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EC: 34 Stanford Terrace | **Mthatha** | 5100 | **East London:** 12 Edison Road | Westbank | 5241

WC: Corner Anson and Collingwood Road | Observatory | Cape Town | 7100

FS: 1 Valencia Road | Bloemfontein | 9301

NC: 20 Reginald De Villiers | Monument Heights | Kimberly | 8301



OFFER TO PURCHASE (OTP) IN RESPECT OF IMMOVABLE PROPERTY

**RILEY AUCTIONEERS (PTY) LTD
UNIT NUMBER 13, CORLETT CITY BUILDING
600 LOUIS BOTHA AVENUE,
BRAMELY**

(the “AUCTIONEER”)

duly instructed by
KNYSNA MUNICIPALITY

(“the SELLER”)

Hereby offers for sale by public auction the immovable PROPERTY known as:

**ERF DESCRIPTION:
ERF 160**

**PHYSICAL ADDRESS:
160 WALKER STREET
BUFFALO BAY**

TITLE DEED NO:

EXTENT: 600 M2

(“the PROPERTY”)

subject to the following conditions:

SCHEDULE OF PARTICULARS

A. THE SELLER ("the seller")

Name: Knysna Municipality within the Government of the Republic of South Africa.

Physical address: Knysna Municipality Town Hall Queens Street Knysna

Tell: 060 998 6881

CONVEYANCER:

Physical address:

Tel:

Email:

B. THE PURCHASER ("the purchaser")

Name: _____

I.D Number: _____

Physical address: _____

Tel: _____

E-mail: _____

TERMS AND CONDITIONS

The terms and conditions of this OTP (“**Terms and Conditions**”) set out in this document, the schedule of particulars, Riley Auctioneers’ Rules of Auction should the conditions of sale arise from public auction and any annexures hereto together constitute the agreement between the parties. The Rules of Auction are attached hereto as “Annexure A” and are available at www.riley.africa as well as at the offices of Riley Auctioneers,

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INTERPRETATION AND INTRODUCTION

1.1 Any reference to: -

- 1.1.1 The one gender shall include the other gender.
- 1.1.2 Natural persons shall include legal persons and vice versa.
- 1.1.3 The singular shall include the plural and vice versa.
- 1.1.4 References to the Executor, Trustee or Liquidator shall include the Provisional Trustee or Provisional Liquidator.

1.2 In the event of this OTP not arising from a public auction but as private treaty, then all references to this Conditions of Sale shall adopt meaning equivalent to a Deed of Sale considering the following expressions:

- 1.2.1 **PUBLIC AUCTION** shall refer to **PRIVATE TREATY AGREEMENT**.
- 1.2.2 **AUCTIONEER** shall refer to **AGENT**.
- 1.2.3 **AUCTIONEER’S** commission shall refer to **AGENT’S** commission.
- 1.2.4 **Bid** shall refer to **purchase price**; and all the other clauses shall be applicable as incorporated in the OTP.

2. INSPECTION AND SUSPENSIVE CONDITIONS

- 2.1. This transaction is subject to the condition that the **PURCHASER** or the **AGENT** on the **PURCHASER’S** behalf securing the loan or money equivalent to the purchase price within **30 (thirty) calendar** days of signing of the OTP by both the **PURCHASER** and the **SELLER**. The **PURCHASER** undertakes timeously to take all steps and sign all documents and do all such things that may be necessary to procure the loan where there is a need for the loan. The **PURCHASER** warrants that they have sufficient income to purchase the property or meet all the requirements to secure a loan for the purchase of the property and are aware of factors which might prevent them from securing the loan.
- 2.2. The suspensive condition set out in clause 2.1 shall be deemed to have been fulfilled on the date upon which the Lender issues a written loan quotation or documentation approving or offering the loan sought by the **PURCHASER** or upon the date which the **PURCHASER** pays in the account of the Conveyancer’s the purchase price in cash which shall be before expiry of the period outlined in clause 2.1 above.
- 2.3. The suspensive condition has been inserted for the benefit of both the **PURCHASER** and the

SELLER in that the **PURCHASER** may waive the suspensive condition by his actions or by giving notice in writing to the **SELLER** at any time prior to date of waiver or fulfilment and the **PURCHASER** may accept another offer from a prospective buyer once the suspensive condition is waived.

