

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 5640/2022

In the matter between:

TRUSTCO GROUP HOLDINGS LIMITED

Applicant

and

THE FINANCIAL SERVICES TRIBUNAL

First Respondent

and

JSE LIMITED

Second Respondent

REPLYING AFFIDAVIT

I, the undersigned:

RIAAN BRUYNS

do hereby state under oath that:

- 1 I was the deponent to the founding and supplementary affidavits in this application.
- 2 The contents of this affidavit fall within my personal knowledge, save where otherwise stated or the context indicates the contrary, and are to the best of my belief, both true and correct.
- 3 I have read the second respondent's answering affidavit deposed to by Mr Andries Francois Visser (**Visser**) to which I will respond below.



4 To the extent that I do not deal with any specific allegation in the answering affidavit, it should be deemed denied.

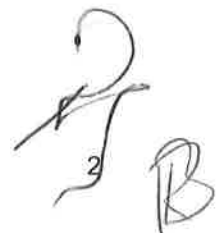
5 I will, for purposes hereof, endeavour to use the same defined terms as those used in my founding and supplementary affidavit.

AD PARAGAPHS 3 AND 4

6 I deny that this review is in fact an appeal as the JSE suggests.

7 The allegation is misplaced and have not been supported by any of the allegations of substance in the answering affidavit. The submission made by the JSE is in fact a stock standard one in review proceedings. A respondent in review proceedings, like the JSE in this case, almost always says that the review is dressed up as an appeal. What Trustco submits is that the Tribunal (the first respondent) did not sit as a review board. It should have been a specialised body - which it was not- and it should have been able to - which it was not - correct the mistakes made by the JSE. Due deference plays, and should not have played, any role in the Tribunal's enquiry. Yet it did. In fact, "due deference" was the be all and end all of the Tribunal's decision. That constituted a fundamental irregularity.

8 The JSE quotes selectively from portions of the founding affidavit while turning a blind eye to the remainder of the allegations which contain the heart of Trustco's contention. It is no secret that Trustco considers the Tribunal's decision to be incorrect, however that is not the basis of this application as the JSE suggests.

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- 9 Trustco's gripe is with the inappropriate manner in which the decision was reached. The fact that the procedure employed to reach the decision may have been a cause of the incorrectness that resulted is neither here nor there. The decision remains reviewable. That is precisely what Trustco seeks to do. The grounds of its review are expressly set out in paragraph 14 of the founding affidavit. Each of which are concerned with procedure, rather than result.
- 10 The JSE has no alternative but to categorise this application as "an appeal dresses up as a review" as it has no answer to the review grounds raised. To engage with the review would undermine the JSE's clear ultimate objective: the suspension of Trustco's listing. This is illustrated by the JSE having forced Trustco to defend its position and protect its rights in multiple judicial fora including having to bring an application for reconsideration of the JSE's decision to suspend its listing as well as urgent proceedings in this court for interim interdictory relief. All of these are a matter of public record and it is indeed perplexing to note the reckless statements by the JSE that Trustco is attempting to avoid accountability and market transparency.
- 11 The JSE stubbornly refuses, as a market infrastructure under the FM Act, to accept that Trustco has the right to fair and just administrative action under the Constitution; that it is entitled to exercise such right; and that, ultimately, a court might find that legitimate concerns have been raised in these novel circumstances which could well impact on the conduct of proceedings before the Tribunal in matters of a similar nature.

- 12 Although Trustco is of the firm view that both the JSE Decision and Tribunal Decision are incorrect, it has confined its application to specific review grounds as provided for under PAJA, alternatively, the principle of legality, which are supported by the facts detailed in the founding and supplementary affidavits.
- 13 Nowhere does Trustco attempt to rehash any of the arguments made in respect of the merits and Visser has failed to point with any credibility to any allegations in the answering affidavit that would support this allegation.
- 14 It is however curious to note that it is the JSE that, for the majority of its answering affidavit, deals with facts out of context and irrelevant to the review application. It then delves into the merits of the JSE and Tribunal Decisions. Again, it does so to disguise the fact that it has no answer to the grounds of review actually raised by Trustco.
- 15 The JSE is also incorrect in its allegation that "Trustco has not restated a single cent". One simply needs to refer to paragraph 16.3 of the answering affidavit which demonstrates the patent incorrectness of this statement. There, the JSE admits that it raised a third issue with Trustco which Trustco has addressed and rectified to the satisfaction of the JSE.
- 16 This fact gives rise to two irrefutable conclusions:
- 16.1 first, where there is a legitimate issue, Trustco has no difficulty engaging constructively with the JSE. The issues that form the basis of the JSE and Tribunal Decisions are different: They are

legitimately disputed by Trustco and appropriate resolution in respect of them is essential; and

16.2 Visser's baseless and frivolous statements that Trustco merely seeks to avoid accountability and market transparency are fundamentally flawed.

17 Trustco has raised numerous legitimate grounds of review supported by detailed facts, as set out in both the founding and supplementary affidavit. These have not been addressed or seriously disputed by the JSE. Its opposition is pinned squarely on misplaced atmospheric nuances.

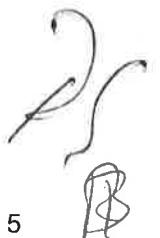
AD PARAGRAPHS 5 TO 6

18 I admit the contents of these paragraphs.

19 I do however need to clarify that because Dr Van Rooyen was on both sides of the transaction, he, in the interest of total transparency and in accordance with Listings Requirements, did not participate in any voting on the transactions when it was put to Trustco's shareholders. A thorough and comprehensive circular approved by the JSE was also submitted and circulated by Trustco.

AD PARAGRAPH 7

20 The issue of whether there was any obligation to disclose the switch from equity to liability as referenced by the JSE is the subject matter of a pending reconsideration application before the Tribunal.

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21 Save for the above, I do not take issue with the remainder of the allegations.

AD PARAGRAPHS 8 TO 9

22 I admit the contents of these paragraphs.

23 Again, the detail and structure of these transactions were dealt with and disclosed in JSE approved circulars to Trustco's shareholders.

AD PARAGRAPH 10

24 There remains this constant fascination that there is an absence of reasons regarding the state of mind with what Dr van Rooyen intended the loan waiver. Dr van Rooyen's state of mind and/or intention is and remains totally and utterly irrelevant.

25 Trustco cannot make it clearer that it does not know what Dr Van Rooyen's intention was when he decided to waive the loans. Dr van Rooyen is also not a party to any proceeding where he had any obligation to do so albeit that his testimony was explicitly tendered during the Reconsideration Application hearing before the Tribunal, and he is still more than willing to do so should any forum require it from him. I refer the court to what is stated at page 34 of the transcript to the hearing before the Tribunal (Annexure FA9 to the founding affidavit) where counsel for Trustco states:

"So in our submission, Mr Chair, the intention of Mr or Dr Van Rooyen is no relevant to the consideration whether or not the transaction has been accounted for in accordance with the applicable standard or not. That does not mean to say, and I have

6



been given an express instruction by my attorney, that Dr Van is not willing to explain himself if he is called up to do so. And I am instructed indeed he would be willing and perfectly comfortable to explain what motivated him to waive the loan liability, if to the extent that you consider that to be a relevant consideration”.

- 26 From a review of the Tribunal's decision is it clear that it was a relevant consideration of the Tribunal, but they failed to take up the offer presented.
- 27 To suggest that Dr Van Rooyen could have explained it in these proceedings is incorrect and would have been inappropriate as this would have amounted to a revisiting of the merits of the matter.
- 28 The fact of the matter is, as I have explained in the other fora where the subject has been raised, that the Trustco board was informed by Dr Van Rooyen that he will waive these loans.
- 29 Naturally, this was unconditionally accepted and with open arms as it ensured the alleviations of a large debt that Trustco had to repay and now no longer had to. It's not for the Trustco board to second-guess Dr Van Rooyen's purpose or intention let alone refuse such a waiver. It is not clear what the Trustco Board should have done when Dr van Rooyen waived his entitlement to enforce the existing loan. It cannot seriously be suggested that the Board should rather have convinced him to enforce the loan.
- 30 The Trustco board then, on the advice of its IFRS experts, accounted for the waiver. The accounting treatment was subsequently audited and approved by Trustco's JSE accredited auditors. The JSE has taken issue

with the manner in which the transaction was accounted for by purportedly considering the matter from the Dr Van Rooyen's perspective as opposed to that of Trustco. This in itself, constitutes a vitiating irregularity in the proceedings

AD PARAGRAPHS 11 TO 27.5

31 I admit the content of these paragraphs. Where parts of the annexures are paraphrased, I admit those insofar as they accord with the wording of the correspondence referenced.

32 I pause to highlight what is stated in paragraph 16.3 of the answering affidavit. This demonstrates that Trustco is not trying anything in its power not to comply with the JSE's directives. Where they were considered to have merit and are legitimate, those were immediately attended and adhered to. This again undermines the JSE's narrative (and really its basis of opposition) of Trustco simply trying to avoid accountability and transparency.

AD PARAGRAPH 28

33 I deny that Trustco did not follow through on its threat.

34 Trustco brought the necessary urgent proceedings once the basis therefore was established and at the appropriate time when the JSE made the decision to suspend its listing by way of an ultimatum.

