

THE FINANCIAL SERVICES TRIBUNAL

In the matter of:

TRUSTCO GROUP HOLDINGS LIMITED

Applicant

and

JSE LIMITED

Respondent

**APPLICATION FOR SUSPENSION OF A DECISION OF THE JSE LIMITED IN
TERMS OF SECTION 231 OF THE FINANCIAL SECTOR REGULATION ACT,
2017**

PLEASE TAKE NOTICE that the applicant hereby applies in terms of section 231 of the Financial Sector Regulation Act, 2017 for the suspension of the JSE Limited's decision on 13 December 2021 and 14 February 2022 that:

1. Trustco has failed to comply with the Listings Requirements and the JSE decision and in so doing, has disregarded the Financial Services Tribunal' decision; and
2. that the appropriate recourse for Trustco's aforementioned failures is to suspend the listing of its securities, as this would further the objectives of the Financial Markets Act, 19 of 2012 and would manifestly be in the public interest.

TAKE FURTHER NOTICE than the affidavit by **RIAAN BRUYNS** is attached hereto in support of this application.

DATED at SANDTON on this the 18th day of FEBRUARY 2022



**NORTON ROSE FULBRIGHT SOUTH
AFRICA INC**

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Ref: TGH1/J Bell

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THE FINANCIAL SERVICES TRIBUNAL

In the matter of:

TRUSTCO GROUP HOLDINGS LIMITED

Applicant

and

JSE LIMITED

Respondent

**AFFIDAVIT IN SUPPORT OF AN APPLICATION IN TERMS OF SECTION 231 OF THE
FINANCIAL SECTOR REGULATION ACT. 9 OF 2017**

I, the undersigned

RIAN BRUYN

do hereby make oath and state as follows:

1. I am an adult male employed as the internal legal adviser and general counsel of applicant ("**Trustco**") at its principal place of business at Trustco House, 2 Keller Street, Windhoek, Namibia.
2. I am duly authorised to depose to this affidavit on behalf of Trustco.
3. The facts herein contained are within my personal knowledge, save where otherwise stated or the context indicated to the contrary and are to the best of my knowledge and belief both true and correct.



BACKGROUND & NATURE OF THIS APPLICATION

4. During 2021, the JSE required that Trustco restate its financial statements in certain respects (“the Restatement Decision”). The Restatement Decision is the genesis of the dispute between Trustco and the JSE. The Restatement Decision is presently the subject of a review application in the High Court, Pretoria under case number 5640/2022 (“the Review Application”).
5. Notwithstanding the Review Application, the JSE seeks to enforce the Restatement Decision. Trustco has not restated its financial statements to date and contends that there is no law, ruling, standard or listing requirement that precludes the presentation of its financials as they currently stand. The Review Application is pending as part of the process to determine this very question.
6. Moreover and despite not restating its financial statements, I point out below that Trustco has indeed informed all relevant stakeholders of the JSE’s position. This in terms of Trustco’s audited financial statements published on 31 January 2022 and through SENS announcements after the Tribunal dismissed Trustco’s initial reconsideration application on 22 November 2021.
7. I point out in particular to the extracts of Trustco’s annual financial statements that are attached to the Reconsideration Application (defined in paragraph 11 below) how this has been dealt with and where a clear explanation is provided as to how Trustco treated the relevant transactions and how the JSE differs from this position. The market is therefore fully informed as to how Trustco accounted for the transactions and also how the JSE wants it to be accounted for.
8. Again, notwithstanding the Review Application and the fact that the market is informed, the JSE seeks to sanction Trustco for failing to comply with the Restatement



Decision in the manner as the JSE says its should be done. The sanction sought to be imposed by the JSE is to suspend Trustco's listing on the JSE and prevent its shares from being traded ("**the Suspension Decision**"). The JSE confirmed that it sought to enforce this relief in a letter dated 13 December 2021. A copy of this letter is attached hereto marked "**A**".

9. TrustCo objected to the Suspension Decision in a letter dated 17 December 2021. A copy of this letter is attached hereto marked "**B**".

