

## THIS CIRCULAR IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION

The definitions commencing on page 9 apply throughout this Circular including this front cover.

If you are in any doubt as to what action you should take arising from this Circular, please consult your broker, banker, attorney, accountant or other professional advisor immediately.

### Actions required

1. If you have disposed of all of your KWV Holdings Shares, this Circular should be handed to the purchaser of such KWV Holdings Shares or to the broker, banker, attorney or other agent through whom the disposal was effected.
  2. KWV Holdings Shareholders are referred to page 4 of this Circular, which sets out the action required by them.
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### KWV HOLDINGS LIMITED

(Incorporated in the Republic of South Africa)

Registration number: 2009/012871/06

("KWV Holdings" or "Company")

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### CIRCULAR TO KWV HOLDINGS SHAREHOLDERS

*regarding:*

- the sale by KWV SA of the Business to Warshay Investments in accordance with the terms and conditions contemplated in the Sale of Business Agreement;
- the General Meeting;

*and incorporating:*

- a report prepared by the Independent Expert as to whether the Transactions are fair and reasonable;
  - an extract of section 115 of the Companies Act;
  - an extract of section 164 of the Companies Act.
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Independent Expert:



Legal Advisor:



Independent Reporting Accountants and Auditors:



Date of issue: 29 June 2016

*This Circular is available in English only and copies hereof may be obtained from the registered offices of KWV Holdings at the address set out in the "Corporate information and advisors" section of this Circular, during normal business hours on Business Days during the period from 29 June 2016 to 29 July 2016, both days inclusive. This Circular will also be available on the Company's website at [www.kwv.co.za](http://www.kwv.co.za).*

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## **CERTAIN FORWARD- LOOKING STATEMENTS**

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This Circular includes certain “forward-looking information”. All statements other than statements of historical fact are, or are deemed to be, forward-looking statements.

The forward-looking statements are not based on historical facts, but rather reflect KWV Holdings’ current expectations concerning future results and events and generally may be identified by the use of forward-looking words or phrases such as “believe”, “aim”, “expect”, “anticipate”, “intend”, “foresee”, “forecast”, “likely”, “should”, “planned”, “may”, “estimated”, “potential” or similar words and phrases. Similarly, statements that describe KWV Holdings’ objectives, plans or goals are or may be forward-looking statements.

These forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause KWV Holdings’ actual results, performance or achievements to differ materially from the anticipated results, performance or achievements expressed or implied by these forward-looking statements. Although KWV Holdings believes that the expectations reflected in these forward-looking statements are reasonable, no assurance can be given that such expectations will prove to have been correct.

KWV Holdings Shareholders should review carefully all information, including the pro forma financial statements and the notes to the pro forma financial statements, included in the Circular. The forward-looking statements included in this Circular are made only as at the Last Practicable Date. KWV Holdings undertakes no obligation to update publicly or release any revisions to these forward-looking statements to reflect events or circumstances after the date of this Circular or to reflect the occurrence of unanticipated events. All subsequent written and oral forward-looking statements attributable to KWV Holdings or any person acting on its behalf are qualified by the cautionary statement in this section of the Circular.

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## CORPORATE INFORMATION AND ADVISORS

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### Directors of KVV Holdings

A van der Veen (Chief Executive Officer)

DP Smit (Financial Director)

MJA Golding\* (Chairman)

JA Copelyn\*

F-A du Plessis\*\*

NL Ellis\*\*

MN Joubert\*\*

KI Mampeule\*

MM Mhlarhi\*\*

LA van Dyk\*\*

\* Non-executive \*\*Independent non-executive

### Company Secretary and registered office

AW Eksteen

57 Main Street

Paarl

Western Cape

7646

(PO Box 528, Suider-Paarl, 7624)

### Legal advisors

Edward Nathan Sonnenbergs Inc.

(registration number 2006/018200/21)

1 North Wharf Square

Loop Street

Foreshore

Cape Town

8001

(PO Box 2293, Cape Town, 8000)

### Independent Reporting Accountant and Auditors

PricewaterhouseCoopers Inc.

(registration number 1998/012055/2)

PwC Building

Zomerlust Estate

Berg River Boulevard

Paarl

7646

(PO Box 215, Paarl, 7620)

### Independent Expert

KPMG Services Proprietary Limited

(registration number 1999/012876/07)

MSC House

1 Mediterranean Street

Foreshore

Cape Town, 8001

(PO Box 4609, Cape Town, 8000)

### Date and Place of Incorporation of KVV Holdings:

2 July 2009, South Africa

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## **ACTION REQUIRED BY KWV HOLDINGS SHAREHOLDERS**

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This Circular is important and requires your immediate attention.

Please take careful note of the following provisions regarding the action required by KWV Holdings Shareholders. If you are in any doubt as to what actions to take, please consult your broker, banker, attorney, accountant or other professional advisor immediately.

If you have disposed of all of your KWV Holdings Shares, this Circular should be handed to the purchaser of such KWV Holdings Shares or to the broker, banker, attorney or other agent through whom the disposal was effected.

The General Meeting will be held at 10:00 am on 29 July 2016 for purposes of considering and, if deemed fit, passing the ordinary and special resolutions required to authorise the implementation of the Sale of Business. The notice convening the General Meeting is included in the Shareholders Document Pack issued to the KWV Holdings Shareholders along with this Circular.

### **1. KWV HOLDINGS SHAREHOLDERS**

#### **Voting and attendance at the General Meeting**

1.1 You may attend the General Meeting in person and may vote at the General Meeting.

1.2 Alternatively, you may appoint a proxy to represent you at the General Meeting by completing the form of proxy included in the Shareholders Document Pack, in accordance with the instructions contained therein and returning it to the company secretary, to be received by it, for administrative purposes, by no later than 10:00 am on 27 July 2016 (or delivered to the Chairman of the General Meeting by hand by no later than 10:00 am on 27 July 2016).

### **2. GENERAL**

#### **2.1 Approvals necessary for the implementation of the Sale of Business at the General Meeting**

The implementation of the Sale of Business is subject, *inter alia*, to the approval by KWV Holdings Shareholders of the requisite resolution at the General Meeting in accordance with the Companies Act and the KWV Holdings Memorandum of Incorporation.

In order to be approved, each special resolution and each ordinary resolution must be adopted with the support of at least 75% and more than 50% respectively of the voting rights exercised on such resolutions at the General Meeting.

## 2.2 Electronic participation in the General Meeting

KWV Holdings Shareholders wishing to participate electronically in the General Meeting are required to deliver, by no later than 10:00 am on 27 July 2016, a Proxy form to the Company at KWV Holdings's offices, 57 Main Street, Paarl, Western Cape (marked for the attention of the company secretary) that they wish to participate via electronic communication at the General Meeting.

In order for the above mentioned notice to be valid it must contain: (a) if the KWV Holdings Shareholder is an individual, a certified copy of his/her identity document and/or passport; (b) if the KWV Holdings Shareholder is not an individual, a certified copy of a resolution or letter of representation by the relevant entity and a certified copy of the identity documents and/or passports of the persons who passed the relevant resolution or signed the relevant letter of representation. The letter of representation or resolution must set out who from the relevant entity is authorised to represent the entity at the General Meeting via electronic communication; (c) a valid e-mail address and/or facsimile number; and (d) confirmation of whether the KWV Holdings Shareholder wishes to vote via electronic communication. KWV Holdings shall use its reasonable endeavours to notify a KWV Holdings Shareholder wishing to participate in the General Meeting by way of electronic communication of the relevant details through which the shareholder can participate via electronic communication by no later than 24 hours before the General Meeting.

Should a KWV Holdings Shareholder wish to participate in the General Meeting by way of electronic communication as mentioned above, such shareholder or his proxy will be required to dial-in to the dial-in facility on the date of the General Meeting. The dial-in facility will be linked to the venue at which the General Meeting will take place on the date of, from the time of commencement of, and for the duration of, the General Meeting. The dial-in facility will enable all persons to participate electronically in the General Meeting in this manner (and as contemplated in section 63(2) of the Companies Act) and to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the General Meeting. The costs borne by you or your proxy in relation to the dial-in facility will be for your own account.

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Notice of General Meeting – included in the Shareholders Document Pack issued to the KWV Holdings Shareholders

Form of Proxy – General Meeting – included in the Shareholders Document Pack issued to the KWV Holdings Shareholders

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**IMPORTANT DATES AND TIMES**

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**2016**

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Notice Record Date, being the date on which a KWV Holdings Shareholder must be registered in the Register in order to be eligible to receive the Notice of General Meeting, on	22 June
Circular and remainder of the Shareholders Document Pack posted to KWV Holdings Shareholders, on	29 June
Dissenting shareholder wishing to exercise his appraisal rights notifies KWV Holdings of his objection by 10:00 am on	22 July
Last day to trade KWV Holdings Shares in order to be recorded in the Register to vote at the General Meeting, on	25 July
General Meeting Record Date, being the date on which a KWV Holdings Shareholder must be registered in the Register in order to be eligible to attend and participate in the General Meeting and to vote thereat, by 16:30 pm, on	26 July
Forms of proxy in respect of the General Meeting to be lodged, for administrative purposes, by 10:00 am on	27 July
General Meeting held at 10:00 am on	29 July
Results of the General Meeting are notified to KWV Holdings Shareholders including dissenting shareholders, on	29 July

**Notes:**

- 1. The above dates and times are subject to amendment at the discretion of KWV Holdings, subject to the Companies Act. Any such amendment will be delivered to the KWV Holdings Shareholders in accordance with the Companies Act and KWV Holdings' memorandum of incorporation.*
- 2. All dates and times indicated above are South African Standard Times.*



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## DEFINITIONS

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In this Circular and the annexures attached hereto, unless otherwise stated or clearly indicated by the context, the words in the first column have the meanings stated opposite them in the second column, words in the singular include the plural and *vice versa*, words importing one gender include the other genders and references to a person include references to a body corporate and *vice versa*:

