

- 9.5 Each such cheque shall be made payable to the relevant Bondholder or, in the case of joint Bondholders, the first one of them named in the Register and each such cheque shall be dated as at the Interest Payment Date or Redemption Date, as the case may be. Subject to these Terms and Conditions, payments by cheque may be posted by ordinary mail and the Issuer or the Paying Agent shall not be responsible for any loss in the transmission of mail and the postal authorities shall be deemed to be the agent of the Bondholders for the purpose of all cheques posted in terms of this Condition 9.
- 9.6 Payment of a cheque sent in terms of Conditions 9.4 and 9.5 shall be a complete discharge by the Issuer of the amount of the cheque.
- 9.7 If several persons are entered into the Register as joint Bondholders then, without affecting the provisions of Condition 9.6, payment to any one of them of any monies payable on or in respect of the Bond shall be an effective and complete discharge by the Issuer of the amount so paid, notwithstanding any notice (express or otherwise) which the Issuer may have of the right, title, interest or claim of any other person to or in any Bond or interest therein.
- 9.8 In the event that any cheque provided by the Paying Agent, for and on behalf of the Issuer, as set out above is not presented for payment and no demand is made for payment of the relevant amount of interest or principal within a period of 6 (six) months from the Relevant Date, the Paying Agent shall forthwith refund any such amount to the Issuer.

## 10. TAXATION

- 10.1 All payments (whether in respect of the Principal Amount, interest or otherwise) in respect of the Bonds will be made free and clear of and without withholding or deduction for or on account of any present or future taxes, duties, assessments or governmental charges ("taxes") of whatever nature imposed, levied, collected, withheld or assessed by or on behalf of South Africa or any political subdivision thereof or any authority or agency therein or thereof having power to tax, unless the withholding or deduction of such taxes is required by law (including any applicable double taxation agreement to which South Africa is a party).
- 10.2 In the event of any withholding or deduction in respect of taxes levied or imposed on interest or principal payments on Debt Instruments (as defined below), the Issuer shall pay such additional amounts as may be necessary in order that the net amounts receivable by the Bondholder after such withholding or deduction shall equal the respective amounts which would have been receivable by such Bondholder in the absence of such withholding or deduction, except that no such additional amounts shall be payable:
  - (a) in respect of any Bond held by a Bondholder which is liable to such taxes in respect of such Bond by reason of its having some connection with South Africa other than the mere holding of such Bond or the receipt of the Principal Amount or interest in respect thereof; or
  - (b) in respect of any Bond held by, or by a third party on behalf of, a Bondholder who could lawfully avoid (but has not so avoided) such withholding or deduction by complying with any statutory requirements or by making a declaration of non-residence or other claim or filing for exemption to the relevant tax authority; or
  - (c) where such withholding or deduction is in respect of taxes levied or imposed on interest or principal payments only by virtue of the inclusion of such payments in the Taxable Income or Taxable Gains (each as defined below) of any Bondholder; or
  - (d) where (in the case of a payment of the Principal Amount or interest which is conditional on surrender of the relevant Certificate in accordance with these Terms and Conditions) the relevant Certificate is surrendered for payment more than 30 (thirty) days after the Relevant Date, except to the extent that the relevant Bondholder would have been entitled to such additional amounts if it had surrendered the relevant Certificate on the last day of such period of 30 (thirty) days; or
  - (e) if such withholding or deduction arises through the exercise by revenue authorities of special powers in respect of tax defaulters; or
  - (f) upon the payment of any taxes by the Issuer as an agent or representative taxpayer for a Bondholder.
- 10.3 If the Issuer becomes subject generally at any time to any taxing jurisdiction other than or in addition to South Africa, references in this Condition 10 to South Africa shall be read and construed as references to South Africa and/or to such other jurisdiction(s).

10.4 Any reference in these Terms and Conditions to any amounts payable in respect of the Bonds shall be deemed also to refer to any additional amounts which may be payable under this Condition 10.

10.5 For the purposes of this Condition 10:

- (i) **"Debt Instrument"** means any *"instrument"* as defined in Section 24J(1) of the Income Tax Act;
- (ii) **"Taxable Income"** means any *"taxable income"* as defined in Section 1 of the Income Tax Act;
- (iii) **"Taxable Gain"** means any *"taxable capital gain"* as defined in paragraph 1 of Schedule 8 to the Income Tax Act; and
- (iv) **"Income Tax Act"** means the Income Tax Act, 1962.

## 11. EVENTS OF DEFAULT

11.1 An Event of Default shall occur if:

### *Failure to pay*

- (a) the Issuer fails to pay any Principal Amount due under the Bonds on its due date for payment thereof or the Issuer fails to pay any interest due under the Bonds on its due date for payment thereof and any such failure continues for a period of 3 (three) Business Days, after receiving written notice from any Bondholder demanding such payment; or

### *Breach of Undertaking*

- (b) the Issuer fails to perform or observe any of its other obligations under any of the Bonds and such failure continues for a period of 30 (thirty) calendar days after receipt by the Issuer of a notice in respect of such failure; or

### *Negative pledge breach*

- (c) the Issuer or any Material Subsidiary fails to remedy a breach of Condition 6 by the Issuer or any Material Subsidiary within 7 (seven) Business Days of receiving written notice from Bondholders demanding such remedy; or

