

THE FINANCIAL SERVICES TRIBUNAL

CASE NUMBER: JSE1/2022

In the matter of:

TRUSTCO GROUP HOLDINGS LIMITED

Applicant

and

JSE LIMITED

Respondent

RESPONDENT'S RESPONSE TO THE APPLICATION FOR SUSPENSION OF A DECISION OF THE JSE LIMITED

INTRODUCTION

1. Trustco Group Holdings Limited ("**Trustco**") asks for a suspension of the JSE's decision to suspend Trustco's listing on the JSE ("**the Suspension Decision**"), pending the determination of its application to reconsider the Suspension Decision ("**the Reconsideration Application**").
2. Trustco premises its Suspension Application on (1) the *prima facie* merits of the Reconsideration Application; and (2) the prejudice that the Suspension Decision will have on Trustco and its stakeholders.
3. The Reconsideration Application is devoid of merit. The Suspension Decision was taken because Trustco contemptuously refused to restate its financial statements, when the JSE had decided that it had to do so, and when the Tribunal had refused its application for reconsideration. Instead of restating its financial statements, Trustco launched an application to review the Tribunal's decision ("**the Review Application**"), but did not seek any interdictory relief that would have delayed the need to restate the financial statements pending the review. Trustco did this after having been warned by the JSE that interdictory relief was required, and failing that, the restatement had to take place.
4. In the correspondence that was exchanged between the parties, Trustco's attorneys said that Trustco would effect the restatement. It was on this basis that the JSE waited until 31 January 2022 for Trustco to publish its financial statements. For reasons that have not been explained, Trustco did not restate its financial statements. Instead, it issued an application to review the Tribunal's decision, and

made mention of the review in the small print of its financial statements. The point is that Trustco has stated that it would restate its financial statements. If it had done as it said it would, it is likely that the Suspension Decision would not have been made. It was within Trustco's exclusive power to restate its financial statements, in accordance with valid, operative, and binding decisions of the JSE and the Tribunal, but it elected not to do so. Trustco is the master of its own misfortune and should not be assisted with a suspension of the Suspension Decision.

5. The suggested prejudice to Trustco shareholders is just that – suggested. There are no facts to support the alleged prejudice. The resort to arguments that the prejudice flowing from a suspension is self-evident are entirely unhelpful in the absence of some facts to support those arguments. Further, arguments of prejudice to existing shareholders are entirely self-serving, because Dr van Rooyen is the majority shareholder and it is for the most part, his "deal" that has resulted in the need for the restatement. He will of course resist the restatement because when it is effected he will have to return the nearly N\$3 billion shares that were awarded to him as part of the earn out deal he had concluded. But most importantly, Trustco ignores the prejudice that will befall the unsuspecting investor who buys Trustco shares/securities, ignorant of the true state of its financial statements. In this respect the restatement of the loan issues will result in the reversal of a gain of N\$1,5 billion. In the context of a company whose net asset value is only N\$2 billion, that is an enormous difference.

THE RELEVANT BACKGROUND FACTS

6. Trustco is a Namibian company listed on the JSE. It describes itself as having a net asset value of N\$2 billion, or roughly R2 billion. Trustco's CEO and majority shareholder is Dr Quintin van Rooyen. Dr van Rooyen was also the sole shareholder of Huso Investments Proprietary Limited ("**Huso**").
7. Between 2015 and 2018, Dr van Rooyen advanced loans totalling approximately N\$546 million (or about R546 million) to Huso and its subsidiaries. In 2018, Trustco acquired all the issued shares of Huso. Dr van Rooyen was on both sides of the transaction: he was Trustco's CEO and majority shareholder, and he was Huso's sole shareholder.
8. In Huso's financial statements, Dr van Rooyen's loan was initially classified as equity (that is, it was recorded as money that Dr van Rooyen had invested in Huso as a shareholder). By the time Trustco acquired Huso, though, the loan had been

reclassified as a liability (that is, money that was owed to Dr van Rooyen). The switch from equity to liability was not disclosed to Trustco's shareholders.

9. The sale of shares agreement for Trustco's purchase of Dr van Rooyen's shares in Huso included an earn-out mechanism for Dr van Rooyen. In short, through the mechanism, Dr van Rooyen earned shares in Trustco if Trustco met stipulated profit thresholds.
10. A few weeks after Trustco acquired Dr van Rooyen's Huso shares, Dr van Rooyen forgave his N\$546 million loan. Because Trustco had recognised the loan as a liability, it reflected the forgiveness of the loan as a gain of N\$546 million in its financial statements. This, in turn, triggered the earn-out mechanism in Dr van Rooyen's sale of shares agreement to his benefit.
11. Despite several opportunities, Dr van Rooyen and Trustco have never explained why Dr van Rooyen would forgive a loan of more than half-a-billion Rand. Trustco never explained it to the FRIP; Trustco never explained it to the JSE; and Trustco never explained it to the Financial Services Tribunal ("**the Tribunal**"). The Tribunal would later criticise Trustco for its "*repeated failure to take the FRIP, the JSE, and the Tribunal into its confidence*" on this issue.
12. Meanwhile, in 2019, Dr van Rooyen advanced a second loan of up to N\$1 billion (or R1 billion) to Trustco. A few months later, Dr van Rooyen's generosity struck again, and he forgave this loan too, resulting in a N\$1 billion gain that Trustco recognised in its financial statements (and resulting in another reward for Dr van Rooyen through his earn-out mechanism).
13. On a separate issue, Trustco owns properties in a development in Elisenheim, just north of Windhoek. Trustco reclassified properties in the development from inventory to investment property. It justified the reclassification on the basis that a decline in demand meant that it did not anticipate selling the properties for the foreseeable future. After the reclassification, Trustco revalued the properties upwards which increased its profitability. Trustco then reported a N\$693 million gain in the profit and loss account in its financial statements (or revenue of N\$984 million against a cost of sales of N\$291 million).
14. On 5 December 2019, Trustco's financial statements were selected for review under the JSE's proactive monitoring review process. Under the proactive monitoring review process, the JSE reviews the financial statements of every listed company at least once every five years. The Trustco financials that were reviewed were its

group annual financial statements for the year ending 31 March 2019, and its interim results for the six months ending 31 August 2018 (for convenience, this is referred to collectively as "**Trustco's financial statements**", except where necessary to differentiate between them).

15. In the process of the proactive monitoring review, the JSE referred three issues to the FRIP. The FRIP is an advisory body to the JSE. It advises the JSE on, amongst other things, technical issues about listed companies' compliance with IFRS. The FRIP comprises a panel of IFRS experts. Individuals are appointed to the FRIP because they have in-depth technical knowledge of IFRS, technical accounting work experience, and recognition from their peers that they are IFRS experts.
16. The JSE referred three issues to FRIP:
 - 16.1 the first issue related to Dr van Rooyen's two loans and Trustco classifying a "gain" in profit and loss after Dr van Rooyen forgave the loans (a N\$546 million gain in Trustco's 2019 annual financial statements, and a N\$ 1billion gain in its 2019 interim results). This became known as "**the loan issue**";
 - 16.2 the second issue related to Trustco's reclassification of the Elisenheim properties from inventory to investment property in its financial statements and resulting gain of N\$693 million. This became known as "**the property issue**";
 - 16.3 a third issue also related to other property transactions, but Trustco subsequently rectified it to the JSE's satisfaction.
17. The FRIP sent a report to the JSE in July 2020. After considering all relevant information, including submissions on each issue from Trustco, the FRIP advised the JSE that, in its view, Trustco's reporting of the loan issue and the property issue did not comply with IFRS.
18. On 16 October 2020, and after giving Trustco an opportunity to comment on the FRIP's report, the JSE decided that Trustco had not complied with IFRS in respect of the loan issue and the property issue.
19. Trustco objected to the JSE's decision in terms of paragraph 1.4 of the JSE Listings Requirements (which gives an issuer a right to object to any decision made under the Listings Requirements).

20. On 11 November 2020, the JSE dismissed Trustco's objection. The JSE directed Trustco to take corrective action, which included the following:
- 20.1 The JSE directed Trustco to restate its annual financial statements for year ended 31 March 2019, with the following corrections:
- 20.1.1 in respect of the first loan, Trustco must reverse the N\$546 million gain recognised in profit and loss; and
- 20.1.2 in respect of the property issue, Trustco must reverse the reclassification of the properties and reverse the N\$693 million gain recognised in profit and loss.
- 20.2 The JSE directed Trustco to restate its interim results for the 6 months ended 30 September 2019 in respect of the second loan by reversing the N\$1 billion gain recognised in profit and loss.
- ("the Restatement Decision").**
21. On 26 April 2021, Trustco applied to the Tribunal for a reconsideration of the Restatement Decision under section 230 of the Financial Sector Regulation Act (**"the Initial Reconsideration Application"**).
22. On 22 November 2021, the Tribunal dismissed Trustco's Initial Reconsideration Application (**"the Tribunal's Order"**). The Tribunal's Order is attached as **"RA1"**.
23. On 1 December 2021, Trustco published a SENS in which it, amongst other things, criticised the Restatement Decision and asked shareholders to participate in a non-binding advisory vote on several issues that the JSE had already considered and decided, including a vote to endorse Trustco's accounting treatment of the loan issue and the property issue. I attach a copy of this SENS notice as **"RA2"**. Regrettably, Trustco described the JSE's diligent process as *"unwarranted interference"* that *"undermine[d] the independence, accountability, and integrity"* of Trustco's board.
24. On 3 December 2021, the JSE wrote to Trustco. A copy of the JSE's letter is already annexed to the Reconsideration Application marked "A1".
- 24.1 The JSE recorded its concern that Trustco had not complied with the Restatement Decision (listed in paragraph 20), and noted that it was clear from Trustco's SENS announcement that it had no intention of complying with

the Restatement Decision (and, therefore, no intention of complying with the Tribunal's Order).

