

CARBACID INVESTMENTS PLC

Incorporated in Kenya on 21 July 1970 under the Companies Act, 2015, Laws of Kenya

(Registration Number C. 32/70)

AND

AKSAYA INVESTMENTS LLP

Registered in Kenya on 20 June 2018 under the Limited Liability Partnership Act (Chapter 30A,

Laws of Kenya)

(Registration Number LLP-6R1MVM)

THE CAPITAL MARKETS ACTS (CHAPTER 485A OF THE LAWS OF KENYA)

PUBLIC NOTICE

NOTICE OF INTENTION TO ACQUIRE UP TO 100% OF THE ORDINARY SHARES OF BOC KENYA PLC (BOC) ISSUED PURSUANT TO REGULATION 4 (1) OF THE CAPITAL MARKETS (TAKE-OVER & MERGERS) REGULATIONS, 2002

1 Introduction

- 1.1 By notice dated 25 November 2020, Carbacid Investments Plc (CIL) and Aksaya Investments LLP (Aksaya) (CIL and Aksaya shall be collectively referred to as the **Co-Offerors**) hereby notify the shareholders of BOC of their intention to make a take-over offer to acquire up to 100% of the ordinary shares (the **Offer**) with a par value of KES 5.00 each in BOC (the **Offer Shares**) for a cash consideration in accordance with the terms of this notice and the terms and conditions of the document setting out the Offer by the Co-Offerors for the purchase of the Offer Shares which will follow in due course (the **Offer Document**). CIL and Aksaya will between them purchase such amounts of the Offer Shares as are detailed in paragraph 5.3.
- 1.2 The ordinary shares of BOC will be acquired free from all liens, charges, encumbrances and other interests and together with all rights now and hereafter attaching thereto.
- 1.3 CIL is a public limited liability company incorporated in Kenya on 21 July 1970 under company registration number C. 32/70 under the Companies Act, No. 17 of 2015 (**Companies Act**). CIL is listed on the Main Market Segment of the Nairobi Securities Exchange (**NSE**). Its registered address is L.R. No. 1870/1/569 ALN House, Eldama Ravine Close, off Eldama Ravine Road, Westlands, P.O. Box 764-00606, Sarit Centre, Nairobi, Kenya.
- 1.4 CIL is an investment and holding company. Its subsidiaries include: Carbacid (Co2) Limited (incorporated on 8 August 1961 under the Companies Act, with company registration number C 6/61), Goodison Twenty Nine Limited (incorporated on 23 April 2009 under the Companies Act, with company registration number CPR/2009/2145) and Goodison Forty Seven Limited (incorporated on 2 September 2009 under the Companies Act, with company registration

number CPR/2009/9855). The principal activities of the main subsidiary, Carbacid (CO2) Limited, are mining, processing and marketing of natural carbon dioxide gas while the other two subsidiaries are investment companies.

- 1.5 Aksaya is a limited liability partnership with registration number LLP-6R1MVM. Aksaya was registered on 20 June 2018. Its registered address is 7th Floor, Grenadier Tower, 01 Woodvale Close, P.O. Box 44690-00606, Nairobi, Kenya. Baloobhai Chhotabhai Patel is the majority owner of Aksaya, owning 99% of the membership interest. Amarjeet Baloobhai Patel owns the remaining 1% membership interest in Aksaya.
- 1.6 Baloobhai Chhotabhai Patel is an investor and has various holdings in both public and private companies with a focus on investments in the real estate, financial services and hospitality sectors in Kenya, in addition to his interest (together with Amarjeet Baloobhai Patel) in CIL where he holds a stake of 40.38%.
- 1.7 BOC is a public limited liability company incorporated in Kenya on 9 December 1940 with company registration number C. 62/63 under the Companies Act and whose registered address is Kitui Road, P.O. Box 18010-00500 Nairobi Industrial Area. The principal activity of BOC is the manufacture and sale of industrial gases, medical gases and welding products. BOC is listed on Main Market Segment of the NSE.
- 1.8 The majority shareholder of BOC is BOC Holdings, a company registered in accordance with the laws of England under company registration number 212945, and whose registered address is The Priestley Centre, 10 Priestley Road, Guildford, Surrey GU2 7XY (**BOCH**).
- 1.9 The Offer will be set out in the Offer Document that complies with the Capital Markets (Takeovers and Mergers) Regulations, 2002 (**Take-over Regulations**) and will include a timetable for the transaction by which shareholders of BOC will be able to accept the Offer within 30 days of the issue of the Offer Document or such longer period as may be approved by the Capital Markets Authority (**CMA**).

