

**For the attention of Mr Marius Kohl**

Administration des Contributions Directes  
Bureau d'imposition Sociétés VI  
18, Rue du Fort Wedell  
L-2982 Luxembourg

PricewaterhouseCoopers  
Société à responsabilité limitée  
Réviseur d'entreprises  
400, route d'Esch  
B.P. 1443  
L-1014 Luxembourg  
Telephone +352 494848-1  
Facsimile +352 494848-2900  
www.pwc.com/lu  
info@lu.pwc.com

19 October 2009

Reference: VTLN/FAMS/AAVU/Q2709097M-DDGZ

**Lion Capital- Project Rally Restructuring**

**Lion/Rally Lux 1 S.A.** – Tax number 2008 22 14268  
**Lion/Rally Lux 2 S.à r.l.** – Tax number 2008 24 21417  
**Lion/Rally Lux 3 S.à r.l.** – Tax number 2008 24 21425  
**Lion/Rally Lux 4 S.à r.l.** – Tax number 2008 24 29949

Dear Mr Kohl,

In our capacity of tax consultant of the above-mentioned client and further to our letter on 30 July 2008 (reference VTLN/AAVU/Q2708069M-DDGZ, hereafter the 'Original Letter' attached as Appendix 3), please find below the tax treatment applicable to the transactions foreseen/implemented by our client. This letter confirms the conclusions reached during our today meeting and will serve as a basis for the preparation of the tax returns of the Luxembourg companies involved.

**A Background**

- 1 The group has recently undergone restructuring, namely in respect of the Carey Agri Loan Notes, but also due to the incorporation of a new Cayman Exempted Limited Partnership and draw-down and partial repayment of certain subordinated loan notes.
- 2 Please refer to Appendix 1 for further details on the restructuring steps that have implications in relation to the Luxembourg entities.



## **B Applicable tax regime**

### **B.1 Luxembourg tax treatment of the additional CPECs**

- 3 The additional CPECs issued by LuxCo 1, LuxCo 2 and LuxCo 3 have substantially the same terms and conditions as the initial CPECs, therefore they will be treated as debt for Luxembourg tax purposes. The related interest expense will be fully deductible at the level of LuxCo 1, LuxCo 2 and LuxCo 3 (but subject to recapture in LuxCo 3) and not subject to withholding tax (please refer to our technical tax analysis in Appendix 3 of the Original Letter).
- 4 An optional repurchase (i.e., redemption at fair market value) of the CPECs will not be subject to withholding tax. Moreover, should LuxCo 1/LuxCo 2/LuxCo 3 realise a loss on the repurchase of the CPECs, said loss should be deductible in LuxCo 1/LuxCo 2/LuxCo 3's hands (yet subject to recapture in the case of LuxCo 3).

### **B.2 Waiver of interest on the Interest-Bearing Loans 1 and 2, and on the on-lending of the Carey Agri Loan Notes**

- 5 Interest waived for the period from 6 May 2009 to 11 September 2009 on the (i) Interest-Bearing Loan 1, (ii) Interest-Bearing Loan 2, and (iii) the on-lending to Cyprus 1 of the Carey Agri Loan Notes will be treated as a non tax-deductible expense at the level of respectively LuxCo 1, LuxCo 2 and LuxCo 3, as it will be characterised as a hidden capital contribution in LuxCo 2, LuxCo 3 and Cyprus 1.
- 6 Pursuant to the hidden capital contribution treatment, interest waived to LuxCo 2 and LuxCo 3 will not be characterised as income, but rather as a capital increase and thus will not be subject to corporate income tax and municipal business tax in LuxCo 2 and LuxCo 3 hands.

### **B.3 Interest-Free Loans 1 and 2**

- 7 Temporary interest-Free Loans 1 and 2 were put in place as bridging facilities until the capital increases in LuxCo 2 and LuxCo 3 were performed on 11 September 2009.
- 8 As a result of the temporary status, it is not abnormal that the loans did not yield interest. Therefore, no interest will be computed thereon (at market rate) by application, for instance, of Art. 45 of the Luxembourg Income Tax Law ('LITL').

### **B.4 Debt-to-equity ratio**

- 9 LuxCo 1 and LuxCo 2 did comply with the 85:15 debt-to-equity ratio, since the capital injections in LuxCo 2 and LuxCo 3 were fully funded by LuxCo 1/LuxCo 2's new equity.

- 10 LuxCo 3 did not comply with the said ratio, as the USD 110 638 532 capital injection in Cyprus 1 has been funded by USD 11,063,837 equity (i.e. USD 1 005 805 share capital and USD 10 058 032) share premium and USD 99 574 695 CPECs.
- 11 However, the interest rate on LuxCo 1, LuxCo 2 and LuxCo 3 CPECs have been discounted to 85% of the fair market rate and interest payments on these CPECs will not be re-characterised into dividend distributions. No withholding tax should hence apply to interest payments notably on the LuxCo 1 CPECs, neither upon redemption thereof (please refer to Appendix 6 of the Original Letter).

#### **B.5 Tax transparency of Cayman 10 L.P. for Luxembourg tax purposes**

- 12 Based on the characteristics of the Limited Partnership agreement and the statutory features of a Cayman Exempted Limited Partnership, Cayman 10 L.P. will be treated as tax transparent for Luxembourg tax purposes and thus will be disregarded for Luxembourg corporate income tax, municipal business tax and net wealth tax purposes. Please refer to our technical analysis on the qualification of Cayman 10 L.P. as tax transparent from a Luxembourg standpoint in Appendix 2 and to the Cayman 10 L.P. deed in Appendix 4.
- 13 Since Cayman 10 L.P. will be treated as tax transparent for Luxembourg tax purposes, LuxCo 2 will be deemed to continue to hold directly the relevant proportion of the Securities in LuxCo 3, if and when the Securities are transferred to Cayman 10 L.P.
- 14 A potential transfer of the Securities would thus be a non-event for Luxembourg tax purposes at the level of LuxCo 2. On this basis, a tax balance sheet shall be prepared wherein LuxCo 2 will report the Securities it holds in LuxCo 3.

#### **B.6 New Unsecured Subordinated Loan Notes**

- 15 LuxCo 3 has invested the USD 32,500,000 Loan Notes drawn down from Cayman 6 into (i) USD 18,830,000 Loan Notes lent to Cyprus 1 and (ii) placed the surplus USD 13 670 000 in a bank deposit.
- 16 LuxCo 3 will derive a 0.09375% minimum net margin on the transactions (i.e., on the USD 18 830 000 Loan Notes and the USD 13 670 000 cash deposit) mentioned in the previous paragraph. Such a margin is an appropriate and acceptable remuneration with respect to Articles 56 and 164 (3) LITL, taking into account the low risk profile that the transactions represent to LuxCo 3.

We remain at your disposal should you need any further information and would like to thank you for the attention that you will give to our request.

Yours sincerely,



Vincent Lebrun  
Partner



Fiona Monsen  
Director

## Appendices:

- Appendix 1: Restructuring of the Russian Alcohol Group
- Appendix 2: Technical analysis on the qualification of Lion/ Rally Cayman 10 L.P.
- Appendix 3: Original Letter
- Appendix 4: Lion/Rally Cayman 10 L.P. partnership deed
- Appendix 5: ~~Other legal documentation~~

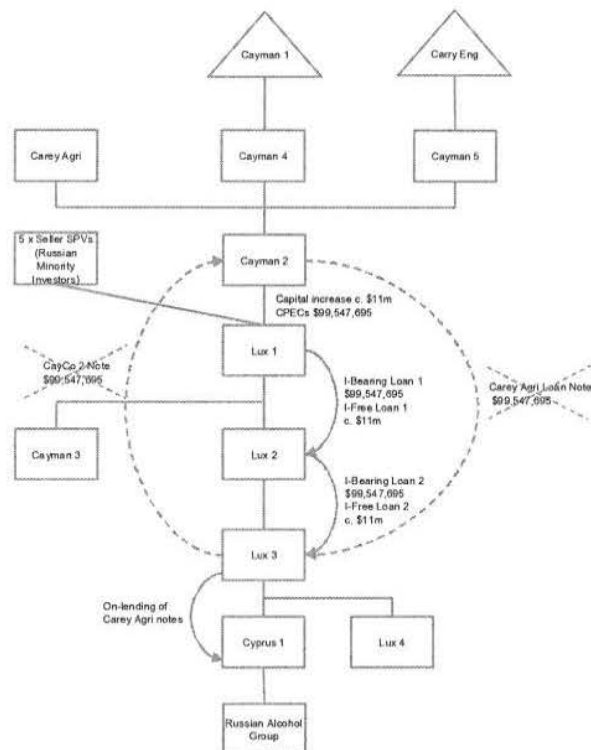
*This tax agreement is based on the facts as presented to PricewaterhouseCoopers S.à r.l as at the date the advice was given. The agreement is dependent on specific facts and circumstances and may not be appropriate to another party than the one for which it was prepared. This tax agreement was prepared with only the interests of Lion/Rally Lux 1 S.A., Lion/Rally Lux 2 S.à r.l., Lion/Rally Lux 3 S.à r.l. and Lion/Rally Lux 4 S.à r.l. in mind, and was not planned or carried out in contemplation of any use by any other party. PricewaterhouseCoopers S.à r.l, its partners, employees and or agents, neither owe nor accept any duty of care or any responsibility to any other party, whether in contract or in tort (including without limitation, negligence or breach of statutory duty) however arising, and shall not be liable in respect of any loss, damage or expense of whatever nature which is caused to any other party.*

## Restructuring of the Russian Alcohol Group

### A Restructuring of the Carey Agri Loan Notes

- 1 On 24 April 2009, using funds borrowed from Citibank, Lion/ Rally Cayman 2 ('CayCo 2')<sup>1</sup> acquired unsecured exchangeable loan notes and PIK notes issued by LuxCo 3 from *Carey Agri International Poland SP. Z O.O.* for an aggregate consideration of USD 110,000,000 ('the Carey Agri Loan Notes', referred to as the 'CEDC Loan Notes' in the Original Letter).
- A.1 Steps undertaken on 6 May 2009*
- 2 LuxCo 3 repaid part of the Carey Agri Loan Notes in an amount of USD 11 063 837 to CayCo 2.
- 3 CayCo 2 used the cash received from LuxCo 3 to subscribe for new shares in LuxCo 1 for a total contribution of USD 11 063 837 consisting of USD 1 005 805 allocated to the share capital and USD 10 058 032 allocated to the share premium account.
- 4 CayCo 2 also subscribed to additional CPECs issued by LuxCo 1 for USD 99 574 695. In consideration, a new note ('CayCo 2 Note') of USD 99 574 695 was issued by CayCo 2 to LuxCo 1. The CayCo 2 Note did not bear any interest.
- 5 LuxCo 1 assigned the CayCo 2 Note to LuxCo 2 in consideration for a loan of USD 99 574 695 bearing interest at a rate of 8.3% per annum ('Interest-Bearing Loan 1'). LuxCo 1 also lent USD 11 063 837 to LuxCo 2 through an intra-group loan agreement bearing no interest ('Interest-Free Loan 1').
- 6 LuxCo 2 assigned the CayCo 2 Note to LuxCo 3 in consideration for a loan of USD 99 574 695 bearing interest at a rate of 8.3% per annum ('Interest-Bearing Loan 2'). LuxCo 2 also lent USD 11,063,837 to LuxCo 3 via an intra-group loan agreement bearing no interest ('Interest-Free Loan 2').
- 7 As a result, Cayman 2 had a receivable from LuxCo 3 for USD 99 574 695 (i.e., USD 110 638 532 total amount accrued less USD 11 063 837 already repaid) under the Carey Agri Loan Notes and a payable to LuxCo 3 for USD 99 574 695 (i.e. the CayCo 2 Note). LuxCo 3 and Cayman 2 entered into a termination and cancellation agreement in order to set off the CayCo 2 Note and the Carey Agri Loan Notes.
- 8 Further to the above steps, the situation was as depicted in the simplified structure chart overleaf.