- 24.2 The JSE informed Trustco that it was considering suspending Trustco's listing "*due to [Trustco's] failure to comply with important provisions of the Listings Requirements and [Trustco's] refusal to take the necessary steps to ensure that it complies, in all aspects, with the Listings Requirements and the decisions of the JSE and the Financial Services Tribunal.*" In the JSE's view, suspending Trustco's listing would be "*in the public interest*" and would "*further the objects of the Financial Markets Act.*"
- 24.3 The JSE gave Trustco an opportunity to make representations as to why the JSE should not suspend its listing.
25. On 9 December 2021, Trustco's attorneys, Norton Rose Fulbright, wrote to the JSE. A copy of the letter is already annexed in the Reconsideration Application, marked "A2".
- 25.1 Trustco denied that it had decided not to comply with the Restatement Decision.
- 25.2 Trustco claimed it needed to "*obtain independent advice on the issues, and how to treat and practically implement the Tribunal's decision.*"
- 25.3 Trustco confirmed that it would be reviewing the Tribunal's Order under PAJA.
- 25.4 Trustco claimed that it would be "*premature*" for the JSE to suspend its listing before Trustco's review of the Tribunal's Order was determined, describing the JSE's threat of suspension as "*nothing short of an attempt by the JSE to coerce [Trustco] into compliance with a decision that is based on an unlawful and reviewable decision by the Tribunal*".
- 25.5 Trustco objected to what it deemed to be a self-standing decision by the JSE that Trustco had not complied with the Restatement Decision (which Trustco labelled "the Non-Compliance Decision").
- 25.6 Trustco demanded an undertaking by 13 December 2021 that the JSE would not suspend its listing (which Trustco labelled the "Suspension Decision") pending, amongst other things, first, a reconsideration application that Trustco intended to bring in the Tribunal against the JSE's decision that Trustco had not complied with the JSE's corrective action "and/or", second, the final

determination of its Review Application (against the Tribunal's decision to dismiss Trustco's Initial Reconsideration Application).

- 25.7 Trustco indicated that if the JSE was "*not prepared to give the undertakings sought*" then it would "*approach the High Court on an urgent basis*" to suspend "*the Non-Compliance and/or Suspension Decision pending either the review or a reconsideration application and suspension application to the Financial Services Tribunal.*"
26. The JSE responded to Trustco on 13 December 2021. A copy of this letter is already annexed to the Suspension Application, marked "A".
- 26.1 The JSE confirmed that prior to its letter of 13 December 2021, it was still considering whether to suspend Trustco's listing; it had not yet suspended its listing.
- 26.2 The JSE pointed out, based on basic principles of administrative law, that the Tribunal's Order is final, binding, and immediately enforceable unless it is interdicted or set aside.
- 26.3 The JSE also pointed out that the Tribunal dismissed Trustco's Initial Reconsideration Application, which means that the Tribunal confirmed the JSE's decision that Trustco had not complied with IFRS in respect of the loan issue and the property issue and must restate its financial statements. The JSE took that decision more than a year earlier, and so Trustco had ample opportunity to consider how to implement the corrective action.
- 26.4 The JSE then conveyed its decision to suspend Trustco's listing.
- 26.5 The JSE declined to give Trustco any undertakings, but noted that Trustco had a right to object to the JSE's decision to suspend its listing under paragraph 1.4 of the Listings Requirements.
27. Despite the JSE unequivocally refusing to give Trustco the undertakings it sought in its letter dated 9 December 2021, Trustco did not follow through on its threat to "*approach the High Court on an urgent basis*".
28. On 14 and 15 December 2021, the parties exchanged correspondence about Trustco's spurious contention that the JSE official who decided, on the JSE's behalf, to suspend Trustco's listing (Andre Visser, the JSE's director of issuer regulation)

was not properly authorised. These letters are already annexed in the Reconsideration Application marked "A4" and "A5".

29. On 17 December 2021, Trustco delivered its objection to the JSE's decision to suspend its listing. A copy of this letter is already annexed to the Suspension Application marked "B".
- 29.1 Trustco described the decision to suspend Trustco's listing as a "*foregone conclusion*" and that Mr Visser "*had already made up his mind*" and simply "*rubber stamp[ed]*" the decision. According to Trustco, the decision to suspend its listing "*for all intents and purposes, had already been taken*". The objection process would also, according to Trustco, be a "*foregone conclusion*".
- 29.2 Despite these protests, Trustco set out the grounds for its objection against the JSE's decision to suspend its listing.
- 29.3 Trustco indicated that the "*earliest*" that it could "*possibility 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*". Trustco confirmed that its audited financial statements would "*reflect the restatements that the JSE required*", and indicated that it was "*anticipated*" that its audited financial statements would be published "*by no later than 31 January 2022*".
- 29.4 Trustco again asked for an undertaking that the JSE would not "*implement the suspension [of Trustco's listing] pending the outcome of an application for suspension of [the JSE's decision to suspend Trustco's listing] to the Tribunal and the outcome of Trustco's review application [of the JSE's decision that Trustco did not comply with IFRS in how it reported the loan issue and the property issue]*".
30. Trustco's letter expressly stated that its audited annual financial statements, which it undertook to publish by 31 January 2022, "*would ... reflect the restatements that the JSE required*". On that understanding, the JSE was prepared to hold off on deciding on Trustco's objection to the suspension of its listing but only if Trustco gave the JSE "*an unequivocal, and irrevocable undertaking that the necessary restatement of [Trustco's] annual financial statements will be implemented in [Trustco's] 31 August 2021 Annual Financial Statements*", which Trustco had, in its previous letter, indicated would be published by 31 January 2022. A copy of the letter from the

JSE's attorneys to this effect is already annexed to the Reconsideration Application, marked "A7".

31. On 13 January 2022, Trustco refused to give the JSE that undertaking. A copy of this letter is already annexed to the Reconsideration Application marked "A8". Trustco did, however, undertake to publish its 2021 annual financial statements by 31 January 2022.
32. Because Trustco stated that it was in the process of "*determin[ing] ... how to practically implement the restatements pending a review*", the JSE reasonably believed that Trustco was still intending on giving effect to the corrective action that the JSE had directed. On this understanding, the JSE was prepared to hold off on deciding on Trustco's objection to the suspension of its listing until it had considered Trustco's 2021 annual financial statements. This was recorded in a letter from the JSE's attorneys, already annexed to the Reconsideration Application marked "A9".
33. A letter from Trustco's attorneys dated 26 January 2022, already annexed in the Reconsideration Application marked "A10", confirmed that Trustco's 2021 annual financial statements would "*address the restatements*" that the JSE had directed in its corrective action.
34. Trustco published its 2021 annual financial statements on 31 January 2022.
35. Trustco did not restate the comparative periods in its 2021 annual financial statements as the JSE had directed it to do. Trustco admits in paragraph 5 of its Suspension Application that "*Trustco has not restated its financial statements*". The corrective action was clear: Trustco must reverse the N\$546 million gain recognised in profit and loss in respect of the first loan, Trustco must reverse the N\$1 billion gain recognised in profit and loss in respect of the second loan, and Trustco must reverse the N\$693 million gain in respect of the properties.
36. Trustco did none of that. It ignored the corrective action that the JSE directed. Instead of "*revers[ing]*" any gains and instead of restating any financial statements, it buried some commentary about the Restatement Decision in the small print to its financial statements. In short, the JSE directed Trustco to restate the numbers in its financial statements (by a total of more than NS\$2 billion). Trustco left the numbers unchanged.
37. The same day, Trustco launched its Review Application, wherein it seeks to review the Tribunal's Order in the Initial Reconsideration Application.

38. Trustco launched its review in the ordinary course. It did not seek an urgent review and it did not seek any urgent interim relief. This notwithstanding the JSE had alerted it of the need to do this in December 2021.
39. On 14 February 2022, and after considering Trustco's 2021 annual financial statements, the JSE dismissed Trustco's objection to the JSE's decision to suspend its listing. The JSE's letter is already annexed to the Suspension Application marked "C". The JSE also published a SENS announcement to this effect, which is attached as "**RA3**". The JSE indicated that it would give Trustco an opportunity to obtain urgent relief "*from a competent tribunal*" and, for that reason, the suspension would take effect from 11 March 2022 provided that any process was initiated and delivered by 18 February 2022.
40. On 18 February 2022, Trustco lodged two applications with the Financial Services Tribunal:
- 40.1 a reconsideration application under section 230 of the Financial Sector Regulation Act, asking the Tribunal to reconsider the JSE's decision to suspend Trustco's listing; and
- 40.2 a suspension application under section 231 of the Financial Sector Regulation Act, asking the Tribunal for, in effect, an interim interdict, or a suspension of the JSE's decision to suspend Trustco's listing pending the determination of the reconsideration application.
41. On 23 February 2022, Trustco applied for an urgent interim interdict, *inter alia*, against the JSE's decision to suspend Trustco's listing. This shows that Trustco is determined to litigate on every front to filibuster compliance with the Restatement Decision and the Tribunal's Order.
42. The urgent application will have been disposed of by the time this suspension application has to be decided. The JSE will file a supplementary answer to set out what occurred in the urgent application.

TRUSTCO'S 2021 AFS

43. Trustco has disregarded the Tribunal's Order. It concedes in its affidavit that it has "*not restated its financial statements*". Instead, Trustco points to some commentary in the small print to its 2021 financial statements that refers to the Review Application.

44. It offers this narrative seemingly as proof that Trustco's stakeholders, and the market, are aware of the Restatement Decision, which in turn is used as a factor mitigating against the Suspension Decision.
45. But what Trustco has not told its shareholders and the market is the impact of the restatement - making it impossible for a reader to understand the full financial effect with any degree of certainty. The disclosures, contained in their narrative form, do not:
- 45.1 identify the specific line items that would be increased or decreased as a result of the restatements;
 - 45.2 specify any tax or deferred tax consequences (which would be needed to be able to reconstruct the financial statements);
 - 45.3 deal with the unwinding of other share transactions, nor does it specifically address the fact that shares were issued to Dr van Rooyen on the basis of profits erroneously declared, which issuing should be reversed as a result of the restatement;
 - 45.4 quantify the impact on Earnings per Share ("**EPS**") or Headline EPS- both useful indicators used by investors as performance measurements when making investment decisions; or
 - 45.5 explain (or quantify) the overall impact the restatements would have had to the financial statements.
46. Investors and/or users of the annual financial statements would need this information to reasonably be able to appreciate the financial effects of any restatement. The narrative disclosures, however, do not portray the financial effects of the restatements and, as such, offer no mitigation against the prejudice suffered by the market and the JSE should the restatements not be implemented.