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AD PARAGRAPH 29

35 I admit the contents of this paragraph.

AD PARAGRAPHS 30 to 31

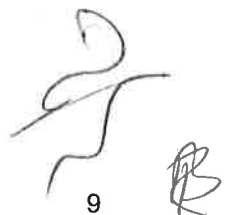
36 The letter referenced by the JSE in paragraph 30 that sets out Trustco's objections is attached as "**RA1**". I admit the content of paragraph 30 to the extent that it accords with what is stated in RA1.

37 The JSE selectively quotes parts of RA1 out of context. It seeks to attach an incorrect meaning to paragraph 7.4.4 of RA1. If read as a whole, it is clear that no undertaking was given that the restatements would be reflected in the financial statements. The paragraph provided for a hypothetical situation if Trustco concluded that it should give effect to the JSE's Decision. Visser's forced reasoning proves his bias.

38 Although the suspension decision is not relevant to these proceedings it does paint a clear picture of the length that the JSE would go to obstruct Trustco from advancing its Constitutional rights and doing so under the auspices of protecting the market whilst the market is fully aware of these proceedings and the JSE's restatement decision – this through various SENS announcement and Trustco' financial statements that I will refer to below.

AD PARAGRAPH 32

39 I admit the contents of these paragraphs.

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AD PARAGRAPH 33

40 I have no knowledge of what the JSE's belief was. As indicated, any such belief was misplaced and based on a misreading of Trustco's correspondence.

41 I admit that the JSE's attorneys sent AA5 to Norton Rose Fulbright.

AD PARAGRAPH 34

42 It is correct that AA6 states that the restatements would be addressed, however it does not say or even imply that it will be given effect to. Again, the JSE misinterprets and takes the correspondence out of context if regard is had to the correspondence as a whole. Unfortunately, this misinterpretation appears to be deliberate.

43 The restatements were, as an interim measure, addressed by means of a comprehensive note to the annual financial statements and in both the independent auditors report and CFO report.

AD PARAGRAPH 35

44 I admit the contents of this paragraph.

AD PARAGRAPHS 36 TO 37

45 I admit that the restatement directed by the JSE was not given effect to. Trustco elected to review the Tribunal and JSE's decision and in accordance with section 236 of the FSR Act it holds the view that it has no

obligation, pending the outcome of the review application, to give effect to the JSE' Decision.

- 46 As mentioned, the restatement that the JSE required was included and explained in comprehensive notes to the financial statements as well as the independent auditor's report and the CFO's report. The relevant extracts are attached as "**RA2**".
- 47 This was to ensure that the market was well aware of the restatements that the JSE required.
- 48 For the JSE to allege that there was commentary buried in the small print to the financial statements is misplaced and disingenuous. It is however telling of the manner in which the JSE has approached this matter and that as a market infrastructure it is stooping to a level of making veiled attacks to try and uphold its position. I also dealt with this in the founding affidavit and highlighted the statements from the bar made by the JSE's counsel during the hearing before the Tribunal. This again highlights the JSE's true modus operandi: it will do anything in its power to suspend Trustco's listing and effectively prevent it from exercising its constitutional rights in respect of matters that requires clarification and determination by the court. I again point out that the JSE admits that the Trustco board did not act fraudulently, recklessly, or otherwise than in a bona fide manner.
- 49 The JSE's decision to restate and its communication to Trustco as to the form of these restatements were also published on SENS by the JSE itself.

AD PARAGRAPHS 38 TO 43

50 I admit the contents of these paragraphs.

AD PARAGRAPHS 44 TO 46

51 These allegations are denied for the reasons already mentioned.

52 It is of course so that Trustco views both the JSE Decision and Tribunal Decision as incorrect. If it did not hold that view, it would simply have made no sense to launch the review despite the irregularities pointed out. It believes that if the irregularities complained of in these proceedings are duly cured, that it would obtain the necessary redress by a duly constituted panel of appropriately qualified members.

53 Moreover, if there were no reviewable irregularities in both the JSE Decision and the Tribunal Decision then that would have been the end of the matter and Trustco would have had to adhere to the JSE's Decision or face the suspension sanction that the JSE is seeking to impose on it.

54 But there are patently reviewable irregularities and these have been clearly dealt with and substantiated in the founding and supplementary affidavit.

AD PARAGRAPH 47

55 I admit the contents of this paragraph.

AD PARAGRAPH 48

56 The review grounds are far more exhaustive than what is stated by the JSE.

57 Each reviewable irregularity has been clearly set out in both the founding and supplementary affidavits albeit that they are not each dealt with under a separate heading.

AD PARAGRAPH 49 TO 55

58 I admit the contents of these paragraphs.

59 The broad powers vested in the JSE in terms of the FM Act and codified by paragraph 1.21 of the Listings Requirements can however not be interpreted as meaning that the JSE has free rein in how it exercises these powers. The JSE should furthermore not be at liberty to exercise these powers in an abusive manner.

60 Moreover, these overarching principles and statutory provisions cannot override the Listings Requirements where it provides for specific powers of the JSE to apply in specific circumstances. A case in point is paragraph 8.65 of the Listings Requirements which has specific jurisdictional requirements specifies the sanctions that the JSE can impose.

AD PARAGRAPH 56

61 Although I do not take issue with the majority of what is stated by Visser in this paragraph, subject to what I have stated above, there is, what has now become a common occurrence in this matter, a throw-away reference to Steinhoff. Thus, seeking by implication to draw some sort of parallel between what happened at Steinhoff and this matter. This again demonstrates the JSE's modus operandi and the levels to which it will

stoop to sustain its misplaced arguments. It's nothing short of sensationalism and the court should take a dim view of this approach.

62 The JSE is aware and have never contended that the issues that are being dealt with in this matter come close to any fraud or misrepresentation. The matter concerns, from a merits perspective, the interpretation of IFRS and the application IFRS auditing standards to specific transactions.

AD PARAGRAPHS 57 TO 60

63 I admit the contents of these paragraphs insofar as they accord with the express wording of the Listings Requirements.

64 I also note that the FRIP members are appointed by the JSE and the FRIP advises the JSE. Any purported independence that is attributed to the FRIP should be seen in this context.

AD PARAGRAPH 61

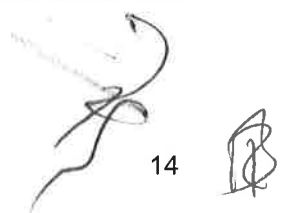
65 Other than to admit that the charter of the FRIP governs its activities and that the members are jointly appointed by the JSE and SAICA, I have no knowledge of the remainder of the allegations in this paragraph.

AD PARAGRAPHS 62 TO 63

66 I admit the contents of these paragraphs.

AD PARAGRAPH 64

67 I note the allegations in this paragraph, but am not in a position to comment on the accuracy thereof.

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AD PARAGRAPH 65

68 I admit the contents of this paragraph.

AD PARAGRAPHS 66 TO 72

69 I don't dispute that sections 12 and 14 of the FM Act replaced sections 13 and 15 of the Securities Act and that the Resolution would now, in effect and by virtue of section 12(2) of the Interpretation Act, 1957, refer to the aforesaid FM Act provision.

70 Trustco's case however is that those sections of the FM Act do not confer upon the JSE the right to make the JSE Decision, i.e. to direct a restatement of financial statements. Hence the Resolution did not authorise Visser to make the JSE Decision. The JSE's powers are confined in its creating documents. The provisions of any Act are not self-executing. They are permissive. The provisions of a new Act do not enlarge or amend the creating documents of a company like the JSE. Its powers remain exactly the same as it is in the creating documents.

71 Visser does not explain how he is the head of the Issuer Regulation Division when he specifically refers to himself as the director of Issuer Regulation. His purported "directorship" remains unexplained.

72 Insofar as it is contended that the powers and duties that gave rise to the JSE Decision was one in terms of the Listing Requirements for purposes of bringing it into the realm of the Resolution, this is denied. The JSE

Listings Requirements do not authorise a restatement as the JSE Decision purported to do.

AD PARAGRAPH 73

73 I do not dispute the contents of this paragraph insofar as it accords with the express wording of paragraph 8.65(b) of the Listings Requirements.

74 The JSE's broad powers to impose a penalty is not akin to instances where the Listings Requirements provide for specific sanctions that can be imposed and particularly where those sanctions do not amount to penalties.

AD PARAGRAPH 74

75 This recordal in the Listings Requirements does not assists the JSE.

76 The recordal cannot and does not in itself legally confer authority on Visser. There is no underlying resolution compliant with the Companies Act and the JSE's MOI which supports the recordal and that would afford it any legitimacy. The mere fact that an Act of parliament permits a certain action does not result in free reign to do so. This is particularly so where a company's foundational documents do not permit it exercise such a power.

AD PARAGRAPH 75

77 For the reasons mentioned above and in the founding affidavit, it is denied that Visser was properly authorised. He is a simply a power "in his own mind, trampling the very existence of Trustco.

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AD PARAGRAPHS 76 TO 78

- 78 There is no absurdity in Trustco's interpretation.
- 79 The delegation in terms of section 68 of the FM Act simply allows for a delegation, i.e. it provides for the eventuality – it does not, in and of itself constitute an actual delegation. The actual delegation has to be effected in compliance with the Companies Act and the JSE's MOI. These don't provide in the circumstances for a delegation to someone other than a committee. Absent an actual delegation – rather than the mere power to do so – there is no lawful delegation at all.
- 80 The relevant committee would naturally not be precluded in turn from delegating certain of its functions and powers but that is not the case in the present matter.

