

Current report no 15/2021

dated 31 August 2021

## **RESOLUTIONS ADOPTED AT THE EXTRAORDINARY GENERAL MEETING OF SHAREHOLDERS OF KERNEL HOLDING S.A. HELD ON 30 AUGUST 2021**

Kernel Holding S.A. informs that the Extraordinary General Meeting of Shareholders, which was held on 30 August 2021 at 3.00 p.m. (Luxembourg time) at the Company's registered office, 9 rue de Bitbourg, L-1273 Luxembourg, adopted the resolutions specified below. First, second, third, fourth, sixth and seventh resolutions were adopted substantially in wording as proposed in current report No 14/2021 published on 29 July 2021. Resolutions regarding the amendments of the articles of association of the Company were not adopted due to the absence of a quorum of fifty per cent (50%) of the share capital.

All resolutions adopted at the Extraordinary General Meeting of Shareholders come into force on the day of their adoption.

In accordance with the provisions of the law of 24 May 2011 implementing the Directive 2007/36 EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders of listed companies, we hereby inform you of the resolutions adopted at the Extraordinary General Meeting of shareholders:

### **FIRST RESOLUTION**

**WHEREAS** the general meeting of shareholders noted that the Company intends to adopt a new management incentive plan to motivate and reward employees of the group of companies to which the Company belongs for accomplishing individual performance goals related to the duties and services provided by such employees to subsidiaries of the Company, altogether contributing to the better financial and non-financial results of the group of companies to which the Company belongs (the "**Management Incentive Plan**").

**WHEREAS** the general meeting of shareholders further noted that in the context of the Management Incentive Plan, the Company, as purchaser, intends to enter into Luxembourg law governed put option agreements whereby the Company shall grant to the beneficiaries of the put options the right to sell to the Company and to require the Company to purchase in total up to two million seven hundred ninety-two thousand four hundred thirty-five (2,792,435) ordinary shares of the Company without nominal value comprising three point three hundred twenty-three percent (3.323%) of the issued share capital of the Company, and any shares, stocks or other securities which derive (whether directly or indirectly) from them, to which the beneficiary of the put option (or its affiliates or nominees) becomes legally or beneficially entitled (the "**Put Option Agreements**"). The consideration for each share will be a minimum of (i) twenty-three United States Dollar and eighty cents (USD 23.80) and (ii) (operating profit before working capital changes *minus* interest paid *plus* interest received *minus* interest tax paid *minus* maintenance capital expenditures in the fixed amount of one hundred fifty-five million United States Dollars (USD 155,000,000.-)), where all amounts, except for the maintenance capital expenditures, are specified in United States Dollars (USD) in the relevant paragraph of the consolidated statement of cash flows of the audited annual consolidated accounts of the Company and its subsidiaries for the Financial Years 2022-2024, *divided* by three (3) *divided* by twelve percent (12%) and *divided* by eighty-four million thirty-one thousand two hundred and thirty (84,031,230). The option period is set for a period commencing on 1 November 2024 and expiring on 31 December 2025.

**WHEREAS** the general meeting of shareholders understood that in case of an acceleration event (the cessation of trading of Company's shares at the Warsaw Stock Exchange or any other recognised stock exchange or a change of control event where the shareholding of Namsen Limited or its ultimate beneficial owner in Kernel's total votes falls below twenty five percent (25%) - the "**Acceleration Event**"), put options shall be exercisable immediately.