THE RECONSIDERATION APPLICATION

47. Trustco contends that there is no legal basis for the Suspension Decision as the Reconsideration Application shows, *prima facie*, that:
- 47.1 it is premature to suspend Trustco's listing until the Review Application has been determined; and

47.2 the Restatement Decision was taken by a person who is not lawfully authorised to do so.

48. Both of the reasons advanced for why the Reconsideration Application has some prospect of success are wrong. The Reconsideration Application is just another attempt by Trustco to delay preparing and presenting to its shareholders a proper set of annual financial statements that fairly represent its position.

The Suspension Decision is not premature

49. The effect of the Tribunal's Order was that the Restatement Decision was upheld by the Tribunal, as the Tribunal neither set it aside nor varied it in any manner.

50. For this reason, the JSE did not, and does not, intend to enforce the Tribunal's Order in the form of a civil judgment as contemplated in section 236 of the Financial Sector Regulation Act, 2017 ("**FSRA**"). This is mentioned because Trustco has mistakenly sought to found an argument that the Review Application automatically suspends the Restatement Decision because of the provisions of section 236 of the FSRA. Trustco is wrong in its understanding of section 236, and it does not suspend the Restatement Decision.

51. The Review Application was launched in response to the Tribunal's Order. It alleges, among other things, that the Tribunal erred fundamentally in setting aside Trustco's Initial Reconsideration Application, and consequently the Tribunal's Order is to be set aside. It even accuses the members of this Tribunal of not being properly qualified and of not applying their minds to the matter. This is done without providing any facts to support these presumptuous allegations. Trustco goes so far as to ask the reviewing court to replace its own decision for that of the Tribunal instead of asking for the matter to be referred back to the Tribunal. This is a further manifestation of Trustco's disdain for the Tribunal.

52. The Review Application does not suspend the operation of the JSE's and the Tribunal's decisions. Trustco knows this because it was told that by the JSE. That being so the JSE must deal with Trustco's failure to effect the restatement notwithstanding the Review Application.

53. In the correspondence that was exchanged between the parties, Trustco's attorneys stated that Trustco intends to effect the restatement and proceed with the review. It was on the basis that Trustco said it would effect the restatement that the JSE waited for the financial statements to be published on 31 January 2022. Instead of effecting the restatement Trustco openly defied the JSE and the Tribunal's decisions

and reneged on its say-so that it would effect the restatement. Simply put, it thumbed its nose at the JSE and the Tribunal. In those circumstance the JSE must proceed to deal with the failure to effect the restatement. If the JSE did not deal with the failure to effect the restatement in those circumstances it would call into question the orderly functioning of the markets and raises rule of law issues.

54. What Trustco has belatedly done is to bring an urgent application in the High Court interdicting the Tribunal's Order. Trustco's urgent application is flawed in several respects, including that this Suspension Application is the correct forum in which the suspension (or interdict) should be sought. Trustco is candid in its founding affidavit in its urgent application that it approached the High Court "[o]ut of caution" in case the Tribunal did not decide the Suspension Application before 11 March 2022. This despite the Tribunal's secretariat indicating that a ruling "*should be finalized before 11 March 2022 provided the timelines set out in the Tribunal rules are adhered to*" (in an email thread annexed as "RA4").
55. Trustco's review of the Restatement Decision is also a non-starter. Apart from gratuitous allegations that the members of the Tribunal are not properly qualified, Trustco's main point in its review is that the Tribunal got its decision wrong. In its founding affidavit in the High Court urgent application, it describes the review is "*aimed at determining whether or not the Tribunal was correct*". But that should be the start and end of the review. On Trustco's own version, it applies the wrong standard: a review is not about whether a decision is correct.
56. Trustco's several rounds of objections and litigation between the JSE, the courts, and this Tribunal have ultimately achieved Trustco's goal through brute force. It has been more than a year since the Restatement Decision and more than 3 months since the Tribunal's Order. Yet Trustco remains defiant: it has not restated its financial statements, and it has no intention of doing so. The ultimate result is, by the intention of Trustco, a cross-pollination of issues, giving rise to a circular state of legal affairs designed to frustrate and cause maximum delay. Trustco is intent on filibustering compliance with the Restatement Decision and the Tribunal's Order. The prejudicial effect of this delay is dealt with below.

Mr Visser had authority to make the Suspension Decision

57. In the Reconsideration Application, Trustco contends that Mr Visser, the Head of Issuer Regulation, does not have the authority to make the Restatement Decision or the Suspension Decision.

58. For present purposes, it is necessary to only deal with the authority of Mr Visser in making the Suspension Decision.
59. Mr Visser was, and remains, duly authorised to make the Suspension Decision. These powers were delegated unto him by the Board of the JSE. A copy of the delegation of powers is annexed marked "RA5" ("**the Delegation**"). As appears from the Delegation:

"2. That, save for the power or duty to decide whether the listing of the securities of a company on the JSE should be terminated at the instance of the JSE, which power is delegated to the Executive Committee, the Board hereby delegates the powers and duties under sections 13 and 15 of the Securities Services Act, and the Listing Requirements to –

2.1 the head of the Issuer Regulation Division or the General Manager: Issuer Regulation, or other appropriate person or persons as identified by the Executive Committee;"

60. Notwithstanding the valid resolution, Trustco adopts the same form-over-substance approach it did in the Initial Reconsideration Application by asserting that section 72(1)(b) of the Companies Act provides that the board of a company may delegate to any committee any authority of the board. Trustco asserts that Mr Visser is a single person and the term "committee" must mean more than one person.
61. Should Trustco's interpretation be adopted, the absurd result would be that no board of directors would be able to delegate anything to a single person. In any event, it is irrelevant. Section 68 of the FMA provides for the delegation of functions for a market infrastructure (JSE). It records:

"(1) A market infrastructure may delegate or assign any function entrusted to it by this Act or its rules to a person or group of persons, or a committee approved by the controlling body of the market infrastructure, or a division or department of the market infrastructure, subject to the conditions that the market infrastructure may determine."

PREJUDICE TO TRUSTCO

62. In terms of the Listings Requirements, there is an obligation on the JSE to protect investors.¹ The JSE is further obligated to ensure that full, equal and timeous public disclosure is made to all holders of securities and the general public at large regarding the activities of an issuer that are price sensitive.² The JSE must promote investor confidence in standards of disclosure and corporate governance in the conduct of applicant issuers' affairs and in the market as a whole.³
63. The Suspension Decision accords with the General Principles of the Listings Requirements.
64. In addition, Trustco, by failing to implement the restatements, has failed to comply with IFRS. Compliance with IFRS is a requirement of paragraph 8.62 of the Listings Requirements.
65. Without the restatement, Trustco shareholders, the market and potential investors do not have full and accurate information on which to base their decisions regarding potential transactions. It is unhelpful for Trustco to point to the small print narrative in its financial statements or to SENS announcements as being sufficient to inform shareholders, the market and potential investors. If that were so a restatement would never be required – but that is not the case. What the small print in the financial statements and the SENS announcements do not do is set out the numbers – they do not spell out the actual financial effect - and it is this that must be provided to the shareholders, the market and potential investors.
66. Equally important is the knock-on effect of the restatement – the shares that were given to Dr van Rooyen must be returned. It must be important to shareholders, the market and potential investors to know how many shares are in issue. It is also important that those shares be recovered by Trustco as soon as possible so that they are not sold to an unsuspecting third party.
67. Trustco concedes that it is currently in the circular process of two transactions and that should it not implement these transactions, there would be irreparable harm to Trustco and the contracting third parties. The fact that large transactions are contemplated on the basis of incorrect financial statements is the very reason why

¹ See (i) of the Listings Requirements.

² See (ii) of the Listings Requirements.

³ See (vi) of the Listings Requirements.

the shares should be suspended. This is certainly not a reason to suspend the Suspension Decision. Again, this prejudice is of Trustco's own making because it must have known of the transactions when it decided not to restate its financial statements.

68. Trustco's filibustering is designed to protect its majority shareholder, Dr van Rooyen. It is after all Dr van Rooyen who will lose out financially when the restatement is effected because he will have to return the nearly N\$ 3 billion shares he unlawfully received.
69. On Trustco's timelines, the Review Application will only be heard towards the end of 2022. The finalisation of the Reconsideration Application will have a similar time period. Assuming the Reconsideration Application is decided against Trustco, Trustco will undoubtedly review it, as it is want to do. If the suspension of Trustco's shares is not effected now those shares will trade on the JSE for a year or more under the flag of incorrect financial statements.
70. The harm to the ability of the JSE to regulate issuers of shares, to the regulation of financial markets generally far outweighs the prejudice of a suspension at this stage. If Trustco is able to simply delay the implementation of the restatement by bringing one reconsideration or review process after the next, and appeals to those decisions where it fails, then there is no practical benefit to be gained from the JSE's regulation of the market and the companies listed on the JSE because the implementation of the decisions will come so late in the day that it may as well not have been made in the first place. And in the meanwhile many investors will have based decisions on incorrect information.