### *Cross-default*

- (d) the Issuer or any Material Subsidiary default in the payment of the principal or interest, or any obligations in respect of Material Indebtedness of, or assumed or guaranteed by, the Issuer or any Material Subsidiary when and as the same shall become due and payable and where notice has been given to the Issuer or any Material Subsidiary, as the case may be, of the default and if such default shall have continued for more than the notice period (if any) applicable thereto and the time for payment of such interest or principal or other obligation has not been effectively extended or if any such obligations of, or assumed or guaranteed by, the Issuer or any Material Subsidiary shall have become repayable before the due date thereof as a result of acceleration of maturity by reason of the occurrence of any event of default thereunder; or

### *Consents*

- (e) any action, condition or thing, including the obtaining of any consent, licence approval or authorisation now or in future necessary to enable the Issuer to comply with its respective obligations under the Bonds is not taken, fulfilled or done, or any such consent, licence, approval or authorisation is revoked, modified, withdrawn or withheld or shall cease to be in full force and effect, resulting in the Issuer being unable to perform any of its respective payments or other obligations in terms of the Bonds and the Issuer fails to remedy such circumstances (if capable of remedy) within 7 (seven) Business Days of receiving written notice from the Bondholders demanding such remedy; or

### *Liquidation or winding-up*

- (f) any competent court or authority grants an order for the liquidation, winding-up, dissolution or judicial management of the Issuer or any Material Subsidiary, whether provisionally (and not dismissed or withdrawn within 30 (thirty) days thereof) or finally, or the placing of the Issuer or any Material Subsidiary under voluntary liquidation or curatorship, provided that no liquidation, curatorship, winding-up, dissolution or judicial management shall constitute an event of default if (i) the liquidation, winding-up, dissolution or judicial management is for the purposes of effecting an amalgamation, merger, demerger, consolidation, reorganisation or other similar arrangement within the Barloworld

Group or with any third party; or (ii) the liquidation, winding-up, dissolution or judicial management is for the purposes of effecting an amalgamation, merger, demerger, consolidation, reorganisation or other similar arrangement, the terms of which were approved by Extraordinary Resolution of Bondholders before the date of the liquidation, winding-up, dissolution or judicial management; or

#### **Nationalisation**

- (g) any step is taken by or under any authority with a view to the seizure, compulsory acquisition, expropriation or nationalisation of all or any of the Issuer or any Material Subsidiary or a material part of the assets of the Issuer or any Material Subsidiary or any of the securities issued by the Issuer or any Material Subsidiary without reasonable compensation; or

#### **Judicial proceedings**

- (h) the Issuer or any Material Subsidiary initiates or consents to judicial proceedings relating to itself under any applicable compromise with creditors, liquidation, winding-up or insolvency or other similar laws or compromises or attempts to compromise, with its creditors generally (or any significant class of creditors) or any meeting of creditors is convened by the Issuer or any Material Subsidiary to consider a proposal for an arrangement of compromise with its creditors generally (or any significant class of its creditors), save for any such initiation, consent, attempt or convening of a meeting which relates to a Material Subsidiary and is for the purposes of an internal reconstruction or reorganisation within the Barloworld Group; or
- (i) if proceedings are initiated against the Issuer or any Material Subsidiary such that a person takes possession of the whole or a material part of the undertaking or assets of any of them, or an execution or attachment or other process is levied, enforced upon, sued out or put in force against the whole or a part of the undertaking or assets of any of them and such is not discharged within 30 (thirty) days.

If the Issuer becomes aware of the occurrence of any Event of Default, the Issuer shall forthwith notify all Bondholders, BESA and the Joint Lead Managers.

Upon the happening of an Event of Default, any Bondholder may, by written notice to the Issuer at its registered office, effective upon the date of receipt thereof by the Issuer, declare the Bonds held by such Bondholder to be forthwith due and payable. Upon receipt of that notice, such Bonds, together with accrued interest (if any) to the date of payment, shall become forthwith due and payable.

For purposes of this Condition 11:

**"Material Indebtedness"** means any Indebtedness (as defined in Condition 6.3(c)) amounting in aggregate to not less than ZAR150,000,000 (or its equivalent in other currencies at the time of the Event of Default).

## **12. DELIVERY, EXCHANGE AND REPLACEMENT OF CERTIFICATES**

- 12.1 The Bonds will initially be issued in the form of the Global Certificate and will be lodged and immobilised in the CSD, in the name of and for the account of the CSD's Nominee.
- 12.2 A person holding a Beneficial Interest in the Bonds represented by the Global Certificate may, in terms of the Applicable Procedures and through its nominated Participant, direct a written request to the Transfer Secretary for an Individual Certificate representing the number of Bonds to be delivered by the Transfer Secretary in exchange for such Beneficial Interest. The aggregate of the Principal Amounts of the Bonds represented by such Individual Certificate shall be equivalent to the amount of such Beneficial Interest. The Transfer Secretary shall deliver such Individual Certificate upon such written request no later than 14 (fourteen) days after receiving the written request of the holder of such Beneficial Interest in accordance with the Applicable Procedures, provided that, joint holders of a Beneficial Interest shall be entitled to receive only one Individual Certificate in respect of that joint holding and delivery to one of those joint holders shall be delivery to all of them.
- 12.3 Upon the receipt of a written request for delivery of an Individual Certificate in terms of Condition 12.2, the Global Certificate shall, in terms of the Applicable Procedures, be presented to the Transfer Secretary for splitting and a new Global Certificate for the balance of the Bonds still held by the CSD shall be delivered to the CSD. The old Global Certificate will be cancelled and retained by the Transfer Secretary.
- 12.4 Certificates shall be provided (whether by way of issue, delivery or exchange) by the Issuer, save as otherwise provided in these Terms and Conditions. Separate costs and expenses relating to the provision of Certificates and/or the transfer of Bonds may be levied by other persons, such as a Settlement Agent, under the Applicable Procedures and such costs and expenses shall not be borne by the Issuer. The costs and expenses of delivery

of Certificates by other than ordinary post (if any) and, if the Issuer shall so require, taxes or governmental charges or insurance charges that may be imposed in relation to such mode of delivery shall be borne by the Bondholder.