**WHEREAS** the general meeting of shareholders acknowledged that, for the purposes of the Management Incentive Plan and the implementation of the terms of the Put Option Agreements, it is now intended for the shareholders of the Company to grant an authorisation to the board of directors of the Company for a period commencing on the date of the present general meeting and expiring on 31 December 2025, to purchase, in the name and on behalf of the Company, a maximum of two million seven hundred ninety-two thousand four hundred thirty-five (2,792,435) shares of the Company without nominal value, in accordance with the conditions set forth in the article 430-15 of the Luxembourg law of 10 August 1915 on commercial companies, as amended (the “1915 Law”), for a purchase price which shall be a minimum of (i) twenty-three United States Dollar and eighty cents (USD 23.80) and (ii) (operating profit before working capital changes *minus* interest paid *plus* interest received *minus* interest tax paid *minus* maintenance capital expenditures in the fixed amount of one hundred fifty-five million United States Dollars (USD 155,000,000.-)), where all amounts, except for the maintenance capital expenditures, are specified in United States Dollars (USD) in the relevant paragraph of the consolidated statement of cash flows of the audited annual consolidated accounts of the Purchaser and its subsidiaries for the Financial Years 2022-2024, *divided* by three (3) *divided* by twelve percent (12%) and *divided* by eighty-four million thirty-one thousand two hundred and thirty (84,031,230) (the “**Authorization**”).

The extraordinary general meeting of the shareholders of the Company acknowledges, approves and, to the extent necessary, ratifies the Management Incentive Plan, acknowledges the Put Option Agreements and resolves to grant the Authorization.

This resolution has been adopted by a majority of 38,689,362 votes in favour, 3,009,884 votes against. 0 votes abstained.

## **SECOND RESOLUTION**

**WHEREAS** the recent financial results of the Company and its subsidiaries allowed the Company to accumulate significant liquidity.

**WHEREAS** the Company does not face any new attractive investment opportunities in the short term.

**WHEREAS** the leverage of the Company and its subsidiaries on the consolidated basis is at comfortable one point four (1.4)x Net-debt-to-EBITDA as of 31 March 2021, as presented in the Kernel Holding S.A. and Subsidiaries Condensed Consolidated Interim Financial Statements for the three (3) months ended 31 March 2021.

**WHEREAS** the board of directors of the Company recognize the increased demand from shareholders for higher allocation of profits to shareholders, with a substantial percentage of shareholders expressing a preference of the share buyback over dividends.

**WHEREAS**, in the context of the above, the board of directors of the Company resolved to suggest to the general meeting of shareholders to grant the authorization to the board of directors of the Company, according to the article 430-15 of the 1915 Law, during a period of two (2) years ending on the second anniversary of the date of these resolutions of the general meeting of shareholders, to (i) purchase, in the name and on behalf of the Company, or (ii) designate any wholly-owned subsidiary of the Company to purchase a maximum of 19,200,000 (nineteen million two hundred thousand) shares of the Company without a nominal value in accordance with the conditions set forth in the article 430-15 of the 1915 Law regarding the repurchase of own shares by a company and the article 430-23 of the 1915 Law regarding the cross-participation regime for a purchase price which shall (i) not be less than PLN 50 (fifty Polish Zloty) per share and (ii) not be more than PLN 65 (sixty-five Polish Zloty) per share, for a total maximum consideration equivalent to USD 250,000,000 (two hundred and fifty million United States Dollars).

Accordingly, the general meeting of shareholders resolves to grant authorisation to the board of directors of the Company for a period of two (2) years ending on the second anniversary of the date of these resolutions of the general meeting of shareholders, to (i) purchase, in the name and on behalf of the Company, or (ii) designate any wholly-owned subsidiary of the Company to purchase, in one or several times, a maximum of 19,200,000 (nineteen million two hundred thousand) shares of the Company in accordance with the conditions set forth in the article 430-15 of the 1915 Law regarding the repurchase of own shares by a company and the article 430-23 of the 1915 Law regarding the cross-participation regime. The bought-back shares shall be subsequently cancelled, kept, sold or used for such

legitimate purposes as the board of directors deem advisable. It is being understood that in case where the above option (ii) (cross-participation regime) is chosen by the board of directors of the Company, the latter has to ensure that the respective subsidiary complies at all times with all the contractual provisions applying to transfer and holding of such Company's shares by such subsidiary. The purchase price of the bought-back shall (i) not be less than PLN 50 (fifty Polish Zloty) per share and (ii) not be more than PLN 65 (sixty-five Polish Zloty) per share, for a total maximum consideration equivalent of USD 250,000,000 (two hundred and fifty million United States Dollars). The shares purchased and retained by the Company or its subsidiary shall not carry any voting rights and shall not give any dividend rights.