CONCLUSION

71. The Tribunal should dismiss the Suspension Application.

THE FINANCIAL SERVICES

TRIBUNAL

CASE NO.: JSE1/2021

TRUSTCO GROUP HOLDINGS LIMITED

APPLICANT

and

JSE LIMITED

RESPONDENT

Tribunal: LTC Harms (chair), Adv Soraya Hassim SC and Attorney Zama Nkubungu-Shangisa

For the applicant: Adv KW Lüderitz SC and MJ Cooke instructed by Norton Rose Fulbright
South Africa Inc

For the respondent: Adv Ian Green SC and Jason Mitchell instructed by Webber Wentzel

Virtual hearing: 2 November 2021

Date of decision: 22 November 2021

Summary: JSE listing requirements – financial statements – reconsideration of non-compliance with IFRS – form and substance – change of use of land

DECISION

INTRODUCTION

- 1 The applicant, Trustco Group Holdings Ltd, is a Namibian company which is registered as an external company and is listed as an issuer on a local stock exchange, the JSE Ltd ('the JSE'), the respondent.
- 2 TrustCo applies for the reconsideration of a decision, which is in the form of a directive, by the JSE. The application is in terms of sec 230 of the Financial Sector Regulation Act 7 of 2019 (the 'FSR Act').
- 3 The JSE found that the group annual financial statements for the year ending 31 March 2019 and the interim results for the six months ending 30 September 2019 did not, in material respects, comply with the International Financial Reporting Standards ('IFRS'), and it instructed TrustCo to restate the statements and results by correcting them. TrustCo is aggrieved by the decision, insisting that its accounting complied with the IFRS.

THE LISTING REQUIREMENTS

- 4 The JSE is a 'licensed exchange' as defined in the Financial Markets Act 19 of 2012. It must, inter alia, issue exchange rules; supervise compliance by its authorised users with the exchange rules and exchange directives; and enforce the exchange rules, listing requirements and exchange directives (sec 10).

5 Section 3 of its Listing Requirements imposes continuing obligations, including those relating to their financial statements, on listed companies.

6 The annual financial statements in terms of para 8.62 (inter alia):

- *must be prepared in accordance with (a) IFRS and the SAICA [the SA Institute of Chartered Accountants] Financial Reporting Guides as issued by the Accounting Practices Committee and (b) Financial Pronouncements as issued by Financial Reporting Standards Council;*
- *must be audited;*
- *must be in consolidated form if the listed company has subsidiaries; and*
- *must fairly present the financial position, changes in equity, results of operations and cash flows of the group.*

7 Paragraphs 8.66 and 8.67 deal with FRIP (the Financial Reporting Investigations Panel):

The JSE and SAICA have formed a panel to be known as the Financial Reporting Investigations Panel to consider complaints and to advise the JSE in relation to compliance by issuers with IFRS and the JSE's required accounting practices (in terms of the Listings Requirements). If, after receiving advice from the FRIP, the JSE finds that an issuer has not complied with any of the above, the JSE will be able, in its sole discretion:

(a) to censure such issuer in accordance with the provisions contained in Section 1 of the Listings Requirements; and

(b) instruct such issuer to publish or re-issue any information the JSE deems appropriate.

In addition, the JSE will refer any such non-compliance to SAICA, the IRBA or any other relevant professional body.

- 8 This should be read in with the charter of the FRIP Panel. The Panel consists of the Chairman, and fifteen members representing preparers, auditors, academics and users of listed entities' financial statements.
- 9 The function of the Panel is to advise the Issuer Regulation Division of the JSE in relation to alleged cases of non-compliance with the financial reporting requirements which have been referred to the Panel by the Division. The Division considers the advice of the Panel and takes such action that it deems appropriate.
- 10 The JSE, before issuing the instruction under consideration, complied with the procedure prescribed.

THE CONTEXT OF THE RECONSIDERATION APPLICATION

- 11 The JSE is a 'market infrastructure' as defined in the FSR Act. It is a 'decision-maker' and its decisions fall under the definition of 'decision' in sec 281(c). They are subject to reconsideration by this Tribunal under sec 230(1). Apart from dismissing the application or setting the order aside and refer the matter back to the JSE, the Tribunal may substitute the decision with its own decision (sec 234(1)(b)).
- 12 There was some confusion during argument about the nature of reconsideration proceedings. They are not motion proceedings subject to Uniform rule 6 and the notorious *Plascon-Evans* rule; they are not appeals; and they are concerned with result more than reasons.¹

¹ Cf *Tecmed Africa (Pty) Ltd v Minister of Health and another* [2012] 4 All SA 149 (SCA) at para 17.

13 We said this before and quote it again for convenience:²

Although we have before stated our position clearly, it appears that we have to do it again. Our position is, as it was with the then Appeal Board of the Financial Services Board, when the judgment in *Nichol and Another v Registrar of Pension Funds and Others* [2006] 1 All SA 589 (SCA), 2008 (1) SA 383 (SCA) was delivered. The Court pointed out that the Appeal Board was a specialist and independent tribunal as contemplated in sec 34 of the Constitution:

It has very wide powers on appeal, including the power to confirm, set aside or vary the decision of the Registrar against which the appeal is brought; to refer the matter back for consideration or reconsideration by the Registrar in accordance with such directions as the Board may lay down; or to order that its own decisions be given effect to. In addition, it is empowered under section 26(2A) to grant interim relief by suspending the operation or execution of the decision appealed against and, under section 26(14), it can make an appropriate order as to costs. The Appeal Board therefore conducts an appeal in the fullest sense – it is not restricted at all by the Registrar’s decision and has the power to conduct a complete rehearing, reconsideration and fresh determination of the entire matter that was before the Registrar, with or without new evidence or information.

In short, this Tribunal is not much different, and it exercises an appeal jurisdiction of the first category referred to in *Tikly v Johannes NO* 1963 (2) SA 588 (T) 590.

14 We also explained in another context (omitting inapplicable considerations):³

Although the Tribunal is an ‘expert’ tribunal, it obviously is less qualified than the PA [read: the JSE] to make multi-faceted and polycentric decisions . . . The following

² *MET Collective Investments (RF) (Pty) Ltd v Financial Sector Conduct Authority* (Case No A23/2019).

³ *Niemiec and others v Constantia Insurance Co Ltd and Ano* (Case PA 1/2021).

dictum in *Staufen Investments (Pty) Ltd v The Minister of Public Works, Eskom Holdings SOC Ltd & Registrar of Deeds, Cape Town* (200/2019) [2020] ZASCA 18; [2020] 2 All SA 738 (SCA); 2020 (4) SA 78 (SCA) . . . appears to be apposite:

‘it is important to note that the first respondent’s decision was a multi-faceted and polycentric decision requiring ‘. . . an equilibrium to be struck between a range of competing interests and considerations and which is to be taken by a person or institution with specific expertise in that area . . .’ An evaluation as to whether an expropriation was expedient would necessarily lie within the domain of the expropriating authority. Although not immune from judicial review it was a decision to which the principle of ‘deference’, which required that the decision should be ‘shown respect by the courts’, applied.’

THE SUBSTANCE VERSUS FORM ISSUE

- 15 Mr Lüderitz, for TrustCo, submitted that the essence of the loan issues lies in the JSE’s insistence on substance over form.
- 16 We shall assume that, by defining the case in these terms, counsel did not concede by implication that if substance trumps form, the decision of the JSE in respect of the loan issues was correct.
- 17 Counsel and his expert take issue with the following statement by the JSE in its further reasons:

Trustco's approach in the application is to focus on the form of the relevant transactions and decisions that underly the matter. It carefully dissects each transaction into its component steps, and then justifies its accounting treatment with reference to these individual components, while criticising the JSE for adopting the broader approach that it did.

What Trustco ignores is that IFRS requires financial statements to be a faithful representation of the underlying economic substance and events.

This means that financial statements must consider the economic substance and financial reality of the underlying transactions, and not merely their legal form.

18 The substance/form issue was formulated in both the FRIP report and the reasons for decision of the JSE. TrustCo dealt with the matter generally, alleging that

it is apparent that the FRIP / JSE took an overarching theoretical and not case specific view to support a type of substance over form argument without taking into account the actual facts which supported Trustco and its JSE accredited IFRS advisors' decision in relation to the specific accounting treatment of the Van Rooyen Loans.

19 It was raised in detail in its augmented grounds by means of an expert report of Mr Tapiwa Njikizana, who is a director of a firm accredited by the JSE to act as IFRS advisor.

20 Since Mr Njikizana acted as advisor of TrustCo in relation to the accounting the entries that form the basis of the JSE's decision under attack, he cannot be said to be entirely objective. The main problem is that his report contains a mix of allegation of fact, interpretation and adjudication and therefore transgresses the limits of 'expert evidence'.

21 Counsel submitted that the erstwhile auditors (according to FRIP, there were two firms) of TrustCo, who had signed off the financials, shared his view. The problem with the submission is that one does not know what they considered because they did not, in these proceedings, seek to justify their audit. In any event, one of the purposes of a FRIP report is to enable the JSE to decide whether to report an auditor to the professional body.

22 Against Mr Njikizana’s opinion we have the opinion of the JSE, the opinion of Professor Maroun, and the opinion of the FRIP panel (constituted as explained above).

23 Numbers do not count, reasons do.

24 If Mr Njikizana’s conclusion were that form trumps substance, accounting would be the only discipline we know of with that approach. Not even Picasso would have agreed. Fortunately, that is not what he says. The essence of his argument is that substance is ‘baked into’ the IFRS standards and once one complies with the standards, the form determines substance:

There is therefore a built-in presumption within IFRS that by applying the requirements of the standards, an entity will achieve a fair representation, meaning that the financial statements will faithfully represent the financial effects of transactions. Put differently, where an entity has referred to no information other than the requirements set out in the IFRS applicable to it, it shall be able to present financial statements that fairly represent its affairs (para 15).

25 Mr Njikizana relies chiefly in support of this conclusion on IAS1, which he says is an important paragraph because it is in bold in the original. It reads (with his emphasis here indicated by means of underlining):

“Fair presentation and compliance with IFRSs

15 Financial statements shall present fairly the financial position, financial performance and cash flows of an entity. Fair presentation requires the faithful representation of the effects of transactions, other events and conditions in accordance with the definitions and recognition criteria for assets, liabilities, income and expenses set out in the Framework. The

application of IFRSs, with additional disclosure when necessary, is presumed to result in financial statements that achieve a fair presentation.”