"Board"	the board of directors of KWV Holdings whose names appear in the "Corporate information and advisors" section of this Circular;
"Business Day"	a day other than a Saturday, Sunday or official public holiday in South Africa;
"Circular"	this document (together with any annexures), dated 29 June 2016 and included in the Shareholders Document Pack together with the Notice of General Meeting and a form of proxy;
"Companies Act"	the Companies Act, 2008 (Act No. 71 of 2008), as amended;
"Competition Act"	the Competition Act, 1998 (Act No. 89 of 1998), as amended;
"Competition Authorities"	the Competition Commission and/or the Competition Tribunal, as the case may be, both as established in terms of the Competition Act;
"Conditions Precedent"	the conditions precedent in terms of the Sale of Business Agreement;
"Directors"	the directors for the time being of KWV Holdings;
"Effective Date"	the effective date of the Sale of Business Agreement;
"Financial Markets Act"	the Financial Markets Act, 2012 (Act No. 19 of 2012);
"General Meeting"	the annual general meeting of KWV Holdings Shareholders to be held at KWV's offices at 29 July 2016 for the purpose of considering and if thought fit, passing <i>inter alia</i> the special and ordinary resolutions required to approve the Sale of Business as contemplated in the Notice of General Meeting included in the Shareholders Document Pack;
"Grondves Agreement"	the written agreement to be concluded between KWV SA and Warshay Investments in terms of which, <i>inter alia</i> , Warshay Investments shall sub-lease certain vineyards from KWV SA, which agreement shall at least contain the terms and conditions set out in the Sale of Business Agreement;

“IFRS”	International Financial Reporting Standards;
“Independent Expert”	KPMG Services Proprietary Limited (registration number 1999/012876/07);
“Independent Expert Report”	the fair and reasonableness report prepared by the Independent Expert as to the fair and reasonableness of the terms and conditions of the Sale of Business;
“Independent Board”	the independent board formed in accordance with the Companies Act;
“IP Assignment Agreement”	the intellectual property assignment agreement concluded or to be concluded between KWV IP and KWV SA, in terms of which KWV IP assigns the names “La Concorde” and “Jean Taillefert” and any and all intellectual property relating thereto, to KWV SA;
“IP Subsidiary Agreement”	the sale of shares and claims agreement concluded between New Rose 7, KWV Holdings and KWV IP in terms of which, <i>inter alia</i> , New Rose 7 will acquire the IP Subsidiary Sale Shares and IP Subsidiary Sale Claims from KWV Holdings;
“IP Subsidiary Sale”	the sale by KWV Holdings of all of the issued shares in and claims against KWV IP to New Rose 7 as contemplated in the IP Subsidiary Agreement;
“IP Subsidiary Sale Claims”	all of the loan amounts owing by KWV IP to KWV Holdings, as at the effective date of IP Subsidiary Sale;
“IP Subsidiary Sale Shares”	the entire issued ordinary shares held by KWV Holdings in KWV IP, as at the effective date of the IP Subsidiary Sale;
“IT Systems Agreement”	the written agreement to be concluded between KWV SA and Warshay Investments, in terms of which, <i>inter alia</i> , Warshay Investments shall lease the shared IT systems located in the La Concorde building from KWV SA, which agreement shall at least contain the terms and conditions set out in the Sale of Business Agreement;
“KWV Holdings” or “Company”	KWV Holdings Limited (registration number 2009/012871/06), a public company duly incorporated in terms of the laws of the Republic of South Africa, of 57 Main Street, La Concorde, Paarl, Western Cape, 7646;
“KWV Holdings Shareholders”	the registered holders of KWV Holdings Shares appearing on the Register of KWV Holdings at the Last Practicable Date;

“KWV Holdings Shares”	ordinary shares having a par value of R0.00001 each in the issued share capital of KWV Holdings, being 68,980,374 KWV Holdings shares at the Last Practicable Date;
“KWV IP”	KWV Intellectual Properties Proprietary Limited (registration number 1998/022029/07), a private company duly incorporated in terms of the laws of the Republic of South Africa, of 57 Main Street, La Concorde, Paarl, Western Cape, 7646;
“KWV SA”	KWV South Africa Proprietary Limited (registration number 1997/020814/07), a private company duly incorporated in terms of the laws of the Republic of South Africa, of 57 Main Street, La Concorde, Paarl, Western Cape, 7646;
“Laborie Lease Agreement”	the written agreement to be concluded between KWV SA and Warshay Investments, in terms of which, <i>inter alia</i> , Warshay Investments shall lease certain facilities located on the Laborie Estate such as the restaurant, tasting room, the accommodation facilities and Bar Di Bar, which agreement shall at least contain the terms and conditions set out in the Sale of Business Agreement;
“La Concorde Lease Agreement”	the written agreement to be concluded between KWV SA and Warshay Investments, where in terms of which, <i>inter alia</i> , Warshay Investments shall lease a portion of the La Concorde building from KWV SA, which agreement shall at least contain the terms and conditions set out in the Sale of Business Agreement;
“Last Practicable Date”	the last practicable date prior to the finalisation of the Circular, being 23 June 2016;
“New Rose 7”	New Rose 7 Proprietary Limited (registration No. 2013/207844/07), a private company duly incorporated in accordance with the laws of the Republic of South Africa, of Ground Floor, Block B, Riviera Road Office Park, 6-10 Riviera Road, Killarney, 2193;
“Niveus Investments”	Niveus Investments Limited (registration number 1996/005744/06), a public company duly incorporated in terms of the laws of the Republic of South Africa, La Concorde, 57 Main Road, Paarl, 7646, the indirect holding company of KWV Holdings;

“Notice of General Meeting”	the notice of the General Meeting where the KWV Holdings Shareholders shall meet and vote pursuant to this Circular, which notice is included in the Shareholders Document Pack together with this Circular;
“Promissory Notes”	the three promissory notes to be delivered by Warshay Investments to KWV SA, in respect of payment of a portion of the Sale of Business purchase price payable in terms of the Sale of Business Agreement;
“Rand” or “R”	South African Rand, the official currency of South Africa;
“Register”	the securities register of KWV Holdings Shareholders maintained by KWV Holdings in accordance with the Companies Act;
“Sale of Business”	the sale of the KWV SA business by KWV SA to Warshay Investments as contemplated in Sale of Business Agreement;
“Sale of Business Agreement”	sale of business agreement concluded between KWV SA, KWV, New Rose 7 and Warshay Investments in terms of which, <i>inter alia</i> , KWV SA sells its business of producing, marketing, distributing and selling wine and spirits, and ancillary activities in support thereof, to Warshay Investments;
“Sensorium Agreement”	the written agreement to be concluded between KWV SA and Warshay Investments, in terms of which, <i>inter alia</i> , Warshay Investments shall lease a portion of the KWV Sensorium from KWV SA;
“Share Buy-Back Agreement”	the share buy-back agreement between KWV Holdings and KWV IP in terms of which, <i>inter alia</i> , KWV IP repurchases 99% of its shares from KWV Holdings, which purchase consideration will remain owing on loan account which will form part of the IP Subsidiary Sale Claims;
“Shareholders Document Pack”	the bundle of documents issued to KWV Holdings Shareholders including the KWV Holdings Annual Report 2016, the Notice of General Meeting, the form of proxy for use by the KWV Holdings Shareholders and this Circular;
"South Africa"	the Republic of South Africa;
“Subsidiary”	a subsidiary as defined in the Companies Act;
“Transactions”	the Sale of Business and the IP Subsidiary Sale and “Transaction” shall mean either of them as indicated by the context;

“Transaction Agreements” collectively the IP Subsidiary Agreement and the Sale of Business Agreement and “Transaction Agreement” shall mean either of them as indicated by the context;

“Warshay Investments” Warshay Investments Proprietary Limited (registration No. 2012/018792/07), a private company duly incorporated in accordance with the laws of the Republic of South Africa of Ground Floor, Block B, Riviera Road Office Park, 6-10 Riviera Road, Killarney, 2193.



## KWV HOLDINGS LIMITED

(Incorporated in the Republic of South Africa)

Registration number: 2009/012871/06

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### CIRCULAR TO KWV HOLDINGS SHAREHOLDERS

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#### 1. INTRODUCTION AND PURPOSE

The purpose of this Circular is to:

- provide KWV Holdings Shareholders with the relevant information relating to the Transactions, the action required by KWV Holdings Shareholders and the implications thereof, in accordance with the Companies Act; and
- furnish KWV Holdings Shareholders with the relevant information to enable KWV Holdings Shareholders to make a decision as to whether or not they should vote in favour of the resolutions required to implement the Sale of Business.

#### 2. BACKGROUND AND RATIONALE IN RESPECT OF THE TRANSACTIONS

KWV Holdings Shareholders are referred to the announcement published by the Company on 11 May 2016, in terms of which KWV Holdings Shareholders were advised that the Company and KWV SA respectively have concluded conditional agreements in terms of which, *inter alia*, KWV SA wishes to dispose of its operational assets, and the Company wishes dispose of all of its shares in and loan accounts against its wholly-owned subsidiary, KWV Intellectual Properties, to entities within the Vasari group of companies, for an aggregate consideration of approximately R1 150 000 000.

The Vasari group, led by Mr Vivian Imerman, is a leading consumer investment group with over three decades of experience in owning and operating companies across a variety of sectors, focusing on branded goods and manufacturing in Europe, Asia and Africa. Pursuant to negotiations with the Vasari group, the Transaction Agreements have been concluded, subject to various conditions precedent, including obtaining the approval of shareholders of KWV Holdings.

The assets to be acquired by the Vasari group include production facilities and brands as well as wine and brandy stock, however, excludes certain non-operational assets which will remain within KWV SA. The non-operational assets include the Laborie Estate, the art collection, the head office building (La Concorde) and a 31% interest in Paarl Valley Bottling Company Proprietary Limited.