The general meeting of shareholders resolves to authorize the board of directors of the Company to take all legal and factual actions in order to implement this resolution and in any format as they deem fit, in compliance with the conditions set out therein, including to conclude an agency agreement with the selected investment firm for the purchase of shares. The board of directors of the Company is also authorized to establish the detailed terms and conditions of the acquisition of own shares in limits specified in this resolution, but in any case with assurance of equal and proportional access by shareholders to exercise the right to sell shares.

The general meeting of shareholders specifies that the board of directors of the Company shall satisfy itself that, at the time of each authorised acquisition, the conditions of the article 430-15 of the 1915 Law are complied with.

This resolution has been adopted by a majority of 39,598,436 votes in favour, 2,100,810 votes against. 0 votes abstained.

### **THIRD RESOLUTION**

**WHEREAS** the general meeting of shareholders noted that, pursuant to the Article 7bis of the Luxembourg law of 24 May 2011 on the exercise of certain rights of shareholders at general meetings, as amended, companies must establish a remuneration policy as regards directors and must submit it to the vote of shareholders at the general meeting.

**WHEREAS** the general meeting of shareholders further noted that according to the article 5.2.4 of the Company's corporate governance charter (the "**CGC**"), the nomination and remuneration committee (the "**N&R Committee**") of the Company is in charge of the establishment of the remuneration policies and has therefore drawn up an updated remuneration policy of the directors of the Company in the form as substantially set out in the Schedule 1 attached hereto (the "**Remuneration Policy**") and has presented such Remuneration Policy to the vote of the shareholders at the present extraordinary general meeting of the shareholders of the Company.

The extraordinary general meeting of the shareholders of the Company approves and ratifies the Remuneration Policy.

This resolution has been adopted by a majority of 37,588,870 votes in favour, 4,110,376 votes against. 0 votes abstained.

### **FOURTH RESOLUTION**

**WHEREAS** the general meeting of shareholders noted that, pursuant to the same article 5.2.4 of the CGC, the N&R Committee is in charge of the identification and recommendation of candidates for their appointment as directors of the Company, including assessment of the skills, knowledge and experience of the individuals appointed, as well as of the appointment and removal of the directors of the Company.

**WHEREAS** the general meeting of shareholders acknowledged that the N&R Committee identified the profile of Mrs. Pietermel Boogaard, born on 16 July 1967 in Sliedrecht, the Netherlands, and residing at Wilhelminastraat 60, 2011 VP Haarlem, the Netherlands ("**Mrs. Boogaard**").

**WHEREAS** the general meeting of shareholders further acknowledged that the N&R Committee noted that Mrs. Boogaard showcases strong skills and significant experience in the field of agriculture, sustainable development and finance that shall positively contribute to the Company's growth and expansion, these skills and experience being fundamental for a potential member of the board of directors of the Company. The N&R Committee also noted that appointment of Mrs. Boogaard as a director of the Company shall increase the diversity within the composition of the board of directors of the Company.

**WHEREAS** the general meeting of shareholders understood that, further to the above, the N&R Committee is of opinion that Mrs. Boogaard fulfills the criteria required to be appointed as non-executive independent director of the Company and thus recommends the board of directors of the Company to nominate Mrs. Boogaard to be appointed by the general meeting of shareholders as a director of the Company.

**WHEREAS** the general meeting of shareholders further understood that, further to the above, the board of directors of the Company decided to nominate Mrs. Boogaard to be appointed by the general meeting of shareholders as a Director of the Company for a term mandate which shall terminate on the date of the general meeting of shareholders to be held in 2021.

**WHEREAS** the general meeting of shareholders acknowledged that the board of directors of the Company decided to recommend the general meeting of shareholders to approve the fee for Mrs. Boogaard for a total gross annual amount of fifty thousand US dollars (USD 50,000), implying thirteen thousand nine hundred seventy-three US dollars (USD 13,973) pro rata fee for the period commencing on the date of this general shareholder meeting and expiring on the date of the general meeting of shareholders to be held in 2021.