- 26 The underlined sentence does not state what he says. The presumption only arises when the necessary disclosure has been made and then it is only a presumption of fair presentation. Presumptions remain presumptions, and the decision whether additional disclosure was required is not something that cannot be reassessed by the JSE.
- 27 In addition, the opinion did not take account of the Listing Requirement 8.62 referred to earlier. It regards fair presentation as a requirement separate and additional to IFRS rules.
- 28 The JSE, in emphasising substance over form, referred to the Conceptual Framework.⁴ Its status and purpose are as follows:

SP 1.1: The Conceptual Framework for Financial Reporting (Conceptual Framework) describes the objective of, and the concepts for, general purpose financial reporting. The purpose of the Conceptual Framework is to:

(a) . . .;

(b) . . .; and

(c) assist all parties to understand and interpret the Standards.

SP 1.2: The Conceptual Framework is not a Standard.

SP 1.3: Nothing in the Conceptual Framework overrides any Standard or any requirement in a Standard.

⁴ Conceptual Framework for Financial Reporting Issued by the International Accounting Standards Board.

29 It is unnecessary to refer to the detail of the Framework and it suffices to quote para 2.12:

Financial reports represent economic phenomena in words and numbers. To be useful, financial information must not only represent relevant phenomena, but it must also faithfully represent the substance of the phenomena that it purports to represent. In many circumstances, the substance of an economic phenomenon and its legal form are the same. If they are not the same, providing information only about the legal form would not faithfully represent the economic phenomenon (see paragraphs 4.59–4.62).

30 TrustCo submitted that the JSE, in requiring that financials must be a faithful representation of the underlying economic substance and events, elevated the Framework to a standard and overrode the requirements of IFRS. (It is unclear whether TrustCo thereby suggests that financials may provide an inaccurate representation of the underlying substance and events by, for instance, ignoring simulation.)

31 We disagree and hold that the JSE used the Framework to understand and interpret the IFRS. As Prof Maroun explained:

The CFW [the Framework] is not itself an IFRS and does not override a requirement of the IFRS (CFW, SP1.2). It does, however, underpin the development of IFRS and inform how the standard-setter, which prepared IFRS, developed and interpreted the provisions of specific IFRSs (CFW, SP1.5). In addition, the use of the CFW to inform any analysis is supported by the following:

The CFW provides details on what is meant by "substance over form" which is referred to in certain of the individual IFRSs.

The CFW must be referred to when IAS 8 is used to develop an accounting policy, because a specific IFRS does not deal with a transaction (see IAS 8, para 10-11).

More generally, IAS 1 (which is part of IFRS) requires financial statements to achieve 'fair presentation' and provide a 'faithful representation of the effects of transactions, other events and conditions' (IAS 1, para 15).

32 We find the opinion of Prof Maroun expressed as a chartered accountant convincing and logical for us as lawyers. We quote in redacted form:

The accounting standards are used by accountants to prepare financial statements which faithfully represent the economic substance of a transaction, or group of transactions.

The economic substance, as assessed by an accountant or auditor, may differ from the legal conclusions reached by a lawyer when interpreting a transaction, or group of transactions.

Differentiating between economic substance and form would capture a transaction which is a simulation or sham, but it can also inform the accounting for entirely honest transactions.

For the purpose of applying IFRS, "substance over form" is an accounting concept which is specific to financial accounting. It is not a legal concept that is dictated by the assessment of whether a contract is a sham or not.

"Substance over form" requires the underlying economics of a transaction to be considered, including how the facts and circumstances affect the amount, timing and certainty of the resulting cash flows and entity-specific values (see, for example, the Conceptual Framework for Financial Reporting ("CFW") which underpins the IFRS at paragraphs 2.6- 2.19; IAS 16, para 25, IFRS 9, para 3.3.2 & IFRS 16 para B2).

IFRS requires financial statements to be a faithful representation of the underlying economic phenomena and events.

33 Once one accepts that, the detail of the Framework, relied on by Prof Maroun (para 12), follows as a matter of logic, and one would have reached the same conclusion without reference to it relying on the underlying universal principle of transparency and the purpose of financial statements of companies. This is confirmed by sec 29(1) of the Companies Act 71 of 2008:

If a company provides any financial statements, including any annual financial statements, to any person for any reason, those statements must—

(a) satisfy the financial reporting standards as to form and content, if any such standards are prescribed;

(b) present fairly the state of affairs and business of the company, and explain the transactions and financial position of the business of the company.

34 Mr Lüderitz, accordingly, mischaracterised the JSE's analysis and reasons by submitting that the JSE 'merely dislikes TrustCo's accounting treatment' of the transactions, and that the JSE without finding any material breach or irregularity 'merely asserts that it would have done it differently' or 'from a different perspective'. Whether the JSE was correct in its conclusion is the issue to which we now turn.

THE FIRST LOAN ISSUE

35 The decision of the JSE was as follows:

Trustco has not complied with the International Financial Reporting Standards in that: Trustco's annual group financial statements for the year ending 31 March 2019 ("the Group AFS") recognised a NAD545.6 million gain in profit and loss with respect to the

waiver by Dr Quinton van Rooyen of an initial loan by Dr van Rooyen to Huso Investments (Pty) Ltd ("Huso") as a financial liability.

- 36 The consequent direction was that –
- Trustco must restate the Group AFS making the following correction: reversing the NAD545.6 million 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.
- 37 The underlying transaction is the acquisition by TrustCo of another company, Huso Investment (Pty) Ltd. Dr Quinton van Rooyen was and is the majority shareholder of TrustCo and was the sole shareholder of Huso Investment.
- 38 The JSE accepted that the acquisition was a common control transaction, for which there is no current IFRS, which brings one to IAS 8 paragraph 10, which reads:

In the absence of an IFRS that specifically applies to a transaction, other event or condition, management shall use its judgement in developing and applying an accounting policy that results in information that is:

(a) relevant to the economic decision-making needs of users; and

(b) reliable, in that the financial statements:

(i) represent faithfully the financial position, financial performance and cash flows of the entity;

(ii) reflect the economic substance of transactions, other events and conditions, and not merely the legal form;

(iii) are neutral, ie free from bias;

(iv) are prudent; and

(v) are complete in all material respects.

39 Paragraph 11 states:

In making the judgement described in paragraph 10, management shall refer to, and consider the applicability of, the following sources in descending order:

(a) the requirements in IFRSs dealing with similar and related issues; and

(b) the definitions, recognition criteria and measurement concepts for assets, liabilities, income and expenses in the Conceptual Framework for Financial Reporting (Conceptual Framework).

40 And para 12 provides:

In making the judgement described in paragraph 10, management may also consider the most recent pronouncements of other standard-setting bodies that use a similar conceptual framework to develop accounting standards, other accounting literature and accepted industry practices, to the extent that these do not conflict with the sources in paragraph 11.

41 It is consequently necessary to consider the facts to establish, inter alia, whether the financials (i) represent faithfully the financial position, financial performance and cash flows of the entity and (ii) reflect the economic substance of transactions, other events and conditions, and not merely the legal form. We therefore set out the facts substantially as recorded by TrustCo in its reconsideration application.

42 As mentioned, Dr van Rooyen is the majority shareholder of TrustCo and was also the sole shareholder of Huso Investments. To fund Huso Investments' operations, he advanced NAD 546 million to TrustCo Resources and Huso Investments and its

subsidiaries. The loans were structured so that their repayment was entirely within the discretion of the borrowers.⁵

43 Given the repayment terms, the loans were recorded as equity loans in the books of the borrowers.

44 During 2015, TrustCo agreed to acquire Huso Investments in terms of a sale of shares agreement. The structure of the acquisition was that TrustCo, through TrustCo Resources, would acquire the entire shareholding in Huso Investments from Dr van Rooyen. The effective date was 30 September 2015, and the agreement was subject to conditions precedent. The purchase consideration was 'payable' by an issue of TrustCo shares at NAD 4.69 per share, the major portion over nine years mainly determined with reference to agreed annual EBITDAASA targets in each year.

45 The Huso Loan was not affected by the sale and the initial accounting treatment of the Huso Loan, as an equity loan, was not altered.

46 The conditions precedent could not be fulfilled, and the parties concluded an addendum to the Share Purchase Agreement on 17 December 2016 (A506), which provided inter alia that the purchase consideration would be determined by new specific financial performance targets (i.e., EBITDAASA).

47 During March 2018 (A572), the terms of the Huso Loan were changed: repayment was no longer at the discretion of the borrowers but was due within the following twelve-month period.

⁵ References to Huso and the loan include the subsidiaries and the loans to them.

48 It was not suggested that Huso had the ability to pay in terms of the new arrangement, and the change was not motivated.

49 As a result of this change, the accounting treatment of the Huso Loan changed in the books of Huso Investments from equity to a liability.

50 The Huso Transaction became effective on 4 September 2018, and the shares of Huso Investments were acquired by TrustCo Resources and, in turn, by TrustCo.

51 Dr van Rooyen elected to waive repayment of the Huso Loan of some NAD 546 on 30 September 2018 – 26 days after the effective date.

52 The waived loan amount affected the EBITDAASA and made the ‘purchase price’ by means of shares payable. In other words, through the waiver of the loan, Dr van Rooyen’s shareholding in TrustCo increased.

53 TrustCo, as ultimate holding company, had to account for the acquisition in the group financials for the year ending 31 March 2018.

54 In so doing, TrustCo “merely” recorded the Huso Loan as it had been reflected in the books of Huso Investments as at the acquisition date, namely as a financial liability and not as an equity loan; and the effect of the waiver was reflected as a gain in profit and loss.

55 It is this representation that gave rise to the JSE’s directive stated earlier.

56 TrustCo, in its reconsideration application (para 36), describes the transaction as ‘peculiar and novel’, which it is doubtlessly.