<sup>1</sup> CayCo 2's name changed at a latter stage to Lion/Rally Cayman 6 ('CayCo 6').

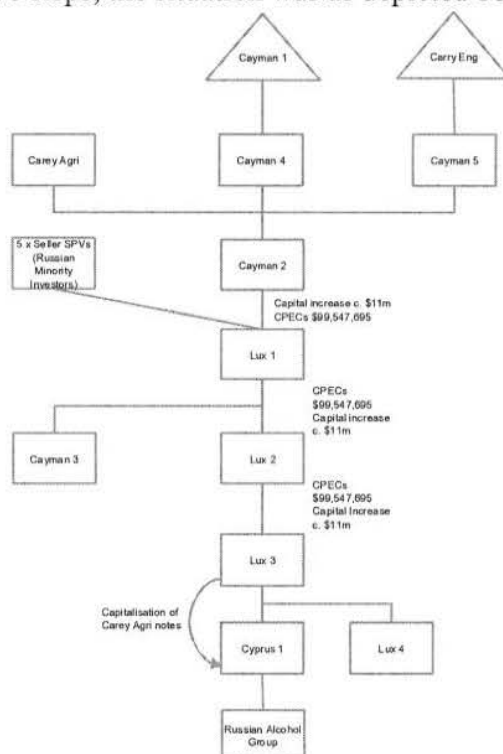


- 9 The additional USD 99 574 695 CPECs issued by LuxCo 1 have yielded interest for the period from 6 May 2009 to 11 September 2009. So as to set off the interest expense generated by the CPECs throughout this period, Cayman 2 will waive the interest on the CPECs from 6 May 2009 to 11 September 2009.

#### A.2 Steps undertaken on 11 September 2009

- 10 LuxCo 1 contributed the USD 11 063 837 Interest-Free Loan 1 to LuxCo 2 in exchange for USD 1 005 805 shares and USD 10 058 032 share premium.
- 11 LuxCo 2 contributed the USD 11 063 837 Interest-Free Loan 2 to LuxCo 3 in exchange for USD 1 005 805 shares and USD 10 058 032 share premium.
- 12 LuxCo 1 assigned the USD 99 574 695 Interest-Bearing Loan 1 to LuxCo 2 in exchange for an issuance of CPECs for the same amount and waived the interest accrued on the Interest-Bearing Loan 1 from 6 May 2009 to 11 September 2009.
- 13 LuxCo 2 assigned the USD 99,574,695 Interest-Bearing Loan 2 to LuxCo 3 in exchange for an issuance of CPECs for the same amount and waived the interest accrued on the Interest-Bearing Loan 2 from 6 May 2009 to 11 September 2009.
- 14 Subsequently, LuxCo 3 contributed most of its USD 103.5m receivable plus accrued interest to *Pasalba Limited* ('Cyprus 1') in exchange for USD 110 638 532 share capital and share premium. An amount of approx. USD 170k of interest accrued up to 5 May 2009 on the receivable was not capitalised into Cyprus 1 and therefore remains outstanding as an inter-company account. At the same time, LuxCo 3 waived interest yielded by the USD 103.5m receivable since 6 May 2009.

15 Further to the above steps, the situation was as depicted below:

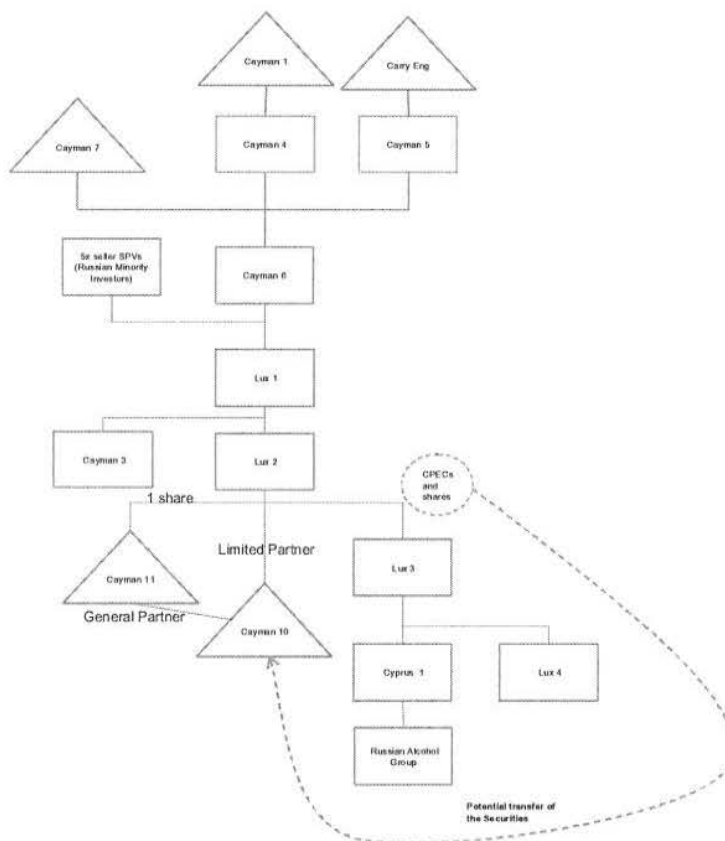


## B Incorporation of Lion/ Rally Cayman 10 L.P. and Securities Transfer Agreement

- 16 On 24 May 2009, LuxCo 2, as Limited Partner, and *Lion/ Rally Cayman 11* ('Cayman 11'), a Cayman company, as General Partner, set up a Cayman Exempted Limited Partnership, *Lion/ Rally Cayman 10 L.P.* ('Cayman 10 L.P.'). The following steps happened also on 24 May 2009.
- 17 LuxCo 2 and Cayman 10 L.P. concluded an agreement for the conditional transfer of the shares and CPECs (together referred to as 'the Securities') in LuxCo 3 by LuxCo 2 to Cayman 10 L.P. The transfer will only materialise should certain commercial conditions be met. Further to the restructuring of the Carey Agri Loan Notes on 11 September 2009, this agreement was amended and restated to take into account the new shares and CPECs issued by LuxCo 3 (see paragraphs 10 and 12).
- 18 Furthermore, LuxCo 2, as holder of 1 ordinary share of USD 1 in the capital of Cayman 11, granted Cayman 6 (the former Cayman 2) an option to purchase the share in Cayman 11, exercisable upon the date of the conditional transfer of the Securities in LuxCo 3 from LuxCo 2 to Cayman 10 L.P..
- 19 LuxCo 2 also waived any right it had under the Series A Unsecured Subordinated Loan Notes issued by LuxCo 3 on 8 July 2008 for USD 35 500 000 (referred to as 'Vendor Loan Notes' in the Original Letter) to any redemption, repayment, prepayment or repurchase in respect of said notes, other than on the maturity date.



- 20 Interest-Bearing Loan 1 and 2, and Interest-Free Loan 1 and 2 were amended to fix the maturity date on 31 December 2012 and to have a free prepayment option at the level of the borrower (whereas the lender cannot prepay in any event).



## C USD 32,500,000 Unsecured Subordinated Loan Notes

- 21 On 15 September 2009, Cayman 6 lent USD 32,500,000 unsecured subordinated loan notes to LuxCo 3, yielding an annual interest of 8%.
- 22 LuxCo 3 lent the USD 32,500,000 funds to Cyprus 1 also as unsecured subordinated loan notes, whose terms and conditions mirror the terms and conditions of the LuxCo 3 loan notes, save for the fact that Cyprus 1 loan notes yield an annual interest of 8.09375%.
- 23 On 25 September 2009, Cyprus 1 loan notes were partially repaid (for an amount of USD 13 670 000). On the same date, LuxCo 3 loan notes were amended and restated so as to create two tranches:
- USD 18 830 000 Tranche A yielding an interest rate of 8%.
  - USD 13 670 000 Tranche B yielding interest at rate equal to the higher of:
    - 0.5% per annum; or
    - the interest rate per annum accruing from time to time on bank deposits or such other interest rate on any bank account deposit, loan or investment as specified by LuxCo 3 from time to time, in each case less 0.09375% per annum.



**D USD 20,000,000 capital increase in Cyprus 1**

- 24 In March 2009, LuxCo 3 injected USD 20m into Cyprus 1 share capital. The USD 20m cash was from the surplus funds transferred to LuxCo 3 at the time of its initial funding (i.e. in 2008).



## Technical analysis on the qualification of Cayman 10 L.P. from a Luxembourg perspective

- 1 Under Luxembourg domestic tax law, no specific provisions exist to determine whether an entity established under foreign laws may be considered as transparent or non-transparent entities for Luxembourg tax purposes.
- 2 Whereas article 159 of the Luxembourg Income Tax Law (LITL) deals with non-transparent entities, article 175 LITL<sup>2</sup> directly provides for a list of transparent entities.
- 3 Based on parliamentary documents, the Luxembourg tax regime of an entity is to be determined depending on the classification of said entity, i.e. either as “société de personnes” (which qualify as transparent entities) or as tax resident entity subject to Luxembourg corporate income tax (which qualify as non-transparent entities)<sup>3</sup>.
- 4 Accordingly, in order to assess the Luxembourg tax treatment of a foreign entity, the characteristics of this entity should thus be compared to the characteristics of similar entities governed by Luxembourg law<sup>4</sup>.
- 5 As it would be the case in a Luxembourg SCS, Cayman 10 L.P. has a Limited Partner (‘LP’), LuxCo 2, and a General Partner (‘GP’), Cayman 11. The features of Cayman 10 L.P. are summarized hereunder:

### **- Limitation of liability**

- The liability of the GP is unlimited.
- LPs shall have no personal obligation for the debts or liabilities of the Partnership, except in respect of their contributions to the Limited Partnership.