The extraordinary general meeting of the shareholders of the Company resolves to appoint Mrs. Boogaard, born on 16 July 1967 in Sliedrecht, the Netherlands, and residing professionally at Wilhelminastraat 60, 2011 VP Haarlem, the Netherlands, as a new non-executive independent director of the Company for a term mandate which shall terminate on the date of the general meeting of shareholders to be held in 2021.

The extraordinary general meeting of the shareholders of the Company resolves to approve the fee to Mrs. Boogaard, for the period commencing on the date of this general shareholder meeting and expiring on the date of the general meeting of shareholders to be held in 2021 for a total gross amount of thirteen thousand nine hundred seventy-three US dollars (USD 13,973).

This resolution has been adopted by a majority of 41,699,246 votes in favour, 0 votes against. 0 votes abstained.

#### **FIFTH RESOLUTION**

The general meeting of shareholders acknowledges that due to the absence of a quorum of fifty per cent (50%) of the share capital, it is not validly constituted to validly deliberate on the point 6 of the agenda regarding the amendments of the articles of association of the Company.

#### **SIXTH RESOLUTION**

**WHEREAS** the general meeting of shareholders notes that in accordance with article 17 of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (the “**Audit Regulation**”), “*a public-interest entity shall appoint a statutory auditor or an audit firm for an initial engagement of at least one year. The engagement may be renewed. Neither the initial engagement of a particular statutory auditor or audit firm, nor this in combination with any renewed engagements therewith shall exceed a maximum duration of 10 years.*”

**WHEREAS** Deloitte Audit, a *société à responsabilité limitée* registered with the Luxembourg Trade and Companies’ Register under number B 67 895, acts as independent auditor of the Company since 7 December 2011, and such engagement was continuously renewed for 9 years in a row, bringing the total duration of the mandate to 10 years;

**WHEREAS** the general meeting of shareholders notes that in accordance with article 16 of the Audit Regulation, “*the audit committee shall submit a recommendation to the administrative or supervisory body of the audited entity for the appointment of statutory auditors or audit firms. [ ] Unless it concerns the renewal of an audit engagement in accordance with Article 17(1) and 17(2), the recommendation of the audit committee referred to in paragraph 2 of this Article shall be prepared following a selection procedure organised by the audited entity.*”

**WHEREAS** the Audit Regulation further states in its article 16 paragraph 5 that: “*the proposal to the general meeting of shareholders or members of the audited entity for the appointment of statutory auditor or audit firms shall include the recommendation and preference referred to in paragraph 2 made by the audit committee or the body performing equivalent functions.*”

**WHEREAS** the general meeting of shareholders notes that further to the above, the audit committee of the Company (the “**Audit Committee**”) has identified the following audit firms for the position of an independent auditor of the Company:

- PwC *Société coopérative*, having its registered office at 2, rue Gerhard Mercator B.P. 1443 L-1014 Luxembourg, registered with the Luxembourg Trade and Companies' Register under number B 65 477 (“**PwC**”); and
- Deloitte Audit, a *société à responsabilité limitée*, having its registered office at 20, Boulevard de Kockelscheuer, L-1821 Luxembourg, registered with the Luxembourg Trade and Companies' Register under number B 67 895 (“**Deloitte**”)

(together the “**Independent Auditor Candidates**”).

**WHEREAS** the proposal is based on the results of the formal auditor selection process conducted by the auditor selection team, which includes all Audit Committee members and selected employees of the group of companies to which the Company belongs.

**WHEREAS** the general meeting of shareholders further notes that the Audit Committee recommended the candidacy of the Independent Auditor Candidates to the board of directors of the Company.

