to-market election. Under the election, any excess of the fair market value of the Ordinary Shares at the close of any tax year over the US Holder's adjusted basis in the Ordinary Shares is included in the US Holder's income as ordinary income. In addition, the excess, if any, of the US Holder's adjusted basis at the close of any taxable year over fair market value is deductible in an amount equal to the lesser of the amount of the excess or the net mark-to-market gains on the Ordinary Shares that the US Holder included in income in previous years. If the mark-to-market election were made, then the regime mentioned above generally would not apply for periods covered by the election.

If the Company were a PFIC, US holders of equity interests in a holder of the Ordinary Shares would be treated as indirect holders of their proportionate share of the Ordinary Shares and would be taxed on their proportionate share of any excess distribution or gain attributable to the Ordinary Shares. An indirect holder would also be required to treat an appropriate portion of its gain on the sale or distribution of its interest in the actual holder as gain on the sale of the Ordinary Shares.

A US Holder of Ordinary Shares will not be able to elect to treat the Company as a qualified electing fund, or QEF, because the Company does not intend to prepare the information that US Holders would need to make a QEF election.

US Holders should consult their own tax advisers concerning the potential application of the PFIC provisions, as well as the advisability and timing of making a mark-to-market election or other available election for their Ordinary Shares if the Company is classified as a PFIC.

Information reporting and backup withholding

17.5 Dividends from the Ordinary Shares and proceeds from the sale of the Ordinary Shares may be reported to the Internal Revenue Service ("IRS") unless the holder (a) is a corporation, (b) provides a properly executed IRS Form W-8BEN, or (c) otherwise establishes a basis for exemption. Backup withholding tax may apply to amounts subject to reporting if the holder fails to provide an accurate taxpayer identification number. The amount of any backup withholding tax will be allowed as a credit against the holder's US federal income tax liability.

18. Material contracts

The following contracts, not being contracts entered into in the ordinary course of business, have been entered into by a member of the Group within the two years immediately preceding the date of this document or are expected to be entered into prior to the Global

6.C.20

Part VIII Additional information

Offer and are, or may be, material or have been entered into at any time by a member of the Group and contain provisions under which a member of the Group has an obligation or entitlement which is, or may be, material to the Group as at the date of this document:

