

Translation from German

Form of Contract of Purchase and Assignment Contract of Investments

Annex 3

**PURCHASE and ASSIGNMENT CONTRACT**

## PURCHASE and ASSIGNMENT CONTRACT

concluded by and between

**Dr. Gerhard Rothner**, lawyer in Linz, as the insolvency administrator in the bankruptcy proceedings of Teak Holz International AG, case number 17 S 97/15m of Regional Court Linz,

– hereinafter referred to as the Seller or Insolvency Administrator –

and

.....  
.....

- hereinafter referred to as the Purchaser -

as follows:

### 1. Introduction

#### 1.1 Insolvency Proceedings

1.1.1 By decision of Regional Court Linz dated 9 September 2015 reorganisation proceedings without the debtor in possession were opened under case number 17 S 97/15m over the assets of Teak Holz International AG, Wiener Strasse 131, 4020 Linz (registered office stated in the Business Register: Stallburggasse 4, 1010 Vienna), which is registered in the Business Register of Commercial Court Vienna under FN [Business Register Number] 27141p.

1.1.2 By decision of the same date Regional Court Linz appointed Dr. Gerhard Rothner, lawyer, Hopfengasse 23, 4020 Linz, insolvency administrator (Dr. Gerhard Rothner is

a managing shareholder of Wildmoser/Koch & Partner Rechtsanwälte GmbH, whose registered office is in Linz).

- 1.1.3 The terms used in this Purchase and Assignment Contract shall have the meaning defined in Clause 2 of the Terms of Realisation. "Terms of Realisation" means the terms of realisation including addenda, modifications or amendments, if any, published in the database of official publications of the Federal Government on 29 January 2016 in the bankruptcy proceedings over the assets of Teak Holz International AG, case number 17 S 97/15m of Regional Court Linz,

## 1.2 Realisation in insolvency proceedings

- 1.2.1 The Insolvency Administrator announced realisation of the Object of the Purchase to the public and carried out an auction to identify the highest bid in accordance with the Terms of Realisation. The Object of the Purchase includes, *inter alia*, certain shareholdings of Teak Holz International AG.
- 1.2.2 The Insolvency Administrator awarded the contract to the Purchaser on 8 March 2016. By such Award the contract on the sale of shareholdings was concluded, even though subject to the condition precedent defined in Clause 3.3 of the Terms of Realisation. The Parties have agreed to execute this document after fulfilment of the condition precedent for the sale.

## 2. **Object of the Purchase**

### 2.1 Interests of the Debtor in Holding Companies

- 2.1.1 The Holding Companies are (the Debtor's shareholding in the Holding Companies is stated in brackets)
- Finca De Los Austriacos S.A., Costa Rica (83.7%)
  - Finca De Los Austriacos Numero Dos S.A., Costa Rica (100%)

- Finca De Los Austriacos Teca Tres S.A., Costa Rica (100%)
- Finca De La Teca, S.A., Costa Rica (100%)
- Plantacion Austriaca Teca S.A., Costa Rica (100%)
- Segunda Plantacion Austriaca Teca S.A., Costa Rica (100%)

2.1.2 The Holding Companies hold the registered capital stated in the following list, which is divided into registered shares with the stated par value (currency: Costa Rican colón):

Company	Number of shares	Par value	Registered Capital
Finca De Los Austriacos S.A.	405	3,500.00	1,417,500.00
Finca De Los Austriacos Numero Dos. S.A.	10	1,000.00	10,000.00
Finca De Los Austriacos Teca Tres S.A.	10	1,000.00	10,000.00
Finca De La Teca, S.A.	12	1,000.00	12,000.00
Plantacion Austriaca Teca S.A.	100	100.00	10,000.00
Segunda Plantacion Austriaca Teca S.A.	100	100.00	10,000.00

2.1.3. Accordingly, the Object of the Purchase is

- 339 registered par value shares in Finca De Los Austriacos S.A., which are equal to an interest of 83.7% in the registered capital,
- 10 registered par value shares in Finca De Los Austriacos Numero Dos S.A.,
- 10 registered par value shares in Finca De Los Austriacos Teca Tres S.A.,
- 12 registered par value shares in Finca De La Teca, S.A.,
- 100 registered par value shares in Plantacion Austriaca Teca S.A. and
- 100 registered par value shares in Segunda Plantacion Austriaca Teca S.A..