57 The JSE queried the financial rationality of the transaction, but TrustCo chose to ignore the question, as did counsel during the hearing. This pertinently raises doubts as to whether the financials represent faithfully the financial position, financial performance and cash flows of the entity and reflect the economic

substance of transactions, other events and conditions, and not merely the legal form.

58 The question, accordingly, is whether the loan reclassification, waiver and acquisition transaction (the application par 41 uses the singular) should be treated as separate and distinct transactions. TrustCo says yes, relying principally on the dates of the transactions.

59 The JSE's assessment, in brief, was the following:

Your assertion that the Trustco Group and QvR should be viewed independent of one another is contrary to the accounting policy that was adopted by the Group when it acquired control of the Huso Group - namely a business combination under common control. To claim that the Huso acquisition was a common control transaction takes the view that Trustco is part of a larger reporting entity under the control of QvR. That being the viewpoint, the waiver of a "financial liability" a mere 26 days after the acquisition date by the common shareholder should be viewed in its holistic sense. The additional information that came to light (in the form of the loan waiver) was relevant to the entire transaction and should have been considered as part of the "acquisition date" accounting.

This is further demonstrated by the fact that the "loan" (by QvR to Huso) was not classified as a financial liability at the time that the transaction was voted on by Trustco shareholders (in October 2015 and June 2017).

Furthermore, it is not clear why (in the absence of definitive guidance regarding business combinations under common control) an accounting policy based on UK GAAP was developed rather than an accounting policy based on IFRS 3. The Huso acquisition led to a debit of N\$3.9bn being recognised in equity at the acquisition date.

Subsequently a gain/ credit of N\$546m was recognised in profit and loss when the 'financial liability' was waived 26 days later. It is not clear how the above accounting outcome leads to more relevant and reliable information being presented (IAS 8.10) than if an accounting policy aligned to IFRS 3 had been applied?

60 Reverting to IAS 8, quoted earlier, TrustCo had to develop an accounting policy based primarily on the requirements in IFRSs dealing with similar and related issues. Although IFRS 3 does not apply, it deals with 'similar and related issues.' The next step is the Framework, which (as discussed) the applicant seeks to avoid. The third step (IAS 8.12) does not include repealed UK GAAP provisions.

61 To summarise (relying on Mr Green's argument),

- in Huso's financial statements, the loan was initially classified as equity.
- By the time Trustco acquired Huso, though, the first loan had been reclassified as a liability.
- This was not disclosed to the Trustco shareholders.
- The sale of shares agreement for the purchase of the Huso shares included an EBITDAASA-based earn-out mechanism in favour of Dr van Rooyen (or his investment vehicle, Next Investments (Pty) Ltd), in terms of which Trustco shares were to be allotted if profit thresholds were met.
- 26 days after Trustco acquired the Huso shares, Dr van Rooyen forgave the first Huso loan and released Huso from all its obligations in relation to the first loan.
- Consequent on the first loan being forgiven Trustco then recognised a substantial gain of N\$546 million in its 2019 annual financial statements.

- The conversion of the first loan from equity to liability and its subsequent forgiveness converted what was otherwise a loss-making resources segment to a profit, which also triggered the earn-out mechanism in Dr van Rooyen's favour.
- Despite several opportunities, neither Dr van Rooyen nor Trustco has offered a commercial rationale for forgiving the first loan.

62 TrustCo did not allege, nor did it argue (as mentioned), that the the transaction was, as a matter of substance not a composite transaction or that the financials reflect the substance of the transaction.

63 The answer to the question put is that, on balance, the loan reclassification, waiver and acquisition transaction(s) should not have been treated as separate and distinct transactions in order to reflect their economic substance and not merely their legal form. This means that the reconsideration application relating to the first loan is dismissed.

THE SECOND LOAN

64 Much of what was said about the first loan is applicable. The JSE determined that TrustCo has not complied with the International Financial Reporting Standards in that the interim results for the six months ended 30 September 2019 ("the Interim Results") recognised a NAD 1 billion gain in profit and loss with respect to the waiver by Dr van Rooyen of a subsequent loan of NAD1 billion by Dr van Rooyen to Trustco as a financial liability.

65 The JSE accordingly issued the instruction that TrustCo must restate the Interim Results making the following corrections: Reversing the NAD1 billion 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.

66 In summary, as Mr Green pointed out, Dr van Rooyen advanced a second loan of up to NAD1 billion to Trustco during 2017. After eight months he waived/forgave this loan too, resulting in a NAD1 billion gain which was recognised by TrustCo in its September 2019 interim results and September 2020 financial statements. Here too, neither Dr van Rooyen nor Trustco offered a commercial rationale for forgiving the second loan. As with the first loan, this waiver/forgiveness triggered the earn out provisions in terms of the Huso sale of shares agreement and Dr van Rooyen or his investment vehicle, benefited handsomely from the allocation of Trustco shares.

67 The loan agreement (A 576) of October 2018 is, on its face, what the title states. It provided for a loan, payable in cash, in (or up to – clause 3.3) an amount of NAD 1 billion before 30 June 2019. It was to be an unsecured sub-ordinated shareholder's loan to TrustCo. Its effective date was to be the date on which the first payment is received by the borrower. It bore interest on any outstanding amount at the prime interest rate compounded monthly. Interest was monthly payable as from the effective date. The due date for repayment was 31 March 2024.

68 The lender had a conversion option, namely, to receive repayment of the capital amount in tranches, the first of being for the the first quarter of 2020.

69 Clause 7.3 is significant and also 'peculiar and novel'. It reads:

During the term of the Loan, the Lender, in its sole discretion, have the right and may elect to postpone or write-off any portion of the Capital Amount. The Lender would give 30 (thirty) days' notice to the TrustCo board of the Lender's decision to postpone

or write-off the Capital Amount or any portion thereof which was on lend to the Borrowers subsidiaries or operating segments. The Borrower would be obligated to align the Capital Amount accordingly to reflect the Lender's decision in the Borrower's subsidiaries or operating segments.

70 The object of the last sentence of the clause was that the resources segment of Trustco would make a profit due to a waiver (without which it would have made a loss) the EBITDASA targets would be triggered and Trustco shares would be issued to Dr van Rooyen under the Huso share sale agreement.

71 The effective date of the loan was 29 March 2019, two days before the end of the financial year, when Dr van Rooyen settled a TrustCo obligation. The balance of the 1 billion was advanced during the period 1 April and 30 September.

72 The waiver was, apparently on 30 September 2019, and was notified by a SENS announcement early in October.

73 The effect of the waiver on the interims was that the carrying amount of the financial liability (the loan amount) was derecognised and the amount was recognised in profit and loss as a gain.

74 TrustCo relied in this regard on IFRS 9 para 3.3:

1.3.1 An entity shall remove a financial liability (or a part of a financial liability) from its statement of financial position when, and only when, it is extinguished—ie when the obligation specified in the contract is discharged or cancelled or expires.

1.3.2 An exchange between an existing borrower and lender of debt instruments with substantially different terms shall be accounted for as an extinguishment of the original financial

liability and the recognition of a new financial liability. Similarly, a substantial modification of the terms of an existing financial liability or a part of it (whether or not attributable to the financial difficulty of the debtor) shall be accounted for as an extinguishment of the original financial liability and the recognition of a new financial liability.

1.3.3 The difference between the carrying amount of a financial liability (or part of a financial liability) extinguished or transferred to another party and the consideration paid, including any non-cash assets transferred or liabilities assumed, shall be recognised in profit or loss.

75 The findings of the JSE that the result of the waiver was pre-determined by the terms of the loan and that the loan was in substance an equity contribution rather than a debt/liability instrument are not in dispute. In other words, although its treatment of the waiver was formally in order, the presentation was in substance untrue.

76 The JSE's reasoning is relied on and for the sake of completion quoted in redacted form (A360 et seq):

- QvR [Van Rooyen] appears to have been acting as a shareholder (as opposed to a lender) when waiving the second loan.
- The waiver led to the issue of TrustCo shares to QvR because of triggering the EBITDAASA earn-out clause.

- The ability to relieve a counterparty of the obligation to repay a loan is a common right in any debt agreement and the explicit inclusion of this right is unusual.
- The loan was always designed to cause a benefit in Trustco's resources sector, which is where the contingent share obligation for the benefit of QvR was located.
- The reference to the right to waive in the SENS announcement of 8 October 2018 and how any waiver was to be recognised by the TrustCo Group 'suggests' [indicates that it is likely] that the future waiver was predetermined.
- The SENS announcement was specific as to how any 'waiver benefit' would be required to be passed down to operating segments of the TrustCo Group. This also suggests [indicates that it is likely] that the future waiver was predetermined.
- The timing of the loan: The market was informed about the loan approximately one month after the Huso acquisition was effected. The first loan from QvR was waived by 30 September 2018. Considering the explicit inclusion of a right to waive the loan, this suggests [indicates that it is likely] that QvR [always] intended to waive the loan as he had with the first loan.
- There is no reasonable commercial rationale for why Dr van Rooyen (in his capacity as lender) would forgo the receipt of capital and interest payments related to a 5-year loan a mere 9 months after the loan had been initiated without some form of compensation.

77 TrusCo does not dispute that the waiver was predetermined and the application in respect of the second loan is consequently dismissed.

THE PROPERTY ISSUE

78 The JSE found that

TrustCo had not complied with the International Financial Reporting Standards in that its annual group financial statements for the year ending 31 March 2019 reclassified certain properties in the Elisenheim development from inventory to investment property and thereby recognising a NAD693 million gain (presented as revenue of NAD984 million and cost of sales of NAD 91 million in profit and loss).

79 It consequently instructed

TrustCo to restate the Group AFS by reversing the reclassification of the Elisenheim properties (incorrectly reclassified to investment properties) and consequently reversing the NAD693 million gain (presented as revenue of NAD984 million and cost of sales of NAD91 million from profit and loss).