AD PARAGRAPH 79

- 81 Trustco only came to know about the fact that Visser was not authorised after the Tribunal's Decision was conveyed to it and it started interrogating the JSE in respect thereof. This is evidenced from the correspondence attached to the affidavits filed in these proceedings.
- 82 There is in any event no bar to Trustco raising it in these proceedings. It is the first time that the JSE's Decision can in fact be judicially reviewed by a court and it is accordingly appropriate to have raised it in these proceedings.

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83 In the circumstances, Trustco cannot be criticised for having raised the issue of Visser's authority at this stage and for the reasons advanced above and in the founding affidavit. Visser evidently did not have the authority to make the JSE Decision and an invalid decision cannot in the circumstances be left to stand.

AD PARAGRAPHS 80 TO 94

84 There is no attempt to have the merits of the JSE's Decision reheard. What Trustco seeks is that the matter is determined by a body with the necessary expertise, which can interfere with the JSE's wrong decisions where required. It is inevitable that a body without the required expertise, will accept, with some relief, the due deference principle. This particularly in circumstances where it does not have the expertise to meaningfully interrogate the issues involved. That, in itself, constitutes a vitiating irregularity in this case.

85 The JSE fails to explain its contention of a "disguised appeal" in light of the fact that a jurisdictional complaint is raised. What the JSE does in paragraphs 82 to 93 of the answering affidavit, is to again impermissibly delve into the merits of the JSE Decision. This can only be as the JSE is aware that absent them impermissibly doing so, there simply is no answer to the review grounds raised.

86 The essence of Trustco's contention all along is this: The JSE cannot point to any instance where Trustco has not complied with any specific IFRS. The JSE need not revisit the merits to address the complaint, it simply

needs to point to the specific IFRS provision that it contends has been contravened. It has never done so and, despite the opportunity to do so in these proceedings, again failed to demonstrate the purported non-compliance.

87 The JSE instead tries to overcome this by endlessly reiterating the well-trodden ground of “substance over form”. This does not demonstrate a contravention or breach of any specific IFRS pursuant to which it can impose a sanction. Trustco strictly complied with IFRS in each instance, duly exercised the discretion afforded to the Trustco Board as afforded by IFRS and under the business judgment rule, and that cannot and has never been disputed.

88 The JSE contends that the accounting treatment employed by Trustco does not give effect to this “substance over form” principle whereas Trustco contends that substance over form is baked into IFRS. Compliance with IFRS necessarily entails that effect has been given to the “substance over form” requirement.

89 The JSE, and the Tribunal, disregarded the principle of due deference to the board of directors who took advice from JSE accredited IFRS experts and auditors accounted for the transactions in strict accordance with IFRS.

90 The JSE then seeks to elevate the substance over form argument and in particular the dispute between the parties in respect thereof to a breach of IFRS. This in order to impermissibly bring the impasse between the parties within the realm of paragraph 8.65(b) of the Listings Requirements.

91 The content of paragraphs 82 to 93 of the answering affidavit is furthermore impermissible (on the JSE's own version) and totally irrelevant to the review application. It stands to be struck out.

AD PARAGRAPHS 95 TO 102

92 The JSE suggests that, on its interpretation of paragraph 8.65 of the Listings Requirements – which interpretation is not expressly catered for by the paragraph - that there is no ambiguity. This is evidently not correct. What is unambiguous is the express wording which does not allow for a restatement of financial statements. It caters for specific remedies which does not include a restatement of the financial statements.

93 As such, the JSE exceeded its powers by imposing a sanction on Trustco which is not authorised by the Listings Requirements.

94 Also, the ability to instruct an issuer to publish any information is, on its face, not the same as ordering a restatement of financial statements. Undoubtedly, the Listings Requirements would have been very clear on such an intrusive and extreme sanction in the same vein as a re-issue would be and that is expressly catered for. This unfortunately again points to a situation where the JSE is hiding behind its wide powers and interpreting the Listing Requirements in a manner that would suit its purpose. This is a classic example of a situation where a court is bound to intervene.

95 The references to sections 10 and 11 of the FM Act offer no assistance to the JSE. It is the Listings Requirements that are informative and pursuant

to which the JSE exercises its powers and in particular paragraph 8.65 thereof regarding matters of non-compliance with IFRS.

96 It is this paragraph that expressly arms the JSE with specific sanctioning power in such instances and these cannot be replaced or broadened based on this ostensible wide power in terms of the FM Act. There would have been no need for these express sanctions in paragraph 8.65 of the Listing Requirements if paragraph 1.2 of the Listing Requirements is to be seen as conferring broad powers on the JSE which would include the sanctions listed in paragraph 8.65, and more.

97 It cannot seriously be contended that the restatement of financial statements is akin to a penalty, as the JSE appears to suggest. These are distinct concepts that the JSE evidently conflates. Again, this demonstrates its desperation to try and justify its impermissible actions.

98 As with the issue of Visser's authority, this jurisdictional and authority challenge was raised in these proceedings for the first time. Again, there is no prohibition for doing so as it is a review of a decision by the JSE for the first time.

AD PARAGRAPHS 103 TO 106

99 The JSE pins its response and opposition solely on the fact that expert witness statements were considered. There is no merit in this proposition.

100 The Tribunal is intended to be and was established as an expert tribunal to determine technical financial disputes in the first instance.

101 The fact that the panel members had the benefit of expert witness statements does not derogate from the fact that they must themselves be experts in the field in which they are requested to make a determination – they are not rendered experts and suitable adjudicators by virtue of having access to expert witness statement. To suggest otherwise is simply misplaced.

102 The Tribunal must be the experts. The Tribunal must know better. The Tribunal must show no due deference. They are the experts, or rather, should be, which is not the case here.

103 This is evidenced by the numerous reviewable errors made by the Tribunal as a consequence of its collective inexperience in matters of accounting. The JSE has not addressed this at all.

AD PARAGRAPHS 108 TO 110

104 There is no confusion on Trustco's part as to the distinction between the members of the Tribunal and the make-up of a particular panel.

105 Trustco's argument is, as can be seen from a reading of both the founding affidavit and the supplementary affidavit, that on a proper interpretation of sections 224(1) and 225(2)(a)(ii) read with section 220(2) of the FSR Act, Tribunal members ought to be sufficiently experienced and skilled to determine the subject matter of the Reconsideration Application. They ultimately constitute the decision makers of an expert tribunal.

106 The JSE has not sought, in any meaningful manner, to dispute Trustco's purposeful interpretation of these sections.

AD PARAGRAPHS 111 TO 118

107 There is no mischaracterisation as the JSE alleges.

108 What the JSE does not address is the fact that the Tribunal's Decision ended up criticising Dr Van Rooyen's failure to explain his intention in respect of the loan waivers. This then ended up forming the basis (or at least one of the bases) on which the Tribunal's Decision was premised.

109 The simple point is this - the Tribunal could not permissibly have raised the possibility of Van Rooyen testifying to clarify his intention, declining it when it was in fact offered and then go on to use it as a basis to come to its decision. This strikes at the core of a fair administrative process.

110 As to Trustco's failure to call Dr Van Rooyen at the outset through the mechanisms allowed by the Tribunal rules – Trustco's counsel argued before the Tribunal, that Van Rooyen's intention is not relevant to the accounting treatment and the core question as to whether Trustco complied with IFRS. Trustco persists with this view. This is however not destructive of Trustco's arguments and complaints in these proceedings.

111 After taking instructions during the virtual meeting, the Record makes it clear that Trustco's counsel tendered Dr Van Rooyen's evidence despite the position that in Trustco's view it remained irrelevant. I have earlier highlighted the exact part of the transcript of the hearing where counsel for

Trustco made it abundantly clear that the evidence is tendered if the Tribunal considered it relevant. The Tribunal considered it to be relevant but opted not to hear the evidence.

- 112 The difficulty Trustco has in the circumstances is that the Tribunal, in seemingly rejecting Trustco's submission on relevance, opted to attach evidentiary weight to the fact that Dr Van Rooyen's version was not put before the Tribunal whilst it in fact declined to hear his testimony when it was offered. This again strikes at the heart of just administrative action.

AD PARAGRAPH 119

- 113 The failure of the Tribunal to consider the consequences of any of its decisions remains a reviewable ground that Trustco is at liberty to raise in review proceedings. Again, there is no prohibition for only raising it in these proceedings.

- 114 The JSE's persistent objections to matters being raised for the first time in review proceedings instituted for the first time is indicative of the merits thereof and the JSE's intent to avoid having to deal with these matters which they know full well amount to reviewable irregularities.

AD PARAGRAPH 120

- 115 The JSE misconstrues Trustco's contention in respect of the application of the business judgment rule, the due deference principle and in turn how the Tribunal came to an irrational decision based on its misinterpretation of the law.

116 For an appellate body to give due deference to the decision before it entirely undermines the purpose of an appeal. An appeal ought to consider the matter afresh. The Tribunal's acceptance of its lack of expertise to do so is a reviewable irregularity.