- (a) the Underwriting Agreement dated 20 March 2002 between the Company, Xstrata AG, the Underwriters and the Sponsor providing for the underwriting of the Global Offer, referred to in “– Underwriting Agreement and Lock-up Agreements” in paragraph 9 of this Part VIII;
- (b) the Relationship Agreement dated 20 March 2002 between the Company and Glencore International regulating the continuing relationship between the parties and ensuring the Company is capable of carrying on its business independently of Glencore and of Glencore International as controlling shareholder, referred to in “Relationship with Glencore – Relationship with controlling shareholder” in Part II;
- (c) the Acquisition Agreement dated 21 February 2002 between the Purchasers, Xstrata AG and the Vendors referred to in “– Agreements relating to the Acquisitions and the Merger” in paragraph 10 of this Part VIII and the agreement amending the Acquisition Agreement dated 20 March 2002;
- (d) the Merger Agreement dated as of 20 February 2002 between the Company and Xstrata AG referred to in “– Agreements relating to the Acquisitions and the Merger” in paragraph 10 of this Part VIII;
- (e) the Syndicated Loan Facility Agreement dated on or about 20 March 2002 (but in any event prior to Admission) between certain members of the Group, Barclays Capital (the investment banking division of Barclays Bank PLC), Dresdner Kleinwort Wasserstein acting through Dresdner Bank Luxembourg S.A. and J.P. Morgan plc, as mandated lead arrangers, and the banks named therein, as lenders, referred to in “– Agreements relating to the Acquisitions and the Merger” in paragraph 10 of this Part VIII;
- (f) the Market Advisory Agreement dated 20 March 2002 between Duiker Marketing AG, Xstrata (Schweiz) AG and Glencore International referred to in “Relationship with Glencore – Commercial relationship – Coal Business” in Part II;
- (g) two agreements for the sale and purchase of shares and joint venture interests in the Ulan Coal Mine were entered into on 6 February 2001 by the purchasers Jonsha Pty Ltd (“Jonsha”) and Danrod Pty Ltd (“Danrod”). Under the first share sale agreement between Danrod, ESSO Australia Resources Pty Ltd (“ESSO”), SAS Trustee Corporation (“SAS”) and Mitsubishi Development Pty Ltd (“MDP”), Danrod obtained a 45% interest in Ulan Coal Mines Ltd (“UCML”) and a 25.5% interest in the Ulan Joint Venture for total consideration of A\$25,725,615.60. Under the second agreement between Jonsha, ESSO, SAS, MDP and Crowjura Pty Ltd (“Crowjura”) together the vendors, Jonsha obtained a 45% interest in UCML and a 64.5% interest in the Ulan Joint Venture for total consideration of A\$83,359,946.40. MDP retained a 10% interest in UCML and the Ulan Joint Venture. The vendor warranties under these agreements expired on 5 February 2002;
- (h) an agreement for purchase of shares in Cyprus Australia Coal Company (now Enex Oakbridge Pty Ltd) dated 9 March 2000 between Enex Coal Pty Limited, Glencore International, Amax Energy Inc and Phelps Dodge Corporation, pursuant to which Enex Coal Pty Ltd acquired all the issued and outstanding common shares of Cyprus Australia Coal Company (renamed Enex Oakbridge Pty Ltd) for consideration of US\$61,625,000. In addition, Enex Coal Pty Ltd assumed US\$88,375,000 of parent company debt, bringing the total outflow to US\$150,000,000. The only warranties that are still current are in relation to taxation matters. These warranties expire on 30 June 2004.
- (i) a share sale agreement dated 27 July 2001 between Xstrata AG, Enex Coal Pty Ltd and Xstrata Windimurra Pty Ltd, pursuant to which Enex Coal Pty Ltd acquired a 100% interest in the issued capital of each of Xstrata Coal Pty Limited (now known as Abelshore Pty Ltd) for consideration of A\$73,185,990 and Winarch Pty Limited for consideration of A\$100. Following the purchase, Enex Coal Pty Ltd holds an indirect interest in 95% of the issued capital of both United Collieries Pty Ltd, the United Collieries Joint Venture and 100% of the issued capital of Jerry’s Plain Coal Terminal Pty Ltd. In addition, Enex Coal Pty Ltd assumed A\$52,550,649 of parent company debt, bringing the total outflow to A\$125,736,639. Xstrata AG’s indemnity and warranties to Enex Coal Pty Ltd remain in force for an indefinite period following completion. Xstrata AG indemnifies Enex Coal Pty Ltd for all liability and losses arising from: (i) a breach of its warranties; (ii) actions (if any) taken from Xstrata AG’s representative on the boards of Abelshore Pty Ltd or Winarch Pty Ltd with respect to those companies, which have not been communicated to the other members of those boards; (iii) Abelshore Pty Ltd’s 9% interest in, and its involvement as a 9% joint venturer in, the Windimurra Joint Venture and 9% shareholding in Vanadium Australia Pty Ltd and their divestiture; (iv) any amounts which either Abelshore Pty Ltd, Winarch Pty Ltd or Enex Coal Pty Ltd may be called upon to pay in respect of any assessment, re-assessment, amended assessment, default assessment, penalty, fine or any other obligation in respect of any year of income ended before 1 January 2001 which have not been paid or fully provided for and quantified in the accounts; and (v) any loss or outgoing arising from Abelshore Pty Ltd being unable to utilise any prior tax loss because Abelshore Pty Ltd could not satisfy a requirement of the income tax law due to any act, event or omission by Abelshore Pty Ltd occurring prior to completion.
- (j) an agreement for sale and purchase of the Ravensworth Coal Supply Business dated 19 December 2001 between Enex Ravensworth Pty Limited (“Enex Ravensworth”), CNA Resources Limited and Glencore International, pursuant to which Enex Ravensworth has agreed to acquire land, the Ravensworth mining assets, a 50% joint venture interest in the Narama mine, all of the issued shares in CNA Coal Ltd, CNA Warkworth Mining Investments Pty Ltd and CNA Opencut Mining Pty Ltd for consideration of US\$64 million (subject to adjustment to reflect trading between 26 January 2001 to completion). Within 30 days of completion of this agreement, Enex Ravensworth must provide replacement performance bonds in the sum of A\$31,173,750. The vendor is not liable to make any payment for any breach of the vendor’s warranties unless a claim is made by Enex