The Independent Expert has advised that the purchase consideration payable in respect of KWV SA's operational assets in terms of the Sale of Business equates to approximately R16.91 per KWV Holdings Share, on an indirect basis. This represents a premium of R10.93 to the 12 month weighted average share price of KWV Holdings Shares as at 31 March 2016. Furthermore, there is an estimated inferred value of approximately R3.00 on the non-operational assets, which will not be sold in terms of the Transactions.

### 3. TERMS AND CONDITIONS OF THE TRANSACTION AGREEMENTS

#### 3.1. THE SALE OF BUSINESS AGREEMENT

##### 3.1.1. Terms of the Sale of Business Agreement

In terms of the Sale of Business Agreement, KWV SA will dispose of its core operational assets used by KWV SA in its business of producing, marketing, distributing and selling wine and spirits, and ancillary activities in support thereof, presently conducted by KWV SA ("Business").

The core operational assets of the Business includes all property, plant and equipment used in the production of wine, brandies and other alcoholic beverages, the shares in and claims against KWV SA's local and foreign subsidiaries and associate companies including Brannas Draught Proprietary Limited, Solamoyo Processing Company Proprietary Limited, Red Dawn Wine Licensing Proprietary Limited, Red Dawn IP Holdings Proprietary Limited, KWV USA LLC and KWV Russia. It furthermore includes all inventories, all brands and all contractual arrangements with regard to purchasing, producing, distributing, marketing and selling of branded liquor products.

The core operational assets exclude certain non-operational assets, including but not limited to, the Laborie Estate, the art collection, the head office building (La Concorde), a 31% interest in Paarl Valley Bottling Company Proprietary Limited and other non-operational land and property.

The cash portion of the Sale of Business consideration payable to KWV SA shall attract interest at a rate of 8,5%, nominal annual compounded annually, from the Effective Date to the date of payment thereof. The cash portion is calculated in terms of the following table:

<b><u>If the Effective Date is on:</u></b>	<b><u>Base Cash Portion:</u></b>	<b><u>Minimum Net Asset Value:</u></b>
<b>1 May 2016</b>	1,193,406,872	1,256,539,000
<b>1 June 2016</b>	1,200,190,944	1,262,289,000
<b>1 July 2016</b>	1,207,008,931	1,268,067,750
<b>1 August 2016</b>	1,213,861,011	1,273,875,394
<b>1 September 2016</b>	1,220,747,348	1,279,712,076
<b>1 October 2016</b>	1,227,668,121	1,285,577,941
<b>1 November 2016</b>	1,234,623,497	1,291,473,136
<b>1 December 2016</b>	1,241,613,649	1,297,397,806
<b>1 January 2017</b>	1,248,638,750	1,303,352,101

The cash portion will be settled as follows:

- R515,000,000 (R575,000,000 less R60,000,000 paid in terms of the IP Subsidiary Sale - refer to page 19 for further information) will be paid in cash on the Effective Date; and
- the balance, being R575,000,000 plus interest accrued in respect of the aggregate purchase consideration, will be deferred and settled on each of the first, second and third anniversaries of the Effective Date. These deferred instalments will be secured by way of the issue of Promissory Notes issued or guaranteed by Investec Bank Limited, or alternatively secured by way of a guarantee issued by Investec Bank Limited in favour of KWV SA, in the form acceptable to KWV SA.

On the Effective Date, KWV SA shall calculate the net asset value of the Business. If such net asset value is less than the minimum net asset value referred to in the table above, then KWV SA shall pay Warshay Investments the amount equal to the difference between the actual net asset value and the minimum net asset value, provided that in the event of such difference being greater than R10,000,000, then:

- KWV SA shall be entitled (but not obliged) to notify Warshay Investments that it intends to withdraw from and terminate the Sale of Business Agreement;
- Warshay Investments shall be entitled (but not obliged) to notify KWV SA that it has elected to limit its claim for payment of such difference to R10,000,000 only, in which event KWV SA shall pay R10,000,000 to Warshay Investments. If Warshay Investments does not so notify KWV SA, the Sale of Business Agreement shall terminate and be of no further force and effect and the Parties shall be restored to their respective positions which prevailed immediately prior to the Effective Date in all respects.

### 3.1.2. **Conditions Precedent**

The Sale of Business is subject to the fulfilment or waiver, as the case may be, of *inter alia* the following Conditions Precedent:

- the IP Subsidiary Agreement is concluded and becomes unconditional and of full force and effect in accordance with its terms, save for any condition precedent therein requiring the Sale of Business Agreement to be concluded and become unconditional;
- the unconditional approval of the Transactions having been obtained from the Competition Authorities in terms of the Competition Act, to the extent required (or if such approval is granted subject to conditions, the parties having approved of such conditions in writing and delivered such written approval to one another);



- the sole shareholder of KWV SA, being KWV Holdings, adopting a special resolution authorising KWV SA to conclude the Sale of Business Agreement and enter into the transactions contemplated herein, in accordance with section 115 of the Companies Act;
- the KWV Holdings Shareholders adopting a special resolution authorising KWV SA to conclude the Sale of Business Agreement, in accordance with section 115 of the Companies Act;
- the board of directors of KWV SA adopting resolutions in terms whereof, *inter alia*, the board authorises the conclusion of the Sale of Business Agreement and the transactions contemplated therein, which resolutions shall be subject to the requisite shareholder approval;
- the conclusion by KWV SA and Investec Bank Limited (“Investec”) of such agreements as may be required by KWV SA in terms of which:
  - o Investec guarantees Warshay Investments’ obligations contained in the Promissory Notes; or
  - o Investec grants a put option to KWV SA to enable KWV SA to put the Promissory Notes to Investec upon default by Warshay Investments of its obligations to make payment of any amount owing to KWV SA; or
  - o Investec guaranteeing the obligations of Warshay Investments to make payment of the amounts owing by Warshay Investments to KWV SA;
- the delivery of the written confirmation by KWV SA that it is satisfied with the terms of the Promissory Notes or the Investec guarantee;
- KWV SA and Warshay Investments concluding the La Concorde Lease Agreement and such agreement becoming unconditional, save for any condition therein requiring that the Sale of Business Agreement becomes unconditional;
- KWV SA and Warshay Investments concluding the Laborie Lease Agreement and such agreement becoming unconditional, save for any condition therein requiring that Sale of Business Agreement becomes unconditional;
- KWV SA and Warshay Investments concluding the Sensorium Agreement and such agreement becoming unconditional, save for any condition therein requiring that the Sale of Business Agreement becomes unconditional;
- KWV SA and Warshay Investments concluding the Grondves Agreement and such agreement becoming unconditional, save for any condition therein requiring that the Sale of Business Agreement becomes unconditional;

- KWV SA and Warshay Investments concluding the IT Systems Agreement and such agreement becoming unconditional, save for any condition therein requiring that the Sale of Business Agreement becomes unconditional;
- no material adverse event having occurred during the period between the signature date of the Sale of Business Agreement and the date on which the last of the remaining conditions precedent in the Sale of Business Agreement are fulfilled (or waived); and
- Niveus Investments providing a non-solicitation and non-compete undertaking to Warshay Investments on substantially the same terms as are provided by KWV SA and KWV as agreed in the Sale of Business Agreement.

As at the Last Practicable Date, the parties are in the process of negotiating the potential inclusion of an additional condition precedent in the Sale of Business Agreement relating to the transfer by KWV SA to Warshay Investments, or the obtaining by Warshay Investments, of certain certifications relating to KWV products from the Department of Agriculture, Forestry and Fisheries, which will seek to ensure that there is no disruption to Warshay Investments' ability to produce KWV products upon implementation of the Sale of Business.

### 3.1.3. **Effective Date of the Sale of Business Agreement**

The Effective Date shall be the first calendar day of the month immediately after the date on which the last of the Conditions Precedent of the Sale of Business Agreement is fulfilled or waived, as the case may be.

### 3.1.4. **Other material terms**

#### *Warranties*

KWV SA has provided Warshay Investments with standard warranties to be expected of a transaction of this nature and size. The warranties provided by KWV SA have been qualified by, *inter alia*, the disclosures made by KWV SA during the due diligence investigation conducted by Warshay Investments and on the basis of what is to the best of KWV SA's knowledge and belief after making diligent enquiries.

#### *Limitations of KWV SA's liability*

Claims made by Warshay Investments and/or New Rose 7 against KWV Holdings and KWV SA, as the case may be, shall in respect of any breach of warranties:

- contained in the Sale of Business Agreement and the IP Subsidiary Agreement, not exceed R120,000,000;

- as to title and ownership of the KWV SA stock, shall not exceed 100% of the value of such stock;
- as to title and ownership of the accounts receivable, the fixed assets and the properties sold, shall not exceed 100% of the value of such assets.

Furthermore, claims shall be wholly barred and unenforceable unless and to the extent that Warshay Investments delivers written notice thereof by not later than the expiry of three months after the Effective Date in the case of any claims in respect of the title and ownership of the stock, accounts receivable, fixed assets or properties, or eight months after the Effective Date for any other claims.

KWV SA has undertaken not to distribute the rights in or proceeds of the first Promissory Note (or if no Promissory Note is issued, the payment received by KWV SA on the first anniversary of the Effective Date) prior to the date that is 6 (six) months from the first anniversary of the Effective Date. KWV SA shall furthermore not be entitled to make any such distribution if a claim has been lodged in respect of a breach of warranty or any obligation of KWV SA in terms of the Sale of Business Agreement and such claim is the subject of arbitration, provided that the amount which may not be distributed shall be limited to the extent of the claim which has been made.

## **3.2. THE IP SUBSIDIARY AGREEMENT**

### **3.2.1. Terms of the IP Subsidiary Agreement**

The intellectual property relating to the business conducted by KWV SA is held in KWV IP. In terms of the IP Subsidiary Agreement, New Rose 7 will acquire the IP Subsidiary Sale Shares and IP Subsidiary Sale Claims in KWV IP from KWV Holdings. The IP Subsidiary Agreement consideration shall be an aggregate amount of R60,000,000.