2 Offer Price

- 2.1 The Offer price will be KES 63.50 for each ordinary share of BOC (the **Take-Over Offer Price**).
- 2.2 The Offer values 100% of the share capital of BOC (being 19,525,446 shares) at KES 1,239,865,821.00. The Take-Over Offer Price of KES 63.50 represents a premium, as at 24 November 2020, of:
 - 2.2.1 KES 4.67 (7.94%) over the 30-day volume-weighted average price per ordinary share; and
 - 2.2.2 KES 6.62 (11.64%) over the 90-day volume-weighted average price per ordinary share.

3 Persons acting in concert, irrevocable undertakings and options to acquire the Offer Shares

- 3.1 The issued share capital of BOC comprises of 19,525,446 ordinary shares with a par value of KES 5.00 per share. All issued shares are fully paid up.
- 3.2 CIL does not currently own any shares in BOC.
- 3.3 Amarjeet Baloobhai Patel and Baloobhai Chhotabhai Patel jointly hold 40.38% of the issued shares in CIL. The remaining 59.62% of the issued shares in CIL are held by a diverse range of nearly 3,000 shareholders. Baloobhai Chhotabhai Patel is also a non-executive director of CIL.
- 3.4 Rohan Baloobhai Patel is a non-executive director of CIL and is the son of Baloobhai Chhotabhai Patel and Amarjeet Baloobhai Patel.

- 3.5 Baloobhai Chhotabhai Patel holds 2,554 ordinary shares in the share capital of BOC jointly with Amarjeet Baloobhai Patel.
- 3.6 Baloobhai Chhotabhai Patel is the majority owner of Aksaya, owning 99% of the membership interest. Amarjeet Baloobhai Patel owns the remaining 1% membership interest in Aksaya. Baloobhai Chhotabhai Patel is an investor and has various holdings in both public and private companies with a focus on investments in the real estate, financial services and hospitality sectors in Kenya, in addition to his interest in CIL.
- 3.7 The Co-Offerors have on 25 November 2020 received an irrevocable undertaking from BOCH which holds 12,765,582 ordinary shares in BOC, which constitutes 65.38% of the issued and fully paid up share capital of BOC (the **Committed Shares**). The Committed Shares shall include any shares in BOC of which BOCH may become the registered holder or beneficial owner after the date of the irrevocable undertaking and any other shares or interests in shares attributable to or deriving from the existing shares in BOC owned by BOCH.
- 3.8 Under the terms of the irrevocable undertaking BOCH *inter alia*:
- 3.8.1 irrevocably undertakes to accept or procure the acceptance of the Offer in respect of the Committed Shares. BOCH agrees to fulfil this undertaking by validly accepting the Offer in respect of the Committed Shares in accordance with the Offer Document, not later than five (5) Business Days after receipt by BOCH of the Offer Document (and to communicate such acceptance in the manner envisaged in the Offer Document) or, in relation to the Committed Shares that BOCH becomes the registered shareholder or beneficial owner of after the date of the irrevocable undertaking or any other shares or interests in shares attributable to or deriving from the existing shares in BOC owned by BOCH, as soon as practicable after BOCH becomes the registered holder or beneficial owner of such Committed Shares;
- 3.8.2 irrevocably undertakes that it will not sell, transfer, mortgage, charge or otherwise encumber, grant any option or other right over or otherwise deal with or dispose of any or all of the Committed Shares or any interest (whether actual or contingent) in any or all of them other than pursuant to the Offer or the undertaking;
- 3.8.3 irrevocably undertakes that BOCH will not effect an indirect transfer of the Committed Shares through a sale of any or all of the shares of BOCH;
- 3.8.4 irrevocably undertakes that notwithstanding that the terms of the Offer Document will confer rights of withdrawal on accepting shareholders, BOCH shall not withdraw any acceptance of the Offer in respect of the Committed Shares or any of them and shall procure that no rights to withdraw any acceptance in respect of such Committed Shares are exercised;
- 3.8.5 irrevocably undertakes that BOCH will not exercise the voting rights attaching to the Committed Shares in any manner which is likely to be prejudicial to the Offer or its outcome;
- 3.8.6 irrevocably undertakes to take all steps in relation to BOC that as a shareholder of the Committed Shares it is able or entitled to take in order that the Offer may be successfully implemented within the period envisaged by the Offer Document, including the convening of all meetings which may be necessary in this regard; and
- 3.8.7 agrees to exercise its votes in relation to the Committed Shares in a manner which is supportive of the Offer, to assist in the implementation of the Offer.
- 3.9 The conditions of the irrevocable undertaking are:

