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Information Memorandum dated 28 May 2009

**THIS INFORMATION MEMORANDUM IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION.** If you are in any doubt as to the action you should take, you are recommended to obtain your own personal financial advice immediately from an independent professional adviser authorised under the Financial Services and Markets Act 2000 if you are resident in the United Kingdom or, if not, from another appropriately authorised independent professional adviser.

Applications under the Offer may only be made on the accompanying Application Form. Copies of the Application Form are available on request from the Registrar, whose details are set out on page 105 of this Information Memorandum.

If you sell or have sold or otherwise transferred all your Ordinary Shares, you should send this Information Memorandum at once to the purchaser or transferee or to the stockbroker, bank or other agent through whom the sale or transfer was effected, for transmission to the purchaser or transferee. However, this Information Memorandum should not be sent by you into the United States of America, Australia, Canada or Japan. If you sell or have sold part only of your holding of Ordinary Shares, please consult the bank, stockbroker or other agent through whom the sale or transfer was effected.

This Information Memorandum does not constitute or form part of any offer or invitation to purchase, otherwise acquire, subscribe for, sell, otherwise dispose of or issue, or any solicitation of any offer to sell, otherwise dispose of, issue, purchase, otherwise acquire or subscribe for, any security, in any jurisdiction in which such offer, invitation or solicitation is unlawful. For a description of certain restrictions on offers, sales and deliveries of the Convertible Securities and on distribution of this Information Memorandum and other material relating to the Convertible Securities, see the sections headed "Overseas Shareholders" and "Transfer Restrictions" in this Information Memorandum.

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## **EUROCASTLE INVESTMENT LIMITED**

*(Registered in Guernsey No. 41058)*

**Issue of €130,000,000**

### **20 per cent. Perpetual Subordinated Convertible Securities Convertible into Ordinary Shares of Eurocastle Investment Limited**

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All Qualifying Shareholders who wish to take up Convertible Securities pursuant to the Offer must complete and return an Application Form in accordance with the instructions thereon. The minimum eligible investment in the Convertible Securities is €50,000. All completed Application Forms and payment in full must be received no later than 3 p.m. London time on 19 June 2009.

The Convertible Securities will be issued at 100 per cent. of their principal amount.

The Convertible Securities are new securities which are unlisted. The Convertible Securities will therefore be illiquid assets.

The Convertible Securities and the Ordinary Shares to be issued upon conversion of the Convertible Securities (together, the "Securities") have not been and will not be registered under the United States Securities Act of 1933 (the "Securities Act") or with any securities regulatory authority of any state or other jurisdiction of the United States and, subject to certain exceptions, may not be offered or sold within the United States. The Convertible Securities are being offered and sold outside the United States in reliance on Regulation S under the Securities Act. Convertible Securities may be purchased in the United States only by persons (a) reasonably believed to be "accredited investors" within the meaning of the Securities Act or "qualified institutional buyers" in reliance on the exemption from the registration requirements of the Securities Act provided by Rule 144A thereunder and (b) who are "qualified purchasers" or "knowledgeable employees" within the meaning of the US Investment Company Act of 1940 (the "Investment Company Act"). The Issuer will not be registered under the Investment Company Act, and investors will not be entitled to the benefits of such Act. The Convertible Securities are not transferable except in compliance with the restrictions described under "Transfer Restrictions" herein.

The Securities have not been approved or disapproved by the US Securities and Exchange Commission, any state securities commission in the United States or any other US regulatory authority, nor have any of the foregoing authorities passed upon or endorsed the merits of the offering of the Securities or the accuracy or adequacy of this Information Memorandum. Any representation to the contrary is a criminal offence in the United States.

Subject to certain exceptions, neither this Information Memorandum nor the Application Form constitutes or will constitute an offer or an invitation to apply for, or an offer or an invitation to acquire, Securities in the United States. There shall be no offer or sale of Securities in any jurisdiction in which such offer or sale would be unlawful. In addition, until 40 days after the commencement of the offering of the Convertible Securities, an offer or sale of Convertible Securities within the United States by any dealer (whether or not participating in the offering) may violate the registration requirements of the Securities Act.

Copies of this Information Memorandum and the Application Form are not being, and must not be, mailed or otherwise forwarded, distributed or sent in, into or from the United States (except to certain existing holders of Ordinary Shares that qualify as (1) a Qualified Institutional Buyer or an Accredited Investor and (2) a Qualified Purchaser or a Knowledgeable Employee and who have made certain representations to the Issuer by completing and returning a signed US Investor Letter) or any other jurisdiction in which such mailing or distribution would be illegal, or to publications with a general circulation in those jurisdictions, and persons receiving this Information Memorandum or the Application Form (including custodians, nominees and trustees) must not mail or otherwise forward, distribute or send it in, into or from the United States or any other jurisdiction in which such mailing or distribution would be illegal or to publications with a general circulation in those jurisdictions. Receipt of this Information Memorandum or the Application Form will not constitute an offer in those jurisdictions in which it would be illegal to make such an offer and in such circumstances this Information Memorandum and the Application Form will be deemed to have been sent for information only.

Any decision to purchase any of the Convertible Securities should only be made on the basis of an independent review by you of the Issuer's publicly available information. The information contained in this Information Memorandum is subject to change up until the Closing Date. You should consult your professional adviser to ascertain the suitability of the Securities as an investment.

An investment in the Convertible Securities involves a high degree of risk. See "Risk Factors" commencing on page 16 of this Information Memorandum. In making any decision to purchase the Convertible Securities, you will be deemed to: (i) have such business and financial experience as is required to give you the capacity to protect your own interests in connection with the purchase of the Convertible Securities; (ii) have made your own investment decision regarding the Convertible Securities based on your own knowledge and investigation of the Issuer and the Securities; (iii) have made and relied on your own assessment of the Issuer, its subsidiaries, the Securities and the terms of the Offer based on this Information Memorandum, the Application Form and other such information as is publicly available and you deem reasonably sufficient (which you acknowledge you have been able to access, read and understand); and (iv) consulted your own independent advisers or otherwise satisfied yourself concerning, without limitation, accounting, regulatory, tax or other consequences in the light of your particular situation under the laws of all relevant jurisdictions generally.

None of the Issuer, its advisers or Fortress makes any representation as to (i) the accuracy of any information regarding the Securities or the Offer other than as contained in this Information Memorandum, (ii) the suitability of the Securities for any particular investor, (iii) the appropriate accounting treatment and potential tax consequences of investing in the Securities or (iv) the future performance of the Securities either in absolute terms or relative to competing investments.

Any allocation of the Convertible Securities is made expressly subject to the condition that the Offer completes and that the Convertible Securities are issued. The Issuer reserves the right to amend or waive any and all terms and conditions of the Offer (including, without limitation, the terms and conditions of the Convertible Securities) as set out in this Information Memorandum and to terminate the Offer at any time until the Closing Date.

No action has been taken by the Issuer that would permit an offering of the Securities or possession or distribution of this Information Memorandum or any publicity material relating to the Securities in any jurisdiction where action for that purpose is required. Persons into whose possession this Information Memorandum comes are required by the Issuer to inform themselves about and to observe any such restrictions.

Unless otherwise specified or the context requires, references to “euro”, “€” and “EUR” are to the currency introduced at the start of the third stage of the European Economic and Monetary Union pursuant to the Treaty establishing the European Community, as amended; reference to “pounds sterling” and “£” are to the lawful currency of the United Kingdom; and reference to “US\$” and “US dollars” are to the lawful currency of the United States of America.

Certain capitalised terms used in this Information Memorandum are defined in “Glossary”.

#### **Notice to New Hampshire Residents only**

NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENCE HAS BEEN FILED UNDER RSA 421-B WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY IS EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE CONSTITUTES A FINDING BY THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE THAT ANY DOCUMENT FILED UNDER RSA 421-B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT AN EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THAT THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE HAS PASSED IN ANYWAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL, TO ANY PERSON, SECURITY OR TRANSACTION. IT IS UNLAWFUL TO MAKE OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER OR CLIENT ANY REPRESENTATION INCONSISTENT WITH THE PROVISIONS OF THIS PARAGRAPH.

#### **Available Information**

For so long as any of the Securities are in issue and are “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, the Issuer will, during any period in which it is not subject to Section 13 or 15(d) under the Exchange Act, nor exempt from reporting under the Exchange Act pursuant to Rule 12g3-2(b) thereunder, make available to any holder or beneficial owner of Securities, or to any prospective purchaser of securities designated by such holder or beneficial owner, the information specified in, and meeting the requirements of, Rule 144A(d)(4) under the Securities Act.

#### **Service of Process and Enforcement of Civil Liabilities**

The Issuer is incorporated under Guernsey law. Service of process upon Directors and officers of the Issuer, the majority of whom reside outside the United States, may be difficult to obtain within the United States. Furthermore, since most directly owned assets of the Issuer are outside the United States, any judgment obtained in the United States against it may not be collectible within the United States. There is doubt as to the enforceability in England and Guernsey, in original actions or in actions for enforcement of judgments of US courts, of civil liabilities predicated upon US federal securities laws.

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**LETTER FROM THE CHAIRMAN**  
**LETTER OF RECOMMENDATION FROM THE CHAIRMAN OF**  
**EUROCASTLE INVESTMENT LIMITED**

*(Registered in Guernsey No. 41058)*

28 May 2009

Dear Shareholder

**Issue of €130,000,000 20 per cent. Perpetual Subordinated Convertible Securities convertible into Ordinary Shares (the “Issue”) of Eurocastle Investment Limited (the “Issuer”)**

**1 Introduction**

The Issuer is a closed-ended investment company whose investment activities are primarily focused on the German commercial real estate sector and European real-estate backed debt.

The Issuer is raising additional funds to pay down its direct recourse financing obligations. As a consequence, the Issuer is proposing to issue the Convertible Securities on the terms and subject to the conditions set out in this Information Memorandum (a summary of the principal terms and conditions of the Convertible Securities is set out in the section of this Information Memorandum headed “Summary of the Terms of the Issue”). **If the Issue does not proceed, the Issuer will default under its Corporate Facility (as defined below). As a consequence, the Issuer may become insolvent or be unable to continue trading and all Shareholders are likely to suffer a loss on their investment. Existing Shareholders who do not participate in the Issue should note that their holdings could be substantially diluted upon any conversion of the Convertible Securities by participating Shareholders and that the on-going value of their shareholding may be impaired as a result of the Issue, in particular given that any distributions made by the Issuer shall, after current creditors are satisfied, first be applied to the payment of interest on the Convertible Securities, which by their terms have no fixed redemption date.**

Under the terms of the Issue and subject to applicable securities laws and regulations, the Issuer is proposing to invite Qualifying Shareholders, regardless of the number of Ordinary Shares held by them on the Record Date, to apply to subscribe for Convertible Securities having a minimum denomination of €50,000 at the Issue Price, payable in full in cash on application. The Issuer reserves the right to decline applications in excess of any Qualifying Shareholder’s *pro rata* entitlement. In the event of over-subscription of the Convertible Securities, the Board shall have the discretion to increase the principal amount of the Convertible Securities offered and/or to scale back applications to a minimum subscription amount of €50,000.

Fortress Funds have conditionally undertaken to the Issuer to participate in the Issue by subscribing for approximately €15.4 million of Convertible Securities.

Other than the Issue, the Directors do not believe that there is a viable alternative source of capital available to the Issuer in the timeframe necessary to provide the Issuer with sufficient liquidity to satisfy its near-term financing obligations. In reaching this conclusion, the Board has had regard to the Issuer’s current financial position including the terms of its Corporate Facility and the EFL Facility (both as described in Section 2 below) as well as the size and timing of working capital requirements, market conditions, the level of the Issuer’s share price, the lack of other forms of debt or equity finance. The Issue has been structured to enable all Qualifying Shareholders to purchase the Convertible Securities in a minimum denomination of €50,000 notwithstanding the size of their individual holding of Issued Ordinary Share Capital. For these reasons, the Issuer has decided to pursue the Issue as being in the best interests of the Shareholders as a whole.

The purpose of this Information Memorandum is to provide you with details of the Issue, to explain why the Board considers the Issue to be fair and reasonable so far as the Shareholders as a whole are concerned and to be in the best interests of the Shareholders as a whole.

## **2 Background to and reasons for the Issue**

### **Eurocastle's Debt Position**

The Issuer has two material near-term recourse obligations: (1) a €115 million corporate loan facility and (2) a guarantee obligation limited to €30 million in respect of an acquisition facility of certain debt investments made by a consolidated Subsidiary.

As of 9 May 2008, the Issuer benefits from a corporate term credit facility maturing on 30 June 2011 with €115 million outstanding as at the date of this Information Memorandum (the "Corporate Facility"). This facility is required to be paid down by at least €15.4 million by 30 June 2009 from proceeds of the Issue and has planned semi-annual amortisations reducing it to €95 million by 30 June 2009, to €65 million by 31 December 2009, to €45 million by 30 June 2010 and to €20 million by 31 December 2010. Any excess cashflow from asset sales and operations (after allowing for capital expenditure, operating expenses and the maintenance of a minimum operating cash balance) must be used to amortise the outstanding loan balance of the Corporate Facility on its interest payment dates.

The Issuer may not make any payments under the Convertible Securities or any dividend payments under its Ordinary Shares while any amounts under the Corporate Facility remain outstanding.

The Board cannot give assurances as to whether the Eurocastle Group can execute sufficient sales of its real estate assets or otherwise generate sufficient cashflow to satisfy the amortisation requirements of the Corporate Facility within the given timeframe.

On 30 September 2009, an acquisition facility (which was originally a 12-month revolving facility) drawn by a consolidated subsidiary of the Issuer to finance certain debt investments (the "EFL Facility"), comes due. The Issuer has given a guarantee in respect of this facility, which is limited to a maximum amount of €30 million (the "EFL Facility Guarantee"). The Board cannot be certain as to whether this facility will be extended or refinanced.

Further details regarding the Corporate Facility, the EFL Facility and other obligations of the Issuer may be found in the Issuer's Annual Report for the year ended 31 December 2008, its quarterly results for the quarter ended 31 March 2009 (the "Q1 Report") and the section of this Information Memorandum headed "Risk Factors".

### **Background to the Issue**

Conditions in global capital markets have deteriorated markedly such that the Directors have found that the ability of companies like the Issuer that invest in German real estate to raise funds in the loan or capital markets is currently extremely limited. The Issuer has not been able to identify a source of additional debt or equity financing in the timeframe necessary to provide the Issuer with adequate reassurance in respect of its recourse financing obligations, the most pressing of which is the Corporate Facility. While any excess cashflows from the Eurocastle Group will be used to amortise the Corporate Facility in accordance with the agreed schedule, if the Issuer is not able to fulfil its obligation to raise additional capital or make the nearer-term scheduled amortisation payments under the Corporate Facility, the lender under the Corporate Facility may be able to enforce its security which could mean a loss of part or all of the assets of the Issuer. Therefore, the Issue is deemed to be the most attractive option because it offers the greatest degree of certainty, due to Fortress Funds' conditional undertaking to subscribe at least €15.4 million of the Issue, and gives other Qualifying Shareholders and third parties the opportunity to participate.

In addition, while the guarantee given in respect of the EFL Facility is limited to a maximum amount of €30 million, the Board cannot be certain as to whether this facility will be extended or refinanced or whether the underlying assets will have a resale value sufficient to repay the EFL Facility. Therefore, the Directors believe it is in the best interests of the Eurocastle Group, and the Issuer in particular, to reserve funds from the Issue for the satisfaction of the EFL Facility Guarantee in full which comes due on 30 September 2009 when the EFL Facility matures.

The Directors believe that if the Issuer raises enough capital to (1) pay down the Corporate Facility in its entirety; and (2) build an adequate reserve in relation to the Issuer's obligations under the EFL Facility Guarantee, the Issuer will have sufficient cashflow to satisfy all its near-term recourse obligations (as more particularly described in Part I of the Risk Factors below).

Against the background of turbulence in the global markets and, in particular, the European commercial property sector, the Issuer has worked with its manager, Fortress (an affiliate of Fortress Funds), to design an instrument which could be offered to investors and provides the Issuer with sufficient liquidity to meet its short term direct recourse needs including the fulfilment of a condition to raise at least €15.4 million in capital by 30 June 2009, the satisfaction of its amortisation obligations under the Corporate Facility and its potential exposure as guarantor under the EFL Facility Guarantee. The Issue is the result of this exercise. The estimated net proceeds of the Issue, which are expected to be, approximately €126.5 million (assuming an issue of €130 million in principal amount of Convertible Securities at par) must be used first to repay the Corporate Facility (and to the extent it is not repaid in full, any amounts repaid will be credited against the Issuer's periodic amortisation obligations under this facility), with any balance expected to be used, amongst other things, to reserve funds for the satisfaction of the EFL Facility Guarantee.

### **Conclusion**

The Issuer requires additional capital primarily to pay down its Corporate Facility and also to satisfy its obligations under the EFL Facility Guarantee. In an extremely challenging market environment, the Directors welcome the certainty of funds provided by Fortress Funds' conditional agreement to subscribe for €15.4 million of the Issue. In addition, Qualifying Shareholders and third-party investors have the opportunity to subscribe for the Convertible Securities. If the Issue does not proceed, the Issuer will be in default of the Corporate Facility. Even if the Issue does proceed such that only €15.4 million is raised, the Issuer will likely not have sufficient working capital to continue to operate its business or the capital available to satisfy its near-term obligations under the Corporate Facility and the EFL Facility. A default under any such obligations would jeopardise the Issuer's overall financial position which may lead to the loss of the entire value of Shareholders' investment in the Issuer's shares.

If, however, the Issue successfully raises its target amount of €130 million, the Directors believe that the Issuer will likely be able to satisfy all its near-term outstanding recourse financial obligations from a combination of the capital raised through the Issue and cashflow from the Eurocastle Group leaving only asset-level non-recourse obligations at the lower Eurocastle Group level. This would, therefore, likely leave the Issuer on a much sounder financial footing, well-poised to benefit from a recovery in the German real estate market, the European credit markets and the financial markets generally.

### **3 Summary of the terms of the Issue**

Pursuant to the Issue, the Issuer is inviting Qualifying Shareholders regardless of the number of Ordinary Shares held on the Record Date to apply to subscribe for a minimum amount of €50,000 of Convertible Securities at the Issue Price, payable in full in cash on application. In the event of over-subscription of the Convertible Securities, the Board shall have the discretion to increase the principal amount of the Convertible Securities offered and/or to scale back applications to a minimum subscription amount of €50,000.

The Convertible Securities will be issued at 100 per cent. of their principal amount. Interest on the Convertible Securities will be calculated at the rate of 20 per cent. per annum and will be due annually in arrear on 30 June in each year (each, an “Interest Payment Date”). However, although interest will accrue from 25 June 2009 (the “Closing Date”), the first Interest Payment Date shall be the Interest Payment Date next following the repayment in full of the Corporate Facility but not earlier than 30 June 2010, or such other time as payment is permitted under the Corporate Facility (the “Interest Payment Trigger Date”), unless such interest is otherwise deferred.

The Issuer may elect to defer any payment of interest, including any interest payable on the Interest Payment Trigger Date, which is otherwise scheduled to be paid on an Interest Payment Date by giving notice of such election to the holders of the Convertible Securities, the Trustee and the Principal Paying, Transfer and Conversion Agent. Any such deferred interest shall itself bear interest at the Interest Rate and shall be paid in cash or in the form of Shares at the Conversion Price, at the option of the Issuer, in whole or in part at any time. The initial Conversion Price will be €0.30 per Ordinary Share and is subject to adjustment over the life of the Convertible Securities. The Convertible Securities will be subordinated and, in the event of the winding-up of the Issuer, claims of Convertible Securityholders in respect of amounts payable in respect of the Convertible Securities will rank senior to the holders of all classes of issued shares for the time being in the capital of the Issuer and junior to the claims of all creditors of the Issuer. The Convertible Securities will be transferable in minimum denominations of €50,000, but will not be listed or admitted to trading on any stock exchange. The Issuer may issue Convertible Securities to third-party investors and may increase the size of the offering in excess of €130 million.

Shareholders should also be aware of the potential risks of participating in the Issue and should refer to the risks set out in the section headed “Risk Factors” in this Information Memorandum in this regard.

#### **4 Use of Issue Proceeds**

Assuming an issue of €130 million in principal amount of Convertible Securities at par, the estimated net proceeds of the Issue, which are expected to be, approximately €126.5 million, will be used to repay the Corporate Facility, with the balance used, amongst other things, to build an adequate reserve fund in relation to its obligations under the EFL Facility Guarantee.

#### **5 Further information**

Your attention is drawn to the further information set out in this Information Memorandum and, in particular, the risk factors set out on pages 16 - 38 of this Information Memorandum. This Information Memorandum should be read in conjunction with the Issuer’s Prospectus dated 1 December 2006 , except to the extent that information in the Prospectus is updated in this Information Memorandum. It should be understood that the Prospectus contains date sensitive information which was current at the date of issue of the Prospectus but which has not been updated save as relevant to the Issue and as set out in this Information Memorandum. You are advised to read the whole of this Information Memorandum and not just rely on the summary information presented above. The Issuer has recently published its Annual Report for the year ended 31 December 2008 and its Q1 Report. See [www.eurocastleinv.com](http://www.eurocastleinv.com) for these results, the Issuer’s results for the years ended 31 December 2007 and 31 December 2006 and for recent information on the financial position of the Issuer.

#### **6 Conclusion**

**The Board considers the Issue to be critical to the successful continuance of the Issuer as a going concern and is, therefore, in the best interests of the Shareholders as a whole. In addition, the Board considers the Issue to be fair and reasonable as far as the Shareholders as a whole are concerned. The**



**Board notes that Qualifying Shareholders who do not participate in the Issue are at risk of dilution of their current holdings of Ordinary Shares upon any conversion of the Convertible Securities.**

Yours faithfully

Wesley R. Edens  
Chairman

## OVERVIEW OF THE OFFER

### 1 The Offer

The Issuer is inviting Qualifying Shareholders to apply, on and subject to the terms and conditions set out in this Information Memorandum and in the Application Form (the form of which is set out in the Schedule to this Information Memorandum), to subscribe for Convertible Securities at a price equal to 100 per cent. of the principal amount of the Convertible Securities, payable in full in cash by electronic bank transfer on application.

Applicants will only be able to subscribe for whole numbers of Convertible Securities (in whole multiples of €50,000 and integral multiples of €10 in excess thereof up to and including €99,990) and fractions of a Convertible Security will not be issued.

Qualifying Shareholders may apply to subscribe for any number of Convertible Securities subject to the minimum requirement of €50,000, regardless of the number of Ordinary Shares held by them on the Record Date. However, the Issuer reserves the right to decline applications in excess of any Shareholder's *pro rata* entitlement.

In the event of over-subscription of the Convertible Securities, the Board shall have the discretion to increase the principal amount of the Convertible Securities issued to more than €130,000,000 and/or to scale back applications to a minimum subscription amount of €50,000.

**Qualifying Shareholders wishing to apply for Convertible Securities under the Offer should complete and sign the accompanying Application Form in accordance with the instructions thereon (including the provision of proof of ownership) and post or (during normal business hours) to Anson Registrars Limited, PO Box 426, Anson Place, Mill Court, La Charroterie, St. Peter Port, Guernsey GY1 3WX together with payment for the full amount payable by electronic bank transfer, so as to arrive as soon as possible, but in any event not later than 3 p.m. London time on 19 June 2009, at which time the Offer will close. Application Forms received after this time may not be accepted. Copies of the Application Form are also available on request from Anson Registrars Limited at the above address or by telephone (+44 (0) 1481 711 301).**

The Convertible Securities will be issued at 100 per cent. of their principal amount.

The Issuer may issue Convertible Securities to third-party investors and may increase the size of the offering in excess of €130,000,000.

### 2 Background to and Reasons for the Offer

Full details of the background to and reasons for the Offer are set out in the Chairman's Letter. See pages 5 - 9 of this Information Memorandum.

### 3 Initial Conversion Price

The initial Conversion Price will be €0.30 per Ordinary Share and is subject to adjustment over the life of the Convertible Securities as set out in "Terms and Conditions of the Convertible Securities" herein.

#### 4 Expected Timetable of Principal Events<sup>(1)</sup>

Date for establishing initial recipients of Information Memorandum.....	5 p.m. on 27 May 2009
Distribution of Information Memorandum and Application Form to Shareholders.....	29 May 2009
Record Date for participation in the Offer .....	15 June 2009
Latest time and date for receipt of completed Application Forms and payment in full by electronic bank transfer.....	3 p.m. on 19 June 2009
Closing Date and announcement of the results of the Offer .....	25 June 2009
Certificated registered Convertible Securities despatched.....	by 10 July 2009

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Note:

(1) All references to times of day are to London time.

**All enquiries in connection with the procedure for application should be referred to Anson Registrars Limited (Tel: +44 (0) 1481 711 301).**

## SUMMARY OF THE TERMS OF THE ISSUE

The following is a summary of certain information relating to the Issue, including the terms and conditions of the Convertible Securities, and must be read in conjunction with the Information Memorandum as a whole (which includes the full terms and conditions of the Convertible Securities).

<b>Issuer</b>	Eurocastle Investment Limited.
<b>Closing Date</b>	The Convertible Securities are expected to be issued on 25 June 2009.
<b>Convertible Securities</b>	€130,000,000 20 per cent. Perpetual Subordinated Convertible Securities, convertible into fully paid Ordinary Shares.
<b>Issue Price</b>	100 per cent. of the principal amount of the Convertible Securities.
<b>The Offering</b>	<p>Qualifying Shareholders are invited, regardless of the number of Ordinary Shares held on the Record Date, to apply to subscribe for in aggregate €130,000,000 Convertible Securities at the Issue Price, payable in full in cash on application. However, the Issuer reserves the right to decline applications in excess of any Shareholder's <i>pro rata</i> entitlement.</p> <p>In the event of over-subscription of the Convertible Securities, the principal amount of the Convertible Securities offered may be increased and/or applications will be scaled back to a minimum subscription amount of €50,000.</p> <p>Fortress Funds have conditionally undertaken to subscribe for a principal amount of approximately €15,400,000.</p> <p>The Issuer may issue Convertible Securities to third-party investors and may increase the size of the offering in excess of €130,000,000.</p>
<b>Qualifying Shareholders</b>	Shareholders of the Issuer who are not US Persons and not within the US, or shareholders of the Issuer who are both (1) Qualified Institutional Buyers or Accredited Investors and (2) Qualified Purchasers or Knowledgeable Employees on the Issuer's register of members on the Record Date excluding certain Overseas Shareholders and Benefit-Plan Investors.
<b>Form and Denomination</b>	The Convertible Securities will be issued in definitive, registered form, in principal amounts of €50,000 and integral multiples of €10 in excess thereof up to and including €99,990 each.
<b>Status and Subordination</b>	<p>The Convertible Securities will be unsecured and subordinated obligations of the Issuer and will rank <i>pari passu</i> without any preference amongst themselves.</p> <p>In the event of the winding-up of the Issuer, claims of Convertible Securityholders in respect of amounts payable in respect of the Convertible Securities will rank senior to the holders of all classes of issued shares for the time being in the</p>

capital of the Issuer, but shall be subordinated to the claims of all other creditors, other than creditors whose claims rank or are expressed to rank *pari passu* with or junior to the claims of the Convertible Securityholders.

**Transferability**

The Convertible Securities will be transferable by registration on the Register.

**Transfer Restrictions**

The Securities will be subject to substantial restrictions on transfer. See “Transfer Restrictions” commencing on page 87 of this Information Memorandum.

**Interest**

Interest on the Convertible Securities will be calculated at the rate of 20 per cent. per annum on an actual/actual basis and will be due annually in arrear on 30 June in each year (each, an “Interest Payment Date”) with the first Interest Payment Date being not before 30 June 2010.

**Mandatory Interest Deferral**

Although interest will accrue from the Closing Date, the first Interest Payment Date shall be the Interest Payment Date next following the repayment in full of the Corporate Facility, or such other time as payment is permitted under the Corporate Facility (the “Interest Payment Trigger Date”), unless such interest is deferred in accordance with the interest deferral provision below.

**Optional Interest Deferral**

The Issuer may elect to defer any payment of interest, including any interest payable after the Interest Payment Trigger Date, which is otherwise scheduled to be paid on an Interest Payment Date by giving notice of such election to the Convertible Securityholders not more than 20 nor less than 10 business days prior to the relevant Interest Payment Date. Any such Deferred Interest which includes any interest deferred from the Closing Date shall itself bear interest at the rate of 20 per cent. per annum from (and including) its due date up to (but excluding) the date on which the interest is paid in full.

Deferred Interest shall be paid in cash, at the option of the Issuer, in whole or in part, at any time upon the expiry of not less than 14 days’ notice to such effect given by the Issuer to the Convertible Securityholders.

The deferral of any payment of interest shall not constitute a default for any purpose under the Convertible Securities on the part of the Issuer.

**Payment Priority**

The Issuer shall not declare or pay any distribution or dividend or make any other payment on, and will procure that no distribution or dividend or other payment is made on, the Ordinary Shares unless or until the Issuer satisfies in full all Deferred Interest.

**Final Redemption**

The Convertible Securities are perpetual and have no final maturity date.

**Redemption at the Option of the Issuer**

The Issuer may redeem the Convertible Securities at 120 per cent. of their principal amount together with accrued but unpaid interest (including any Deferred Interest), in whole but not in part, (i) at any time on or after 2 years after the Closing Date or (ii) at any time if Conversion Rights shall have been exercised and/or purchases and/or redemptions effected in respect of two thirds or more in principal amount of the Convertible Securities originally issued, in each case on giving not more than 60 nor less than 30 days' notice to the Convertible Securityholders.

The Issuer may not redeem any Convertible Securities until such time as the Corporate Facility has been repaid in full.

**Taxation**

All payments made by or on behalf of the Issuer in respect of the Convertible Securities will be made free from any restriction or condition and be made without deduction or withholding for or on account of any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of Guernsey or any political subdivision or any authority thereof or therein having power to tax, unless the Issuer reasonably believes that deduction or withholding of such taxes, duties, assessments or governmental charges is required to be made by law.

In the event that the Issuer reasonably believes that any such withholding or deduction is required to be made, all payments made by or on behalf of the Issuer in respect of the Convertible Securities will be made subject to and after deduction or withholding for or on account of such taxes, duties, assessments or governmental charges. The Issuer will not be required to pay any additional or further amounts in respect of such deduction or withholding.

The terms and conditions of the Convertible Securities require the holders of the Convertible Securities to agree to treat the Convertible Securities as equity interests for all US federal, state and local income tax purposes.

**Conversion**

Each Convertible Security shall entitle the holder (such right a "Conversion Right") to convert such Convertible Security into Ordinary Shares at any time on or after 6 months after the Closing Date.

The number of Ordinary Shares to be issued or transferred and delivered on exercise of a Conversion Right shall be determined by dividing the principal amount of a Security together with any unpaid Deferred Interest by the Conversion Price in effect on the relevant conversion date, save that the Issuer may elect to settle all or part of any Deferred Interest in cash in lieu of issuing or transferring and delivering Ordinary Shares.

Where a holder elects to convert a Convertible Security, subject

to certain exceptions, such Convertible Security will cease to bear interest from the date the Convertible Securityholder submits its Conversion Notice.

The initial “Conversion Price” per Ordinary Share will be €0.30.

The Conversion Price is subject to adjustment in certain circumstances, including in the case of the payment of a dividend by the Issuer.

**Events of Default**

Limited to the winding-up or dissolution of the Issuer.

**Governing Law**

The Convertible Securities, the Trust Deed and the Agency Agreement will be governed by English law.

**Trustee**

LaSalle Global Trust Services Limited.

**Registrar, Principal Paying, Transfer and Conversion Agent**

Anson Registrars Limited.

**Listing and Trading**

The Convertible Securities will not be listed or admitted to trading on any stock exchange. The Ordinary Shares are listed on Euronext Amsterdam and the Frankfurt Stock Exchange.

**Clearing**

The Convertible Securities will be issued in definitive certificated registered form and will not be held in any clearing system.

**Selling Restrictions**

There are restrictions on the offer, sale and delivery of the Convertible Securities, among other things, in the United States, Australia, Canada and Japan.

## RISK FACTORS

Participating Shareholders should consider carefully the risk factors described below and as set out in the Eurocastle Group's 2008 Annual Report (the "Annual Report") and its Q1 Report which are incorporated by reference into this Information Memorandum, together with all the other information set out in this Information Memorandum, before making any investment decision. Should any of the following events or circumstances occur, the Issuer's business, financial condition and results of operations could be materially affected. In such circumstances, the value of the Convertible Securities and the market price of the Ordinary Shares could decline and investors could lose all or part of the value of their investment in the Convertible Securities.

The risks set out below are the risks which the Board currently considers to be material but are not the only risks relating to the Eurocastle Group or an investment in the Convertible Securities. There may be additional material risks that the Board does not currently consider to be material or of which it is not aware.

### 1 Risks Relating to the Eurocastle Group's Business

#### **Material uncertainties exist that may cast doubt on the Eurocastle Group's ability to continue as a going concern**

The Directors of the Eurocastle Group have made an assessment of the Eurocastle Group's ability to continue as a going concern. The Directors recognise the existence of material uncertainties that may cast significant doubt upon the Eurocastle Group's ability to continue as a going concern. Many of these uncertainties are described in Note 3 to the Annual Report and referred to in its Q1 Report. However, based on the actions taken and contemplated as described in the Annual Report and referred to in its Q1 Report, the Directors have concluded that it is appropriate for the financial statements of the Eurocastle Group to be prepared on a going concern basis. That said, to the extent that the actions contemplated (principally in relation to raising further capital through the issue of the Convertible Securities) are not successfully completed, the Eurocastle Group may not have sufficient capital resources to continue as a going concern.