- 12.5 If any Certificate is mutilated, defaced, stolen, destroyed or lost it may be replaced at the office of the Transfer Secretary on payment by the claimant of such costs and expenses as may be incurred in connection therewith and against the furnishing of such indemnity as the Transfer Secretary may reasonably require. Mutilated or defaced Certificates must be surrendered before replacements will be issued.
- 12.6 Any person becoming entitled to Bonds in consequence of the death or insolvency of the relevant Bondholder may, upon producing evidence to the satisfaction of the Issuer that he holds the position in respect of which he proposes to act under this paragraph or of his title, require the Issuer and the Transfer Secretary to register such person as the holder of such Bonds or, subject to the requirements of this Condition 12, to transfer such Bonds to such person.

### **13. TRANSFER OF BONDS**

- 13.1 Beneficial Interests in the Bonds may be transferred in terms of the Applicable Procedures in the CSD.
- 13.2 In order for any transfer of Bonds to be effected through the Register and for the transfer to be recognised by the Issuer, each transfer of a Bond:
  - (a) must be embodied in the usual Transfer Form;
  - (b) must be signed by the relevant Bondholder and the transferee, or any authorised representatives of that registered Bondholder and/or transferee;
  - (c) shall only be in respect of denominations of ZAR1,000,000 each or a multiple thereof and consequently the Issuer will not recognise any fraction of a denomination of ZAR1,000,000; and
  - (d) must be made by way of the delivery of the Transfer Form to the Transfer Secretary together with the Certificate in question for cancellation or, if only part of the Bonds represented by a Certificate is transferred, a new Certificate for the balance will be delivered to the transferor and the cancelled Certificate will be retained by the Transfer Secretary.
- 13.3 The transferor of any Bonds represented by a Certificate shall be deemed to remain the owner thereof until the transferee is registered in the Register as the holder thereof.
- 13.4 Before any transfer is registered all relevant transfer taxes (if any) must have been paid and such evidence must be furnished as the Transfer Secretary reasonably requires as to the identity and title of the transferor and the transferee.
- 13.5 No transfer will be registered while the Register is closed.
- 13.6 If a transfer is registered then the Transfer Form and cancelled Certificate will be retained by the Transfer Secretary.

### **14. REGISTER**

- 14.1 The Register shall be kept at the offices of the Transfer Secretary. The Register shall contain the name, address and bank account details of the registered Bondholders. The Register shall set out the Principal Amount of the Bonds issued to any Bondholder and shall show the date of such issue and the date upon which the Bondholder became registered as such. The Register shall show the serial numbers of Certificates issued. The Register shall be open for inspection during the normal business hours of the Transfer Secretary to any Bondholder or any person authorised in writing by any Bondholder. The Transfer Secretary shall not be obliged to record any transfer while the Register is closed.
- 14.2 The Register will be closed during the 10 (ten) days preceding each Interest Payment Date and the Redemption Date, namely from and including 23 March to but excluding 2 April and from and including 22 September to but excluding 2 October of each year until the Redemption Date, in order to determine those Bondholders entitled to receive payments. All periods referred to for the closure of the Register may be shortened by the Issuer from time to time, upon notice thereof to the Bondholders.
- 14.3 The Transfer Secretary shall alter the Register in respect of any change of name, address or bank account number of any of the Bondholders of which it is notified in accordance with these Terms and Conditions.

## 15. LISTING AND TRADING

An application has been made to list the Bonds on BESA under stock code number BAW2. The application was granted on 30 September 2008 and the Bonds may be traded by and through members of BESA from 2 October 2008.

## 16. NOTICES

- 16.1 All notices (including all demands or requests under these Terms and Conditions) to the Bondholders will be valid if (a) mailed by registered post or hand delivered to their addresses appearing in the Register or published in a leading English language daily newspaper of general circulation in South Africa, and (b) for so long as the Bonds are listed on BESA, published in a daily newspaper of general circulation in Johannesburg, which newspapers are respectively expected to be the *Business Day* and *The Star* (or their respective successors). Any such notice shall be deemed to have been given on the day of first publication or hand delivery or on the seventh day after the day on which it is mailed, as the case may be.
- 16.2 For so long as the Bonds are held in their entirety by the CSD, there may be substituted for publication as contemplated in Condition 16.1 the delivery of the relevant notice to the CSD, the Settlement Agents and BESA for communication by them to the holders of Beneficial Interests in the Bonds represented by the Global Certificate.
- 16.3 Notices (including all demands or requests under these Terms and Conditions) to be given by any Bondholder shall be in writing and given by delivering the notice, together with a certified copy of the relevant Certificate, to the Issuer. While any of the Bonds are represented by the Global Certificate, notice may be given by any holder of a Beneficial Interest to the Issuer through the holder's relevant Settlement Agent in accordance with the Applicable Procedures and in such manner as the Issuer and the relevant Settlement Agent may approve for this purpose.
- 16.4 Any notice to the Issuer shall be deemed to have been received by the Issuer, on the second Business Day after being hand delivered to the registered office of the Issuer or on the seventh day after the day on which it is mailed by registered post to the registered office of the Issuer, as the case may be.