- 3.9.1 that the Offer made by the Co-Offerors is made on the same or better terms to those contained in this Notice; and
 - 3.9.2 that the regulatory conditions of the Offer are fulfilled; and
 - 3.9.3 completion of the Offer occurs by 31 July 2021 or such later date as may be agreed in writing by the Co-Offerors and BOCH,

(hereinafter referred to as the **Conditions** and each a **Condition**).
- 3.10 If any of the Conditions are not fulfilled (or in the case of the Conditions in paragraphs 3.9.1 and 3.9.3 waived by BOCH, and in the case of the Condition in paragraph 3.9.2 waived by the Co-Offerors to the extent capable of waiver), then the irrevocable undertaking shall automatically terminate.
- 3.11 In addition, the provisions of the irrevocable undertaking will terminate if the Offer lapses or is withdrawn and no new, revised or replacement take-over offer is or has been announced by the Co-Offerors at the same time.
- 3.12 Neither CIL, nor Aksaya, nor any related companies or any person associated with any of them has an option to acquire any of the Offer Shares.

4 Agreement, arrangement and understanding regarding the Offer Shares

- 4.1 Save for the irrevocable undertaking referred to in paragraph 3.7 above, there is no existing or proposed agreement, arrangement or understanding relating to the Offer Shares between the Co-Offerors or any related company or person associated with the Co-Offerors and the holders of the voting shares to which the Offer relates.
- 4.2 The Co-Offerors have on 25 November 2020 entered into a termination agreement in respect of certain arrangements provided to BOC by BOCH's group (the **Termination Services Agreement**). The Termination Services Agreement provides for *inter alia*, the termination of certain intra-group agreements between the BOCH group and BOC, the resignation of the BOCH appointed directors from BOC, the change of name of the BOC group entities (save for East African Oxygen Limited) once the Offer is completed as certain names belong to the BOCH group as well as acknowledgement by the Co-Offerors that they no longer have the right to certain designations (including *inter alia* various names, trademarks (whether registered or unregistered, business names, logos and domain names) that are vested in the BOCH group. There are also provisions that cater for the re-branding of BOC's equipment and products once the Offer is completed.

5 Conditions of the Offer

- 5.1 The Offer will be subject to fulfilment or waiver (at the sole discretion of the Co-Offerors where legally capable of waiver) of the following conditions by no later than the Closing Date (as defined in the Offer Document):
 - 5.1.1 receipt of applicable regulatory approvals, including approval from the Competition Authority of Kenya;
 - 5.1.2 to the extent that any of the approvals listed herein have conditions attached to them, such conditions being acceptable to the Co-Offerors;
 - 5.1.3 CIL receiving its shareholders' approval for the transaction;
 - 5.1.4 no governmental, revenue collection or regulatory body having decided to take any action or proceedings or make an investigation which might:

- (a) make the acquisition of the Offer Shares pursuant to the Offer void or illegal;
 - (b) impose any restriction on the ability of BOC to carry on its business as the same was carried on prior to the date of this Offer; or
 - (c) otherwise materially affect the business profits or prospects of BOC or the Co- Offerors;
- 5.1.5 there being no Material Adverse Change in the trading position or prospects or financial position of BOC,
- for purposes of paragraph 5.1.5, Material Adverse Change means:
- (a) a material change in an event, matter or circumstance, or in any combination of such events, matters or circumstances, existing as at any time from the date of this notice which in the aggregate, has resulted in a reduction by more than 15% in the net asset value of BOC as compared to the net asset value of BOC as at 31 December 2019 (the **Reduction**), provided that any dividend distribution by BOC that may be declared at any time from the date of this notice up to and including the Closing Date of an amount up to KES 4.25 per share shall be excluded for purposes of calculating the Reduction; or
 - (b) the loss of any material asset, licence or consent necessary for BOC to continue to conduct business as a going concern.
- 5.1.6 no material litigation or other legal proceedings having been commenced against BOC and no order being given by a court or authority in Kenya to prevent or restrict the transfer of any shares in BOC under the Offer.
- 5.2 BOC currently holds 14,850,000 shares (representing 5.83%) in CIL.
- 5.3 Section 108 of the Companies Act, 2015 prohibits a subsidiary from being a member of its holding company and provides that a transaction that would have the effect of making a body corporate a member of a company that is its holding company is void. Therefore, CIL cannot at this stage acquire more than 49.99% of the shares of BOC. For this reason, CIL is acting jointly with Aksaya in making the Offer. The following allocation criterion will apply for acceptances of the Offer:
- 5.3.1 If by the Closing Date (as defined in the Offer Document) of the Offer (being the latest time by which shareholders in BOC can accept the Offer in the manner provided for in the Offer Document) BOC no longer owns shares in CIL, CIL will proceed to acquire up to 100% of the Offer Shares and Aksaya will waive its rights to acquire any Offer Shares; and
 - 5.3.2 If by the Closing Date BOC still holds shares in CIL then, CIL will acquire 49% of the Offer Shares and Aksaya will acquire up to 51% of the Offer Shares. Aksaya has agreed with CIL that if the Offer Shares held by Aksaya are acquired by CIL within and up to six calendar months of the Closing Date, then the price for such Offer Shares shall be the Take-Over Offer Price and in addition Aksaya shall charge CIL a fee equivalent to 1% per month (and *pro rated* for periods less than a month) of the value of the Offer Shares actually acquired by Aksaya for agreeing to be a co-offeror. If the sale is effected after such six calendar month period, the price shall be a price as may be agreed between CIL and Aksaya. Such a sale by Aksaya to CIL will be subject to approval by the CMA for it to be effected as an off-market sale under Section 31(1A) of the Capital Markets Act (Chapter 485A, Laws of Kenya) and Regulation 57 of the Capital Markets (Licensing Requirements) (General) Regulations 2002.

6 Continued Listing

On the closing of the Offer, BOC shall continue to be listed. However, should the Co-Offerors achieve acceptances of 75% or more of the Offer Shares, the Co-Offerors will evaluate the continued efficacy of BOC remaining listed and may then, subject to approval from the CMA, apply for BOC to be de-listed from the NSE.

7 Offer Documentation and Timetable

7.1 The Offer Document will be sent to shareholders of BOC together with a Form of Acceptance prepared by the Co-Offerors and a Shareholders' circular prepared by the Board of Directors of BOC containing an Independent Financial Advisor's report.

7.2 The Offer Document will include a transaction timetable, instructions to shareholders of BOC on how to deal with the Offer and arrangements for payment of the cash consideration by the Co-Offerors, to the shareholders of BOC who accept the Offer.

By Order of the Board


SIGNATURE

NAME: NALIN KOTHARI

COMPANY SECRETARY OF CARBACID INVESTMENTS PLC

DATE: 25th November 2020

By Order of the majority Partner


SIGNATURE

NAME: BALOOBHAI CHHOTABHAI PATEL

PARTNER OF AKSAYA INVESTMENTS LLP

DATE: 25 NOV 2020

Transaction Advisor and
Sponsoring Broker



Legal Advisor



Registrar & Data Processing
Agent



Paying Bank