#### **The Corporate Facility**

On 9 May 2008, the Eurocastle Group converted its €300 million revolving credit facility into a term loan facility of €175 million and extended the maturity to 31 March 2009. In accordance with the loan agreement, €50 million was repaid on 31 October 2008.

The terms of this loan were amended in April 2009 and involved an immediate repayment of €10 million leaving the principal amount outstanding at the publication date of this Information Memorandum of €115 million. The Corporate Facility now matures on 30 June 2011 and has planned semi-annual amortisations reducing it to €95 million by 30 June 2009, to €65 million by 31 December 2009, to €45 million by 30 June 2010 and to €20 million by 31 December 2010. Any amounts raised through the Issue will be used to pay down this facility in full or in part. Further, any excess cashflows from investment property sales and operations (after allowing for capital expenditure, operating expenses and the maintenance of a minimum operating cash balance) will be used to amortise the outstanding loan balance on the quarterly interest payment dates. The Corporate Facility contains a net asset value covenant and a cashflow covenant, both of which have been renegotiated to the benefit of the Eurocastle Group. No event of default can occur upon the breach of either covenant. In addition, the Manager has agreed that the Eurocastle Group may escrow the majority of its management fee (approximately €940,000 per month) and use this retained portion to amortise the facility if semi-annual amortisation targets are not met from cashflows generated by the Eurocastle Group or where financial covenants are breached. To the extent that any fees due to the Manager are used to amortise the Corporate Loan Facility, such fees will be deferred by the Manager and will become due to the Manager



once the Corporate Facility has been repaid. To the extent the Issuer achieves its amortisation targets and passes its financial covenant tests, any escrowed fees due to the Manager will be released to the Manager.

The Issuer may not pay dividends or any amounts under the Convertible Securities while any amounts under the Corporate Facility are outstanding.

The terms of the Corporate Facility require that at least €15.4 million be raised by the Issuer by 30 June 2009. If this amount is not raised, an event of default would occur under the Corporate Facility. In addition, even if the required amount is raised, there can be no assurance that the Issuer will have sufficient capital available to satisfy its future repayment obligations under the Corporate Facility.

In addition, an event of default under any Eurocastle Group indebtedness would trigger an event of default under the Corporate Facility if such default would have a material adverse effect on the ability of the Issuer to meet its payment obligations under the Corporate Facility. While the Eurocastle Group is currently not in default of any indebtedness, there can be no assurance that events of default in relation to Eurocastle Group indebtedness will not occur in the future, thereby triggering a cross default of the Corporate Facility.

### **Fortress Funds Conditional Undertaking**

Fortress Funds have given a conditional undertaking with respect to a subscription for approximately €15.4 million in principal amount of Convertible Securities. The undertaking, given in April 2009 in connection with the refinancing of the Corporate Facility and prior to the approval by the Issuer of the terms of the Convertible Securities, is conditional, among other things, upon the terms of the Issue being satisfactory to the Fortress Funds. There can be no assurances that the terms of the Issue are or will be satisfactory to the Fortress Funds. If the Fortress Funds fail, regardless of their reasons, to subscribe for approximately €15.4 million in principal amount of Convertible Securities, a default of the Corporate Facility would likely occur.

### **The EFL Facility**

This facility (currently drawn to approximately €100 million as at 31 March 2009) was originally made available to a member of the Eurocastle Group by an entity which was part of the now insolvent Lehman Brothers group to finance the sub-participation in a real estate loan and to finance the acquisition of certain CMBS assets (which form the primary security for the EFL Facility). This facility is due to mature on 30 September 2009. The Issuer has guaranteed payment obligations under this facility of an amount up to €30 million. There can be no assurances that the lender will agree to extend this facility, that an alternative lender will be found to refinance this facility or that the value of the collateral pledged as security for the EFL Facility will be sufficient, upon sale, to repay the EFL Facility in full. There can therefore be no assurances that the Issuer will not be liable for the maximum amount under its €30 million guarantee in respect of the EFL Facility.

### **The Mars Floating Facility**

The Mars Floating Facility was due to be paid down to €200 million by 31 December 2008, with the balance due on 30 June 2009. However, since year-end, the Eurocastle Group has refinanced this facility. The amended facility matures on 31 December 2012 and has scheduled amortisation payments of €36 million, €50 million and €75 million at the end of 2009, 2010 and 2011, respectively. This facility continues to contain no loan-to-value covenants and benefits from an interest top-up guarantee of up to a maximum of €10 million from the Issuer in the event that there is insufficient net operating cashflow from the portfolio to meet current interest. The Eurocastle Group has also provided €10 million credit support in respect of the Mars Floating Facility allowing (at the Eurocastle Group's discretion) assets to be sold in aggregate up to €10 million below their respective facility-allocated loan amounts (when the Corporate Facility is repaid, this amount will increase to €30 million). The Mars Floating Facility is subject to a full cash sweep which means that any

operating cashflows, net of interest expenses, will be used to amortise the outstanding loan balance on the quarterly interest payment dates.

In consideration of the extension of this facility, the Eurocastle Group has transferred to the Mars Floating Facility lender approximately half of its equity investment in the Combined Mars Portfolios as at 31 January 2009. The Eurocastle Group's total equity investment in the Combined Mars Portfolios as at 31 March 2009 was €261.8 million as at 31 March 2009.

#### **Loan-to-value covenants**

The Eurocastle Group is currently in compliance with the two loan-to-value covenants in its real estate loan facilities. There can be no assurance that any such covenants will continue to be satisfied in the future.

Under their respective financing arrangements (as more particularly described in the Annual Report and its Q1 Report), the Eurocastle Group's Bastion and Drive property portfolios have valuation-based covenants.

With respect to the Drive property portfolio financing, German public fund legislation (to which the Drive Fund containing the Drive property portfolio is subject) requires that a fund may not have long term borrowing exceeding 50 per cent. of the value of its real estate assets. For the purposes of this regulation, the value of real estate assets (and, accordingly, the valuation covenant) is not determined with reference to the open market but rather with reference to the relevant fund manager's expert committee (*Gutachterlicher Verkehrswert*) valuation of the fund's real estate. In connection with this fund legislation, the Drive property portfolio financing contains a valuation-based covenant, requiring the maintenance of a loan-to-expert committee valuation ratio of not more than 49.5 per cent. A failure to comply would result in a mandatory prepayment obligation of a portion of the senior tranche of the financing. Complying with this covenant could restrict the ability of the Drive portfolio to service the junior portion of the financing and to distribute excess cash to other members of the Eurocastle Group or to dispose of assets. In the first year following origination of this loan, this ratio was 49.5 per cent. As at 31 March 2009, this ratio was 47.52 per cent.

The Bastion property portfolio financing contains a traditional loan-to-value covenant. There would be an event of default under the financing if the externally appraised value of the real estate being financed exceeded 85 per cent. of the outstanding principal of the loan. As at 31 March 2009, this ratio was 74.1 per cent.

#### **Eurocastle Group non-recourse indebtedness**

Aside from the Corporate Facility, the EFL Facility and the Mars Floating Facility, Eurocastle Group indebtedness is non-recourse to the Issuer. However, a default of any such non-recourse indebtedness would allow the relevant lenders, among other things, to accelerate indebtedness to which members of the Eurocastle Group are subject and to enforce security over the assets being financed by such indebtedness. There can be no assurance that, following a default of indebtedness by a member of the Eurocastle Group, there would remain any significant value in the Issuer's investment in that member of the Eurocastle Group. As a result, there is no assurance that, even though the default of Eurocastle Group non-recourse indebtedness may not result in direct financial liabilities for the Issuer, the value of the Issuer's Ordinary Shares or the Convertible Securities will not be adversely affected by the default of non-recourse indebtedness.

#### **Availability of debt finance on reasonable terms**

The property investment sector tends to be highly capital-intensive. As described above and in the Annual Report and Q1 Report, the Eurocastle Group has a number of asset-specific, non-recourse financings in addition to a general corporate facility.

The ability of the Eurocastle Group to raise funds and or renegotiate on favourable terms depends on a number of factors, including general economic, political and capital market conditions and credit availability.

Although the Eurocastle Group has historically been able to obtain financing on reasonable terms, there can be no assurance that future financing and/or renegotiation of existing terms will be available or, if it is, that it will be available on terms that the Eurocastle Group considers acceptable. In particular, should the current difficult financial market conditions persist, the Eurocastle Group may have difficulty in renewing, extending or refinancing its existing financing facilities in the future. If it is unable to do so, or as a result of the current economic climate the terms of any new facilities entered into by the Eurocastle Group are more onerous than the terms of the Eurocastle Group's existing financing facilities, this could have an adverse effect on the Eurocastle Group's business, financial condition, results of operations, future prospects or the price of the Ordinary Shares and the value of the Convertible Securities.

#### **Non-recourse borrowings are secured on the Eurocastle Group's assets**

The investment management activities of the Eurocastle Group are performed through subsidiaries of the Issuer. Certain subsidiaries act as borrower for the purposes of the financing requirements of the relevant investment activities of the Eurocastle Group. Such borrowings are often made on a secured basis, with the security being granted over the relevant property investment assets of the relevant subsidiary. Secured borrowings are generally structured on a non-recourse basis to the Issuer. Any such secured borrowings will rank ahead of the unsecured borrowings of the Eurocastle Group. There can be no assurance that the borrowings of the Issuer's subsidiaries made in the course of their investment activities, and the security granted in respect thereof, will not be substantial. If the lenders enforce their security over and/or require subsidiaries of the Eurocastle Group to sell any of their secured assets, there is a risk that the value received for such assets may be lower than the value previously attributed to the investment which could have an adverse effect on the Eurocastle Group's business, financial condition, results of operations, future prospects or the price of the Ordinary Shares and the value of the Convertible Securities.

#### **Covenants to maintain financial ratios in existing financing facilities**

The Eurocastle Group's existing financing facilities contain covenants requiring the Eurocastle Group to maintain certain specified financial ratios. There is a risk that existing financial covenants could be breached in the future, particularly covenants such as loan-to-value ratios (for example, if property valuations fall), interest cover ratios (for example, if income falls) and net worth covenants (for example, if the net worth of the Eurocastle Group falls). Breach of such covenants in the future could (unless the breaches are waived or the covenants are amended) result in the facilities being withdrawn or becoming repayable. Generally, however, the terms of the Eurocastle Group's non-recourse facilities (whose covenant ratios vary from facility to facility) permit the Eurocastle Group to remedy such a breach by setting aside additional capital. However, there can be no assurance that the Eurocastle Group would have such additional capital available to it. In certain circumstances, the Eurocastle Group could be forced to sell assets under potentially unfavourable conditions or take other steps in order to satisfy such covenants or the lenders could enforce the security that they have over such assets under the terms of the relevant facilities. No member of the Eurocastle Group is currently in breach of any material financial covenants, being covenants whose breach would lead to an event of default under the relevant financing, under those of its facilities that have such covenants. However, no assurances can be given with respect to the continuing compliance by the Eurocastle Group of material financial covenants to which it is subject.

There are also material risks to the cashflows from the Eurocastle Group's debt investment operations. In particular, since the year-end, a number of the CDOs held by the Eurocastle Group have fallen out of compliance in respect of certain tests, where compliance is a function of the default rate and credit ratings of the underlying investments. Continuing failure of those tests will lead to a substantial proportion of the net cashflows attributable to the debt business being mandatorily applied to the repayments of the debt funding those underlying investments. Furthermore, there are additional tests, which, if breached, would constitute an event of default under the terms of those borrowings and as such give a right of acceleration to the respective

lenders or bondholders (whose recourse will be limited to underlying investment collateral and not to the Eurocastle Group (with the exception of the €30 million guarantee given in respect of the EFL Facility)). In the current economic environment, where the frequency and the severity of negative ratings actions has increased significantly, the risk of a diversion of net cashflows has become very likely and the risk of an event of default which was previously remote has become a more material risk.

Any of the foregoing factors could have an adverse effect on the Eurocastle Group's business, financial condition, results of operations, future prospects or the price of the Ordinary Shares and the value of the Convertible Securities.

**Decreased investor demand may prevent the Issuer from selling assets and could increase pressure on its financial covenants**

Global market turmoil, weakening economic conditions and, in particular, the continued impact of the credit crisis have reduced values and the level of market activity across many asset classes, including commercial real estate. Some investors may be reluctant to purchase property in the current market due to the general view that property values will continue to decrease or due to the increased cost or unavailability of debt financing, low investor confidence and concern that the economic downturn will adversely affect customer business and rental growth. Even where investors wish to purchase property, they may not be able to arrange bank financing to do so. The resulting relative lack of liquidity in commercial real estate will inhibit the Issuer's ability to sell assets at all or to generate cash from sales after repayment of debt and expenses associated with any such sales. In addition, properties such as those in which the Eurocastle Group has invested and may in the future invest are relatively illiquid.

A decrease in value of the Issuer's property portfolio could, in future, increase pressure on its financial covenants and a lack of liquidity in commercial real estate may prevent the Issuer from relieving this pressure or capturing trends in customer demand and rental growth or disposing of lower growth or riskier assets. As a result, the Issuer may be unable to sell a particular property or, alternatively, might be forced to sell that property on commercially unattractive terms, which could have an adverse effect on the Eurocastle Group's business, financial condition, results of operations, future prospects or the price of the Ordinary Shares and the value of the Convertible Securities.

**The Eurocastle Group relies on certain key tenants for a significant proportion of its real estate business income**

The Eurocastle Group's top five tenants accounted for 42.7 per cent. of its passing rental income annualised as at 31 March 2009. Loss or reduction of turnover from either of these tenants (either as a result of external factors, such as the economic environment, the strategic direction of the tenants or the exercise by these tenants of their contractual right to vacate properties, or other factors, such as the Eurocastle Group's performance on contracts) could have an adverse effect on the Eurocastle Group's business, financial condition, results of operations, future prospects or the price of the Ordinary Shares and the value of the Convertible Securities.

**Changes in tax laws or their interpretation could affect the intended tax treatment for investments using Special Purpose Vehicles**

The Issuer holds its debt investments through SPVs. For tax and other reasons, the Issuer's investments in the SPVs are likely to be funded wholly or partly by way of a series of debt instruments with the equity of such SPVs held by one or more third parties. The Issuer structures its SPVs so that they are substantially exempt from income taxes in their jurisdiction of incorporation and conducts their affairs so as not to be subject to, or subject to minimal, income tax in the jurisdictions in which they operate. Further, the Issuer structures the

SPVs so that they only hold assets that are not subject to withholding taxes on distributions made by, or on realisations of, the assets.

However, tax laws may change or be subject to differing interpretations, possibly with retroactive effect, so that the tax consequences of a particular investment or SPV structure may change after the investment has been made or the SPV has been established with the result that investments held by SPVs may be required to withhold tax or the SPVs themselves may become liable to tax, in each case resulting in the Issuer's returns being reduced. The Issuer and the SPVs will be subject to such risk both in the jurisdiction of their respective incorporation and in each jurisdiction of their respective operations.

For further information on the tax treatment of the Issuer's holdings in subsidiaries that own the Eurocastle Group's real estate assets, see "Risk of adverse tax consequences by reason of having a permanent establishment" below.

#### **Risk of adverse tax consequences by reason of having a permanent establishment**

If the Issuer, its SPVs or any subsidiaries were treated as having a permanent establishment in any country in which the Eurocastle Group's income is generated, income attributable to such permanent establishment may be subject to tax on a net basis. Any such taxation might adversely affect the financial condition of the Issuer and the Eurocastle Group.

#### **Extensive borrowings may adversely affect the Eurocastle Group's return on its investments and may reduce the amount of cash available for payment of Securityholders and/or distribution to Shareholders**

The Eurocastle Group has leveraged its portfolio through borrowings, generally through the use of bank credit facilities, repurchase agreements, mortgage loans, securitisations, including the issuance of CDOs, and other borrowings. The extent of the borrowings depended on the Eurocastle Group's ability to obtain credit facilities and the lender's estimate of the stability of the portfolio's cashflow. The Issuer had a policy limiting the Eurocastle Group's overall indebtedness to 95 per cent. of the value of the Eurocastle Group's gross assets on an aggregate basis. The Eurocastle Group's return on investments and cash available for distribution to holders of the Ordinary Shares have been reduced as changes in market conditions caused the cost of these borrowings to increase relative to the income that can be derived from the Eurocastle Group's underlying assets.

The extent of the borrowings and the terms thereof will depend on the Eurocastle Group's future ability to obtain new and refinanced credit facilities and the lenders' estimate of the stability of the portfolio's cashflow as well as the level of interest rates in existence from time to time. The Issuer's cash available for distribution to Shareholders or for making interest or principal payments to holders of Convertible Securities may be reduced to the extent that future changes in market conditions, increases in interest rates and/or levels of amortisation imposed by its lenders cause the Eurocastle Group's cost of borrowing to increase relative to the income that can be derived from its portfolio of investments.

In the extreme, the use of leverage, in particular, as described in relation to the Corporate Facility, may lead to a complete loss of the value of Shareholders' investment in the Eurocastle Group.

#### **Many of the Eurocastle Group's ABS investments are in subordinated securities**

A significant portion of the Eurocastle Group's ABS investments consist of securities that are subordinated in right of payment and ranked junior to other securities that are secured by or represent ownership in the same pool of assets. In general, losses on a mortgage loan included in a securitisation will be borne first by a liquidity facility that generally ranks senior to the bond structure, if any, and then by the "first loss" subordinated securityholder. The "first loss" holder is the holder of the most junior securities, being the securities most at risk if the value of the collateral falls below the loan amount. In the event of default and the

exhaustion of any equity support, reserve fund, letter of credit and any classes of securities junior to those in which the Eurocastle Group invests, the Eurocastle Group may not be able to recover all of its investment in the securities purchased. In addition, if the underlying mortgage portfolio has been overvalued by the originator of the loan, or if the values subsequently decline, and, as a result, less collateral is available to satisfy interest and principal payments due on the related mortgage-backed securities, the securities in which the Eurocastle Group invests may effectively become the “first loss” position behind the more senior securities.

In addition, certain of the Eurocastle Group’s investments have structural features that divert payments of interest and/or principal to more senior classes when the delinquency or loss experience of the pool exceeds certain levels. As a result of these features, subordinated securities have a higher risk of loss as a result of delinquencies or losses on the underlying assets.

Subordinated securities generally do not have the right to call a default or vote on remedies following a default unless more senior securities have been paid in full. As a result, a shortfall in payments to subordinated investors in ABS will generally not result in the default being declared on the relevant transaction and the transaction will not be restructured or unwound first. Furthermore, because subordinated securities may represent a relatively small percentage of all securities secured by the same asset pool, the impact of a relatively small loss on the overall pool may be substantial on the holders of such subordinate securities. The prices of lower credit quality securities are generally less sensitive to interest rate changes than more highly rated investments, but more sensitive to adverse economic downturns or individual issuer developments. A projection of an economic downturn, for example, could cause a decline in the price of lower credit quality securities because the ability of obligors of mortgages underlying mortgage backed securities to make principal and interest payments may be impaired. In such event, existing credit support in the securitisation structure may be insufficient to protect the Eurocastle Group against loss of its principal on these securities.

### **The Eurocastle Group’s investments in mortgage loans may be subject to delinquency, foreclosure and loss**

The mortgage loans underlying the mortgage-backed securities that the Eurocastle Group invests in and the mortgage loans that the Eurocastle Group invests directly in are subject to delinquency, foreclosure and loss. Commercial mortgage loans are secured by multi-family or commercial property and are subject to risks of delinquency and foreclosure, and risks of loss that are greater than similar risks associated with loans made on the security of single-family residential property. The ability of a borrower to repay a loan secured by an income-producing property typically is dependent primarily upon the successful operation of such property rather than upon the existence of independent income or assets of the borrower. If the net operating income of the property is reduced, the borrower’s ability to repay the loan may be impaired. Net operating income of an income-producing property can be affected by, among other things, tenant mix, success of tenant businesses, property management decisions, property location and condition, competition from comparable types of properties, changes in laws that increase operating expense or limit rents that may be charged, any need to address environmental contamination at the property, the occurrence of any uninsured casualty at the property, changes in national, regional or local economic conditions and/or specific industry segments, declines in regional or local real estate values, declines in regional or local rental or occupancy rates, increases in interest rates, real estate tax rates and other operating expenses, changes in governmental rules, regulations and fiscal policies, including environmental legislation, acts of God, terrorism, social unrest and civil disturbances.

Residential mortgage loans are secured by single-family residential property and are subject to risks of delinquency and foreclosure, and risks of loss. The ability of a borrower to repay a loan secured by a residential property is dependent upon the income or assets of the borrower. A number of factors, including a

general economic downturn, acts of God, terrorism, social unrest and civil disturbances, may impair borrowers' abilities to repay their loans.

In the event of any default under a mortgage loan held directly, the Eurocastle Group is expected to bear a risk of loss of principal to the extent of any deficiency between the value of the collateral and the principal and accrued interest of the mortgage loan, which could have a material adverse effect on cashflow from operations. Foreclosure of a mortgage loan can be an expensive and lengthy process which could have a substantial negative effect on the Eurocastle Group's anticipated return on the foreclosed mortgage loan.

Residential mortgage-backed securities evidence interests in or are secured by pools of residential mortgage loans and commercial mortgage-backed securities evidence interests in or are secured by a single commercial mortgage loan or a pool of commercial mortgage loans. Accordingly, the mortgage-backed securities that the Eurocastle Group will invest in are subject to all of the risks of the underlying mortgage loans.

### **Concentration in any one industry, region or country may increase risk of defaults on debt obligations**

Whilst the Eurocastle Group intends to diversify its portfolio of debt investments, the risk that payments on the Eurocastle Group's debt investments could be adversely affected by defaults on debt obligations is likely to be increased to the extent that the Eurocastle Group's portfolio is concentrated in any one industry, region or country as a result of the increased potential for correlated defaults in respect of a single industry, region or country as a result of downturns relating generally to such industry, region or country.

### **Fluctuations and changes in interest rates may cause losses**

Interest rates are highly sensitive to many factors, including governmental monetary and tax policies, domestic and international economic and political conditions, and other factors beyond the Issuer's control. Changes in interest rates can affect the Eurocastle Group's net interest income, which is the difference between the interest income earned on interest-earning investments and the interest expense incurred on interest-bearing liabilities. Changes in the level of interest rates also can affect, among other things, the Eurocastle Group's ability to acquire loans and securities, the value of its securities, gains or losses associated with the unwind of swaps upon the sale of assets and the Eurocastle Group's ability to realise gains from the settlement of such assets.

In the event of a significant rising interest rate environment and/or economic downturn, mortgage and loan defaults may increase and result in credit losses that may be expected to affect the Eurocastle Group's liquidity and operating results adversely. Interest rates are highly sensitive to many factors, including governmental monetary and tax policies, domestic and international economic and political conditions, and other factors beyond the Eurocastle Group's control.

The Eurocastle Group's ability to execute its business strategy, particularly the growth of its investments, depends to a significant degree on its ability to obtain additional capital. The Eurocastle Group's CDO strategy is dependent on its ability to place the match-funded debt used to finance European real estate securities and other ABS investments at spreads that provide a positive arbitrage. If spreads for CDO liabilities widen, or if demand for such liabilities ceases to exist, then the Eurocastle Group's ability to execute future CDO financings will be severely restricted.

The Eurocastle Group's operating results will depend in large part on differences between the income from its assets, net of credit losses, and its financing costs (including gains or losses on swaps). The Eurocastle Group anticipates that, in most cases, for any period during which its assets are not match-funded, the income from such assets will respond more slowly to interest rate fluctuations than the cost of its borrowings. Consequently, changes in interest rates, particularly short-term interest rates, may significantly influence the Eurocastle Group's net income. Increases in these rates will tend to decrease the Eurocastle Group's net

income and market value of assets. Interest rate fluctuations may increase any losses associated with the unwinding of swaps upon the sale of assets and rate changes resulting in the Eurocastle Group's interest expense exceeding interest income are expected to result in operating losses for the Eurocastle Group.

**The value of investments is subject to changes in credit spreads**

The value of the real estate securities and other ABS will be subject to changes in credit spreads as a result of changes in interest rates and market demand. The value of these securities is dependent on the yield demanded on these securities by the market. Excessive supply of these securities or a reduced demand will generally cause the market to require a higher yield on these securities, resulting in the use of a higher, or "wider", spread over a benchmark rate to value such securities. Under such conditions, the value of the Eurocastle Group's securities portfolio would tend to decline. Conversely, if the spread used to value such securities were to decrease, or "tighten", the value of the Eurocastle Group's securities portfolio would tend to increase.

Furthermore, shifts in the market's expectations of future interest rates would also affect the yield required on the Eurocastle Group's securities and therefore their value. This would have similar effects on the Eurocastle Group's portfolio and the Eurocastle Group's financial position and operations as a change in spreads.

The Eurocastle Group's investments in mortgage loans will also be subject to changes in credit spreads. The value of the loans is expected to be dependent upon the yield demanded by the market based on their credit. The value of the Eurocastle Group's portfolio would tend to decline should the market require a higher yield on such loans, resulting in the use of a higher spread over the benchmark rate. If the value of the Eurocastle Group's mortgage loan portfolio were to decline, it could affect its ability to refinance such portfolio upon the maturity of any related financing. Any credit or spread losses incurred with respect to the Eurocastle Group's mortgage loan portfolio would affect it in the same way as similar losses on its investments falling within the Issuer's investment objectives and other ABS portfolio as described above.

**Insolvency of obligors under investments may prevent payment in full or on time**

Investments may be subject to various laws for the protection of creditors in the jurisdictions of incorporation of the obligor and, if different, the jurisdictions from which the obligor conducts its business and in which it holds its assets, which may adversely affect such obligor's ability to make payment on a full or timely basis. These insolvency considerations will differ depending on the country in which an obligor or its assets are located and may differ depending on the legal status of the obligor.

**The ability of the Eurocastle Group to sell investments and reinvest the proceeds may be restricted**

The Eurocastle Group may dispose of certain of its investments and reinvest the proceeds thereof in substitute investments subject to compliance with the Eurocastle Group's investment guidelines and certain other conditions, including the terms of CDO issuances. The earnings with respect to such substitute investments will depend, among other factors, on reinvestment rates available at the time and on the availability of investments satisfying the investment guidelines and otherwise acceptable to the Manager. The need to satisfy such guidelines and identify acceptable investments may require the Eurocastle Group to purchase substitute investments with a lower yield than those initially acquired or require that the sale proceeds be maintained temporarily in cash which may reduce the yield.

**Prepayment rates may increase, which may adversely affect the yields on investments**

The value of the Eurocastle Group's assets may be affected by prepayment rates on mortgage loans that serve as collateral for certain of the investments. Prepayment rates on mortgage loans are influenced by changes in current interest rates and a variety of economic, geographic and other factors beyond the Eurocastle Group's control, and consequently, such prepayment rates cannot be predicted with certainty. In periods of declining mortgage interest rates, prepayments on mortgage loans generally increase. If general interest rates decline as



well, the proceeds of such prepayments received during such periods are likely to be reinvested by the Eurocastle Group in assets yielding less than the yields on the assets that were prepaid. In addition, the market value of the mortgage assets may, because of the risk of prepayment, benefit less than other fixed-income securities from declines in interest rates. Conversely, in periods of rising interest rates, prepayments on mortgage loans generally decrease, in which case the Eurocastle Group would not have the prepayment proceeds available to invest in assets with higher yields. Under certain interest rate and prepayment scenarios, the Eurocastle Group may fail to recoup fully the Eurocastle Group's cost of acquisition of certain investments.

**The global economic downturn and serious dislocation of the financial markets exposes the Issuer to significant liquidity and counterparty credit risk**

The global financial system has been experiencing difficulties since August 2007. The bankruptcy filing by Lehman Brothers in September 2008 accelerated the global economic downturn that was already underway and created a serious dislocation of financial markets around the world with unprecedented levels of illiquidity. As a result, a number of the world's largest commercial banks, investment banks and insurance companies have experienced significant operational and financial difficulties. Such difficulties could inhibit the capability of a counterparty of the Issuer to honour its pre-existing lending arrangements or to provide new facilities, or the strategic refinancing of existing facilities, at a commercially reasonable rate, or at all, or to repay deposits to the Issuer and the Issuer may be unable to meet its future financial obligations (including interest payments (including those payments in respect of the Convertible Securities), loan repayments, operating expenses, dividends and repayment of the principal amount of the Convertible Securities) when they fall due or to replace funds needed to finance its operations. In addition, if a counterparty closes favourable positions on hedged transactions, the Issuer could face increased credit exposure and incur costs of rearranging the credit transactions, potentially on less favourable terms, such as an incremental change in its financing rate. Actions by counterparties who fail to fulfil their obligations to the Issuer may impact the Issuer's cashflow and liquidity, which could have an adverse effect on the Eurocastle Group's business, financial condition, results of operations, future prospects or the price of the Ordinary Shares and the value of the Convertible Securities.

**The Eurocastle Group may be subject to claims following the disposal of assets or properties**

The Eurocastle Group has an ongoing programme of planned disposals and when it disposes of investments it may be required to give representations and warranties in respect of those investments and to pay damages to the extent that any such representations or warranties are proven to be inaccurate. The Eurocastle Group may become involved in disputes or litigation concerning such representations or warranties and may be required to make payments to third parties as a result of such disputes or litigation. Any such cash outflows from the Eurocastle Group could have an adverse effect on the Eurocastle Group's business, financial condition, results of operations, future prospects or the price of the Ordinary Shares and the value of the Convertible Securities.

**Foreign investment risk and currency rate exposure**

The Issuer's accounts will be denominated in euro, while investments are likely also to be made and realised in other currencies. Changes in rates of exchange may have an adverse effect on the value, price or income of the investments in the Issuer. A change in foreign currency exchange rates may adversely impact returns on the Issuer's non-euro-denominated investments. The Issuer's principal direct non-euro currency exposure is expected to be to the UK pound sterling. Changes in the currency rates can adversely impact the fair values and earnings streams of the Issuer's holdings.

Movements in the foreign exchange rate between euro and the currency applicable to a particular Shareholder may have an impact upon such Shareholder's returns in its own currency of account.

### **Hedging transactions may limit gains or result in losses**

The Eurocastle Group intends to use derivatives for the purposes of efficient portfolio management. This strategy has certain risks, including the risk that losses on a hedge position will reduce the cash available for distribution to Shareholders and that such losses may exceed the amount invested in such instruments. The Eurocastle Group intends to use derivative instruments, including forwards, futures, swaps and options, in its risk management strategy to limit the effects of changes in interest rates and foreign exchange rate movements on its operations. A hedge may not be effective in eliminating all of the risks inherent in any particular position. The Eurocastle Group will also be exposed to the credit risk of the relevant counterparty with respect to relevant payments under derivative instruments.

## **2 Risks Relating to the Eurocastle Group's Properties**

### **Property valuation is inherently subjective and uncertain**

The valuation of property and property-related assets is inherently subjective due to the individual nature of each property. As a result, valuations are subject to a degree of uncertainty. Moreover, property valuations are made on the basis of assumptions which may not prove to be accurate. Incorrect assumptions or flawed assessments underlying the valuation reports could have an adverse effect on the Eurocastle Group's business, financial condition, results of operations, future prospects or the price of the Ordinary Shares and the value of the Convertible Securities and could potentially inhibit the Eurocastle Group's ability to realise a sale price that reflects the stated valuation. Further, if the Eurocastle Group acquires properties based on inaccurate valuations, the Eurocastle Group's net assets and results of operations may be materially adversely affected. There is no assurance that the valuations of the Eurocastle Group's properties will be reflected in the actual transaction prices, even where any such transactions occur shortly after the relevant valuation date, or that estimated yield and annual rental income will prove to be attainable.

Furthermore, the current crisis in the global financial system, including the failure or rescue of major banks and financial institutions, has created a significant degree of uncertainty in markets (including commercial real estate) across the world. In this environment, it is possible that real estate prices and value could decrease significantly or experience heightened volatility. The current lack of liquidity in the capital markets means that it may be very difficult in the short term to achieve the sale of property assets at prices reflected in the Eurocastle Group's valuations. Failure to achieve successful sales of properties in the future at an acceptable price could have an adverse effect on the Eurocastle Group's business, financial condition, results of operations, future prospects or the price of the Ordinary Shares and the value of the Convertible Securities.

### **A default by a tenant and the occurrence of void periods may adversely affect the Eurocastle Group's operating performance**

In the event of a default by a tenant or during a void period (for example, following vacation by a tenant), the Eurocastle Group will suffer a rental shortfall and incur additional expenses until the property is re-let. These expenses could include legal and surveying costs in re-letting, maintenance costs, service charges, insurances, rates and marketing costs.

### **Turnover earned from, and the value of, properties held by the Eurocastle Group may be adversely affected by a number of factors**

Turnover earned from, and the value of, properties held by the Eurocastle Group may be adversely affected by a number of factors, including:

- (a) vacancies that lead to reduced occupancy rates which would reduce the Eurocastle Group's turnover and its ability to recover certain operating costs such as service charges;

- (b) the Eurocastle Group's ability to provide adequate management, maintenance or insurance on commercial terms or at all;
- (c) the Eurocastle Group's ability to collect rent from tenants and other contractual payments under real estate outsourcing contracts, on a timely basis or at all;
- (d) tenants seeking the protection of insolvency laws which could result in delays in receipt of rental and other contractual payments, inability to collect such payments at all or the termination of a tenant's lease, all of which could hinder or delay the sale of a property;
- (e) the amount of rent and the terms on which lease renewals and new leases are agreed being less favourable than current leases;
- (f) a competitive rental market which may affect rental levels or occupancy levels at the Eurocastle Group's properties; and
- (g) changes in laws and governmental regulations in relation to real estate, including those governing permitted and planning usage, taxes and government charges. Such changes may lead to an increase in management expenses or unforeseen capital expenditure to ensure compliance. Rights related to particular properties may also be restricted by legislative actions, such as revisions to existing laws or the enactment of new laws.