## 17. AMENDMENT OF THESE TERMS AND CONDITIONS

- 17.1 These Terms and Conditions set out all the rights and obligations relating to the Bonds. No addition, variation or consensual cancellation shall be of any force or effect unless reduced to writing and signed by or on behalf of the Issuer and (a) signed by or on behalf of Bondholders holding not less than two-thirds in value of the Bonds outstanding from time to time, or (b) authorised by an Extraordinary Resolution of a meeting of Bondholders, provided that no such amendment shall be of any force or effect unless notice of the intention to make such amendment shall have been given to the Bondholders.
- 17.2 The Issuer may, without the consent of the Bondholders, make any modification to these Terms and Conditions which is of a formal, minor or technical nature or is made to correct a manifest error to comply with mandatory provisions of the law of the jurisdiction in which the Issuer is incorporated and the governing law in accordance with which the Bonds are issued. Any such modification shall be binding on the Bondholders and any such modification shall be notified to the Bondholders in accordance with Condition 16 as soon as practical thereafter.

## 18. MEETINGS OF BONDHOLDERS

### 18.1 Convening of meetings

- (a) The Issuer may at any time convene a meeting of Bondholders (a "**meeting**" or (the "**meeting**").
- (b) The Issuer shall convene a meeting upon the requisition in writing of the holders of at least 10% (ten percent) of the aggregate Principal Amount outstanding of the Bonds (the "**requisition notice**").
- (c) Whenever the Issuer wishes or is required to convene a meeting, it shall forthwith give notice in writing to the Bondholders of the place, day and hour of the meeting and of the nature of the business to be transacted at the meeting.
- (d) All meetings of Bondholders shall be held in Johannesburg.
- (e) Every director, the company secretary of and the attorneys to the Issuer, and every other person authorised in writing by the Issuer, may attend and speak at a meeting of Bondholders, but shall not be entitled to vote, other than as a Proxy or duly authorised representative of a Bondholder.



## **18.2 Requisition**

- (a) A requisition notice shall state the nature of the business for which the meeting is to be held and shall be deposited at the registered office of the Issuer.
- (b) A requisition notice may consist of several documents in like form, each signed by one or more requisitionists.

## **18.3 Convening of meetings by requisitionists**

If the Issuer does not proceed to cause a meeting to be held within 30 (thirty) days of the deposit with the company secretary of the Issuer of a requisition notice, requisitionists who together hold not less than 10% (ten percent) of the aggregate Principal Amount outstanding of the Bonds for the time being, may themselves convene the meeting, but the meeting so convened shall be held within 60 (sixty) days from the date of such deposit and shall be convened as near as possible in the same manner as that in which meetings may be convened by the Issuer. Notice of the meeting shall be required to be given to the Issuer.

## **18.4 Notice of meeting**

- (a) Unless the holders of at least 90% (ninety percent) of the aggregate Principal Amount outstanding of the Bonds agree in writing to a shorter period, at least 21 (twenty-one) days' written notice specifying the place, day and time of the meeting and the nature of the business for which the meeting is to be held shall be given by the Issuer to Bondholders.
- (b) The accidental omission to give such notice to any Bondholder or the non-receipt of any such notice, shall not invalidate the proceedings at a meeting.

## **18.5 Quorum**

- (a) A quorum at a meeting shall for the purposes of considering:
  - (i) an Ordinary Resolution, consist of Bondholders present in person or by Proxy and holding in the aggregate not less than one-third of the aggregate Principal Amount outstanding of the Bonds;
  - (ii) an Extraordinary Resolution, consist of Bondholders present in person or by Proxy and holding in the aggregate not less than a clear majority of the aggregate Principal Amount outstanding of the Bonds.
- (b) No business shall be transacted at a meeting of the Bondholders unless a quorum is present at the time when the meeting proceeds to business.
- (c) If, within 15 minutes from the time appointed for the meeting, a quorum is not present, the meeting shall, if it was convened on the requisition of Bondholders, be dissolved. In every other case the meeting shall stand adjourned to the same day in the third week thereafter, at the same time and place, or if that day is not a Business Day, the following Business Day. If at such adjourned meeting a quorum is not present the Bondholders present in person or by Proxy shall constitute a quorum for the purpose of considering any resolution, including an Extraordinary Resolution.

## **18.6 Chairman**

The chairman of the meeting shall be appointed by the Issuer.

## **18.7 Adjournment**

- (a) Subject to the provisions of this Condition 18, the chairman may, with the consent of, and shall on the direction of, the meeting adjourn the meeting from time to time and from place to place.
- (b) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) At least 14 (fourteen) days' written notice of the place, day and time of an adjourned meeting shall be given by the Issuer to each Bondholder and the Issuer. In the case of a meeting adjourned in terms of Condition 18.5(c), the notice shall state that the Bondholders present in person or by Proxy at the adjourned meeting will constitute a quorum.

#### 18.8 How questions are decided

- (a) At a meeting, a resolution put to the vote shall be decided on a show of hands unless, before or on the declaration of the result of the show of hands, a poll is demanded by the chairman or by any one of the Bondholders present in person or by Proxy.
- (b) Unless a poll is demanded, a declaration by the chairman that on a show of hands a resolution has been carried, or carried by a particular majority, or lost, shall be conclusive evidence of that fact, without proof of the number or proportion of the votes cast in favour of or against such resolution.
- (c) A poll demanded on the election of a chairman or on the question of the adjournment of a meeting shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs and the result of such poll shall be deemed to be the resolution of the meeting.
- (d) In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to a casting vote in addition to the vote, if any, to which he is entitled.

