

Opinion of the Management Board regarding the application for appointment of an auditor for special matters submitted by Basolma Holding Limited with its registered office in Nicosia and AIS Investment 2 sp. z o.o. with a registered office in Warszawa.

Legal basis: art. 84 pass. 5 of the Act on the offer

Opinion of the Management Board of Bioton S.A. (hereinafter: "Company", "Bioton") regarding the shareholders' application for the appointment of the auditor for special matters

Acting on the basis of Art. 84 item 5) of the Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and Public Companies of 29 July 2005 (i.e. Journal of Laws of 2018 item 512 as amended, hereinafter: Act on the offer) The Management Board of the Company presents its position on the request to convene an Extraordinary General Meeting of the Company and placing on the agenda a point regarding adoption of a resolution regarding the appointment of an auditor for special matters ("**Application**") submitted by Basolma Holding Limited with its registered office in Nicosia and AIS Investment 2 sp. z o.o. with its registered office in Warszawa ("**Applicants**").

After analyzing the content of the Application, in particular the content of the resolution proposed by the Applicants ("**Draft Resolution**"), the Management Board of the Company is forced to issue a **negative opinion** on the application.

Justification

I. ECONOMIC JUSTIFICATION OF THE TRANSACTION

The decision to start the SciGen sales process was preceded by a broad survey by Bioton of the relationship with Scigen, terms of cooperation and business prospects for SciGen. Below, the Management Board presents the results of these activities.

The Bioton and SciGen business profiles are fundamentally different. Bioton is a biotechnology company whose business is the production of medicines and medical devices, including in particular recombinant human insulin and other products used to treat diabetes, while SciGen is a company dealing in the distribution of generic medicines based on distribution agreements from third parties.

SciGen does not have research and development facilities, including production plants or laboratories, and focuses its development on license agreements regarding the distribution of products from other companies. Importantly, SciGen distributes the so-called generic drugs, or drugs that are substitutes for other medicines (original medicines) produced after the patent protection has expired on the original medicine. The competition on the generic market is very large, and at any moment a new entity offering another identical derived medicine may appear, which inevitably leads to margin erosion. Conducting distribution activities is also associated with risk exposure related to agreements with suppliers (producers) of medicines - in the case of generic drugs, the introduction of which on a given market does not require significant expenditures, distribution agreements are concluded for relatively short periods, i.e. 3 to 5 years (in contrast to distribution agreements on original medicines, which in turn are characterized by long periods for which they are concluded, i.e. over 10 years).

It should also be pointed out that the serious risk associated with further investment in SciGen is associated with a very low diversification of the product portfolio distributed by SciGen. The sales of generic drugs came in 2017, 85% of SciGen's revenues. At the same time, 72% of sales and 82% of the company's gross margin generated sales of only three products. The appearance of any product competitive with any of the major medicines in the SciGen portfolio with such a low level of sales diversification would mean a sharp drop in SciGen's revenues and profits.

The structure of SciGen's activity described above proves that this company needed urgent investments, in particular in a commercial team (employment, funds for marketing support, funds for obtaining new products), which would involve the necessity of (another) co-financing of this company. At the same time, the related expenses would not bring any visible benefit to the Company itself - their sole aim would be to maintain any profitability of SciGen. However, it could not be expected that SciGen co-financing would also improve the results of Bioton. Quite the reverse - by investing in SciGen, the Company would significantly distance the possibility of investing in Bioton itself, which in the long run could pose a serious risk to its operation.

Bioton was not a significant supplier for SciGen nor SciGen was an important distributor for Bioton. The sale of insulin produced by Bioton generated only 15% of SciGen's turnover. On the other hand, the share of insulin sold by SciGen in the total insulin sale by Bioton was only 12%, with the insulin sold by SciGen generating only 2% of the operating profit attributed to the sale of insulin produced by Bioton. This means that SciGen was not an important economic partner for Bioton, that despite the risks described above, it was necessary and purposeful to maintain SciGen in the structure of the Bioton capital group. The only important element of SciGen from the point of view of Bioton's business was an insulin license, covering a total of 41 countries, on the basis of which Bioton supplied products to certain countries via SciGen (e.g. Thailand or Philippines) and directly to China and Vietnam, and planned to commercialize other markets. Under the terms of the transaction, Bioton took over this license in its entirety.

Also arguments related to the situation of Bioton argued for the exit from the investment in SciGen. The company conducts biotechnology, and therefore very advanced and thus expensive. The biotechnology industry is constantly changing due to the progress of science, which requires constant adaptation of entities operating in this industry to current standards and requirements. The Company also faces a number of challenges related to both the search for new markets and the need to enter the market of the most advanced diabetic products. The most important projects that the Company is currently working on and which require multi-million investments are: (i) registration of recombinant human insulin in Brazil, (ii) modification of the production technology of recombinant human insulin in accordance with the provisions that will apply in the European Union from January 2021 and registration in the central procedure of the European Medicines Agency (iii) implementation and registration of short and long-acting analogues of human insulin (iv) supplementation of the registration of human insulin in international markets.