Office properties and shopping centres generate a significant portion of gross rent due to the Eurocastle Group from its real estate portfolio. Other important factors include the quality and mix of a property's existing tenants, the quality of its property manager, access to public transportation and major roads and the public perception of safety in the surrounding neighbourhood. Attracting and retaining tenants in the case of an office includes the Eurocastle Group renovating premises to accommodate the type of business conducted by prospective tenants or a change in the type of business conducted by existing major tenants and, in the case of a centre, to continue to attract customers and other tenants.

Local and regional economic conditions and other related factors also affect the demand for and success of a property. For example, decisions by companies to locate an office in a given area will be influenced by factors such as labour cost and quality, and quality of life issues such as those relating to schools and cultural amenities. Equally, leases at shopping centres may contain turnover rent provisions which can result in lower income during periods of low consumer spending. Also, changes in local or regional population patterns and employment growth influence the success of both office properties and shopping centres and the ability of such properties to generate income and sustain market value. A decline in consumer spending could have a similar effect on a shopping centre. The risk of such an adverse effect is increased if revenue is dependent on a single tenant or a few large tenants or if there is a poor tenant mix.

#### **The Eurocastle Group may be subject to increases in operating and other expenses**

The Eurocastle Group's operating and other expenses could increase without a corresponding increase in revenue or tenant reimbursements of operating and other costs.

Factors which could increase operating and other expenses include:

- (a) increases in the rate of inflation;
- (b) increases in payroll expenses and energy costs;
- (c) increases in property taxes and other statutory charges;
- (d) changes in laws, regulations or government policies (including those relating to health and safety) which increase the costs of compliance with such laws, regulations or policies;

- (e) increases in insurance premiums;
- (f) unforeseen increases in the costs of maintaining properties;
- (g) defects affecting the properties which need to be rectified, leading to unforeseen capital expenditure; and
- (h) failure to perform by sub-contractors leading to unforeseen capital expenditure or increases in operating costs.

Such increases could have an adverse effect on the Eurocastle Group's business, financial condition and results of operations, future prospects or the price of the Ordinary Shares and the value of the Convertible Securities.

#### **The Eurocastle Group may suffer material losses in excess of insurance proceeds**

The Eurocastle Group's properties could suffer physical damage caused by fire or other causes, resulting in losses (including loss of rent) which may not be fully compensated by insurance. In addition, certain types of risks (such as terrorist acts) may be uninsurable or the cost of insurance may be prohibitive when compared to the risk. Should an uninsured loss or a loss in excess of insured limits occur, the Eurocastle Group could lose capital invested in the affected property as well as anticipated future turnover from that property. In addition, the Eurocastle Group could be liable to repair damage caused by uninsured risks. The Eurocastle Group would also remain liable for any debt or other financial obligation related to that property. No assurance can be given that material losses in excess of insurance proceeds will not occur in the future.

#### **Environmental liability**

The Eurocastle Group may be liable for the costs of removal, investigation or remediation of hazardous or toxic substances located on or in a property owned or leased by it. The costs of any required removal, investigation or remediation of such substances may be substantial. The presence of such substances, or the failure to remediate such substances properly, may also adversely affect the Eurocastle Group's ability to sell or lease the real estate or to borrow using the real estate as security. Laws and regulations may also impose liability for the release of certain materials into the air or water from a real estate investment, including asbestos, and such release can form the basis for liability to third persons for personal injury or other damages. Other laws and regulations can limit the development of, and impose liability for, the disturbance of areas of environmental significance, such as wetlands, or the habitats of threatened or endangered species.

#### **Geographic concentration; the economy of Germany**

All of the Eurocastle Group's direct real estate assets are located across Germany, and therefore the Eurocastle Group's performance depends on the strength of the local economies of such regions and of the German economy generally and other factors affecting German real estate values. The level of economic activity in general will affect net absorption of commercial and retail space and increases in rental rates. The economy of the regions where the properties are located may be adversely affected to a greater degree than that of other areas of Germany or elsewhere by developments affecting industries or other economic activity concentrated in each such region.

A weakening of the retail and business sectors in the relevant regions or in Germany generally may adversely affect demand for space at the properties and thus affect each such property's operation, lessen its market value and also lead to increased vacancy rates. Conversely, strong economic conditions could lead to increased building activity and increased competition for tenants. In either case, the operation of the properties could be adversely affected. Many of the Eurocastle Group's German real estate assets are let to different German retailers. Consolidation among those retailers, over which the Eurocastle Group would have

no control, may adversely affect the Eurocastle Group if it led to the closure of stores located in properties owned by the Eurocastle Group.

A decline in the commercial property market or in the financial condition of a major tenant or a general decline in the local, regional or national economy will tend to have a more immediate effect on the net operating income of properties with short-term revenue sources, such as the properties, and may lead to higher rates of delinquency or defaults under the leases at the properties.

Each of the foregoing circumstances and events may, individually or in the aggregate, adversely affect the income from and market value of the properties.

### **3 Risks Relating to the Eurocastle Group's Structure**

#### **Changes to the tax residency of the Issuer and other members of the Eurocastle Group or changes to the treatment of intra-group arrangements could adversely affect the Issuer's financial and operating results**

In order to maintain its non-UK and non-Germany tax resident status, the Issuer is required to be controlled and managed outside the United Kingdom and Germany. While the Issuer is organised in Guernsey and a majority of the Directors live outside the United Kingdom and Germany, attention must be maintained to ensure that major decisions are not made in the United Kingdom or Germany or the Issuer may lose its non-UK/non-Germany tax resident status. Were the Issuer to be considered UK or Germany tax resident, this would negatively affect its financial and operating results. This applies also to the principal subsidiaries of the Issuer.

#### **The Directors believe that the Issuer has been, and anticipate that it will continue to be, classified as a passive foreign investment company for US federal income tax purposes**

Based on the Issuer's income, assets and activities, the Directors believe that the Issuer has been, and anticipate that it will continue to be, classified as a passive foreign investment company ("PFIC") for US federal income tax purposes. Dividends paid by the Issuer would be taxed at the regular rates applicable to ordinary income, rather than the 15 per cent. maximum rate applicable to certain dividends received by an individual from a qualified foreign corporation. Unless a US investor makes an election to treat the Issuer as a "qualified electing fund" ("QEF"), with respect to its Securities, "excess distributions" to the US investor, and any gain recognised by the US investor on a disposition of its Securities, would be subject to adverse tax consequences. Among other consequences, such investor would be subject to special deferred tax and interest charges with respect to certain distributions on the Securities, any gain realised on a disposition of the Securities, and certain other events. The effect of these deferred tax and interest charges could be materially adverse to such US investor. US investors that make a QEF election will be subject to tax on their *pro rata* share of the Issuer's earnings or net capital gains, whether or not they receive any distributions from the Issuer. As a result, US investors may recognise income in a taxable year in amounts significantly greater than the distributions they receive from the Issuer. Another election generally available with respect to publicly traded PFICs, the "mark-to-market" election, will not be available with respect to the subsidiaries of the Issuer, making such an election ineffectual with respect to an investment in the Issuer's Securities. In addition, the Issuer may own or acquire interests in CDOs or other ABS investments (including subordinated notes) that are treated as equity interests in PFICs for US federal tax purposes. Whether it will be possible to make a QEF election with respect to an indirect interest in a CDO or other ABS investment owned by the Issuer that is treated as an equity interest in PFIC for US federal tax purposes will depend upon whether the issuer of that interest will provide information to the Issuer and its US Holders necessary to make a valid QEF election, which cannot be assured. Because a mark-to-market election with respect to the Issuer does not apply to any equity interests in any lower-tier PFIC the Issuer may own, a US Holder may continue to be subject to the

PFIC rules with respect to distributions to the Issuer on, and dispositions by the Issuer of, any investments held by the Issuer that are so treated. For further discussion, see “Taxation — Certain United States Federal Income Tax Considerations” in this Information Memorandum.

#### **The Issuers will not be registered under the Investment Company Act**

The Issuer is not registered as an investment company in the United States under the Investment Company Act. The Investment Company Act provides certain protections to investors and imposes certain restrictions on registered investment companies, none of which will be applicable to investors in the Issuer or to the Issuer.

#### **The US federal income tax classification of the Securities is unclear**

The determination of whether an obligation represents debt, equity, or some other instrument or interest is based on all the relevant facts and circumstances. There is no statutory, judicial or administrative authority directly addressing the characterisation of the Securities or of instruments similar to the Securities. The Issuer intends to take the position that the Securities should be treated as equity for US federal income tax purposes. However, no rulings will be sought from the IRS regarding the characterisation of the Securities. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences set forth herein.

If the Securities are classified as debt, rather than equity, for US federal income tax purposes, US investors would be subject to adverse tax consequences. Among other consequences, a US investor could not make a QEF election with respect to the Securities. As a result of the unavailability of the QEF election, and the mark-to-market election being ineffectual with respect to an investment in the Issuer’s Securities (as described above), US investors would be subject to the excess distribution rules and related adverse tax consequences. For further discussion, see “Taxation — Certain United States Federal Income Tax Considerations” in this Information Memorandum.

#### **Risk of the Eurocastle Group’s assets being deemed “plan assets” if 25 per cent. or more of any class of securities are owned by ERISA investors or if the US Department of Labor believes that the Issuer is subject to the fiduciary requirements of ERISA with respect to its assets**

Unless an exception applies, if 25 per cent. or more of the Convertible Securities, the Ordinary Shares (calculated in accordance with the US Employee Retirement Income Security Act of 1974 (“ERISA”) and including those Ordinary Shares acquired or held as the result of the Conversion of the Convertible Securities) or any other class of equity interest in the Eurocastle Group are owned, directly or indirectly, by pension plans or other Benefit Plan Investors, assets of the Eurocastle Group could be deemed to be “plan assets” subject to the constraints of ERISA. The Directors currently believe that the Issuer is not subject to the fiduciary requirements of ERISA with respect to its assets. The Issuer’s articles of incorporation provide that in the event that a purported transfer of any Ordinary Share to a Benefit Plan Investor that is subject to the Title I of ERISA or Section 4975 of the Code could result in the assets of the Issuer being treated as plan assets that are subject to Title I of ERISA or Section 4975 of the Code, any Ordinary Shares held by such a Benefit Plan Investor shall be deemed to be Shares-in-Trust, and transferred automatically and by operation of law to a Trust for the benefit of one or more designated charities. In order to continue to take all reasonable endeavours to prevent the Ordinary Shares from being treated as Plan Assets under the ERISA rules, the Issuer intends to continue to prohibit investors that are subject to Title I of ERISA or Section 4975 of the Code from acquiring any Ordinary Shares (even where those Ordinary Shares are acquired or held as the result of the Conversion of the Convertible Securities) or Convertible Securities. Accordingly, Benefit Plan Investors using assets of Plans that are subject to Title I ERISA or Section 4975 of the Code (including, as applicable, assets of an insurance company general account) will not be permitted to acquire Convertible Securities, and each investor will be required to represent, or will be deemed to have represented, as

applicable, that it is not a Benefit Plan Investor that is using assets of a Plan that is subject to ERISA or Section 4975 of the Code. Each acquirer of a Convertible Security (howsoever acquired) will be deemed to represent and warrant that it is not a Benefit Plan Investor that is using assets of a Plan that is subject to ERISA or Section 4975 of the Code.

However, while the Issuer will continue to use all reasonable endeavours to prevent the Ordinary Shares (even where those Ordinary Shares are acquired or held as the result of the Conversion of the Convertible Securities) from being treated as Plan Assets under the ERISA rules, there can be no assurance that it will be successful in doing so or that the Department of Labor will not take a different view

Prospective investors should refer to the sections headed “Certain ERISA Considerations” and “Transfer Restrictions” herein.

#### **Risk of adverse tax consequences by reason of having a permanent establishment**

If the Issuer, its SPVs or any subsidiaries were treated as having a permanent establishment in any country in which it does business, income attributable to such permanent establishment may be subject to tax on a net basis.

#### **Risk relating to the deduction of interest expenses under interest ceiling rules**

The Issuer holds significant investments in German real estate. The Issuer holds these assets either via leveraged Luxembourg companies that are subject to German taxation on real estate income but minimal taxation in their jurisdiction of incorporation (including on withholding tax on dividend payments, if any) or via leveraged German companies that are subject to German taxation. Under the German Business Tax Reform Act 2008 (*Unternehmensteuerreform 2008*) the German legislator introduced the so-called interest ceiling rules (*Zinsschranke*). Under these rules the deduction of net interest expenses (on any kind of financing) of a business that is subject to German taxation is limited to 30% of the respective businesses tax EBITDA, unless certain exemptions apply. Net interest expenses exceeding the 30% tax EBITDA limitation are non-deductible for German tax purposes but can be carried forward and deducted in future years (subject to the same limitations under the interest ceiling rules and the German change of control rules). The relevant exemptions from the 30% limitation are (i) the EUR 1 million threshold (*EUR 1 Million Freigrenze*) and (ii) the so-called equity-ratio escape clause (*Eigenkapitalvergleich*). The qualification for the EUR 1 million threshold requires that the net interest expenses of a business are below EUR 1 million p.a. (there are currently discussions as to increase threshold from EUR 1 million to EUR 3 million, however it is uncertain whether this proposal will be enacted by the German legislator). Under the equity-ratio escape clause the relevant business must in general furnish evidence to the tax authorities that the equity ratio (i.e. the ratio of equity compared to the total balance sheet assets) of the business at the end of the preceding business year is equal to or higher than the group’s (consolidated) equity-ratio (a shortfall of 1% is irrelevant). Certain requirements must be satisfied in order for this exemption to apply. The Issuer intends to fulfil the requirements for the exemptions from the interest ceiling rules. However, since currently no clear guidance of the tax authorities as regards the fulfilment of the relevant requirements exists, it cannot be excluded that the 30% EBITDA limitation applies. This could also lead to an increase of the Eurocastle Group’s tax burden and thus impact the Eurocastle Group’s after tax position and financial condition.

#### **The Eurocastle Group is subject to various laws, regulations, administrative actions and policies. Any significant regulatory or legal developments could have an effect on how the Eurocastle Group conducts its business and on its results of operations and financial condition.**

The Eurocastle Group is subject to various laws, regulations, administrative actions and policies in each location in which it operates. All of these are subject to change, particularly in the current market environment. Any future changes to such laws, regulations, administrative actions or policies may mean that

the Eurocastle Group faces greater regulation and oversight in the countries in which it operates, compliance with which, may have an adverse impact on the Eurocastle Group's business and the value of its assets.

**The Eurocastle Group is exposed to the risk of changes in tax legislation and its interpretation and to increases in the rate of taxes in the jurisdictions in which it operates.**

The Eurocastle Group's activities are subject to tax at various rates around the world computed in accordance with local legislation and practice. Action by governments to increase tax rates or to impose additional taxes would reduce the Eurocastle Group's profitability. Revisions to tax legislation or to its interpretation might also affect the Eurocastle Group's results in the future.

#### **4 Risks Relating to the Manager**

**The Eurocastle Group's performance is dependent on the Manager, and the Issuer may not find a suitable replacement if the Manager terminates the Management Agreement**

The Eurocastle Group is reliant on the Manager, who has significant discretion as to the implementation of the Eurocastle Group's operating policies and strategies. The Eurocastle Group is subject to the risk that the Manager will terminate the Management Agreement and that no suitable replacement will be found. In addition, the Directors believe that the Eurocastle Group's success depends to a significant extent upon the experience of the Manager's executive officers, whose continued service is not guaranteed. The departure of a key executive of the Manager may have an adverse effect on the performance of the Eurocastle Group.

**There are conflicts of interest in the Eurocastle Group's relationship with the Manager**

The Manager or its affiliates manage and invest in other investment vehicles which have investment objectives which overlap with those of the Eurocastle Group, and some of the members of the Board of Directors also serve as officers and/or directors of these other entities. For example, the Manager and its affiliates may have investment in and/or earn fees from such other investment vehicles which are larger than their economic interests in the Eurocastle Group and may therefore have an incentive to allocate investments to such other investment vehicles. These relationships may lead to conflicts of interest. Certain investments appropriate for the Eurocastle Group may also be appropriate for one or more of these other investment vehicles. Accordingly, it is possible that the Eurocastle Group will not have the opportunity to participate in investments made by such other investment vehicles which fall within the Eurocastle Group's investment objectives. When it is determined that it would be appropriate for the Eurocastle Group and one or more other investment vehicles managed by the Manager or its affiliates to participate in the same investment opportunity, the Manager will seek to allocate participation levels on an appropriate basis, taking into account such factors as the relative amounts of capital available for new investments, relative exposure to market trends and the size, liquidity, financeability and anticipated term of the proposed investment. The Manager may also engage in additional real estate-related management and investment opportunities in the future which may also compete with the Eurocastle Group for investments.

While the Manager does not currently manage any investment vehicle whose core business competes directly with the Eurocastle Group and while the Management Agreement prevents the Manager from raising or sponsoring a vehicle whose investment policies, guidelines or plans target, as its primary investment category, investment in credit-sensitive European real estate-related securities, the Manager is otherwise not limited or restricted from engaging in any business or managing any other vehicle that invests in investments falling within the Issuer's investment objectives.

The ability of the Manager and its officers and employees to engage in other business activities will reduce the time the Manager spends managing the Eurocastle Group. The Eurocastle Group may engage in a material



transaction with the Manager or another entity managed by the Manager provided the transaction is on arm's length commercial terms.

The management compensation structure that the Issuer has agreed to with its Manager may encourage the Manager to invest in high-risk investments. In addition to its management fee, the Manager is entitled to receive incentive compensation based in part upon the Issuer's funds from operation as described in the Annual Report ("FFO"). In evaluating investments and other management strategies, the opportunity to earn incentive compensation based on FFO may lead the Manager to place undue emphasis on the maximisation of FFO at the expense of other criteria, such as preservation of capital, in order to achieve higher incentive compensation. Investments with higher yield potential are generally riskier or more speculative.

The Manager also manages Fortress Funds which hold 12.35 per cent. of the Ordinary Shares and have given a conditional undertaking to subscribe for approximately €15.4 million in principal amount of the Convertible Securities as well as certain of Fortress Funds' affiliates. In acting for Fortress Funds and their affiliates, the Manager must act in the best interests of those Fortress Funds. There can be no assurances that the interests of the Fortress Funds and their affiliates will be aligned with the interest of other Convertible Securityholders.

#### **The Management Agreement may be difficult and costly to terminate**

Termination of the Management Agreement may be difficult and costly. The term of the Management Agreement is ten years from 13 August 2003, subject to automatic renewal: (i) on the tenth anniversary of its commencement; and (ii) on each three-year anniversary of such date, for an additional three-year period unless a majority of the Shareholders by vote agree that there has been unsatisfactory performance by the Manager that is materially detrimental to the Issuer. Unless terminated for cause, and even if terminated on an anniversary date, the Manager must be paid a termination fee equal to the amount of management fee incurred by the Manager during the 12-month period preceding such termination. In addition, following any termination of the Management Agreement, unless the Issuer, either at the request of the Manager or at its own volition, purchases the Manager's right to receive incentive compensation at its fair market value (determined by independent appraisal to be conducted by an appraisal firm recognised in the United States, and mutually agreed upon by the Issuer and the Manager), the Issuer must continue to pay the incentive compensation to the Manager following termination or expiration of the Management Agreement which payments could continue for an indefinite period of time. These provisions may increase the effective cost to the Issuer of terminating the Management Agreement.

#### **Broad investment guidelines provide the Manager with a wide range of potential investments, each of which the Directors will not specifically review**

The Manager is authorised to follow very broad investment guidelines. The Board of Directors will periodically review the Issuer's investment guidelines and the Eurocastle Group's investments. However, the Board of Directors does not review each proposed investment. Transactions entered into by the Manager may be difficult or impossible to unwind by the time they are reviewed by the Board of Directors.

## **5 Risks Relating to the Issue**

#### **Convertible Securities may not be a suitable investment for all investors**

Each potential investor in the Convertible Securities must determine the suitability of that investment in light of its own circumstances. In particular, each potential investor should:

- (a) have sufficient knowledge and experience to make a meaningful evaluation of the Convertible Securities, the merits and risks of investing in the Convertible Securities and the information contained in this Information Memorandum;

- (b) have access to, and knowledge of, appropriate analytical tools to evaluate, in the context of its particular financial situation, an investment in the Convertible Securities and the impact such investment will have on its overall investment portfolio;
- (c) understand thoroughly the terms of the Convertible Securities; and
- (d) be able to evaluate (either alone or with the help of a financial adviser) possible scenarios for economic, interest rate and other factors that may affect its investment and its ability to bear the applicable risks.

**Fortress Funds may have significant rights as holders of the Convertible Securities or as significant Shareholders**

Fortress Funds have agreed with the Issuer that, in addition to holding 12.35 per cent. of the Issued Ordinary Share Capital, they will subscribe for €15.4 million in principal amount of the Convertible Securities. In addition, if Fortress Funds are the only or the majority subscribers for the Convertible Securities, Fortress Funds may have significant rights as holders of a majority of the Convertible Securities. For example, the Trustee shall call an Event of Default under the Convertible Securities if it is so directed by holders of one-quarter in principal amount of the Convertible Securities then outstanding. Furthermore, a resolution in writing signed by or on behalf of the holders of not less than two-thirds in principal amount of Convertible Securities outstanding shall for all purposes be as valid and effective as an extraordinary resolution passed at a meeting of holders of Convertible Securities duly convened and held. In such circumstances, for so long as Fortress Funds hold and do not convert their Convertible Securities, they will have the power to agree with the Issuer any changes to the terms and conditions of the Convertible Securities, without the requirement to call a meeting of holders of the Convertible Securities. Other holders of the Convertible Securities would be bound by any such changes agreed to by the Issuer, on the one hand, and by Fortress Funds on the other hand. As major Convertible Securityholders, the Fortress Shareholders' interests may not always be aligned with those of other holders of Convertible Securities.

In addition, if Fortress Funds are the only or the majority subscribers for the Convertible Securities, upon a conversion of those Convertible Securities, Fortress Funds, together with other Fortress Shareholders and their affiliates, may have significant holdings of the then Issued Ordinary Share Capital. Such a holding could entitle Fortress Funds, together with other Fortress Shareholders and their affiliates, to control certain shareholder decisions. As significant holders of the Issued Ordinary Share Capital, the Fortress Shareholders' interests may not always be aligned with those of other holders of Issued Ordinary Share Capital.

**The Issuer will not make any interest payments in respect of the Convertible Securities until the Corporate Facility has been repaid in full and may, from time to time, defer interest payments on the Convertible Securities**

The Issuer will not make any interest payments in respect of the Convertible Securities until the Corporate Facility has been repaid in full, or such other time as permitted by the Corporate Facility. Furthermore, the Issuer may, from time to time, elect to defer any payment of interest which is otherwise scheduled to be paid on an Interest Payment Date by giving notice of such election to the holders of Convertible Securities.

There is a risk that holders of the Convertible Securities will not be paid interest for a significant period of time. The deferral of any payment of interest by the Issuer in accordance with the terms and conditions of the Convertible Securities will not constitute an Event of Default under the Convertible Securities.

**The Convertible Securities may be redeemed at any time on or after 2 years after the Closing Date at the option of the Issuer**

The terms and conditions of the Convertible Securities provide that the Convertible Securities are redeemable at the Issuer's option at any time on or after 2 years after the Closing Date at a premium of 120 per cent. of their principal amount. Securityholders not exercising their conversion rights prior to any such redemption will lose their right to convert into Ordinary Shares. In addition, an investor may not be able to reinvest the redemption proceeds in a comparable security at an effective interest rate at the same level as that of the Convertible Securities.

**The Convertible Securities are perpetual securities**

The Issuer is under no obligation to redeem the Convertible Securities at any time and the Convertible Securityholders have no right to call for their redemption.

**The obligations of the Issuer under the Convertible Securities are subordinated**

The obligations of the Issuer under the Convertible Securities will constitute unsecured and subordinated obligations of the Issuer. In the event of the winding-up of the Issuer, the rights of the Convertible Securityholders to receive payments in respect of the Convertible Securities will rank senior to the holders of all classes of issued shares in the capital of the Issuer, but junior to the claims of all other creditors (as described in Condition 3 of the terms and conditions of the Convertible Securities). There is a real risk that an investor in the Convertible Securities will lose all or some of its investment should the Issuer become insolvent.

**No limitation on issuing senior or *pari passu* securities**

There is no restriction on the amount of securities or other liabilities which the Issuer may issue or incur and which rank senior to, or *pari passu* with, the Convertible Securities. The issue of any such securities or the incurrence of any such other liabilities may reduce the amount (if any) recoverable by Convertible Securities on a winding-up of the Issuer and/or may increase the likelihood of a deferral of interest payments under the Convertible Securities.

**Limited Events of Default and Remedy for Event or Default**

The only Event of Default applicable to the Convertible Securities is the winding-up or dissolution of the Issuer. The only remedy against the Issuer available to the Trustee or (where the Trustee has failed to proceed against the Issuer as provided in the terms and conditions of the Convertible Securities) any Convertible Securityholder for recovery of amounts in respect of the Convertible Securities following the occurrence of an Event of Default under the Convertible Securities will be proving in such winding-up and/or claiming in the liquidation of the Issuer in respect of any payment obligations of the Issuer arising from the Convertible Securities or under the Trust Deed.

**Holders of the Convertible Securities have no voting rights in respect of the Ordinary Shares**

Prior to conversion, Convertible Securityholders have no shareholder rights, including but not limited to voting rights.

**Holders of Convertible Securities have limited anti-dilution protection**

The Conversion Price at which the Convertible Securities may be converted into Ordinary Shares will be adjusted in certain circumstances when events occur affecting the Ordinary Shares, but only in the situations and only to the extent provided in the terms and conditions of the Convertible Securities. There is no requirement that there should be an adjustment for every corporate or other event that may affect the value of the Ordinary Shares and the Issuer has discretion in relation to the determination of certain adjustment events.

Events in respect of which no adjustment is made may adversely affect the value of the Ordinary Shares and, therefore, adversely affect the value of the Convertible Securities.

### **Future Convertible Security issues could dilute the interests of Convertible Securityholders and Shareholders**

The Issuer may issue more than the targeted €130 million Convertible Securities in this Issue and, in the future, issue additional Convertible Securities in subsequent offerings. The Issuer is not required to offer any such Convertible Securities to existing Convertible Securityholders or Shareholders on a pre-emptive basis. Therefore, the interests of Convertible Securityholders or Shareholders are not protected and may suffer considerable dilution in the future to the extent of any further issues. In addition, further offerings may be priced in such a way as to cause the price of the Convertible Securities or the market price of Ordinary Shares to decline as a result.

### **Modification, waivers and substitution**

The terms and conditions of the Convertible Securities contain provisions for calling meetings of holders of Convertible Securities to consider matters affecting their interests generally. These provisions permit defined majorities to bind all holders of Convertible Securities, including holders of Convertible Securities who did not attend and vote at the relevant meeting and holders of Convertible Securities who voted in a manner contrary to the majority. In addition, an Extraordinary Resolution in writing signed by or on behalf of the holders of not less than two-thirds of the aggregate principal amount of Convertible Securities outstanding shall for all purposes be as valid and effective as an Extraordinary Resolution passed at a meeting of holders of Convertible Securities duly convened and held.

The terms and conditions of the Convertible Securities also provide that the Trustee may, without the consent of holders of Convertible Securities, subject as provided in the terms and conditions of the Convertible Securities and the Trust Deed, agree to (i) any modification of any of the provisions of the Convertible Securities which in the Trustee's opinion is of a formal, minor or technical nature or is made to correct a manifest error or to comply with mandatory provisions of law, and (ii) any other modification to the Convertible Securities (except as mentioned in the Trust Deed), and any waiver or authorisation of any breach or proposed breach, of any of the provisions of the Convertible Securities which is, in the opinion of the Trustee, not materially prejudicial to the interests of the holders of Convertible Securities or (iii) the substitution of any Subsidiary of the Issuer as principal debtor under any Convertible Securities in place of the Issuer, in certain circumstances and provided that, in the opinion of the Trustee, such substitution is not materially prejudicial to the interests of the holders of the Convertible Securities. Any such modification, authorisation or waiver shall be binding on the holders of Convertible Securities.

It is conceivable, depending on the take-up of the Issue, that the Fortress Funds and affiliates subscribe for a holding of the Convertible Securities, sufficient to give them negative control over the rights of the Convertible Securityholders. There can be no assurances that the interests of the Fortress Funds and their affiliates will be aligned with the interest of other Convertible Securityholders.

### **The Directors of the Issuer have the right to amend the procedures in relation to conversion of the Convertible Securities**

The Issuer may, without the consent of Convertible Securityholders or the Trustee, amend the conversion procedures applicable to the Convertible Securities if such amendment facilitates the listing of Ordinary Shares issued upon conversion of the Convertible Securities without unreasonable burden (in the opinion of the Directors of the Issuer) on the Issuer. Such amendment could, for example, limit the periods in each year during which the Conversion Right may be exercised.

**No tax gross-up**

The Issuer is not obliged under the terms and conditions of the Convertible Securities to make any additional payments to holders of Convertible Securities in the event it reasonably believes that payments by or on behalf of the Issuer in respect of the Convertible Securities are subject to withholding or deduction for taxation as required by law. The holders of Convertible Securities do not have the right to require redemption of the Convertible Securities in the event of such deduction or withholding being required.

**No active trading market for the Convertible Securities**

The Convertible Securities are new securities which are unlisted, which may not be widely distributed and for which there is no active trading market. Accordingly, they are illiquid investments.

**The Convertible Securities are subject to restrictions on transfers**

The Convertible Securities have not been registered in the United States under the Securities Act or under any other applicable securities law and are subject to restrictions on transfer contained in such laws and as necessary to comply with in the ERISA.

There are additional restrictions on the resale of Convertible Securities by holders who are located in the United States or who are US Persons and on the resale of Securities by any holders to any person who is located in the United States or is a US Person. These restrictions will make it more difficult to resell the Securities in many instances, and this could have an adverse impact on the market value of the Securities. Prospective investors should refer to the section headed “Transfer Restrictions” commencing on page 87 of this Information Memorandum.

**Holders of Convertible Securities will bear the risk of fluctuation in the price of the Ordinary Shares**

The price of the Convertible Securities may be affected by fluctuations in the market price of the Ordinary Shares and it is impossible to predict whether the price of the Ordinary Shares will rise or fall. Trading prices of the Ordinary Shares will be influenced by, among other things, the financial position of the Issuer, its results of operations and political, economic, financial and other factors (including the factors described in this Information Memorandum). Any decline in the price of the Ordinary Shares may have an adverse effect on the price of the Convertible Securities.

In addition, because there will be a delay between when Conversion Rights are exercised and when Ordinary Shares are delivered, the value of the Ordinary Shares to be delivered may vary substantially between the date on which conversion rights are exercised and the date on which such Ordinary Shares are delivered.

Future issues or sales of the Ordinary Shares may significantly affect the trading price of the Convertible Securities or the Ordinary Shares. The future issue of Ordinary Shares by the Issuer or the disposal of Ordinary Shares by the Fortress Shareholders or any other significant Shareholder of the Issuer or the perception that such issues or sales may occur may significantly affect the price of the Convertible Securities and the Ordinary Shares. There can be no assurance that the Issuer will not issue Ordinary Shares or that any such substantial Shareholder will not dispose of, encumber or pledge its Ordinary Shares or related securities.

**Shareholders may not be entitled to the takeover offer protections provided by the City Code on Takeovers and Mergers**

The City Code on Takeovers and Mergers (the “City Code”) applies to offers for all public companies considered by the Takeover Panel to be resident in the United Kingdom, the Channel Islands (which includes Guernsey) or the Isle of Man.

However, the Takeover Panel will normally consider a company resident in the United Kingdom, the Channel Islands or the Isle of Man only if it is incorporated in one of those jurisdictions and has its place of central management in one of those jurisdictions.

The Takeover Panel may not regard the Issuer as having its place of central management in the United Kingdom, the Channel Islands or the Isle of Man, in which case the Takeover Panel may decline to apply the City Code to the Issuer and the holders of Ordinary Shares issued on conversion will not receive the benefit of the takeover offer protections provided by the City Code.

The Dutch takeover rules, as amended, will apply to the Issuer.

**Future Ordinary Share issues could dilute the interests of Shareholders and lower the price of Ordinary Shares issued on any conversion**

The Issuer may in the future issue additional Ordinary Shares in subsequent public offerings or private placements. The Issuer is not required under Guernsey law to offer any such Ordinary Shares to existing Shareholders on a pre-emptive basis. Therefore, it may not be possible for Convertible Securityholders or existing Shareholders to participate in such future Ordinary Share issues, which may dilute the existing Shareholders' interests in the Issuer. In addition, the issue of additional Ordinary Shares by the Issuer, or the possibility of such issue, may cause the market price of Ordinary Shares issued on any conversion to decline.

**There is no guarantee of a liquid market for Ordinary Shares issued on any conversion**

There can be no guarantee that a trading market will exist for Ordinary Shares issued on conversion of the Convertible Securities, or how liquid that market will remain. If an active and liquid trading market is not sustained, investors may have difficulty selling their Ordinary Shares.