117 As an example, if a court of appeal were to give 'due deference' to the decision of the court *a quo*, no decision would ever be overturned on appeal. The appeal court, exercising due deference, would merely accept the lower court's decision as its own. However, that is not that case. A court of appeal interrogates the facts and law of the matter and renders a decision afresh. If the Tribunal had the expertise to do so, it would have (and ought to have) done just that. However, its lack of accounting expertise prevented it from doing so.

118 To give deference to the decision of the FRIP, as the Tribunal did (despite its partisan affiliation to the JSE), fundamentally impairs the appeal process and thus Trustco's right of fair and just administrative action.


WHEREFORE the applicant persists with its prayers for an order in terms of the amended notice of motion.

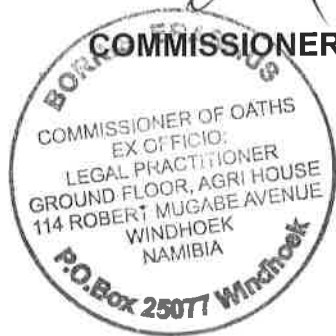


RIAAN BRUYNs

SIGNED and **SWORN** to before me at Windhoek on this the 28th
day of May 2022, by the deponent who has acknowledged that he

knows and understands the contents of this affidavit; that he has no objection to taking the prescribed oath and that he considers the prescribed oath to be binding on his conscience.



**COMMISSIONER OF OATHS**
Full names:
Capacity:
Address:

COMMISSIONER OF OATHS
EX OFFICIO:
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GROUND FLOOR, AGRI HOUSE
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17 December 2021

NORTON ROSE FULBRIGHT

Norton Rose Fulbright South Africa Inc
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By Email: andrev@jse.co.za

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General Manager: Issuer Regulation
JSE Limited
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Dear Sir / Madam

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Your reference **Our reference**
111246/19-4/SC TGH1/J Bell

Trustco Group Holdings Limited ("Trustco"): Objection to suspension of listing of securities

1. We refer to Mr Visser's letter of 13 December 2021.
2. In the letter you advised that Trustco should follow the procedure prescribed in paragraph 1.4 of the Listing Requirements. That paragraph 1.4 states that "an applicant issuer" who wants to object to a decision which "is taken under these Listing Requirements", may file an objection, for consideration by the JSE. We follow your advice and forward you this objection letter which should be considered by the correct independent body or members. We are not sure which exact body must consider the objection, but law and logic tells that Mr Visser cannot form part of this body. No person can be an "appellate body" with appellate jurisdiction over himself. Trustco furthermore request an opportunity to make oral representations to the independent body and also requires confirmation as to the identity of the members comprising this independent body.
3. Trustco follows the procedure as advised by you without prejudice to its rights as to the following:
 - 3.1. Mr Visser took the decision while his outcome was a foregone conclusion. That much we made clear in our letter dated 9 December 2021. He was disqualified to do so as a result of Trustco's legitimate concern that he has already made up his mind before he received our letter dated 9 December 2020. The fact that Mr Visser had already made up his mind, was not cured by his invitation to Trustco to persuade him to change his mind. A casual perusal of the relevant case law will inform that such a process constitute "rubber stamping", "a foregone conclusion" and "smokescreens".
 - 3.2. Mr Visser, all along, acted in an ultra vires manner. Even your attorney's letter of 15 December makes it plain and beyond dispute, that no resolution is in existence in terms of which the JSE board of directors duly and properly delegated the entire might of their coercive powers to one person. The JSE also does not have such a power, being a power to delegate to one person. If the JSE board of directors did so, they themselves acted in an ultra vires manner. As we have pointed out in our letter of 9 December 2021, the delegation powers of the JSE board of directors are proscribed and refer you to the JSE's Memorandum of Incorporation.
 - 3.3. Given this unfortunate state of affairs, Trustco demands that the JSE should immediately acknowledge Mr Visser's ultra vires actions, and to please take the necessary remedial steps by informing the market accordingly. The unfortunate truth appears to be that the market and the public at large are under the impression – caused by publications made on behalf of the JSE – that decisions made by Mr Visser were made by competent authorities, while the failure of Mr Visser and the JSE itself to provide Trustco with the relevant resolutions and minutes of meetings, unequivocally demonstrates the exact opposite.

TGH1 Objections (211217)final

Norton Rose Fulbright South Africa Inc (Reg No 1984/065385/21) Directors: APM Robinson (Chairman) M van der Westhuizen (Chief Executive Officer) K Anacle MH Alexander MS Aali SH Hammett JW Bell HI Uwezel UB Botha UG Louwer N Bosman PA Bracher DR Broler AJ Chappell M Chavosa SL Chemsaly MD Coetzee C Coetjies MD Dale V David BM Danny D Dierrie MC Harwell R Hardricka CR Holness DS Kapelus AV Kardamalakia SJ Kennedy-Good SS Khoza JM Kron S Luthi REF Lake PE Lamb S Makara EJ McCaul CJ Merrington JE Mediane GA Nott UN Odayer B Perrett RP Petersen CC Pillay DR Pityay DR Pretorius GM Rademeyer L Rach D Reddy V Reddy AK Strachan I Stuart DS Talham HJ van Rensburg C van Vuuren AP Vos M Wagener JJ Whyte AP Williams LE Williams C Woolley

Consultant: N Dolhe AC Duckley PM Chronis AGS Dixon MJ Hart RJ Howell GGD Kaho WP to Roux E Lamprecht P Naudé L Otholz

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4. While reserving all Trustco's rights, we now proceed to address the body who must hear Trustco's objections.
5. The suspension decision taken by Mr Visser ("**the Suspension Decision**") re-affirms the position adopted in our letter of 9 December 2021 in that the decision, for all intents and purposes, had already been taken by him at the time. It unfortunately appears that the outcome of the objection process will also be a foregone conclusion, if it is again decided by Mr Visser, and that an inevitable application for reconsideration coupled with an urgent application for suspension of the Suspension Decision before the Financial Services Tribunal is soon to follow. The only basis on which this can be cured is for an independent body with proper authority, or delegated authority, to set aside Mr Visser's decisions.
6. If an authorised independent body does not cure the fundamental defects in Mr Visser's decisions, it will lead to unnecessary, protracted and costly legal process to run in parallel with the review application to be instituted by Trustco. The impetuous manner in which Mr Visser acts as if he is duly authorised and even referred to himself in past letters as the "JSE" (while Trustco believed, it now turned out to be erroneously so, that he was indeed duly authorised and acted as a member of a duly authorised body or committee) is unfortunate and it neither serves the public interest nor those of Trustco's shareholders to enforce his decisions. That would have been the case even if Mr Visser was duly authorised. It is certainly not in line with the objects and purpose of the Financial Markets Act, 2012 ("**the FMA**") to enforce Mr Visser's decisions whether they are ultra vires or not.
7. Without prejudice to Trustco's right to supplement these grounds in any application for reconsideration to follow, Trustco objects to the Suspension Decision for the reasons set out in our letter of 9 December 2021 and also the following:
 - 7.1. As already stated, Mr Visser has failed to provide the resolutions requested in our 9 December 2021 letter and our subsequent letter of 14 December 2021. It is therefore apparent that no such resolutions exist and those who took the decisions, including the Suspension Decision, were not duly authorised and mandated to do so. Those decisions and the Suspension Decision are therefore unlawful and of no force and effect. They are nullities.
 - 7.2. Mr Visser, despite being requested to do so, has failed to confirm which JSE Listing Requirement has purportedly been breached by Trustco. Absent such a confirmation:
 - 7.2.1. Trustco is firstly deprived of the right to in the first instance address the JSE in relation to such decision which in turn renders the entire suspension decision making process contrary to the Listing Requirements and the FMA;
 - 7.2.2. The Suspension Decision is not founded on a legally sound basis and not authorised by any empowering provision; and
 - 7.2.3. Trustco is prejudiced in its ability to properly object to the Suspension Decision, again contrary to both the Listing Requirements and the FMA, and is left to base its objections on both conjecture and assumptions, which impedes its rights to a fair and just process.
 - 7.3. In our 9 December 2021 letter we made it abundantly clear that no decision has been taken on the part of Trustco to not implement the JSE and Tribunal's decision as they pertain to the restatement of the relevant financial statements. Although Trustco disagrees with the Tribunal's decision and has decided to review it, it does not detract from the aforesaid position. Trustco is investigating whether the decisions can practically be implemented pending a review but would naturally not wish to be in the unenviable position of having to restate the financials at this juncture simply to again, following a successful review, having to reverse the restatements. Such a situation would create absolute confusion in the market and not be in the public interest.
 - 7.4. Given the date of the Tribunal's decision (23 November 2021), it is frankly impossible for it to be implemented in the period of time between the decision that the JSE purportedly decided that there was a breach of the Listing Requirements (3 December 2021).
 - 7.4.1. To expect implementation in this short period of time is grossly unreasonable and demonstrates an absolute failure on the part of the JSE to appreciate the complexities and

implications of the Tribunal and the JSE's decision. This is not simply a quick correction and restatement that has to be effected.