<sup>2</sup> Also codified under para. 11bis of the Adaptation Act dated 16 October 1934 as amended.

Based on a recent reference (Luxembourg law dated 17 November 2006) to EU companies in a portion of art. 175, it has become very clear that art. 175 is in principle also applicable to foreign partnerships. In the context of the modification of art. 175 LITL in 2006, linked to EU entities, the authorities confirmed that there was no change for the analysis of non EU entities, which could be viewed as transparent from a Luxembourg angle although taxed as such in their country of residence.

<sup>3</sup> Report of the special commission, parliamentary document n° 571 (ordinary session of 1967- 1968) , p. 85 (The main example of tax resident entity subject to corporate income tax being the Luxembourg “société de capitaux”).

<sup>4</sup> See in particular:

- Parliamentary document No. 571 (ordinary session of 1967- 1968), comments on art. 17 (current art. 14).  
- IFA, Livre jubilaire de l'IFA Luxembourg, Section 6-37, 2008.

<p><b>- Legal personality</b></p> <ul style="list-style-type: none"> <li>○ A Cayman Exempted Limited Partnership is not a separate legal entity and cannot own property in its own right.</li> </ul>
<p><b>- Centralised management and representation</b></p> <ul style="list-style-type: none"> <li>○ The GP has the right and power to manage and administer the affairs of the Partnership. There is no separate Board of Directors or any other management board whatsoever.</li> </ul>
<p><b>- Profit distribution pattern</b></p> <ul style="list-style-type: none"> <li>○ The Partnership's profits and losses are allocated automatically pro rata in accordance with the partner's respective interests in the Partnership.</li> </ul>
<p><b>- Liquidation/ Dissolution and withdrawals</b></p> <ul style="list-style-type: none"> <li>○ The Partnership is terminated by notice from the GP or if the latter withdraws or resigns, without appointing a substitute GP.<sup>5</sup></li> <li>○ LPs may not withdraw their contributions or withdraw from the partnership.</li> </ul>
<p><b>- Absence of minimum capital required</b></p> <ul style="list-style-type: none"> <li>○ Pursuant to the Cayman Islands law, no minimal statutory capital is required for this type of Exempted Limited Partnership.</li> <li>○ Partners have made an initial capital contribution of USD 1 to the Partnership.</li> </ul>
<p><b>- Transferability of the partnership interest</b></p> <ul style="list-style-type: none"> <li>○ No transfer of all or any part of a limited partner's interest in the Limited Partnership may be made without the prior written consent of the GP, which the GP may grant or withhold at its discretion.</li> </ul>

6 Based on the above-described characteristics, Cayman 10 L.P. should be analysed under different approaches to determine its Luxembourg tax treatment.

#### *I. The entrepreneur approach*

7 According to the Luxembourg doctrine<sup>6</sup>, the main criteria that allow defining a transparent entity are the following:

<sup>5</sup> The fact that the GP may withdraw by appointing a substitute GP is an accepted practice in these kinds of partnerships and, in the case at hand, it is motivated by commercial reasons. In any case, this feature may not preclude the LP to be regarded as a tax-transparent entity for Luxembourg tax purposes.

<sup>6</sup> Alain Steichen, reconnaissance de la personnalité fiscale des entreprises étrangères, rapport Luxembourgeois, cahiers de droit fiscal international, 1988.

- **The entrepreneur's risk:** the partners have to participate in the entity's social activity, as if they were carrying on the entity in their own name. The responsibility of the partners is unlimited, meaning that they are liable to an amount higher than their contribution.
  - **The entrepreneur's initiative:** the partners have to participate directly in the decisions of the entity. The decisions must not be taken through the entity's bodies.
- 8 Based on the above, in order to determine the domestic equivalent form of Cayman 10 L.P., its following characteristics should be outlined:
- The GP of Cayman 10 L.P. does incur an unlimited liability to third parties. Consequently, it does bear a risk higher than the amount of its initial **contribution**. The first criterion (i.e. entrepreneur's risk) should thus be considered as fulfilled in respect of the GP.
  - The **GP** has the right and power to manage and administer the affairs of the Partnership. **There is no separate Board of Directors or any other management board whatsoever.** Consequently, the second criterion should be considered as fulfilled (i.e. entrepreneur's initiative).

## II. *Analysis under German Case law*

- 9 According to a German case law of 1930<sup>7</sup>, the following legal characteristics of a foreign entity should be analysed as an accumulation of evidence to determine in which category of Luxembourg entity the foreign entity should be classified:
- Management of the company: an entity, which is managed by its partners, is a transparent entity. If there is a separate management, then it is opaque.
  - Implication of the partner in the decision-taking of the entity: should there be a strong implication, the entity is transparent, otherwise it is opaque.
  - Level of the liability of the partner: when the partners have an unlimited liability the entity is transparent, otherwise it is opaque.
  - The free transferability of the shares of the entity: should such transfers be subject to the agreement of the partners then the entity is transparent, otherwise it is opaque.
- 10 Cayman 10 L.P. is managed by GP, who is responsible for its decision-taking. Furthermore, GP bears an unlimited liability in respect of the partnership and GP's consent (which GP may grant or withhold at its discretion) is necessary before any transfer of partnership interest is made.

---

<sup>7</sup> RFH of 12 February 1930, RStBl p. 444.

- 11 Based upon its characteristics as outlined above and on the criteria pursuant to the Luxembourg doctrine and German case law, Cayman 10 L.P. will be treated as tax transparent for Luxembourg tax purposes and thus will be disregarded for Luxembourg corporate income tax, municipal business tax and net wealth tax purposes.
- 12 Since Cayman 10 L.P. will be treated as tax transparent for Luxembourg tax purposes, LuxCo 2 will be deemed to continue to hold directly the relevant proportion of the Securities in LuxCo 3, if and when the Securities are transferred to Cayman 10 L.P. A potential transfer of the Securities would thus be a non-event for Luxembourg tax purposes at the level of LuxCo 2.
- 13 As a consequence, a tax balance sheet shall be prepared and LuxCo 2 should report therein the Securities it holds in LuxCo 3.

Appendix 3

Original Letter





**For the attention of Mr Marius Kohl**

Administration des Contributions Directes  
Bureau d'imposition Sociétés VI  
18, Rue du Fort Wedell  
L-2982 Luxembourg

PricewaterhouseCoopers  
Société à responsabilité limitée  
Réviseur d'entreprises  
400, route d'Esch  
B.P. 1443  
L-1014 Luxembourg  
Telephone +352 494848-1  
Facsimile +352 494848-2900  
www.pwc.com/lu  
info@lu.pwc.com

30 July 2008

Reference: VTLN/AAVU/Q2708069M-DDGZ

**Lion/Rally Lux 1 S.A. – Tax number 2008 22 14268**  
**Lion/Rally Lux 2 S.à r.l. – Tax number 2008 24 21417**  
**Lion/Rally Lux 3 S.à r.l. – Tax number 2008 24 21425**  
**Lion/Rally Lux 4 S.à r.l. – Tax number in progress**

**Project Rally**

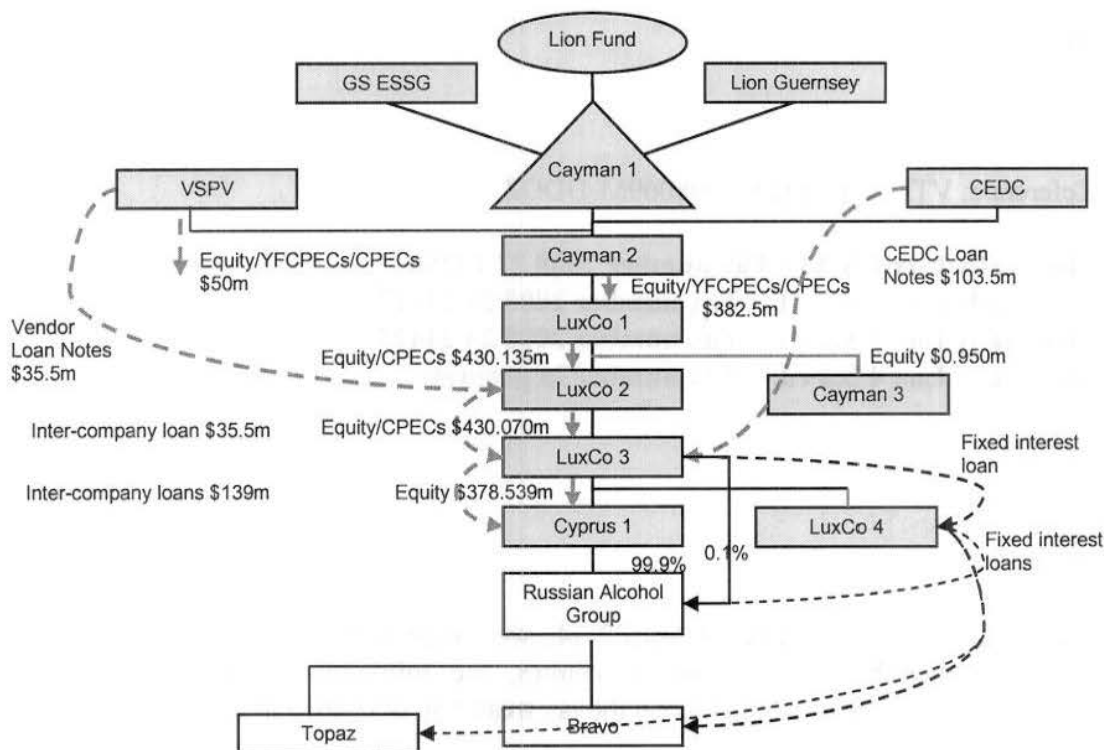
Dear Mr Kohl,

Further to our meeting dated 9 April 2008, we would like to submit to your attention, on behalf of the above mentioned companies, the following situation and obtain your agreement and/or your comments on the tax treatment described herein.

**A Background**

- 1 Lion Capital has recently acquired a majority stake in Russian Alcohol Group ("Russian Alcohol"), the largest producer of vodka and ready-to-drink alcoholic beverages in Russia. Central European Distribution Corporation ("CEDC"), the leading vodka producer in Poland and Russia, Goldman Sachs and the UniCredit Group have invested in Russian Alcohol alongside Lion Capital.
- 2 The acquisition has been structured through four Luxembourg companies: Lion/Rally Lux 1 S.A. ("LuxCo 1"), Lion/Rally Lux 2 S.à r.l. ("LuxCo 2"), Lion/Rally Lux 3 S.à r.l. ("LuxCo 3") and Lion/Rally Lux 4 S.à r.l. ("LuxCo 4").

- 3 For your information, you will find in enclosure a brief description of Lion Capital and Russian Alcohol Group (Appendix 1) and a step plan depicting the acquisition steps (Appendix 2).
- 4 The acquisition has been financed by shareholder capital, interest-bearing Convertible Preferred Equity Certificates ("CPECs"), Yield Free Convertible Preferred Equity Certificates ("YFCPECs"), Series A Vendor Loan Notes ("VLN") and CEDC Loan Notes ("CLN"), as shown in the chart hereunder.