## FORM OF TERMS AND CONDITIONS OF THE CONVERTIBLE SECURITIES

*The following are, subject to completion of the Offer and issue of the Convertible Securities, the terms and conditions of the Convertible Securities and any changes made by the Directors, as so authorised. The dates below may be subject to change if the expected timetable of the Offer changes.*

*The terms and conditions of the Convertible Securities require the holders of the Convertible Securities to agree to treat the Convertible Securities as equity interests for all US federal, state and local income tax purposes.*

The issue of the € 20 per cent. Perpetual Subordinated Convertible Securities (the “Convertible Securities”, which expression shall, unless otherwise indicated, include any Further Convertible Securities) was (save in respect of any Further Convertible Securities) authorised by a resolution of a committee of independent directors of Eurocastle Investment Limited (the “Issuer”) passed on 2009. The Convertible Securities are constituted by a trust deed dated 2009 (the “Trust Deed”) between the Issuer and LaSalle Global Trust Services Limited (the “Trustee”, which expression shall include all persons for the time being appointed as the trustee or trustees under the Trust Deed) as trustee for the holders (as defined below) of the Convertible Securities. The statements set out in these Terms and Conditions (the “Conditions”) are summaries of, and are subject to, the detailed provisions of the Trust Deed, which includes the form of the Convertible Securities. The Convertible Securityholders (as defined below) are entitled to the benefit of, and are bound by, and are deemed to have notice of, all the provisions of the Trust Deed and those provisions applicable to them which are contained in the Paying, Transfer and Conversion Agency Agreement dated 2009 (the “Agency Agreement”) relating to the Convertible Securities between the Issuer, the Trustee and Anson Registrars Limited (in such capacity the “Principal Paying, Transfer and Conversion Agent”, which expression shall include any successor as Principal Paying, Transfer and Conversion Agent under the Agency Agreement), the Paying, Transfer and Conversion Agents for the time being (such persons, together with the Principal Paying, Transfer and Conversion Agent, being referred to below as the “Paying, Transfer and Conversion Agents”, which expression shall include their successors as Paying, Transfer and Conversion Agents under the Agency Agreement) and Anson Registrars Limited in its capacity as registrar (the “Registrar”, which expression shall include any successor as registrar under the Agency Agreement). Copies of the Trust Deed and the Agency Agreement are available for inspection at the office of the Trustee at 5 Canada Square, London E14 5AQ and at the specified offices of the Paying, Transfer and Conversion Agents and the Registrar.

Capitalised terms used but not defined in these Conditions shall have the meanings attributed to them in the Trust Deed unless the context otherwise requires or unless otherwise stated.

### **1 Form, Denomination and Title**

#### *(a) Form and Denomination*

The Convertible Securities are in definitive, registered form, serially numbered, in principal amounts of €50,000 and integral multiples of €10 in excess thereof up to and including €99,990 each (“authorised denominations”). No definitive Convertible Securities will be issued with a denomination above €99,990.

#### *(b) Title*

Title to the Convertible Securities will pass by transfer and registration as described in Condition 4. The holder (as defined below) of any Convertible Security will (except as otherwise required by law or as ordered by a court of competent jurisdiction) be treated as its absolute owner for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any interest in it or its

theft or loss (or that of the related certificate, as applicable) or anything written on it or the certificate representing it (other than a duly executed transfer thereof) and no person will be liable for so treating the holder.

## **2 Status**

The Convertible Securities constitute direct, unsecured and subordinated obligations of the Issuer ranking *pari passu* and rateably, without any preference among themselves. The rights and claims of the Convertible Securityholders are subordinated as provided in Condition 3.

## **3 Subordination**

### *(a) Ranking of claims*

In the event of the winding-up of the Issuer, the rights of the holders of the Convertible Securities shall rank ahead of those persons whose claims are in respect of any class of share capital of the Issuer, but shall be subordinated to the claims of all other creditors of the Issuer, other than creditors whose claims rank or are expressed to rank *pari passu* with or junior to the claims of the Convertible Securityholders.

### *(b) Set-off*

Subject to applicable law, no Convertible Securityholder may exercise, claim or plead any right of set-off, compensation or retention in respect of any amount owed to it by the Issuer in respect of, or arising from, the Convertible Securities and each Convertible Securityholder shall, by virtue of his holding of any Convertible Security, be deemed to have waived all such rights of set-off, compensation or retention. The Trustee shall, on behalf of such Convertible Securityholders, be deemed to have waived any such right of set-off, compensation or retention. Notwithstanding the preceding sentence, if any of the amounts owing to any Convertible Securityholder by the Issuer in respect of, or arising from, the Convertible Securityholder is discharged by set-off, such Convertible Securityholder shall, subject to applicable law, immediately pay an amount equal to the amount of such discharge to the Issuer (or, in the event of its winding-up, the liquidator of the Issuer) and, until such time as payment is made, shall hold an amount equal to such amount in trust for the Issuer (or the liquidator of the Issuer) and accordingly any such discharge shall be deemed not to have taken place.

## **4 Registration and Transfer of Convertible Securities**

### *(a) Registration*

The Issuer will cause a register (the "Register") to be kept at all times at the specified office of the Registrar outside the United Kingdom on which will be entered the names and addresses of the holders of the Convertible Securities and the particulars of the Convertible Securities held by them and of all transfers, redemptions and conversions of Convertible Securities.

### *(b) Transfer*

Convertible Securities may, subject to the terms of the Agency Agreement and to Conditions 4(c) and 4(d), be transferred in whole or in part in an authorised denomination (subject to a minimum denomination of €50,000) by lodging the relevant Convertible Security (with the form of application for transfer in respect thereof duly executed and duly stamped where applicable) at the specified office of the Registrar or any Paying, Transfer and Conversion Agent.



No transfer of a Convertible Security will be valid unless and until entered on the Register. A Convertible Security may be registered only in the name of, and transferred only to, a named person (or persons, not exceeding four in number).

The Registrar will within seven business days (in the place of the specified office of the Registrar) of any duly made application for the transfer of a Convertible Security, register the relevant transfer and deliver a new Convertible Security to the transferee (and, in the case of a transfer of part only of a Convertible Security, deliver a Convertible Security for the untransferred balance to the transferor) at the specified office of the Registrar or (at the risk and, if mailed at the request of the transferee or, as the case may be, the transferor otherwise than by ordinary mail, at the expense of the transferee or, as the case may be, the transferor) mail the Convertible Security by uninsured mail to such address as the transferee and/or, as the case may be, the transferor may request.

(c) *Formalities Free of Charge*

Such transfer will be effected without charge subject to (i) the person making such application for transfer paying or procuring the payment of any taxes, duties and other governmental charges in connection therewith, (ii) the Registrar being satisfied with the documents of title and/or identity of the person making the application and (iii) such reasonable regulations as the Issuer may from time to time agree with the Registrar and the Trustee (and as initially set out in the Agency Agreement).

(d) *Closed Periods*

Neither the Issuer nor the Registrar will be required to register the transfer of any Convertible Security (or part thereof) (i) during the period of 15 days ending on and including the day immediately prior to any date fixed for redemption of the Convertible Securities pursuant to Condition 7(b)(ii) in respect of which a Conversion Notice has been delivered in accordance with Condition 6(b); or (iii) during the period of 15 days ending on (and including) any Record Date in respect of any payment of interest on the Convertible Securities.

## **5 Interest**

(a) *Interest Rate*

The Convertible Securities bear interest from (and including) the Closing Date at the rate of 20 per cent. per annum calculated by reference to the principal amount thereof.

The amount of interest payable in respect of any period which is shorter than an Interest Period shall be calculated on the basis of the number of days in the relevant period from (and including) the first day of such period to (but excluding) the last day of such period divided by the number of days from (and including) the immediately preceding Interest Payment Date (or, if none, the Closing Date) to (but excluding) the next Interest Payment Date.

(b) *Mandatory Interest Deferral*

Interest on the Convertible Securities will be due annually in arrear on 30 June in each year (each an "Interest Payment Date"), with the first Interest Payment Date being not before 30 June 2010. Prior to the Interest Payment Trigger Date, any interest accrued up to and due on each Interest Payment Date shall be deferred. Any such deferred interest shall itself bear interest at the rate of 20 per cent. per annum from (and including) its due date up to (but excluding) the date on which such deferred interest is paid in full.

Subject to deferral as set out in Condition 5(c) below and save where the Issuer has made a Deferred Interest Payment Election pursuant to Condition 6(i) following an exercise of Conversion Rights, no interest (including any deferred interest) will be payable until the Interest Payment Trigger Date.

The Issuer shall notify the Convertible Securityholders in accordance with Condition 17, the Trustee and the Principal Paying, Transfer and Conversion Agent promptly of repayment in full of the Corporate Facility or if payment of interest in respect of the Convertible Securities is otherwise permitted under the Corporate Facility.

*(c) Optional Interest Deferral*

The Issuer may elect to defer any payment of interest, including any interest payable on the Interest Payment Trigger Date, which is otherwise scheduled to be paid on an Interest Payment Date by giving notice of such election to the Convertible Securityholders (in accordance with Condition 17), the Trustee and the Principal Paying, Transfer and Conversion Agent not more than 20 nor less than 10 business days prior to the relevant Interest Payment Date. Any such interest deferred pursuant to this Condition 5(c) shall itself bear interest at rate of 20 per cent. per annum from (and including) its due date up to (but excluding) the date on which the interest is paid in full.

Such Deferred Interest pursuant to this Condition 5(c) may be satisfied at the option of the Issuer in whole or in part at any time upon the expiry of not less than 14 days' notice (the "Optional Deferred Interest Settlement Date") to such effect given by the Issuer to the Convertible Securityholders (in accordance with Condition 17), the Trustee and the Principal Paying, Transfer and Conversion Agent.

If, on any Interest Payment Date, payment of all interest, including any interest accrued to the Interest Payment Trigger Date, scheduled to be made on such date is not made in full by reason of this Condition 5(c), the Issuer shall not declare or pay any Dividend or make any other payment on, and will procure that no Dividend or other payment is made on, the Ordinary Shares unless or until the Issuer satisfies in full all Deferred Interest.

Notwithstanding any other provision in these Conditions or the Trust Deed, the deferral of any payment of interest by virtue of this Condition 5(c) shall not constitute a default for any purpose (including, without limitation, pursuant to Condition 10) on the part of the Issuer.

*(d) Accrual of Interest*

Each Convertible Security will cease to bear interest (i) where the Conversion Right shall have been exercised by a Convertible Securityholder, from the date of delivery of the relevant Convertible Securities and Conversion Notice (subject as provided in Condition 6(j)) or (ii) where such Convertible Security is redeemed or repaid pursuant to Condition 7 or Condition 10, from the due date for redemption or repayment thereof unless, upon due presentation thereof, payment of principal is improperly withheld or refused, in which event interest will continue to accrue at the rate specified in Condition 5(a) (both before and after judgment, with such additional interest being compounded at the end of every 12 months after the due date for redemption or repayment thereof) until whichever is the earlier of (a) the day on which all sums due in respect of such Convertible Security up to that day are received by or on behalf of the relevant holder, and (b) the day seven days after the Trustee or the Principal Paying, Transfer and Conversion Agent has notified Convertible Securityholders of receipt of all sums due in respect of all the Convertible Securities up to that seventh day (except to the extent that there is failure in the subsequent payment to the relevant holders under these Conditions).

## 6 Conversion of Convertible Securities

### (a) *Conversion Right, Conversion Price, Conversion Period and Conversion Procedures Amendment*

#### **Conversion Right and Conversion Price**

Subject to, and as provided in, these Conditions, each Convertible Security shall entitle the holder to convert such Convertible Security into new and/or existing Ordinary Shares as determined by the Issuer, credited as fully paid (a “Conversion Right”).

Save where the Issuer has made a Deferred Interest Payment Election pursuant to Condition 6(i) in respect of all relevant Deferred Interest, the number of Ordinary Shares to be issued or transferred and delivered on exercise of a Conversion Right shall be determined by dividing the Conversion Reference Amount by the conversion price (the “Conversion Price”) in effect on the relevant Conversion Date.

Where the Issuer has made a Deferred Interest Payment Election pursuant to Condition 6(i) in respect of all relevant Deferred Interest, the number of Ordinary Shares to be issued or transferred and delivered on exercise of a Conversion Right shall be determined by dividing the principal amount of the Convertible Security to be converted by the Conversion Price in effect on the relevant Conversion Date. In such case Issuer shall make payment to the relevant Convertible Securityholder of all such Deferred Interest in cash in accordance with Condition 6(i).

Where the Issuer has made a Deferred Interest Payment Election pursuant to Condition 6(i) in respect of part only of the relevant Deferred Interest, the number of Ordinary Shares to be issued or transferred and delivered on exercise of a Conversion Right shall be determined by dividing the sum of (i) the principal amount of the Convertible Security to be converted and (ii) the portion of the relevant Deferred Interest that is not subject to the Deferred Interest Payment Election, by the Conversion Price in effect on the relevant Conversion Date. In such case the Issuer shall make payment to the relevant Convertible Securityholder of the portion of the relevant Deferred Interest that is subject to the Deferred Interest Payment Election in cash in accordance with Condition 6(i).

The initial Conversion Price is €0.30 per Ordinary Share. The Conversion Price is subject to adjustment in the circumstances described in Condition 6(b).

A Convertible Securityholder may exercise the Conversion Right in respect of a Convertible Security by delivering such Convertible Security to the specified office of any Paying, Transfer and Conversion Agent in accordance with Condition 6(g) whereupon the Issuer shall (subject as provided in these Conditions) procure the delivery, to or as directed by the relevant Convertible Securityholder of Ordinary Shares credited as paid up in full as provided in this Condition 6.

#### **Conversion Period**

Subject to and as provided in these Conditions, the Conversion Right in respect of a Convertible Security may be exercised, at the option of the holder thereof, at any time (subject to any applicable fiscal or other laws or regulations and as hereinafter provided) from 6 months after the Closing Date. If such Convertible Security is to be redeemed pursuant to Condition 7(b), then the Conversion Right in respect thereof may be exercised up to the close of business (at the place where the relevant Bond is delivered for conversion) on the seventh calendar day before the date fixed for redemption thereof pursuant to Condition 7(b), unless there shall be a default in making payment in respect of such Convertible Security on such date fixed for redemption, in which event the Conversion Right shall extend up to the close of business (at the place aforesaid) on the date on which the full amount of such payment becomes available for payment and notice of such availability has been duly given in accordance with Condition 17; provided that, in each case, if the final such date for the exercise of

Conversion Rights is not a business day at the place aforesaid, then the period for exercise of Conversion Rights by Convertible Securityholders shall end on the immediately preceding business day at the place aforesaid.

**Conversion (general)**

Conversion Rights may not be exercised following the giving of notice by the Trustee pursuant to Condition 10.

Save where a notice of redemption is given by the Issuer in the circumstances provided in Condition 6(j), Conversion Rights may not be exercised by a Convertible Securityholder in circumstances where the relevant Conversion Date would fall during the period commencing on the Record Date in respect of any payment of interest on the Convertible Securities and ending on the relevant Interest Payment Date (both days inclusive).

The period during which Conversion Rights may (subject as provided below) be exercised by a Convertible Securityholder is referred to as the “Conversion Period”.

Conversion Rights may only be exercised in respect of the whole of an authorised denomination.

Fractions of Ordinary Shares will not be issued or delivered on conversion or pursuant to Condition 6(c) and no cash payment or other adjustment will be made in lieu thereof. However, if the Conversion Right in respect of more than one Convertible Security is exercised at any one time such that Ordinary Shares to be delivered on conversion or pursuant to Condition 6(c) are to be registered in the same name, the number of such Ordinary Shares to be delivered in respect thereof shall be calculated on the basis of the aggregate principal amount of such Convertible Securities being so converted and rounded down to the nearest whole number of Ordinary Shares.

The Issuer will procure that Ordinary Shares to be issued or delivered on conversion will be issued or delivered to the holder of the Convertible Securities completing the relevant Conversion Notice or his nominee. Such Ordinary Shares will be deemed to be issued or delivered as of, and the relevant holder of Convertible Securities or his nominee will be entered into the Issuer’s register of members as the registered holder of such Ordinary Shares on, the relevant Conversion Date. Any Additional Ordinary Shares to be issued or transferred and delivered pursuant to Condition 6(c) will be deemed to be issued or delivered as of, and the relevant holder of Convertible Securities or his nominee will be entered into the Issuer’s register of members as the registered holder of such Additional Ordinary Shares on, the relevant Reference Date.

**Conversion Procedures Amendment**

The Issuer may, without the consent of Convertible Securityholders or the Trustee, amend the conversion procedures applicable to the Convertible Securities (a “Conversion Procedures Amendment”), including, if applicable and without limitation, limiting the periods in each year during which the Conversion Right may be exercised if such amendment facilitates the listing of Ordinary Shares issued upon conversion of the Convertible Securities without unreasonable burden (in the opinion of the Directors) on the Issuer. Such amendments will be effected by way of a supplemental trust deed entered into between the Issuer and the Trustee. The Issuer shall give notice to the Convertible Securityholders (in accordance with Condition 17) and the Trustee and Principal Paying, Transfer and Conversion Agent of any amendment to the conversion procedures pursuant to this Condition 6(a).

(b) *Adjustment of Conversion Price*

Upon the happening of any of the events described below, the Conversion Price shall be adjusted as follows:

- (i) If and whenever there shall be a consolidation, reclassification or subdivision in relation to the Ordinary Shares, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such consolidation, reclassification or subdivision by the following fraction:

$$\frac{A}{B}$$

where:

A is the aggregate number of Ordinary Shares in issue immediately before such consolidation, reclassification or subdivision, as the case may be; and

B is the aggregate number of Ordinary Shares in issue immediately after, and as a result of, such consolidation, reclassification or subdivision, as the case may be.

Such adjustment shall become effective on the date the consolidation, reclassification or subdivision, as the case may be, takes effect.

- (ii) If and whenever the Issuer shall issue any Ordinary Shares credited as fully paid to the Shareholders by way of capitalisation of profits or reserves (including any share premium account or capital redemption reserve) other than (1) where any such Ordinary Shares are or are to be issued instead of the whole or part of a Dividend in cash which the Shareholders would or could otherwise have elected to receive or (2) where the Shareholders may elect to receive a Dividend in cash in lieu of such Ordinary Shares, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue by the following fraction:

$$\frac{A}{B}$$

where:

A is the aggregate number of Ordinary Shares in issue immediately before such issue; and

B is the aggregate number of Ordinary Shares in issue immediately after such issue.

Such adjustment shall become effective on the date of issue of such Ordinary Shares.

- (iii)

- (A) If and whenever the Issuer shall pay or make any Dividend to Shareholders, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to the Effective Date by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the Current Market Price of one Ordinary Share on the Effective Date; and
- B is the portion of the Fair Market Value of the aggregate Dividend attributable to one Ordinary Share, with such portion being determined by dividing the Fair Market Value of the aggregate Dividend by the number of Ordinary Shares entitled to receive the relevant Dividend (or, in the case of a purchase, redemption or buy back of Ordinary Shares or any depositary or other receipts or certificates representing Ordinary Shares by or on behalf of the Issuer or any Subsidiary of the Issuer, by the number of Ordinary Shares in issue immediately following such purchase, redemption or buy back, and treating as not being in issue any Ordinary Shares, or any Ordinary Shares represented by depositary or other receipts or certificates, purchased, redeemed or bought back).

Such adjustment shall become effective on the Effective Date or, if later, the first date upon which the Fair Market Value of the relevant Dividend is capable of being determined as provided herein.

“Effective Date” means the first date on which the Ordinary Shares are traded ex- the relevant Dividend on the Relevant Stock Exchange (or if the Ordinary Shares are not so traded at such time, the record date for such Dividend) or, in the case of a purchase, redemption or buy back of Ordinary Shares or any depositary or other receipts or certificates representing Ordinary Shares, the date on which such purchase, redemption or buy back is made or, in the case of a Spin-Off, on the first date on which the Ordinary Shares are traded ex- the relevant Spin-Off on the Relevant Stock Exchange (or if the Ordinary Shares are not so traded at such time, the record date for such Spin-Off).

- (B) For the purposes of the above, Fair Market Value shall (subject as provided in paragraph (a) of the definition of “Dividend” and in the definition of “Fair Market Value”) be determined as at the Effective Date.
- (iv) If and whenever the Issuer shall issue Ordinary Shares to Shareholders as a class by way of rights, or issue or grant to Shareholders as a class by way of rights, options, warrants or other rights to subscribe for or purchase any Ordinary Shares, in each case at a price per Ordinary Share which is less than 95 per cent. of the Current Market Price per Ordinary Share on the date of the first public announcement of the terms of the issue or grant of such Ordinary Shares, options, warrants or other rights (or, if that is not a dealing day, on the immediately preceding dealing day), the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A is the number of Ordinary Shares in issue immediately before such announcement;
- B is the number of Ordinary Shares which the aggregate consideration (if any) receivable for the Ordinary Shares issued by way of rights, or for the options or warrants or other rights issued by way of rights and for the total number of Ordinary Shares deliverable on the exercise thereof, would purchase at such Current Market Price per Ordinary Share; and
- C is the number of Ordinary Shares to be issued or, as the case may be, the maximum number

of Ordinary Shares which may be issued upon exercise of such options, warrants or rights calculated as at the date of issue of such options, warrants or rights.

Such adjustment shall become effective on the first date on which the Ordinary Shares are traded ex-rights, ex-options or ex-warrants on the Relevant Stock Exchange (or if the Ordinary Shares are not so traded at such time, the record date for such issue or grant).

- (v) If and whenever the Issuer shall issue any Securities (other than Ordinary Shares or options, warrants or other rights to subscribe for or purchase any Ordinary Shares) to Shareholders as a class by way of rights or grant to Shareholders as a class by way of rights any options, warrants or other rights to subscribe for or purchase any Securities (other than Ordinary Shares or options, warrants or other rights to subscribe for or purchase Ordinary Shares), the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the Current Market Price of one Ordinary Share on the first date on which the terms of such issue or grant are publicly announced (or, if that is not a dealing day, the immediately preceding dealing day); and
- B is the Fair Market Value on the date of such announcement (or, if that is not a dealing day, the immediately preceding dealing day) of the portion of the rights attributable to one Ordinary Share.

Such adjustment shall become effective on the first date on which the Ordinary Shares are traded ex-rights, ex-options or ex-warrants on the Relevant Stock Exchange (or if the Ordinary Shares are not so traded at such time, the record date for such issue or grant).

- (vi) If and whenever the Issuer shall issue (otherwise than as mentioned in sub-paragraph (b)(iv) above) wholly for cash or for no consideration any Ordinary Shares (other than Ordinary Shares issued on conversion of the Convertible Securities or on the exercise of any rights of conversion into, or exchange or subscription for or purchase of, Ordinary Shares) or issue or grant (otherwise than as mentioned in sub-paragraph (b)(iv) above) wholly for cash or for no consideration any options, warrants or other rights to subscribe for or purchase any Ordinary Shares (other than the Convertible Securities, which term shall for this purpose include any Further Convertible Securities), in each case at a price per Ordinary Share which is less than 95 per cent. of the Current Market Price per Ordinary Share on (or, if that is not a dealing day, the immediately preceding dealing day) the date of the first public announcement of the terms of such issue or grant, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the number of Ordinary Shares in issue immediately before the issue of such Ordinary Shares or the grant of such options, warrants or rights;

- B is the number of Ordinary Shares which the aggregate consideration (if any) receivable for the issue of such Ordinary Shares or, as the case may be, for the Ordinary Shares to be issued or otherwise made available upon the exercise of any such options, warrants or rights, would purchase at such Current Market Price per Ordinary Share; and
- C is the number of Ordinary Shares to be issued pursuant to such issue of such Ordinary Shares or, as the case may be, the maximum number of Ordinary Shares which may be issued upon exercise of such options, warrants or rights calculated as at the date of issue of such options, warrants or rights.

Such adjustment shall become effective on the date of issue of such Ordinary Shares or, as the case may be, the grant of such options, warrants or rights.

- (vii) If and whenever the Issuer or any Subsidiary of the Issuer or (at the direction or request of or pursuant to any arrangements with the Issuer or any Subsidiary of the Issuer) any other company, person or entity (otherwise than as mentioned in sub-paragraphs (b)(iv), (b)(v) or (b)(vi) above) shall issue wholly for cash or for no consideration any Securities (other than the Convertible Securities, which term shall for this purpose exclude any Further Convertible Securities) which by their terms of issue carry (directly or indirectly) rights of conversion into, or exchange or subscription for, Ordinary Shares (or shall grant any such rights in respect of existing Securities so issued) or Securities which by their terms might be redesignated as Ordinary Shares, and the consideration per Ordinary Share receivable upon conversion, exchange, subscription or redesignation is less than 95 per cent. of the Current Market Price per Ordinary Share on the date of the first public announcement of the terms of issue of such Securities (or the terms of such grant) (or, if that is not a dealing day, the immediately preceding dealing day), the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue (or grant) by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A is the number of Ordinary Shares in issue immediately before such issue or grant (but where the relevant Securities carry rights of conversion into or rights of exchange or subscription for Ordinary Shares which have been issued, purchased or acquired by the Issuer or any Subsidiary of the Issuer (or at the direction or request or pursuant to any arrangements with the Issuer or any Subsidiary of the Issuer) for the purposes of or in connection with such issue, less the number of such Ordinary Shares so issued, purchased or acquired);
- B is the number of Ordinary Shares which the aggregate consideration (if any) receivable for the Ordinary Shares to be issued or otherwise made available upon conversion or exchange or upon exercise of the right of subscription attached to such Securities or, as the case may be, for the Ordinary Shares to be issued or to arise from any such redesignation would purchase at such Current Market Price per Ordinary Share; and
- C is the maximum number of Ordinary Shares to be issued or otherwise made available upon conversion or exchange of such Securities or upon the exercise of such right of subscription attached thereto at the initial conversion, exchange or subscription price or rate or, as the case may be, the maximum number of Ordinary Shares which may be issued



or arise from any such redesignation,

provided that if at the time of issue of the relevant Securities or date of grant of such rights (as used in this sub-paragraph (b)(vii) the “Specified Date”) such number of Ordinary Shares is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time (which may be when such Securities are converted or exchanged or rights of subscription are exercised or, as the case may be, such Securities are redesignated or at such other time as may be provided) then for the purposes of this sub-paragraph (b)(vii), “C” shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such conversion, exchange, subscription, purchase or acquisition or, as the case may be, redesignation had taken place on the Specified Date.

Such adjustment shall become effective on the date of issue of such Securities or, as the case may be, the grant of such rights.

- (viii) If and whenever there shall be any modification of the rights of conversion, exchange, subscription, purchase or acquisition attaching to any such Securities (other than the Convertible Securities, which term shall for this purpose include any Further Convertible Securities) as are mentioned in sub-paragraph (b)(vii) above (other than in accordance with the terms (including terms as to adjustment) applicable to such Securities upon issue) so that following such modification the consideration per Ordinary Share receivable has been reduced and is less than 95 per cent. of the Current Market Price per Ordinary Share on the date of the first public announcement of the proposals for such modification (or, if that is not a dealing day, the immediately preceding dealing day), the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such modification by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A is the number of Ordinary Shares in issue immediately before such modification (but where the relevant Securities carry rights of conversion into or rights of exchange or subscription for Ordinary Shares which have been issued, purchased or acquired by the Issuer or any Subsidiary of the Issuer (or at the direction or request or pursuant to any arrangements with the Issuer or any Subsidiary of the Issuer) for the purposes of or in connection with such issue, less the number of such Ordinary Shares so issued, purchased or acquired);
- B is the number of Ordinary Shares which the aggregate consideration (if any) receivable for the Ordinary Shares to be issued or otherwise made available upon conversion or exchange or upon exercise of the right of subscription attached to the Securities so modified would purchase at such Current Market Price per Ordinary Share or, if lower, the existing conversion, exchange or subscription price of such Securities; and
- C is the maximum number of Ordinary Shares which may be issued or otherwise made available upon conversion or exchange of such Securities or upon the exercise of such rights of subscription attached thereto at the modified conversion, exchange or subscription price or rate but giving credit in such manner as the Issuer shall consider appropriate for any previous adjustment under this sub-paragraph or sub-paragraph (b)(vii) above,

provided that if at the time of such modification (as used in this sub-paragraph (b)(viii) the “Specified Date”) such number of Ordinary Shares is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time (which may be when such Securities are converted or exchanged or rights of subscription are exercised or at such other time as may be provided) then for the purposes of this paragraph (b)(viii), “C” shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such conversion, exchange or subscription had taken place on the Specified Date.

Such adjustment shall become effective on the date of modification of the rights of conversion, exchange or subscription attaching to such Securities.

- (ix) If and whenever the Issuer or any Subsidiary of the Issuer or (at the direction or request of or pursuant to any arrangements with the Issuer or any Subsidiary of the Issuer) any other company, person or entity shall offer any Securities in connection with which Shareholders as a class are entitled to participate in arrangements whereby such Securities may be acquired by them (except where the Conversion Price falls to be adjusted under sub-paragraphs (b)(ii), (iii), (iv), (vi) or (vii) above (or would fall to be so adjusted if the relevant issue or grant was at less than 95 per cent. of the Current Market Price per Ordinary Share on the relevant dealing day) or under sub-paragraph (b)(v) above) the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before the making of such offer by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the Current Market Price of one Ordinary Share on the date on which the terms of such offer are first publicly announced (or, if such date is not a dealing day, the immediately preceding dealing day); and
- B is the Fair Market Value on the date of such announcement (or, if that is not a dealing day, the immediately preceding dealing day) of the portion of the relevant offer attributable to one Ordinary Share.

Such adjustment shall become effective on the first date on which the Ordinary Shares are traded ex-rights on the Relevant Stock Exchange.

- (x) If the Issuer determines that an adjustment should be made to the Conversion Price as a result of one or more circumstances not referred to above in this Condition 6(b) (even if the relevant circumstance is specifically excluded from the operation of sub-paragraphs (b)(i) to (ix) above), the Issuer shall in good faith determine as soon as practicable what adjustment (if any) to the Conversion Price is fair and reasonable to take account thereof and the date on which such adjustment (if any) should take effect (and shall notify the Trustee accordingly) and upon such determination such adjustment (if any) shall be made and shall take effect in accordance with such determination, provided that an adjustment shall only be made pursuant to this sub-paragraph (b)(x) if such determination is made not more than 21 days after the date on which the relevant circumstance arises and if the adjustment would result in a reduction to the Conversion Price.

Notwithstanding the foregoing provisions, where the events or circumstances giving rise to any adjustment pursuant to this Condition 6(b) have already resulted or will result in an adjustment to the

Conversion Price or where the events or circumstances giving rise to any adjustment arise by virtue of any other events or circumstances which have already given or will give rise to an adjustment to the Conversion Price or where more than one event which gives rise to an adjustment to the Conversion Price occurs within such a short period of time that, in the opinion of the Issuer, a modification to the operation of the adjustment provisions is required to give the intended result, such modification shall be made to the operation of the adjustment provisions as it may in good faith consider appropriate to give the intended result.

For the purpose of any calculation of the consideration receivable or price pursuant to subparagraphs (iv), (vi), (vii) and (viii), the following provisions shall apply:

- (a) the aggregate consideration receivable or price for Ordinary Shares issued for cash shall be the amount of such cash;
- (b) (x) the aggregate consideration receivable or price for Ordinary Shares to be issued or otherwise made available upon the conversion or exchange of any Securities shall be deemed to be the consideration or price received or receivable for any such Securities and (y) the aggregate consideration receivable or price for Ordinary Shares to be issued or otherwise made available upon the exercise of rights of subscription attached to any Securities or upon the exercise of any options, warrants or rights shall be deemed to be that part (which may be the whole) of the consideration or price received or receivable for such Securities or, as the case may be, for such options, warrants or rights which are attributed by the Issuer to such rights of subscription or, as the case may be, such options, warrants or rights or, if no part of such consideration or price is so attributed, the Fair Market Value of such rights of subscription or, as the case may be, such options, warrants or rights as at the date of the first public announcement of the terms of issue of such Securities or, as the case may be, such options, warrants or rights, plus in the case of each of (x) and (y) above, the additional minimum consideration receivable or price (if any) upon the conversion or exchange of such Securities, or upon the exercise of such rights of subscription attached thereto or, as the case may be, upon exercise of such options, warrants or rights and (z) the consideration receivable or price per Ordinary Share upon the conversion or exchange of, or upon the exercise of such rights of subscription attached to, such Securities or, as the case may be, upon the exercise of such options, warrants or rights shall be the aggregate consideration or price referred to in (x) or (y) above (as the case may be) divided by the number of Ordinary Shares to be issued upon such conversion or exchange or exercise at the initial conversion, exchange or subscription price or rate;
- (c) if the consideration or price determined pursuant to (a) or (b) above (or any component thereof) shall be expressed in a currency other than the Relevant Currency, it shall be converted into the Relevant Currency at the Prevailing Rate on the date of the first public announcement of the terms of issue of such Ordinary Shares or, as the case may be, Securities; and
- (d) in determining the consideration or price pursuant to the above, no deduction shall be made for any commissions or fees (howsoever described) or any expenses paid or incurred for any underwriting, placing or management of the issue of the relevant Ordinary Shares or Securities or options, warrants or rights, or otherwise in connection therewith.

(c) *Retroactive Adjustments*

If the Conversion Date in relation to the conversion of any Convertible Security shall be after the record date in respect of any consolidation, reclassification or sub-division as is mentioned in Condition 6(b)(i), or after the record date or other due date for the establishment of entitlement for any

such issue, distribution, grant or offer (as the case may be) as is mentioned in Condition 6(b)(ii), (iii), (iv), (v) or (ix), or after any such issue or grant as is mentioned in Condition 6(b)(vi) and (vii), but before the relevant adjustment to the Conversion Price becomes effective under Condition 6(b) (such adjustment, a “Retroactive Adjustment”), then the Issuer shall (conditional upon the relevant adjustment becoming effective) procure that there shall be issued or transferred and delivered to the converting Convertible Securityholder, in accordance with the instructions contained in the Conversion Notice, such additional number of Ordinary Shares (if any) (the “Additional Ordinary Shares”) as, together with the Ordinary Shares issued or to be transferred and delivered on conversion of the relevant Convertible Security (together with any fraction of an Ordinary Share not so issued), is equal to the number of Ordinary Shares which would have been required to be issued or delivered on conversion of such Convertible Security if the relevant adjustment to the Conversion Price had been made and become effective immediately prior to the relevant Conversion Date.