### **3.2.2. Conditions precedent**

The IP Subsidiary Agreement is subject to the fulfilment or waiver of the following conditions precedent:

- the Sale of Business Agreement is concluded and becomes unconditional in accordance with its terms, save for any condition precedent therein requiring the IP Subsidiary Agreement to be concluded and become unconditional;
- the Share Buy-Back Agreement is concluded and becomes unconditional in accordance with its terms, save for any condition precedent therein requiring this IP Subsidiary Agreement to be concluded and become unconditional;
- the IP Assignment Agreement is concluded and becomes unconditional in accordance with its terms, save for any condition precedent therein requiring this IP Subsidiary Agreement to be concluded and become unconditional;

- the board of directors of KWV Holdings adopting a resolution approving of IP Subsidiary Agreement; and
- the board of directors of KWV IP adopting resolutions approving of the transfer of the IP Subsidiary Sale Shares and IP Subsidiary Sale Claims to New Rose 7.

### 3.2.3. Effective date of the IP Subsidiary Agreement

The effective date of the IP Subsidiary Agreement shall be effective date of the Sale of Business Agreement.

## 4. PRO FORMA FINANCIAL INFORMATION OF KWV HOLDINGS

**Annexure D** of this Circular contains the pro forma financial information of the Company illustrating the impact of the Transactions. The Independent Reporting Accountant's report on the pro forma financial information of the Company is contained in **Annexure C**.

## 5. SHAREHOLDER SPREAD OF KWV HOLDINGS (as at financial year end 31 March 2016)

TYPE OF SHAREHOLDERS	NO. OF SHAREHOLDERS	% (PERCENT)	NO. OF SHARES	% (PERCENT)
KWV Employee Empowerment Trust	1	0.03	3 020 344	4.40
Niveus Investments Limited	1	0.03	38 849 891	56.30
<b>Total share of BEE shareholders</b>	<b>2</b>	<b>0.06</b>	<b>41 870 235</b>	<b>60.70</b>
KWV SA	1	0.03	979 427	1.40
Other	2 860	99.91	26 130 712	37.90
<b>Total</b>	<b>2 863</b>	<b>100.00</b>	<b>68 980 374</b>	<b>100.00</b>

## 6. DIRECTORS AND SENIOR MANAGEMENT

### 6.1. Directors

The name, age, qualification, nationality, business address and function of each of the directors of KWV Holdings as at the Last Practicable Date are set out below.

<b>NAME, AGE, QUALIFICATION AND NATIONALITY</b>	<b>BUSINESS ADDRESS</b>	<b>FUNCTION</b>
A van der Veen, 45, CA (SA), CFA, South African	KWV Head Office, 57 Main Street, Paarl, 7646	Executive director
DP Smit, 43, CA (SA), South African	KWV Head Office, 57 Main Street, Paarl, 7646	Executive director
MJA Golding, 55, BA Hons (UCT), South African	KWV Head Office, 57 Main Street, Paarl, 7646	Non-executive director
JA Copelyn, 65, BProc, South African	HCI, 4 Stirling Road, Zonnebloem, 7925	Non-executive director
F-A du Plessis, 61, CA(SA), BCom LLB, BCom (Hons) Taxation, LLM cl, South African	LDP, P O Box 528, Stellenbosch, 7599	Independent Non-executive director
NL Ellis, 63, Dipl. Agric., South African	Neil Ellis Wines Proprietary Limited, R310 Helshoogte Road, Stellenbosch	Independent Non-executive director
MN Joubert, 52, BCom MBA, South African	C/o Saatchi & Saatchi, The Foundry, Ebenhezer Road, Greenpoint, 8001	Independent Non-executive director
KI Mampeule, 51, BA, MSc, MBA, South African	Unit 54, Thembu Place Office Park, Calderwood Road, Lonehill, Fourways	Non-executive director
MM Mhlarhi, 36, CA (SA), South African	345 Rivonia Road, Sandton, 2191	Independent Non-executive director
LA van Dyk, 61, MA Psychology, MBA, Masters in Consulting and Coaching for Change, South African	The Gables, 12 De Beer Street, Prince Albert, 6930	Independent Non-executive director

## 6.2. Senior Management

The name, age, qualification, nationality, business address and function of each of the members of senior management of KWV Holdings as at the Last Practicable Date are set out below.

<b>NAME, AGE, QUALIFICATION AND NATIONALITY</b>	<b>BUSINESS ADDRESS</b>	<b>FUNCTION</b>
A W Eksteen, 60, BA LLB, South African	KWV Head Office, 57 Main Street, Paarl, 7646	Director: Legal & Company Secretary
L M Barnard, 58, BCom Acc, South African	KWV Head Office, 57 Main Street, Paarl, 7646	Executive: Operations
J Gericke, 57, BCom Acc Hons (AGA), ELP, South African	KWV Head Office, 57 Main Street, Paarl, 7646	Executive: Strategic Projects
F D Steenkamp, 40, LLM (International Trade Law), Qualified Attorney, Cape Wine Master, South African	KWV Head Office, 57 Main Street, Paarl, 7646	Executive: Global Marketing & Sales
Z Samuels, 39 , BCom (HR), South African	KWV Head Office, 57 Main Street, Paarl, 7646	Executive: Human Resources

## 6.3. Appointment, remuneration and borrowing powers of Directors

As at the Last Practicable Date, it is not anticipated that there will be any change to the Board as a result of the Sale of Business. As at the Last Practicable Date, it is not anticipated that the remuneration and current employment status of the Directors will be affected by the Sale of Business.

#### 6.4. Directors' interests in KVV Holdings securities

	Number of KVV Holdings Shares held as at 31 March 2016		
	Direct beneficial	Indirect beneficial	Percent of total issued share capital (%)
<b>Executive Directors</b>			
A van der Veen	-	1 277 836	1.85
DP Smit	8 500	-	0.01
<b>Non-Executive Directors</b>			
MJA Golding	-	4 087 706	5.93
JA Copelyn	-	3 448 846	5.00
F-A du Plessis	-	-	-
NL Ellis	-	-	-
MN Joubert	-	-	-
KI Mampeule	-	51 000	0.07
LA van Dyk	-	-	-
MM Mhlarhi	-	-	-
<b>Directors of major subsidiaries</b>			
AW Eksteen	-	-	-

During the last six months prior to the Last Practicable Date, no Directors have dealt in the securities in respect of:

- KVV Holdings; or
- Warshay Investments; or
- New Rose 7.

#### 6.5. Directors' interests in the Transactions

The Directors have not had any material beneficial interests, whether direct or indirect, in the Transactions including any acquisitions or disposals that were effected during the current or immediately preceding financial year.

#### 6.6. Directors' service contracts

André van der Veen is providing managerial services for KVV Holdings in terms of a managerial services agreement entered into between KVV Holdings and Niveus.

## 7. SHARE CAPITAL OF KWV HOLDINGS

The information below sets out the authorised and issued share capital of KWV Holdings at the Last Practicable Date:

Shares authorised:

*200 000 000 ordinary profit-sharing shares of R 0,00001 each*

Shares issued:

*68 980 374 (2015: 68 980 374) ordinary profit-sharing shares of R 0,00001 each*

For more information, please refer to the Summarised Group Report included in the Shareholders Document Pack or Annexure E.

## 8. DISSENTING KWV HOLDINGS SHAREHOLDERS' APPRAISAL RIGHTS

KWV Holdings Shareholders who wish to exercise their rights in terms of section 164 of the Companies Act (to the extent that such rights may be applicable) are referred to **Annexure G** of this Circular. KWV Holdings Shareholders who wish to exercise their rights in terms of section 164 of the Companies Act (and allege that such section in fact applies to the Sale of Business) are required, before the resolutions are voted on at the General Meeting, to give notice to KWV Holdings in writing objecting to the applicable Special Resolution and notifying KWV Holdings of their intention to vote against the Special Resolution at the General Meeting.

Within 10 Business Days of KWV Holdings Shareholders having adopted such Special Resolution, KWV must send a notice confirming that the Special Resolution has been adopted to each KWV Holdings Shareholder who gave KWV Holdings written notice of objection to the Special Resolution, and has neither withdrawn that notice nor voted in favour of the Special Resolution.

A KWV Holdings Shareholder who has given KWV Holdings written notice objecting to the applicable Special Resolution and who is present at the General Meeting, and votes against the Special Resolution and has complied with all of the procedural requirements set out in section 164 of the Companies Act may, if the Special Resolution has been adopted, then demand in writing within –

- 20 Business Days after receipt of the notice referred to above; or
- if the KWV Holdings Shareholder does not receive the notice from KWV Holdings referred to above, 20 Business Days after learning that the Special Resolution has been adopted, that KWV Holdings pay the KWV Holdings Shareholder the fair value for all the KWV Holdings Shares held by that KWV Holdings Shareholder.

Any KWV Holdings Shareholder that is in doubt as to what action to take should consult their legal or professional advisor in this regard.



Before exercising their rights under section 164 of the Companies Act, KWV Holdings Shareholders should have regard to the following factors relating to the Sale of Business:

- the report of the Independent Expert set out in **Annexure B** to this Circular concludes that the terms of the Transactions are fair and reasonable to KWV Holdings Shareholders; and
- the Court is empowered to grant a costs order in favour of, or against, a dissenting KWV Holdings Shareholder attempting to exercise their appraisal rights.

## 9. DIRECTORS' RESPONSIBILITY STATEMENT

### 9.1. Responsibility Statement of the Board of Directors

The Board of Directors, whose names appear in this Circular on pages 3, 21 and 23 collectively and individually accept full responsibility for the accuracy of the information given in this Circular and certify that, to the best of their knowledge and belief, there are no facts that have been omitted which would make any statement in this Circular false or misleading and that all reasonable enquiries to ascertain such facts have been made and that this Circular contains all information required by law.

### 9.2. Responsibility Statement of the Independent Board

In addition, the Independent Board collectively and individually accept full responsibility for the accuracy of the information given in this Circular and certify that, to the best of their knowledge and belief, there are no facts that have been omitted which would make any statement in this Circular false or misleading and that all reasonable enquiries to ascertain such facts have been made and that this Circular contains all information required by law.