80 TrustCo explained that the issue concerns 1,186.2387⁶ hectares of land acquired for development as residential property. The land was held as inventory in accordance with IAS 2:

Inventories are assets:

(a) held for sale in the ordinary course of business;

(b) in the process of production for such sale; or

(c) in the form of materials or supplies to be consumed in the production process or in the rendering of services.

81 A portion of the land was developed for residential purposes. However, in 2018 TrustCo experienced a slow-down in demand and most of the land stood vacant

⁶ There may be typos in the record about the placing of the commas but that does not affect the decision.

and undeveloped. Reflecting on this wasted use of the land, the directors of TrustCo resolved during March 2019 to effectively: retain 356.3603 hectares, which would no longer be held for purposes of development and sale in the ordinary course of business; cease all works in relation to the development of the identified portion of the property for the purposes of a sale in the ordinary course of business; and the identified portion of land was to be held as a long term investment for capital appreciation.

82 'Given the board's decision to change the purpose of the land', TrustCo said, it applied IAS 40 to reclassify the land for accounting purposes.

83 IAS 40.57 stipulates that:

'An entity shall transfer a property to, or from, investment property when, and only when, there is a change in use. A change in use occurs when the property meets, or ceases to meet, the definition of investment property and there is evidence of the change in use. In isolation, a change in management's intentions for the use of a property does not provide evidence of a change in use. Examples of evidence of a change in use include:

(a) commencement of owner-occupation, or of development with a view to owner-occupation, for a transfer from investment property to owner-occupied property;

(b) commencement of development with a view to sale, for a transfer from investment property to inventories;

(c) end of owner-occupation, for a transfer from owner-occupied property to investment property; and

(d) inception of an operating lease to another party, for a transfer from inventories to investment property".

84 The accounting consequences of a change in use are set out in IAS 40.63:

For a transfer from inventories to investment property that will be carried at fair value, any difference between the fair value of the property at that date and its previous carrying amount shall be recognised in profit or loss.

The factual consequences of the application of IAS 40.63 have been set out in the decision of the JSE quoted earlier.

85 TrustCo's submits that

The examples in IAS 40.57 are not exhaustive. The critical factor influencing the appropriate accounting treatment and valuation is the intention for which the property is held. IAS 40 then prescribes that land held at cost and then reclassified as investment property must be valued at fair value.

86 Its second submission is that objective factors (the outward manifestation of the board's decision) evince TrustCo's change in intention. These include cessation of all development activity related; decommissioning of the development plans; and cessation of associated activities such as planning, contracting and obtaining regulatory approval. The details and underlying documents were supplied.

87 Although the examples given are, as submitted, nothing more than examples, they are all instances of 'a change in use'. There is no evidence of a change in use in relation to the property. One would at least have expected something approximating items (c) and (d). The properties are undeveloped and vacant and continue to be vacant and undeveloped.

88 Concerning the submission that ‘the critical factor is the intention for which the property is held’, one is here concerned with a change in use and not the original intention. The submission ignores the express statement that *in isolation, a change in management's intentions for the use of a property does not provide evidence of a change in use.*

89 In any event, the expressed intention (apart from the intention to change the accounting), reflected in the minutes of the Board, was the following and belies the submission:

The current economic slowdown in the property market has forced the Group to reconsider its development timetable in order to optimally allocate resources and maximise its return on its investments. Based on this review a decision was taken to defer various development projects.

90 A different timetable and a deferment of projects do not amount to a change in use. That leaves the objective factors. As the JSE held, these facts are neutral and are equally consistent with a delayed implementation of the use of the property as per its initial classification (A365).

CONCLUSION

91 It is, in view of our conclusion, unnecessary to deal with all the issues raised, and the application stands to be dismissed.

92 Both parties have asked for costs, which means that both parties consider that exceptional circumstances, as required by sec 234(2) of the FSR Act, are present.

93 The JSE is the successful party. We agree with its counsel that TrustCo’s repeated failure to take the FRIP, the JSE, and the Tribunal into its confidence by explaining

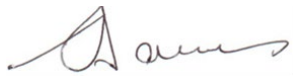
the economic rationale for Dr van Rooyen's waivers of the loans amounts to exceptional circumstances.

94 A fair assessment would be to order TrustCo to pay half the costs of the JSE.

ORDER:

- A. The application for reconsideration is dismissed.
- B. The applicant is ordered to pay 50% of the respondent's costs, such costs to include the costs of two counsel on the High court scale and which is to be taxed by the Taxing Master or a taxing practitioner agreed to by the parties.

Signed on behalf of the Tribunal on 22 November 2021.

A handwritten signature in black ink, appearing to read 'LTC Harms', is written over a light grey rectangular background.

LTC Harms

**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)****JSE share code: TTO****NSX share code: TUC****OTCQX share code: TSCHY****ISIN Number: NA000A0RF067****("Trustco" or "the Group")****NON-BINDING ADVISORY VOTE**

Trustco Shareholders (Shareholders) are referred to the announcements released on SENS on 23 November 2021 in terms whereof Shareholders were advised of the dismissal of Trustco's application for reconsideration by the Financial Services Tribunal in South Africa.

Shareholders are reminded that, as per the Companies Act of Namibia, Act 28 of 2004 and the principles of the King IV Report, the Trustco Board of Directors (the Board) is responsible and accountable to Shareholders for the preparation and presentation of financial statements and to ensure that the financial statement are prepared in compliance with International Financial Reporting Standards (IFRS). The Board cannot abdicate this responsibility, especially when the outcome would contradict the Group's appointed professional advisors.

Trustco's professional advisors confirmed that the dismissal of its application for reconsideration puts the Board in an untenable position whereby the Board is instructed by the JSE, which is only one of the three stock exchanges Trustco is listed on, to report in a manner that would not be in compliance with IFRS. The JSE directive contradicts both the Board's considered opinion and the advice of its professional advisors. Trustco reserves its rights herein.

Shareholders should further note that the unwarranted interference of the JSE is an attempt to usurp the responsibilities and fiduciary duties of the Board without any accountability towards Shareholders. This undermines the independence, accountability and integrity of the Board.

Trustco's Board is engaging stakeholders and requests Shareholders to participate in non-binding advisory votes on key matters as set out below. All Shareholders, excluding the majority shareholder and his associates, are hereby invited to cast their vote. Although Shareholders have previously approved the affected transactions, as well as the audited annual financial statements and disclosures, the Board requests current Shareholders to reaffirm their position on these transactions.

This non-binding advisory vote enables Shareholders to express their views and will not have any legal consequences for those Shareholders that now cast their vote. The Board will however consider the outcome of the votes to assess Trustco's future options.

The process will be as follows:

1. Shareholders are invited to attend an interactive online session with the independent non-executive chairman of the Board, the Audit and Risk Committee Chairman and the Group Financial Director to discuss the key matters set out below.
2. Shareholders who want to attend the online session must provide the company secretary with their details (Full name, name under which shares are registered, number of shares and email address) by sending an email to komada@tgh.na before 10h00 Central African Time (08h00 UTC) on the 6th of December 2021.
3. The online session will be held on the 6th of December 2021 at 12h00 Central African Time (10h00 UTC).
4. Shareholders are requested to return the voting tabulation by no later than Wednesday the 8th of December 2021 at 12h00 Central African Time (10h00 UTC) to komada@tgh.na. The form can also be downloaded from or completed online at Trustco's website at www.tgh.na

Name of shareholder : _____
 Number of shares held : _____
 Email and contact details : _____

| No | Key matter | For Include number of shares | Against Include number of shares | Abstain Include number of shares |
|-----|---|---------------------------------------|---|---|
| 1.1 | To endorse and confirm the accounting treatment of the NAD 546 million loan forgiveness transaction by the majority shareholder, Next Capital Limited, as set out in the audited financial statements (Note 26, Page 65 of the March 2019 Annual Financial Statements). | | | |
| 1.2 | To endorse and confirm the accounting treatment of the NAD 1 billion loan forgiveness transaction by the majority shareholder, Next Capital Limited, as set out in the audited financial statements (Note 27, Page 153 of the September 2020 Financial Statements). | | | |
| 1.3 | To endorse the accounting treatment of the property reclassification as set out in the audited financial statements (Note 8, Page 49 of the March 2019 Annual Financial Statements) | | | |
| 2.1 | To confirm and endorse the auditors' opinions as contained in the audited financial statements for the financial year ending March 2019. | | | |
| 2.2 | To confirm and endorse the auditors' opinions as contained in the audited financial statements for the financial period ending September 2020. | | | |
| 3 | To confirm and agree that the Board followed due process and remains best placed to do so in the future, in recommending the financial statements to the shareholders for approval. | | | |
| 4.1 | To endorse that the loan write-offs set out in 1.1 and 1.2 above triggered a contractual earn-out clause in terms of the amended Huso Transaction as approved by Shareholders on 13 June 2017. | | | |

| | | | | |
|-----|---|--|--|--|
| 4.2 | To endorse that the share issue at NAD 4.69 was in line with the amended Huso Transaction as previously approved by Shareholders on 13 June 2017. | | | |
| 4.3 | To endorse the amended Huso Transaction as approved by Shareholders on 13 June 2017. | | | |
| 4.4 | To endorse the Related Party Loan Transaction (One Billion Namibia Dollar Loan) as approved by Shareholders on 22 January 2019. | | | |
| 4.5 | To confirm that the Board acted in the best interest of minority Shareholders by accepting the total of NAD1.546 billion loan write-offs by the majority shareholder to Trustco. | | | |
| 5 | To confirm that the information and disclosures (including pro forma financial information) presented to Shareholders in the Huso circular, the amended Huso circular and the audited financial statements were adequate to approve the Huso Transaction, the amended Huso Transaction and the Related Party Loan Transaction. | | | |
| 6.1 | The Board is considering its options regarding the benefits of Trustco's current listings. To move a listing to a more beneficial exchange, a majority vote from minority Shareholders is required. Should Trustco delist from the JSE, Trustco would also automatically delist from the NSX in Namibia and the OTCQX in the United States of America. To support the Board's position that Trustco's current listings are not in the best interest of all Shareholders. | | | |
| 6.2 | To support the Board's position for Trustco to list on a business-friendly international exchange as soon as practical. | | | |
| 7.1 | To elect to remain as a Shareholder in an unlisted environment until Trustco relists on an international stock exchange within a period of not more than 36 (thirty-six) months from the date of delisting from the JSE ("Delisting Date") | | | |