*(d) Decision of the Company’s Auditors or other Independent Accountants*

The Issuer shall, if requested to do so by the Trustee or by an Extraordinary Resolution, obtain a written opinion from its auditors, or other independent accountant selected by the Issuer, in each case acting as experts, as to whether an adjustment falls to be made to the Conversion Price or as to the appropriate adjustment to the Conversion Price and the Issuer will certify to the Trustee that it has obtained such an opinion. Such opinion shall be conclusive and binding on all parties, save in the case of manifest error.

*(e) Share or Option Schemes*

No adjustment will be made to the Conversion Price where Ordinary Shares or other Securities (including rights, warrants and options) are issued, offered, exercised, allotted, appropriated, modified or granted to, or for the benefit of, employees or former employees (including Directors holding or formerly holding executive office or the personal service company of any such person) or their spouses or relatives, in each case, of the Issuer or any of its Subsidiaries or any associated company or to a trustee or trustees to be held for the benefit of any such person, in any such case pursuant to any share or option scheme.

*(f) Rounding Down and Notice of Adjustment to the Conversion Price*

On any adjustment, the resultant Conversion Price, if not an integral multiple of €0.01, shall be rounded down to the nearest whole multiple of €0.01. No adjustment shall be made to the Conversion Price where such adjustment (rounded down if applicable) would be less than 1 per cent. of the Conversion Price then in effect. Any adjustment not required to be made and/or any amount by which the Conversion Price has been rounded down, shall be carried forward and taken into account in any subsequent adjustment, and such subsequent adjustment shall be made on the basis that the adjustment not required to be made had been made at the relevant time and/or, as the case may be, that the relevant rounding down had not been made.

Notice of any adjustments to the Conversion Price shall be given by the Issuer to Convertible Securityholders in accordance with Condition 17 and to the Trustee promptly after the determination thereof.

*(g) Procedure for Exercise of Conversion Rights*

**Delivery of a Conversion Notice**

Conversion Rights may be exercised by a Convertible Securityholder during the Conversion Period by delivering the relevant Convertible Security to the specified office of any Paying, Transfer and

Conversion Agent, during its usual business hours, accompanied by a duly completed and signed notice of conversion (a “Conversion Notice”) in the form (for the time being current) obtainable from any Paying, Transfer and Conversion Agent. Conversion Rights shall be exercised subject in each case to any applicable fiscal or other laws or regulations applicable in the jurisdiction in which the specified office of the Paying, Transfer and Conversion Agent to whom the relevant Conversion Notice is delivered is located.

If such delivery is made after the end of normal business hours or on a day which is not a business day in the place of the specified office of the relevant Paying, Transfer and Conversion Agent, such delivery shall be deemed for all purposes of these Conditions to have been made on the next following such business day.

Conversion Rights may only be exercised in respect of an authorised denomination. Where Conversion Rights are exercised in respect of part only of a Convertible Security, the old Convertible Security shall be cancelled and a new Convertible Security for the balance thereof shall be issued in lieu thereof without charge but upon payment by the holder of any taxes, duties and other governmental charges payable in connection therewith and the Registrar will within seven business days, in the place of the specified office of the Registrar, following the relevant Conversion Date deliver such new Convertible Security to the Convertible Securityholder at the specified office of the Registrar or (at the risk and, if mailed at the request of the Convertible Securityholder otherwise than by ordinary mail, at the expense of the Convertible Securityholder) mail the new Convertible Security by uninsured mail to such address as the Convertible Securityholder may request.

A Conversion Notice, once delivered, shall be irrevocable.

#### **Conversion Date**

The conversion date in respect of a Convertible Security (the “Conversion Date”) shall be the business day in London immediately following the date of the delivery of the Convertible Securities and the Conversion Notice pursuant to this Condition 6(g).

#### **Taxes payable on conversion**

A Convertible Securityholder exercising a Conversion Right must pay directly to the relevant authorities any taxes and capital, stamp, issue and registration and transfer taxes and duties arising on conversion (other than any taxes or capital, stamp, issue and registration and transfer taxes and duties payable in Guernsey in respect of the issue or transfer and delivery of any Ordinary Shares on such conversion (including any Additional Ordinary Shares), which shall be paid by the Issuer). Such Convertible Securityholder must also pay all, if any, taxes arising by reference to any disposal or deemed disposal of a Convertible Security or interest therein in connection with such conversion. The Trustee shall not be responsible for determining whether such taxes or capital, stamp, issue and registration and transfer taxes and duties are payable or the amount thereof and it shall not be responsible or liable for any failure by the Issuer to pay such taxes or capital, stamp, issue and registration and transfer taxes and duties.

#### **Delivery of Ordinary Shares in certificated form**

If (i) the Ordinary Shares are not at that time listed and admitted to trading on a Relevant Stock Exchange, or (ii) the Ordinary Shares are listed and admitted to trading on a Relevant Stock Exchange, but the relevant Convertible Securityholder elects in its Conversion Notice to receive its entitlement of Ordinary Shares in certificated form, the relevant Ordinary Shares shall be delivered in certificated form, dispatched by mail free of charge (but uninsured and at the risk of the recipient), by not later

than 28 TARGET Business Days following the relevant Conversion Date (or Reference Date, as the case may be).

#### **Delivery of Ordinary Shares in uncertificated form**

For so long as the Ordinary Shares are listed and admitted to trading on the Relevant Stock Exchange, and provided that the relevant Convertible Securityholder has not elected in its Conversion Notice to receive its entitlement of Ordinary Shares in certificated form, Ordinary Shares to be delivered on conversion of the Convertible Securities (including any Additional Ordinary Shares) will be delivered in uncertificated form, at the option of the Convertible Securityholder exercising its Conversion Right as specified in the relevant Conversion Notice, through either (i) the dematerialised securities trading system operated by Euroclear UK & Ireland Limited (“CREST”) or (ii) *Nederlands Centraal Instituut voor Giraal Effectenverkeer B.V.*, the central securities depository and settlement system in the Netherlands (“Euroclear Nederland”). Where Ordinary Shares are to be delivered through CREST or Euroclear Nederland, they will be delivered to the account specified by the relevant Convertible Securityholder in the relevant Conversion Notice by a date which is generally expected to be not later than 10 TARGET Business Days following the relevant Conversion Date (or Reference Date, as the case may be).

#### *(h) Ordinary Shares*

- (i) Ordinary Shares issued or transferred and delivered upon conversion of the Convertible Securities will be fully paid and will in all respects rank *pari passu* with the fully paid Ordinary Shares in issue on the relevant Conversion Date or, in the case of Additional Ordinary Shares, on the relevant Reference Date, except in any such case for any right excluded by mandatory provisions of applicable law and except that such Ordinary Shares or, as the case may be, Additional Ordinary Shares will not rank for (or, as the case may be, the relevant holder shall not be entitled to receive) any rights, distributions or payments the record date or other due date for the establishment of entitlement for which falls prior to the relevant Conversion Date or, as the case may be, the relevant Reference Date.
- (ii) Save as provided in Condition 6(j), no payment or adjustment shall be made on conversion for any interest which otherwise would have accrued on the relevant Convertible Securities since the last Interest Payment Date preceding the Conversion Date relating to such Convertible Securities (or, if such Conversion Date falls before the first Interest Payment Date, since the Closing Date).

#### *(i) Deferred Interest Payment Election*

Upon exercise of Conversion Rights by a Convertible Securityholder, the Issuer may make an election (a “Deferred Interest Payment Election”) by giving notice to the relevant Convertible Securityholder (a “Deferred Interest Payment Election Notice”) by not later than the date (the “Deferred Interest Payment Election Date”) falling five TARGET Business Days following the relevant Conversion Date to the address (or, if a fax number or email address is provided in the relevant Conversion Notice, that fax number or email address) specified for that purpose in the relevant Conversion Notice (with a copy to the Trustee and the Principal Paying, Transfer and Conversion Agent) to satisfy all or part of the relevant amount of Deferred Interest in respect of the relevant Convertible Securities by making payment in cash, or procuring that payment in cash is made, to the relevant Convertible Securityholder of the relevant amount of Deferred Interest.

A Deferred Interest Payment Election shall be irrevocable.

The Deferred Interest Payment Election Notice shall specify the amount of Deferred Interest to be settled in cash, and the number of Ordinary Shares to be issued or transferred and delivered to the relevant Convertible Securityholder.

The Issuer will pay the relevant amount of Deferred Interest by not later than five TARGET Business Days following the Deferred Interest Payment Election Date by transfer to a euro account with a bank in a city in which banks have access to the TARGET System in accordance with instructions contained in the relevant Conversion Notice.

*(j) Interest on Conversion*

If any notice requiring the redemption of any Convertible Securities is given pursuant to Condition 7(b) on or after the fifteenth TARGET Business Day prior to a record date which has occurred since the last Interest Payment Date (or in the case of the first payment of interest, since the Interest Payment Trigger Date) in respect of any Dividend payable in respect of the Ordinary Shares where such notice specifies a date for redemption falling on or prior to the date which is 14 days after the Interest Payment Date next following such record date, interest shall accrue at the rate provided in Condition 5(a) on Convertible Securities in respect of which Conversion Rights shall have been exercised and in respect of which the Conversion Date falls after such record date and on or prior to the Interest Payment Date next following such record date in respect of such Dividend, in each case from and including the preceding Interest Payment Date to but excluding such Conversion Date. The Issuer shall pay any such interest by not later than 14 days after the relevant Conversion Date by transfer to a euro account with a bank in a city in which banks have access to the TARGET System in accordance with instructions given by the relevant Convertible Securityholder in the relevant Conversion Notice.

*(k) Purchase or Redemption of Ordinary Shares*

The Issuer or any Subsidiary of the Issuer may exercise such rights as it may from time to time enjoy to purchase, redeem or buy back any shares of the Issuer (including Ordinary Shares) or any depositary or other receipts or certificates representing the same without the consent of the Convertible Securityholders.

*(l) No duty to Monitor*

The Trustee shall not be under any duty to monitor whether any event or circumstance has happened or exists which may require an adjustment to be made to the Conversion Price and will not be responsible or liable to the Convertible Securityholders for any loss arising from any failure by it to do so.

## **7 Redemption and Purchase**

*(a) No Fixed Redemption Date*

The Convertible Securities are perpetual securities in respect of which there is no fixed redemption date and the Issuer shall (subject to the provisions of Condition 3 and without prejudice to the provisions of Condition 12) only have the right to redeem or purchase them in accordance with the following provisions of this Condition 7.

*(b) Redemption at the Option of the Issuer*

On giving not less than 30 nor more than 60 days' notice (an "Optional Redemption Notice") to the Trustee and to the Convertible Securityholders in accordance with Condition 17, the Issuer may redeem all but not some only of the Convertible Securities on the date (the "Optional Redemption Date") specified in the Optional Redemption Notice at 120 per cent. of their principal amount together

with accrued but unpaid interest (including any Deferred Interest) to the relevant Optional Redemption Date:

- (x) at any time on or after 2 years after the Closing Date; or
- (y) at any time if, prior to the date the relevant Optional Redemption Notice is given, Conversion Rights shall have been exercised and/or purchases and/or redemptions effected in respect of two thirds or more in principal amount of the Convertible Securities originally issued (which shall for this purpose include any Further Convertible Securities),

provided that the Issuer may not redeem the Convertible Securities pursuant to this Condition 7(b) until such time as the Corporate Facility has been repaid in full.

(c) *Optional Redemption Notices*

Any Optional Redemption Notice shall be irrevocable. Any such notice shall specify (i) the Optional Redemption Date, (ii) the Conversion Price, the aggregate principal amount of the Convertible Securities outstanding and the closing price of the Ordinary Shares as derived from the Relevant Stock Exchange (if any), in each case as at the latest practicable date prior to the publication of the Optional Redemption Notice and (iii) the last day on which Conversion Rights may be exercised by Convertible Securityholders.

(d) *Purchase*

Subject to the requirements (if any) of any stock exchange on which the Convertible Securities may be admitted to listing and trading at the relevant time and subject to compliance with applicable laws and regulations, the Issuer or any Subsidiary of the Issuer may at any time purchase any Convertible Securities in the open market or otherwise at any price. Such Convertible Securities may be held, re-sold or reissued or, at the option of the Issuer, surrendered to any Paying, Transfer and Conversion Agent for cancellation.

(e) *Cancellation*

All Convertible Securities which are redeemed or in respect of which Conversion Rights are exercised will be cancelled and may not be reissued or resold. Convertible Securities purchased by the Issuer or any of its Subsidiaries may be surrendered to the Principal Paying, Transfer and Conversion Agent for cancellation and, if so surrendered, shall be cancelled may not be reissued or re-sold.

(f) *Multiple Notices*

If more than one notice of redemption is given pursuant to this Condition 7, the first of such notices to be given shall prevail.

## **8 Payments**

(a) *Principal and Interest*

Payments of principal and interest in respect of the Convertible Securities will be made to the persons shown in the Register at the close of business on the Record Date.

(b) *Record Date*

“Record Date” means the seventh business day, in the place of the specified office of the Registrar, before the due date for the relevant payment.



(c) *Payments*

Each payment in respect of the Convertible Securities is expected to be made by transfer to a euro account maintained by the payee with a bank in a city in which banks have access to the TARGET System. The Issuer may, at its discretion, permit alternative customary and reasonable methods of payment including, but not limited to, the issuance of cheques or banker's drafts to Convertible Securityholders at the address provided by Convertible Securityholders for the purposes of the Register.

Payment instructions (for value on the due date or, if that is not a TARGET Business Day, for value the first following day which is a TARGET Business Day) will be initiated on the TARGET Business Day preceding the due date for payment.

(d) *Payments subject to Fiscal Laws*

All payments in respect of the Convertible Securities are subject in all cases to any applicable fiscal or other laws and regulations.

(e) *Delay in Payment*

Convertible Securityholders will not be entitled to any interest or other payment for any delay after the due date in receiving the amount due as a result of the due date not being a TARGET Business Day.

(f) *Paying, Transfer and Conversion Agents, etc.*

The initial Paying, Transfer and Conversion Agents and Registrar and their initial specified offices are listed below. The Issuer reserves the right under the Agency Agreement at any time, with the prior written approval of the Trustee, to vary or terminate the appointment of any Paying, Transfer and Conversion Agent and Registrar and appoint additional or other Paying, Transfer and Conversion Agents, provided that it will (i) maintain a Principal Paying, Transfer and Conversion Agent and (ii) maintain a Registrar with a specified office outside the United Kingdom. Notice of any change in the Paying, Transfer and Conversion Agents or the Registrar or their specified offices will promptly be given by the Issuer to the Convertible Securityholders in accordance with Condition 17.

(g) *No charges*

Neither the Registrar nor the Paying, Transfer and Conversion Agents shall make or impose on a Convertible Securityholder any charge or commission in relation to any payment or conversion in respect of the Convertible Securities.

(h) *Fractions*

When making payments to Convertible Securityholders, if the relevant payment is not of an amount which is a whole multiple of the smallest unit of the relevant currency in which such payment is to be made, such payment will be rounded down to the nearest unit.

## **9 Taxation**

All payments made by or on behalf of the Issuer in respect of the Convertible Securities will be made free from any restriction or condition and be made without deduction or withholding for or on account of any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of any jurisdiction or any political subdivision or any authority thereof or therein having power to tax, unless the Issuer reasonably believes that deduction or withholding for or on account of such taxes, duties, assessments or governmental charges is required to be made by law.

In the event that the Issuer reasonably believes that any such withholding or deduction is required to be made, all payments made by or on behalf of the Issuer in respect of the Convertible Securities will be made subject to and after deduction or withholding for or on account of such taxes, duties, assessments or governmental charges. The Issuer will not be required to pay any additional or further amounts in respect of such deduction or withholding.

Each Convertible Securityholder, by holding a Convertible Security, shall be deemed to have agreed to treat the Convertible Securities as equity interests for all US federal, state and local income tax purposes.

## **10 Events of Default**

### *(a) Event of Default*

If an order is made or an effective resolution passed for the winding-up or dissolution of the Issuer, except for the purpose of and followed by a reconstruction, amalgamation under the Companies (Guernsey) Law, 2008 as amended, reorganisation, merger or consolidation on terms approved by the Trustee or by an Extraordinary Resolution (an “Event of Default”), the Trustee at its discretion may, and if so requested by the holders of at least one-quarter in principal amount of the Convertible Securities then outstanding or if so directed by an Extraordinary Resolution and provided that it is indemnified and/or secured and/or prefunded to its satisfaction, shall give notice to the Issuer at its registered office that the Convertible Securities are, and they shall accordingly immediately become due and repayable at their principal amount together with accrued interest (if any) to the date of payment.

### *(b) Enforcement*

If the Convertible Securities become due and repayable pursuant to Condition 10(a) and are not paid when so due and repayable, the Trustee may at its discretion prove in the winding-up of the Issuer and/or claim in the liquidation of the Issuer for such payment, but shall not be entitled to take any other action in respect thereof.

Without prejudice to Condition 10(a), the Trustee may at its discretion and without further notice institute such proceedings against the Issuer as it may think fit to enforce any other obligations binding on the Issuer under the Trust Deed or the Convertible Securities, but in no event shall the Issuer, by virtue of the institution of any such proceedings, be obliged to pay any sum or sums, in cash or otherwise, sooner than the same would otherwise have been payable by it. Nothing in this Condition 10(b) shall, however, prevent the Trustee proving in any winding-up of the Issuer and/or claiming in any liquidation of the in respect of any payment obligations of the Issuer arising from the Convertible Securities or the Trust Deed.

### *(c) Extent of Convertible Securityholders' remedy*

No remedy against the Issuer, other than as referred to in this Condition 10, shall be available to the Trustee or the Convertible Securityholders, whether for the recovery of amounts owing in respect of the Convertible Securities or under the Trust Deed or in respect of any breach by the Issuer of any of its other obligations under or in respect of the Convertible Securities or under the Trust Deed.

## **11 Undertakings**

Whilst any Conversion Right remains exercisable, the Issuer will, save with the approval of an Extraordinary Resolution or with the prior written approval of the Trustee where, in its opinion, it is not materially prejudicial to the interests of the Convertible Securityholders to give such approval:

- (a) other than in connection with a Newco Scheme, not issue or pay up any Securities, in either case by way of capitalisation of profits or reserves, other than:
- (i) by the issue of fully paid Ordinary Shares to Shareholders and other holders of shares in the capital of the Issuer which by their terms entitle the holders thereof to receive Ordinary Shares or other shares or securities on a capitalisation of profits or reserves; or
  - (ii) by the issue of Ordinary Shares paid up in full (in accordance with applicable law) and issued wholly, ignoring fractional entitlements, in lieu of the whole or part of a cash dividend; or
  - (iii) by the issue of fully paid equity share capital (other than Ordinary Shares) to the holders of equity share capital of the same class and other holders of shares in the capital of the Issuer which by their terms entitle the holders thereof to receive equity share capital (other than Ordinary Shares); or
  - (iv) by the issue of Ordinary Shares or any equity share capital to, or for the benefit of, any employee or former employee, director or executive holding or formerly holding executive office of the Issuer or any of its Subsidiaries or any associated company or to trustees or nominees to be held for the benefit of any such person, in any such case pursuant to an employee, director or executive share or option scheme whether for all employees, directors, or executives or any one or more of them,
- unless, in any such case, the same constitutes a Dividend or otherwise gives rise (or would, but for the provisions of Condition 6(f) relating to roundings or the carry forward of adjustments, give rise) to an adjustment to the Conversion Price; or
- (b) not modify the rights attaching to the Ordinary Shares with respect to voting, dividends or liquidation nor issue any other class of equity share capital carrying any rights which are more favourable than the rights attaching to the Ordinary Shares but so that nothing in this Condition 11(b) shall prevent:
- (i) any consolidation, reclassification or subdivision of the Ordinary Shares; or
  - (ii) any modification of such rights which is not, in the opinion of the Issuer, acting reasonably, materially prejudicial to the interests of the holders of the Convertible Securities; or
  - (iii) any issue of equity share capital where the issue of such equity share capital results, or would, but for the provisions of Condition 6(f) relating to roundings or the carry forward of adjustments or, where comprising Ordinary Shares, the fact that the consideration per Ordinary Share receivable therefor is at least 95 per cent. of the Current Market Price per Ordinary Share (or equivalent if the Ordinary Shares are not admitted to trading or listed on the Relevant Stock Exchange at the relevant time), otherwise result, in an adjustment to the Conversion Price; or
  - (iv) any issue of equity share capital or modification of rights attaching to the Ordinary Shares, where prior thereto the Issuer shall have determined what (if any) adjustments should be made to the Conversion Price as being fair and reasonable to take account thereof and shall have determined either that no adjustment is required or that an adjustment resulting in a decrease in the Conversion Price is required and, if so, the new Conversion Price as a result thereof and the basis upon which such adjustment is to be made and, in any such case, the date on which the adjustment shall take effect (and so that the adjustment shall be made and shall take effect accordingly);
- (c) procure that no Securities (whether issued by the Issuer or any Subsidiary of the Issuer or procured by the Issuer or any Subsidiary of the Issuer to be issued or issued by any other person pursuant to any arrangement with the Issuer or any Subsidiary of the Issuer) issued without rights to convert into, or

exchange or subscribe for, Ordinary Shares shall subsequently be granted such rights exercisable at a consideration per Ordinary Share which is less than 95 per cent. of the Current Market Price per Ordinary Share at the close of business on the last dealing day preceding the date of the first public announcement of the proposed inclusion of such rights (or equivalent if the Ordinary Shares are not admitted to trading or listed on the Relevant Stock Exchange at the relevant time), unless the same gives rise (or would, but for the provisions of Condition 6(f) relating to roundings or the carry forward of adjustments, give rise) to an adjustment to the Conversion Price and that at no time shall there be in issue Ordinary Shares of differing nominal values, save where such Ordinary Shares have the same economic rights;

- (d) not make any issue, grant or distribution or take or omit to take any other action if the effect thereof would be that, on the exercise of Conversion Rights, Ordinary Shares could not, under any applicable law then in effect, be legally issued as fully paid;
- (e) not reduce its issued share capital, share premium account, or any uncalled liability in respect thereof, or any non-distributable reserves, except:
  - (i) pursuant to the terms of issue of the relevant share capital; or
  - (ii) by means of a purchase or redemption of share capital of the Issuer to the extent permitted by applicable law; or
  - (iii) pursuant to a Newco Scheme; or
  - (iv) by way of transfer to reserves as permitted under applicable law; or
  - (v) where the reduction is permitted by applicable law; or
  - (vi) where the reduction is permitted by applicable law and results in (or would, but for the provisions of Condition 6(f) relating to roundings or the carry forward of adjustments, result in) an adjustment to the Conversion Price or is otherwise taken into account for the purposes of determining whether such an adjustment should be made,

provided that, without prejudice to the other provisions of these Conditions, the Issuer may exercise such rights as it may from time to time be entitled pursuant to applicable law to purchase, redeem or buy back its Ordinary Shares and any depositary or other receipts or certificates representing Ordinary Shares without the consent of Convertible Securityholders;

- (f) if any offer is made to all (or as nearly as may be practicable all) Shareholders (or all (or as nearly as may be practicable all) Shareholders other than the offerer and/or any associates of the offerer) to acquire the whole or any part of the issued Ordinary Shares, or if any person proposes a scheme with regard to such acquisition or proposes an amalgamation (other than in any such case a Newco Scheme), give notice of such offer, scheme or amalgamation to the Convertible Securityholders at the same time as any notice thereof is sent to the Shareholders (or as soon as practicable thereafter) that details concerning such offer, scheme or amalgamation may be obtained from the specified offices of the Paying, Transfer and Conversion Agents and, where such an offer, scheme or amalgamation has been recommended by the board of directors of the Issuer, or where such an offer has become or been declared unconditional in all respects or such scheme or amalgamation has become effective, use all reasonable endeavours to procure that a like offer or scheme or proposal is extended to the holders of any Ordinary Shares issued during the period of the offer or scheme arising out of the exercise of the Conversion Rights by the Convertible Securityholders and/or to the holders of the Convertible Securities; and

- (g) in the event of a Newco Scheme, the Issuer shall take (or shall procure that there is taken) all necessary action to ensure that immediately after completion of the scheme of arrangement, at its option, either (a) Newco is substituted under the Convertible Securities and the Trust Deed as principal obligor in place of the Issuer (with the Issuer providing a guarantee) subject to and as provided in the Trust Deed; or (b) Newco becomes a guarantor under the Convertible Securities and the Trust Deed and, in either case, that such amendments are made to these Conditions and the Trust Deed as are necessary, in the opinion of the Trustee, to ensure that the Convertible Securities may be converted into or exchanged for ordinary shares in Newco *mutatis mutandis* in accordance with and subject to these Conditions and the Trust Deed.

The Issuer has undertaken in the Trust Deed to deliver to the Trustee, within 14 days of any request by the Trustee, a certificate of two directors of the Issuer as to there not having occurred an Event of Default since the date of the last such certificate (or, if none, the date of the Trust Deed) or if such event has occurred as to the details of such event. The Trustee will be entitled to rely on such certificate and shall not be obliged to independently monitor compliance by the Issuer with the undertakings set forth in this Condition 11 or the Event of Default set forth in Condition 10, nor be liable to any person for not so doing.

## **12 Prescription**

Claims against the Issuer for payment in respect of the Convertible Securities shall be prescribed and become void unless made within 10 years (in the case of principal) or five years (in the case of interest) from the appropriate Relevant Date in respect of such payment.

## **13 Replacement of Convertible Securities**

If any Convertible Security is lost, stolen, mutilated, defaced or destroyed, it may be replaced at the specified office of any Paying, Transfer and Conversion Agent subject to all applicable laws upon payment by the claimant of the expenses incurred in connection with such replacement and on such terms as to evidence and indemnity as the Issuer may require. Mutilated or defaced Convertible Securities must be surrendered before replacements will be issued.

## **14 Meetings of Convertible Securityholders, Modification and Waiver, Substitution**

### *(a) Meetings of Convertible Securityholders*

The Trust Deed contains provisions for convening meetings of Convertible Securityholders to consider matters affecting their interests, including the sanctioning by Extraordinary Resolution of a modification of any of these Conditions or any provisions of the Trust Deed. Such a meeting may be convened by the Issuer or the Trustee and shall be convened by the Issuer if requested in writing by Convertible Securityholders holding not less than 10 per cent. in principal amount of the Convertible Securities for the time being outstanding. The quorum for any meeting convened to consider an Extraordinary Resolution will be one or more persons holding or representing a clear majority in principal amount of the Convertible Securities for the time being outstanding, or at any adjourned meeting one or more persons being or representing Convertible Securityholders whatever the principal amount of the Convertible Securities so held or represented, unless the business of such meeting includes consideration of proposals, *inter alia*, (i) to modify the dates on which interest is payable in respect of the Convertible Securities, (ii) to reduce or cancel the principal amount of, or interest on, the Convertible Securities or to reduce the amount payable on redemption of the Convertible Securities or (iii) to modify or cancel the Conversion Rights, other than pursuant to or as a result of any amendments to these Conditions and the Trust Deed made pursuant to and in accordance with the

provisions of Condition 11(g) (“Newco Scheme Modification”) or pursuant to a Conversion Procedures Amendment, (iv) to increase the Conversion Price other than in accordance with these Conditions or pursuant to a Newco Scheme Modification, (v) to change the currency of any payment in respect of the Convertible Securities, (vi) to change the governing law of the Convertible Securities, the Trust Deed or the Agency Agreement (other than in the case of a substitution of the Issuer (or any previous substitute or substitutes) under Condition 14(c)), (vii) to modify the provisions concerning the quorum required at any meeting of Convertible Securityholders or the majority required to pass an Extraordinary Resolution, in which case the necessary quorum will be one or more persons holding or representing not less than two-thirds, or at any adjourned meeting not less than one-half, in principal amount of the Convertible Securities for the time being outstanding. Any Extraordinary Resolution duly passed shall be binding on Convertible Securityholders (whether or not they were present at the meeting at which such resolution was passed).

The Trust Deed provides that a resolution in writing signed by or on behalf of the holders of not less than two-thirds of the aggregate principal amount of Convertible Securities outstanding shall for all purposes be as valid and effective as an Extraordinary Resolution passed at a meeting of Convertible Securityholders duly convened and held.

No consent or approval of Convertible Securityholders shall be required in connection with any Newco Scheme Modification or Conversion Procedures Amendment.

*(b) Modification and Waiver*

The Trustee may agree, without the consent of the Convertible Securityholders, to (i) any modification of any of the provisions of the Trust Deed, any trust deed supplemental to the Trust Deed, the Agency Agreement, any agreement supplemental to the Agency Agreement, the Convertible Securities or these Conditions which in the Trustee’s opinion is of a formal, minor or technical nature or is made to correct a manifest error or to comply with mandatory provisions of law, and (ii) any other modification to the Trust Deed, any trust deed supplemental to the Trust Deed, the Agency Agreement, any agreement supplemental to the Agency Agreement, the Convertible Securities or these Conditions (except as mentioned in the Trust Deed), and any waiver or authorisation of any breach or proposed breach, of any of the provisions of the Trust Deed, any trust deed supplemental to the Trust Deed, the Agency Agreement, any agreement supplemental to the Agency Agreement, the Convertible Securities or these Conditions which is, in the opinion of the Trustee, not materially prejudicial to the interests of the Convertible Securityholders. Any such modification, authorisation or waiver may be made on such conditions (if any) as the Trustee may determine and shall be binding on the Convertible Securityholders and such modification shall be notified to the Convertible Securityholders promptly in accordance with Condition 17.

*(c) Substitution*

The Trustee may, without the consent of the Convertible Securityholders, agree any substitution as provided in, and for the purposes of, Condition 11(g) or to the substitution in place of the Issuer (or any previous substitute or substitutes under this Condition) as the principal debtor under the Convertible Securities and the Trust Deed of any Subsidiary of the Issuer subject to (a) the Convertible Securities being unconditionally and irrevocably guaranteed by the Issuer, and (b) the Convertible Securities continuing to be convertible or exchangeable into Ordinary Shares as provided in these Conditions *mutatis mutandis* as provided in these Conditions, with such amendments as the Trustee shall consider appropriate subject to, in any such case, (x) the Trustee being satisfied that the interests of the Convertible Securityholders will not be materially prejudiced by the substitution, and (y) certain other conditions set out in the Trust Deed being complied with. In the case of such a substitution the

Trustee may agree, without the consent of the Convertible Securityholders, to a change of the law governing the Convertible Securities and/or the Trust Deed provided that such change would not in the opinion of the Trustee be materially prejudicial to the interests of the Convertible Securityholders. Any such substitution shall be binding on the Convertible Securityholders and shall be notified promptly to the Convertible Securityholders in accordance with Condition 17.

(d) *Entitlement of the Trustee*

In connection with the exercise of its functions (including, but not limited to, those referred to in this Condition) the Trustee shall (except when acting on the instructions of the Convertible Securityholders as specified in the Conditions) have regard to the interests of the Convertible Securityholders as a class and, in particular but without limitation, shall not have regard to the consequences of the exercise of its trusts, powers or discretions for individual Convertible Securityholders resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory or any political subdivision thereof, and the Trustee shall not be entitled to require, nor shall any Convertible Securityholder be entitled to claim, from the Issuer or any other person or entity any indemnification or payment in respect of any tax consequence of any such exercise upon individual Convertible Securityholders.

## **15 Enforcement**

The Trustee may at any time, at its discretion and without notice, take such proceedings against the Issuer as it may think fit to enforce the provisions of the Trust Deed and the Convertible Securities, but it shall not be bound to take any such proceedings or any other action in relation to the Trust Deed or the Convertible Securities unless (i) it shall have been so directed by an Extraordinary Resolution or so requested in writing by the holders of at least one-quarter in principal amount of the Convertible Securities then outstanding, and (ii) it shall have been indemnified and/or secured and/or prefunded to its satisfaction. No Convertible Securityholder shall be entitled to proceed directly against the Issuer unless the Trustee, having become bound so to proceed, fails so to do within a reasonable period and the failure shall be continuing.

## **16 The Trustee**

The Trust Deed contains provisions for the indemnification of the Trustee and for its relief from responsibility, including relieving it from taking proceedings unless indemnified and/or secured and/or prefunded to its satisfaction. The Trustee is entitled to enter into business transactions with the Issuer and any entity related to the Issuer without accounting for any profit. The Trustee may rely without liability to Convertible Securityholders on a report, confirmation or certificate or any advice of any accountants, financial advisers or financial institution, whether or not addressed to it and whether their liability in relation thereto is limited (by its terms or by any engagement letter relating thereto entered into by the Trustee or in any other manner) by reference to a monetary cap, methodology or otherwise. The Trustee shall be obliged to accept and be entitled to rely on any such report, confirmation or certificate or advice where the Issuer procures delivery of the same pursuant to its obligation to do so under any provision of these Conditions or the Trust Deed and such report, confirmation or certificate or advice shall be binding on the Issuer, the Trustee and the Convertible Securityholders in the absence of manifest error.

## **17 Notices**

Notices to the holders of the Convertible Securities shall be mailed to them at their respective addresses in the Register and deemed to have been given on the fourth weekday (being a day other than a Saturday or a Sunday) after the date of mailing.