## 10. STATEMENTS, OPINIONS AND RECOMMENDATIONS

- 10.1. The Independent Board confirms that no agreement has been entered into in the previous 12 month period between KWV Holdings and Warshay Investments and/or New Rose 7 and/or directors of Warshay Investments and/or New Rose 7, as the case may be, and/or holders of securities in Warshay Investments and/or New Rose 7.
- 10.2. The Independent Expert has concluded that the Transactions are fair and reasonable. The Independent Expert Report is attached as **Annexure B** to this Circular.
- 10.3. The Independent Board has reviewed the Transaction Agreements and has authorised entry into and/or ratified the entry into the Transaction Agreements, subject to the requisite shareholder approval.

- 10.4. Having regard to the terms and conditions of the Transactions as set out more fully in the Transaction Agreements, the knowledge and advice available to the Independent Board as well as the fair and reasonable opinion of the Independent Expert, as contemplated in the Independent Expert Report, the Independent Board is of the unanimous opinion that the Transactions are in the long-term interests of KWV Holdings and its shareholders. The Independent Board recommend that the KWV Holdings Shareholders vote in favour of the special and ordinary resolutions to be proposed at the General Meeting relating to the approval of the Sale of Business.
- 10.5. The Directors who own KWV Holdings Shares in their own right intend to vote in favour of the special and ordinary resolutions proposed at the General Meeting.

#### 11. DOCUMENTS AVAILABLE FOR INSPECTION

Copies of the following documents will be available for inspection at the registered offices of KWV Holdings during normal business hours and on Business Days from the date of issue of this Circular up to and including 29 July 2016:

- the audited annual financial statements of KWV for the three financial years ended 31 March 2014 and 2015 and 2016;
- the Memorandum of Incorporation of KWV Holdings;
- the signed Independent Expert Report;
- the signed Sale of Business Agreement;
- the signed IP Subsidiary Agreement;
- signed power of attorney documents authorising the signing of this Circular; and
- a signed copy of this Circular.



**AW Eksteen**

*Company Secretary*

In terms of powers of attorney granted by all Directors

Paarl

29 June 2016

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**STATEMENT BY THE INDEPENDENT BOARD**

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“Having regard to the terms and conditions of the Transactions as set out more fully in the Transaction Agreements, the knowledge and advice available to the Independent Board as well as the fair and reasonable opinion of the Independent Expert, as contemplated in the Independent Expert Report, the Independent Board is of the unanimous opinion that the Transactions are in the long-term interests of KWV Holdings and its shareholders. The Independent Board recommend that the KWV Holdings Shareholders vote in favour of the special and ordinary resolutions to be proposed at the General Meeting.”



**KPMG Services Proprietary Limited**  
MSC House  
1 Mediterranean Street, Foreshore, 8001  
PO Box 4609, Cape Town, 8000, South Africa

Telephone +27 (0)21 408 7000  
Fax +27 (0)21 408 7100  
DoceX 102 Cape Town  
Internet <http://www.kpmg.co.za/>

The Independent Board  
KWV Holdings Limited  
57 Main Street  
Paarl  
7646

13 June 2016

Dear Sirs

**Independent fair and reasonable opinion regarding an offer by Vasari Global Limited (“Vasari”), through its subsidiaries New Rose 7 (Pty) Ltd (“New Rose”) and Warshay Investments (Pty) Ltd (“Warshay”) whereby KWV South Africa (Pty) Ltd (“KWV SA”) shall dispose of the operational assets of the KWV group, and KWV Holdings Limited shall dispose all of its shares in and loan accounts against its wholly-owned subsidiary, KWV Intellectual Properties (Pty) Ltd (“KWV IP”)(“the Offer”)**

### *Introduction*

In an announcement by Niveus Investments Limited (“Niveus”) released on the Securities Exchange News Service of the JSE Limited and published in the press on Wednesday, 11 May 2016, shareholders of KWV Holdings Limited (“KWV”) were advised that KWV and its wholly-owned subsidiary, KWV SA have concluded conditional agreements in terms of which KWV SA shall dispose of the operational assets of the KWV group, and KWV shall dispose of all of its shares in and loan accounts against its wholly-owned subsidiary, KWV IP, for an aggregate consideration of approximately R1.150 billion (the “Offer Consideration”).

Full details of the Offer are contained in the Circular to KWV shareholders (the “Circular”) to be dated on or about 22 June 2016, which will include a copy of this letter.

### *Scope*

A sub-committee of the KWV board of directors comprising three independent directors (“the KWV Independent Board”) was formed for purposes of considering the Offer.

KPMG Services Proprietary Limited (“KPMG”) has been appointed by the KWV Independent Board as the independent professional expert to advise on whether the terms and conditions of the Offer are fair and reasonable to the shareholders of KWV.

KPMG Services Proprietary Limited is a company incorporated under the South African Companies Act and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity.

KPMG Services Proprietary Limited is not a Registered Auditor in terms of the Auditing Profession Act, 26 of 2005 and does not provide audit services as defined in Section 1 of this Act.

Registration number 1999/012876/07

Policy Board  
Chief Executive: TH Hoole

Executive Directors: N Dloimu, M Letsitsi, SL Louw, NKS Maaba, M Oddy, M Saloojee, CAT Smit

Other Directors: ZH De Beer, LP Fourie, N Fubu, AH Jaffer (Chairman of the Board), FA Kairreem, ME Magondo, AMS Mokgabudi, GM Pickering, JN Pierce, T Rossouw, GCC Smith

The company's principal place of business is at KPMG Crescent, 85 Empire Road, Parktown, where a list of the directors' names is available for inspection.

### ***Responsibility***

The compliance with the Companies Act is the responsibility of the KWV Independent Board. Our responsibility is to report on the terms and conditions of the Offer in compliance with the related provisions of the Companies Act.

We confirm that our fair and reasonable opinion has been provided to the KWV Independent Board for the sole purpose of assisting the KWV Independent Board in forming and expressing an opinion for the benefit of KWV shareholders.

### ***Definition of the terms “fair” and “reasonable”***

A transaction will generally be considered fair to a company’s shareholders if the benefits received by the shareholders, as a result of the transaction, are equal to or greater than the value surrendered by the shareholders.

The assessment of fairness is primarily based on quantitative issues. The transaction may be considered fair if the consideration received per share by KWV shareholders is considered to be equal to or greater than the value surrendered by KWV shareholders in terms of the transaction.

The assessment of reasonableness is generally based on qualitative considerations surrounding the transaction. Hence, even though the consideration received by KWV shareholders may be less than the value surrendered by KWV shareholders, the entire transaction may still be reasonable in certain circumstances after considering other significant qualitative factors.

### ***Information utilised and procedures performed***

#### ***Key fairness considerations***

In arriving at our opinion we have undertaken the following procedures in evaluating the fairness of the Offer:

- obtained an understanding of the structure of the Offer;
- reviewed the terms and conditions of the Offer;
- considered the Circular to KWV shareholders, dated on or about 22 June 2016, in respect of the Offer;
- reviewed certain publicly available information relating to KWV, including company announcements and media articles;
- considered the audited annual report of KWV for the 9 months ended 31 March 2013, as well as the years ended 31 March 2014, 2015 and 2016;
- compared the 12 month historical share price movement of KWV shares to shares of comparable companies in order to assess the relative trading activities, liquidity and volatility of KWV shares;

- held discussions with the directors and management of KWV to establish its strategy and considered such other matters as we consider necessary, including assessing the prevailing economic, legal and market conditions in the alcoholic beverage industry;
- reviewed KWV's financial forecast for the 4 years ending 31 March 2020, as approved by the KWV Board on 17 March 2016, and the basis of the assumptions therein including the prospects of the business. This review included an assessment of the recent historical performance to date as well as the reasonableness of the outlook assumed based on discussions with management;
- reviewed the process followed in the preparation of the financial forecast and reliance placed thereon by KWV directors;
- considered any further material adjustments to value based on matters arising in the period from 31 March 2016 to the date of this opinion;
- reviewed the reasonableness of material assumptions in the financial forecast relating to
  - Volume and price growth
  - Gross and trading profit margins
  - Working capital management
- stress tested the material assumptions applied in the financial forecast which included, *inter alia*, discount rate, exchange rates, future growth in the business, gross and trading profit margins, working capital management and optimisation of the existing asset base;
- evaluated the risks and expected returns associated with KWV; and
- considered the independent valuation performed at 30 April 2016 by professional valuers and property consultants Rode & Associates.

*Key qualitative considerations*

In arriving at our opinion, we have also considered the following key qualitative considerations in evaluating the reasonableness of the Offer:

- consideration of the rationale for the Offer and the benefits thereof to KWV as set out in the Circular and based on discussions with members of the KWV Independent Board;
- consideration of the VWAP of the KWV shares for the 30 days prior to 31 March 2016 relative to the value per share assuming the Offer is accepted; and
- consideration of the potential exit mechanisms available for KWV shareholders and the liquidity of the over the counter trading.

## ***Valuation***

KPMG performed a valuation of KWV to determine whether the Offer Consideration represents fair value to KWV shareholders. The discounted cash flow methodology was the primary valuation methodology employed. This was supplemented with another valuation methodology such as the capitalisation of maintainable Earnings before Interest, Taxation, Depreciation and Amortisation (“EV/EBITDA”) methodology.

The valuation was performed taking cognisance of risk and other market and industry factors affecting KWV. Additionally, sensitivity analyses were performed considering key assumptions.

The valuation assumed that KWV continues as a going concern. We have further assumed that the turnaround strategy will result in ongoing improvements of operational and financial performance to the extent that these performance parameters will converge to industry norms (e.g. in respect of EBITDA margins and return on assets) over the medium to longer term.

Where appropriate adjustments were made to the financial forecast based on the information and procedures described above and our understanding of the markets in which KWV operates.