#### 18.9 Votes

On a show of hands every Bondholder present in person shall have one vote. On a poll every Bondholder, present in person or by Proxy, shall have one vote for each ZAR1,000,000 of the Principal Amount outstanding of the Bonds held by him. The joint holders of Bonds shall have only one vote on a show of hands and one vote on a poll for each ZAR1,000,000 of the Principal Amount outstanding of the Bonds of which they are the registered holder and the vote may be exercised only by that holder present whose name appears first on the Register in the event that more than one of such joint holders is present in person or by Proxy at the meeting. The Bondholder in respect of Bonds represented by the Global Certificate shall vote at any such meeting on behalf of the holders of Beneficial Interests in such Bonds in accordance with the instructions to the CSD or the CSD's Nominee from the holders of Beneficial Interests conveyed through the Settlement Agents in accordance with the Applicable Procedures.

#### 18.10 Proxies and representatives

- (a) Bondholders present either in person or by Proxy may vote on a poll.
- (b) A person appointed to act as Proxy need not be a Bondholder.
- (c) The Form of Proxy shall be deposited at the registered office of the Issuer or at the office where the Register is kept or at such other office as the Issuer may determine not less than 24 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in such Form of Proxy proposes to vote, and in default, the Proxy shall be invalid.
- (d) No Form of Proxy shall be valid after the expiration of 6 (six) months from the date named in it as the date of its execution.
- (e) A Proxy shall have the right to demand or join in demanding a poll.
- (f) Notwithstanding Condition 18.10(d) the Form of Proxy shall be valid for any adjourned meeting, unless the contrary is stated thereon.
- (g) A vote given in accordance with the terms of a Proxy shall be valid notwithstanding the previous death or incapacity of the principal or revocation of the Proxy or of the authority under which the Form of Proxy was executed or the transfer of Bonds in respect of which the proxy was given, provided that no intimation in writing of such death, incapacity or revocation shall have been received by the Issuer at the office of the Transfer Secretary more than, and that the transfer has been given effect to less than, 12 hours before the commencement of the meeting or adjourned meeting at which the Proxy is to be used.
- (h) Any Bondholder which is a corporation may by resolution of its directors or other governing body authorise any person to act as its representative in connection with any meeting or proposed meeting of Bondholders. Any reference in these Conditions to a Bondholder present in person includes such a duly authorised representative of a Bondholder.

#### 18.11 Minutes

- (a) The Issuer shall cause minutes of all resolutions and proceedings of meetings to be duly entered in the minute books of the Issuer.

- (b) Any such minutes as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings held or by the chairman of the next succeeding meeting, shall be receivable in evidence without any further proof, and until the contrary is proved, a meeting of Bondholders in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened and all resolutions passed thereat, or proceedings held, to have been duly passed and held.

**19. NO VOTING RIGHTS ON BONDS HELD BY THE ISSUER**

The Issuer shall not have any voting rights on any Bonds repurchased or otherwise held by it.

**20. GOVERNING LAW**

The Bonds and all rights and obligations relating to the Bonds are governed by, and shall be construed in accordance with the laws of South Africa.



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## USE OF PROCEEDS

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Words used in this section entitled "Use of Proceeds" shall bear the same meanings as used in the Terms and Conditions, except to the extent that they are separately defined in this section or this is clearly inappropriate from the context.

For the purposes of the commercial paper regulations published in the Government Gazette Notice No. 2172 (Government Gazette 16167) of 14 December 1994 (the "**Commercial Paper Regulations**") under paragraph (cc) of the definitions of "the business of a bank" in section 1 of the Banks Act, 1990, it is recorded that the "ultimate borrower", as defined in the Commercial Paper Regulations, of the net proceeds from the issue of the Bonds will be the Issuer.

The net proceeds from the issue of the Bonds will be applied by the Issuer for the funding of its general corporate purposes.

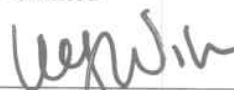
SIGNED at SANDTON on this the 30<sup>th</sup> day of September 2008.

For and on behalf of  
**Barloworld Limited**



Name: CYRIL THOMSON  
Capacity: CHIEF EXECUTIVE  
Who warrants his authority hereto

For and on behalf of  
**Barloworld Limited**



Name: D. WILSON  
Capacity: FINANCE DIRECTOR  
Who warrants his authority hereto

## ORGANISATIONAL STRUCTURE OF BARLOWORLD LIMITED



Principal subsidiary companies	Type	Currency	Issued capital Local currency amount
Avis Southern Africa Limited	H	ZAR	17 883 036
Barloworld Botswana (Pty) Limited <sup>3</sup>	H	BWP	35 329 536
Barloworld Capital (Pty) Limited	F	ZAR	30 000 000
Barloworld Equipment (Pty) Limited	O	ZAR	2
Barloworld Equipment UK Limited <sup>1</sup>	O	GBP	4 500 000
Barloworld Holdings PLC <sup>1</sup>	H	GBP	213 301 000
Barloworld Industrial Distribution Limited <sup>1</sup>	O	GBP	22 125 000
Barloworld Insurance Limited <sup>1</sup>	O	GBP	4 100 000
Barloworld International Investment PLC <sup>1</sup>	F	GBP	50 000
Barloworld Investments (Pty) Limited	H	ZAR	900
Barloworld Logistics (Pty) Limited	O	ZAR	100
Barloworld Motor (Pty) Limited	O	ZAR	600 000
Barloworld Investments Namibia (Pty) Limited <sup>4</sup>	H	NAD	1 450 000
Finanzauto SA <sup>2</sup>	O	EUR	41 382 127
Sociedade Technica De Equipamentos e Tractores SA <sup>5</sup>	O	EUR	4 000 000
Zeda Car Leasing (Pty) Limited t/a Avis Fleet Services	O	ZAR	100

All companies are incorporated in (or operate principally in) the Republic of South Africa except where otherwise indicated as follows:

1. United Kingdom

2. Spain

3. Botswana

4. Namibia

5. Portugal

Keys to type of subsidiary

H – Holding companies

O – Operating companies

F – Finance companies

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## DESCRIPTION OF BARLOWORLD LIMITED

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### 1. BACKGROUND

Barloworld Limited ("**Barloworld**" or the "**Company**") and its subsidiaries (the "**Group**") are distributors of leading international brands providing integrated rental, fleet management, product support and logistics solutions. Barloworld comprises four divisions, namely equipment (earthmoving and power systems), automotive (car rental, fleet services and motor trading), materials handling (forklift, truck distribution and fleet management) and logistics (logistics and supply chain management). There are operations in 26 countries and the Group has over 20 000 employees.