| | | | | |
|-----|--|--|--|--|
| | Should Trustco fail to relist on an international exchange within 36 (thirty-six) months from the Delisting Date, Shareholders may give notice of their intention to sell their shares to Trustco at a price of 10% above the average VWAP price of the TTO Share between the 1 st of January 2021 to the 30 th of November 2021 plus 8.5% compound interest from the Delisting Date to the end of the 36 (thirty-six) month period. | | | |
| 7.2 | To elect not to remain a Shareholder after delisting, with Trustco acquiring the Shareholder's Trustco shares ("TTO Shares") within 36 (thirty-six) months from the Delisting Date at a price of 10% above the average VWAP price of the TTO Share between the 1 st of January 2021 to the 30 th of November 2021. | | | |
| 8 | As a minority Shareholder, to consent to a reduced timeframe for the above delisting transactions when a formal vote is required. | | | |
| 9 | To agree that any announced transactions currently in process be implemented subsequent to the potential delisting. | | | |
| 10 | To hold the responsible parties, jointly and severally, accountable for shareholder value destruction during the process. | | | |
| 11 | Shareholders are invited to provide any relevant comments or information for the attention of the board: | | | |

The outcome of the non-binding advisory votes will be announced on SENS.

Windhoek, Namibia,

1 December 2021

Komada Holdings (Pty) Ltd

Company Secretary and Investor Relations Services to Trustco Group Holdings Limited

JSE Sponsor

Vunani Corporate Finance – Johannesburg

NSX Sponsor

Simonis Storm Securities Proprietary Limited – Windhoek

OTCQX Sponsor

J.P Galda & Co – New York

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



From: Applications <Applications@fstribunal.co.za>

Sent: 18 February 2022 14:06

To: Bell, John <John.Bell@nortonrosefulbright.com>

Cc: Grieve, Candice <Candice.Grieve@nortonrosefulbright.com>; Mogotsi, Masego <Masego.Mogotsi@nortonrosefulbright.com>; Michael Straeuli <michael.straeuli@webberwentzel.com>; Prathik Mohanlall <Prathik.Mohanlall@webberwentzel.com>; Dominic Harris <Dominic.Harris@webberwentzel.com>; Applications <Applications@fstribunal.co.za>

Subject: RE: TRUSTCO GROUP HOLDINGS LIMITED / JSE LIMITED: RECONSIDERATION APPLICATION [NRFSA-JHB.FID5035645]

Dear John

Thank you for your e-mail with the attachments.

I have asked Lwandiso to process the applications for reconsideration and suspension and he will communicate with you shortly in this regard.

By my calculations, the ruling in the application for suspension should be finalised before 11 March 2022 provided the timelines set out in the Tribunal rules are adhered to.

Kind regards



Kim Host

Tel: 012 741 4302

Email: Applications@fstribunal.co.za

Kasteel Office Park, Orange Building (2nd Floor) 546 Jochemus Street

Erasmuskloof, Pretoria, 0048

From: Bell, John <John.Bell@nortonrosefulbright.com>

Sent: Friday, February 18, 2022 1:59 PM

To: Applications <Applications@fstribunal.co.za>

Cc: Grieve, Candice <Candice.Grieve@nortonrosefulbright.com>; Mogotsi, Masego <Masego.Mogotsi@nortonrosefulbright.com>; Michael Straeuli <michael.straeuli@webberwentzel.com>; Prathik Mohanlall <Prathik.Mohanlall@webberwentzel.com>; Dominic Harris <Dominic.Harris@webberwentzel.com>

Subject: TRUSTCO GROUP HOLDINGS LIMITED / JSE LIMITED: RECONSIDERATION APPLICATION [NRFSA-JHB.FID5035645]

Dear Kim

TRUSTCO GROUP HOLDINGS LIMITED / JSE LIMITED

As you are aware, we represent Trustco Group Holdings Limited.

Please find attached our client's:

1. Application in terms of section 230 of the Financial Sector Regulation Act, 2017 ("the Act") for reconsideration of a decision taken by the JSE to suspend our client's listing ("the decision"); and
2. Application in terms of section 231 of the Act to suspend the decision.

We wish to bring to your attention the JSE's ultimatum that they will enforce and implement the decision if our client's application to suspend is not finally determined by **15h00 on 11 March 2022**. We would accordingly appreciate it if this can be brought to the Chairperson / Deputy Chairperson's attention.

Webber Wentzel has further been authorised to accept service of process on behalf of the JSE and we accordingly copy Mr Michael Straeuli.

Kindly acknowledge receipt.

Kind regards,

John Bell | Director

Norton Rose Fulbright South Africa Inc
15 Alice Lane, Sandton 2196, South Africa

Tel +27 11 685 8501 | Mob +27 83 464 2352 | Fax 27 11 301 3200

john.bell@nortonrosefulbright.com

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DELEGATION OF POWERS

“RESOLVED:

1. That in terms of section 58 of the Securities Services Act 36 of 2004 and section 72 of the Companies Act 71 of 2008 (the Acts), the Board hereby delegates to the persons or entities set out below the following powers:

1.1. To the Executive Committee, the power to:

- 1.1.1. to do all such things as the Board is required or permitted to do in terms of the Acts, the Articles and Memorandum of Association, the common law and equities, derivatives and interest rate rules and Listings Requirements of the JSE, including authorising an appropriate person to sign any affidavit that may be required to be signed by a representative of the JSE in performing any power exercised in terms hereof;
- 1.1.2. incur budgeted expenditure as per the budget applicable to the financial year in question as approved by the Board (“budgeted expenditure”);
- 1.1.3. incur, in aggregate, unbudgeted expenditure not exceeding 5 % of the total budgeted expenditure for the year in question, provided that no one item of such unbudgeted expenditure exceeds R10 million;
- 1.1.4. enter into and sign any agreement between the JSE and any other person or persons which: –
 - results in expenditure of R 10 million or less over the period of the agreement;
 - is of a duration of 5 years or less; or
 - is of an indefinite duration, results in expenditure of no more than R 2 million per annum with an initial term of no more than five years but thereafter may be terminated on not more than 3 months; and
 - has been formally approved and signed off by the **JSE’s Legal Counsel**.

For the avoidance of doubt, it is noted that any agreements involving expenditure or duration in excess of the limits set out in 1.1.3 and 1.1.4 above are required to be approved by the JSE Board;

- 1.2. Subject to 1.3 below, to each individual Executive Committee member in respect of the operations and budget of that Executive Committee Member's division, the power to:
- 1.2.1. incur budgeted expenditure of any one item up to a maximum of R 1 Million;
- 1.2.2. enter into and sign any agreement between the JSE and any other person or persons that –
- results in expenditure of no more than R 300 000 per annum;
 - results in expenditure of up to a maximum of R1.2 million over the period of the agreement;
 - has a duration of no more than three years; or
 - is of an indefinite duration, results in expenditure of no more than R 300 000 per annum with an initial term of no more than three years but thereafter may be terminated on not more than 3 months; and
 - has been formally approved and signed off by the **JSE's Legal Counsel**.

For the avoidance of doubt, it is noted that any agreements involving expenditure or duration in excess of the limits set out in 1.2.1 and 1.2.2 above are required to be approved by the JSE Executive Committee;

- 1.3. To the Chief Information Officer in respect of the operations and budget of the **Technology Division** , the powers as are set out in the document entitled "ITD Contracts Delegation Policy V1.00", the content of which is set out hereunder in these minutes;
- 1.4. To an employee of grade 15 and above ("employee"), in respect of the operations and budget of the division in which that person is employed, the power to:
- 1.4.1. incur budgeted expenditure of any one item up to R 500 000: Provided that the general authority of a specific individual to incur expenditure on this basis has been tabled and approved by the Executive Committee in advance of the exercising of the said power.

2. That, save for the power or duty to decide whether the listing of the securities of a company on the JSE should be terminated at the instance of the JSE, which power is delegated to the Executive Committee, the Board hereby delegates the powers and duties under sections 13 and 15 of the Securities Services Act, and the Listing Requirements to –
 - 2.1. the head of the **Issuer Regulation Division** or the General Manager: Issuer Regulation, or other appropriate person or persons as identified by the Executive Committee; and
 - 2.2. the Listings Appeal Committee, provided that the Listings Appeal Committee may only exercise any of the powers or duties so delegated after it receives a request for appeal.
3. The Board hereby delegates the power to enter into and sign:
 - any Information Distribution agreements between the JSE and any JSE public information user to the **Head of the Market Data** Division, or failing such person for any reason, any member of the Executive Committee, provided that the agreements are the standard form Information Distribution agreements as approved by the JSE Executive Committee from time to time;
 - any Clearing Agreements between the JSE and a clearing member of the JSE to the Head of the **Post Trade Services** Division or failing such person for any reason, any member of the Executive Committee, provided that the agreements are the standard form clearing agreement as approved by the JSE Executive Committee from time to time;
 - Any JSE Services Agreements between the JSE and any authorised user or other party, including the JSE Services Agreement, the Shared Infrastructure Provider Agreement and the Talx End user Agreement to the Head of the **Equities** Division or failing such person for any reason, any member of the Executive Committee, provided that the agreement is the standard form clearing agreement as approved by the JSE Executive Committee from time to time.

That any and all existing delegations will remain in force unless they are contrary to the delegations effected in terms of these resolutions.

(Resolved on 1 December 2000 and amended on 6 November 2001, 7 May 2002, 5 August 2003, 22 November 2005, 13 March 2007, 20 November 2007, 22 November 2011)