Key value drivers to the primary valuation included the discount rate, exchange rates, future growth in the business segments, operating margins, cost saving initiatives, working capital management and optimisation of the existing asset base.

Prevailing market and industry conditions were also considered in assessing the risk profile of KWV. Sensitivity analyses were performed on key value drivers in arriving at a valuation range.

In undertaking the primary valuation exercise above, we determined a valuation range of the sale assets between R753 million and R852 million, with a most likely value of R832 million. This translates into a value per KWV share pre the transaction of R13.47, compared to a value per KWV share of R17.84 immediately post transaction. The valuation above is provided solely in respect of this fair and reasonable opinion and should not be used for any other purposes.

## ***Opinion***

KPMG has considered the terms and conditions of the Offer and, based upon and subject to the conditions set out herein, is of the opinion that the terms and conditions of the Offer are fair to the KWV shareholders.

Based on the qualitative considerations set out above, we are of the opinion that the terms and conditions of the Offer are reasonable in the circumstances.

Our opinion is necessarily based upon the information available to us up to Friday, 27 May 2016, including in respect of the financial, regulatory, securities market and other conditions and circumstances existing and disclosed to us at the date thereof. We have furthermore assumed that all conditions precedent, including any material regulatory, other approvals and consents required in connection with the Offer have been or will be timeously fulfilled and/or obtained.



Accordingly, it should be understood that subsequent developments may affect this opinion, which we are under no obligation to update, revise or re-affirm.

***Limiting conditions***

This opinion is provided to the KWV Independent Board in connection with and for the purposes of the Offer for the sole purpose of assisting the KWV Independent Board in forming and expressing an opinion for the benefit of the KWV shareholders. This opinion is prepared solely for the KWV Independent Board for use in the indicated manner and therefore should not be regarded as suitable for use by any other party or give rise to third party rights. This opinion does not purport to cater for each individual shareholder's perspective, but rather that of the general body of KWV shareholders. Should a KWV shareholder be in doubt as to what action to take, he or she should consult an independent adviser.

An individual KWV shareholder's decision as to whether to accept the Offer may be influenced by his particular circumstances.

We have relied upon and assumed the accuracy of the information used by us in deriving our opinion. Where practical, we have corroborated the reasonability of the information provided to us for the purpose of our opinion, whether in writing or obtained in discussion with management of KWV, by reference to publicly available or independently obtained information. While our work has involved an analysis of, *inter alia*, the annual financial statements, and other information provided to us, our engagement does not constitute, nor does it include, an audit conducted in accordance with generally accepted auditing standards.

Where relevant, the forecasts of KWV relate to future events and are based on assumptions that may or may not remain valid for the whole of the forecast period. Consequently, such information cannot be relied upon to the same extent as that derived from audited financial statements for completed accounting periods. We express no opinion as to how closely the actual future results of KWV will correspond to those projected. Where practicable, we compared the forecast financial information to past trends and third party estimates as well as discussing the assumptions inherent therein with the management of KWV. On the basis of these enquiries and such other procedures we consider appropriate to the circumstances, we believe that the forecasts have been prepared with due care and consideration.

We have also assumed that the Offer will have the legal, accounting and taxation consequences described in discussions with, and materials furnished to us by, representatives and advisors of KWV and we express no opinion on such consequences. We have assumed that all agreements that will be entered into in respect of the transaction will be legally enforceable.

***Independence, competence and fees***

We confirm that we have no direct or indirect interest in KWV shares, Vasari or the Offer. We also confirm that we have the necessary qualifications and competence to provide the fair and reasonable opinion on the Offer.

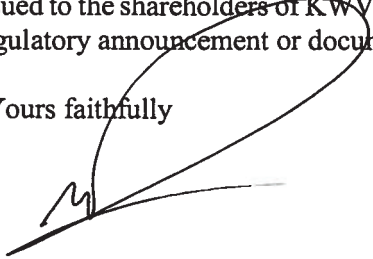


Furthermore, we confirm that our professional fees of approximately R200 000 are not contingent upon the success of the transaction.

***Consent***

We consent to the inclusion of this letter and the reference to our opinion in the Circular to be issued to the shareholders of KWV in the form and context in which it appears and in any required regulatory announcement or documentation.

Yours faithfully



Jacques Johannes Pienaar  
Director – Deal Advisory  
KPMG Services (Proprietary) Limited  
MSC House  
1 Mediterranean Street  
Foreshore  
Cape Town  
8000



## **Independent reporting accountant's assurance report on the compilation of pro forma financial information of KWV Holdings Limited**

### **Introduction**

KWV Holdings Limited ("KWV" or "the Company") is issuing a circular to its shareholders ("the Circular") regarding the Sale of Business and IP Subsidiary Sale ("together referred to as the Transactions").

At your request and for the purposes of the Circular to be dated on or about 23 June 2016, we present our assurance report on the compilation of the pro forma financial information of KWV Holdings Limited by the directors. The pro forma financial information, presented in Annexure D to the Circular, consists of the pro forma statement of financial position as at 31 March 2016, the pro forma statement of comprehensive income for the 12 months ended 31 March 2016 and the pro forma financial effects ("the Pro Forma Financial Information"). The Pro Forma Financial Information has been compiled in terms of Regulation 106(7)(c)(ii) of the Companies Act 71 of 2008 ("the Companies Act").

The Pro Forma Financial Information has been compiled by the directors to illustrate the impact of the Transactions on the Company's reported financial position as at 31 March 2016, and the Company's financial performance for the period then ended, as if the Transactions had taken place at 31 March 2016 and 1 April 2015, respectively. As part of this process, information about the Company's financial position and financial performance has been extracted by the directors from the Company's financial statements for the year ended 31 March 2016, on which an audit report has been published.

### **Directors' responsibility**

The directors of KWV Holdings Limited are responsible for the compilation, contents and presentation of the Pro Forma Financial Information in terms of Regulation 106(7)(c)(ii) of the Companies Act and the basis described in Annexure D of the Circular. The directors of KWV Holdings Limited are also responsible for the financial information from which it has been prepared.

### **Reporting accountant's responsibility**

Our responsibility is to express a reasonable assurance opinion about whether the Pro Forma Financial Information has been compiled, in all material respects, by the directors on the basis specified in Annexure D of the Circular based on our procedures performed. We conducted our engagement in accordance with the International Standard on Assurance Engagements (ISAE) 3420, Assurance Engagements to Report on the Compilation of Pro Forma Financial Information Included in a Prospectus. This standard requires that we plan and perform our procedures to obtain reasonable assurance about whether the Pro Forma Financial Information has been compiled, in all material respects, on the basis specified.

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*PricewaterhouseCoopers Inc., PricewaterhouseCoopers Building, Zomerlust Estate, Berg River Boulevard, Paarl 7646, P O Box 215, Paarl 7620*  
*T: +27 (21) 807 7100, F: +27 (21) 807 7200/1, www.pwc.co.za*

Chief Executive Officer: T D Shango  
Management Committee: T P Blandin de Chalain, S N Madikane, P J Mothibe, C Richardson, F Tonelli, C Volschenk  
Western Cape region – Partner in charge: D J Fölscher  
The Company's principal place of business is at 2 Eglin Road, Sunninghill where a list of directors' names is available for inspection.  
Reg. no. 1998/012055/21, VAT reg.no. 4950174682.



We have complied with the independence and other ethical requirements of the Code of Professional Conduct for Registered Auditors issued by the Independent Regulatory Board for Auditors (IRBA Code), which is founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. The IRBA Code is consistent with the International Ethics Standards Board for Accountants Code of Ethics for Professional Accountants (Part A and B).

The firm applies International Standard on Quality Control 1 and, accordingly, maintains a comprehensive system of quality control including documented policies and procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

For purposes of this engagement, we are not responsible for updating or reissuing any reports or opinions on any historical financial information used in compiling the Pro Forma Financial Information, nor have we, in the course of this engagement, performed an audit or review of the financial information used in compiling the Pro Forma Financial Information.

As the purpose of Pro Forma Financial Information included in a circular is solely to illustrate the impact of a significant corporate action or event on unadjusted financial information of the entity as if the corporate action or event had occurred or had been undertaken at an earlier date selected for purposes of the illustration, we do not provide any assurance that the actual outcome of the event or transaction would have been as presented.

A reasonable assurance engagement to report on whether the Pro Forma Financial Information has been compiled, in all material respects, on the basis of the applicable criteria involves performing procedures to assess whether the applicable criteria used in the compilation of the Pro Forma Financial Information provides a reasonable basis for presenting the significant effects directly attributable to the corporate action or event, and to obtain sufficient appropriate evidence about whether:

- The related pro forma adjustments give appropriate effect to those criteria; and
- The Pro Forma Financial Information reflects the proper application of those adjustments to the unadjusted financial information.

Our procedures selected depend on our judgement, having regard to our understanding of the nature of the company, the corporate action or event in respect of which the Pro Forma Financial Information has been compiled, and other relevant engagement circumstances.

Our engagement also involves evaluating the overall presentation of the Pro Forma Financial Information.



We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

**Opinion**

In our opinion, the Pro Forma Financial Information has been compiled, in all material respects, on the basis described in Annexure D of the Circular.

*PricewaterhouseCoopers Inc*

**PricewaterhouseCoopers Inc.**

Director: DG Malan

Registered Auditor

Paarl

23 June 2016

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**PRO FORMA FINANCIAL INFORMATION OF KWV HOLDINGS LIMITED**

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The pro forma financial information has been prepared to illustrate the impact of the Transactions on the reported financial information of KWV Holdings Limited for the year ended 31 March 2016, had the Transactions occurred on 1 April 2015 for statement of comprehensive income purposes and on 31 March 2016 for statement of financial position purposes. The pro forma financial information has been prepared using accounting policies that comply with IFRS and that are consistent with those applied in the audited results of KWV Holdings Limited for the year ended 31 March 2016.