- 2.4. The property is sold subject to all conditions, servitudes, current or forthcoming land claims, legal or illegal occupants and/or expropriation applicable to the property and/or any other conditions evidenced in the existing Title Deed of the specific property.
- 2.5. The **AUCTIONEER** and the **SELLER** warrants that as at the date of acceptance of this offer, there are no latent defects in the property known to the **SELLER** and that save for this, the property is sold **VOETSTOETS**.
- 2.6. The **PURCHASER** agrees to buy the property **VOETSTOETS**.

3 PURCHASE PRICE AND PAYMENT

- 3.1 The purchase price of the property is the sum of R_____ (_____)
Excluding VAT (if applicable) and is payable by the **PURCHASER** as follows: -
- 3.2 **10% (ten percent)** deposit calculated on the purchase price payable to the **AUCTIONEER**, by way of electronic transfer bank upon signature of the OTP by the **PURCHASER** or upon demand by the **AUCTIONEER**. The **SELLER** and the **PURCHASER** authorize the **AUCTIONEER**, upon acceptance of the OTP by the **SELLER**, to pay the remainder of the deposit to the **CONVEYANCER** for the benefit of the **SELLER** after deduction of all costs and fees. The entire deposit will be held in trust account for the benefit of the seller.
- 3.3 The balance of the purchase price shall be paid or secured by means of a guarantee acceptable to the **CONVEYANCER**, within **90 (ninety) calendar days** from date of the OTP's acceptance and confirmation by the **SELLER**.
- 3.4 The **SELLER** and the **PURCHASER** hereby irrevocably instruct and authorize the **CONVEYANCER** to invest the purchase price and any amounts paid by the **PURCHASER** in an interest-bearing account until registration and transfer of the property.
- 3.5 Interest from the funds invested by the **CONVEYANCER** shall be for the credit and benefit of the **SELLER**.
- 3.6 The **PURCHASER** shall be responsible for payment of Bank costs.

4. AUCTIONEER'S COMMISSION

- 4.1 The **PURCHASER** shall be liable for the payment of the auctioneer's commission at the rate of **5,75% (five-point seven five percent)** of the purchase price (inclusive of VAT), it being recorded that auctioneers' commission is over and above the purchase price.
- 4.2 The **AUCTIONEER's** commission shall be deemed to have been earned upon the conclusion of the auction and immediately payable by the **PURCHASER** into the **AUCTIONEER's** nominated Trust Account upon the **PURCHASER** signing the OTP, it being recorded that the auctioneer's commission shall be payable simultaneously with the deposit contemplated in clause 3.2 herein and shall be in addition to said deposit.
- 4.3 The **AUCTIONEER** shall be entitled to and the **PURCHASER** shall remain responsible for the payment of the **AUCTIONEER's** commission and/or damages should the transaction not continue or be cancelled because of any failure by the **PURCHASER** to fulfil his obligations in terms of this OTP and the Rules of Auction.

5 VALUE ADDED TAX/TRANSFER DUTIES AND OTHER COSTS

- 5.1 If **SARS** regards the sale of the property as a vatable transaction, then the **PURCHASER** shall pay **VAT** to the **SELLER's CONVEYANCER** upon demand, it being specifically recorded that the purchase price excludes **VAT**.
- 5.2 If the sale of the property is not a vatable transaction, but **TRANSFER DUTY** is payable, the **PURCHASER** shall pay **TRANSFER DUTY** to the **SELLER's CONVEYANCER** upon demand, it being specifically recorded that the purchase price excludes **TRANSFER DUTY**.
- 5.3 This transaction is subject to **CONVEYANCING FEES** as agreed upon and stipulated by the **CONVEYANCER**.
- 5.4 Therefore, the **PURCHASER** shall be liable for the payment of the **CONVEYANCING FEES** upon demand by the **CONVEYANCER**, it being recorded that the **CONVEYANCING FEES** are not included in the purchase price.