## B Applicable Tax Regime

### B.1 Luxembourg tax residency

- 5 LuxCo 1, LuxCo 2, LuxCo 3 and LuxCo 4 have their statutory seat and central administration<sup>1</sup> in Luxembourg. It follows that the companies are Luxembourg tax-resident within the meaning of Article 159 of the Luxembourg Income Tax Law ("LITL"). A tax residence certificate may be requested in the future for these companies.

<sup>1</sup> The shareholder's meetings as well as the meetings of the board of directors of LuxCo 1, LuxCo 2, LuxCo 3 and LuxCo 4 are regularly and physically held in Luxembourg. The management decisions are effectively taken in Luxembourg. Their accounting and archives will also be kept in Luxembourg.

## **B.2 Luxembourg tax treatment of the CPECs**

- 6 Based on the characteristics of the CPECs issued by LuxCo 1, LuxCo 2 and LuxCo 3, they will be treated as debt for Luxembourg income tax and also net wealth tax purposes. Therefore, the interest expenses will be fully tax deductible at the level of LuxCo 1, LuxCo 2 and LuxCo 3 and not subject to withholding tax (see our technical analysis on the debt characterization of the CPEC and YFCPEC instruments in Appendix 3).
- 7 An optional repurchase (i.e., redemption at fair market value) of the CPECs should not be subject to withholding tax. Moreover, should LuxCo 1/LuxCo 2/LuxCo 3 realise a loss on the repurchase of the CPECs, said loss should be deductible in LuxCo 1/LuxCo 2/LuxCo 3's hands (yet subject to recapture in the case of LuxCo 3).

## **B.3 Luxembourg tax treatment of the YFCPECs**

- 8 Based on the characteristics of the YFCPECs issued by LuxCo 1, they will be treated as debt for Luxembourg income tax and also net wealth tax purposes (see our technical analysis on the debt characterization of the CPEC and YFCPEC instruments in Appendix 3).
- 9 An optional repurchase (i.e., redemption at fair market value) of the YFCPECs should not be subject to withholding tax. Moreover, should LuxCo 1 realise a loss on the repurchase of the YFCPECs, said loss should be deductible in its hands.
- 10 Given the fact that the YFCPECs issued by LuxCo 1 do not yield any interest, they will be treated as an equity investment strictly for thin-capitalization purposes (cf. with section B.4 below).

## **B.4 Compliance with the debt-to-equity ratio**

- 11 LuxCo 1's equity investment in CayCo 3 has been fully financed by YFCPECs. Since the YFCPECs are treated as an equity investment for thin-capitalisation purposes (see section B.3 above), the gearing at LuxCo 1's level on the financing of the participation in CayCo 3 complies with Luxembourg's 85:15 debt-to-equity ratio.
- 12 The gearing on the financing at LuxCo 3's level of the participation in Cyprus 1 did not meet the 85:15 debt-to-equity ratio that is usually applied in Luxembourg's practice for the intra-group financing of participations. The interest rate on LuxCo 1, LuxCo 2 and LuxCo 3 CPECs having however been discounted to 85% of the fair market rate, interest payments on these CPECs will not be re-characterised into dividend distributions. No withholding tax

should hence apply to interest payments notably on the LuxCo 1 CPECs, neither upon redemption thereof (see Appendix 6).

#### **B.5 Characteristics of the VLN and CLN**

- 13 Based on the characteristics of the VLN and CLN, they will be treated as debt for Luxembourg income tax and also net wealth tax purposes. Therefore, the related interest expenses will be fully tax deductible at the level of LuxCo 2 and LuxCo 3, respectively, and not subject to withholding tax (see Appendices 4 and 5).
- 14 The VLN carry a high progressive coupon (8% until 30 June 2011, 20% until 30 June 2012 and 30% onwards). Indeed, the VLN are intended to be repaid within a short time frame and thus the increasing high rates from June 2011 onwards are meant to act as a “penalty” for non-settlement within the initial time frame. It should also be noted that LuxCo 2 and LuxCo 3 are not in a risk situation as regards the VLN as they are on-loaned to Cyprus 1 under similar terms and conditions and thus the creditor risk ultimately lies in Cyprus 1. The interest rate on the VLN has been thus set at arm’s length and therefore no hidden dividend distribution should be constructed on the interest payment made by LuxCo 2 on the VLN.

#### **B.6 Financing activities of LuxCo 1, LuxCo 2, LuxCo 3 and LuxCo 4**

- 15 LuxCo 1, LuxCo 2, LuxCo 3 and LuxCo 4 carry out financing activities for an overall amount of approximately USD 564,810,000 i.e. the CPECs, VLN, CLN, fixed interest loans that are on-lent to other companies within the group.
- 16 Given the amounts involved and the financing risk profile, an approximate net taxable margin of 0.09375% will be derived by LuxCo 1 (on the CPECs financing), LuxCo 2 (on the VLN financing) and LuxCo 3 (on the CLN financing) as fair market value remuneration for the above financing activities (see Appendix 7).

#### **B.7 Functional currency for tax purposes**

- 17 The accounts of LuxCo 1, LuxCo 2, LuxCo 3 and LuxCo 4 will be denominated in Unites States Dollars. Indeed, USD will be LuxCo 1, LuxCo 2, LuxCo 3 and LuxCo 4’s functional currency for tax purposes as from their date of incorporation. It follows that the tax returns will be established on the basis of the yearly net profits converted into EUR by using the year-end market rate for USD to EUR exchange, as provided by [www.factiva.com](http://www.factiva.com).

We respectfully request that you confirm the tax treatment of the situation described above or that you provide us with your remarks, if any.

We remain at your disposal should you need any further information and would like to thank you for the attention that you will give to our request.

Yours sincerely,

Vincent Lebrun  
Partner

Appendices:

- Appendix 1: Description of Lion Capital and Russian Alcohol
- Appendix 2: Acquisition steps
- Appendix 3: Characteristics/tax treatment of the CPECs and YFCPECs
- Appendix 4: Characteristics of the VLN and Unsecured Subordinated Loan Notes
- Appendix 5: Characteristics of the CLN and Unsecured Subordinated Loan Notes
- Appendix 6: Compliance with the Luxembourg debt-to-equity ratio
- Appendix 7: Financing activities of LuxCo 1, LuxCo 2, LuxCo 3 and LuxCo 4
- Appendix 8: Legal documentation

**For approval**

*Le préposé du bureau d'imposition Sociétés 6*  
*Marius Kohl*

**Luxembourg, 2008**

*This tax agreement is based on the facts as presented to PricewaterhouseCoopers Sàrl as at the date the advice was given. The agreement is dependent on specific facts and circumstances and may not be appropriate to another party than the one for which it was prepared. This tax agreement was prepared with only the interests of Lion/Rally Lux 1 S.A., Lion/Rally Lux 2 S.à r.l., Lion/Rally Lux 3 S.à r.l. and Lion/Rally Lux 4 S.à r.l. in mind, and was not planned or carried out in contemplation of any use by any other party. PricewaterhouseCoopers S.à r.l., its partners, employees and or agents, neither owe nor accept any duty of care or any responsibility to any other party, whether in contract or in tort (including without limitation, negligence or breach of statutory duty) however arising, and shall not be liable in respect of any loss, damage or expense of whatever nature which is caused to any other party.*

## Appendix 1

### Description of Lion Capital and Russian Alcohol

- 1 Lion Capital ([www.lioncapital.com](http://www.lioncapital.com)) is the recognized leader in investing in consumer businesses. Headquartered in London, the firm's principals have been investing private equity capital since the early 1990s and have invested over €4 billion of equity in transactions totaling over €15 billion in value. The firm works in partnership with the management of its companies to strategically transform the business in which it invests. Lion Capital is currently managing two active pools of equity capital: Lion Capital Fund I (formed in 2004) and Lion Capital Fund II (formed in 2007), which combined give Lion over €2.8 billion of assets under management.
- 2 Russian Alcohol ([www.rusalco.com](http://www.rusalco.com)) is the largest producer of vodka and ready-to-drink alcoholic beverages in Russia. Since its creation by Industrial Investors in 2003, the company has grown to become a leader in the Russian spirits industry, with a portfolio of market-leading spirits products and one of the most enviable distribution operations in the Russian market. Russian Alcohol's flagship brand, Green Mark (Zelenaya Marka), is the largest vodka brand by volume in Russia, and one of the top five globally. The Company produces Zhuravli, a top-selling premium vodka and one of the fastest growing vodka brands in Russia, and Russian Alcohol has one of the largest portfolios of long-drinks products in the country. The Company is headquartered in Moscow and employs approximately 3,500 employees across five production facilities. In its current financial year, the Company expects to generate net sales of over \$500 million."



## Acquisition steps

### A Formation of the Luxembourg acquisition structure

- 1 Lion Capital, Goldman Sachs and UniCredit set up a Cayman limited partnership named Lion/Rally Cayman 1 LP (“Cayman LP”).
- 2 Cayman LP and CEDC formed a Cayman holding company called Lion/Rally Cayman 2 (“CayCo 2”).
- 3 CayCo 2 and Lion Capital set up LuxCo 1.
- 4 LuxCo 1 set up (i) LuxCo 2 and (ii) another Cayman company named Lion/Rally Cayman 3 (“CayCo 3”)<sup>2</sup>.
- 5 LuxCo 2 set up LuxCo 3.
- 6 LuxCo 3 subsequently incorporated (i) LuxCo 4 and (ii) a Cyprus company named Pasalba Ltd (“Cyprus 1”).

### B Financing of the acquisition

- 7 CayCo 2 and Lion Capital passed USD 432,500,000 to LuxCo 1 in exchange for:
  - USD 4,325,000 equity;
  - USD 425,810,000 Convertible preferred equity certificates (“CPECs”); and
  - USD 2,365,000 Yield Free Convertible Preferred Equity Certificates issued by LuxCo 1 (“YFCPECs”).
- 8 LuxCo 1 passed USD 430,135,000 to LuxCo 2 in exchange for:
  - USD 4,325,000 equity; and
  - USD 425,810,000 CPECs.
- 9 LuxCo 1 injected USD 950,000 into CayCo 3 and retained USD 1,415,000 to finance operational expenses.

<sup>2</sup> CayCo 3 is the vehicle for Russian Alcohol’s management incentive scheme. As such, upon exit, will receive a portion (via equity injection from Luxco 1) of the proceeds received by LuxCo 1 and subsequently make a correspondent payment to the Russian Alcohol executives.