10. On 14 February 2022, the JSE:

10.1. dismissed Trustco's objection to the Suspension Decision (a copy of the JSE's letter is attached hereto marked "**C**"); and

10.2. issued a SENS announcement informing the market that, notwithstanding the Review Application, the JSE sought to suspend Trustco's listing (a copy of the SENS announcement is attached hereto marked "**D**").

11. Having confirmed its intended course of action, and in light of the pending Review Application, Trustco seeks a reconsideration of the Suspension Decision. An application in terms of section 230 of Financial Sector Regulation Act 9 of 2019 ("**the Act**"), for the reconsideration of the Suspension Decision, has been filed simultaneously herewith ("**the Reconsideration Application**").

12. Pending the Reconsideration Application, Trustco seeks that the JSE's Suspension Decision is itself suspended in terms of section 231 of the Act, read with Financial Services Tribunal Rules 15 to 21.

13. I am advised that the basis and reasons for this application must be succinct. I therefore do not intend to repeat the content of the grounds to the Reconsideration Application.



While the essence of the basis of this application is set out above, so as not to unduly burden this affidavit, I refer to the grounds to the Reconsideration Application where appropriate.

BASIS FOR THE APPLICATION

14. I am advised that it would be wholly inappropriate and significantly prejudicial to Trustco, its employees and its shareholders, if the Suspension Decision is enforced and given effect to before the Reconsideration Application has been considered and finally determined.

15. I say so for the following reasons:

15.1. as the grounds to the Reconsideration Application show, there is (at least) a prima facie basis for Trustco's conclusion that there is no legal basis for the Suspension Decision, in particular as:

15.1.1. it is premature in view of the Review Application; and

15.1.2. the Restatement Decision was taken by a person who is not lawfully authorised to do so: Mr AF Visser.

15.2. the Suspension Decision imposes the harshest possible sanction on Trustco and one which will have evidently devastating consequences for it, its employees and shareholders;

15.3. in light of the pending and yet unresolved disputes between the parties, it is disproportionate to enforce such a drastic remedy in circumstances where the genesis of the dispute – the Restatement Decision – may be decided in favour of Trustco, in which event, all of the consequent disputes, threats and sanctions will not be imposed at all;



- 15.4. the Reconsideration Application is unlikely to be determined before the end of 2022 – a suspension for the vast majority of the year is unwarranted, certainly where Trustco will likely eventually succeed.
16. Should the Suspension Decision be implemented notwithstanding the Reconsideration Application, Trustco's listing is prematurely suspended and the ability to trade in Trustco shares is unduly scuppered – all of this based on the incorrect and legally invalid Restatement Decision.
17. The invalid Restatement Decision will, in the circumstances, have significant adverse consequences for Trustco, its employees and stakeholders as it would:
- 17.1. disable Trustco's staff from trading in their shares as they receive shares as part of their compensation package and saving initiatives (which for purposes of its commercial attractiveness relies on the liquidity and value of Trustco's share), and Trustco employees will thus suffer financially;
- 17.2. cause significant reputational damage to Trustco, particularly in an environment where the market is currently extremely sensitive when it comes to the transparency with which listed entities conducts business. Taking into consideration that as to date Trustco's external independent auditors, after conducting thorough audit processes, provided Trustco with unqualified audit reports for a period of 29 years;
- 17.3. negatively impact on Trustco shareholders as they will be unable to trade their shares and further face uncertainty as to the value attributable to their shareholding which in turn negatively impacts on their own commercial positions and dealings;



- 17.4. negatively impact on Trustco's ability to raise capital for its current and future business operations; and
- 17.5. negatively impact on the international stakeholders and funders of Trustco, as an involuntary suspension of Trustco's shares will automatically create an event of default in accordance with the terms of certain of its investors;
- 17.6. Trustco is currently under a cautionary announcement (a copy of the SENS announcement is attached hereto marked "E") where a possible transaction is pending. The parties are currently negotiating the terms, and performing a legal due diligence on Trustco. Should Trustco be suspended, it is believed that this transaction may not proceed as the party with whom the transaction is envisaged is also a listed entity;
- 17.7. Trustco is currently in the circular process of two transactions. Should Trustco not be able to conclude the two circular processes and implement these transactions - there would be irreparable harm to Trustco and the contracting third parties. In both these circulars the financial information on the effect of these transactions is provided and if the JSE refuses to accept the financial information based on the latest published financial information or implement the suspension of Trustco's listing, it would mean that Trustco would not be able to be able to enter and conclude any commercial transaction until the Review Application is concluded. This process can still take a long time and is outside Trustco's control; and
- 17.8. One of Trustco's minority shareholder funds matured and they are in the process of distributing its shareholding in Trustco to its underlying investments. Should Trustco be suspended, it would render any further investments and/or opportunities moot and impossible.