### 2. HISTORY OF BARLOWORLD

- 2.1 **1902:** Major Ernest (Billy) Barlow forms Thomas Barlow & Sons ("**Barlow & Sons**") in Durban, South Africa, an independent company based on the family business of the same name in England. Initially, the Company sold woollen goods, including blankets and coats, but within five years Billy Barlow expanded to engineering components.
- 2.2 **1920 – 1930:** A period of growth and consolidation. In 1920, Billy Barlow opens an office in Johannesburg and in 1927 his eldest son, Charles Sydney Barlow, better known as "*Punch*", joins Barlow & Sons. Punch Barlow quickly establishes himself by selling the first Caterpillar tractor and in the same year Barlow becomes the official sales and services dealer in South Africa for Caterpillar. Two years later Barlow acquires the forklift dealership.
- 2.3 **1941:** Barlow shares are traded on the Johannesburg Stock Exchange for the first time. The opening price is seven shillings and sixpence per share.
- 2.4 **1959:** Barlow enters the motor business by acquiring a Ford motor dealership.
- 2.5 **1960:** Barlow expands rapidly into many fields including motor vehicle retailing, steel and building materials distribution, handling equipment, consumer electronics and steel tube manufacturing and selling. Although based mainly in South Africa, Barlow also acquires trading interests in the United Kingdom (the "**UK**"), Zimbabwe, Botswana and Namibia. In 1969, Barlow shares are listed on the London Stock Exchange.
- 2.6 **1970:** Barlow Rand ("**Barlow Rand**"), with the acquisition of Rand Mines Limited, adds extensive mining and property interests to the Company. Barlow Rand expands further, adding cement, lime, stainless steel, televisions, paint and additional motor franchises to the mix. Although still largely based in South Africa, Barlow Rand is acknowledged as a world-class company. In South Africa it is the dominant player in many sectors of the economy with interests in many sectors, from food to mining.
- 2.7 **1979:** Punch Barlow dies. The Company moves into the USA following the acquisition of Wrenn Brothers (later Wrenn Brungart).
- 2.8 **1980:** Barlow Rand continues to grow by diversifying into information technology, electrical engineering and textiles. At the same time, the Company's reputation develops and Barlow Rand manages brands such as IBM and Merck in South Africa.
- 2.9 **1984:** The acquisition of J Bibby & Sons PLC ("**Bibby**") in the UK provides a major springboard to further international expansion. Bibby includes scientific products such as Bibby Sterilin.
- 2.10 **1989:** This is the peak year for Barlow Rand with profits of R1,001 million and almost 240 000 employees. The early 1990s is a time of expansion in Europe with the acquisition of Lamson in Belgium, Finanzauto in Spain and STET in Portugal.

- 2.11 **1990 – 1994:** During this period of political transition in South Africa, Barlow Rand plays a major part in helping the peaceful transition into democracy. Its sheer size gives it a unique position and role in bringing different sides together and in building bridges, for example, assisting in the management of the 1994 elections. In the same way that South Africa is changing to face the future, Barlow Rand also moves forward. Barlow Rand is unbundled during 1993/1994 and a more focused and streamlined Barlow Limited ("**Barlow Limited**") is born.
- 2.12 **1995 – 2000:** This is a time of consolidation and investment. Barlow Limited invests R3,3 billion in its business units to build the structure and world-class operational capabilities needed for the 21st century. Barlow Limited continues to expand its global reach with the acquisition of Lanes Limited and Taubmanns in Australia and the Ditch Witch franchise in Georgia, the United States of America (the "**USA**"). New challenges are taken on with distributorship of the Perkins brand in southern Africa and the Caterpillar brand in Siberia.
- 2.13 **2000:** Barlow Limited becomes Barloworld Limited and the Company embarks on a long-term value creation strategy built on a platform of Value Based Management. Over the next six years Barloworld continues to expand through incremental acquisitions and expands its global offering of business solutions, products and services.
- 2.14 **2007:** Following deliberations by the Barloworld board, as well as a shareholders engagement, it was announced on 18 December 2006 that the Barloworld board would continue to review the Group structure and, in addition to the unbundling of Pretoria Portland Cement Company Limited ("**PPC**"), further unbundlings or disposals would follow in the future. Barloworld has been repositioned and profiled as a focused distribution company, with an offering that includes integrated product support, as well as rental and logistics solutions. The Group will comprise businesses that fit the above strategic profile, meet strict performance criteria, and demonstrate good growth potential. Based on the factors stated above, the Barloworld board has taken the following decisions and/or actions in relation to the composition of the Group:
- The unbundling of PPC was concluded in July 2007;
  - The unbundling of Freeworld Coatings was concluded in December 2007;
  - The sale of Melles Griot to CVI Laser, a portfolio company of Norwest Equity Partners, was concluded in July 2007;
  - The disposal of the Barloworld Scientific Laboratory business was completed in December 2007;
  - The Freightliner dealerships and the DitchWitch and Vacuum Technology businesses were sold during the course of the 2007 financial year;
  - The disposal of the greater portion of the Barloworld Coatings Australia business was concluded in July 2007; and
  - A number of steps have also been taken to further enhance shareholder returns including downsizing the corporate office, implementing stricter capital allocation processes and improving the performance of the remaining businesses.
- 2.15 **2008:** As already announced, the Group's Black Economic Empowerment agreements have been finalised and are subject to a number of conditions precedent including approval by shareholders at a General Meeting to be held on 8 September 2008. If all conditions precedent are fulfilled the transaction will be implemented shortly thereafter. Having completed the process of repositioning, the Group has the following defining characteristics and competencies:
- the provision of flexible, value adding, integrated customer solutions in the areas of:
    - earthmoving and power systems ("**Barloworld Equipment**");
    - vehicle usage ("**Barloworld Automotive**");
    - materials handling ("**Barloworld Handling**"); and
    - logistics management and supply chain optimisation ("**Barloworld Logistics**");
  - representation of leading global brands supported by Barloworld service excellence;
  - effective management of long-term relationships with global principals and customers;
  - ability to develop and grow businesses in multiple geographies including challenging territories with high growth prospects; and
  - commitment to lead in empowerment and transformation in South Africa.