Part VIII Additional information

Ravensworth within 15 months of the date of completion (13 March 2002). In addition, the maximum aggregate amount Enx Ravensworth may recover from the vendor under the vendor warranties is limited to the amount of the purchase price.

- (k) an asset purchase agreement between Xstrata Aluminum Corporation (a wholly-owned subsidiary of Xstrata AG) and Berkeley Aluminum, Inc. (a wholly-owned subsidiary of Century Aluminum Company) dated as of 31 March 2000, pursuant to which the Xstrata AG Group disposed of its undivided 23% interest in the Mt. Holly primary aluminium smelter in Goose Creek, South Carolina, together with its undivided 23% interest in the Mt. Holly Aluminum Company, which operates the Mt. Holly primary aluminium smelter, its membership interest in Mt. Holly Commerce Park, LLC and US\$8 million in net working capital for a total consideration of US\$95,000,000, referred to in "Operating and Financial Review-Recent Acquisitions and Disposals-Xstrata" in Part V.
- (l) a sale and purchase agreement between Xstrata Energy Corporation A.V.V. (a wholly-owned subsidiary of Xstrata A.G., now renamed Xstrata Capital Corporation A.V.V.), Perez Companc S.A. and Xstrata AG dated 7 June 2000, and effective as of 1 January 2000, pursuant to which the Xstrata AG Group disposed of its 100% shareholding in Südelektra Argentina S.A., holder of a 32.8013% undivided joint venture interest in the Santa Cruz I block located in the Austral Basin, southern Argentina, for a total consideration of US\$121,121,000, less an adjustment of US\$47,036,276, referred to in "Operating and Financial Review-Recent Acquisitions and Disposals-Xstrata" in Part V.
- (m) the agreement dated 10 January 2001 between Xstrata AG, Xstrata Zinc B.V., Xstrata Spain, S.L., Glencore Investments B.V., and Glencore International AG, pursuant to which Glencore Investments B.V. irrevocably and unconditionally undertook to accept the tender offer made by Xstrata Spain, S.L. and Xstrata Zinc B.V. in respect of the issued share capital of Asturiana de Zinc, S.A. pursuant to the agreement, Glencore Investments B.V. sold its entire shareholding of 17,911,838 shares in Asturiana de Zinc, S.A. (representing 44.41% of the total issued share capital of Asturiana de Zinc, S.A.) for an aggregate consideration of €241,809,813.
- (n) Richards Bay Coal Terminal Company Limited documents:
 - (i) Richards Bay Coal Terminal consolidation agreement
An agreement for the continued operation of the Richards Bay Coal Terminal Company Limited ("RBCT Company"), defining the rights and obligations of the parties thereto, became effective as of 28 June 1996 (the "1996 RBCT Agreement"). The parties to the 1996 RBCT Agreement are RBCT Company, Anglo American Coal Corporation Limited, Duiker Mining (Proprietary) Limited, Duiker Coal (Proprietary) Limited, Gold Fields Coal Limited, Ingwe Collieries Limited, Welgedacht Exploration Company Limited, Savage & Lovemore Mining (Proprietary) Limited, JCI Limited, Tavistock Collieries (Proprietary) Limited, Kangra Group (Proprietary) Limited, Shell South Africa (Proprietary) Limited, Total Exploration South Africa (Proprietary) Limited and Sasol Mining (Proprietary) Limited. The 1996 RBCT Agreement, as amended, regulates, amongst other things, the management of RBCT, shareholders' rights and obligations and sets out additional construction works to the Richards Bay Coal Terminal to increase its throughput capacity, ultimately, to 72 million tonnes per annum. The 1996 RBCT Agreement provides, among other things, that: (i) the tonnage of coal which each shareholder of the RBCT Company is entitled to export through the RBCT is in proportion to its respective shareholding; (ii) each shareholder has undertaken not to participate in or utilise another coal export terminal (other than the Durban coal terminal or the Matola coal terminal) without having given ninety days prior written notice to the board of the RBCT Company; and (iii) each shareholder has certain financing obligations towards the RBCT Company in proportion to its respective shareholding.
 - (ii) Memorandum of Understanding
A memorandum of understanding ("MoU") was entered into on 1 June 2001 to embark upon the Phase V expansion of the Richards Bay Coal Terminal, increasing its throughput capacity to 82 million tonnes per annum and supplementing its existing operations. The parties to the agreement are RBCT Company, South Dunes Coal Terminal Company (Proprietary) Limited, Anglo Operations Limited, Duiker Mining (Proprietary) Limited, Gold Fields Coal Limited, Ingwe Collieries Limited, Kangra Group (Proprietary) Limited, Naudven Mining (Proprietary) Limited, Sasol Mining (Proprietary) Limited, and Total Exploration South Africa (Proprietary) Limited. It is anticipated that the parties to the MoU will enter into an agreement to amend the 1996 RBCT Agreement. The conditions precedent detailed in the MoU were fulfilled as of 4 December 2001 and the RBCT Company has since been required to formally approve the Phase V expansion of the Richards Bay Coal Terminal referred to in the MoU. The MoU provides, among other things, that each RBCT Company shareholder will contribute to the financing of the Phase V expansion of the Richards Bay Coal Terminal in proportion to its respective shareholdings.