18. Evidently, as made plain above, the immediate imposition of the Suspension Decision will generally have significant adverse financial consequences for Trustco and every person and entity connected to it – regardless of how remote. The sheer impact of this damage is incalculable and will likely devastate Trustco entirely and irreparably.
19. Once that damage has been done, the egg cannot be unscrambled.
20. In stark contrast to Trustco's position, the JSE suffers no harm or prejudice at all if the Suspension Decision is not immediately implemented. Indeed, a suspension does not protect the market as is the JSE's mandate. In this regard it should be noted that:
 - 20.1. the market is well aware of the JSE's Restatement Decision and the Tribunal's decision in respect of it. Both were conveyed to the market by the JSE through a number of SENS announcements;
 - 20.2. Trustco itself has taken steps to ensure that the market participants are fully apprised of the situation by publishing the SENS announcements on its own website;
 - 20.3. Trustco's 2021 annual financial statements ("**AFS**") explain:
 - 20.3.1. Trustco's accounting treatment;
 - 20.3.2. the fact that the JSE has taken issue with it;
 - 20.3.3. the fact of the Restatement Decision; and
 - 20.3.4. the fact that the Tribunal made a decision in the JSE's favour.
21. To implement the Suspension Decision thus does not create equilibrium in the market or share any new information with market participants. This information is already freely available in the market and has been distributed widely.



22. Moreover, although there has not been a restatement of the AFS in the technical sense of the word, all readers of the AFS will note the effect that these restatements will have if they were to be implemented following the outcome of the Review Application. The market is thus well aware of the potential in either event.
23. The difference between Trustco and the JSE's respective positions is an interpretation of IFRS accounting standards. Despite the wealth of documents filed in various fora, the JSE has not ever pointed to a concrete standard or rule that Trustco has contravened. Indeed, Trustco has not. Importantly, the JSE does not assert or suggest an element of fraud, deceit or manipulation of financial statements.
24. In addition, Trustco's minority shareholders have confirmed, through a non-binding vote, that they agree with Trustco's financial treatment of the underlying transactions.
25. As such, there is no prejudice to the JSE or the market if the Suspension Decision is suspended pending the outcome of the Reconsideration Decision. It is noteworthy that the JSE has not provided any reasons as to why it views the Suspension Decision to in fact be in the public interest and how it will protect the market.
26. The only effect that an immediate implementation of the Suspension Decision will have is to damage Trustco, its shareholders, investors and employees.

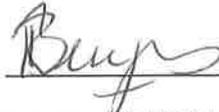
CONCLUSION

27. In conclusion, and for the reasons above, I respectfully submit that Trustco has made out a proper case for the Suspension Decision not to be implemented pending the outcome of the Reconsideration Application.
28. The prejudice and irreparable damage that Trustco and its stakeholders will suffer is self-evident and catastrophic.



29. On the other hand the JSE or market will suffer no harm or prejudice. There is simply no imminent need for the Suspension Decision to be implemented.

WHEREFORE I pray for an award in terms of the notice to which this affidavit is annexed.



RIAN BRUYNS

SIGNED and **SWORN** to before me at Windhoek on this the **18th** day of **February 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

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Attorney and Notary of the High Court
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13 December 2021
Ref: 111246/19-4/SC

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Dear Sir/ Madam

TRUSTCO GROUP HOLDINGS LIMITED ("TRUSTCO"): SUSPENSION OF LISTING OF SECURITIES

1. We refer to the following:

1.1 our letter of 3 December 2021, in which Trustco was informed that due to its non-compliance with the Listings Requirements, the decision of the JSE in its letter of 11 November 2020 (which was confirmed by Financial Services Tribunal) ("**the JSE Decision**") and the decision of the Financial Services Tribunal itself, upholding the JSE Decision, dated 22 November 2021 ("**the FST Decision**"), the JSE was considering suspending the listing of Trustco's securities ("**the proposed suspension**"); and

1.2 the letter from Norton Rose Fulbright to the JSE, on Trustco's behalf, dated 7 December 2021 in response to the JSE's above letter ("**the NRF letter**").