- 10 LuxCo 2 retained USD 65,000 to finance operational expenses and passed USD 430,070,000 to LuxCo 3 in exchange for:
  - USD 4,325,000 equity; and
  - USD 425,745,000 CPECs.
- 11 From the funds received in step 10, LuxCo 3 retained approximately USD 43,931,468 to finance on-going expenses and invested (i) USD 378,538,532 into Cyprus 1's equity and (ii) USD 7,600,000 in a fixed interest loan to LuxCo 4. LuxCo 4 passed subsequently the USD 7,600,000 funds to ZAO Distillery Topaz and OOO Bravo Premium, Russian entities pertaining to Russian Alcohol, under similar fixed interest loan facilities.<sup>3</sup>
- 12 LuxCo 2 issued Series A USD 35,500,000 VLN to VSPV. LuxCo 2 passed subsequently the USD 35,500,000 funds via an inter-company loan to LuxCo 3. The latter company granted a correspondent USD 35,500,000 inter-company loan to Cyprus 1.
- 13 LuxCo 3 issued USD 103,500,000 CLN to CEDC. LuxCo 3 passed subsequently the USD 103,500,000 funds to Cyprus 1 under an inter-company loan facility.
- 14 Cyprus 1 acquired Russian Alcohol.

**C Co-investment of the vendor**

- 15 A company controlled by the vendor of Russian alcohol ("VSPV") acquires from Lion Capital 11.56% of the total equity and CPECs issued by LuxCo 1 for an overall value of USD 50,000,000.

---

<sup>3</sup> LuxCo 4 will also grant a fixed interest loan to ZAO Russian Alcohol Group. Indeed, these fixed interest loans granted to and by LuxCo 4 are credit facilities and therefore further draw downs may be made in the future.

## Characteristics/tax treatment of the CPECs and YFCPECs

### A Characteristics of the CPECs and YFCPECs

Features of the CPECs/YFCPECs	CPECs issued by LuxCo 1, LuxCo 2 and LuxCo 3	YFCPECs issued by LuxCo 1
Term	49 years	49 years
Yield	<p><u>CPECs issued by LuxCo 1:</u> 0.425% per annum, i.e. 0.5% discounted by 15%</p> <p><u>CPECs issued by LuxCo 2 and LuxCo 3:</u> 0.51875% per annum (i.e. 0.6103% discounted by 15%)</p>	Yield free
Redemption/ Optional repurchase/Payment	<p><u>Redemption at Mandatory Redemption or Liquidation Date</u> Upon the Mandatory Redemption Date or in the event of any voluntary or involuntary liquidation, bankruptcy, dissolution or winding up of the affairs of the Company (a "Liquidation"), the Holder shall be entitled to be paid a value equal to the sum of (1) the Par Value for each outstanding CPEC owned by it plus (2) unpaid Yield with respect thereto accrued through to and excluding the Mandatory Redemption Date or the date fixed for such Liquidation (the "Liquidation Price") as the case may be, in each case before any payment shall be made or any assets distributed in relation to any Shares of the Company, whether outstanding on the date hereof or issued in the future, but after payment of all creditors of the Company and upon surrender of the CPECs so redeemed. Notwithstanding the foregoing, upon a Mandatory Redemption or Liquidation the Company shall be entitled instead to convert any or all of the CPECs into Shares by requiring the Holders to exchange the CPECs for the Conversion Shares.</p> <p><u>Optional Repurchase</u> The Company may, instead of delivering Conversion Shares, repurchase any or all of the CPECs at a price equal to the Repurchase Price, provided that any such repurchase may be carried out only to the extent that the Company:</p>	<p><u>Redemption at Mandatory Redemption or Liquidation Date</u> Upon the Mandatory Redemption Date or in the event of any voluntary or involuntary liquidation, bankruptcy, dissolution or winding up of the affairs of the Company (a "Liquidation"), the Holder shall be entitled to be paid a value equal to the Par Value for each outstanding YFCPEC owned by it (the "Liquidation Price") as the case may be, in each case before any payment shall be made or any assets distributed in relation to any Shares of the Company, whether outstanding on the date hereof or issued in the future, but after payment of all creditors of the Company and upon surrender of the YFCPECs so redeemed. Notwithstanding the foregoing, upon a Mandatory Redemption or Liquidation the Company shall be entitled instead to convert any or all of the YFCPECs into Shares by requiring the Holders to exchange the YFCPECs for the Conversion Shares.</p> <p><u>Optional Repurchase</u> The Company may, instead of delivering Conversion Shares, repurchase any or all of the YFCPECs at a price equal to the Repurchase Price, provided that any such repurchase may be carried out only to the extent that the Company:</p> <p>(a) after payment of or provision for all other obligations of the Company having priority over the YFCPECs and which have become due and payable on the Repurchase Date, has sufficient funds resulting from (i)</p>

	<p>(a) after payment of or provision for all other obligations of the Company having priority over the CPECs and which have become due and payable on the Repurchase Date, has sufficient funds resulting from (i) payments made to the Company by its subsidiaries or its affiliates or (ii) a sale of its subsidiaries or any other asset of the Company; and</p> <p>(b) will not be Insolvent after payment of the aggregate Repurchase Price of the CPECs to be repurchased.</p> <p><i>"Repurchase Price"</i> means, at any time, the greater of (1) the Par Value of a CPEC plus accrued but unpaid Yield or (2) the market value, on a fully diluted basis, of the Conversion Shares into which the CPECs would have been convertible plus accrued but unpaid Yield. The Repurchase Price shall be determined by the Board of Directors of the Company on the basis of the equity value of the Company and its affiliates on an arm's length basis.</p>	<p>payments made to the Company by its subsidiaries or its affiliates or (ii) a sale of its subsidiaries or any other asset of the Company; and</p> <p>(b) will not be Insolvent after payment of the aggregate Repurchase Price of the YFCPECs to be repurchased.</p> <p><i>"Repurchase Price"</i> means, at any time, the greater of (1) the Par Value of a YFCPEC or (2) the market value, on a fully diluted basis, of the Conversion Shares into which the YFCPECs would have been convertible pursuant to Section 4.2A. The Repurchase Price shall be determined by the Board of Directors of the Company on the basis of the equity value of the Company and its affiliates on an arm's length basis.</p>
<b>Conversion</b>	<p>On a Conversion Event, the Company shall be entitled to convert any or all of the principal of the CPECs into Conversion Shares by requiring the Holders to exchange the CPECs for the Conversion Shares. The number of Conversion Shares to which a Holder is entitled upon conversion of such CPECs shall be calculated by reference to the Conversion Price (i.e. USD 1.00 Conversion Share for each USD 1.00 of principal amount of CPECs to be converted).</p>	<p>On a Conversion Event, the Company shall be entitled to convert any or all of the principal of the YFCPECs into Conversion Shares by requiring the Holders to exchange the YFCPECs for the Conversion Shares. The number of Conversion Shares to which a Holder is entitled upon conversion of such YFCPECs shall be calculated by reference to the Conversion Price (i.e. USD 1.00 Conversion Share for each USD 1.00 of principal amount of CPECs to be converted).</p>
<b>Ranking</b>	<p>The CPECs issued hereunder and any Yield thereon shall be subordinate to all other present and future obligations of the Company, including the Company's trade debt. Notwithstanding the foregoing, the CPECs shall rank pari passu with any other CPECs issued by the Company but, for the avoidance of doubt, the CPECs shall rank ahead of the Shares.</p>	<p>The YFCPECs issued hereunder shall be subordinate to all other present and future obligations of the Company, including the Company's trade debt. Notwithstanding the foregoing, the YFCPECs shall rank pari passu with any other YFCPECs/CPECs issued by the Company but, for the avoidance of doubt, the YFCPECs shall rank ahead of the Shares.</p>
<b>Transfer restrictions</b>	<p>The CPECs can only be transferred in accordance with the Shareholders' Agreement.</p>	<p>The YFCPECs can only be transferred in accordance with the Shareholders' Agreement.</p>
<b>Voting rights</b>	<p>The Holders shall not be entitled to any voting rights in respect of the Company by reason of their ownership of the CPECs.</p>	<p>The Holders shall not be entitled to any voting rights in respect of the Company by reason of their ownership of the YFCPECs.</p>

**B Tax treatment of the CPECs**

- 1 Based on the characteristics above mentioned, the CPECs issued by LuxCo 1, LuxCo 2 and LuxCo 3 will be treated as debt for Luxembourg income tax and net wealth tax purposes.
- 2 In this respect, the explanatory note to the income tax reform law no. 571 of 1955 (Projet de Loi on Article 114 – currently Article 97 LITL) points out that the distinction between debt and equity must be done on the basis of the economic characteristics of the financial instrument. In particular, the main economic features that characterise a financial instrument as debt are:
  - The fact that the instrument yields a fixed income (as opposed to an equity participation which gives right to a percentage of the company's profits); and
  - A privileged ranking over the company's shares.
- 3 As previously mentioned, the applicable interest rate on the CPECs is a fixed rate per annum, thus the CPECs' yield is not dependent on the company's profits, and the CPECs rank prior to the issuing company's shares. In addition, the CPECs do not confer any voting rights to the holders and do not grant the holders a right in the profits or liquidation surplus of the issuer.
- 4 Considering the above criteria and given that the CPECs meet them, they will qualify as regular debt for Luxembourg tax purposes at the level of LuxCo 1, LuxCo 2 and LuxCo 3.
- 5 The interest paid thereon will be booked as a yearly financial cost (even if not paid but only accrued for). This accounting treatment will be followed for tax purposes as no specific tax rules depart therefrom (cf. Article 40 LITL). Consequently, the interest will constitute a yearly tax-deductible charge.

**C Tax treatment of the interest payments on the CPECs**

- 6 Articles 146(1)-3 and 164(2) LITL provide for the application of a withholding tax upon payment of interest arising from profit participation bonds or other similar securities. Indeed, interest may be subject to the 15% domestic withholding tax in Luxembourg if the following conditions are met:
  - The loan is structured under the form of bonds or other similar securities; and;
  - Aside from the fixed interest, a supplementary interest varying according to the amount of distributed profit is paid, unless said supplementary interest is stipulated simultaneously with a momentary decrease of the fixed interest.

- 7 Consequently, as the CPECs issued by LuxCo 1, LuxCo 2 and LuxCo 3 bear a fixed interest, are not profit participating bonds and, moreover, carry an arm's length interest rate, such withholding tax will not apply to interest payments made under these instruments.
- 8 Besides, as the debt-to-equity ratio is deemed to be respected at the time of the acquisition of the shares (in this respect, we refer to Appendix 6) in Cyprus 1, interest paid by LuxCo 3 on the CPECs will be deductible and exempt from withholding tax. LuxCo 3's CPECs deductibility is however subject to recapture upon a potential gain derived from the participation in Cyprus 1.
- 9 In this respect, it is worth noting that the premium that could be paid by LuxCo 1, LuxCo 2 and LuxCo 3 upon an Optional Repurchase of the CPECs at market value will not be deemed as an interest payment. Indeed, such premium corresponds to a repurchase at fair market value of the conversion right attached to the CPECs and thus shall not be characterized as a constructive interest.