## 2.2 Interest in the Operating Company

2.2.1 The Operating Company Servicios Austriacos Uno S.A. holds the registered capital stated in the following list, which is divided into registered shares with the stated par value (currency: Costa Rican colón):

Company	Number of shares	Par value	Registered Capital
Servicios Austriacos Uno S.A.	10	1,000.00	10,000.00

2.2.2 Accordingly, the Object of the Purchase is 10 registered par value shares in Servicios Austriacos Uno S.A.

## 3. **Contents of the Contract**

3.1.1 The Insolvent's Estate sells and delivers and the Purchaser buys and takes delivery of the Object of the Purchase described in Clauses 2.1.2 and 2.2.1 including all rights and powers with which the Insolvent's Estate has possessed and used the same so far and/or has been entitled to possess and use the same, for the Purchase Price fixed in Clause 4.

3.1.2 The Insolvency Administrator undertakes, if necessary, to make all other statements and to sign all documents that may be necessary for acquisition of the Object of the Purchase by the Purchaser at the request and at the cost of the Purchaser.

## 3.2 Passing of title

3.2.1 The Object of the Purchase shall be transferred upon signing of the Purchase and Assignment Contract, endorsement of the shares in favour of the Purchaser and delivery of the endorsed shares to the Purchaser.

3.2.2 Upon delivery all rights and duties as well as all benefits and burdens related to the Object of the Purchase shall pass to the Purchaser.

3.2.3 The Purchaser already bears the financial risk of the current financial year of the companies. Thus, it shall be entitled to the profit of this financial year but it shall also bear the loss of this financial year. In addition, it may dispose of undistributed profit carryforwards; loss carryforwards shall be borne by it.

#### **4. Purchase Price**

##### **4.1 Purchase Price of the interests**

4.1.1 The price for transfer of possession of and title to the Object of the Purchase  
for Holding Companies amounts to EUR .....  
(in words: ..... euros)  
for the Operating Company amounts to EUR .....  
(in words: ..... euros)

4.1.2 The Purchase Price is the result of the auction procedure carried out by the Insolvency Administrator. The prices are the result of a compulsory distribution key that had to be determined.

##### **4.3 Fulfilment of the purchase price obligation**

4.3.1 95% of the Purchase Price, which is payable in cash, was due within eight days of fulfilment of the condition precedent (Clause 5.1.2 of the Terms of Realisation) and has been credited to the special account of the insolvency proceedings. The remaining 5% of the Purchase Price, which is payable in cash, is due within six months of fulfilment of the condition precedent (Clause 5.1.2 of the Terms of Realisation) and is to be secured by a bank guarantee (Clause 4.4.1 of the Terms of Realisation). Such bank guarantee has been received by the Insolvency Administrator.

4.3.2 As defined in Clause 4.4.2 of the Terms of Realisation the Purchaser was entitled, subject to certain prerequisites, to raise a portion of the Purchase Price for the Holding Companies by taking over liabilities.

- The Purchaser did not make use of this right.
- The Purchaser made use of this right. Accounts receivable of EUR ..... will be set off. [Alternatively]

#### 4.4 Costs, charges and transaction duties

Clause 4.1.2 of the Terms of Realisation shall apply to costs, charges and transaction duties related to execution and consummation of the Purchase and Assignment Contract.

### 5. **Warranty and damages**

#### 5.1 Preliminary remarks

In the course of the insolvency proceedings the Purchaser had the opportunity to inform itself about the financial and legal condition of the Object of the Purchase.

#### 5.2 Exclusion of warranty

5.2.1 The Insolvent's Estate exclusively warrants that it is entitled to transfer the ownership right to the Object of the Purchase upon Closing.

5.2.2 The Object of the Purchase defined in Clause 1.1.3 has been pledged to SEMPER CONSTANTIA PRIVATBANK AKTIENGESELLSCHAFT under the pledge agreement of September 2010 for the benefit of claims of the Creditors of the Convertible Bond; the effectiveness of that pledge is currently subject to debate. Notwithstanding this debate Section 120 of the Austrian Insolvency Code [*Insolvenzordnung*] shall apply to the way in which the lien will be dealt with.

5.2.3 For the rest, any warranty of the Insolvent's Estate for the Object of the Purchase or parts of the same of whatsoever kind and based on whatsoever grounds shall be excluded.