The pro forma financial information set out below are the responsibility of KWV Holdings Limited's directors and have been prepared for illustrative purposes only and because of their nature may not fairly present the financial position, changes in equity, results of operations or cash flows of KWV Holdings Limited after the Transactions.

<b>Pro Forma</b>				
<b>Statement of financial position</b>				
as at 31 March 2016				
	<b>Before</b>	<b>Operational assets and liabilities to be sold</b>	<b>Proceeds and adjustments</b>	<b>Pro Forma after disposal</b>
	<i>(note 1)</i>	<i>(note 2)</i>		<i>(note 7)</i>
	R'000	R'000	R'000	R'000
<b>ASSETS</b>				
<b>Non-current assets</b>	<b>274 916</b>	<b>( 239 894)</b>	<b>580 591</b>	<b>615 613</b>
Property, plant and equipment	241 577	( 219 348)	-	22 229
Intangible assets	15 162	( 15 103)	-	59
Deferred tax asset	-	-	5 591	5 591
Trade and other receivables	-	-	575 000	575 000
Investments in associates and joint ventures	18 177	( 5 443)	-	12 734
<b>Current assets</b>	<b>1 314 254</b>	<b>(1 314 211)</b>	<b>575 000</b>	<b>575 043</b>
Inventory	1 029 116	(1 029 116)	-	-
Trade and other receivables	222 449	( 222 449)	-	-
Current income tax assets	43	-	-	43
Derivative financial instruments	18 319	( 18 319)	-	-
Bank and cash balances	44 327	( 44 327)	575 000	575 000
<b>Total assets</b>	<b>1 589 170</b>	<b>(1 554 105)</b>	<b>1 155 591</b>	<b>1 190 656</b>
<b>EQUITY AND LIABILITIES</b>				
<b>Capital and reserves</b>				
Share capital	1	-	-	1
Share premium	425 722	-	-	425 722
Reserves	869 089	(1 325 564)	1 221 408	764 933
<b>Total equity</b>	<b>1 294 812</b>	<b>(1 325 564)</b>	<b>1 221 408</b>	<b>1 190 656</b>
<b>Non-current liabilities</b>				
Deferred taxation	53 042	-	( 53 042)	-
Deferred revenue: government grant	10 900	-	( 10 900)	-
<b>Current liabilities</b>	<b>230 416</b>	<b>( 228 541)</b>	<b>( 1 875)</b>	<b>-</b>
Trade and other payables	181 117	( 181 117)	-	-
Deferred revenue: government grant	1 875	-	( 1 875)	-
Derivative financial instruments	47 424	( 47 424)	-	-
<b>Total equity and liabilities</b>	<b>1 589 170</b>	<b>(1 554 105)</b>	<b>1 155 591</b>	<b>1 190 656</b>
Net asset value per share	R 19.04			R 17.51
Tangible net asset value per share	R 18.82			R 17.51
Number of issued shares (thousand)	68,001			68,001

#### **Notes and assumptions**

1. Extracted, without any adjustments, from the audited results of KVV Holdings Limited for the year ended 31 March 2016.
2. The effects of the proposed conditional disposal of the operational assets and resulting liabilities of KVV Holdings Limited at its carrying values as at 31 March 2016.
3. The proposed transaction will increase the unutilised income tax losses of the group. The group recognises a deferred tax asset because it is considered probable that there will be sufficient future taxable profits against which these tax losses can be utilised.
4. The purchase consideration of the proposed transaction is R1 150 000 000. As per the agreements the consideration payable to the group in cash amounts to R575 000 000. The balance will be deferred and settled in three instalments with the first instalment due on the first anniversary of the Effective Date.
5. The movement in reserves is due to the effects of the Transactions as at 31 March 2016.
6. The decrease in deferred revenue: government grant is due to the realisation of this deferred revenue triggered by the proposed transaction.
7. Represents the pro forma financial position after incorporating the adjustments as set out above.

<b>Pro Forma</b>				
<b>Statement of comprehensive income</b>				
for the year ended 31 March 2016				
	<b>Before</b>	<b>Proposed transaction</b>	<b>Adjustments</b>	<b>Pro Forma after disposal</b>
	<i>(note 1)</i>	<i>(note 2)</i>		<i>(note 8)</i>
	<b>R'000</b>	<b>R'000</b>	<b>R'000</b>	<b>R'000</b>
Revenue	1 224 214	(1 224 214)	-	-
Cost of sales	( 852 837)	852 837	-	-
<b>Gross profit</b>	<b>371 377</b>	<b>( 371 377)</b>	-	-
Other income	14 821	( 11 522)	2 097	5 396 <i>note 3</i>
Other gains and (losses) - net	( 42 290)	42 290	( 175 564)	( 175 564) <i>note 4</i>
Operating expenses	( 307 325)	299 077	( 3 210)	( 11 458)
Promotion, marketing and distribution	( 231 855)	231 855	-	-
Operational and administrative expenses	( 75 470)	67 222	( 3 210)	( 11 458) <i>note 5</i>
<b>Operating profit / (loss)</b>	<b>36 583</b>	<b>( 41 532)</b>	<b>( 176 677)</b>	<b>( 181 626)</b>
Interest received	1 886	( 1 886)	87 345	87 345 <i>note 6</i>
Finance costs	( 1 620)	1 620	-	-
Share of profit of associates and joint ventures	239	652	-	891
<b>Profit / (loss) before income tax</b>	<b>37 088</b>	<b>( 41 146)</b>	<b>( 89 332)</b>	<b>( 93 390)</b>
Income tax	( 9 302)	10 688	38 065	39 451 <i>note 7</i>
<b>Profit / (loss) for the year</b>	<b>27 786</b>	<b>( 30 458)</b>	<b>( 51 267)</b>	<b>( 53 939)</b>
<b>Other comprehensive income / (loss) for the year</b>				
Items that will subsequently be reclassified to profit or loss	( 86)	86	-	-
Change in foreign currency translation reserve	( 86)	86	-	-
<b>Total comprehensive income / (loss)</b>	<b>27 700</b>	<b>( 30 372)</b>	<b>( 51 267)</b>	<b>( 53 939)</b>
(Attributable to equity holders of the company)				
<b>Earnings per share</b>	<b>Cents</b>			<b>Cents</b>
(Attributable to equity holders of the company)				
- Basic earnings	40.9			(79.3)
- Headline earnings	44.6			87.4

#### Notes and assumptions

1. Extracted, without any adjustments, from the audited results of KWV Holdings Limited for the year ended 31 March 2016.
2. Income and expenses associated with operational assets as if the Sale of Business was effective on 1 April 2015.
3. Adjusted for additional rental income due to additional rental space availability after the Sale of Business. The rental income earned has been calculated at market related rates.
4. Adjusting for the net loss incurred with the Sale of Business and IP Subsidiary Sale based on the net asset values as at 31 March 2016.
5. Adjusting for an estimated increase in operational and administrative expenses to manage and maintain the remaining assets of the company.
6. The increase in interest received of R 87 345 000 stems from an R 1 150 000 000 increase in cash and bank balances and trade and other receivables. Interest received on cash and bank balances was calculated based on the investment rate (6.7%) that the KWV group earned in the period under review. The interest received on trade and other receivables was calculated using the interest rate (8.5%) as disclosed in the Sale of Business Agreement.
7. The movement in taxation relates to the tax effect on the loss of disposal of the operational assets.
8. Represents the pro forma financial results after incorporating the adjustments as set out above.

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**HISTORICAL FINANCIAL INFORMATION OF KVV HOLDINGS FOR THE YEARS ENDED 31 MARCH  
2014, 2015 AND 2016**

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Please refer to KVV Holdings website ([www.kvv.co.za](http://www.kvv.co.za)) for details of financial information pertaining to years ended 31 March 2014, 2015 and 2016.

After entering the website, go to tab “Shareholder Services” and then refer to “Financial Reports and Notices”.

[www.kvv.co.za](http://www.kvv.co.za)



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**EXTRACT OF SECTION 115 OF THE COMPANIES ACT**

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**115. Required approval for transactions contemplated in Part (1)**

Despite section 65, and any provision of a company's Memorandum of Incorporation, or any resolution adopted by its board or holders of its securities, to the contrary, a company may not dispose of, or give effect to an agreement or series of agreements to dispose of, all or the greater part of its assets or undertaking, implement an amalgamation or a merger, or implement a scheme of arrangement, unless—

(1) (a) the disposal, amalgamation or merger, or scheme of arrangement—

(i) has been approved in terms of this section; or

(ii) is pursuant to or contemplated in an approved business rescue plan for that company, in terms of Chapter 6; and

(b) to the extent that Parts B and C of this Chapter, and the Takeover Regulations, apply to a company that proposes to—

(i) dispose of all or the greater part of its assets or undertaking;

(ii) amalgamate or merge with another company; or

(iii) implement a scheme of arrangement, the Panel has issued a compliance certificate in respect of the transaction, in terms of section 119 (4) (b), or exempted the transaction in terms of section 119 (6).

(2) A proposed transaction contemplated in subsection (1) must be approved —

(a) by a special resolution adopted by persons entitled to exercise voting rights on such a matter, at a meeting called for that purpose and at which sufficient persons are present to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised on that matter, or any higher percentage as may be required by the company's Memorandum of Incorporation, as contemplated in section 64 (2); and

(b) by a special resolution, also adopted in the manner required by paragraph (a), by the shareholders of the company's holding company if any, if—

(i) the holding company is a company or an external company;

(ii) the proposed transaction concerns a disposal of all or the greater part of the assets or undertaking of the subsidiary; and

(iii) having regard to the consolidated financial statements of the holding company, the disposal by the subsidiary constitutes a disposal of all or the greater part of the assets or undertaking of the holding company; and

(c) by the court, to the extent required in the circumstances and manner contemplated in subsections (3) to (6).

(3) Despite a resolution having been adopted as contemplated in subsections (2) (a) and (b), a company may not proceed to implement that resolution without the approval of a court if—

(a) the resolution was opposed by at least 15% of the voting rights that were exercised on that resolution and, within five business days after the vote, any person who voted against the resolution requires the company to seek court approval; or

(b) the court, on an application within 10 business days after the vote by any person who voted against the resolution, grants that person leave, in terms of subsection (6), to apply to a court for a review of the transaction in accordance with subsection (7).