- 7.4.2. Cognisance must be had to the Tribunal's decision, the complexity of the relevant transactions, their accounting, and the magnitude thereof. Numerous stakeholders must be consulted in the process to ensure that all interested parties positions are properly taken into account and that the decision is practically implementable. To suggest that Trustco had a year to conduct this exercise is with respect a paper-thin argument devoid of all sensibility. Those decisions were suspended pending final determination of the matter pending before the Tribunal.
- 7.4.3. Moreover, the exercise does not simply entail the restatement of the financial statements but also potential unwinding of the underlying transactions as relevant parties to the transactions must reconsider whether or not they wish to proceed with the underlying transactions – unwinding of the transaction will in turn have further knock-on effects on the accounting of the transactions.
- 7.4.4. Given that the JSE's decision requires a restatement of audited financial statements, the earliest Trustco can possibly and legitimately be expected to give effect to the JSE and Tribunal's decision is when it will be in a position to publish its audited financial statements which would then: (i) reflect the restatements that the JSE required; (ii) be audited; and (iii) signed-off by the Trustco's board of directors.
- 7.4.5. Trustco has until 31 December 2021 to publish its annual audited financial statements. Mindful of the factors listed above, and to allow sufficient time for the auditors to conduct their audit and render an unqualified report, it is however anticipated that these will be published by no later than 31 January 2022 and the JSE has separately been engaged on this.
- 7.4.6. The additional time required by Trustco is reasonable in the circumstances and also both fair and in the public interest, particularly given that the public would require audited financial statements, compliant with IFRS and on an unqualified basis. Trustco cannot be blamed for the timing of the Tribunal's decision in relation to the timing for filing of its financial statements.
- 7.4.7. It is therefore submitted, that the Suspension Decision is at best pre-mature and cannot be enforced upon Trustco prior to the publishing of the audited financial statements. In short, Mr Visser's decision punishes Trustco before it breached any rule. Mr Visser simply assumes, despite Trustco's assurances to the contrary, that Trustco will definitely be non-compliant in future when its financial statements are published.
- 7.5. Contrary to the Mr Visser's position, the validity of his initial decision relating to the restatements are wholly dependent on the validity and legality of the Tribunal's decision. His decision can only have legal force and effect if the Tribunal's decision is valid and enforceable which enforcement process is regulated by section 236 of the Financial Sector Regulation Act, 2017.
- 7.5.1. It would be absurd to suggest that if any underlying decision, which receives its validation from a decision by the Tribunal, can simply continue to be enforced outside of the enforcement of the Tribunal's decision itself. Indeed, any review of the Tribunal's decision as provided for would then similarly serve no purpose at all – which underpins how Mr Visser is misconstruing the importance of section 236.
- 7.5.2. It is furthermore untenable for the common law relating to a challenge to an administrative decision that it can be considered to take precedence over a statutory remedy and process of enforcement. Section 236 would in such circumstances simply be rendered superfluous which in turn cannot pass constitutional muster.
- 7.5.3. Mr Visser is accordingly impermissibly seeking to subvert both the review of the Tribunal's decision and its enforcement process by now seeking to extricate himself from that decision.
- 7.5.4. As such, Trustco persists in its position that an independent and authorised body which will consider the objections contained in this letter, cannot enforce Mr Visser's decision whether through the Sanctions Decision or otherwise pending the outcome of the review application to

be instituted by Trustco. As such and on this basis as well, Mr Visser's Sanctions Decision is both premature and illegal.

- 7.6. Mr Visser has also failed to consider and properly evaluate the consequences of a successful review application in circumstances where he has suspended Trustco's listing. This would necessitate a reinstatement after a significant period of time with Trustco and its shareholders suffering immense and irreparable financial and reputational prejudice which Mr Visser, or his employer, has not sought to indemnify Trustco for. This to be weighed against absolutely no prejudice to the market given their knowledge of the matter as explained below.
- 7.7. Mr Visser has persisted in his view and support of his decision that a suspension is purportedly in the interest of the public and promotes the objectives of the FMA. He has however again failed to provide any factual basis for this contention and in particular the purported weighting exercise referenced in paragraph 3.4 of its letter. Whilst again undermining Trustco's right to a fair process, it has in particular lost sight of the fact that:
 - 7.7.1. The market is well aware of the JSE's decision and the Tribunal's decision as conveyed to them through the various SENS announcements;
 - 7.7.2. A suspension is not going to provide the market or the public with any further information than they either do not already know or that is in the public domain;
 - 7.7.3. The difference between Trustco and the JSE's positions is an interpretation of IFRS accounting standards, and is not a situation where there is any suggestion or element of fraud or manipulation of financial statements;
 - 7.7.4. Trustco's minority shareholders have confirmed through the recent non-binding vote that they agree with Trustco's financial treatment of the transactions; and
 - 7.7.5. There remains, by virtue of what is stated above, a live and bona fide dispute as to whether Visser and the Tribunal's decisions are correct, whether they should be implemented and then also whether Trustco has in fact breached any Listings Requirement. Needless to say, had the Tribunal known that Mr Visser acted without any authority whatsoever, it would have set aside Mr Visser's decisions.
8. In view of the above, the Suspension Decision seeks, not as Mr Visser suggests, to be in the interest of the public but is in fact quite obviously aimed at implementing punitive measures which is wholly inappropriate and premature but is also capricious, arbitrary and irrational.
9. We accordingly would implore the independent body consisting of duly authorised persons who are considering this letter, to take an unbiased and pragmatic view in relation to the Suspension Decision and again mindful that this entire matter will be resolved through the review application.
10. However, should you nevertheless approve of Mr Visser's conduct and decisions, then mindful of the upcoming festive season and the unavailability of decision makers of both Trustco and the JSE as well as their advisors, the JSE is requested to undertake not to implement the suspension pending the outcome of an application for suspension of the Suspension Decision to the Tribunal and the outcome of Trustco's review application in the courts. .
11. We await your response and decision and in the interim Trustco's rights remain reserved including the right to address any aspect of Mr Visser's letters under reply which has not expressly been dealt with herein.

A handwritten signature in dark ink, appearing to be 'AB' or similar initials, located in the bottom right corner of the page.

17 December 2021

NORTON ROSE FULBRIGHT

Yours faithfully

A handwritten signature in dark ink, appearing to read 'John Bell', with a horizontal line underneath.

John Bell
Director
Norton Rose Fulbright South Africa Inc

Handwritten initials 'JB' in dark ink, with a stylized flourish.

INDEPENDENT AUDITOR'S REPORT

To the shareholders of Trustco Group Holdings Limited

REPORT ON THE AUDIT OF THE CONSOLIDATED FINANCIAL STATEMENTS

OPINION

We have audited the consolidated financial statements of Trustco Group Holdings Limited and its subsidiaries (the Group) set out on pages 100 to 195, which comprise the consolidated statement of financial position as at 31 August 2021, the consolidated statement of profit or loss and other comprehensive income, the consolidated statement of changes in equity and the consolidated statement of cash flows for the 11 month period then ended as well as notes to the consolidated financial statements, including a summary of significant accounting policies.

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the consolidated financial position of the group as at 31 August 2021, and its consolidated financial performance and consolidated cash flows for the 11 month period then ended in accordance with International Financial Reporting Standards and the requirements of the Companies Act of South Africa.

BASIS FOR OPINION

We conducted our audit in accordance with International Standards on Auditing (ISAs). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Consolidated Financial Statements section of our report. We are independent of the group in accordance with the Independent Regulatory Board for Auditors' Code of Professional Conduct for Registered Auditors (IRBA Code), and other independence requirements applicable to performing audits of financial statements in South Africa. We have fulfilled our other ethical responsibilities in accordance with the IRBA Code and in accordance with other ethical requirements applicable to performing audits in South Africa. The IRBA Code is consistent with the corresponding sections of the International Ethics Standards Board for Accountants' International Code of Ethics for Professional Accountants (including International Independence Standards). We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

MATERIAL UNCERTAINTY RELATED TO GOING CONCERN

We draw attention to note 36 in the consolidated financial statements, which indicates that the group incurred a loss of NAD 988 million for the 11 month period ended 31 August 2021 (18 month period ended 30 September 2020: NAD 342 million) and, as of that date, the group's current liabilities exceeded its current assets by NAD 664 million with total assets exceeding total liabilities by NAD 2.3 billion. As stated in note 36, these events or conditions, along with other matters as set forth in note 36, indicate that a material uncertainty exists that may cast significant doubt on the group's ability to continue as a going concern. We have considered the adequacy of the disclosures made in note 36 to the consolidated financial statements concerning the group's ability to continue as a going concern and we assessed the solvency and liquidity of existing assets. Our opinion is not modified in respect of this matter.

EMPHASIS OF MATTER JSE LIMITED PROACTIVE MONITORING PROCESS

We draw attention to note 39 of the consolidated financial statements, which describes the conditions associated with the proactive monitoring and the instruction issued by the JSE Limited to restate the annual financial statements for comparative financial periods, as well as management's response thereto.

HELIOS ORYX LIMITED LITIGATION

We draw attention to note 37 of the consolidated financial statements, which describes the ongoing litigation with Helios Oryx Limited relating to the facility agreement entered into between the parties amounting to NAD 332 million as at 31 August 2021, as well as the security provided against the facility.

Our opinion is not modified in respect of these matters.