An important project of the Company is the commercialization of the so-called analogues of human insulin. Bioton never introduced analogues of insulin to the market despite the fact that globally the analogue market is nine times larger than that of human insulins with a strong upward trend. The company is currently carrying out development activities aimed at the rapid implementation of insulin analogues in the full industrial process. According to the Company's expectations, the commercialization of insulin analogues will be possible at the earliest in four years. Entering the analogue market will, however, entail significant investments in preclinical and clinical research, and then preparation of registration documentation and registration.

As is clear from the above, in the next few years the Company needs significant amounts for development investments in areas important for itself. In this situation, it is not surprising that the Company cannot afford to finance additional SciGen activities, which also needs major investments, and whose future - due to the specificity of the market on which it operates - is uncertain. In the long-term perspective, maintaining investments in SciGen would not only not benefit the Company, but could even prevent it from developing its core business.

For these reasons, the Transaction was in the interest of the Company.

II. VALUE OF THE TRANSACTION

Applicants seem to question the valuation of one SciGen share established under the Transaction. At the outset, it should be noted that SciGen was listed on the Australian Stock Exchange (ASX) during the Transaction period, so its market valuation resulted from stock exchange quotations. The price under the Transaction had to be determined in compliance with the requirements set by the exchange and legal regulations in force in Australia and Singapore.

The valuation of one share for the needs of the Transaction amounted to USD 0.0507. Meanwhile, after the announcement of the Transaction, when the price of SciGen shares grew (which is natural in the case of announcement about the intention to purchase a significant block of shares) on May 16, 2018, it amounted to USD 0.032. For comparison, on May 3, 2018, the price of one share in a stock

exchange transaction was USD 0.023 and on May 7, 2018 USD 0.024¹. At first glance, it is clear that the price for one SciGen share proposed by Yifan was market-profitable for Bioton (apart from the fact that other potential buyers were not interested in the transaction or have submitted far less favourable offers). For these reasons, the Management Board of the Company believes that the audit of this issue by the Auditor is pointless. The valuation resulted from publicly available market data. What is more, it was set at a definitely higher level than that resulting from stock exchange quotations.

Notwithstanding the foregoing, the issue of the valuation of SciGen shares was subject to an independent financial counsel's review **in connection with the requirements of the law of Singapore**. As a result of such research, Crowe Horwarth Capital Pte Ltd, an entity authorized to act as a financial counsel, among others in Singapore, issued an opinion addressed to independent directors of SciGen, in which they indicated that the terms of the Transaction are fair and reasonable. This review is available on the SciGen website. Moreover, the transaction was approved by the banks financing Bioton's activities, which independently assessed Bioton's assets and possible consequences of exiting the investment in Bioton.

Applicants also demand an assessment of the merits of the redemption of debts to SciGen. However, they do not refer to the fact that the condition for the Transaction from Yifan was the redemption of the unsettled portion of the loan granted to SciGen. Without this element, Yifan would not have made the Transaction, which is reflected in the Transaction documentation. They also do not take into account the fact that SciGen did not have the means to repay debt at any foreseeable time. Assuming that SciGen's net profit would remain consistently at the level achieved in 2017, SciGen would need around 42 years to repay debt to Bioton. In turn, without redemption, the value of SciGen would be negative, therefore finding any investor would be practically impossible. For this reason, the Company made a write-off revaluating the value of its involvement in SciGen. This allowance was included in the Company's financial statements for 2017, approved by the General Meeting with votes, *inter alia*, of the Applicants and examined by an independent chartered auditor.

It should also be noted, that from the point of view of Bioton's financial flows, the transaction in which the Company has now received PLN 100 million in cash is much more advantageous than the attempt to accumulate such amount by way of dividends, which the net profit of 2017 would take more than 15 years, assuming that no investment costs would be incurred throughout this time and the profit would be maintained at the same level throughout this period.