### 3. CORE BUSINESSES DESCRIPTION OF BUSINESS

#### Equipment

Barloworld Equipment celebrated 80 years in partnership with Caterpillar in 2007. Barloworld supplies Caterpillar equipment and support to customers in 11 countries in southern Africa (South Africa, Namibia, Botswana, Angola, Zambia, Zimbabwe, Malawi, Mozambique, the Democratic Republic of Congo, Lesotho and Swaziland) and in Siberia, Spain, Portugal, Andorra, Sao Tomé and Príncipe. Complementary brands also represented by the equipment division include, among others, MaK (Spain) and Perkins engines (both Caterpillar subsidiaries), rotary blasthole drilling equipment from Atlas Copco, and Metso mobile crushing and screening plants (southern Africa).

Barloworld Equipment provides customers in mining, construction, marine, electrical power generation and other industries with integrated solutions that include new, used and rental equipment options, linked to equipment management plans designed to improve productivity and lower operating costs. Facilities throughout the division's territories offer world-class customer support, and in-house skills development produces focused and dedicated staff.

#### Automotive

Barloworld Automotive provides a range of integrated motor vehicle usage solutions through the successful operation of complementary business units. Motor retail operates leading motor vehicle franchise dealerships in South Africa representing passenger, light, medium and heavy commercial brands. Also included are coachwork repair centres, motor vehicle finance, insurance and related products and services. In Botswana and Australia passenger and light commercial brands are represented and motor vehicle finance, insurance and related products and services are provided. Botswana and South Africa operations also represent tractor brands.

Barloworld is the sole importer and distributor of Subaru vehicles in southern Africa. Car rental operates Avis' short-term car rental throughout southern Africa, and Avis and Budget short-term car rental in Denmark, Norway and Sweden. Fleet services provide long-term rental and value-added services to operators of passenger and commercial vehicles in South Africa, Botswana, Mozambique, Namibia, Lesotho and Swaziland under the Avis brand.

#### Handling

Barloworld Handling is the world's largest independent Hyster lift truck dealer offering its customers a full range of lift trucks and warehouse/handling equipment in the USA, the UK, including Northern Ireland, the Netherlands, Belgium and South Africa. Barloworld has represented the market-leading Hyster brand for over 78 years and have leveraged the strength of the brand by leading the market in the introduction of innovative solutions for its manufacturing and distribution industry customers' materials handling needs.

As of 1 October 2007, the division includes the Group's South African agriculture business distributing the Massey Ferguson, Claas and Geringhoff brands in South Africa.

#### Logistics

Formed by the combination of logistics operations in PPC and Barloworld Automotive during 2002, Barloworld Logistics has grown into one of the leading logistics and supply chain management businesses in southern Africa with complementary operations in Iberia, the UK, the USA and United Arab Emirates. The combined effects of globalisation and technology have made the logistics industry one of the most exciting and dynamic industries. Technology has enabled the integration of previously independent logistics functions leading to increased productivity and the concept of managing a chain of interrelated logistics activities, i.e. supply chain management.

Whilst Barloworld Logistics offers traditional logistics services such as transportation, warehousing and freight forwarding, it creates unique value for its clients through a more holistic approach to supply chain management and skilful integration of the various logistics components in a typical supply chain. The ultimate benefit for Barloworld's clients is that it helps them deliver better service to their customers at lower cost.

Barloworld Logistics recently acquired the Swift group of companies ("Swift") and Flynt International for an aggregate total of US\$83,000,000. Swift is a Dubai based logistics group which has operations in the Far East, India, the United Arab Emirates, Africa and Germany. Flynt International is based in Hong Kong.

#### Corporate

Corporate primarily comprises the operations of the headquarters in Johannesburg, the treasury in Maidenhead, UK, and the captive insurance company. The Group has a decentralised management philosophy, however, a limited range of corporate activities and services are provided including internal audit, company secretarial, investor relations, corporate finance, risk and legal.