KEY AUDIT MATTERS

Key audit matters are those matters that, in our professional judgement, were of most significance in our audit of the consolidated financial statements of the current period. These matters were addressed in the context of our audit of the consolidated financial statements as a whole, and in forming our opinion thereon, and we do not provide a separate opinion on those matters. In addition to the matter described in the Material Uncertainty Related to Going Concern section, we have determined the matters described below to be the key audit matters to be communicated in our report.

KEY AUDIT MATTER

IMPAIRMENT ASSESSMENT OF ADVANCES

As at 31 August 2021, the group recognised advances carried at amortised cost amounting to NAD 490 million (2020: NAD 922 million), net of expected credit losses determined in accordance with IFRS 9 of NAD 235 million (2020: NAD 853 million).

As described in the accounting policy notes to the consolidated financial statements the impairment loss is determined in accordance with IFRS 9 - Financial Instruments.

The application of IFRS 9's requirements related to credit loss allowances is subject to a significant degree of judgement required in assessing the impairment of financial instruments.

Those judgements include amongst others, the classification of the financial instrument on initial recognition, defining the default period, determining the stage of impairment the financial instrument falls within and estimating the recoverable amount of the underlying security.

Accordingly, the expected credit loss assessment of these assets is considered to be a key audit matter.

HOW OUR AUDIT ADDRESSED THE KEY AUDIT MATTER

Our procedures focused on testing the assumptions and judgements applied in the ECL model of advances.

- Our audit procedures included amongst others:
 - We obtained an understanding of the group's process for estimating the credit loss allowance;
 - We tested the design, implementation and operating effectiveness of key financial controls over identification of significant increase in credit risk, measurement of expected credit losses and evaluation of the consistency of methodologies and appropriateness of the assumptions used by management;
 - We evaluated the source of data used by management in their assessment to ensure there is no data discrepancies between the financial systems and accounting systems;
 - We assessed the competencies, capabilities, objectivity, experience and professional certification of management's staff that performed the assessments;
 - We assessed the appropriateness of the valuation methodology, inputs and assumptions used by management in determining expected credit losses including assessing whether the inputs incorporate prior information, current information and forward-looking information and to ascertain whether the method/model and assumptions used are comparable with industry benchmarks and incorporated a further risk premium for the impact of COVID-19 a part of the testing;
 - We assessed the stages 1 - 3 categorisation and probability of default determination to confirm it is accurate;
 - We recalculated the expected credit losses that result from all possible default events over the life of the financial instrument as calculated by management and followed up on any material differences identified;
 - We assessed the adequacy of the present value of securities held against loans advanced; and
 - We assessed whether disclosures made in the consolidated financial statements relating to the credit loss allowance of the trade receivables and advanced met the requirements of IFRS 9 - Financial Instruments.

GROUP FINANCIAL DIRECTOR'S REPORT

PERFORMANCE OVERVIEW

During the period under review, the COVID-19 pandemic continued to exacerbate the adverse economic environment. Tusco operates in the Delta variant wave in particular hit Tusco's core market in Namibia hard, but the roll-out of vaccination programmes in the operating countries of the group promise to negate the effect of the pandemic somewhat, albeit with sub-optimal vaccination numbers in the population currently.

Due to the aforementioned, revenue for the group decreased from NAD 618 million to NAD 313 million, down by 49%. Loss attributable to the owners of the parent similarly increased by 228% to a loss of NAD 872 million from a loss of NAD 266 million in the previous year.

A significant portion of this loss, NAD 282 million, was due to property revaluations as a result of above mentioned adverse market conditions, with a forex loss of NAD 253 million also forming part of the loss. Headline loss per share of 19.06 cents in the previous year thus decreased to a loss of 48.81 cents per share in the current period.

Nexa SABGT, the group's JSE accredited external auditors, continued in office for the reporting period. The group changed its financial year-end from September to August, allowing it to align the release of its full year results to the operating schedule of group's capital and funding base in the northern hemisphere.

The group continued operating under the restructured debt agreement with its international lenders, with interest payments, capital holidays as well as term extensions of up to seven years having been negotiated.

INVESTMENTS OVERVIEW

FINANCIAL SERVICES

INSURANCE AND ITS INVESTMENTS

Revenue from insurance premiums for the previous reporting period of eighteen months was from NAD 168 million, down to NAD 113 million, a decrease of 32%.

Insurance continued with the diversification of revenue streams with innovative products, restructuring and expanding existing products on a digital platform, but experienced increased claims due to the COVID-19 pandemic, especially in the life business.

Revenue from tuition fees in the distance learning business increased from NAD 42 million in the prior period to NAD 59 million, an increase of 41%. This was driven by funding received that was used to fund student loans.

Property sales revenue decreased from NAD 130 million to NAD 41 million, a decrease of 69%.

The shopping mall at Eisenheim Lifestyle Estate, which was completed during the previous period, continued to add value to the development, as well as enhanced the living environment of residents during the reporting period. Further commercial developments are anticipated in the future.

BANKING AND FINANCE

The banking division revenue decreased to NAD 80 million from NAD 276 million, a decrease of 71%, but reduced their recorded loss after tax from NAD 462 million compared to a loss of NAD 62 million in the reporting period. The reduction in revenue was mainly driven by the decline in interest rates that occurred during the prior period.

While COVID-19 has affected customers through loss of employment and income, both Tusco Finance and Tusco Bank Namibia have applied concerted strategies to manage credit waiting to ensure that the quality of their loan books are not compromised, thereby limiting any further impact of the pandemic on the ECLs.

RESOURCES

Resources reported an after tax loss of NAD 332 million, compared to a NAD 1142 million profit in the previous year, as this period saw concerted effort to bring the Meysa Mine into commercial production.

FLOORS ABRAHAMS
EXECUTIVE DIRECTOR AND
GROUP FINANCIAL DIRECTOR

GROUP FINANCIAL DIRECTOR'S REPORT

(CONTINUED)

MEYA MINING

Meya Mining, a world class Kimberlite deposit, is situated in Sierra Leone. Meya Mining was granted a twenty five year large-scale mining licence on 26 July 2019 which will enable Meya to exploit the current estimated three million carats valued at approximately NAD 14 billion as determined by the internal preliminary exploration conducted and reported on by independent international mining experts

During the financial period, Meya Mining was capitalised sufficiently to produce at least 10 000 carats per month, being circa 120 000 carats per annum, after development is completed during the first half of 2022, whereafter production is set to increase up to 30 000 carats per month, being 360 000 carats per annum by the last quarter of 2023.

After the end of the financial period, a term sheet was signed between Meya Mining and a first tier global diamond producer to acquire a 65% equity stake, as well as provide a USD 150 million debt facility. This will enable the mine to scale production to 1 million carats per annum over the next three years. It is expected that this agreement will be finalised by the end of March 2022, after a technical and geological due diligence has been completed.

DIVIDENDS

During the period under review, no dividend declaration for the financial period ended 31 August 2021 was made by the board.

COVID-19 IMPACT

Measures taken to contain the spread of the virus, including travel bans, quarantines, social distancing and closures of non-essential services, have triggered significant disruptions to businesses worldwide, resulting in an economic slowdown. However, the vaccination program in Tustico, Namibia and worldwide is showing positive results. The forward-looking impact of COVID-19 has been incorporated into the expected credit loss model and impairment assessments.

PROACTIVE MONITORING PROCESS

The Johannesburg Stock Exchange Limited (JSE) selected Tustico as part of their proactive monitoring review process wherein they reviewed Tustico's financial statements for the twelve months ended 31 March 2019 and its unaudited interim results for the six months ended 30 September 2019.

Following the conclusion of the proactive monitoring process, the JSE informed Tustico that Tustico's financial statements for the 12 months ended March 2019 and unaudited interim results for the six months ended September 2019, as referred to above, were not fully compliant with IFRS with respect to the three matters as listed below, and consequently instructed Tustico to effect certain restatements to the 31 March 2019 and 30 September 2019 results.

These three matters were:

1. Treatment of reclassification of inventory to investment property;
2. Recognition of revenue from the sale of unsold even (real estate inventory); and
3. Treatment of loan waivers.

These matters were correctly identified by Tustico at inception thereof as complex and non-routine in nature and as such the company sought expert IFRS advice on these matters from its JSE accredited expert IFRS advisors to determine the appropriate accounting treatment thereof.

The transactions were considered quantitatively and qualitatively material and noted as significant matters by the current and previous auditors and were therefore the subject of detailed technical assessment.

Following reconsideration, including consultation with the current auditors, Tustico agreed to effect a restatement to the 2019 and 2019 financial years with regards to matter 2 as disclosed in note 44 of the September 2020 financial results.

Tustico disagreed with the JSE with respect to matters 1 and 3 hence no adjustments have been made to the August 2021, September 2020, September 2019 and March 2019 financial statements regarding these matters. Tustico is pursuing the relevant channels available to obtain a confirmation of the appropriateness of its accounting treatment and a rescission of the decisions of the JSE.

Tustico lodged an objection to the JSE's findings concerning matters 1 and 3 with the Financial Services Tribunal during January 2021, and its decision to direct Tustico to apply particular accounting as allowed for in terms of Section 230 of the Financial Sector Regulations Act, 2017.

On 2 November 2021 the Financial Services Tribunal held virtual representation from both Tustico and the JSE's legal representatives to consider the instruction issued by the JSE to restate the historic results related to matters 1 and 3.