See "Information on the Group-Coal Business-South African operations-Transportation of the South African operations coal" in Part I.

19. Working capital

In the opinion of the Company, following the Acquisitions and the Merger becoming effective and taking account of the Group's existing banking facilities, the net proceeds of the Global Offer and the Syndicated Loan Facility, the working capital available to the Group is sufficient for the Group's present requirements, that is, for the next 12 months following the date of this document.

6.E.16

3.10

Part VIII Additional information

20. Litigation

No member of the Group is or has been engaged in nor, so far as the Group is aware, has pending or threatened, any legal or arbitration proceedings which may have, or have had during the 12 months preceding the date of this document, a significant effect on the Group's financial position. 6.D.8 19.4(e)

21. Significant change

There has been no significant change in the financial or trading position of the Group since 31 December 2001, the date to which the last audited consolidated financial statements of the Xstrata AG Group, Enex Group and Duiker Group were prepared. 6.E.8

22. Consents

22.1 Ernst & Young LLP has given and has not withdrawn its written consent to the inclusion in this document of its name, reports and references to it in the form and context in which they appear and has authorised the contents of its reports for the purposes of paragraph 6(1)(e) of the Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001. 6.A.9

22.2 Minarco Pty Limited has given and has not withdrawn its written consent to the inclusion in this document of its name, report and references to it in the form and context in which they appear and has authorised the contents of its report for the purposes of paragraph 6(1)(e) of the Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001.

22.3 Weir International Mining Consultants has given and has not withdrawn its written consent to the inclusion in this document of its name, report and references to it in the form and context in which they appear and has authorised the contents of its report for the purposes of paragraph 6(1)(e) of the Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001.

22.4 Pincock, Allen & Holt has given and has not withdrawn its written consent to the inclusion in this document of its name, report and references to it in the form and context in which they appear and has authorised the contents of its report for the purposes of paragraph 6(1)(e) of the Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001.