Valuation of SciGen

In the second half of 2017, in the context of the above-described potential difficulties of SciGen and Bioton's investment needs, the Management Board of the Company decided to conduct an analysis regarding the strategy of further actions of the Company towards SciGen in the context of increasing the efficiency and profitability of this investment, in particular the purposefulness

¹ Data after: <https://www.marketindex.com.au/asx/sie>.

of further investing in SciGen or withdraw from the company. In October 2017, in order to obtain the opinion of an external business advisor regarding the SciGen valuation and defining possible strategies for further action towards SciGen, the Company's Management Board approached an international organization with an established position on the market in the business consulting and related services, i.e. a member of the KPMG group - KPMG Advisory sp. z o.o. sp.k. ("**KPMG**"), with the order to prepare relevant valuations and analysis. In this way, the Company's Management Board sought to obtain a professional analysis which on the one hand would provide an objective view of the situation and possible solutions, and on the other hand would also be reliable for the Company's stakeholders. Before receiving the analysis, the Management Board made no binding decisions and remained open to various solutions to the SciGen issue. KPMG prepared an analysis of strategic options related to the involvement of Bioton in SciGen and analyzed the expected benefits and costs of various strategies (the so-called strategic options), including the transfer of important licenses owned by SciGen to Bioton for human insulin, followed by the sale of SciGen shares and redeeming the unpaid part of the loan.

According to KPMG's opinion, supported by a series of calculations, the scenario described above was the most favourable. At the same time, KPMG also prepared a valuation of SciGen shares (after reorganization) and valuation of assets in the form of licenses that were to be separated from SciGen and transferred to Bioton. Valuations conducted by KPMG as at September 30, 2017 were the basis for the valuation as part of the transaction. We emphasize that the KPMG valuation took into account the state after restructuring, including the redemption of the remaining part of the debt.

Selection of advisers

The Management Board indicates that by choosing the advisers for the purposes of the Transaction planned, they were guided by the knowledge of the market, their current extensive experience, recommendations and experience of the advisers. The advisers are recognized entities on the transaction market with many years of experience. The financial adviser analyzed in detail the financial situation of Bioton and SciGen, and in their opinion, the price in the Transaction was adequate to the value of SciGen. Comet Advisory is a boutique investment advisor, which allows it to operate more efficiently than larger entities, while generating lower costs for Bioton. At the same time, the quality of services does not give way to services of much larger competitors, especially since the Comet advisers with whom the Company cooperated have many years of corporate experience and the Company has already had the opportunity to cooperate with Comet in the past while maintaining good experience.

Therefore, the transaction was justified

III. DISCLOSURE OF CONFIDENTIAL DATA

Both the Transaction and the Distribution Agreement contain provisions regarding the preservation of their content in confidentiality. It is possible to disclose their provisions only to the extent necessary to fulfill statutory obligations, e.g. related to current reporting or preparation of financial statements.

The provisions on confidentiality are primarily intended to protect the interest of the Company and its business secrets. In this context, providing documentation to the Auditor clearly poses a significant risk of disclosure of information constituting company secret, especially since the Company does not have the actual power to enforce the conclusion of a confidentiality agreement on the Auditor. Disclosure of the requested information and documents is in clear contradiction with the interest of the Company.

Distribution Agreement

The Distribution Agreement is not related to the Transaction. On the basis of the Distribution Agreement, the Company obtained a strategic trading partner that will enable the sale of the Company's products on markets that were previously unavailable or on which Bioton was present only to a minimum extent. In addition, under the Distribution Agreement, the distributor has undertaken to incur administrative costs related to the introduction of Bioton products on the market. The costs that the Company would most probably not be able to incur due to its financial situation.

It should also be stressed that the amount of USD 6,800,000 indicated by the Applicants is not the entirety of the distributor's obligations under the Distribution Agreement, but only the initial payment for the amount specified in detail in the agreement. The Distributor will bear the costs of current trade exchange with the Company, in particular he will be obliged to pay for the Company's products. Moreover, the Distribution Agreement does not apply to the currently largest market of Bioton, to Poland.

IV. ALLEGED CONNECTIONS

Applicants once again request information regarding personal connections between the Company and a number of persons indicated in the draft resolution on the appointment of the Auditor. In the opinion of the Management Board, this issue was thoroughly explained already at the stage of conducting the Transaction and presented in the course of the ordinary general meeting of June 11, 2018. Prior to the Transaction, the Company, in accordance with the legal requirements, commissioned the analysis of the personal and capital connections to a reputable law firm specializing in issues related to capital transactions. Appropriate analysis was carried out based on the content of the Statute and International Financial Reporting Standard No. 24. In the attachment, the Management Board presents the definition of a related party within the meaning of IFRS 24. From the content of the opinion it results, *inter alia*, that the investor, i.e. Yifan International Pharmaceutical Co., Ltd. ("**Yifan**"), did not meet the conditions to be recognized as a related party of the Company. Notwithstanding the foregoing, the Management Board indicates that the status of a related party does not prejudice of a given transaction being unfair and unreasonable, or prohibition of a transaction. We emphasize that the Yifan offer was the most advantageous one received by the Company. This offer has been analyzed and accepted by both the Management Board and the Supervisory Board. In the realities of business, it was the best solution to the issue of the Company's exit from investment in SciGen. In the opinion of the Management Board, the content of the resolution in § 2 pass. 1 letter d. has the character of insinuation and is intended

to raise false doubts about the alleged preference of Yifan by the Company and its authorities. Such circumstances did not take place. What is worth emphasizing, the Applicants have not provided any evidence or even justification for their claims.