On 22 November 2021 the Financial Services Tribunal dismissed the application for reconsideration sought by Tustico.

The board, who ultimately remains responsible and accountable to stakeholders for the preparation of the financial statements and their compliance with IFRS, together with their legal representatives and IFRS advisors, reviewed the Financial Services Tribunal ruling, and once again are not in agreement with the judgement.

Responding to the ruling of the Financial Services Tribunal, Tustico is in the process of bringing an application in the High Court in South Africa, in terms of the Promotion of Administrative Justice Act No.3 of 2000, to set aside the ruling of the Financial Services Tribunal as Tustico believes the ruling did not consider pertinent representation by affected parties related to the substance of the various transactions at the time they were entered into and recorded.

The following summary provides further information relating to the qualitative factors pertaining to matters 1 and 3, insofar as it supports the relevant accounting application adopted by Tustico, and the issues raised by the JSE.

TREATMENT OF RECLASSIFICATION OF INVENTORY TO INVESTMENT PROPERTY

In accordance with IAS 2, Tustico initially classified the Elsenheim property as inventory as it was intended for immediate development and sale in the ordinary course of business. Over the years Tustico has developed and sold portions of the land. When the property market slowed down and Tustico was unable to fully exploit this development opportunity, the board of directors resolved to cease developments of a portion of the remaining extent of the property for the foreseeable future. Management gave effect to this decision by implementing a cessation of development activity including a decommissioning of the development.

Plans, ceased to seek regulatory approvals for further development, a sale of equipment earmarked for in the development, and staff retrenchments. The actions were consistent with the changed intention to hold the property for long term capital appreciation which is consistent with the definition of investment property. These actions were consistent with the changed use to hold the property for long-term capital appreciation which is consistent with the definition of investment property.

The JSE opposes the reclassification of property previously held inventory to investment property, as they are of the opinion that Tustico had only demonstrated a change in its intentions with respect to the property but did not demonstrate any actions as evidence of a change in the use of the land as required by IAS 40. Tustico strongly disagrees with the JSE given the facts stated above.

Following Tustico's change in use as indicated above, the property was reclassified from inventory (NAD 291 million) to investment property (NAD 984 million), in accordance with IAS 40.63, which specifies the treatment for a transfer from inventories to investment property that will be carried at fair value, and that any difference between the fair value of the property at that date and its previous carrying amount shall be recognised in profit or loss. This was done by recognising the fair value of the transferred property as revenue, and its previous carrying amount (at cost) as cost of sales, in accordance with the requirements of IAS 40.64 which states that such transfers be treated in a manner consistent with the sale of inventory.

TREATMENT OF LOAN WAIVERS – HUSO LOAN

During 2015, Tustico engaged in a transaction to acquire Huso from Dr Q Van Rooyen. The terms of the Huso Transaction were recorded in a sale of shares agreement (which did not include the sale of loan interests held by Dr Q Van Rooyen in these entities). The shareholders of Tustico (excluding Dr Q Van Rooyen who did not vote) approved the Huso transaction and voted in favour thereof at a meeting held on 5 October 2015. Due to a delay in fulfilment of the Huso Transaction suspensive conditions, a change in the structure of the Huso Transaction was proposed. These changes were approved by Tustico Group's shareholders on 13 June 2017.

GROUP FINANCIAL DIRECTOR'S REPORT (CONTINUED)

The shareholder of Huso Investments (Pty) Ltd (Huso), being Dr Q Van Rooyen, had over the years advanced NAD 548 million to the Huso group of companies. The repayment of these loans was at the sole discretion of the Huso group companies and were therefore classified as equity by these entities.

During March 2018, the terms of the loans were amended by a resolution of directors of Huso and Northern Namibian Development Company (Pty) Ltd (NNDCL). The amendment meant that the loan repayment was no longer at the discretion of Huso but would now be due within a stipulated period. As a result of this change, which imposed an unavoidable obligation to repay the loans, the loans became classified as financial liabilities. Before and after this amendment these loans remained in the beneficial interest of Dr Q Van Rooyen and did not in any way affect the sale of shares agreement between the parties as these loan interests had always been excluded from the Huso Transaction from the onset.

The Huso Transaction subsequently became effective and Dr Q Van Rooyen's shares in Huso were acquired by Trustco Resources. Subsequent to the finalisation of the Huso Transaction Dr Q Van Rooyen elected to waive repayment of the Huso Loan from the Huso group companies (which had by this time become a part of the Trustco group). The loans, as financial liabilities falling within the scope of IFRS 9, were therefore derecognised upon the waiver in accordance with the requirements of that standard with the resulting effect being recognised in profit or loss.

The JSE contends that the Huso Transaction (a common control business combination) and the subsequent waiver of the Huso group company loans by Dr Q Van Rooyen in his capacity as a lender to those businesses, be treated as a single transaction. On this understanding the loans due to Dr Q Van Rooyen would not have been recognised as financial liabilities and the waiver would not have had an impact to be recognised in profit or loss. Trustco disagrees with the JSE's understanding of the Huso transaction, specifically that the loan waiver forms part of an indivisible single transaction.

TREATMENT OF LOAN WAIVERS - RELATED PARTY LOAN

On 8 October 2018, Dr Q Van Rooyen, through Next Capital Ltd (Next), concluded an agreement to loan up to NAD 1 billion to Trustco Group for the purpose of funding the acquisition of a 51% shareholding interest in Maya Mining from Geminate Sierra Leone Limited. The loan terms were explicit with respect to imposing an obligation of repayment and was therefore classified as a financial liability by Trustco.

On 1 October 2019, repayment of the Related Party Loan was waived by Dr Q Van Rooyen at his sole discretion. The loan was derecognised in a manner consistent with the application described above with respect to the Huso loans and as a consequence impacted profit or loss.

The JSE contends that whilst the loan terms would have met the requirements of IAS 32 to be classified as a financial liability at initial recognition, the subsequent waiver in substance was equity in nature, following a similar approach as in the Huso loan noted above, and should thus have been initially recognised directly in equity, with the subsequent waiver thereof being recognised directly in equity, and not through profit and loss. Trustco disagrees with the opinion of the JSE regarding the Related Party Loan, specifically in that the loan should be accounted for in equity due to it being waived in the following financial period.

For more information the Review Application filed on 31 January 2022 can be found on <https://www.jse.co.za/downloads>.



FLOORS ABRAHAMS
EXECUTIVE DIRECTOR AND
GROUP FINANCIAL DIRECTOR



NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

39. PROACTIVE MONITORING PROCESS

The Johannesburg Stock Exchange Limited (JSE) selected Trustco as part of their proactive monitoring review process wherein they reviewed Trustco's financial statements for the twelve months ended 31 March 2019 and its unaudited interim results for the six months ended 30 September 2019.

Following the conclusion of the proactive monitoring process, the JSE informed Trustco that Trustco's financial statements for the 12 months ended March 2019 and unaudited interim results for the six months ended September 2019, as referred to above, were not fully compliant with IFRS with respect to the three matters as listed below, and consequently instructed Trustco to effect certain restatements to the 31 March 2019 and 30 September 2019 results.

These three matters were:

1. Treatment of reclassification of inventory to investment property;
2. Recognition of revenue from the sale of unserviced even (real estate inventory); and
3. Treatment of loan waivers.

These matters were correctly identified by Trustco at inception thereof as complex and non-routine in nature and as such the company sought expert IFRS advice on these matters from its JSE accredited expert IFRS advisors to determine the appropriate accounting treatment thereof.

The transactions were considered quantitatively and qualitatively material and noted as significant matters by the current and previous auditors and were therefore the subject of detailed technical assessment.

Following reconsideration, including consultation with the current auditors, Trustco agreed to effect a restatement to the 2018 and 2019 financial years with regards to matter 2 as disclosed in note 44 of the September 2020 financial results.

Trustco disagreed with the JSE with respect to matters 1 and 3 hence no adjustments have been made to the August 2021, September 2020, September 2019 and March 2019 financial statements regarding these matters. Trustco is pursuing the relevant channels available to obtain a confirmation of the appropriateness of its accounting treatment and a rescission of the decisions of the JSE.

Trustco lodged an objection to the JSE's findings concerning matters 1 and 3 with the Financial Services Tribunal during January 2021, and its decision to direct Trustco to apply particular accounting as allowed for in terms of Section 230 of the Financial Sector Regulations Act, 2017.

On 2 November 2021 the Financial Services Tribunal heard virtual representation from both Trustco and the JSE's legal representatives to consider the instruction issued by the JSE to restate the historic results related to matters 1 and 3.

On 22 November 2021 the Financial Services Tribunal dismissed the application for reconsideration sought by Trustco.

The board, who ultimately remains responsible and accountable to stakeholders for the preparation of the financial statements and their compliance with IFRS, together with their legal representatives and IFRS advisors, reviewed the Financial Services Tribunal ruling, and once again are not in agreement with the judgement.

Responding to the ruling of the Financial Services Tribunal, Trustco is in the process of bringing an application in the High Court in South Africa, in terms of the Promotion of Administrative Justice Act No 3 of 2000, to set aside the ruling of the Financial Services Tribunal as Trustco believes the ruling did not consider pertinent representation by affected parties related to the substance of the various transactions at the time they were entered into and recorded.