2. It is necessary to record at the outset that the NRF letter is incorrect in contending that the JSE has already decided to suspend the listing of Trustco's shares. It is plain that the JSE expressly invited Trustco in its letter to "*make written representations to the JSE as to why such a suspension should not be affected.*" The JSE therefore sought in express terms Trustco's views in relation to why the proposed suspension should not be confirmed, and the NRF letter unfortunately proceeds from the wrong premise insofar as it assumed that the JSE already decided to suspend the listing of Trustco's securities.

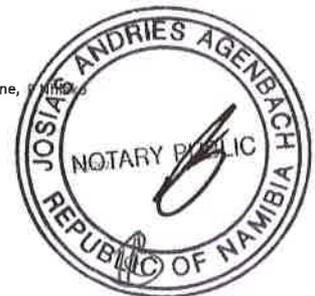
Executive Directors: Dr L Fourie (Group CEO), A Takoordeen (CFO)

Non-Executive Directors: N Nyembezi (Chairman), ZBM Bassa, MS Cleary, VN Fakude, Dr SP Kana, FN Khanyile, IM Klirk, BJ Kruger, Dr MA Matookane, P Mphahlele

Group Company Secretary: GA Brookes

JSE Limited Reg No: 2005/022939/06

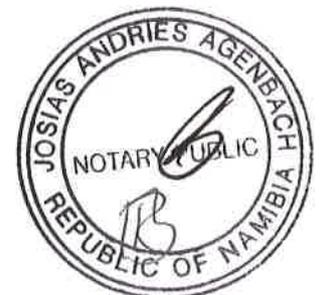
Member of the World Federation of Exchanges



3. In the circumstances, we consider the "*objections*" raised in paragraph 14 and 15 of the NRF letter (which are clearly intended to be Trustco's objections to the proposed suspension) to be Trustco's representations as to why the proposed suspension should not be confirmed. We deal with these representations on this basis below.
- 3.1 Firstly, considerable emphasis has been placed on the alleged difficulties that Trustco has with the FST Decision and its intended review thereof. Trustco seeks to rely on this as a basis to contend that the proposed suspension will be premature, as the JSE ought in Trustco's view to await the outcome of its intended review proceedings before considering the proposed suspension. The JSE does not agree with this contention for, *inter alia*, the following reasons:
- 3.1.1 The FST Decision is final, binding and immediately enforceable unless and until it is set aside; and its enforceability is not affected or automatically suspended by the institution of any proceedings to have it reviewed and set aside.
- 3.1.2 In any event, the effect of the FST Decision is that the JSE Decision is restored, as the Tribunal refused to interfere with the JSE Decision and dismissed Trustco's application for reconsideration.
- 3.1.3 The JSE does not intend to enforce the FST Decision (save in respect of the cost order if that is required, which will be done later) in the form of a civil judgment as contemplated in section 236 of the Financial Sector Regulation Act, 2017 ("**FSRA**"). Instead, the JSE seeks to enforce the JSE Decision as it would have had there been no application for reconsideration at all. Section 236 of the FSRA accordingly does not find application.
- 3.2 Secondly, Trustco contends that it requires more time to consider the effect of the FST Decision and how to implement the FST Decision. The JSE does not agree with this for the following reasons:
- 3.2.1 As noted above, it is not the FST Decision that needs to be implemented but instead, the JSE Decision which was effectively confirmed by the FST Decision to dismiss Trustco's application for reconsideration. Importantly, the JSE Decision directs Trustco as to how the relevant financial statements need to be restated.