## **18 Further Issues**

The Issuer may from time to time without the consent of the Convertible Securityholders create and issue further notes, bonds or debentures either having the same terms and conditions in all respects as the outstanding notes, bonds or debentures of any series (including the Convertible Securities) or in all respects except for the first payment of interest on them and the first date on which conversion rights may be exercised and so that such further issue shall be consolidated and form a single series with the outstanding notes, bonds or debentures of any series (including the Convertible Securities) or upon such terms as to interest, conversion, premium, redemption and otherwise as the Issuer may determine at the time of their issue. Any further notes, bonds or debentures forming a single series with the outstanding notes, bonds or debentures of any series (including the Convertible Securities) constituted by the Trust Deed or any deed supplemental to it shall, and any other notes, bonds or debentures may, with the consent of the Trustee, be constituted by a deed supplemental to the Trust Deed. The Trust Deed contains provisions for convening a single meeting of the Convertible Securityholders and the holders of notes, bonds or debentures of other series in certain circumstances where the Trustee so decides.

## **19 Contracts (Rights of Third Parties) Act 1999**

No person shall have any right to enforce any term or condition of the Convertible Securities under the Contracts (Rights of Third Parties) Act 1999.

## **20 Governing Law and Jurisdiction**

### *(a) Governing Law*

The Trust Deed, the Agency Agreement and the Convertible Securities and any non-contractual obligations arising out of or in connection with them are governed by, and shall be construed in accordance with, English law.

### *(b) Jurisdiction*

The courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the Trust Deed or the Convertible Securities and accordingly any legal action or proceedings arising out of or in connection with the Trust Deed or the Convertible Securities (“Proceedings”) may be brought in such courts. The Issuer has in the Trust Deed irrevocably submitted to the jurisdiction of such courts and has waived any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum. This submission is made for the benefit of the Trustee and each of the Convertible Securityholders and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

### *(c) Agent for Service of Process*

The Issuer has irrevocably appointed Fortress Investment Group (UK) Limited at its registered office for the time being, currently at 5 Saville Row, London W1S 3PD as its agent in England to receive service of process in any Proceedings in England. Nothing herein or in the Trust Deed shall affect the right to serve process in any other manner permitted by law.

## **21 Definitions**

In these Conditions, unless otherwise provided:



“Additional Ordinary Shares” has the meaning provided in Condition 6(c).

“Convertible Securityholder” and “holder” mean the person in whose name a Convertible Security is registered in the Register (as defined in Condition 4(a)).

“business day” means, in relation to any place, a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets are open for business in that place.

“Closing Date” means June 2009.

“Conversion Date” has the meaning provided in Condition 6(g).

“Conversion Notice” has the meaning provided in Condition 6(g).

“Conversion Period” has the meaning provided in Condition 6(a).

“Conversion Price” has the meaning provided in Condition 6(a).

“Conversion Procedures Amendment” has the meaning provided in Condition 6(a).

“Conversion Reference Amount” means the principal amount of the Convertible Securities to be converted, together with any unpaid Deferred Interest in respect thereof.

“Conversion Right” has the meaning provided in Condition 6(a).

“Corporate Facility” means the Issuer’s €175 million term loan facility which is scheduled to mature on 30 June 2011 with €115 million outstanding at the date of this Information Memorandum, as amended, supplemented or replaced from time to time and including any other facility or financing (howsoever described) for the purposes of refinancing all or part thereof.

“Current Market Price” means, in respect of an Ordinary Share at a particular date, the average of the daily Volume Weighted Average Price of an Ordinary Share on each of the five consecutive dealing days ending on the dealing day immediately preceding such date; provided that if at any time during the said five-dealing-day period the Volume Weighted Average Price shall have been based on a price ex-Dividend (or ex- any other entitlement) and during some other part of that period the Volume Weighted Average Price shall have been based on a price cum-Dividend (or cum- any other entitlement), then:

- (a) if the Ordinary Shares to be issued or transferred and delivered do not rank for the Dividend (or entitlement) in question, the Volume Weighted Average Price on the dates on which the Ordinary Shares shall have been based on a price cum- Dividend (or cum- any other entitlement) shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Dividend or entitlement per Ordinary Share as at the date of first public announcement of such Dividend (or entitlement); or
- (b) if the Ordinary Shares to be issued or transferred and delivered do rank for the Dividend (or entitlement) in question, the Volume Weighted Average Price on the dates on which the Ordinary Shares shall have been based on a price ex-Dividend (or ex- any other entitlement) shall for the purpose of this definition be deemed to be the amount thereof increased by an amount equal to the Fair Market Value of any such Dividend or entitlement per Ordinary Share as at the date of first public announcement of such Dividend (or entitlement),

and provided further that if on each of the said five dealing days the Volume Weighted Average Price shall have been based on a price cum-Dividend (or cum- any other entitlement) in respect of a Dividend (or other entitlement) which has been declared or announced but the Ordinary Shares to be issued or transferred and delivered do not rank for that Dividend (or other entitlement) the Volume Weighted Average Price on each of

such dates shall for the purposes of this definition be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Dividend or entitlement per Ordinary Share as at the date of the first public announcement of such Dividend or entitlement;

and provided further that, if the Volume Weighted Average Price of an Ordinary Share is not available on one or more of the said five dealing days (disregarding for this purpose the proviso to the definition of Volume Weighted Average Price), then the average of such Volume Weighted Average Prices which are available in that five-dealing-day period shall be used (subject to a minimum of two such prices) and if only one, or no, such Volume Weighted Average Price is available in the relevant period, the Current Market Price shall be determined in good faith by the Issuer.

“dealing day” means a day on which the Relevant Stock Exchange or relevant market is open for business and on which Ordinary Shares, Securities or Spin-Off Securities (as the case may be) may be dealt in (other than a day on which the Relevant Stock Exchange or relevant market is scheduled to or does close prior to its regular weekday closing time).

“Deferred Interest” means (i) any interest payment deferred pursuant to Condition 5(b) and which has not been satisfied, and (ii) any interest payment which, pursuant to Condition 5(c), the Issuer has elected to defer and which has not been satisfied.

“Deferred Interest Payment Election” has the meaning provided in Condition 6(i).

“Deferred Interest Payment Election Date” has the meaning provided in Condition 6(i).

“Deferred Interest Payment Election Notice” has the meaning provided in Condition 6(i).

“Dividend” means any dividend or distribution to Shareholders (including a Spin-Off) whether of cash, assets or other property, and wherever paid and however described and whether payable out of share premium account, profits, retained earnings or any other capital or revenue reserve or account, and including a distribution or payment to holders upon or in connection with a reduction of capital (and for these purposes a distribution of assets includes without limitation an issue of Ordinary Shares or other Securities credited as fully or partly paid up by way of capitalisation of profits or reserves), provided that:

- (a) where a Dividend in cash is announced which is to be, or may at the election of a Shareholder or Shareholders be, satisfied by the issue or delivery of Ordinary Shares or other property or assets, or where a capitalisation of profits or reserves is announced which is to be, or may at the election of a Shareholder or Shareholders be, satisfied by the payment of cash, then the Dividend in question shall be treated as a cash Dividend of the greater of (i) such cash amount and (ii) the Current Market Price of such Ordinary Shares or, as the case may be, Fair Market Value of such other property or assets (as at the date of the first public announcement of such Dividend or capitalisation (as the case may be) or if later, the date on which the number of Ordinary Shares (or amount of property or assets, as the case may be) which may be issued or transferred and delivered is determined);
- (b) any issue of Ordinary Shares falling within Condition 6(b)(ii) shall be disregarded;
- (c) a purchase or redemption or buy back of share capital of the Issuer by or on behalf of the Issuer or any of its Subsidiaries shall not constitute a Dividend unless, in the case of a purchase or redemption or buy back of Ordinary Shares by or on behalf of the Issuer or any of its Subsidiaries, the weighted average price per Ordinary Share (before expenses) on any one day (a “Specified Share Day”) in respect of such purchases or redemptions or buy backs (translated, if not in the Relevant Currency, into the Relevant Currency at the Prevailing Rate on such day) exceeds by more than 5 per cent. the average of the closing prices of the Ordinary Shares on the Relevant Stock Exchange (as published by or derived from the Relevant Stock Exchange) on the five dealing days immediately preceding the

Specified Share Day or, where an announcement (excluding, for the avoidance of doubt for these purposes, any general authority for such purchases, redemptions or buy backs approved by a general meeting of Shareholders or any notice convening such a meeting of Shareholders) has been made of the intention to purchase, redeem or buy back Ordinary Shares at some future date at a specified price or where a tender offer is made, on the five dealing days immediately preceding the date of such announcement or the date of first public announcement of such tender offer (and regardless whether or not a price per Ordinary Share, a minimum price per Ordinary Share or a price range or a formula for the determination thereof is or is not announced at such time), as the case may be, in which case such purchase, redemption or buy back shall be deemed to constitute a Dividend in the Relevant Currency to the extent that the aggregate price paid (before expenses) in respect of such Ordinary Shares purchased, redeemed or bought back by the Issuer or, as the case may be, any of its Subsidiaries (translated where appropriate into the Relevant Currency as provided above) exceeds the product of (i) 105 per cent. of the average closing price of the Ordinary Shares determined as aforesaid and (ii) the number of Ordinary Shares so purchased, redeemed or bought back; and

- (d) if the Issuer or any of its Subsidiaries shall purchase, redeem or buy back any depositary or other receipts or certificates representing Ordinary Shares, the provisions of paragraph (c) shall be applied in respect thereof in such manner and with such modifications (if any) as shall be determined in good faith by the Issuer.

“equity share capital” means, in relation to any entity, its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specific amount in a distribution.

“euro” and “€” means the currency introduced at the start of the third stage of European economic and monetary union pursuant to the Treaty establishing the European Community, as amended.

“Euronext Amsterdam” means Euronext Amsterdam by NYSE Euronext, the regulated market of Euronext Amsterdam N.V.

“Extraordinary Resolution” has the meaning provided in the Trust Deed.

“Fair Market Value” means, with respect to any property on any date, the fair market value of that property as determined in good faith by the Issuer provided that (i) the Fair Market Value of a cash Dividend shall be the amount of such cash Dividend; (ii) the Fair Market Value of any other cash amount shall be the amount of such cash; (iii) where Securities, Spin-Off Securities, options, warrants or other rights are publicly traded in a market of adequate liquidity (as determined in good faith by the Issuer), the Fair Market Value (a) of such Securities or Spin-Off Securities shall equal the arithmetic mean of the daily Volume Weighted Average Prices of such Securities or Spin-Off Securities and (b) of such options, warrants or other rights shall equal the arithmetic mean of the daily closing prices of such options, warrants or other rights, in the case of both (a) and (b) during the period of five dealing days on the relevant market commencing on such date (or, if later, the first such dealing day such Securities, Spin-Off Securities, options, warrants or other rights are publicly traded) or such shorter period as such Spin-Off Securities, options, warrants or other rights are publicly traded; (iv) where Securities, Spin-Off Securities, options, warrants or other rights are not publicly traded (as aforesaid), the Fair Market Value of such Securities, Spin-Off Securities, options, warrants or other rights shall be determined in good faith by the Issuer, on the basis of a commonly accepted market valuation method and taking account of such factors as it considers appropriate, including (where available) the market price per Ordinary Share, the dividend yield of an Ordinary Share, the volatility of such market price, prevailing interest rates and the terms of such Securities, Spin-Off Securities, options, warrants or other rights, including as to the expiry date and exercise price (if any) thereof. Such amounts shall in the case of (i), be translated into the Relevant Currency (if declared or paid or payable in a currency other than the Relevant Currency) at

the rate of exchange used to determine the amount payable to Shareholders who were paid or are to be paid or are entitled to be paid the cash Dividend in the Relevant Currency; and in any other case, shall be translated into the Relevant Currency (if expressed in a currency other than the Relevant Currency) at the Prevailing Rate on that date. In addition, in the case of (i) and (ii), any withholding or deduction required to be made on account of tax and any associated tax credit shall be disregarded.

“Further Convertible Securities” means any further Convertible Securities issued pursuant to Condition 18 and consolidated and forming a single series with the then outstanding Convertible Securities.

“Group” means the Issuer and its Subsidiaries taken as a whole.

“Interest Payment Trigger Date” means the Interest Payment Date next following the repayment in full of the Corporate Facility, or such other time as payment is permitted under the Corporate Facility.

“Interest Period” means the period beginning on (and including) the Closing Date and ending on (but excluding) the next succeeding Interest Payment Date and each successive period beginning on (and including) an Interest Payment Date and ending on (but excluding) the next succeeding Interest Payment Date.

“Interest Period” has the meaning provided in Condition 5(a).

“Newco Scheme” means a scheme of arrangement or analogous proceeding (which would, for the avoidance of doubt, include a scheme of arrangement or an amalgamation under the Companies (Guernsey) Law, 2008 as amended) (“Scheme of Arrangement”) which effects the interposition of a limited liability company (“Newco”) between the Shareholders of the Issuer immediately prior to the Scheme of Arrangement (the “Existing Shareholders”) and the Issuer; provided that (i) only ordinary shares of Newco are issued to Existing Shareholders; (ii) immediately after completion of the Scheme of Arrangement the only shareholders of Newco are Existing Shareholders; (iii) immediately after completion of the Scheme of Arrangement, Newco is (or one or more wholly-owned Subsidiaries of Newco are) the only shareholder of the Issuer; (iv) all Subsidiaries of the Issuer immediately prior to the Scheme of Arrangement (other than Newco, if Newco is then a Subsidiary of the Issuer) are Subsidiaries of the Issuer (or of Newco) immediately after completion of the Scheme of Arrangement; and (v) immediately after completion of the Scheme of Arrangement the Issuer (or Newco) holds, directly or indirectly, the same percentage of the ordinary share capital and equity share capital of those Subsidiaries as was held by the Issuer immediately prior to the Scheme of Arrangement.

“Optional Deferred Interest Settlement Date” has the meaning provided in Condition 5(c).

“Optional Redemption Date” has the meaning provided in Condition 7(b).

“Optional Redemption Notice” has the meaning provided in Condition 7(b).

“Ordinary Shares” means fully paid ordinary shares in the capital of the Issuer currently with no par value.

a “person” includes any individual, company, corporation, firm, partnership, joint venture, undertaking, association, organisation, trust, state or agency of a state (in each case whether or not being a separate legal entity).

“Prevailing Rate” means, in respect of any currencies on any day, the spot rate of exchange between the relevant currencies prevailing as at or about 12 noon (London time) on that date as appearing on or derived from the Relevant Page or if such a rate cannot be determined at such time, the rate prevailing as at or about 12 noon (London time) on the immediately preceding day on which such rate can be so determined.

“Record Date” has the meaning provided in Condition 8(b).

“Reference Date” means, in relation to a Retroactive Adjustment, the date as of which the relevant Retroactive Adjustment takes effect or, in any such case, if that is not a dealing day, the next following dealing day.

“Register” has the meaning provided in Condition 4(a).

“Relevant Currency” means euro or, if at the relevant time or for the purposes of the relevant calculation or determination, Euronext Amsterdam is not the Relevant Stock Exchange but there is a Relevant Stock Exchange, the currency in which the Ordinary Shares are quoted or dealt in on the Relevant Stock Exchange at such time.

“Relevant Date” means, in respect of any Convertible Security, whichever is the later of (i) the date on which payment in respect of it first becomes due and (ii) if any amount of the money payable is improperly withheld or refused the date on which payment in full of the amount outstanding is made or (if earlier) the date on which notice is duly given by the Issuer to the Convertible Securityholders in accordance with Condition 17 that, upon further presentation of the Convertible Security, where required pursuant to these Conditions, being made, such payment will be made, provided that such payment is in fact made as provided in these Conditions.

“Relevant Page” means the relevant page on Bloomberg or such other information service provider that displays the relevant information.

“Relevant Stock Exchange” means Euronext Amsterdam or, if at the relevant time the Ordinary Shares are not at that time listed and admitted to trading on Euronext Amsterdam, the principal stock exchange or securities market on which the Ordinary Shares are then listed, admitted to trading or quoted or dealt in (if any).

“Retroactive Adjustment” has the meaning provided in Condition 6(c).

“Securities” means any securities including, without limitation, Ordinary Shares, or options, warrants or other rights to subscribe for or purchase or acquire Ordinary Shares.

“Shareholders” means the holders of Ordinary Shares.

“Specified Date” has the meaning provided in Conditions 6(b)(vii) and (viii).

“Spin-Off” means:

- (a) a distribution of Spin-Off Securities by the Issuer to Shareholders as a class; or
- (b) any issue, transfer or delivery of any property or assets (including cash or shares or securities of or in or issued or allotted by any entity) by any entity (other than the Issuer) to Shareholders as a class or, in the case of or in connection with a Newco Scheme, Existing Shareholders as a class (but excluding the issue and allotment of ordinary shares by Newco to Existing Shareholders as a class), pursuant in each case to any arrangements with the Issuer or any of its Subsidiaries.

“Spin-Off Securities” means equity share capital of an entity other than the Issuer or options, warrants or other rights to subscribe for or purchase equity share capital of an entity other than the Issuer.

“Subsidiary” has the meaning provided in Section 531 of the Companies (Guernsey) Law, 2008 as amended.

“TARGET Business Day” means a day (other than a Saturday or Sunday) on which the TARGET System is operating.

“TARGET System” means the Trans-European Automated Real-Time Gross Settlement Express Transfer (known as TARGET2) system which was launched on 19 November 2007 or any successor thereto.

“Volume Weighted Average Price” means, in respect of an Ordinary Share, Security or, as the case may be, a Spin-Off Security on any dealing day, the order book volume-weighted average price of an Ordinary Share, Security or, as the case may be, a Spin-Off Security published by or derived (in the case of an Ordinary Share) from the relevant Bloomberg page (or any successor page) or (in the case of a Security (other than Ordinary Shares) or Spin-Off Security) from the principal stock exchange or securities market on which such Securities or Spin-Off Securities are then listed or quoted or dealt in, if any or, in any such case, such other source or determined on such other basis as shall be determined in good faith to be appropriate by the Issuer on such dealing day, provided that if on any such dealing day such price is not available or cannot otherwise be determined as provided above, the Volume Weighted Average Price of an Ordinary Share, Security or a Spin-Off Security, as the case may be, in respect of such dealing day shall be the Volume Weighted Average Price, determined as provided above, on the immediately preceding dealing day on which the same can be so determined.

“Voting Rights” means the right generally to vote at a general meeting of Shareholders of the Issuer (irrespective of whether or not, at the time, stock of any other class or classes shall have, or might have, voting power by reason of the happening of any contingency).

References to any act or statute or any provision of any act or statute shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under such modification or re-enactment.

References to any issue or offer or grant to Shareholders or Existing Shareholders “as a class” or “by way of rights” shall be taken to be references to an issue or offer or grant to all or substantially all Shareholders or Existing Shareholders, as the case may be, other than Shareholders or Existing Shareholders, as the case may be, to whom, by reason of the laws of any territory or requirements of any recognised regulatory body or any other stock exchange or securities market in any territory or in connection with fractional entitlements, it is determined not to make such issue or offer or grant.

In making any calculation or determination of Current Market Price or Volume Weighted Average Price, such adjustments (if any) shall be made as the Issuer considers appropriate to reflect any consolidation or subdivision of the Ordinary Shares or any issue of Ordinary Shares by way of capitalisation of profits or reserves, or any like or similar event.

For the purposes of Conditions 6(b), (c), (g) and (h) and Condition 11 only, (a) references to the “issue” of Ordinary Shares shall include the transfer and/or delivery of Ordinary Shares, whether newly issued and allotted or previously existing or held by or on behalf of the Issuer or any of its Subsidiaries, and (b) Ordinary Shares held by or on behalf of the Issuer or any of its respective Subsidiaries (and which, in the case of Condition 6(b)(iv) and (vi), do not rank for the relevant right or other entitlement) shall not be considered as or treated as “in issue”.

## APPLICATION PROCEDURES

### 1 Shareholders

Subject to the restrictions set out in “Overseas Shareholders” below, the Offer is available to all Shareholders.

### 2 Application

Applications for Convertible Securities pursuant to the Offer may only be made on an Application Form, the form of which is Schedule 1 to this Information Memorandum, and which is also available on request from the Registrar.

Qualifying Shareholders who validly apply for their full *pro rata* entitlement to Convertible Securities will be allotted their valid applications in full, unless the Offer is over-subscribed, in which case (unless the principal amount of the Convertible Securities offered is increased to more than €130,000,000) applications will be scaled back to a minimum subscription amount of €50,000. Any subscription monies to be returned to Qualifying Shareholders will be returned to the Qualifying Shareholder’s bank account, the details of which the Qualifying Shareholder will have provided in section 4 of the Application Form (the “Applicant’s Account”).

Qualifying Shareholders may apply for more than their *pro rata* entitlement of Convertible Securities. The Issuer will have sole discretion as to whether to accept any applications for Convertible Securities from Qualifying Shareholders in excess of their *pro rata* entitlement of Convertible Securities. **The Issuer reserves the right to decline applications in excess of any Qualifying Shareholder’s *pro rata* entitlement.**

Qualifying Shareholders who do not want to take up any of the Convertible Securities to which they are entitled do not need to do anything. In these circumstances, such Qualifying Shareholders will not receive any Convertible Securities.

Qualifying Shareholders who are beneficial and not registered holders of Ordinary Shares must provide proof reasonably acceptable to the Issuer and the Registrar of their beneficial holding of such Ordinary Shares. The Issuer and the Registrar have agreed that, among other things, a certified copy of such Qualifying Shareholder’s paper or online brokerage account statement of holdings dated as of the Record Date will be deemed to be sufficient proof of ownership. The Issuer and the Registrar have absolute discretion to refuse any application made by a Qualifying Shareholder who is a beneficial and not registered, holder of Ordinary Shares if it reasonably believes that the legal holder of such Ordinary Shares has also made an application for Convertible Securities.

**Qualifying Shareholders wishing to apply for Convertible Securities under the Offer should complete and sign an Application Form in accordance with the instructions thereon and post it or deliver it by hand (during normal business hours) to Anson Registrars Limited, PO Box 426, Anson Place, Mill Court, La Charroterie, St. Peter Port, Guernsey GY1 3WX, together with payment by way of interbank electronic transfer (“SWIFT payment”) for the full amount payable for the Convertible Securities being subscribed, so as to arrive as soon as possible, but in any event not later than 3 p.m. London time on 19 June 2009 at which time the Offer will close. Application Forms received after this time may not be accepted. Applications which are not accompanied by cleared funds by this date may also be rejected, at the absolute discretion of the Registrar.**

Any beneficial owners will notify the registered holders and/or custodians holding Ordinary Shares on their behalf that they have made such an application.

The Convertible Securities will be issued at 100 per cent. of their principal amount.

Applications, once made, will be irrevocable. The Registrar will not acknowledge receipt of an Application Form nor the accompanying SWIFT payment. If an Application Form is sent by post, Qualifying Shareholders are recommended to use first-class post and to allow at least two days for delivery. The instructions and other terms set out in the Application Form are part of the terms of the Offer.

Completion and return of an Application Form with its accompanying SWIFT payment shall constitute a contract between the applicant and the Issuer which shall become binding upon receipt by the Registrar of the Application Form and accompanying SWIFT payment and the Offer becoming or being declared unconditional in all respects.

### **3 Acknowledgements, Representations and Undertakings by Shareholders**

By completing and delivering an Application Form in accordance with the instructions thereon, a Qualifying Shareholder will make certain acknowledgements and give certain representations and undertakings as set out therein. Qualifying Shareholders should read these acknowledgements, representations and undertakings carefully before signing an Application Form. The Issuer and the Registrar will rely on the truth and accuracy of such acknowledgements, representations and warranties.

### **4 Payment**

SWIFT payment for the full amount payable for the Convertible Securities being subscribed must be made to:

**BARCLAYS PRIVATE CLIENTS INTERNATIONAL LIMITED, GUERNSEY INTERNATIONAL BANKING CENTRE BRANCH, SORT CODE: 20-35-32; SWIFT CODE: BARCGB22; ACCOUNT NAME: EUROCASTLE INVESTMENTS LIMITED – ESCROW ACCOUNT; ACCOUNT NUMBER: 69006111; IBAN: GB17BARC20353269006111.**

and should be received by the Registrar at the same time as receipt of the Application Form, which must be by no later than 3 p.m. on 19 June 2009. All payments must be made in euro. Payment by cheque will not be accepted.

No interest will be payable on payments made and any interest will accrue for the benefit of the Issuer. As the Convertible Securities are being issued in units of €50,000 and integral multiples of €10 in excess thereof up to and including €99,990 each, any payment therefor should be a whole multiple of €50,000 and integral multiples of €10 in excess thereof up to and including €99,990. All SWIFT payments and completed Application Forms must be received no later than 3 p.m. London time on 19 June 2009. The Application Form contains terms and conditions relating to payment.

All monies received in excess of the amount due in respect of an application will be returned without payment of interest to the Applicant's Account (at the applicant's risk).

The Issuer may (in its sole discretion) treat an application as valid and binding on the person(s) by whom or on whose behalf it is lodged even if it is not completed in accordance with the relevant instructions or if the application does not otherwise comply strictly with the conditions of the Offer.

If the Offer is terminated by the Issuer or is not completed by 25 June 2009 (or such later date as the Issuer may determine) and the Offer lapses, all application monies will be returned without payment of interest to the Applicant's Account (at the applicant's risk) as soon as reasonably practicable thereafter.



## 5 Settlement

The results of the Offer are expected to be announced on 25 June 2009. It is expected that each successful applicant for Convertible Securities will be sent by 10 July 2009 a definitive certificate representing the principal amount of Convertible Securities allotted to him.

## 6 Money Laundering

To ensure compliance with the Money Laundering Regulations, all applications will be subject to Guernsey's verification of identity requirements. This will involve the Qualifying Shareholder providing the verification of identity documents listed in section 6 of the Application Form, unless it can have the declaration provided at section 5 of the Application Form given and signed on its behalf, in accordance with the requirements set out in the Application Form.

Section 5 of the Application Form requires that a person or institution (such as a governmental approved bank, stockbroker or investment firm, financial services firm or an established law firm or accountancy firm) (the "firm") which is subject to anti-money laundering regulation in a country which the Guernsey Financial Services Commission considers as having anti-money laundering standards equivalent to those currently in place in Guernsey (those jurisdictions currently include Austria, Australia, Belgium, Canada, Denmark, Finland, France, Germany, Gibraltar, Greece, Hong Kong, Iceland, Ireland, Isle of Man, Italy, Japan, Jersey, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland, the United Kingdom and the United States of America) should provide, *inter alia*, in accordance Section 5 of the Application Form, written confirmation that it has that status and a written assurance that it has obtained and recorded evidence of the identity of the person for whom it acts and that it will on demand make such evidence available to the Registrar.

Notwithstanding that the declaration in section 5 of the Application Form has been completed and signed, the Registrar is entitled, in its absolute discretion, to request from the Qualifying Shareholder the identity documents listed in section 6 of the Application Form and/or to seek verification of identity of each holder and payor (if necessary) from the Qualifying Shareholder or their bankers or from another reputable institution, agency or professional adviser in the applicable country of residence. If satisfactory evidence of identity has not been obtained within a reasonable time, an application may be rejected or revoked by the Issuer, in its absolute discretion, in which event the monies payable on acceptance of the Offer will be returned to the Applicant's Account (at the acceptor's risk) without payment of interest.

The relevant Convertible Securities (notwithstanding any other term of the Offer) will not be issued to the relevant acceptor unless and until the verification of identity requirements have been satisfied in respect of that acceptor or application. The Registrar is entitled, in its absolute discretion, to determine whether such verification of identity requirements have been satisfied, and neither the Registrar nor the Issuer will be liable to any person for any loss or damage suffered or incurred (or alleged), directly or indirectly, as a result of the exercise of such discretion.

The person lodging the Application Form with payment and in accordance with the other terms as described above (the "acceptor"), including any person who appears to the Registrar to be acting on behalf of some other person, accepts the Offer in respect of such principal amount of Convertible Securities as is referred to therein and shall thereby be deemed to agree to provide the Registrar with such information as the Registrar may require to satisfy the verification of identity requirements.

If the Application Form is submitted by a UK regulated broker or intermediary acting as agent and which is itself subject to the money laundering regulations of the United Kingdom (such regulations, the "Money Laundering Regulations 2007 (SI 2007/2157)"), any verification of identity requirements are the

responsibility of such broker or intermediary. In such case, the lodging agent's stamp should be inserted on the Application Form.

Submission of an Application Form with the appropriate SWIFT payment will constitute a warranty from the applicant that the Money Laundering Regulations will not be breached by application of such remittance.

## 7 Data Protection

The Issuer or the Registrar may process Personal Data (as defined in the Data Protection Act 1998 ("DPA") or the Data Protection (Bailiwick of Guernsey) Law 2001 ("DP Law") (as appropriate) relating to you, your clients and any other person for whom you are applying for Convertible Securities. By submitting a completed Application Form, you acknowledge that such Personal Data may be used by the Issuer or the Registrar to process the applications and subscriptions for Convertible Securities and corresponding forms and documents, produce reports for the Issuer and this may include sharing such data with third parties in one or more of the countries mentioned below when (a) processing the applications for subscriptions for Convertible Securities and corresponding forms and documents; (b) compiling data for the reports to the Issuer; (c) allotting Convertible Securities to successful applicants; and (d) maintaining a register of members of the Issuer. Personal Data may not be retained on record for longer than is necessary for the purposes held. Furthermore, you acknowledge that the countries referred to above include but need not be limited to, those in the European Economic Area or the European Union and any of their respective dependent territories overseas, Argentina, Australia, Brazil, Canada, Hong Kong, Japan, New Zealand, Singapore, South Africa, Switzerland and the United States of America.

By completing and sending an Application Form, the applicant becomes a subject of Personal Data (as defined in the DPA and/or the DP Law (as appropriate)) and consents to the processing by the Issuer and the Registrar of any such Personal Data relating to it in the manner described above.

## 8 Further Information

Until the Closing Date, copies of the following documents will be available, during usual business hours on any weekday (Saturdays and public holidays excepted), for inspection at the office of the Registrar:

- (a) the Memorandum and Articles of Incorporation of the Issuer; and
- (b) a copy of this Information Memorandum together with any amendment to this Information Memorandum or further Information Memorandum.

**If you are in any doubt about the action you should take, you are recommended to obtain your own personal financial advice immediately from an independent professional adviser authorised under the Financial Services and Markets Act 2000 if you are resident in the United Kingdom or, if not, from another appropriately authorised independent professional adviser. If you do not wish to apply for any of the Convertible Securities, you should not complete or return the Application Form.**

<b>All enquiries in connection with the procedure for application should be addressed to Anson Registrars Limited (Tel: +44 (0) 1481 711 301).</b>
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*Please note that, for legal reasons, the Registrar is only able to provide information contained in this Information Memorandum and information relating to the Issuer's register of members and is unable to give any advice on the merits of the Offer or to provide legal, business, accounting, tax, investment or other professional advice.*

## TAXATION

*The following paragraphs, which are intended as a general guide only, and do not constitute tax advice in any jurisdiction. They summarise certain limited aspects of the tax treatment of the acquisition, ownership, conversion and disposal of Convertible Securities for Securityholders. These comments do not apply to certain classes of Securityholders, such as dealers in securities, insurance companies, collective investment schemes and Securityholders who have, or are deemed to have, acquired their Securities by reason of, or in connection with, an office or employment.*

*Prospective investors should consult their own independent professional advisers on the potential tax consequences of subscribing for, purchasing, holding or selling Convertible Securities under the laws of their country and/or state of citizenship, domicile or residence.*

### **Guernsey**

The Issuer has received confirmation from the Director of Income Tax that, under current law and practice in Guernsey, the Issuer will not be liable to income tax in Guernsey save in respect of income arising in Guernsey (other than bank deposit interest). However, the Issuer will be liable to pay an annual exempt company fee to the Income Tax Authority in Guernsey which is currently £600.

Guernsey does not levy taxes upon capital inheritances, capital gains (with the exception of a dwelling profits tax), gifts, sales or turnover, nor are there any estate duties save for an ad valorem fee for the grant of probate.

No stamp duty is chargeable in Guernsey on the issue, transfer or repurchase of shares and therefore no stamp duty will be payable in Guernsey by Securityholders as a result of exercising a Conversion Right.

Securityholders resident outside Guernsey and who do not carry on business in Guernsey through a permanent establishment situated in Guernsey are not subject to any tax in Guernsey in respect of any shares owned by them.

Securityholder resident in Guernsey for the purposes of liability to Guernsey income tax will receive their dividends gross.

### **EU Savings Tax Directive**

Although not a Member State of the European Union, Guernsey in common with certain other jurisdictions has agreed to apply equivalent measures to those contained in the EU Savings Tax Directive (2003/48/EC) (the "EUSD"). Guernsey has adopted a retention tax where interest is paid to an EU resident individual, unless that individual has agreed to the exchange of information about their identity, residence and savings income with the tax authority in their country of residence. The current retention tax is set at a rate of 20 per cent., increasing to 35 per cent. from July 2011. The EU Savings Tax Directive as implemented in Guernsey is expected to apply to holdings of Securities where payments of interest are made. This will only apply to individual holders resident in the EU. Interest paid to banks, companies and any Guernsey resident are not within the scope of the EUSD.

### **Certain United States Federal Income Tax Considerations**

**TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, INVESTORS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF US FEDERAL TAX ISSUES IN THIS INFORMATION MEMORANDUM IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY INVESTORS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON INVESTORS UNDER THE INTERNAL REVENUE**

**CODE; (B) SUCH DISCUSSION IS INCLUDED HEREIN BY THE ISSUER IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY US AND THE UNDERWRITERS OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) INVESTORS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

## **General**

The following is a discussion of certain material US federal income tax consequences applicable to the acquiring, holding and disposing of the Securities by US Holders, Tax-Exempt Holders and Non-US Holders (all as defined below, and collectively, the “Investors” for the purposes of this section).