V. CASE IN COURT/ SIGNIFICANT COSTS

The Management Board points out that the Application was submitted in parallel with the Applicants taking other actions challenging the Company's sale transaction of shares held by the Company in SciGen Ltd. with its registered office in Singapore for the benefit of Yifan International Pharmaceutical Co., Ltd. and its individual components.

One of the Applicants on 11 July 2018 has already filed a lawsuit for repealing the resolution No. 2 of the Ordinary General Meeting of Bioton Spółka Akcyjna of June 11, 2018 on the consent to the sale transaction of SciGen Ltd. with its registered seat in Singapore and defining the basic conditions for the transaction (copy of the statement the Company received on August 6, 2018). The Applicant claims in the content of the statement, *inter alia*, that the resolution is against good morals due to the alleged connections between the members of the Company's Supervisory Board and the buyer of the shares at SciGen Ltd. with its registered office in Singapore sold. The company responded to the lawsuit by questioning the plaintiff's indications. The Regional Court set the date of the hearing on December 3, 2018.

It should be emphasized that in the course of the proceedings, the court will examine analogous circumstances to those to be audited by the Auditor. Considering the insinuating nature of the Applicants' allegations aimed at causing misperception about the irregularities in the Company rather than the actual need to investigate the conduct of the Company's affairs, the significant cost of conducting the audit should also be indicated as a negative aspect of the appointment of the auditor. Appointing the auditor for special matters will result in the necessity of incurring significant costs by the Company, which will include, among others, the remuneration of the auditor and reimbursement of the audit costs incurred by him and the costs that the Company will have to incur in connection with the necessity to prepare relevant documentation and make it available to the auditor. According to preliminary information obtained by the Company, the cost of only the remuneration of the auditor would be at least 600,000 PLN without expenses for commuting and subsistence expenses of the team engaged in the execution of the order, which may be settled according to the actual costs incurred, which further may considerably influence the height of remuneration. The Management Board points out that in the light of the current regulation of art. 84 of the Act on Offerings The Company is not entitled to a claim for reimbursement of the costs of the conducted audit in the event of any fraud or irregularity being detected by the auditor during the audit.

Thus, the Court will examine the Transaction and appoint an expert, which emphasizes that the appointment of an auditor for special matters will constitute the serious mismanagement, because

de facto it will result in a double cost for the Company for the same assessment, as involved lawyers and therefore an unnecessary waste of time instead of running a business.

VI. CONCLUSIONS

The Management Board emphasizes that the sense of appointing an auditor exists only if it is a good-faith action that is actually aimed at obtaining reliable information about the conduct of specific Company matters.

Considering the simultaneous application by the Applicants of an action against the Company relating also to the Transaction, the Management Board has serious doubts as to the intentions of the Applicants. The Management Board is of the opinion, that the application submitted by the Applicants may be considered in the context of abuse of the right enjoyed by minority shareholders, given that in the justification of the Project, the Applicants have not substantiated any violations or infringements of law in the conduct of the Company's affairs.

In view of the above, the Management Board is compelled to give a negative opinion on the Application.

Robert Neymann – President of Management Board

Adam Polonek – Member of Management Board

Attachment 1- the definition of a Related Party within the meaning of IFRS 24.

A related party is a person or entity related to the entity that prepares the financial statements (in this standard referred to as a "reporting entity").

- a) A person or a close family member of that person is associated with a reporting entity if that person:
 - (i) controls or jointly controls the reporting entity;
 - (ii) has a significant impact on the reporting entity; or
 - (iii) is a member of the key management personnel of the reporting entity or its parent.
- b) An entity is associated with a reporting entity if one of the following conditions is met:
 - (i) The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and interdependent entity is related to other entities).
 - (ii) One entity is an associate or joint venture of another entity (or an associate or joint venture of a member of the group of which that other entity is a member)
 - (iii) Both entities are joint ventures of the same third entity.
 - (iv) One entity is a joint venture of the third entity and the other entity is an associate of the third entity).
 - (v) An entity is a post-employment benefit plan for employees of the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a scheme, the sponsoring employers are also associated with the reporting entity.
 - (vi) An entity is controlled or jointly controlled by the person referred to in point a).
 - (vii) The person identified in point (a) (i) has a significant influence on the entity or is a member of the key management personnel of the entity (or the parent of that entity).

In the definition of a related party, the concept of an associate includes subsidiaries of that affiliate, and the concept of joint venture includes subsidiaries of this joint venture. Thus, for example, a subsidiary of an associate and an investor with a significant influence on the associate are related.