- 3.2.2 The JSE Decision was taken over a year ago and Trustco accordingly had a year to consider and take advice on it, in the knowledge that its challenges to the JSE Decision may prove to be unsuccessful.
- 3.2.3 In any event, the confirmation that Trustco will review the FST Decision confirms that it has already formed a view on such decision and accordingly does not require any further time to consider it.
- 3.2.4 As regards the alleged concerns regarding the potential liability of Trustco's directors, it is not clear why this has been raised in the NRF letter, as this has nothing to with Trustco and its obligation to comply with its legal obligations.
- 3.3 Trustco's contention that the FST Decision did not confirm the reconsidered decision or find that it was correct is plainly incorrect. The FST Decision clearly aligns with the submissions advanced by the JSE in all material respects and moreover, as stated above, by dismissing Trustco's application for reconsideration, the JSE Decision was effectively upheld.
- 3.4 Thirdly, Trustco contends that the proposed suspension should not be confirmed because it would cause harm to Trustco itself and to its shareholders. In considering whether to suspend the listing of Trustco's shares, the JSE is required to consider whether it would promote the objectives of the Financial Markets Act, 2012 ("FMA") which, *inter alia*, includes whether or not it is in the public interest to do so. In the JSE's view, Trustco's concerns as aforesaid are outweighed by the need to hold Trustco accountable for its refusal to comply with the Listing Requirements and the JSE Decision, and its consequent disregard of the FST Decision. The JSE is of the view that the proposed suspension is necessary to satisfy the objectives of the FMA and it is manifestly in the public interest. What Trustco is required to do involves restating its financial statements in an amount in excess of N\$ 2 billion. The JSE considers that this is important information which the public must be told.
4. Lastly, in regard to Trustco's requests for information, the JSE is of the view that Trustco already has all of the information that it requires to respond to the JSE's request for written representations regarding the proposed suspension. The JSE accordingly declines to provide same.



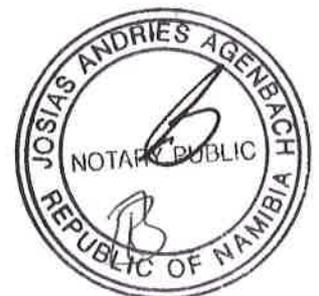
Decision by the JSE

5. Having carefully considered all relevant facts and information, including those contained in the NRF letter, the JSE has decided that Trustco has failed to comply with the Listings Requirements and the JSE decision and in so doing, has disregarded the FST Decision. The JSE has also decided that the appropriate recourse for Trustco's aforementioned failures is to suspend the listing of its securities, as this would further the objectives of the FMA and would manifestly be in the public interest.
6. The JSE notes Trustco's requests for undertakings and its threat of urgent court proceedings if such undertakings are not provided. In light of the fact that Trustco misconstrued the proposed suspension as being a decision already made by the JSE, this threat is clearly premature. In any event the JSE declines to provide the undertaking sought.
7. Now that the JSE has confirmed its decision, should Trustco be dissatisfied with the decision, its remedy is to object to the decision in accordance with paragraph 1.4 of the Listings Requirements.
8. Should Trustco wish to object to the JSE's decision to suspend the listing of Trustco's shares, the JSE must be notified and written reasons for such objection must be furnished to the JSE by no later than close of business on Friday, 17 December 2021.

Yours Faithfully



**AM DE BRUYN: GENERAL MANAGER
ISSUER REGULATION**



17 December 2021

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Dear Sir / Madam

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

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

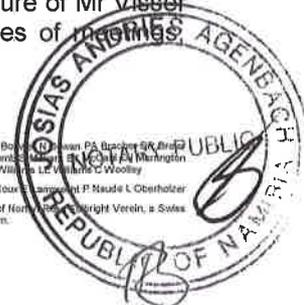
1. We refer to Mr Visser's letter of 13 December 2021.
2. In the letter you advised that Trustco should follow the procedure prescribed in paragraph 1.4 of the Listing Requirements. That paragraph 1.4 states that "an applicant issuer" who wants to object to a decision which "is taken under these Listing 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 1984/003395/21) Directors: APM Robinson (Chairman) M van der Westhuizen (Chief Executive Officer) Y Airdrie MH Alexander MS Ash SH Barnett JW Bell HI Bisset BE Botha GG Bouwer D Cavan PA Cooper SK Dreyer AJ Chappell M Charvot SL Chemaly MD Coale C Costas MO Dale V David BM Denny D Dinile MC Hartwell R Hendricka CR Holness DS Kaprielis AV Kardamitska SJ Kennedy-Good SS Khoza JM Kruger S Lathi REF Lake PE Lambert M Lanyon E Lanyon M Maritzburg JE Midlane GA Nott UN Odoyar B Perret RP Petersen CC Pillay DR Pillay CJ Pretorius GM Redemeyer L Rech D Reddy V Reddy AK Strachan I Swart DS Tatham HJ van Renburg G van Vuuren AP Voe M Wagener JJ Whyte AP Williams LE Williams Z Woolley