This discussion deals only with the Issuer’s Securities held as capital assets by holders who are allotted and issued its Securities in connection with the Issue. This discussion does not cover all aspects of US federal income taxation that may be relevant to the purchase, ownership or disposition of the Issuer’s Securities by prospective investors in light of their particular circumstances. In particular, this discussion does not address all of the tax considerations that may be relevant to certain types of investors subject to special treatment under US federal income tax laws, such as the following: brokers or dealers in securities or currencies; financial institutions; pension plans; regulated investment companies; real estate investment trusts; cooperatives; insurance companies; persons holding the Securities as part of a hedging, integrated, conversion or constructive sale transaction or a straddle; traders in securities that elect to use a mark-to-market method of accounting for their securities holdings; persons liable for alternative minimum tax; US expatriates; partnerships or entities or arrangements treated as partnerships or other pass-through entities for US federal income tax purposes (or investors therein); or US Holders (as defined below) whose “functional currency” is not the US dollar.

Furthermore, this discussion is based upon the provisions of the Internal Revenue Code of 1986, as amended (the “Code”), the Treasury regulations promulgated thereunder and administrative and judicial interpretations thereof, all as of the date hereof. Such authorities may be repealed, revoked, modified or subject to differing interpretations, possibly on a retroactive basis, so as to result in US federal income tax consequences different from those discussed below. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax aspects set forth below. This discussion does not address any state, local or non-US tax considerations. For the purposes of this discussion, a prospective investor will be considered a “US Holder” if it beneficially owns the Issuer’s Securities and it is for US federal income tax purposes one of the following:

- a citizen or an individual resident of the United States;
- a corporation (or other entity taxable as a corporation) created or organised in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to US federal income taxation regardless of its source; or
- a trust if the prospective investor (i) is subject to the primary supervision of a court within the United States and one or more US persons have the authority to control all of its substantial decisions or (ii) has a valid election in effect under applicable US Treasury regulations to be treated as a US person.

A prospective investor will be considered a “Non-US Holder” if it beneficially owns the Issuer’s Securities and it is not a US Holder or a partnership or an entity or arrangement treated as a partnership for US federal income tax purposes. If a prospective investor is a partnership or other entity or arrangement treated as a partnership for US federal income tax purposes, the US federal income tax treatment of its partners generally will depend upon the status of such partners and their activities. For the purposes of this discussion, a

prospective investor will be considered a “Tax-Exempt Holder” if it beneficially owns the Issuer’s Securities and it is a tax-exempt entity for US federal income tax purposes.

**PROSPECTIVE INVESTORS ARE URGED TO CONSULT THEIR TAX ADVISORS TO DETERMINE THE US FEDERAL, STATE, LOCAL AND NON-US INCOME AND OTHER TAX CONSEQUENCES OF ACQUIRING, HOLDING AND DISPOSING OF THE SECURITIES, AS WELL AS THE EFFECT OF TAX LAWS OF THE JURISDICTIONS OF WHICH THEY ARE CITIZENS, RESIDENTS OR DOMICILIARIES OR IN WHICH THEY CONDUCT BUSINESS.**

## **The Issuer**

### **Taxation as a Corporation**

The Issuer will be treated as a corporation for US federal income tax purposes. Thus, except as described below, the income, gains, losses, deductions and expenses of the Issuer will not pass through to the Investors, and all distributions by the Issuer to the Investors will be treated as dividends, returns of capital and/or gains.

### **United States Trade or Business; Withholding Taxes**

It is not expected that the Issuer and its subsidiaries will be engaged in a US trade or business as determined for US federal income tax purposes, although no assurances can be given in this regard. So long as the Issuer and its subsidiaries are not engaged in a US trade or business, income and gain earned by the Issuer and its subsidiaries will not be subject to regular US federal income taxation. If, however, contrary to expectations, the Issuer or any of its subsidiaries are treated as engaged in a US trade or business, then the Issuer or its subsidiaries generally would be subject to regular US federal income taxation on any income or gain effectively connected with the United States trade or business (and may also be subject to a 30 per cent. US branch profits tax). In such event, the Issuer’s ability to make distributions to its Shareholders may be materially and adversely affected.

The Issuer may be subject to US withholding tax at a rate of 30 per cent. on certain types of periodic income derived by the Issuer from sources inside the United States.

### **Passive Foreign Investment Company**

Generally, a non- US corporation, such as the Issuer, will be classified as a passive foreign investment company (a “PFIC”) during a given year if either (i) 75 per cent. or more of its gross income constitutes “passive income”, or (ii) 50 per cent. or more of its assets produce “passive income”. For these purposes, “passive income” generally includes interest, dividends, annuities and other investment income. Based on the Issuer’s income, assets and activities, the Directors believe that the Issuer and its subsidiaries have been, and anticipate that they will continue to be, classified as PFICs for US federal income tax purposes.

### **Controlled Foreign Corporation**

Generally, a non- US corporation, such as the Issuer, will be classified as a controlled foreign corporation (a “CFC”) if more than 50 per cent. of the shares of the corporation, measured by reference to combined voting power or value, are held, directly or indirectly, by “US Shareholders”. A US Shareholder, for this purpose, is generally any US Holder that possesses, directly, indirectly or through attribution, 10 per cent. or more of the combined voting power of all classes of shares of the corporation. Depending on the ownership of the Securities, it is possible that the Issuer may be treated as a CFC.

If the Issuer were classified as a CFC, a US Shareholder of the Issuer generally would be required to include in gross income (as ordinary income) at the end of each taxable year of the Issuer an amount equal to the shareholder’s *pro rata* share of the “subpart F income” and certain US source income of the Issuer. Subpart F income generally includes dividends, interest, gains from the sale of securities, and income from certain

transactions with related parties. If the Issuer were classified as a CFC, it is likely that all or substantially all of its income would constitute subpart F income.

## **US Federal Income Tax Classification of the Securities**

The determination of whether an obligation represents debt, equity or some other instrument or interest is based on all the relevant facts and circumstances. There is no statutory, judicial or administrative authority directly addressing the characterisation of the Securities or of instruments similar to the Securities.

The Issuer intends to take the position that the Securities should be treated as equity for US federal income tax purposes, and the remainder of this discussion assumes that the Securities are properly so treated. However, no rulings will be sought from the IRS regarding the characterisation of the Securities. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences set forth herein. The terms and conditions of the Convertible Securities require the holders of the Securities to agree to treat the Securities as equity interests for all US federal, state and local income tax purposes. The balance of this discussion assumes that the Securities will be treated as equity for US federal income tax purposes. **EACH HOLDER SHOULD CONSULT ITS OWN TAX ADVISER ABOUT THE PROPER CHARACTERISATION OF THE SECURITIES FOR US FEDERAL INCOME TAX PURPOSES AND CONSEQUENCES TO SUCH HOLDER OF ACQUIRING, OWNING OR DISPOSING OF THE SECURITIES.**

## **US Holders**

### **Passive Foreign Investment Company**

For any taxable year during which the Issuer is classified as a PFIC and a US Holder held the Securities, and such holder fails to make either a “QEF election” or a “mark-to-market election” (each as described below) with respect to the Securities effective from the beginning of the US Holders’ period of ownership in the Securities, the US Holder will be subject to special tax rules on the receipt of an “excess distribution” in respect of the Securities and on gain from the disposition of the Securities. An excess distribution generally is any distribution to the extent such distribution exceeds 125 per cent. of the average annual distributions made with respect to the Securities during the preceding three taxable years or shorter period during which the US Holder held the Securities. For the purposes of the PFIC rules, (i) a distribution includes any transfer of money or property by the Issuer in redemption of the Securities if such redemption is treated as a dividend for US federal income tax purposes, and (ii) a disposition includes any transfer of money or property by the Issuer in redemption of the Securities if such redemption is treated as an exchange for US federal income tax purposes.

Under the PFIC rules, a US Holder is required to allocate any excess distribution received or gain recognised from disposition of the Securities ratably over the US Holder’s entire holding period for the Securities. The amount allocated to the taxable year in which the excess distribution is made or the gain is recognised will be taxed as ordinary income. The amount allocated to each other taxable year will be subject to tax at the highest income tax rate, regardless of the rate otherwise applicable to the US Holder. The US Holder will also be liable for an additional tax equal to an interest charge on the tax liability attributable to income allocated to prior years. In computing such tax liability, amounts allocated to prior tax years may not be offset by any net operating losses of the US Holder.

In addition, under the PFIC rules and QEF rules (discussed below), a US Holder will be required to file an annual return on IRS Form 8621 regarding distributions received in respect of, and gain recognised on the dispositions of, the Securities. Moreover, any US Holder who acquires the Securities upon the death of a US Holder would not receive a step-up in the tax basis of the Securities to fair market value of such Securities.

Instead, the US Holder beneficiary will have a tax basis in the Securities equal to the decedent's tax basis, if lower. A US Holder may make an election to treat the Issuer as a "qualified electing fund" ("QEF") in order to avoid the application of the PFIC rules discussed above. If a US Holder makes a timely and valid QEF election with respect to the Issuer, the US Holder will be required for each taxable year for which the Issuer is a PFIC to include in income such holder's share of the Issuer's (i) ordinary earnings as ordinary income and (ii) net capital gains as long-term capital gain, in each case computed under US federal income tax principles, in some cases even if such earnings or gains have not been distributed. The US Holder will not be required to include any amount in income for any taxable year during which the Issuer does not have ordinary earnings or net capital gains. Moreover, the US Holder will not be required to include any amount in income for any taxable year for which the Issuer is not a PFIC. Furthermore, the denial of a tax basis step-up to fair market value at death described above generally will not apply.

The QEF rules may cause an electing US Holder to recognise income in a taxable year in amounts significantly greater than the distributions received from the Issuer in such taxable year. In certain cases in which the Issuer does not distribute all of its earnings in a taxable year, a US Holder may be permitted to elect to defer the payment of some or all of its taxes with respect to the Issuer's income subject to an interest charge on the deferred amount. The QEF election is made on a shareholder-by-shareholder basis. Thus, any US Holder of Securities can make its own decision regarding whether to make a QEF election. A QEF election applies to all of the Securities held or subsequently acquired by an electing US Holder and can be revoked only with the consent of the IRS. The Issuer intends to provide US Holders with such information as is necessary to enable them to make a QEF election.

It should be noted that US Holders may not make a QEF election with respect to an option to acquire the Securities, and that certain classes of Investors (for example, consolidated groups and grantor trusts) are subject to special rules regarding the QEF election.

Another election generally available with respect to publicly traded PFICs, the "mark-to-market" election, will not be available with respect to the subsidiaries of the Issuer, making such an election ineffectual with respect to an investment in the Issuer's Securities.

Based on their income, assets and activities, the Directors believe that the Issuer's subsidiaries (including CDOs), to the extent they are treated as corporations for US federal income tax purposes, have been and will continue to be PFICs. Under the PFIC rules, a US Holder would be considered to own corporate equity held by the Issuer based on the value of shares such US Holder owns relative to the value of all outstanding shares of the Issuer. Accordingly, a US Holder would be subject to similar rules with respect to distributions to the Issuer by, and dispositions by the Issuer of, subsidiaries that are PFICs.

Under proposed regulations, a US Holder would be taxable on all distributions with respect to equity of a lower-tier PFIC deemed owned by such US Holder and distributions on such underlying securities could also result in a deemed excess distribution for a US Holder. Any loss from a deemed disposition of an underlying PFIC issuer does not appear to result in a current reduction in income. Further, to the extent that the expenses of the Issuer exceed its income from sources other than distributions or dispositions of the securities of the underlying issuers, such expenses cannot be offset against income earned by the Issuer, and ultimately will reduce gain or increase loss on the ultimate disposition by the US Holder of its shares. As a result, the taxable income recognised from holding shares may differ substantially from and the amount of distributions on the shares within any taxable period. To the extent that income is recognised from a deemed disposition from the securities of the underlying issuers, it should increase a US Holder's tax basis in the shares, resulting in less gain or greater loss on any ultimate disposition of the shares. Therefore, a US Holder could experience a mismatch in both the timing and character of income.

**PROSPECTIVE INVESTORS ARE URGED TO CONSULT THEIR TAX ADVISOR ABOUT THE PFIC RULES, INCLUDING THE POSSIBILITY AND ADVISABILITY OF AND THE PROCEDURE AND TIMING FOR MAKING A QEF OR MARK-TO-MARKET ELECTION IN CONNECTION WITH THE SECURITIES.**

**Controlled Foreign Corporation**

If the Issuer were classified as a CFC, a US Holder that is treated as a US Shareholder of the Issuer for purposes of the CFC rules would generally not be taxable under the PFIC rules described above. Rather, at the end of each taxable year of the Issuer, such US Holder would generally include in gross income (as ordinary income) an amount equal to the shareholder's *pro rata* share of the subpart F income and certain US source income of the Issuer. As a result, to the extent subpart F income of the Issuer included net capital gains, such gains will be treated as ordinary income of the US Holder under the CFC rules, notwithstanding the fact that the character of such gains generally would otherwise be preserved under the PFIC rules if a QEF election were made.

**Distributions on the Securities**

The treatment of actual distributions of cash on the Securities will generally vary depending on whether a US Holder has made a timely QEF or mark-to-market election as described above. If a timely QEF election has been made or if the US Holder is treated as a US Shareholder of the Issuer for the purposes of the CFC rules, distributions should be allocated first to amounts previously taxed pursuant to the QEF election or pursuant to the CFC rules, if applicable. Amounts so allocable would not be taxable to US Holders. Distributions in excess of such previously taxed amounts will be taxable to US Holders as ordinary income upon receipt, to the extent of any remaining untaxed current and accumulated earnings and profits of the Issuer. Such distributions made to a US Holder that is an individual will not be eligible for taxation at reduced tax rates generally applicable to dividends paid by certain United States corporations and "qualified foreign corporations" on or after 1 January 2003. Distributions in excess of (i) previously taxed amounts and (ii) any remaining current and accumulated earnings and profits will be treated first as a non-taxable return of capital, which reduces the tax basis in the Securities to the extent thereof, and then as capital gain.

If a timely mark-to-market election has been made, distributions made by the Issuer to a US Holder will be taxable as ordinary income to the extent of any current and accumulated earnings and profits of the Issuer. Such distributions made to a US Holder that is an individual will not be eligible for taxation at recently reduced tax rates applicable to dividends payable by certain United States corporations and qualified foreign corporations on or after 1 January 2003. Any distributions in excess of the current and accumulated earnings and profits of the Issuer will be treated first as a non-taxable return of capital, which reduces the tax basis in the Securities to the extent thereof, and then as capital gain.

In the event that a US Holder does not make a timely QEF or mark-to-market election, then, except to the extent that distributions may be attributable to amounts previously taxed pursuant to the CFC rules, some or all of any distributions made with respect to the Securities may constitute excess distributions, taxable as previously described under the PFIC rules.

**Sale or Other Disposition of the Securities**

A US Holder that has made a valid QEF or mark-to-market election will generally recognise gain or loss upon the sale or other disposition of the Securities equal to the difference between the amount realised and the holder's adjusted tax basis in the Securities. The tax basis of a US Holder in the Securities will generally be the amount paid for such Securities. Such tax basis will be increased by amounts taxable to such holder by virtue of a QEF or mark-to-market election and will be decreased by (i) actual distributions from the Issuer that are deemed to consist of previously taxed amounts or are treated as a non-taxable reduction in the tax basis of the Securities, and (ii) any losses allowable under the mark-to-market rules. In the case of a US



Holder that has made a valid QEF election, any gain or loss recognised from a sale or other disposition of the Securities will be long-term capital gain or loss if the US Holder has held such Securities for more than one year at the time of the sale or disposition. In the case of a US Holder that has made a valid mark-to-market election, any gain recognised will be ordinary income and any loss recognised will be ordinary loss, to the extent of the net gains previously recognised under the mark-to-market election, and capital loss thereafter. In certain circumstances, non-corporate US Holders may be entitled to preferential treatment for net long-term capital gains. The ability of US Holders to offset capital losses against ordinary income, however, is limited.

If a US Holder does not make a timely QEF election or mark-to-market election, any gain realised from the sale or other disposition of the Securities or any gain deemed to accrue prior to the time a QEF or mark-to-market election is made will generally be treated as an excess distribution and subject to an additional tax reflecting an interest charge under the PFIC rules described above.

If the Issuer were treated as a CFC and a US Holder were treated as a US Shareholder thereof at any time within the five-year period ending on the date of disposition, then, subject to a special limitation for individual US Shareholders that have held the Securities for more than one year, any gain realised by such US Holder upon disposition of the Securities would generally be treated as ordinary income to the extent of the current and accumulated earnings and profits of the Issuer accumulated while such US Shareholder owned the Securities. In this respect, earnings and profits generally would not include any amounts previously taxed pursuant to the CFC rules.

#### **Conversion of Securities into Ordinary Shares**

No gain or loss will be recognised by a US Holder for United States federal income tax purposes on conversion of the Securities solely into Ordinary Shares. Any cash payments received by a holder in lieu of fractional shares will be taxable to such US Holder in the manner described in “Sale or Other Disposition of the Securities” above.

A converting US Holder’s adjusted basis for the Ordinary Shares received upon conversion will be equal to such US Holder’s adjusted tax basis in the Securities determined immediately prior to conversion, less any tax basis allocated to fractional shares paid in cash. A US Holder’s holding period for the Ordinary Shares received upon conversion will include such US Holder’s holding period for the Securities so converted. A QEF election or mark-to-market election made with respect to the Securities will remain in place with respect to the Ordinary Shares received upon conversion, and will be deemed to have been in place since the date that such QEF election or mark-to-market election was originally made with respect to the Securities.

#### **Adjustments to the Conversion Price**

Under certain circumstances, an adjustment to the Conversion Price may be treated as a constructive distribution of stock to holders whose proportionate interest in the Issuer’s earnings and profits or assets is increased thereby, even though no cash or property is actually distributed by the Issuer. Adjustments to the Conversion Price made pursuant to a bona fide reasonable adjustment formula, which has the effect of preventing dilution of the interests of the holders of the Convertible Securities, generally will not be treated as a constructive distribution of stock. Certain of the possible adjustments described in “Terms and Conditions of the Convertible Securities” may qualify as being pursuant to a bona fide reasonable adjustment formula. In contrast, other adjustments may not so qualify. In addition, a failure to adjust the Conversion Price of the Convertible Securities to reflect a stock dividend or similar event could in some circumstances give rise to a constructive distribution to holders of Ordinary Shares. Any such constructive distributions will be subject to United States federal income tax in the manner described above under “Distributions on the Securities.”

## **Tax-Exempt Holders**

### **Unrelated Business Taxable Income**

Tax-Exempt Holders that are generally exempt from US federal income taxation may nevertheless be subject to “unrelated business income tax” on any “unrelated business taxable income” or income from debt-financed property (collectively “UBTI”) derived by such Tax-Exempt Holder. An investment in the Securities should not generate UBTI for Tax-Exempt Holders that are pension plans, Keogh plans, individual retirement accounts, tax-exempt institutions and other tax-exempt entities, provided that such Tax-Exempt Holders do not incur “acquisition indebtedness” (as defined for US federal income tax purposes) with respect to their investments in the Securities.

### **Controlled Foreign Corporation**

If the Issuer were classified as a CFC and a Tax-Exempt Holder were treated as a US Shareholder, the Tax-Exempt Holder’s subpart F income from the Issuer generally would not be treated as UBTI (assuming such Tax-Exempt Holder itself did not incur “acquisition indebtedness” to acquire its Securities).

### **Passive Foreign Investment Company**

As discussed above, the Directors believe that the Issuer has been, and anticipate that it will continue to be, classified as a PFIC for US federal income tax purposes. Treasury regulations provide, however, that Tax-Exempt Holders generally will not be subject to the potentially adverse effects of the PFIC rules discussed above. Moreover, unlike US Holders, a Tax-Exempt Holder may not make a QEF election with respect to the Issuer unless such Tax-Exempt Holder is taxable under the UBTI rules with respect to distributions received from the Issuer (which should occur only if a Tax-Exempt Holder itself incurred “acquisition indebtedness” to make its investment in the Securities).

## **Non-US Holders**

The following discussion applies only to Non-US Holders. Special rules may apply to you if you are a CFC or a PFIC or are otherwise subject to special treatment under the Code. **IN SUCH CASE, YOU SHOULD CONSULT YOUR OWN TAX ADVISOR TO DETERMINE THE US FEDERAL, STATE, LOCAL AND NON-US TAX CONSEQUENCES THAT MAY BE RELEVANT TO YOU WITH RESPECT TO AN INVESTMENT IN THE SECURITIES.**

A Non-US Holder generally will not be subject to US federal income taxation or withholding tax on distributions received from the Issuer or on gains recognised on the sale, exchange or redemption of the Securities where such Non-US Holder’s nexus with the United States is solely as a result of an investment in the Securities. The foregoing, however, may not apply in the case of a Non-US Holder (i) who has an office or fixed place of business in the United States or is otherwise carrying on a US trade or business, (ii) who is an individual present in the United States for 183 days or more in a taxable year or has a “tax home” in the United States for US federal income tax purposes or (iii) who is a former citizen of the United States, a CFC or a corporation which accumulates earnings to avoid US federal income tax.

## **Reporting Requirements**

Treasury regulations promulgated under Section 6038B of the Code require reporting for certain transfers of property (including cash) to a foreign corporation by US persons or entities. In general, these rules require US Holders and Tax-Exempt Holders who acquire the Securities to file a Form 926 with the IRS and to supply certain additional information to the IRS. In the event such holder fails to file any such required form, such holder could be required to pay a substantial penalty. In addition, depending on a holder’s particular

circumstances, such holder may be required to file certain other IRS information returns with respect to an investment in the Securities. **PROSPECTIVE INVESTORS ARE URGED TO CONSULT THEIR TAX ADVISERS REGARDING THESE REPORTING REQUIREMENTS.**

### **Reportable Transactions**

Treasury regulations require that each taxpayer participating in a “reportable transaction” must disclose such participation to the IRS. The scope and application of these rules is not completely clear. In the event an investment in the Issuer constitutes participation in a “reportable transaction”, each Investor who must file a US federal income tax return may be required to file Form 8886 with the IRS with the Investor’s US federal tax return, thereby disclosing certain information relating to the Issuer to the IRS. In addition, the Issuer and its advisers may be required to maintain a list of the Investors and to furnish this list and certain other information to the IRS upon its written request. **PROSPECTIVE INVESTORS ARE URGED TO CONSULT THEIR TAX ADVISERS REGARDING THE APPLICABILITY OF THESE RULES TO AN INVESTMENT IN THE ISSUER.**

### **Backup Withholding and Information Reporting**

Payment of dividends and sales proceeds with respect to shares that are made within the United States or through certain US-related financial intermediaries may be reported to the IRS unless the holder is a corporation or otherwise provides a basis for exemption. Backup withholding may apply to reportable payments if the holder fails to provide an accurate taxpayer identification number or certification of exempt status or fails to report all interest and dividends required to be shown on its US federal income tax returns. The holder may credit amounts withheld against its US federal income tax liability, if any, and claim a refund for amounts in excess of its tax liability if the required information is provided to the IRS. **PROSPECTIVE INVESTORS SHOULD CONSULT THEIR TAX ADVISORS AS TO THEIR QUALIFICATION FOR EXEMPTION FROM BACKUP WITHHOLDING AND THE PROCEDURE FOR OBTAINING AN EXEMPTION.**

## **CERTAIN ERISA CONSIDERATIONS**

The US Employee Retirement Income Security Act of 1974, as amended (“ERISA”) imposes fiduciary standards and certain other requirements on employee benefit plans subject thereto (collectively, “ERISA Plans”), including collective investment funds, separate accounts, and other entities or accounts whose underlying assets are treated as assets of such plans pursuant to the US Department of Labor “plan assets” regulation, 29 CFR Section 2510.3-101, as modified by Section 3(42) of ERISA (as so modified, the “Plan Assets Regulation”) and on those persons who are fiduciaries with respect to ERISA Plans. Investments by ERISA Plans are subject to ERISA’s general fiduciary requirements, including the requirement of investment prudence and diversification and the requirement that an ERISA Plan’s investments be made in accordance with the documents governing the ERISA Plan. The prudence of a particular investment will be determined by the responsible fiduciary of an ERISA Plan by taking into account the ERISA Plan’s particular circumstances and all of the facts and circumstances of the investment including, but not limited to, the matters discussed in “Risk Factors”. Fiduciaries of these plans should consult with their own counsel as to the consequences under ERISA and the Code of an investment in the Issuer.

Under the Plan Assets Regulation, the assets of the Issuer would be deemed to be “plan assets” of an ERISA Plan for the purposes of ERISA and Section 4975 of the Code if plan assets of the ERISA Plan were used to acquire an equity interest in the Issuer and no exception were applicable under the Plan Assets Regulation. The assets of the Issuer will not be deemed to be plan assets of investing ERISA Plans if (i) the Issuer is considered to be an “operating company” under the Plan Assets Regulation, or (ii) equity participation in the Issuer by employee benefit plan investors is not “significant”. Under the rules, equity participation in an entity by Benefit Plan Investors is “significant” on any date if, immediately after the most recent acquisition of any equity interest in the entity, 25 per cent. or more the value of the class of equity interest in the entity is held by Benefit Plan Investors (as defined in Section 3(3) of ERISA).

The Issuer intends to continue to prohibit investors that are subject to Title I of ERISA or Section 4975 of the Code from acquiring any Ordinary Shares (even where those Ordinary Shares are acquired or held as the result of the conversion of the Convertible Securities) or Convertible Securities. Accordingly, Benefit Plan Investors using assets of Plans that are subject to Title I ERISA or Section 4975 of the Code (including, as applicable, assets of an insurance company general account) will not be permitted to acquire Convertible Securities, and each investor will be required to represent, or will be deemed to have represented, as applicable, that it is not a Benefit Plan Investor that is using assets of a Plan that is subject to ERISA or Section 4975 of the Code. Each acquirer of either a Convertible Security or an Ordinary Share (howsoever acquired) will be deemed to represent and warrant that it is not a Benefit Plan Investor that is using assets of a Plan that is subject to ERISA or Section 4975 of the Code. In addition, the Issuer’s articles of incorporation provide that, in the event that a purported transfer of any Ordinary Share to a Benefit Plan Investor that is subject to the Title I of ERISA or Section 4975 of the Code could result in the assets of the Issuer being treated as plan assets that are subject to Title I of ERISA or Section 4975 of the Code, any Ordinary Shares held by such a Benefit Plan Investor shall be deemed to be Shares-in-Trust, and transferred automatically and by operation of law to a Trust for the benefit of one or more designated charities.

Governmental plans and certain church plans, while not subject to the fiduciary responsibility provisions of ERISA or the provisions of Section 4975 of the Code, may nevertheless be subject to state or other laws that are substantially similar to the foregoing provisions of ERISA and the Code. Fiduciaries of any such plans should consult with their counsel before purchasing Convertible Securities.

## OVERSEAS SHAREHOLDERS

**The making or acceptance of the offer of Convertible Securities to or by Shareholders whose registered address is outside the United Kingdom or who are citizens or residents of or who are located in countries other than the United Kingdom (“Overseas Shareholders”) may be affected by the laws of the relevant jurisdictions. Such persons should consult their professional advisers as to whether they require any governmental or other consents or need to observe any other formalities to enable them to take up their entitlements.**

Application Forms will not be sent to Overseas Shareholders who are in the United States, Australia, Canada or Japan except that Application Forms may be sent to certain of these Overseas Shareholders if they can prove to the satisfaction of the Issuer that such action would not result in a contravention of any applicable legal or regulatory requirements. For the provisions dealing specifically with Shareholders in the United States, see “— United States” and “Transfer Restrictions” below.

Receipt of this Information Memorandum and/or an Application Form will not constitute an offer in those jurisdictions in which it would be illegal to make such an offer and, in those circumstances, this Information Memorandum and/or an Application Form either will not be sent or will be deemed to have been sent for information only and should not be copied or redistributed.

No person receiving this Information Memorandum or an Application Form in any territory other than the United Kingdom may treat the same as constituting an invitation or offer to them, nor should they in any event use such an Application Form unless, in the relevant territory, such an invitation or offer could lawfully be made to them and such Application Form could lawfully be used without contravention of any unfulfilled registration or other legal requirements. This Information Memorandum is being sent to such persons for information.

Any person (including, without limitation, nominees and trustees) outside the United Kingdom wishing to apply for Convertible Securities must satisfy themselves as to full observance of the laws of any relevant territory in connection therewith, including obtaining any requisite governmental or other consents, observing any other requisite formalities and paying any issue, transfer or other taxes due in such territory. Any Shareholder who is in any doubt as to their position should consult their professional adviser(s).

Persons receiving an Application Form should not, in connection with the Offer, distribute or send it in or into any such jurisdiction where to do so would or might contravene local securities laws or regulations. If an Application Form is received by any person in any such jurisdiction or by the agent or nominee of such a person, they must not take up the entitlement referred to in such Application Form except pursuant to an express agreement with the Issuer. Any person who does forward an Application Form into any such jurisdiction whether pursuant to a contractual or legal obligation or otherwise should draw the attention of the recipient to the contents of this paragraph.

The Issuer reserves the right to treat as invalid any application for Convertible Securities comprised in any Application Form which appears to the Issuer or its agents to have been executed, effected or despatched in a manner which may involve a breach of the legislation of any jurisdiction or if it or its agents believe or their agents believe that the same may violate applicable legal or regulatory requirements or that it does not meet the warranty set out in the Application Form.

Notwithstanding any other provision of this Information Memorandum or the Application Form, the Issuer reserves the right to permit any Overseas Shareholder to apply for their entitlement to Convertible Securities under the Offer if the Issuer, in its sole and absolute discretion, is satisfied that the transaction in question is

exempt from or not subject to the legislation or regulations giving rise to the restrictions in question or would not result in the contravention of any applicable legal or regulatory requirements.

Overseas Shareholders who wish and are permitted to take up their entitlements should note that payments must be made in euro.

### **United States**

The Convertible Securities may only be offered (i) in the United States to persons reasonably believed to be “Accredited Investors” (as such term is defined in Rule 501 of the Securities Act) or “Qualified Institutional Buyers” (as such term is defined in Rule 144A of the Securities Act) that in each case are also “Qualified Purchasers” or “Knowledgeable Employees” (as such terms are defined in the Investment Company Act) and (ii) outside the United States to investors that are not US Persons in offshore transactions pursuant to Regulation S. Initial purchasers of the Convertible Securities will be required to make the representations and agreements set forth under “Transfer Restrictions” herein. Convertible Securities or the Ordinary Shares to be issued upon conversion of the Convertible Securities may only be sold, transferred, assigned, pledged, or otherwise disposed of (i)(a) to a person (x) that the transferor reasonably believes is a Qualified Institutional Buyer in a transaction meeting the requirements of Rule 144A under the Securities Act and (y) that is also a Qualified Purchaser or a Knowledgeable Employee, (b) pursuant to an exemption from registration under the Securities Act such as provided by Rule 144 thereunder to a person that is also a Qualified Purchaser or Knowledgeable Employee or (c) to a person that is not a “US Person” in an offshore transaction in accordance with Rule 903 or Rule 904 of Regulation S and (ii) in each case in accordance with any applicable securities laws of any state of the United States. **You understand that no representation can be made as to the availability of the exemption provided by Rule 144 for resales of the Securities.** See “Transfer Restrictions” below.

## TRANSFER RESTRICTIONS

The Convertible Securities have not been and will not be registered under the Securities Act or any US state securities or “Blue Sky” laws or the securities laws of any other jurisdiction and, accordingly, the Convertible Securities, and the Ordinary Shares to be issued upon conversion of the Convertible Securities, may not be reoffered, resold, pledged or otherwise transferred in the United States or to US Persons unless the Securities are registered under the Securities Act, or an exemption from the registration requirements of the Securities Act is available and in accordance with the restrictions described below.

Each purchaser of Convertible Securities will be required to represent and agree as follows:

- (1) The purchaser (A) (i) is a US Person that is an Accredited Investor or a Qualified Institutional Buyer that in each case is also a Qualified Purchaser or a Knowledgeable Employee, (ii) is acquiring the Convertible Securities for its own account or for the account of an Accredited Investor or a Qualified Institutional Buyer that in each case is also a Qualified Purchaser or a Knowledgeable Employee and (iii) is aware, and each beneficial owner of the Convertible Securities has been advised, that the sale of the Convertible Securities to it is being made in reliance on Rule 144A or another exemption from the registration requirements of the Securities Act, or (B) is not a US Person and is purchasing the Convertible Securities in an offshore transaction pursuant to Regulation S.
- (2) The purchaser understands that the Convertible Securities are being offered in a transaction not involving any public offering in the United States within the meaning of the Securities Act, that the Convertible Securities have not been and will not be registered under the Securities Act and that (A) if in the future the purchaser decides to offer, resell, pledge or otherwise transfer any of the Convertible Securities, or the Ordinary Shares to be issued upon conversion of the Convertible Securities, such Securities may be offered, resold, pledged or otherwise transferred only (i)(a) to a person (x) that the transferor reasonably believes is a Qualified Institutional Buyer in a transaction meeting the requirements of Rule 144A under the Securities Act and (y) that is also a Qualified Purchaser or a Knowledgeable Employee, (b) pursuant to an exemption from registration under the Securities Act such as provided by Rule 144 thereunder to a person that is also a Qualified Purchaser or Knowledgeable Employee or (c) to a person that is not a “US Person” in an offshore transaction in accordance with Rule 903 or Rule 904 of Regulation S and (ii) in each case in accordance with any applicable securities laws of any state of the United States and that (B) the purchaser will, and each subsequent holder is required to, notify any subsequent purchaser of the Securities from it of the resale restrictions referred to in (A) above.
- (3) The purchaser understands that such Convertible Securities, and the Ordinary Shares to be issued upon conversion of the Convertible Securities, will bear a legend to the following effect:

THIS SECURITY HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE US SECURITIES ACT OF 1933 (THE “SECURITIES ACT”) OR WITH ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) IN ACCORDANCE WITH RULE 144A UNDER THE SECURITIES ACT (“RULE 144A”) TO A PERSON THAT THE HOLDER AND ANY PERSON ACTING ON ITS BEHALF REASONABLY BELIEVE IS A “QUALIFIED INSTITUTIONAL BUYER” WITHIN THE MEANING OF RULE 144A PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A “QUALIFIED INSTITUTIONAL BUYER”, OR IN ACCORDANCE WITH ANOTHER APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT SUCH AS PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), IN

EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND IN EACH CASE TO A PERSON THAT ALSO QUALIFIES AS A “QUALIFIED PURCHASER” OR A “KNOWLEDGEABLE EMPLOYEE” UNDER THE INVESTMENT COMPANY ACT OF 1940, OR (2) TO A PERSON THAT IS NOT A “US PERSON” IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 903 OR RULE 904 OF REGULATIONS UNDER THE SECURITIES ACT. NO REPRESENTATION CAN BE MADE AS TO THE AVAILABILITY OF THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT FOR REALES OF THIS SECURITY.