22.5 BFP Consultants Pty Ltd has given and has not withdrawn its written consent to the inclusion in this document of its name, report and references to it in the form and context in which they appear and has authorised the contents of its report for the purposes of paragraph 6(1)(e) of the Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001.

22.6 IMC Mackay & Schnellmann has given and has not withdrawn its written consent to the inclusion in this document of its name, report and references to it in the form and context in which they appear and has authorised the contents of its report for the purposes of paragraph 6(1)(e) of the Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001.

22.7 AME has given and has not withdrawn its written consent to the inclusion in this document of its name and references to it and cost curve information produced by it in the form and context in which it appears.

22.8 Brook Hunt has given and has not withdrawn its written consent to the inclusion in this document of its name and references to it and cost curve information produced by it in the form and context in which it appears.

22.9 CRU has given and has not withdrawn its written consent to the inclusion in this document of its name and references to it and cost curve information produced by it in the form and context in which it appears.

22.10 JPMorgan has given and not withdrawn its consent to the inclusion in this document of its name in the form and context in which it appears.

23. Miscellaneous

23.1 The expenses relating to the issue of the Ordinary Shares, including the UK Listing Authority listing fee, professional fees and expenses and the costs of printing of documents are estimated to amount to approximately £41 million (including VAT) (or approximately £46 million (including VAT) assuming that the Manager's Option is exercised) and are payable by the Company. 6.B.15(i)

23.2 Each Ordinary Share to be issued under the Global Offer will be issued at a premium of US\$11.89 to its nominal value of US\$0.50 (based upon the spot rate of exchange (closing mid-point) for pounds sterling into US dollars of £1:US\$1.4247 on 18 March 2002, the last practicable day before the date of this document, as published in the London edition of the *Financial Times* on 19 March 2002). 6.B.15(d)(iii)

24. Documents available for inspection

Copies of the following documents are available for inspection during usual business hours on any weekday (Saturdays, Sundays and public holidays excepted) for a period of 14 days from the date of publication of this document at the offices of Freshfields Bruckhaus Deringer at 65 Fleet Street, London EC4Y 1HS: 6.C.7(a) 6.C.7(c) 6.C.7(e)

(a) the memorandum and articles of association of the Company and a final draft (subject to amendments) of the Voting Agreement referred to in "Summary of the memorandum and articles of association – Articles of association" in paragraph 3 of this Part VIII; 6.C.7(f) 6.C.7(g)

(b) the audited financial statements of the Xstrata AG and Enex Groups for the three financial years ended 31 December 1999, 2000 and 2001 and the audited financial statements of the Duiker Group for the year ended 30 September 1999, the 15 months ended 31 December 2000 and the year ended 31 December 2001 and the audited non-statutory accounts of Xstrata, Duiker Marketing AG and Glencore Overseas AG for the year ended, or in the case of Xstrata, as at, 31 December 2001;

Part VIII Additional information

- (c) all Directors' service agreements, secondment agreements and letters of appointment referred to in "Directors' service agreements" in this Part VIII;
- (d) the material contracts referred to in "Material contracts" in this Part VIII;
- (e) the rules of the Xstrata AG Share Schemes and of the Xstrata Long Term Incentive Plan and the form of trust deeds of the Xstrata Employee and Directors Share Ownership Trust and of the Xstrata Employee Share Ownership Trust;
- (f) the consent letters referred to in "Consents" in this Part VIII;
- (g) the reports from Ernst & Young LLP set out in Part VI together with the statements of adjustments relating to the reports set out in Part VI;
- (h) the reports from Minarco Pty Limited, Weir International Mining Consultants, IMC Mackay & Schnellmann, BFP Consultants Pty Ltd and Pincock, Allen & Holt and the technical report prepared by Xstrata South Africa set out in Part IX; and
- (i) the letter from Ernst & Young LLP regarding the pro forma financial information set out in Part VII.

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