**D Tax treatment of the CPECs upon optional repurchase**

- 10 An optional repurchase by LuxCo 1, LuxCo 2 or LuxCo 3 of the CPECs will neither be re-characterized into a hidden dividend distribution nor into any other similar operation in the sense of Article 164 (3) LITL. As a consequence, the redemption of the CPECs will not be subject to any Luxembourg withholding tax in accordance with Article 146 (1) LITL.
- 11 In case of the sale of Cyprus 1 shares, LuxCo 3 would realize a capital gain if the value of Cyprus 1's shares would be superior to their book value at the time of the disposal. This potential capital gain may benefit from the Luxembourg participation exemption regime on capital gains, provided that LuxCo 3 has held more than 10% of the shares in Cyprus 1 (or a participation with an acquisition cost of at least EUR 6m).
- 12 In these circumstances, recapture rules would apply up to the aggregate amount of the interest expenses borne by LuxCo 3 and which are related to the participation in Cyprus 1 (i.e., interest payments on the CPECs) deducted the year in which the disposal takes place as well as in previous years.
- 13 In addition, a potential loss realized by LuxCo 3 upon the redemption of the CPECs at fair market value will also be subject to recapture rules.
- 14 In case LuxCo 3 may not benefit from the Luxembourg participation exemption on the capital gain realized at the time of the sale of Cyprus 1 shares, such a taxable gain may be offset, yet not completely insofar as LuxCo 3 has financed part of Cyprus 1's shares with equity, against the tax-deductible loss realized upon the redemption of the CPECs at fair market value.



**E Characterisation of the YFCPECs as debt for Luxembourg tax purposes**

- 15 Based on the characteristics here above mentioned, the YFCPECs issued by LuxCo 1 will be treated as debt for Luxembourg income tax purposes and also for net wealth tax purposes.
- 16 In this context, the explanatory note to the income tax reform law no. 571 of 1955 (*Projet de Loi on Article 114* – currently Article 97 – LITL) points out that the distinction between debt and equity must be done on the basis of the economic characteristics of the financial instrument. In particular, the main economic features that characterise a financial instrument as debt are:
  - The fact that the instrument yields a fixed income (as opposed to an equity participation which gives right to a percentage of the company's profits); and
  - A privileged ranking over the company's shares.
- 17 The YFCPECs yield no income and thus do not give access to the lender to a percentage of LuxCo 1's profits and have a privileged ranking over LuxCo 1's common stock. In addition, the YFCPECs do not confer any voting rights to the holders and do not grant the holders a right in the profits or liquidation surplus of the issuer.
- 18 The YFCPECs should hence be characterised as debt for Luxembourg income tax and net wealth tax purposes.
- 19 However, given the fact that the YFCPECs issued by LuxCo 1 do not yield any interest, they will be treated as an equity investment strictly for thin-capitalisation purposes.

**F Tax treatment of the YFCPECs upon optional repurchase**

- 20 An optional repurchase by LuxCo 1 of the YFCPECs will neither be re-characterized into a hidden dividend distribution nor into any other similar operation in the sense of Article 164 (3) LITL. As a consequence, the redemption of the YFCPECs will not be subject to any Luxembourg withholding tax in accordance with Article 146 (1) LITL.
- 21 In case of the sale of CayCo 3 shares, LuxCo 1 would realize a capital gain if the value of CayCo 3's shares would be superior to their book value at the time of the disposal.
- 22 As LuxCo 1 may normally not benefit from the Luxembourg participation exemption on the capital gain realized at the time of the sale of CayCo 3's shares, such a taxable gain may be offset with the tax-deductible loss realized upon the redemption of the YFCPECs at fair market value.



**Characteristics of the VLN and Unsecured Subordinated Loan Notes**
**A Characteristics**

Features of the instrument	VLN issued by LuxCo 2	Unsecured Subordinated Loan Notes issued by LuxCo 3 and Cyprus 1
<b>Term</b>	10 years 6 months	10 years 6 months
<b>Principal amount</b>	<u>Series A Notes:</u> USD 35,500,000  <u>Series B Notes:</u> Not drawn down yet*	<u>Series A Notes:</u> USD 35,500,000  <u>Series B Notes:</u> Not drawn down yet*
<b>Currency</b>	USD denominated	USD denominated
<b>Yield</b>	<u>Series A Notes</u> <ul style="list-style-type: none"> <li>8% p.a. until 30 June 2011</li> <li>20% p.a. until 30 June 2012</li> <li>30% p.a. after 30 June 2012 if the Company has not taken any action to redeem or repay the notes then outstanding</li> </ul> <u>Series B Notes</u> <ul style="list-style-type: none"> <li>20% p.a. for 12 months from the date of issue</li> <li>30% p.a.</li> </ul> <u>Default interest:</u> 1% p.a. over the applicable rate of interest.	<u>Series A Notes</u> <ul style="list-style-type: none"> <li>8.09375% p.a. until 30 June 2011</li> <li>20.09375% p.a. until 30 June 2012</li> <li>30.09375% p.a. after 30 June 2012 if the Company has not taken any action to redeem or repay the notes then outstanding</li> </ul> <u>Series B Notes</u> N/A as not drawn down yet*  <u>Default interest:</u> 1% p.a. over the applicable rate of interest.
<b>Redemption/ Optional purchase</b>	<u>Redemption at Maturity</u> Upon maturity, the Company shall redeem the Notes at their principal amount together with any interest accrued but unpaid thereon.  <u>No early redemption by Noteholders</u>  <u>Early redemption by the Company</u> The Company may redeem the Notes at any time together with accrued and unpaid interest.  <u>Redemption for default</u> Upon an event of default the Notes shall become due and payable at their principal amount together with all accrued and unpaid	<u>Redemption at Maturity</u> Upon maturity, the Company shall redeem the Notes at their principal amount together with any interest accrued but unpaid thereon.  <u>No early redemption by Noteholders</u>  <u>Early redemption by the Company</u> The Company may redeem the Notes at any time together with accrued and unpaid interest.  <u>Redemption for default</u> Upon an event of default the Notes shall become due and payable at their principal amount together with all accrued and unpaid interest thereon.

	<p>interest thereon.</p> <p><u>Optional purchase</u> The Company or any member of the Group may at any time purchase beneficially or procure others to purchase beneficially for its account all or any of the Notes.</p> <p><u>Payment of Series A Notes Yield in cash and in kind</u> To the extent a distribution is made to the Company by its subsidiaries, the Company will apply such distribution to pay interest on the Series A Notes in cash subject to a maximum cash payment of USD 2 million p.a.</p> <p>The balance of the interest shall be payable by the Company by the creation and issue of further Series A Notes (Series A PIK Notes).</p>	<p><u>Optional purchase</u> The Company or any member of the Group may at any time purchase beneficially or procure others to purchase beneficially for its account all or any of the Notes.</p> <p><u>Payment of Series A Notes Yield in cash and in kind</u> To the extent a distribution is made to the Company by its subsidiaries, the Company will apply such distribution to pay interest on the Series A Notes in cash subject to a maximum cash payment of USD 2 million p.a.</p> <p>The balance of the interest shall be payable by the Company by the creation and issue of further Series A Notes (Series A PIK Notes).</p>
<b>Exchange</b>	Each Noteholder has the right to require LuxCo 1 to purchase all, but not some only, of the outstanding Notes in exchange for the issue by LuxCo 1 of Exchange Shares and CPECs to such Noteholder.	Not exchangeable
<b>Ranking</b>	All Series A notes shall rank pari passu with each other. Series B Notes rank ahead of Series A Notes.	All Series A notes shall rank pari passu with each other.
<b>Transfer restrictions</b>	The Notes are freely transferrable except to any Prohibited Person.	The Notes are freely transferrable except to any Prohibited Person.

\* Please note that no Series B have been issued at this stage, however may be issued in the future.

## B Tax treatment of the VLN

- Based on the characteristics above mentioned, VLN will be treated as debt for Luxembourg income tax and net wealth tax purposes.
- In this respect, the explanatory note to the income tax reform law no. 571 of 1955 (Projet de Loi on Article 114 – currently Article 97 LITL) points out that the distinction between debt and equity must be done on the basis of the economic characteristics of the financial instrument. In particular, the main economic features that characterise a financial instrument as debt are:
  - The fact that the instrument yields a fixed income (as opposed to an equity participation which gives right to a percentage of the company's profits); and
  - A privileged ranking over the company's shares.

- 3 Considering the above criteria and given that the VLN meet them, they will qualify as regular debt for Luxembourg tax purposes.
- 4 The interest paid thereon will be booked as a yearly financial cost (even if not paid but only accrued for). This accounting treatment will be followed for tax purposes as no specific tax rules depart there from (cf. Article 40 LITL). Consequently, the interest will constitute a yearly tax-deductible charge.

**C Tax treatment of the interest payments on the VLN**

- 5 Articles 146(1)-3 and 164(2) LITL provide for the application of a withholding tax upon payment of interest arising from profit participation bonds or other similar securities. Indeed, interest may be subject to the 15% domestic withholding tax in Luxembourg if the following conditions are met:
  - The loan is structured under the form of bonds or other similar securities; and;
  - Aside from the fixed interest, a supplementary interest varying according to the amount of distributed profit is paid, unless said supplementary interest is stipulated simultaneously with a momentary decrease of the fixed interest.
- 6 Consequently, as the VLN bear a fixed interest, are not profit participating bonds and, moreover, carry an arm's length interest rate (see next bullet point), such withholding tax will not apply to interest payments made under these instruments.
- 7 The VLN carry a high progressive coupon (8% until 30 June 2011, 20% until 30 June 2012 and 30% onwards). Indeed, the VLN are intended to be repaid within a short time frame and thus the increasing high rates from June 2011 onwards are meant to act as a "penalty" for non-settlement within the initial time frame. It should also be noted that LuxCo 2 and LuxCo 3 are not in a risk situation as regards the VLN as they are on-loaned to Cyprus 1 under similar terms and conditions and thus the creditor risk ultimately lies in Cyprus 1. The interest rate on the VLN has been thus set at arm's length and therefore no hidden dividend distribution should be constructed on the interest payment made by LuxCo 2 on the VLN.