6 SIGNING OF THE OTP

- 6.1 The **PURCHASER** shall sign this OTP when called upon to do so by the **AUCTIONEER**, it being recorded that the **PURCHASER** undertakes to sign the OTP immediately after the conclusion of the auction.
- 6.2 Should the **PURCHASER** be married in community of property or act on behalf of a third party, he guarantees that the necessary letter of authority or power of attorney to legally bind the joint

estate and/or the third party has been obtained and that the transaction shall be concluded in all its facets. The said letter of authority or power of attorney must be submitted upon request.

- 6.3 To the extent that it is necessary, the **PURCHASER** hereby warrants that all written consents as required by the Matrimonial Property Act, No. 88 of 1984 in respect of this OTP or any matters arising therefrom or in any terms hereof have been duly given as required.
- 6.4 Should the **PURCHASER** be a company, close corporation or trust, the person signing this OTP on behalf of such **PURCHASER**, by his signature hereto interposes and binds himself as surety for and co-principal debtor with the **PURCHASER** for the due and proper discharge of all its obligations arising from this OTP.
- 6.5 The **PURCHASER** shall be obliged to submit a duly deposited resolution authorizing him to discharge the obligations arising from the signing of this OTP.
- 6.6 In the event of the **PURCHASER** signing this OTP in his capacity as trustee or agent for a company or close corporation to be formed, and:
- 6.6.1 the **PURCHASER** fails within **90 (ninety) calendar days** from date of acceptance of this offer to register a company or close corporation having as one of its objects the ratification and adoption of this OTP; or
- 6.6.2 such company or close corporation fails to adopt or ratify this OTP within **14 (fourteen) calendar days** after the date of its incorporation, then and in such event the **PURCHASER** shall be deemed as from the date of acceptance hereof to have entered into this OTP in his personal capacity, and to have acquired all the rights and obligations of the **PURCHASER** under this OTP.
- 6.7. In the event of such company or close corporation being registered and duly adopting or ratifying this OTP, then the said **PURCHASER**, by his signature hereto, shall be deemed to have bound himself to the **SELLER** as surety and co-principal debtor *in solidum* with such company or close Corporation for the due performance by it as the **PURCHASER** of all the terms, conditions and obligations arising from this OTP.
- 6.8 If the person signing this OTP acts without the letter of authority, power of attorney or resolution contemplated in paragraphs 6.2 and 6.3 herein, and the said remedies are not available against the **PURCHASER**, then the person signing this OTP will be liable for delicta damages.

7 ACCEPTANCE AND CONFIRMATION

- 7.1 The property is sold to the highest bidder (herein referred to as the **PURCHASER**) but subject to confirmation by the **SELLER**, which confirmation may be given or refused by the **SELLER**. This document constitutes an Offer to Purchase (OTP) by the **PURCHASER**, and the **PURCHASER** is unconditionally and irrevocably bound to this OTP for a period of **30 (thirty) calendar days (CONFIRMATION PERIOD)**; the calculation of which excludes the date of signature hereof by

the **PURCHASER**. The OTP is open for acceptance by the **SELLER** at any time during this period. The onus will rest upon the **PURCHASER** to establish whether his bid was confirmed or not.

- 7.2 The **SELLER** reserves the right to extend the confirmation period.
- 7.3 If this OTP is not accepted, it shall be regarded as null and void and be of no force and effect, and all payments made by the **PURCHASER**, including commission, will be refunded without delay.
- 7.4 The **SELLER** may decide to entertain other bids after the expiry of acceptance and confirmation period should the **PURCHASER** not be in a position to secure a loan or pay the full amount of the purchase price before the due date. The **AUCTIONEER** may continue to market the property during the **CONFIRMATION PERIOD**. The **AUCTIONEER** may receive and consider higher offers from subsequent bidders. Such higher offers shall be made to the **AUCTIONEER** on the same terms and conditions applicable to the auction. Subsequent bidders will have only one opportunity to submit higher offers.
- 7.5 In the event of this transaction requiring the consent of the Master of the High Court in terms of any law or the consent of the Local Authority/Municipality to pass transfer, then this OTP is subject to such consent being obtained in writing in the normal course of the conveyancing process.

8 CONVEYANCING AND TRANSFER

- 8.1 The **SELLER** shall appoint the **CONVEYANCER** to effect registration and transfer of the property, unless the **SELLER** authorizes the **AUCTIONEER** to do so.
- 8.2 Registration and transfer of the property shall be processed by the **CONVEYANCER** once the **PURCHASER** has paid or secured the purchase price in full and fulfilled the statutory requirement to pay VAT or Transfer Duty and other costs upon demand (whichever is applicable), it being specifically recorded that the purchase price excludes VAT or Transfer Duty and other liabilities.