Consultant: N Botha AE Buckley PM Chronis AGS Daron NJ Hart RJ Holwill GCB Kahle W P le Roux S Langmont P Masude L Oberholzer

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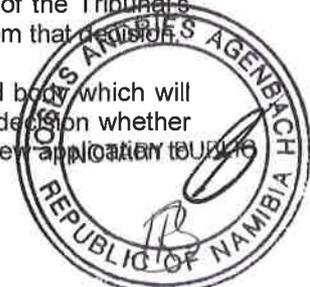


4. While reserving all Trustco's rights, we now proceed to address the body who must hear Trustco's objections.
5. The suspension decision taken by Mr Visser ("**the Suspension Decision**") re-affirms the position adopted in our letter of 9 December 2021 in that the decision, for all intents and purposes, 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 is 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 the



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.



17 December 2021

 **NORTON ROSE FULBRIGHT**

Yours faithfully



John Bell
Director
Norton Rose Fulbright South Africa Inc



14 February 2022

The Company Secretary
Trustco Group Holdings Limited

Johannesburg Stock Exchange
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jse.co.za

Via email: [C/O dsteinbuch@vunanicapital.co.za](mailto:C/O_dsteinbuch@vunanicapital.co.za)

Dear Sirs

JSE LIMITED ("THE JSE") // TRUSTCO GROUP HOLDINGS LIMITED ("TRUSTCO"): SUSPENSION OF LISTING OF SECURITIES

1. We refer to the JSE's decision to suspend the listing of Trustco's securities ("**the Suspension Decision**") and following:
 - 1.1 the correspondence exchanged between the JSE, Trustco and the parties' respective legal representatives between 3 December 2021 to date, with particular reference to:
 - 1.1.1 the JSE's letter to Trustco, dated 11 November 2020 ("**the JSE's Decision**");
 - 1.1.2 the JSE's letter to Trustco confirming the Suspension Decision, dated 13 December 2021;
 - 1.1.3 the letter from Norton Rose Fulbright to the JSE setting out its objections to the Suspension Decision, dated 17 December 2021 ("**the Objection Letter**");
 - 1.1.4 the letter from Webber Wentzel to Norton Rose Fulbright, dated 20 January 2022 and Norton Rose Fulbright's response thereto, dated 26 January 2022;
 - 1.2 Trustco's audited financial statements for the year ending 31 August 2021, published on 1 February 2022 ("**Trustco's AFS**").
2. As you are aware, following receipt of the Objection Letter, in which it was contended that the implementation of the Suspension Decision would be premature prior to the publication of Trustco's AFS, the JSE confirmed, through Webber Wentzel's 20 January 2022 letter, that it would await sight of Trustco's AFS before making its decision on whether to uphold Trustco's objection to the Suspension Decision.
3. Having considered Trustco's AFS, as well as all other relevant facts and information contained in the Objection Letter, the JSE has decided to dismiss Trustco's objection to the Suspension Decision. In doing so, and having regard



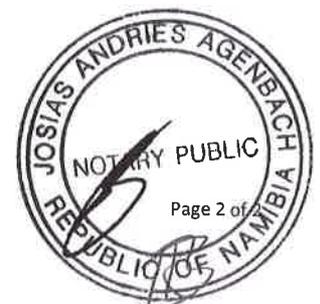
to the significance of the Suspension Decision, the JSE will simultaneously with the sending of this letter, publish a SENS announcement confirming its decision, a copy of which is annexed to this letter marked "A".