## Characteristics of the CLN and Unsecured Subordinated Loan Notes

### A Characteristics

Features of the instrument	CLN issued by LuxCo 3	Unsecured Subordinated Loan Notes issued by Cyprus 1 to LuxCo 3
Term	10 years 6 months	10 years 6 months
Principal amount	USD 103,500,000	USD 103,500,000
Currency	USD denominated	USD denominated
Yield	8.3% p.a.  <u>Default interest:</u> At the rate of 1% p.a. over the applicable rate of interest.	8.39375% p.a.  <u>Default interest:</u> At the rate of 1% p.a. over the applicable rate of interest.
Redemption/ Optional repurchase/Payment	<u>Redemption at Maturity</u> Upon maturity, the Company shall redeem the Notes at their principal amount together with any interest accrued but unpaid thereon.  <u>Redemption by Noteholders in certain circumstances</u> (i.e. change of control of CayCo or LuxCo 1)  <u>Early redemption by the Company</u> The Company may redeem the Notes at any time together with accrued and unpaid interest.  <u>Redemption for default</u> Upon an event of default the Notes shall become due and payable at their principal amount together with all accrued and unpaid interest thereon.  <u>Optional purchase</u> The Company or any member of the Group may at any time purchase beneficially or procure others to purchase beneficially for its account all or any of the Notes.  <u>Payment of Yield in kind</u> Interest shall be payable by the Company by the creation and issue of further Notes on the basis of USD 1 of Notes (PIK Notes) for each USD 1 of accrued interest.	<u>Redemption at Maturity</u> Upon maturity, the Company shall redeem the Notes at their principal amount together with any interest accrued but unpaid thereon.  <u>Redemption by Noteholders in certain circumstances</u> (i.e. change of control of CayCo or LuxCo 1)  <u>Early redemption by the Company</u> The Company may redeem the Notes at any time together with accrued and unpaid interest.  <u>Redemption for default</u> Upon an event of default the Notes shall become due and payable at their principal amount together with all accrued and unpaid interest thereon.  <u>Optional purchase</u> The Company or any member of the Group may at any time purchase beneficially or procure others to purchase beneficially for its account all or any of the Notes.  <u>Payment of Yield in kind</u> Interest shall be payable by the Company by the creation and issue of further Notes on the basis of USD 1 of Notes (PIK Notes) for each USD 1 of accrued interest.
Exchange	Each Noteholder has the right to require CayCo to purchase any Notes held by such Noteholder, but subject to a minimum aggregate value of USD 15 million of principal value in each case, in consideration	Not exchangeable

	of and in exchange for the issue by CayCo to such Noteholder of the New CayCo Shares.	
<b>Ranking</b>	The Notes constitute an unsecured obligation of the Company. The rights of the Noteholders and the obligations of the Company in respect of the Notes at all times rank pari passu among themselves and with all the other unsecured obligations of the Company.	The Notes constitute an unsecured obligation of the Company. The rights of the Noteholders and the obligations of the Company in respect of the Notes at all times rank pari passu among themselves and with all the other unsecured obligations of the Company.
<b>Transfer restrictions</b>	The Notes are not transferrable to any Prohibited Person.	The Notes are not transferrable to any Prohibited Person.

## B Tax treatment of the CLN

- 1 Based on the characteristics above mentioned, CLN will be treated as debt for Luxembourg income tax and net wealth tax purposes.
- 2 In this respect, the explanatory note to the income tax reform law no. 571 of 1955 (Projet de Loi on Article 114 – currently Article 97 LITL) points out that the distinction between debt and equity must be done on the basis of the economic characteristics of the financial instrument. In particular, the main economic features that characterise a financial instrument as debt are:
  - The fact that the instrument yields a fixed income (as opposed to an equity participation which gives right to a percentage of the company's profits); and
  - A privileged ranking over the company's shares.
- 3 Considering the above criteria and given that the CLN meet them, they will qualify as regular debt for Luxembourg tax purposes.
- 4 The interest paid thereon will be booked as a yearly financial cost (even if not paid but only accrued for). This accounting treatment will be followed for tax purposes as no specific tax rules depart there from (cf. Article 40 LITL). Consequently, the interest will constitute a yearly tax-deductible charge.

## C Tax treatment of the interest payments on the CLN

- 5 Articles 146(1)-3 and 164(2) LITL provide for the application of a withholding tax upon payment of interest arising from profit participation bonds or other similar securities. Indeed, interest may be subject to the 15% domestic withholding tax in Luxembourg if the following conditions are met:
  - The loan is structured under the form of bonds or other similar securities; and;

- Aside from the fixed interest, a supplementary interest varying according to the amount of distributed profit is paid, unless said supplementary interest is stipulated simultaneously with a momentary decrease of the fixed interest.
- 6 Consequently, as the CLN bear a fixed interest, are not profit participating bonds and, moreover, carry an arm's length interest rate, such withholding tax will not apply to interest payments made under these instruments.

### Compliance with the Luxembourg debt-to-equity ratio

- 1 Luxembourg companies should in principle comply with a debt-to-equity ratio of 85:15 generally used by the Luxembourg tax authorities with respect to intra-group financing participations.
- 2 As the YFCPECs are treated as equity for Luxembourg thin-capitalisation purposes (see Appendix 3), LuxCo 1 participation in CayCo 3 meets the 85:15 debt-to-equity ratio.
- 3 LuxCo 1 participation in LuxCo 2, LuxCo 2 participation in LuxCo 3 and LuxCo 3 participation in LuxCo 4 are fully financed by equity injected respectively by LuxCo 1, LuxCo 2 and LuxCo 3. They therefore meet the 85:15 debt-to-equity ratio.
- 4 LuxCo 3's USD 376,660,436 participation in Cyprus 1 has been largely financed at LuxCo 3 level via CPECs. LuxCo 3 indeed did not comply with the 85:15 debt-to-equity ratio generally applicable in Luxembourg's practice for the intra-group financing of participations.
- 5 However, the interest rate on LuxCo 3's CPECs has been discounted from 0.5% to 0.425%. Consequently, since the interest effectively payable by LuxCo 3 on the CPECs financing the shares in Cyprus 1 does not exceed the interest which would be due in the case where the company's leverage would have complied with the 85:15 debt-to-equity ratio, the interest payable by LuxCo 3 on the CPECs will not be re-characterized into dividend distribution. Said interest will thus be tax deductible and will not be subject to any withholding tax at the level of LuxCo 3.
- 6 It is worth noting that a premium paid by LuxCo 3 upon a potential optional redemption of the CPECs at fair market value (cf. Appendix 3) shall not be deemed as an interest payment (as referred in Appendix 3, the premium would indeed be the price to be paid by LuxCo 3 upon a repurchase of the conversion right attached to the CPECs) and hence shall be outside the scope of thin-capitalisation rules.



## Appendix 7

### Financing activities of LuxCo 1, LuxCo 2, LuxCo 3 and LuxCo 4

- 1 LuxCo 1, LuxCo 2, LuxCo 3 and LuxCo 4 have entered into financing activities for an overall amount of USD 564,810,000, comprising:
  - CPECs issued by LuxCo 1, LuxCo 2 and LuxCo 3 and fixed interest loans granted to and by LuxCo 4;
  - VLN issued by LuxCo 2 and unsecured subordinated loan notes issued by Luxco 3 and Cyprus 1;
  - CLN issued by LuxCo 3 and unsecured subordinated loan notes issued by Cyprus 1.
- 2 The terms and conditions of the CPECs issued by LuxCo 1 correspond - apart from the slight difference in the yield (i.e., margin of 0.093475%) - to the terms of the CPECs issued by LuxCo 2 and LuxCo 3. In addition, LuxCo 1 will neither bear any foreign exchange risks (i.e., same currency) nor any credit default risk.
- 3 The terms and conditions of the VLN issued by LuxCo 2 correspond - apart from the slight difference in the yield (i.e., margin of 0.09375%) and the exchange feature - to the terms of the unsecured subordinated loan notes issued by LuxCo 3 and Cyprus 1. In addition, LuxCo 2 will not bear any foreign exchange risks (i.e., same currency) and a limited credit default risk.
- 4 The terms and conditions of the CLN issued by LuxCo 3 correspond - apart from the slight difference in the yield (i.e., margin of 0.09375%) and the exchange feature - to the terms of the unsecured subordinated loan notes issued by Cyprus 1. In addition, LuxCo 3 will not bear any foreign exchange risks (i.e., same currency) and a limited credit default risk.
- 5 The fixed interest loans granted to and by LuxCo 4 also have mirroring conditions (including same interest rate).
- 6 Considering the amounts involved and the risk's profile, the taxable profit realised by LuxCo 1, LuxCo 2 and LuxCo 3 in relation to their financial activities will be considered as appropriate and acceptable with respect to Articles 56 and 164 (3) LITL insofar as it represents a net taxable margin of 0.09375% computed on the:
  - a. CPECs facility at LuxCo 1 level;

- b. VLN and corresponding unsecured loan notes at LuxCo 2 level; and
  - c. CLN and corresponding unsecured loan notes at LuxCo 3 level.
- 7 No margin will be computed on the fixed interest loans granted to and by Luxco 4, as these loans on-lent part of the funds raised by LuxCo 3 upon the CPECs issuance and thus a margin is already earned by LuxCo 1 on this facility.
- 8 Taking into account that (a) a sufficient annual taxable margin remains on the on-lent amount at the level of LuxCo 1, LuxCo 2 and LuxCo 3, (b) LuxCo 1, LuxCo 2, LuxCo 3 and LuxCo 4 do not bear any currency and credit risk (or the credit risk is very low), (c) the agreed interest rates are at arm's length and (d) the terms and conditions of the different instruments in each facility are substantially similar (see paragraphs 2 to 4 above), the interests on the:
- a. CPECs issued by LuxCo 1, LuxCo 2 and LuxCo 3;
  - b. VLN issued by LuxCo 2;
  - c. Unsecured loan notes issued by LuxCo 3 in connection to the VLN;
  - d. CLN issued by Luxco 3; and
  - e. Fixed interest loan granted by LuxCo 3 to LuxCo 4.

are deductible for Luxembourg corporate income tax and municipal business tax and will not be subject to any Luxembourg withholding tax.

- 9 In case the accounting profit of LuxCo 1, LuxCo 2 and LuxCo 3 is higher to this minimum margin, the taxable base would be computed according to said accounting profit.
- 10 Expenses are deductible according to standard tax rules. However, the minimum taxable margin is to be understood as a net remuneration and thus no expenses in relation to the above financing activities shall reduce the minimum taxable basis. This implies that direct expenses in relation to the back-to-back situation will be deductible only from the part of income over and above the margin and will not be offset against it. This still holds true as regards general expenses (i.e. indirect expenses, overhead expenses or operating expenses of LuxCo 1, LuxCo 2 and LuxCo 3 as a whole such as supervisory, general and administrative expenses), as long as the company does not run another activity.