(4) For the purposes of subsections (2) and (3), any voting rights controlled by an acquiring party, a person related to an acquiring party, or a person acting in concert with either of them, must not be included in calculating the percentage of voting rights—

(a) required to be present, or actually present, in determining whether the applicable quorum requirements are satisfied; or

(b) required to be voted in support of a resolution, or actually voted in support of the resolution.

(4A) In subsection (4), "act in concert" has the meaning set out in section 117 (1) (b).

(5) If a resolution requires approval by a court as contemplated in terms of subsection (3) (a), the company must either—

(b) treat the resolution as a nullity.

(6) On an application contemplated in subsection (3) (b), the court may grant leave only if it is satisfied that the applicant—

- (a) is acting in good faith;
- (b) appears prepared and able to sustain the proceedings; and
- (c) has alleged facts which, if proved, would support an order in terms of subsection (7).

(7) On reviewing a resolution that is the subject of an application in terms of subsection (5) (a), or after granting leave in terms of subsection (6), the court may set aside the resolution only if—

- (a) the resolution is manifestly unfair to any class of holders of the company's securities; or
- (b) the vote was materially tainted by conflict of interest, inadequate disclosure, failure to comply with the Act, the Memorandum of Incorporation or any applicable rules of the company, or other significant and material procedural irregularity.

(8) The holder of any voting rights in a company is entitled to seek relief in terms of section 164 if that person—

- (a) notified the company in advance of the intention to oppose a special resolution contemplated in this section; and
- (b) was present at the meeting and voted against that special resolution.

(9) If a transaction contemplated in this Part has been approved, any person to whom assets are, or an undertaking is, to be transferred, may apply to a court for an order to effect—

- (a) the transfer of the whole or any part of the undertaking, assets and liabilities of a company contemplated in that transaction;
- (b) the allotment and appropriation of any shares or similar interests to be allotted or appropriated as a consequence of the transaction;
- (c) the transfer of shares from one person to another;
- (d) the dissolution, without winding-up, of a company, as contemplated in the transaction;
- (e) incidental, consequential and supplemental matters that are necessary for the effectiveness and completion of the transaction; or
- (f) any other relief that may be necessary or appropriate to give effect to, and properly implement, the amalgamation or merger.

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**EXTRACT OF SECTION 164 OF THE COMPANIES ACT**

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**164. Dissenting shareholders appraisal rights.**

- (1) This section does not apply in any circumstances relating to a transaction, agreement or offer pursuant to a business rescue plan that was approved by shareholders of a company, in terms of section 152.
- (2) If a company has given notice to shareholders of a meeting to consider adopting a resolution to—
- (a) amend its Memorandum of Incorporation by altering the preferences, rights, limitations or other terms of any class of its shares in any manner materially adverse to the rights or interests of holders of that class of shares, as contemplated in section 37 (8); or
  - (b) enter into a transaction contemplated in section 112, 113, or 114, that notice must include a statement informing shareholders of their rights under this section.
- (3) At any time before a resolution referred to in subsection (2) is to be voted on, a dissenting shareholder may give the company a written notice objecting to the resolution.
- (4) Within 10 business days after a company has adopted a resolution contemplated in this section, the company must send a notice that the resolution has been adopted to each shareholder who—
- (a) gave the company a written notice of objection in terms of subsection (3); and
  - (b) has neither—
    - (i) withdrawn that notice; or
    - (ii) voted in support of the resolution.
- (5) A shareholder may demand that the company pay the shareholder the fair value for all of the shares of the company held by that person if—
- (a) the shareholder—
    - (i) sent the company a notice of objection, subject to subsection (6); and
    - (ii) in the case of an amendment to the company's Memorandum of Incorporation, holds shares of a class that is materially and adversely affected by the amendment;
  - (b) the company has adopted the resolution contemplated in subsection (2); and
  - (c) the shareholder—
    - (i) voted against that resolution; and
    - (ii) has complied with all of the procedural requirements of this section.
- (6) The requirement of subsection (5) (a) (i) does not apply if the company failed to give notice of the meeting, or failed to include in that notice a statement of the shareholders rights under this section.
- (7) A shareholder who satisfies the requirements of subsection (5) may make a demand contemplated in that subsection by delivering a written notice to the company within—
- (a) 20 business days after receiving a notice under subsection (4); or
  - (b) if the shareholder does not receive a notice under subsection (4), within 20 business days after learning that the resolution has been adopted.
- (8) A demand delivered in terms of subsections (5) to (7) must also be delivered to the Panel, and must state—
- (a) the shareholder's name and address;
  - (b) the number and class of shares in respect of which the shareholder seeks payment; and
  - (c) a demand for payment of the fair value of those shares.
- (9) A shareholder who has sent a demand in terms of subsections (5) to (8) has no further rights in respect of those shares, other than to be paid their fair value, unless—
- (a) the shareholder withdraws that demand before the company makes an offer under subsection (11), or allows an offer made by the company to lapse, as contemplated in subsection (12) (b);
  - (b) the company fails to make an offer in accordance with subsection (11) and the shareholder withdraws the demand; or
  - (c) the company, by a subsequent special resolution, revokes the adopted resolution that gave rise to the shareholder's rights under this section.

(10) If any of the events contemplated in subsection (9) occur, all of the shareholder's rights in respect of the shares are reinstated without interruption.

(11) Within five business days after the later of—

(a) the day on which the action approved by the resolution is effective;

(b) the last day for the receipt of demands in terms of subsection (7) (a); or

(c) the day the company received a demand as contemplated in subsection (7) (b), if applicable, the company must send to each shareholder who has sent such a demand a written offer to pay an amount considered by the company's directors to be the fair value of the relevant shares, subject to subsection (16), accompanied by a statement showing how that value was determined.

(12) Every offer made under subsection (11)—

(a) in respect of shares of the same class or series must be on the same terms; and

(b) lapses if it has not been accepted within 30 business days after it was made.

(13) If a shareholder accepts an offer made under subsection (12)—

(a) the shareholder must either in the case of—

(i) shares evidenced by certificates, tender the relevant share certificates to the company or the company's transfer agent; or

(ii) uncertificated shares, take the steps required in terms of section 53 to direct the transfer of those shares to the company or the company's transfer agent; and

(b) the company must pay that shareholder the agreed amount within 10 business days after the shareholder accepted the offer and—

(i) tendered the share certificates; or

(ii) directed the transfer to the company of uncertificated shares.

(14) A shareholder who has made a demand in terms of subsections (5) to (8) may apply to a court to determine a fair value in respect of the shares that were the subject of that demand, and an order requiring the company to pay the shareholder the fair value so determined, if the company has—

(a) failed to make an offer under subsection (11); or

(b) made an offer that the shareholder considers to be inadequate, and that offer has not lapsed.

(15) On an application to the court under subsection (14)—

(a) all dissenting shareholders who have not accepted an offer from the company as at the date of the application must be joined as parties and are bound by the decision of the court;

(b) the company must notify each affected dissenting shareholder of the date, place and consequences of the application and of their right to participate in the court proceedings; and

(c) the court—

(i) may determine whether any other person is a dissenting shareholder who should be joined as a party;

(ii) must determine a fair value in respect of the shares of all dissenting shareholders, subject to subsection (16);

(iii) in its discretion may—

(aa) appoint one or more appraisers to assist it in determining the fair value in respect of the shares; or

(bb) allow a reasonable rate of interest on the amount payable to each dissenting shareholder from the date the action approved by the resolution is effective, until the date of payment;

(iv) may make an appropriate order of costs, having regard to any offer made by the company, and the final determination of the fair value by the court; and

(v) must make an order requiring—

(aa) the dissenting shareholders to either withdraw their respective demands or to comply with subsection (13) (a); and

(bb) the company to pay the fair value in respect of their shares to each dissenting shareholder who complies with subsection (13) (a), subject to any conditions the court considers necessary to ensure that the company fulfils its obligations under this section.

(15A) At any time before the court has made an order contemplated in subsection (15) (c) (v), a dissenting shareholder may accept the offer made by the company in terms of subsection (11), in which case—

(a) that shareholder must comply with the requirements of subsection 13 (a); and

(b) the company must comply with the requirements of subsection 13 (b).

(16) The fair value in respect of any shares must be determined as at the date on which, and time immediately before, the company adopted the resolution that gave rise to a shareholder's rights under this section.

- (17) If there are reasonable grounds to believe that compliance by a company with subsection (13) (b), or with a court order in terms of subsection (15) (c) (v) (bb), would result in the company being unable to pay its debts as they fall due and payable for the ensuing 12 months—
- (a) the company may apply to a court for an order varying the company's obligations in terms of the relevant subsection; and
  - (b) the court may make an order that—
    - (i) is just and equitable, having regard to the financial circumstances of the company; and
    - (ii) ensures that the person to whom the company owes money in terms of this section is paid at the earliest possible date compatible with the company satisfying its other financial obligations as they fall due and payable.
- (18) If the resolution that gave rise to a shareholder's rights under this section authorised the company to amalgamate or merge with one or more other companies, such that the company whose shares are the subject of a demand in terms of this section has ceased to exist, the obligations of that company under this section are obligations of the successor to that company resulting from the amalgamation or merger.
- (19) For greater certainty, the making of a demand, tendering of shares and payment by a company to a shareholder in terms of this section do not constitute a distribution by the company, or an acquisition of its shares by the company within the meaning of section 48, and therefore are not subject to—
- (a) the provisions of that section; or
  - (b) the application by the company of the solvency and liquidity test set out in section 4.
- (20) Except to the extent—
- (a) expressly provided in this section; or
  - (b) that the Panel rules otherwise in a particular case, a payment by a company to a shareholder in terms of this section does not obligate any person to make a comparable offer under section 125 to any other person.