4. As Trustco has made clear its intention to seek a suspension of the Suspension Decision, the JSE confirms that it will not immediately implement the Suspension Decision. In this regard, we are instructed to record that:
 - 4.1 should Trustco wish to initiate any legal proceedings, and obtain the relief it deems necessary to obtain, on an urgent basis, in the form of an order from a competent tribunal directing that the implementation of the Suspension Decision is suspended pending the outcome of an application for reconsideration of such decision, such process must be initiated and delivered by 15h00 on Friday, 18 February 2022;
 - 4.2 upon receipt of such process, the JSE will suspend the implementation of the Suspension Decision until 15h00 on 11 March 2022, to allow for these proceedings of first instance to run their course;
 - 4.3 if Trustco does not initiate and deliver any legal process by 15h00 on 18 February 2022, or if it does so, but in any event fails to obtain the appropriate relief by 15h00 on 11 March 2022, the JSE will immediately implement the Suspension Decision without further notice to Trustco.
5. We confirm that Webber Wentzel is authorised to accept service of any process in this regard on behalf of the JSE.

Yours faithfully

A handwritten signature in black ink, appearing to be 'A F Visser', is written over a faint circular stamp.

**A F VISSER: DIRECTOR
ISSUER REGULATION**



GEN – General – Trustco Group Holdings Limited

Update in the JSE's decision on its proactive monitoring review for Trustco Group Holdings Limited ("**Company**" or "**Trustco**") financial results.

We refer to:

1. the JSE's SENS announcement of 11 November 2020 which informed stakeholders of the process followed and the decisions made by the JSE in respect of the Company as it relates to their Annual Financial Statements for the year ended 31 March 2019 and interim results for the 6 months ended 30 September 2019 and the JSE's views and decision that Trustco's financial information does not comply with the JSE's Listings Requirements ("**the JSE's Decision**");
2. the JSE's SENS announcement of 22 November 2021 which informed stakeholders that the Company's application to the Financial Services Tribunal ("**the Tribunal**") for a reconsideration of the JSE's decisions in terms of the Financial Sector Regulation Act was dismissed by the Tribunal on 22 November 2021 ("**the Tribunal's Ruling**").

Following the dismissal of the Company's application to the Tribunal, the Company was required to implement the JSE's Decision by implementing the following corrective action:

- A. Restating the Company's Annual Financial Statements for the year ended 31 March 2019 to account for the following prior period errors:
 1. Reversing the N\$546m gain previously recognised in profit and loss and recognising this 'credit amount' to reduce the common control reserve initially recognised in equity as a result of the Huso acquisition (referral 1);
 2. Reversing the reclassification of the Elisenheim properties (incorrectly reclassified to investment properties) and consequently reversing the N\$693m gain (presented as revenue of N\$984m and cost of sales of N\$291m) from profit and loss (referral 2); and
- B. Restating the Company's interim results for the 6 months ended 31 September 2019 to account for the following prior period error:
 3. Reversing the N\$1bn gain previously recognised in profit and loss and accounting for this as a transaction with an equity participant i.e. recognising the credit directly in equity (referral 1).

The restatement of both the Annual Financial Statements and interim results was required to be effected in accordance with IAS 8, and in particular paragraphs 42 and 49 thereof.

On 1 December 2021, the Company published a SENS in which, *inter alia*, it criticised the JSE's Decision and requested shareholders to participate in non-binding advisory votes on various key issues which were the subject of and had already been determined by the JSE's Decision.

Following correspondence exchanged between the JSE and the Company in relation to its failure, and/or refusal to comply with the JSE's Decision, the Listing Requirements and



Tribunal's Ruling, the JSE notified the Company of its decision to suspend the listing of its securities on 13 December 2021 ("**the Suspension Decision**").

On 17 December 2021, the Company provided its written objections to the Suspension Decision. One of the Company's objections was that it would be premature to implement the Suspension Decision prior to it publishing its audited financial statements for the year ended 31 August 2021, which was the earliest it would be able to give effect to the JSE's Decision. The Company indicated that it anticipated it would be able to publish its audited financial statements by 31 January 2022.

