

J1172158

THE COMPANIES ACT 1985

COMPANY LIMITED BY SHARES

IVORY & SIME OPTIMUM INCOME TRUST PLC

At an extraordinary general meeting of the above company, duly convened and held at 80 George Street, Edinburgh EH2 3BU on Wednesday, 24 March 2004 at 10.00 a.m., the following resolution was passed as a special resolution:

SPECIAL RESOLUTION

"THAT:

1. subject to (i) paragraph 3 of this resolution and (ii) paragraph 6 of the Scheme, and with effect from the date and time at which the admission of all of the Reclassified Shares to trading on the main market of the London Stock Exchange becomes effective:
  - 1.1. to the extent that an Ordinary Share is the subject of a valid Election for the Share Option, such Ordinary Share shall be reclassified as a Share with A Rights;
  - 1.2. to the extent that a ZDP Share is the subject of a valid Election for the Share Option, such ZDP Share shall be reclassified as a Share with B Rights;
  - 1.3. to the extent that an Ordinary Share is the subject of a valid Election for the Cash Option, such Ordinary Share shall be reclassified as a Share with C Rights;
  - 1.4. to the extent that a ZDP Share is the subject of a valid Election for the Cash Option, such ZDP Share shall be reclassified as a Share with D Rights;
  - 1.5. the Shares with A Rights, Shares with B Rights, Shares with C Rights and Shares with D Rights (together referred to as "Reclassified Shares") shall have the rights attached to them and be subject to the conditions set out in the Company's articles of association as amended pursuant to paragraph 1.6 of this resolution;
  - 1.6. the Articles of Association of the Company be and are hereby amended as follows:
    - 1.6.1. the existing definitions of Ordinary Shares and Zero Dividend Preference Shares in Article 2 shall be deleted and new definitions shall be inserted as follows:

" "Ordinary Shares" means together the Shares with A Rights and Shares with C Rights (or any of them);";

" "Zero Dividend Preference Shares" means together the Shares with B Rights and Shares with D Rights (or any of them);";



" "Shares with A Rights" means the shares with A rights of 10p each in the capital of the Company;;

" "Shares with B Rights" means the shares with B rights of 100p each in the capital of the Company;;

" "Shares with C Rights" means the shares with C rights of 10p each in the capital of the Company;;

" "Shares with D Rights" means the shares with D rights of 100p each in the capital of the Company;;

- 1.6.2. the introduction to Article 4 (comprising the wording in Article 4 which immediately precedes Article 4.1) shall be deleted and replaced by:

"The authorised share capital of the Company as at the date of passing of the special resolution which deleted and replaced this introduction to Article 4 and inserted Article 4.5 in these Articles is £66,000,000 divided into 60,000,000 Ordinary Shares and 60,000,000 Zero Dividend Preference Shares of which the Ordinary Shares shall comprise Shares with A Rights and Shares with C Rights and the Zero Dividend Preference Shares shall comprise Shares with B Rights and Shares with D Rights in each case in such respective numbers as shall result from the passing of the special resolution which deleted and replaced this introduction to Article 4 and inserted Article 4.5 in these Articles. Except as provided in Article 4.5 below the Shares with A Rights and Shares with C Rights shall be identical and shall rank *pari passu* in all respects and constitute one class of share and the Shares with B Rights and Shares with D Rights shall be identical and shall rank *pari passu* in all respects and constitute one class of share.";

- 1.6.3. the words "Subject to Article 4.5," shall be inserted at the beginning of Article 4.2;

- 1.6.4. a new Article 4.5 shall be inserted in the following terms:

"4.5 4.5.1 Words and expressions defined or used in the circular to shareholders of the Company dated 1 March 2004 which included a notice convening an extraordinary general meeting at which the special resolution deleting and replacing the introduction to this Article 4 and inserting this Article 4.5 was to be proposed (the "Circular") shall bear the same meanings in this Article 4.5, save where the context otherwise requires.