THIS SECURITY IS NOT TRANSFERABLE EXCEPT IN ACCORDANCE WITH THE RESTRICTIONS DESCRIBED HEREIN. EACH TRANSFEROR OF THIS SECURITY AGREES TO PROVIDE NOTICE OF THE TRANSFER RESTRICTIONS SET FORTH HEREIN TO THE TRANSFEREE.

- (4) The purchaser is not a Benefit Plan Investor that is using assets of a Plan that is subject to ERISA or Section 4975 of the Code (as defined in the US Employee Retirement Income Security Act of 1974, as amended).
- (5) The purchaser agrees to treat the Convertible Securities as equity interests for all US federal, state and local tax purposes.



## GENERAL INFORMATION

### 1 Directors

The Directors of the Issuer are:

Wesley R. Edens (Chairman of the Board)

Paolo G. Bassi

Keith Dorrian

Randal A. Nardone

Dr. Udo Scheffel

Dr. Simon J. Thornton

Details of the interests of the Directors in the Ordinary Shares of the Company as at 31 December 2008 and details of the Directors annual remuneration for year ended 31 December 2008, are set out in the Issuer's Annual Report.

Details of any other directorships that are held and have been held in the past five years by the Directors are available for inspection at the registered office of the Issuer.

### 2 Fees and Expenses

The fees and expenses relating to the Offer are expected to be approximately €3.5 million (in the event that €130 million of Convertible Securities are issued).

## GLOSSARY

The following definitions apply throughout this Information Memorandum unless the context requires otherwise:

<b>ABS</b>	asset-backed securities
<b>Accredited Investors or AIs</b>	accredited investors, as defined in Rule 501 of Regulation D under the Securities Act
<b>affiliate</b>	has the meaning given to it in Rule 405 under the Securities Act
<b>Annual Report</b>	the annual report of the Issuer in respect of the year ended 31 December 2008
<b>Applicant's Account</b>	has the meaning given to it on page 71 of this Information Memorandum
<b>Application Form</b>	the application form on which Shareholders may apply for the Convertible Securities under the Offer, substantially in the form as scheduled hereto
<b>Benefit Plan Investors</b>	has the meaning given to it in Section 3(3) of ERISA.
<b>Board or Board of Directors</b>	the board of directors of the Issuer
<b>CDOs</b>	collateralised debt obligations, which are debt obligations issued in multiple classes secured by an underlying portfolio of investments
<b>City Code</b>	the City Code on Takeovers and Mergers
<b>Closing Date</b>	25 June 2009 (or such earlier or later date as the Issuer may determine)
<b>Combined Mars Portfolios</b>	means the German real estate assets which the Eurocastle Group acquired in February 2007 and which now comprise assets financed under the Mars Floating Facility and the Mars Fixed Facility, as more particularly described in the Issuer's Annual Report
<b>Convertible Securities</b>	the 20 per cent. Perpetual Subordinated Convertible Securities to be issued by the Issuer and convertible into Ordinary Shares of Eurocastle
<b>Convertible Securityholder</b>	the person in whose name a Convertible Security is registered in the Register
<b>Corporate Facility</b>	means the Issuer's €175 million term loan facility which is scheduled to mature on 30 June 2011 with €115 million outstanding at the date of this Information Memorandum, as amended, supplemented or replaced from time to time and including any other facility or financing (howsoever described) for the purposes of refinancing all or part thereof
<b>Directors</b>	the directors of the Issuer
<b>DPA</b>	Data Protection Act 1998
<b>DP Law</b>	Data Protection (Bailiwick of Guernsey) Law 2001

<b>Drive Fund</b>	means the German public open-ended real estate fund called ECTGPROPI in which the Eurocastle Group owns all the units and as a result of which the Issuer consolidates all the assets owned by this fund
<b>EFL Facility</b>	has the meaning given to it on page 6 of this Information Memorandum
<b>EFL Facility Guarantee</b>	has the meaning given to it on page 6 of this Information Memorandum
<b>ERISA</b>	the US Employee Retirement Income Security Act of 1974
<b>Eurocastle Group</b>	Eurocastle Investment Limited and its SPVs and subsidiaries from time to time
<b>firm</b>	has the meaning given to it on page 73 of this Information Memorandum
<b>Fortress or the Manager</b>	FIG LLC
<b>Fortress Funds</b>	collectively, Fortress Investment Fund III L.P., Fortress Investment Fund (Fund B) L.P., Fortress Investment Fund III (Fund C) L.P., Fortress Investment Fund III (Fund D) L.P., Fortress Investment Fund V (Fund E) L.P.
<b>Fortress Shareholders</b>	Shareholders managed by Fortress and certain of its affiliated entities
<b>FSMA</b>	the Financial Services and Markets Act 2000 as amended
<b>Guernsey</b>	the Bailiwick of Guernsey
<b>Guernsey Companies Law</b>	the Companies (Guernsey) Law, 2008 as amended
<b>Interest Payment Date</b>	has the meaning given to it on page 8 of this Information Memorandum
<b>Interest Payment Trigger Date</b>	has the meaning given to it on page 8 of this Information Memorandum
<b>Investment Company Act</b>	the US Investment Company Act of 1940
<b>IRS</b>	the Internal Revenue Service of the United States
<b>Issue</b>	the proposed issue by the Issuer of the Convertible Securities
<b>Issued Ordinary Share Capital</b>	means the issued Ordinary Shares of the Issuer
<b>Issue Price</b>	means 100 per cent. of the principal amount of the Convertible Securities
<b>Issuer or Eurocastle</b>	Eurocastle Investment Limited (registered in Guernsey No. 41058)
<b>Knowledgeable Employee or KE</b>	Knowledgeable Employee, as defined in Rule 3c-5 under the Investment Company Act
<b>Management Agreement</b>	the amended and restated management and advisory agreement dated 23 June 2004 between the Issuer and the Manager (as amended from time to time thereafter)
<b>Mars Fixed Facility and Mars Floating</b>	the loan facilities described in Note 3 to the Consolidated

<b>Facility</b>	Financial Statements of the Issuer set out in the Annual Report
<b>Money Laundering Regulations</b>	the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, as amended, supplemented by the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007, as amended and the Handbook for Financial Service Businesses on Countering Financial Crime and Terrorist Financing
<b>Non-US Holder</b>	has the meaning given to it on page 76 of this Information Memorandum
<b>Offer</b>	the offer of the Convertible Securities by Eurocastle to Shareholders
<b>Ordinary Shares</b>	the Ordinary Shares of no par value in the capital of the Issuer
<b>Overseas Shareholders</b>	has the meaning given to it on page 85 of this Information Memorandum
<b>PFIC</b>	has the meaning given to it on page 29 of this Information Memorandum
<b><i>pro rata</i> entitlement</b>	a Shareholders' <i>pro rata</i> entitlement based on the total issued Ordinary Share capital of the Issuer on the Record Date
<b>Prospectus</b>	the prospectus of the Issuer dated 1 December 2006
<b>Q1 Report</b>	The Issuer's quarterly financial report for the three months ended 31 March 2009
<b>Qualified Electing Fund or QEF</b>	has the meaning given to it on page 29 of this Information Memorandum
<b>Qualified Institutional Buyers or QIBs</b>	qualified institutional buyers, as defined in Rule 144A under the Securities Act
<b>Qualified Purchaser or QP</b>	Qualified Purchaser, as defined in Section 2(a)(51) of the Investment Company Act
<b>Qualifying Shareholders</b>	Shareholders who are not US Persons and not within the US, or shareholders who are both (1) Qualified Institutional Buyers or Accredited Investors and (2) Qualified Purchasers or Knowledgeable Employees on the Issuer's register of members on the Record Date excluding certain Overseas Shareholders and Benefit Plan Investors
<b>Record Date</b>	5 p.m. London time on 27 May 2009
<b>Register</b>	the register kept at the specified office of the Registrar outside the United Kingdom on which will be entered the names and addresses of the holders of the Convertible Securities and the particulars of the Convertible Securities held by them and of all transfers, redemptions and conversions of Convertible Securities
<b>Registrar</b>	Anson Registrars Limited
<b>Regulation S</b>	Regulation S under the Securities Act
<b>Rule 144A</b>	Rule 144A under the Securities Act

<b>Securities</b>	the Convertible Securities, together with the Ordinary Shares to be issued on conversion of the Convertible Securities
<b>Securities Act</b>	the US Securities Act of 1933
<b>Shareholders</b>	holders of Ordinary Shares
<b>Special Purpose Vehicles or SPVs</b>	special purpose vehicles established by the Issuer to hold investments and/or issue debt securities in the form of CDOs
<b>Subsidiary</b>	has the meaning provided in Section 531 of the Guernsey Companies Law
<b>SWIFT payment</b>	has the meaning given to it on page 71 of this Information Memorandum
<b>Tax-Exempt Holders</b>	has the meaning given to it on page 77 of this Information Memorandum
<b>Trustee</b>	LaSalle Global Trust Services Limited
<b>Trust Deed</b>	the trust deed relating to the Issue to be dated the Closing Date
<b>UK or United Kingdom</b>	the United Kingdom of Great Britain and Northern Ireland
<b>United States</b>	the United States of America, its territories and possessions, any state of the United States, and the District of Columbia
<b>US Holder</b>	has the meaning given to it on page 76 of this Information Memorandum
<b>US Investor Letter</b>	the letter sent by the Issuer to certain shareholders in the United States who are both (1) QIBs or AIs and (2) QPs or KEs, containing certain representations, warranties and agreements required in the United States in order to participate in the Offer and which must be duly executed and delivered to the Issuer prior to their receipt of this Information Memorandum or the Application Form
<b>US Person</b>	US Person as defined in Rule 902(K) of Regulation S

## SCHEDULE 1 FORM OF APPLICATION FORM

### DO NOT COMPLETE THIS FORM UNLESS YOU WISH TO SUBSCRIBE FOR CONVERTIBLE SECURITIES

**THIS APPLICATION FORM IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION.** If you are in any doubt about what action you should take, you are recommended to seek your own personal financial advice immediately from an independent professional adviser authorised under the Financial Services and Markets Act 2000 if you are resident in the United Kingdom or, if not, from another appropriately authorised independent professional adviser. This Application Form represents a right to apply for Convertible Securities to be issued by Eurocastle Investment Limited (the “Company”). It is not a document of title and cannot be traded. This Application Form must be used if you are to apply for Convertible Securities under the Offer. The attention of Shareholders resident in territories outside the United Kingdom is drawn to the restrictions on applications by such persons referred to in the sections entitled “Overseas Shareholders” in the Information Memorandum and below. The Convertible Securities and the Ordinary Shares to be issued upon conversion of the Convertible Securities have not been and will not be registered under the United States Securities Act of 1933 (the “Securities Act”) or with any securities regulatory authority of any state or other jurisdiction of the United States and, subject to certain exceptions, may not be offered or sold within the United States. The Convertible Securities are being offered and sold outside the United States in reliance on Regulation S under the Securities Act. Convertible Securities may be purchased in the United States only by persons (a) reasonably believed to be “accredited investors” within the meaning of the Securities Act or “qualified institutional buyers” in reliance on the exemption from the registration requirements of the Securities Act provided by Rule 144A thereunder and (b) who are “qualified purchasers” or “knowledgeable employees” within the meaning of the Investment Company Act. The Company will not be registered under the Investment Company Act, and investors will not be entitled to the benefits of such Act. Unless an exemption from the relevant local laws is available, the Offer is not being made, and neither the Convertible Securities nor the Ordinary Shares to be issued upon conversion of the Convertible Securities will be sold or issued, to any person in the United States of America, Australia, Canada or Japan or in any other jurisdiction where such Offer, issue or sale would be unlawful. Subject to certain exceptions, this Application Form should not be forwarded or transmitted in or into the United States of America, Australia, Canada or Japan. The full details of the Offer to which this Application Form relates are contained in the Information Memorandum dated 28 May 2009 (the “Information Memorandum”).

**IF YOU WISH TO SUBSCRIBE FOR CONVERTIBLE SECURITIES, PLEASE COMPLETE THIS APPLICATION FORM IN ACCORDANCE WITH THE INSTRUCTIONS SET OUT BELOW AND SIGN AND RETURN IT, BY POST OR BY HAND (DURING NORMAL BUSINESS HOURS), TO ANSON REGISTRARS LIMITED, PO BOX 426, ANSON PLACE, MILL COURT, LA CHARROTERRIE, ST PETER PORT, GUERNSEY GY1 3WX, SO AS TO BE RECEIVED NO LATER THAN 3 P.M. ON 19 JUNE 2009, TOGETHER WITH PAYMENT BY WAY OF INTERBANK ELECTRONIC TRANSFER (SWIFT) FOR THE FULL AMOUNT PAYABLE FOR THE CONVERTIBLE SECURITIES BEING SUBSCRIBED.**

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### EUROCASTLE INVESTMENT LIMITED

*(Registered in Guernsey No. 41058)*

**Offer of €130,000,000**

**20 per cent. Perpetual Subordinated Convertible Securities (the “Convertible Securities”)  
convertible into Ordinary Shares of Eurocastle Investment Limited (the “Offer”)**

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### NOTES ON HOW TO COMPLETE THE APPLICATION FORM

**Applications should be returned so as to be received by Anson Registrars Limited no later than 3 p.m. (London time) on 19 June 2009 (the “Expiry Date”). In the event that the Offer period is changed, Eurocastle Investment Limited (the “Company”) will notify investors of such change and any consequent changes to the timetable through the publication of a press release and via the Company’s website ([www.eurocastleinv.com](http://www.eurocastleinv.com)).**

HELP DESK: If you have a query concerning completion of this Application Form please call Anson Registrars Limited (the “Registrar” and/or the “Receiving Agent”) on 01481 711301 or from outside the UK on +44 01481 711301.

To facilitate application enquiries, applicants should insert their unique Applicant’s Reference Number of up to twelve numbers in the box at the top of the first page of the application form. This should be the direct telephone number of the person completing the form. If you wish to obtain confirmation that your application has been received, call Anson Registrars Limited’s Help Desk on the number shown above,

quoting your unique Applicant's Reference Number. No other acknowledgement of receipt of this Application Form will be issued. No contract note will be issued. As the Convertible Securities are to be issued in certificated form, a certificate will be sent by post to the first named holder specified in section 2 at the holder's risk.

### 1. Application

Fill in (in figures) in Box 1 the amount of money being paid to subscribe for Convertible Securities (the "Subscription Amount"). The Subscription Amount must be for a minimum of €50,000 and thereafter in integral multiples of €10 up to and including €99,990. You must also fill in (in figures) in Section 1 the number of Convertible Securities you wish to subscribe.

Financial intermediaries who are investing on behalf of clients should make separate applications or, if making a single application for more than one client, provide details of all clients in respect of whom application is made.

Applications, once made, will be irrevocable.

### 2. Holder Details

Fill in (in block capitals) the full name and address of each holder. Applications may only be made by persons aged 18 or over. In the case of joint holders only the first named may bear a designation reference. A maximum of four joint holders is permitted. All holders named must sign the Application Form at section 3.

Applicants who are beneficial and not registered holders of Ordinary Shares must provide proof reasonably acceptable to the Issuer and the Registrar of their beneficial holding of such Ordinary Shares. The Issuer and the Registrar have agreed that, among other things, a certified copy of such applicant's paper or online brokerage account statement of holdings dated as of the Record Date will be deemed to be sufficient proof of ownership. The Issuer and the Registrar have absolute discretion to refuse any application made by an applicant who is a beneficial and not registered holder of Ordinary Shares if it reasonably believes that the legal holder of such Ordinary Shares has also made an application for Convertible Securities.

Any beneficial owners will notify the registered holders and/or custodians holding Ordinary Shares on their behalf that they have made such an application.

### 3. Signature

**All holders named in section 2 must sign section 3 and insert the date.** The Application Form may be signed by another person on behalf of each holder if that person is duly authorised to do so under a power of attorney. The power of attorney must be enclosed for inspection (which originals will be returned by post at the addressee's risk). A corporation should sign under the hand of a duly authorised official whose representative capacity should be stated and a copy of a notice issued by the corporation authorising such person to sign should accompany the Application Form.

### 4. Payment Details

Payment of the Subscription Amount may only be made in euros by interbank electronic transfer (SWIFT). Payment by cheque will not be accepted. SWIFT payment for the Subscription Amount must be made to:

**BARCLAYS PRIVATE CLIENTS INTERNATIONAL LIMITED, GUERNSEY INTERNATIONAL BANKING CENTRE BRANCH, SORT CODE: 20-35-32; SWIFT CODE:**

**BARCGB22; ACCOUNT NAME: EUROCASTLE INVESTMENTS LIMITED – ESCROW ACCOUNT; ACCOUNT NUMBER: 69006111; IBAN: GB17BARC20353269006111.**

and should be received by the Registrar at the same time as receipt of the Application Form, which must be by no later than 3 p.m. on the Expiry Date.

Your payment must relate solely to this application. No acknowledgement of receipt of an Application Form nor the accompanying SWIFT payment will be made. Applications which are not accompanied by cleared funds at 3 p.m. on the Expiry Date may be rejected, at the absolute discretion of the Registrar. Application Forms received after this time will not be accepted.

All monies received in excess of the Subscription Amount will be returned without interest to the applicant (at the applicant's risk).

#### **5. Reliable Introducer Declaration**

All applications will be subject to Guernsey's verification of identity requirements. This will involve you providing the verification of identity documents listed in section 6 of the Application Form UNLESS you can have the declaration provided at section 5 of the Application Form given and signed by a firm acceptable to the Registrar and Receiving Agent. In order to ensure your application is processed timely and efficiently **all applicants are strongly advised to have the declaration provided in section 5 of the Application Form completed and signed by a suitable firm.**

#### **6. Identity Information**

Applicants need only consider section 6 of the Application Form if the declaration in section 5 cannot be completed. Notwithstanding that the declaration in section 5 has been completed and signed, the Registrar reserves the right to request of you the identity documents listed in section 6 and/or to seek verification of identity of each holder and payor (if necessary) from you or their bankers or from another reputable institution, agency or professional adviser in the applicable country of residence. If satisfactory evidence of identity has not been obtained within a reasonable time your application might be rejected or revoked. Where certified copies of documents are requested in section 6, such copy documents should be certified by a senior signatory of a firm which is either a governmental approved bank, stockbroker or investment firm, financial services firm or an established law firm or accountancy firm which is itself subject to regulation in the conduct of its business in its own country of operation and the name of the firm should be clearly identified on each document certified.

#### **7. Contact Details**

To ensure the efficient and timely processing of your Application Form, please provide contact details of a person the Registrar or Receiving Agent may contact with all enquiries concerning your application. Ordinarily this contact person should be the person signing in section 3 on behalf of the first named holder. If no details are entered here and the Registrar or Receiving Agent requires further information, any delay in obtaining that additional information may result in your application being rejected or revoked.

#### **8. Delivery by Post**

If you post your Application Form, you are recommended to use first class post and to allow at least two days for delivery. Application Forms received after the Expiry Date may be returned.



## **9. Definitions**

Capitalised terms used but not defined herein shall have the meanings ascribed to them in the Information Memorandum in respect of the Offer dated on or around 28 May 2009.

## **10. Deemed representations**

By signing and returning an Application Form, you will be deemed to have given the representations, undertakings, warranties and agreements set out in section 9 of the Application Form. If you are unable to give any of the deemed representations, undertakings, warranties and agreements set out in section 9 of the Application Form then you are ineligible to participate in the Offer and you should not complete and return your Application Form.

APPLICANT'S REFERENCE NUMBER

.....

## Application Form

Please send this completed form by post or by hand (during normal business hours) to **Anson Registrars Limited, PO Box 426, Anson Place, Mill Court, St Peter Port, Guernsey GY1 3WX** (Reg No 37054) so as to be received no later than 3 p.m. on 19 June 2009, together in each case, with payment in euros by interbank electronic transfer (SWIFT) for the full amount payable for the Convertible Securities being subscribed.

**Important:** before completing this form, you should read the accompanying notes.

To: **Eurocastle Investment Limited (the "Company") and Anson Registrars Limited**

### 1. APPLICATION

I/We the person(s) detailed in section 2 below offer to subscribe the amount shown in Box 1 for € \_\_\_\_\_ Convertible Securities subject to the Terms and Conditions set out in Information Memorandum dated 28 May 2009 (the "**Information Memorandum**") and subject to the Memorandum and Articles of Association of the Company.

FOR OFFICIAL USE ONLY

Log No.

Box 1 (minimum of €50,000; can be an integral multiple of €10 in excess thereof, up to and including €99,990)

€

### 2. DETAILS OF HOLDER(S) IN WHOSE NAME(S) THE CONVERTIBLE SECURITIES WILL BE ISSUED (BLOCK CAPITALS)

1:

Mr, Mrs<sup>1</sup>, Miss or Title

Forenames (in full):

Surname/Company name:

Address<sup>2</sup> (in full):

Post Code:

Designation (if any):

2:

Mr, Mrs, Miss or Title

Forenames (in full):

Surname/Company name:

Address (in full):

Post Code:

3:

Mr, Mrs, Miss or Title

Forenames (in full):

<sup>1</sup> Maiden Name also required

<sup>2</sup> if individual must be primary residential address

Surname/Company name:

Address (in full):

Post Code:

4: Mr, Mrs, Miss or Title

Forenames (in full):

Surname/Company name:

Address (in full):

Post Code:

**3. SIGNATURE(S) ALL HOLDERS MUST SIGN**

First holder signature:

Second holder signature:

Dated:

Dated:

Third holder signature:

Fourth holder signature:

Dated:

Dated:

**4. PAYMENT**

Payment must be by interbank electronic transfer (SWIFT) only. Cheques will not be accepted. An Applicant should send subscription monies in full to:

**BARCLAYS PRIVATE CLIENTS INTERNATIONAL LIMITED, GUERNSEY INTERNATIONAL BANKING CENTRE BRANCH, SORT CODE: 20-35-32; SWIFT CODE: BARCGB22; ACCOUNT NAME: EUROCASTLE INVESTMENTS LIMITED – ESCROW ACCOUNT; ACCOUNT NUMBER: 69006111; IBAN: GB17BARC20353269006111.**

by 3 p.m. on 19 June 2009, and enter below the sort code and account number of the euro denominated account of a bank within the Trans-European Automated Real-Time Gross Settlement Express Transfer (known as TARGET2) System, who you will be instructing to make such payment by SWIFT transfer in euros for value, together with the name of the account to be debited with such payment and the branch contact details. Please also ensure a unique reference number, SWIFT Code and IBAN is quoted on your payment and in the box below.

Sort Code:	Account name:
Account Number:	Contact name at branch and telephone no.:

Payment Reference Number:
SWIFT Code:
IBAN:

In the event of over-subscription of the Convertible Securities, the Board shall have the discretion to increase the principal amount of the Convertible Securities offered and/or to scale back applications to a minimum subscription amount of €50,000. Any subscription monies to be returned to Applicants will be returned to the Applicant's account (without payment of interest) at the Applicant's risk, details of which have been provided by the Applicant immediately above (the "**Applicant's Account**").

If the Offer is terminated by the Issuer or is not completed by 25 June 2009 (or such later date as the Issuer may determine) and the Offer lapses, all application monies will, as soon as reasonably practicable thereafter, be returned to the Applicant's Account, without payment of interest.

#### 5. RELIABLE INTRODUCER DECLARATION

Completion and signing of this declaration by a suitable person or institution may avoid presentation being requested of the identity documents detailed in section 6 of this form.

The declaration below may only be signed by a person or institution (such as a governmental approved bank, stockbroker or investment firm, financial services firm or an established law firm or accountancy firm) (the "**firm**") which is itself subject in its own country to operation of 'know your customer' and anti-money laundering regulations no less stringent than those which prevail in Guernsey. Acceptable countries include Austria, Australia, Belgium, Canada, Denmark, Finland, France, Germany, Gibraltar, Greece, Hong Kong, Iceland, Ireland, Isle of Man, Italy, Japan, Jersey, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland, the United Kingdom and the United States of America.

#### **DECLARATION: To the Company and the Registrar**

With reference to the holder(s) detailed in section 2, all persons signing at section 4 and the payor identified in section 5 if not also a holder (collectively the "**subjects**") WE HEREBY DECLARE:

1. we operate in one of the above mentioned countries and our firm is subject to money laundering regulations under the laws of that country which, to the best of our knowledge, are no less stringent than those which prevail in Guernsey;
2. we are regulated in the conduct of our business and in the prevention of money laundering by the regulatory authority identified below;
3. each of the subjects are known to us in a business capacity and we hold valid identity documentation on each of them and we undertake to immediately provide to you copies thereof on demand;
4. we confirm the accuracy of the names and residential/business address(es) of the holder(s) given at section 2;
5. having regard to all local money laundering regulations we are, after enquiry, satisfied as to the source and legitimacy of the monies being used to subscribe for the Convertible Securities; and
6. where the payor and holder(s) are different persons we are satisfied as to the relationship between them and reason for the payor being different to the holder(s).

The above information is given in strict confidence for your own use only and without any guarantee, responsibility or liability on the part of this firm or its officials.

Signed:

Name:

Position:

having authority to bind the firm.

Name of regulatory authority:

Firm's licence number:

Website address or telephone number of regulatory authority:

STAMP of firm giving full name and business address:

If a Nominee company please state name of regulated parent.

6. IDENTITY INFORMATION

Only complete this section if the declaration in section 5 cannot be signed.

In accordance with internationally recognised standards for the prevention of money laundering the undermentioned documents and information must be provided.

Holders				Payor
1	2	3	4	5

A. For each holder being an individual enclose:

- (1) a certified<sup>3</sup> clear photocopy of one of the following identification documents which bear both a photograph and the signature of the person: current passport, Government identity card, Armed Forces identity card or driving licence; and
- (2) certified copies of at least two of the following documents which purport to confirm that the address given in section 2 is that person's residential address: a recent gas, electricity, water or telephone (not mobile) bill, a recent bank statement, a council rates bill or similar document issued by a recognised authority; and
- (3) if none of the above documents show their date and place of birth, enclose a note of such information; and
- (4) details of the name and address of their personal bankers from which the Registrar or the Receiving Agent may request a reference, if necessary.

Tick here for documents provided

Grid for document provision (row 1)

Grid for document provision (row 2)

Grid for document provision (row 3)

Grid for document provision (row 4)

B. For each holder being a legal entity (a "holder entity") enclose:

- (1) a certified copy of the certificate of incorporation or certificate of good standing of the holder entity; and
- (2) the name and address of the holder entity's principal bankers from which the Registrar or the Receiving Agent may request a reference, if necessary; and
- (3) a statement as to the nature of the holder entity's business, signed by a director; and
- (4) a list of the names and residential addresses of each director or legal representatives of the holder entity; and

Grid for document provision (row 1)

Grid for document provision (row 2)

Grid for document provision (row 3)

Grid for document provision (row 4)

<sup>3</sup> must be by an individual and include the company stamp

(5) for each director or legal representative provide documents and information similar to that mentioned in A above; and

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(6) a copy of the authorised signatory list for the entity company; and

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(7) a list of the names and residential/registered address of each ultimate beneficial owner interested in more than 25% of the issued share capital or other ownership interests of the holder entity and, where a person is named, also complete C below and, if another legal entity is named (hereinafter a “beneficiary company”), also complete D below. If the beneficial owner(s) named do not directly own the holder entity but do so indirectly via nominee(s) or intermediary entities, provide details of the relationship between the beneficial owner(s) and the holder entity.

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**C. For each person named in B(7) as a beneficial owner of a holder entity enclose for each such person documents and information similar to that mentioned in A(1) to (4)**

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**D. For each beneficiary entity named in B(7) as a beneficial owner of an entity enclose:**

(1) a certified copy of the certificate of incorporation of that beneficiary entity; and

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(2) a statement as to the nature of that beneficiary entity’s business signed by a director or legal representative; and

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(3) the name and address of that beneficiary entity’s principal bankers from which the Registrar or the Receiving Agent may request a reference, if necessary; and

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(4) enclose a list of the names and residential/registered address of each beneficial owner owning more than 5% of the issued share capital of that beneficiary entity.

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**E. If the payor is not a holder (see note 5 on how to complete this form) enclose:**

(1) if the payor is a person, for that person the documents mentioned in A(1) to (4); or

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(2) if the payor is a legal entity, for that entity the documents mentioned in B(1) to (7); and

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(3) an explanation of the relationship between the payor and the holder(s).

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The Registrar or the Receiving Agent reserves the right to ask for additional documents and information.

### 7. CONTACT DETAILS

To ensure the efficient and timely processing of this application please enter below the contact details of a person the Registrar or the Receiving Agent may contact with all enquiries concerning this application. Ordinarily this contact person should be the person signing in section 3 on behalf of the first named holder. If no details are entered here and the Registrar or the Receiving Agent requires further information, any delay in obtaining that additional information may result in your application being rejected or revoked.

Contact name:
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E-mail address:
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Contact address:
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Postcode:
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Telephone No:
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Fax No:
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## 8. DEFINITIONS

Capitalised terms used but not defined herein shall have the meanings ascribed to them in the Information Memorandum.

## 9. DEEMED REPRESENTATIONS AND UNDERTAKINGS

By signing and returning this Application Form, you will be deemed to have:

9.1 represented, warranted and agreed as follows:

- (A) you are not (and are not acting on behalf of) a Benefit Plan Investor or otherwise using assets of Plans that are subject to Title I of the U.S. Employee Retirement Income Security Act of 1974, as amended (ERISA) or Section 4975 of the Internal Revenue Code of 1986, as amended;
- (B) if you are in the United States of America:
  - (i) you are both (a) a “qualified institutional buyer” (“QIB”) or an “accredited investor” (an “Accredited Investor”) as defined in Rule 501(a) under the United States Securities Act of 1933 (the “Securities Act”) and (b) a “qualified purchaser” (a “Qualified Purchaser”) within the meaning of Section 3(c)(7) of the U.S. Investment Company Act of 1940 (the “Investment Company Act”) or a “knowledgeable employee” (a “KE”) within the meaning of Rule 3c-5 under the Investment Company Act, and are purchasing the Securities for your own account or for the account of another person who is both (a) a QIB or an Accredited Investor and (b) a Qualified Purchaser or KE;
  - (ii) you understand that the Convertible Securities have not been and will not be registered under the Securities Act, and are aware that the offer of Securities is being made in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4(2) thereunder;
  - (iii) you understand that the Company has not been and will not be registered under the Investment Company Act, and you will not be entitled to the benefits of such acts;
- (C) (i) you have received and reviewed the Information Memorandum, and (ii) you have reviewed such other information as you have deemed necessary or appropriate concerning the Company, the Convertible Securities and any other matter relevant to your decision to purchase Convertible Securities;
- (D) you have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Convertible Securities;
- (E) you are acquiring the Convertible Securities for our own account (or for accounts as to which we exercise sole investment discretion and have authority to make, and do make, the statements contained in this term) and not with a view to any distribution of the Convertible Securities subject, nevertheless, to the understanding that the disposition of our property shall at all times be and remain within your control;
- (F) you understand that the Convertible Securities have not been and will not be registered under the Securities Act and may not be reoffered, resold, pledged or otherwise transferred except: (a)(i) to a person (x) whom the seller reasonably believes is a QIB in a transaction meeting the requirements of Rule 144A under the Securities Act and (y) is a Qualified Purchaser or a KE, (ii) pursuant to an exemption from registration under the Securities Act such as provided by Rule 144 thereunder to a person who is a Qualified Purchaser or KE or (iii) to a person that is not a “US Person” in an offshore transaction in accordance with Rule 903 or Rule 904 of Regulation S and (b) in each case in accordance with any applicable securities laws of any state of the United States. **You understand that no representation can be made as to the availability of the exemption provided by Rule 144 for resales of the Securities;**

- (G) the Convertible Securities have not been offered or sold to you by any form of “general solicitation” or “general advertising”, each as defined in Rule 502(c) of Regulation D under the Securities Act;
  - (H) you understand and acknowledge that the representations by you contained in this Application Form are required, inter alia, in connection with the laws of the United States and that the Company will be relying on these representations. You hereby irrevocably authorise the Company to rely upon these representations and to produce this Application Form to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby ; and
- 9.2 undertaken and agreed as follows:
- (A) you will treat the Convertible Securities as equity interests for all U.S. federal, state and local income tax purposes.



**Registered Office of the Issuer**

**Eurocastle Investment Limited**

Regency Court  
Glategny Esplanade  
St. Peter Port  
Guernsey GY1 1WW

**Registrar and Principal Paying, Transfer and Conversion Agent**

**Anson Registrars Limited**

PO Box 426  
Anson Place  
Mill Court, La Charroterie  
St. Peter Port  
Guernsey GY1 3WX

**Registered Office of the Trustee**

**LaSalle Global Trust Services Limited**

Level 10  
5 Canada Square  
London E14 5AQ