**Legal documentation**

- 1 Terms and conditions of the interest-bearing CPECs issued by LuxCo 1, LuxCo 2 and LuxCo 3
- 2 Terms and conditions of the yield-free CPECs issued by LuxCo 1
- 3 Terms and conditions of the Vendor Loan Notes
- 4 Terms and conditions of the inter-company loan between LuxCo 2 and LuxCo 3
- 5 Terms and conditions of the CEDC Loan Notes
- 6 Terms and conditions of the inter-company loan between LuxCo 3 and Cyprus 1 (related to the VLN)
- 7 Terms and conditions of the inter-company loan between LuxCo 3 and Cyprus 1 (related to the CLN)
- 8 Fixed interest loan agreement between LuxCo 3 and LuxCo 4
- 9 Fixed interest loan agreements between LuxCo 4 and ZAO Russian Alcohol Group, ZAO Distillery Topaz and OOO Bravo Premium



Appendix 4

**Lion/Rally Cayman 10 L.P partnership agreement**



DATED 24 MAY 2009

(1) LION/RALLY CAYMAN 11

(2) LION/RALLY LUX 2

---

INITIAL EXEMPTED LIMITED PARTNERSHIP AGREEMENT

---

WARNING

THE TAKING OR SENDING BY ANY PERSON OF AN ORIGINAL OF THIS DOCUMENT INTO THE  
CAYMAN ISLANDS MAY GIVE RISE TO THE IMPOSITION OF SUBSTANTIAL CAYMAN ISLANDS  
STAMP DUTY



6 Gracechurch Street, London EC3V 0AT

T 44 (0) 20 7220 4999 F 44 (0) 20 7220 4998 [www.walkersglobal.com](http://www.walkersglobal.com)

REF: DP/L02854

RB  
A

## TABLE OF CONTENTS

CLAUSE	PAGE
1. NAME .....	1
2. PURPOSE .....	1
3. REGISTERED OFFICE .....	1
4. PARTNERS .....	1
5. POWERS .....	1
6. TERM .....	1
7. CAPITAL CONTRIBUTIONS .....	2
8. CONTRIBUTIONS .....	2
9. ALLOCATIONS OF PROFITS AND LOSSES .....	2
10. DISTRIBUTIONS .....	2
11. ASSIGNMENTS/TRANSFERS .....	3
12. TERMINATION .....	3
13. AMENDMENTS TO AGREEMENT .....	3
14. WITHDRAWAL .....	3
15. GOVERNING LAW .....	3

RS

*[Handwritten signature]*



THIS INITIAL EXEMPTED LIMITED PARTNERSHIP AGREEMENT is made on 24 May 2009

**BETWEEN**

- (1) **LION/RALLY CAYMAN 11**, having its registered office at Stuarts Corporate Services Ltd., PO Box 2510, Grand Cayman KY1-1104, Cayman Islands, as general partner (the "General Partner"); and
- (2) **LION/RALLY LUX 2**, a société à responsabilité limitée incorporated and existing under the laws of the Grand-Duchy of Luxembourg having its registered office at 13-15 Avenue de la Liberte, L-1931 Luxembourg and registered with the Luxembourg Trade Companies Register under number B139.055 as limited partner (the "Limited Partner").

**WHEREAS**

The General Partner and the Limited Partner agree to form an exempted limited partnership pursuant to and in accordance with the Exempted Limited Partnership Law (as amended) of the Cayman Islands.

**IT IS AGREED**

**1. NAME**

The name of the exempted limited partnership formed hereby is **Lion/Rally Cayman 10 L.P.** (the "Partnership").

**2. PURPOSE**

The Partnership is formed to engage in any lawful activity for which exempted limited partnerships may be formed under the Law.

**3. REGISTERED OFFICE**

The registered office of the Partnership is c/o Stuarts Corporate Services Ltd., PO Box 2510, Grand Cayman KY1-1104, Cayman Islands.

**4. PARTNERS**

The names and addresses of the General Partner and the Limited Partner are as described above.

**5. POWERS**

The General Partner shall have the rights and power to manage and administer the affairs of the Partnership.

**6. TERM**

The Partnership shall be established on the date hereof and shall continue until terminated in accordance with this Agreement or any amendment or modification thereof. The General Partner and the Limited Partners agree not to commence the business of the Partnership until the Partnership has been registered in accordance with Section 9 of the Law.

RB  
✱

## 7. CAPITAL CONTRIBUTIONS

### 7.1 Initial Capital Contributions

The partners of the Partnership have contributed the following amounts, in cash or other property, and no other property, to the Partnership:

General Partner            US\$1.00

Limited Partner            US\$1.00

### 7.2 Further Capital Contributions

- (a) It is acknowledged that Lux 2 and the Partnership have on or about the date hereof entered into a conditional transfer agreement for the transfer of all the shares and convertible preferred equity certificates (the "**Securities**") held by Lux 2 in Lion/Rally Lux 3 to the Partnership (the "**Transfer Agreement**").
- (b) It is further acknowledged that completion of the Transfer Agreement is conditional upon Cirey Holdings, Inc. ("**Cirey**") exercising its enforcement rights under the pledge agreements made between (i) Lion/Rally Lux 1 ("**Lux 1**") (as pledgor), Cirey (as pledgee), and Lux 2 as the Company, and (ii) Lion/Rally Cayman 2 (as pledgor), Cirey (as pledgee), and Lion/Rally Lux 1 as the Company (both dated 9 July 2008), and as a result Cirey exercising voting rights in relation to Lux 1 and Lux 2 (the "**Condition**").
- (c) If the Condition is satisfied and the Transfer Agreement is completed on its terms Lux 2 shall be deemed to have made a further capital contribution to the Partnership in amount equal to the Consideration (as defined in the Transfer Agreement).

## 8. CONTRIBUTIONS

The partners shall make capital contributions to the Partnership in such amounts and at such times as they shall mutually agree.

## 9. ALLOCATIONS OF PROFITS AND LOSSES

The Partnership's profits and losses shall be allocated *pro rata* in accordance with the partners' respective interests in the Partnership provided always that nothing in this provision shall have effect to impose or otherwise place any liability on the Limited Partner for the debts or obligations of the Partnership and provided further that the General Partner shall at all times be entitled to waive its rights to receive any such allocation.

## 10. DISTRIBUTIONS

At the time or times determined by the General Partner only (which may be so determined in the General Partner's sole discretion), the General Partner shall cause the Partnership to distribute any cash held by it which is not reasonably necessary for the operation of the Partnership. Cash available for distribution shall be distributed to the partners of the Partnership in the same proportion as their then capital account balances provided always that the General Partner shall at all times be entitled to waive its rights to receive any such distribution.

RB  
JK

**11. ASSIGNMENTS/TRANSFERS**

- 11.1 A partner may assign or transfer all or any part of its partnership interest in the Partnership only with the consent of the General Partner (which consent may be given or withheld in the General Partner's sole discretion) and any permitted assignee or transferee of a partnership interest shall be admitted as a substitute partner subject to their agreeing to be bound by the terms of this agreement.
- 11.2 Notwithstanding the above the General Partner may transfer all or any portion of its partnership interest to any person at any time.

**12. TERMINATION**

The Partnership shall be dissolved upon:

- 12.1 the service of a notice of dissolution by the General Partner on each of the Limited Partners; or
- 12.2 the withdrawal by or resignation of the General Partner as general partner of the Partnership,

and its affairs shall be wound up by the General Partner or such other person as the General Partner shall appoint, provided that the Partnership shall not be dissolved or wound up as a result of clause 12.2 where within 60 days of the withdrawal or resignation of the General Partner, the General Partner appoints a substitute general partner and transfers to such substitute general partner the General Partner's partnership interest.

**13. AMENDMENTS TO AGREEMENT**

The terms and provisions of this Agreement may be modified or amended at any time and from time to time with the written consent of all of the partners for the time being.

**14. WITHDRAWAL**

In no circumstances will the Limited Partner be permitted to withdraw from the Partnership, or to withdraw any part of its capital account at the instance of the Limited Partner.

**15. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Cayman Islands.

IN WITNESS whereof this Agreement has been entered into by the parties on the day and the year first before written.

SIGNED for and on behalf of LION/RALLY )  
CAYMAN 11 by: )

\_\_\_\_\_  
Duly Authorised Signatory

) Name: \_\_\_\_\_

) Title: \_\_\_\_\_

RB  
F

## 11. ASSIGNMENTS/TRANSFERS

- 11.1 A partner may assign or transfer all or any part of its partnership interest in the Partnership only with the consent of the General Partner (which consent may be given or withheld in the General Partner's sole discretion) and any permitted assignee or transferee of a partnership interest shall be admitted as a substitute partner subject to their agreeing to be bound by the terms of this agreement.
- 11.2 Notwithstanding the above the General Partner may transfer all or any portion of its partnership interest to any person at any time.

## 12. TERMINATION

The Partnership shall be dissolved upon:

- 12.1 the service of a notice of dissolution by the General Partner on each of the Limited Partners; or
- 12.2 the withdrawal by or resignation of the General Partner as general partner of the Partnership,

and its affairs shall be wound up by the General Partner or such other person as the General Partner shall appoint, provided that the Partnership shall not be dissolved or wound up as a result of clause 12.2 where within 60 days of the withdrawal or resignation of the General Partner, the General Partner appoints a substitute general partner and transfers to such substitute general partner the General Partner's partnership interest.

### 13. AMENDMENTS TO AGREEMENT

The terms and provisions of this Agreement may be modified or amended at any time and from time to time with the written consent of all of the partners for the time being.

## 14. WITHDRAWAL

In no circumstances will the Limited Partner be permitted to withdraw from the Partnership, or to withdraw any part of its capital account at the instance of the Limited Partner.

## 15. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Cayman Islands.

IN WITNESS whereof this Agreement has been entered into by the parties on the day and the year first before written.

**SIGNED** for and on behalf of **LION/RALLY**  
**CAYMAN 11** by:

Duly Authorised Signatory

Name: **ROB JONES** Director

**Title:**

SIGNED for and on behalf of LION/RALLY LUX 2  
by:

Manager A

Name: JAMES COCKEN

Title: MANAGER A

Manager B

Name: RICHARD BREMERMAN

Title: MANAGER B





LE GOUVERNEMENT  
DU GRAND-DUCHÉ DE LUXEMBOURG  
Administration des contributions directes

Bureau d'imposition  
Sociétés 6

**For the attention of Mr Vincent Lebrun**

PricewaterhouseCoopers  
400, route d'Esch  
B.P. 1443  
L – 1014 Luxembourg

Companies involved :

**Lion/Rally Lux 1 S.A.** – Tax number 2008 22 14268  
**Lion/Rally Lux 2 S.à r.l.** – Tax number 2008 24 21417  
**Lion/Rally Lux 3 S.à r.l.** – Tax number 2008 24 21425  
**Lion/Rally Lux 4 S.à r.l.** – Tax number 2008 24 29949

19 October 2009

Dear Sir,

Further to your letter dated 19 October 2009 - ref. VTLN/FAMN/AAVU/Q2709097M-DDGZ relating to the transactions that the group Lion Capital would like to conduct, I find the contents of said letter to be in compliance with current tax legislation and administrative practice.

It is understood that my above confirmation may only be used within the framework of the transactions contemplated by the abovementioned letter and that the principles described in your letter shall not apply ipso facto to other situations.

Le préposé du bureau  
d'imposition Sociétés 6  
Marius Kohl