5.2.4 In particular, the Insolvent's Estate does not warrant that

- (i) apart from the Articles of Association of the Holding Companies and the Operating Company which were disclosed to the Interested Parties there are no addenda to, modifications of or amendments to the same or any other agreements or resolutions regarding or in connection with the equity interests;
- (ii) the Holding Companies and the Operating Company have issued no other shares, participation rights, conversion rights and/or option rights or comparable financial instruments;
- (iii) the Object of the Purchase has a particular value or that a certain revenue is involved in the Object of the Purchase;
- (iv) apart from the liabilities of the Holding Companies and the Operating Company which were disclosed to the Interested Parties no other liabilities vis-à-vis group companies or third parties exist; accounts payable which are subsequently identified shall exclusively be taken into account in accordance with and to the extent of Clause 4.4.1 of the Terms of Realisation;
- (v) apart from the collateral security which was disclosed to the Interested Parties no other collateral security furnished for the assets of the Holding Companies or the Operating Company exists;
- (vi) no claims of former shareholders, if any, or their legal successors exist;
- (vii) the annual financial statements of the Holding Companies and the Operating Company are accurate and complete;



- (viii) the information about the assets of the Holding Companies and the Operating Company which was disclosed to the Interested Parties, in particular with regard to the land of the Holding Companies and the forest stand of the same, is accurate and complete;
- (ix) all taxes and official charges have been paid in time or that sufficient provisions have been made for the same;
- (x) no facts and circumstances have occurred which fulfil the necessary elements of offence of refund of contributions or a similar offence under the applicable legal regime;
- (xi) the Holding Companies and the Operating Company possess all approvals of whatsoever kind that are necessary for the current operations;
- (xii) no judicial or official orders or decisions exist or are to be expected which could restrict or hinder operation of the Holding Companies or the Operating Company;
- (xiii) no statutory provisions or judicial or official orders are violated by the operation of the Holding Companies or the Operating Company.

### 5.3 Disclaimer and waiver of avoidance on account of mistake

- 5.3.1 The regulations and restrictions agreed in the foregoing Clauses on warranty of the Insolvent's Estate shall apply in the same way if claims of the Purchaser are (or can be) based on damages or other contractual liability.
- 5.3.2 Likewise the Purchaser waives its right to demand modification of the contract or cancellation of the Purchase and Assignment Contract by way of avoidance on account of mistake.

- 5.3.3 However, the waiver of avoidance on account of mistake shall not apply in cases in which a Party has expressly promised a certain fact, a certain feature or a certain service or performance.

## **6. Other obligations of the Purchaser**

- 6.1 The Debtor or the Insolvent's Estate and their creditors and shareholders might be entitled to claims vis-à-vis (former) bodies/officers, (former) shareholders, auditors who audited contributions in kind and auditors of financial statements. If and when in proceedings for enforcing these claims or in criminal proceedings against persons belonging to the aforementioned group the court or the prosecution authority appoints experts, the Purchaser already at this point irrevocably agrees to grant those experts access to all plantations upon prior notice at any time.

## **7. Place of jurisdiction and applicable law**

- 7.1 All disputes and disagreements arising out of or in connection with this Purchase and Assignment Contract, including over its conclusion or its validity, shall be settled by the court of law in Linz having jurisdiction over the subject matter. Irrespective thereof the Insolvency Administrator is, at his option, entitled to bring the matter before the court of law having subject-matter and local jurisdiction over the Purchaser.
- 7.2 To the extent that the Purchase and Assignment Contract contains no regulation and that no regulation may be deduced by interpretation of the intention of the Parties, this Contract shall exclusively be governed by Austrian substantive law.
- 7.3 The regulation stipulated in this Clause shall also apply in the case of disputes over the conclusion of the Purchase and Assignment Contract and the effectiveness of the agreement on the place of jurisdiction.

## **8. General provisions**

### **8.1 Terms of Realisation**

Unless the Purchase and Assignment Contract contains any other regulations, the Terms of Realisation shall apply. Their contents shall also be the basis for interpretation of this Contract.

### **8.2 Formal requirement**

8.2.1 All written and oral arrangements which are not made a part of this Purchase and Assignment Contract shall cease to be effective upon signing of this document. This shall not include the Terms of Realisation of the Insolvency Administrator. A waiver of the requirement of written form shall also be made in writing.

8.2.2 Modifications of or amendments to this Purchase and Assignment Contract or addenda, and the like thereto shall be made in writing to be legally effective and shall require approval from the insolvency court if changes to the contents affect the Object of the Purchase.

### **8.3 No Assignment**

Unless the Insolvency Administrator has granted his approval, the Purchaser is not entitled prior to fulfilment of all obligations imposed on it to assign claims under this Purchase and Assignment Contract or the Contract itself in whole or in part to third parties.

### **8.4 Severability clause**

8.4.1 If any provisions of this Purchase and Assignment Contract are ineffective, the remaining contents of this Purchase and Assignment Contract shall not be affected thereby.

8.4.2 If the ineffectiveness of one or several provisions or any other facts related to the consummation of the Purchase and Assignment Contract lead to gaps, the Parties agree to cooperate in finding a regulation which comes as close as possible to the financial result of the ineffective provision.

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Linz, 12 February 2016

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Dr. Gerhard Rothner  
as the Insolvency Administrator

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Purchaser