9 RATES, LEVIES AND TAXES

- 9.1 The **PURCHASER** shall, from the date of possession and/or occupation (whichever occurs first), be liable for the payment of all duties, rates, levies, taxes and any other municipal charges.
- 9.2 The **SELLER** shall be responsible for the payment of all arrears including municipal rates, taxes, municipal services accounts and levies (if applicable) in respect of the property before the date of possession and or occupation of the property by the purchaser.

10 CERTIFICATES OF COMPLIANCE

- 10.1 The **SELLER** shall at his own cost, obtain an electrical certificate of compliance (COC) issued by a qualified electrician and any other necessary certificates whatsoever nature that may be required.
- 10.2 The COC issued not more than 2 (two) years prior to the date of this OTP shall be valid and effective for the purposes of this clause 10.

11 OCCUPATION, TENANCIES, ALTERATIONS AND VACATION

- 11.1 The **PROPERTY** is sold subject to any existing tenancies and vacant possession of the **PROPERTY** is not given or guaranteed.
- 11.2 Possession and/or occupation prior to registration and transfer of the properties will be given by the **SELLER** and taken by the **PURCHASER** subject to any existing lease agreement or a new lease agreement being entered into between the **PURCHASER** and the **SELLER** where the property is vacant or is illegally occupied.
- 11.3 Notwithstanding the provisions of clause 11.2 herein, vacant occupation is **NOT GUARANTEED**.
- 11.4 The **PURCHASER** shall be liable for the payment of interest calculated at **11% (eleven percent)** per annum on the purchase price from the date of possession and/or occupation (whichever occurs first) to the date of registration and transfer (both days inclusive), which interest shall be deemed as occupational rent.
- 11.5 The **PURCHASER** shall be obliged to insure the property comprehensively as from date of occupation of the property.
- 11.6 Prior to the registration of transfer, the **PURCHASER** will not be entitled to sublet or make any improvements and/or alterations to or on the property without the written consent of the **SELLER**.
- 11.7 Should the **PURCHASER** make any repairs, alterations or improvements to the property; then, unless otherwise agreed to beforehand, in writing, between the parties, the **PURCHASER** shall not be entitled to any claim of any nature which he may have for any refund or compensation in respect thereof, whether on cancellation or at any other time.
- 11.8 The **PURCHASER** shall be obliged to vacate the property upon cancellation of this OTP for any reason whatsoever, it being agreed that no tenancy shall be created by any occupation prior to transfer.
- 11.9 Upon cancellation, the **PURCHASER** shall be liable for any damages suffered by the **SELLER** because of any alterations effected by the **PURCHASER**, and not authorized by the **SELLER**.

12 NON-COMPLIANCE AND/OR BREACH

- 12.1 In the event of default, the party responsible for non-compliance of this OTP shall be responsible for payment of the total auctioneers' commission.
- 12.2 Should the **PURCHASER** default by failing or refusing to sign this OTP, pay the deposit or to settle the purchase price upon demand by the **AUCTIONEER** as outlined in this OTP, or by violating any condition of this OTP, or neglecting to comply to a written notice by fax or by hand or by prepaid registered post from the **SELLER** or **AUCTIONEER** or the **CONVEYANCER**, and fail to rectify such breach within **7 (seven)** days of such notice, the **SELLER** will be entitled to, without prejudice to any other rights:.
- 12.1.1 hold the **PURCHASER** bound to this OTP, and demand specific performance of the OTP with or without damages;
- 12.1.2 re-sell the property by virtue of a new auction or private treaty, at the **PURCHASER's** risk, who will be held responsible for any shortages and/or costs involved therein. Any increase in price will be to the benefit of the **SELLER**; or
- 12.2.3 cancel the OTP, take possession of the property, evict all occupants from the property and claim damages which will include any damages or costs involved in the resale of the property, either by public auction or private treaty.
- 12.3 In the event of cancellation of this OTP due to default by the **PURCHASER**, the **SELLER** and **AUCTIONEER** shall remedy the **PURCHASER's** default in terms of regulation 21 (2) (l) of the CPA which provides that: "Should the purchaser default, a forfeit fee not exceeding **10% (ten percent)** of the full purchase price or the total costs of advertising and conducting the auction, including any additional costs that may have been reasonably incurred in accordance with regulation 21(2)(l) of the CPA, whichever is the lesser. In such an event of default by the purchaser, the refundable registration deposit will be retained and used to set-off the forfeit fee, or part thereof if the fee is lesser. Should the retained refundable registration deposit be greater, the difference will be refunded to the purchaser".
- 12.4 The **PURCHASER** shall be liable for all legal costs incurred by the **SELLER** arising out of a breach of this OTP by the **PURCHASER**, on the attorney and own client scale of costs including collection fees.