On 1 February 2022, the Company published its audited financial statements but did not implement the JSE's Decision and instead, confirmed its intention to apply to the High Court to review the Tribunal's Ruling in terms of the Promotion of Administrative Justice Act No. 3 of 2000. On the same date, the Company published a SENS announcement indicating that it had filed its review application against the Tribunal's Ruling.

Although the Tribunal's Ruling is now subject of a review application, it remains valid, binding and enforceable until it is set aside or suspended by a court. In the circumstances, Trustco remains in breach of the JSE's Decision, the Listing Requirements and the Tribunal's Ruling. In the circumstances, having considered Trustco's objections to the Suspension Decision, including the reasons for its refusal to comply with its obligations as aforesaid, and the contents of the annual financial statements that it published on 31 January 2022, the JSE has decided to dismiss Trustco's objection and confirm the Suspension Decision.

Trustco has a right to seek a suspension of the Suspension Decision, and has requested from the JSE a notice period between confirmation of the Suspension Decision and its implementation, in order to enable it to seek urgent injunctive relief to stay the implementation of such decision (if so advised). The JSE has considered Trustco's request and has agreed to suspend the implementation of the Suspension Decision on the following terms:

1. should Trustco wish to initiate any legal proceedings, and obtain the relief it deems necessary to obtain, on an urgent basis, in the form of an order from a competent tribunal directing that the implementation of the Suspension Decision is suspended pending the outcome of an application for reconsideration of such decision, such process must be initiated and delivered by 15h00 on Friday, 18 February 2022;
2. upon receipt of such process, the JSE will suspend the implementation of the Suspension Decision until 15h00 on 11 March 2022, to allow for these proceedings of first instance to run their course;
3. if Trustco does not initiate and deliver any legal process by 15h00 on 18 February 2022, or if it does so, but in any event fails to obtain the appropriate relief by 15h00 on 11 March 2022, the JSE will immediately implement the Suspension Decision without further notice to Trustco.

This announcement has been placed by the JSE in the interests of existing and potential shareholders of Trustco. The accuracy and reliability of financial information published by companies is of critical importance in ensuring a fair, efficient and transparent market, and it is therefore imperative that the market is notified of the JSE's decision.



14 February 2022



**TRUSTCO GROUP HOLDINGS LIMITED****Incorporated in the Republic of Namibia****(Registration number 2003/058)****Registered as an external company in South Africa****(External registration number 2009/002634/10)****NSX share code: TUC****JSE share code: TTO****OTCQX share code: TSCHY****ISIN Number: NA000AORF067****("Trustco" or "the Company")****CAUTIONARY ANNOUNCEMENT: FIRST TIER GLOBAL DIAMOND PRODUCER TO PROVIDE FUNDING TO SCALE MEYA MINING TO OVER 1 MILLION CARATS PER ANNUM THROUGH USD 150 MILLION INVESTMENT**

Trustco Shareholders ("**Shareholders**") are referred to the Company's unaudited condensed consolidated interim results for the six months period ended 31 March 2021 published on 30 June 2021 in terms whereof it was advised that the Company's subsidiary, Meya Mining ("**Meya Mining**"), was capitalised sufficiently to produce at least 10 000 carats per month, being circa 120 000 carats per annum from Q1 of 2022, whereafter production is set to increase up to 30 000 carats per month, being 360 000 carats per annum.

Trustco Resources ("**Trustco Resources**"), a subsidiary of Trustco, owns 65% of Meya Mining. The local Sierra Leonean partner Germinate SL Limited ("**Germinate**"), holds the remaining 35%.

Trustco has during the past 5 years, invested approximately USD 115 million into the resource establishment and development of Meya Mining. At an average exchange rate of USD 1 to ZAR 15.55, the ZAR equivalent investment is ZAR 1.848 billion.



Accordingly, Shareholders are advised to exercise caution when dealing in the Company's securities until a further announcement regarding the Transaction is made. Any questions can be sent via email to the company secretary at komada@tgh.na.

Windhoek, Namibia,
28 December 2021

Komada Holdings (Pty) Ltd
Company Secretary and Investor Relations Services to Trustco Group Holdings Limited

JSE Sponsor

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