**WHEREAS** the Audit Committee explained that it prefers the candidacy of **PwC** as an independent auditor of the Company given that **PwC** obtained higher final score during the auditor selection process when evaluating the proposals and presentations in accordance with selection criteria and respective weights defined in Appendix II of the Auditor Selection Procedure approved by the board of directors of the Company on 17 July 2020. Namely, the **PwC** scored higher than **Deloitte** on such criteria as:

- Qualification of the team in Ukrainian office;
- Audit Approach;
- Audit methodology for effectiveness and efficiency; and
- Presentation to the Audit Committee.

Although **Deloitte** scored higher than **PwC** on the criterion “Industry-specific experience”, and both candidates were ranked equal on such criteria as “Provision of audit services to public-interest entities from CIS”, “Price (‘Value for money’)”, “Qualifications of the team in Luxembourg office”, “Evidence of audit quality (review of the auditor’s specific inspection reports)”, and “Reputation”, the assigned weights to each criterion resulted in the 8.8 final score for **PwC** and 8.5 final score for **Deloitte**.

The Audit Committee mentioned that it is free from influence by a third party and that no clause of the kind referred to in Art. 16 (6) of the Audit Regulation has been imposed upon it.

**WHEREAS** the decision of the board of directors of the Company regarding the selection of an auditor does not depart from the recommendation of the Audit Committee and the board of directors of the Company submitted the candidacy of the Independent Auditor Candidates to the vote of the general meeting of shareholders with a justifiable preference of **PwC**.

**WHEREAS** the board of directors of the Company proposes that in case the candidacy of **PwC** is approved by a simple majority of votes of shareholders of the Company, **PwC** shall be appointed as a new independent auditor of the Company and its mandate shall begin on the date of the annual general meeting of shareholders to be held in 2021 and shall terminate on the date of the annual general meeting of shareholders to be held in 2022.

**WHEREAS** the board of directors of the Company further proposes that in case **PwC** does not collect the required majority of votes of shareholders of the Company, the candidacy of **Deloitte** shall be submitted to the vote of the general meeting of shareholders of the Company and in case the candidacy of **Deloitte** is approved by a simple majority of votes of shareholders of the Company, **Deloitte** shall be appointed as a new independent auditor of the Company and its mandate shall begin on the date of the annual general meeting of shareholders to be held in 2021 and shall terminate on the date of the annual general meeting of shareholders to be held in 2022.

The extraordinary general meeting of the shareholders resolves to appoint PwC *Société coopérative*, having its registered office at 2, rue Gerhard Mercator B.P. 1443 L-1014 Luxembourg, registered with the Luxembourg Trade and Companies' Register under number B 65 477 as independent auditor of the Company in respect to the audit of the consolidated and unconsolidated annual accounts of the Company for a one-year term, which shall begin on the date of the annual general meeting of shareholders to be held in 2021 and which shall terminate on the date of the annual general meeting of shareholders to be held in 2022.

This resolution has been adopted by a majority of 41,699,246 votes in favour, 0 votes against. 0 votes abstained.

#### **SEVENTH RESOLUTION**

The general meeting of the shareholders resolves to appoint any director of the Company, (the "Director(s)") each acting individually, with power of substitution to take all actions and do such things on behalf and in the name of the Company that are necessary or desirable for the Company to take or to do in order for the above resolutions to be implemented, to agree or amend the form, terms and conditions of, to certify any and all documents as certified true copies and to make, sign, execute and do, all such deeds, instruments, agreements, applications, forms, declarations, confirmations, notices, acknowledgements, letters, certificates, powers-of-attorney, general assignments, and any other documents (including any notarial deeds) relating to and required or desirable under the above resolutions, and in particular all the agreements and/or documents the entering of which is approved in the present resolutions.

This resolution has been adopted by a majority of 41,699,246 votes in favour, 0 votes against. 0 votes abstained.

Legal grounds: Art. 56.1 of the Act of 29 July 2005 on public offerings, conditions governing the introduction of financial instruments to the organised trading system, and public companies.

Signatures of individuals authorized to represent the Company:

Yuriy Kovalchuk

Viktoriia Lukianenko