13 JURISDICTION AND ADDRESS FOR DELIVERY OF DOCUMENTS

- 13.1 The parties hereto agree to the jurisdiction of the competent Court within the Republic of South Africa in respect of any lawsuit rising from this OTP, or at the discretion of the **SELLER**, to the jurisdiction of the North High Court Pretoria, Gauteng, South Africa.
- 13.2 The parties choose the addresses as indicated herein as their *domicilium citandi et executandi*

(addresses where they will receive all letters and processes) for the purpose of delivery of all notices and documents.

14. FINANCIAL INTELLIGENCE CENTRE ACT ("FICA")

- 14.1 The **CONVEYANCER** is designated as an "accountable institution" in terms of FICA.
- 14.2 Both the **SELLER** and the **PURCHASER** agree to comply with all the FICA requirements of the **AUCTIONEER** and the **CONVEYANCER** and to supply the **AUCTIONEER** and the **CONVEYANCER** with all their respective FICA requirements within **3 (three) days** after demand therefore is made. An extract of FICA requirements is annexed herewith marked "**Annexure B**".
- 14.3 The **SELLER** and the **PURCHASER** acknowledge that FICA prohibits the **CONVEYANCER** to invest and administer any deposits or any other monies paid in terms of this OTP, unless the **SELLER** and the **PURCHASER** have provided the documentation and information as required by FICA legislation.
- 14.4 It is hereby agreed by both the **SELLER** and the **PURCHASER** that neither the **AUCTIONEER** nor the **CONVEYANCER** shall be liable for any loss or damage suffered by either of them, as a result of either the **SELLER** or the **PURCHASER** failing to comply with the provisions of this clause 15.

15. WHOLE AGREEMENT

- 15.1 This OTP, together with **Annexures "A" and "B"** annexed herewith constitutes the whole agreement between the parties relating to the subject matter hereof.
- 15.2 No amendments or consensual cancellation of this OTP or any provision or term thereof or of any agreement or other document issued or executed pursuant to or in terms of this OTP and no settlement of any disputes arising under this OTP and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this OTP or of any agreement or other document issued pursuant to or in terms of this OTP shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be construed as relating strictly to the matter in respect whereof it was made or given.
- 15.3 No extension of time or waiver or relaxation of any of the provisions or terms of this OTP or any agreement or other document issued or executed pursuant to or in terms of this OTP, shall operate as an estoppel against the **SELLER** in respect of his rights under this OTP, nor shall it operate so as to preclude the **SELLER** thereafter from exercising his rights strictly in accordance with this OTP.

16. AMENDMENTS AND ADDITIONS

- 16.1 The terms and conditions of this OTP shall constitute the sole agreement between the parties concerned and no variation or amendment thereto shall be binding unless agreed upon in writing

and signed by the **SELLER** and **PURCHASER**.

17. WAIVER AND CONCESSIONS

- 17.1 Any waiver or concession made or allowed by the **SELLER** shall not constitute a waiver of his rights in terms of this agreement; and the **SELLER** shall at all times be entitled to enforce strict compliance hereof.

18. SPECIAL CONDITIONS

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19. SIGNATURES:

THUS, DONE AND SIGNED ON THE DATES AND AT THE PLACES AS STATED

BELOW: PURCHASER:

NAME/ENTITY:

.....

IDENTITY NO/ ENTITY REGISTRATION NO:

.....

.....

PHYSICAL ADDRESS:

.....