4.5.2 In a winding up of the Company pursuant to and giving effect to the Scheme (but not otherwise):

- (i) the rights of the holders of Shares with A Rights in respect of the assets of the Company shall be satisfied by the issue to the holders thereof of

the numbers of New Fund Shares, in addition to any distribution of cash, to which they shall be entitled in accordance with the Scheme;

- (ii) the rights of the holders of Shares with B Rights in respect of the assets of the Company shall be satisfied by the issue to the holders thereof of the numbers of New Fund Shares, in addition to any distribution of cash, to which they shall be entitled in accordance with the Scheme;
- (iii) the rights of the holders of Shares with C Rights in respect of the assets of the Company shall be satisfied by the distribution to such holders of the amounts in cash to which they shall be entitled in accordance with the Scheme;
- (iv) the rights of the holders of Shares with D Rights in respect of the assets of the Company shall be satisfied by the distribution to such holders of the amounts in cash to which they shall be entitled in accordance with the Scheme.";

1.6.5. Article 163 shall be deleted and replaced by:


**"163. Distribution of assets otherwise than in cash**

If the Company shall be wound up (whether the liquidation is voluntary, under supervision or by the court) the liquidator may, with the authority of a special resolution and any other sanction required by law, divide among the members *in specie* the whole, or any part of, the assets of the Company and that whether or not the assets shall consist of property of one kind or shall consist of properties of different kinds, and may for such purpose set such value as he deems fair upon any one or more class or classes of property and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts or in any body corporate (including without limitation an investment company with variable capital) for the benefit of members as the liquidator, with the like authority, shall think fit and may receive in compensation or part compensation for such vesting units, shares or other interests in such trusts or bodies corporate for distribution among, or may direct that such compensation be distributed directly to, the members but so that no member shall be compelled to accept any shares or other property in respect of which there is a liability or potential liability.";

2. subject to paragraph 3 of this resolution and notwithstanding anything in the Articles to the contrary, the Scheme be and is hereby approved and the directors of the Company and the Liquidators (as defined in or for the purposes of the Scheme), when appointed, be and are hereby authorised (in so far as they are not already authorised by the Articles) to implement the Scheme and to execute any document and do any act or thing for the purpose of carrying the Scheme into effect and, in particular (but without prejudice to the foregoing generality):
  - 2.1. the directors of the Company be and are hereby authorised and directed to enter into, and the Liquidators be and are hereby authorised and directed, pursuant to Article 163 of the Articles (as amended pursuant to paragraph 1.6.5 of this resolution) to give effect to, the transfer agreement in the form of the draft which is produced to the meeting and signed for the purpose of identification by the chairman of the meeting with such non-material modifications thereto as the parties to such agreement may agree or as may be permitted to be made pursuant to the Scheme (the "Transfer Agreement");
  - 2.2. the Share Pool be transferred to ICVC III for the account of the Fund upon the terms and subject to the conditions of the Transfer Agreement;
  - 2.3. the Liquidators be and are hereby authorised and directed to request the ACD to issue New Fund Shares credited as fully paid, on the basis described in the Transfer Agreement, for distribution among the holders of Shares with A Rights and Shares with B Rights (as referred to in Article 4.5 inserted in the articles of association of the Company pursuant to paragraph 1.6.4 of this resolution) by way of satisfaction and discharge of their interests in so much of the undertaking, property and assets of the Company as shall be transferred to ICVC III for the account of the Fund in accordance therewith and with the Scheme;
  - 2.4. the Liquidators be and they are hereby authorised to realise and distribute the Cash Pool in accordance with the Scheme;
3.
  - 3.1. paragraph 1 of this resolution is conditional in all respects on the UK Listing Authority and the London Stock Exchange agreeing to admit to the Official List and to trading respectively the Reclassified Shares on or before 25 March 2004;
  - 3.2. paragraph 2 of this resolution is conditional in all respects on:
    - 3.2.1. the conditions to paragraph 1 of this resolution being fulfilled; and
    - 3.2.2. the passing on or before 26 March 2004 of the ordinary resolution contained in the notice of the extraordinary general meeting of the Company convened for 26 March 2004;
  - 3.3. words and expressions used or defined in the circular to shareholders dated 1 March 2004 (a copy of which is produced to the meeting and signed by the

chairman for the purposes of identification) shall have the same meanings where used in this resolution, except where the context otherwise requires;

4. this special resolution shall operate by way of such further non-material amendments to the Company's articles of association as may be necessary to give effect hereto."



Director