## BARLOWORLD LIMITED BOARD OF DIRECTORS

### NON-EXECUTIVE DIRECTORS

- **D B (Dumisa) Ntsebeza** Chairman LLB, BProc, BA, LLM (International Law)
- **S A M (Selby) Baqwa** BJuris, LLB, MBA, DTech (hc)
- **A G K (Gordon) Hamilton\*** MA (Cantab), FCA
- **M J (Mike) Levett** BCom, DEcon Sc (hc), FIA, FFA, FASSA
- **S S (Bongi) Mkhabela** Dip Business Management, MAP (WITS)
- **S S (Siviwe) Ntsaluba** BCom, B Compt (Hons) (UNISA), CA(SA), HDip Tax Law (US)
- **T H (Hixonia) Nyasulu** BA (Hons) Psychology
- **S B (Steve) Pfeiffer^** BA, MA (Oxon), JD (Yale)
- **G (Gonzalo) Rodríguez de Castro García de los Ríos†**

### EXECUTIVE DIRECTORS

- **C B (Clive) Thomson**, Chief Executive Officer: Barloworld Limited BCom (Hons), CA(SA), MPhil (Cantab)
- **P J (John) Blackbeard**, Chief Executive Officer: Barloworld Handling BSc Eng (Hons), Dip Bus M
- **M (Martin) Laubscher**, Chief Executive Officer: Barloworld Automotive BAcc, BCompt (Hons), CTA, MCom (Business Management)
- **O I (Isaac) Shongwe**, Chief Executive Officer: Barloworld Logistics Africa BA (Hons) US, MPhil (Oxon)
- **P M (Peter) Surgey**, Executive Director BA, LLB
- **D G (Donald) Wilson**, Finance Director BCom CTA, CA(SA)

\* British

† Spanish

^ American

### COMPANY SECRETARY

- **S (Sibani) Mngomezulu** LLM, HDip Co Law, HDip Tax Law

Address: Barloworld Corporate Office, 180 Katherine Street, Sandton, 2146, South Africa.

## 4. CORPORATE GOVERNANCE REPORT

### Regulatory compliance

Barloworld is incorporated in South Africa under the provisions of the Companies Act, 1973, as amended. It is listed on the JSE Limited (the "JSE"), and subscribes to the principles contained in the Code of Corporate Practices and Conduct recommended by the King II Report on Corporate Governance for South Africa published in March 2002. The Company complies fully with the spirit and form of the continuing obligations of the listings requirements of the JSE.

The Company maintains a secondary listing on the London Stock Exchange and the Namibian Stock Exchange. The Company takes cognisance of international best practice and where practicable it applies relevant principles.

The Company is not registered with the Securities and Exchange Commission in the United States and has unsponsored American Depositary Receipts. Accordingly, the Sarbanes-Oxley Act of 2002 does not apply to the Company.

Barloworld board places strong emphasis on achieving the highest standards of financial management, accounting and reporting.

The financial statements are prepared in accordance with International Financial Reporting Standards. The Company has adopted the Global Reporting Initiative's (GRI) Sustainability Reporting guidelines on economic, environmental and social performance in relation to non-financial aspects.

The Company's corporate governance systems are continually evolving to meet the needs and expectations of stakeholders.



## 5. BOARD OF DIRECTORS

### Duties of the board

Whilst all directors have equal responsibility for managing the Company's affairs, it is the role of the group chief executive and the executive management team to run the business within the parameters laid down by the board and to produce clear, accurate and timely reports to enable the board to make informed decisions.

### Board structure and composition

The Company is led and controlled by the board. Considerable thought has been given to board balance and composition. In keeping with the recommendations of the 2002 King II Report, the Barloworld board (the "**Board**") comprises a majority of independent non-executive directors. The non-executive directors are considered to have the skill and experience to bring balanced and independent judgement to bear on company business.

### Appointments to the board

To ensure a rigorous and transparent procedure, any new appointment of a director is considered by the Board as a whole, on the recommendation of the nomination committee. The selection process involves consideration of the existing balance of skills and experience and a continuous process of assessing the needs of the Company.

Non-executive directors are required to devote sufficient time to the Company's affairs and Barloworld's success in this regard is evidenced by the exemplary attendance at board and committee meetings. Non-executive directors are also required to advise the Board of any subsequent changes to or additional commitments from time to time as approved by the chairman.

Executive directors may accept appointments to the board of other companies subject to due consideration being given to the time commitments involved.

### Independence of non-executive directors

The board believes that as long as non-executive directors remain independent of management and are of the right calibre and integrity, they can perform the required function of looking after the Company's interests. The non-executive directors demonstrate complete independence in character, judgement and action in fulfilling their duties.

The nomination committee reviews regularly the independent status of all non-executive directors. It is proposed that certain of the non-executive directors participate in the black ownership initiative and their independence will be reviewed following the conclusion of the black ownership initiative.

### Chairman and chief executive officer

No individual has unfettered powers of decision-making. Responsibility for running the Board and executive responsibility for conduct of the business are differentiated. Accordingly, the roles of the chairman of the Board and of the chief executive officer are separate.

The chairman is responsible for leadership of the Board, ensuring its effectiveness on all aspects of its role and setting its agenda. The chairman is also responsible for ensuring that the directors receive accurate, timely and clear information. The chairman also ensures effective communication with shareholders and facilitates the effective contribution of non-executive directors in particular and ensures constructive relations between executive and non-executive directors.

The chief executive provides leadership to the executive team in running the business and coordinates proposals developed by the executive committee for consideration by the Board.

### Board charter

The general powers of the directors are set out in the Company's articles of association. They have further unspecified powers and authority in respect of matters which may be exercised and dealt with by the Company, which are not expressly reserved to the members of the Company in general meeting.

Whilst retaining overall accountability and subject to matters reserved to itself, the Board has delegated to the chief executive officer and other executive directors authority to run the day-to-day affairs of the Company.