The following summary provides further information relating to the qualitative factors pertaining to matters 1 and 3, insofar as it supports the relevant accounting application adopted by Trustco, and the issues raised by the JSE.

TREATMENT OF RECLASSIFICATION OF INVENTORY TO INVESTMENT PROPERTY

In accordance with IAS 2, Trustco initially classified the Elsenheim property as inventory as it was intended for immediate development and sale in the ordinary course of business. Over the years Trustco has developed and sold portions of the land. When the property market slowed down and Trustco was unable to fully exploit this development opportunity, the board of directors resolved to cease developments of a portion of the remaining extent of the property for the foreseeable

future. Management gave effect to this decision by implementing a cessation of development activity including decommissioning of the development plans, ceased to seek regulatory approvals for further development, a sale of equipment earmarked for in the development, and staff reassignments. The actions were consistent with the changed intention to hold the property for long term capital appreciation which is consistent with the definition of investment property. These actions were consistent with the changed use to hold the property for long-term capital appreciation which is consistent with the definition of investment property.

The JSE opposes the reclassification of property previously held inventory to investment property, as they are of the opinion that Trustco had only demonstrated a change in its intentions with respect to the property but did not demonstrate any actions as evidence of a change in the use of the land as required by IAS 40. Trustco strongly disagrees with the JSE given the facts stated above.

Following Trustco's change in use as indicated above, the property was reclassified from inventory (NAD 201 million) to investment property (NAD 984 million), in accordance with IAS 40.63, which specifies the treatment for a transfer from inventories to investment property that will be carried at fair value, and that any difference between the fair value of the property at that date and its previous carrying amount shall be recognised in profit or loss. This was done by recognising the fair value of the transferred property as revenue, and its previous carrying amount (at cost) as cost of sales, in accordance with the requirements of IAS 40.64 which states that such transfers be treated in a manner consistent with the sale of inventory.

TREATMENT OF LOAN WAIVERS - HUSO LOAN

During 2015, Trustco engaged in a transaction to acquire Huso from Dr Q Van Rooyen. The terms of the Huso Transaction were recorded in a sale of shares agreement (which did not include the sale of loan interests held by Dr Q Van Rooyen in those entities). The shareholders of Trustco (excluding Dr Q Van Rooyen who did not vote) approved the Huso Transaction and voted in favour thereof at a meeting held on 5 October 2015. Due to a delay in fulfilment of the Huso Transaction supportive conditions, a change in the structure of the Huso Transaction was proposed. These changes were approved by Trustco Group's shareholders on 13 June 2017.

The shareholder of Huso Investments (Pty) Ltd (Huso), being Dr Q Van Rooyen, had over the years advanced NAD 546 million to the Huso group of companies. The repayment of these loans was at the sole discretion of the Huso group companies and were therefore classified as equity by these entities.

During March 2018, the terms of the loans were amended by a resolution of directors of Huso and Northern Namibian Development Company (Pty) Ltd (NNDC). The amendment meant that the loan repayment was no longer at the discretion of Huso but would now be due within a stipulated period. As a result of this change, which imposed an unavoidable obligation to repay the loans, the loans became classified as financial liabilities. Before and after this amendment these loans remained in the beneficial interest of Dr Q Van Rooyen and did not in any way affect the sale of shares agreement between the parties as these loan interests had always been excluded from the Huso Transaction from the onset.

The Huso Transaction subsequently became effective and Dr Q Van Rooyen's shares in Huso were acquired by Trustco Resources. Subsequent to the finalisation of the Huso Transaction Dr Q Van Rooyen elected to waive repayment of the Huso Loan from the Huso group companies (which had by this time become a part of the Trustco group). The loans, as financial liabilities falling within the scope of IFRS 9, were therefore derecognised upon the waiver in accordance with the requirements of that standard with the resulting effect being recognised in profit or loss.

The JSE contends that the Huso Transaction (a common control business combination) and the subsequent waiver of the Huso group company loans by Dr Q Van Rooyen in his capacity as a lender to those businesses, be treated as a single transaction. On this understanding the loans due to Dr Q Van Rooyen would not have been recognised as financial liabilities and the waiver would not have had an impact to be recognised in profit or loss. Trustco disagrees with the JSE's understanding of the Huso transaction, specifically that the loan waiver forms part of an indivisible single transaction.

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

TREATMENT OF LOAN WAIVERS – RELATED PARTY LOAN

On 8 October 2018, Dr O Van Rooyen, through Next Capital Ltd (Next), concluded an agreement to loan up to NAD 1 billion to Trustco Group for the purpose of funding the acquisition of a 51% shareholding interest in Meya Mining from Germinate Sierra Leone Limited. The loan terms were explicit with respect to imposing an obligation of repayment and was therefore classified as a financial liability by Trustco.

On 1 October 2019, repayment of the Related Party Loan was waived by Dr O Van Rooyen at his sole discretion. The loan was derecognised in a manner consistent with the application described above with respect to the Huso loans and as a consequence impacted profit or loss.

The USE contends that whilst the loan terms would have met the requirements of IAS 32 to be classified as a financial liability at initial recognition, the subsequent waiver in substance was equity in nature, following a similar approach as in the Huso loan noted above, and should thus have been initially recognised directly in equity, with the subsequent waiver thereof being recognised directly in equity, and not through profit and loss. Trustco disagrees with the opinion of the USE regarding the Related Party Loan, specifically in that the loan should be accounted for in equity due to it being waived in the following financial period.

For more information the Review Application filed on 31 January 2022 can be found on <https://www.burkardwick.com/>.

40. CAPITAL COMMITMENTS AUTHORISED CAPITAL EXPENDITURE

FIGURES IN NAMIBIA DOLLAR THOUSAND

NOT YET CONTRACTED
FOR BUT AUTHORISED BY DIRECTORS
The group intends to finance this expenditure from borrowing facilities. No part of this expenditure has been contracted for at reporting date

1 275 000

1 300 000

31 AUGUST 2021

30 SEPTEMBER 2020

41. CHANGE OF REPORTING PERIOD

The reporting period of the company was changed from 30 September to 31 August. The reason for the change in the reporting period was to align the timing of the release of full-year results to coincide with the group's capital raising working calendar and the funders' budgetary process for the preceding reporting period.

42. SHAREHOLDER INFORMATION

Details of the shareholders were as follows:

LARGE SHAREHOLDERS (AS AT 31 AUGUST 2021)

NAME	DIRECT SHAREHOLDING	INDIRECT SHAREHOLDING	TOTAL SHAREHOLDING	TOTAL SHAREHOLDING %
VAN ROOYEN, QUINTON	307 137 454	696 862 806	1 004 000 060	63.97
PROTEA ASSET MANAGEMENT LLC	339 525 604		339 525 604	21.64
- RISKOWITZ VALUE FUND	212 935 148		212 935 148	
- ITHUBA INVESTMENTS	126 590 466		126 590 466	
GERMINATE SL LTD	85 416 666		85 416 666	5.44
CONSTANTIA INSURANCE COMPANY LIMITED	44 856 616		44 856 616	2.86
MIDBROOK LANE PROPRIETARY LIMITED	6 205 000		6 205 000	0.40
SAXO BANK AS - CLIENT ASSETS	6 015 305		6 015 305	0.39
GOVERNMENT EMPLOYEES PENSION FUND PUBLIC INVESTMENT CORPORATION	5 461 236		5 461 236	0.35
CITICLICENT NOMINEES NO 8 NY GW	5 343 021		5 343 021	0.34
SEAFWELL INVESTMENTS CC	5 006 088		5 006 088	0.32
GRAND TOTAL	804 966 980	696 862 806	1 501 829 596	95.71

* Total issued shares as at 31 August 2021 - 1 616 038 581

* Treasury shares as at 31 August 2021 - 46 520 138

* Shares calculated net of treasury shares as at 31 August 2021 - 1 569 618 443

LARGE SHAREHOLDERS (AS AT 30 SEPTEMBER 2020)

NAME	DIRECT SHAREHOLDING	INDIRECT SHAREHOLDING	TOTAL SHAREHOLDING	TOTAL SHAREHOLDING %
VAN ROOYEN, QUINTON	307 137 454	696 862 806	1 004 000 060	63.94
PERSHING LLC	340 301 835		340 301 835	21.67
- RISKOWITZ VALUE FUND	2 342 696		2 342 696	
- ITHUBA INVESTMENTS	126 672 139		126 672 139	
GERMINATE SL LTD	85 416 666		85 416 666	5.44
SNOWBALL WEALTH PTY LTD	30 583 770		30 583 770	1.95
CONSTANTIA INSURANCE COMPANY LTD	8 151 152		8 151 152	0.52
MIDBROOK LANE (PTY) LTD	* 2 415 530		12 415 530	0.79
GOVERNMENT EMPLOYEES PENSION FUND PUBLIC INVESTMENT CORPORATION	5 461 236		5 461 236	0.35
SAXO BANK AS - CLIENT ASSETS	5 372 346		5 372 346	0.34
GRAND TOTAL	794 839 989	696 862 806	1 491 702 595	95.00

* Total issued shares as at 30 September 2020 - 1 616 038 581

* Treasury shares as at 30 September 2020 - 46 500 647

* Shares calculated net of treasury shares as at 30 September 2020 - 1 570 237 934