CONTACT DETAILS: (W)

(C)

(H)

(FAX)

(E-MAIL)

.....
AS WITNESS

.....
PURCHASER

.....
DATE

.....
PLACE

MARITAL STATUS OF PURCHASER IF NATURAL PERSON:

Select one of the following:

Single

Divorced

Married in Community of Property

Married with Ante Nuptial Contract / Out of Community

Traditional Marriage

Foreign

Other

IF MARRIED IN COMMUNITY OF PROPERTY, THEN:

FULL NAME OF SPOUSE:

.....
.....

IDENTITY NO:

.....
AS WITNESS

.....
PURCHASER'S SPOUSE

.....
DATE

.....
PLACE

SURETYSHIP:

I/We, the undersigned, do hereby bind myself/ourselves jointly and severally as surety/ties in solidum and co-principal debtor/s with the **PURCHASER** and the bidder who have signed this OTP, for the due performance by the **PURCHASER** and such bidder, for all his obligations in terms of this OTP, and I/We do hereby specifically waive all benefits of the legal exceptions known as beneficia ordinis seu excussionis et divisionis, in other words the benefit of division and excussion, the meaning and effect of which I/We are fully acquainted with.

My/Our liability in the terms hereof shall not be affected, prejudiced or vitiated by any concession or accommodation which may be made by the **SELLER** or his successor in title to the said **PURCHASER** or bidder, and I/We are not entitled to receive any prior notice in this regard.

Signed at on this day of

Surety Name

Address:

Signature:

Witness Signature:

Auctioneer Signature:

SELLER(S):

NAME/ ENTITY:

PHYSICAL ADDRESS:

.....

CONTACT DETAILS: (W)

(E-MAIL).....

.....
AS WITNESS

.....
ACCEPTANCE AND CONFIRMATION(SELLER)

Signed at **on this** **day of**

ANNEXURE A: RULES OF AUCTION

ANNEXURE 'B'
FINANCIAL INTELLIGENCE CENTRE ACT REQUIREMENTS(FICA)

NATURAL PERSON (SA CITIZEN /RESIDENT)	FOREIGN NATIONAL	SA CLOSE CORPORATION	SA COMPANY	FOREIGN COMPANY	PARTNERSHIP	TRUST	LEGAL INCAPACITY/3RD PART REPRESENTING ANOTHER INDIVIDUAL
Certified ID Document	Certified Passport	CK1 - Founding statement & certificate of incorporation	CM1 – Certificate of Incorporation	Official document from foreign regulator witnessing incorporation, bearing the name, number & address	Partnership agreement	Trust deed or founding document (i.e. a will)	Certified ID Document
Certified Proof of residence (not older than 3 months)		CK2 – Amended founding statement (if applicable)	CM22 – Notice of registered office and postal address	Certified Proof of trading name and business address of SA & foreign office (utility bill/s)	Certified ID Document of authorised representative	Letters of authority from Master (SA Trust) or foreign regulator (Foreign Trusts) to trustees	Certified Proof of Residence (not older than 3 months)
Certified Marriage certificate (if married in community of property)/traditional marriage		Certified proof of trading name & business address (utility bill)	Certified Proof of trading name & business address (utility bill)	Company resolution giving individual authority to act and sign on behalf of the company	Proof of authority to act on behalf of partnership	Certified ID Document respectively i.r.o an individual founder of the trust, each individual trustee, each individual beneficiary, all authorised representatives	Proof of authority to act: • Power of Attorney; • Mandate Resolution; • Court Order
		Member's resolution giving individual authority to act and sign on behalf of the CC	Company resolution giving individual authority to act and sign on behalf of the company	Certified ID Document / passport of person authorised to act & sign on behalf of company	Applicable documents i.r.o institutional partners or an institution exercising executive control	Certified death certificate or certificate of deregistration where founder died or ceased to exist	Certified Marriage certificate (if married in community of property) / traditional marriage
		Certified ID Document of person authorised to act and sign on behalf of company & each member	Certified ID Document of person authorised to act and sign on behalf of the company	Certified ID document / passport of shareholder holding more than 25% voting right		Applicable documents i.r.o any institutional beneficiaries, any institutional trustees, or institutional founder of the trust	
			Certified ID Document of shareholder holding more than 25% voting right				

