

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

CASE NO.: 2023-071935

In the intervention application of:

**THE PARTIES DESCRIBED IN ANNEXURE A
TO THE NOTICE OF MOTION**

Applicants
(In the intervention application)

and

PRUDENTIAL AUTHORITY	First Respondent
SOUTH AFRICAN RESERVE BANK	Second Respondent
HABIB OVERSEAS BANK LIMITED (in curatorship)	Third Respondent
PRICEWATERHOUSECOOPERS INCORPORATED	Fourth Respondent
CRAIG DU PLESSIS N.O.	Fifth Respondent
THE MINISTER OF FINANCE	Sixth Respondent

In Re:

PRUDENTIAL AUTHORITY	First Applicant
SOUTH AFRICAN RESERVE BANK	Second Applicant

And

HABIB OVERSEAS BANK LIMITED (in curatorship)	First Respondent
PRICEWATERHOUSECOOPERS INCORPORATED	Second Respondent
CRAIG DU PLESSIS N.O.	Third Respondent
THE MINISTER OF FINANCE	Fourth Respondent

FOUNDING AFFIDAVIT

(In the intervention application)



I, the undersigned,

AHMED ISMAIL DESAI

do state under oath that -

- 1 I am an adult male businessman residing at 22 Kings Avenue, Westville, Durban.
I am depositor in Habib Overseas Bank Limited ("the Bank").

- 2 I am a director in the following companies, all of which are depositors in the Bank
—
 - 2.1 Cartoon Clothing (Pty) Ltd;
 - 2.2 Elite Moda (Pty) Ltd;
 - 2.3 Elite Moda Manufacturers (Pty) Ltd;
 - 2.4 Kintyre Investments (Pty) Ltd; and
 - 2.5 Point Zero Creations (Pty) Ltd.

- 3 The facts set forth in this affidavit fall within my personal knowledge unless the contrary is stated or appears from the context. To the best of my knowledge and belief they are true and correct.

- 4 I am authorised to depose to this affidavit, to bring this intervention application and to oppose the winding up on behalf of the parties set out in Annexure A to the notice of motion.

THE APPLICANTS IN THE INTERVENTION APPLICATION

- 5 The applicants in this application for leave to intervene (“the depositors”), are all depositors with the Bank who have a positive credit balance on their accounts.
- 6 The depositors have a personal right to payment of the amounts standing to the credit of their bank accounts held with the Bank. They are, therefore, all creditors of the Bank.
- 7 Subject to verification of the current balances, the depositors are collectively to the value of approximately R165 million. There is still some confusion amongst depositors and it is likely that further depositors will intervene on the proposed return date.
- 8 By way of example:
 - 8.1 The current total credit balance of accounts of the companies in which I hold directorship in is R21 132 808,00 I attach the recent statements of account confirming the credit balance as Annexure “AD1a – AD1e”.
 - 8.2 I have not been able to withdraw funds from this account since the Bank was placed under curatorship, nor am I able to transact on the account in any way.
- 9 The other depositors also all hold bank accounts with the Bank. Time permitting, the account balances of these other depositors are set out in Annexure A to the notice of motion.
- 10 The credit balances of the depositors’ accounts with the Bank constitute incorporeal property belonging to each depositor. The main winding-up

application therefore affects the property rights of the depositors since there is a likelihood, if winding up is ordered, that the depositors will not be paid the full amounts standing to the credit of their bank accounts. I deal with this further below.

11 The depositors therefore have a direct and substantial interest in the main winding up application.

12 The depositors are businesses, individuals or charitable institutions. By way of example:

12.1 Nazmira Carrim is a single mother who sold her house and had the proceeds of the sale paid into her bank account with the Bank. She stands to lose most of her wealth through the winding-up of the Bank.

12.2 Darul Yatamah is an orphanage which deposited R 5 million with the Bank.

12.3 Phoenix Islamic School is a school which deposited about R700 000.00 with the Bank.

12.4 Al Falaah is a school which deposited about R3.5 million with the Bank.

13 The deposits of the charitable institutions represent donations given to the institutions, and fees raised by the institutions, for the purpose of carrying on their charitable work.

14 The loss of the deposits belonging to these charitable institutions will have a detrimental effect on their ability to carry out their work and threatens their continued existence.

15 Leave to intervene is therefore sought:

15.1 On the basis of the direct and substantial interest of the depositors; and

15.2 In the public interest, on the basis of the potential harm to the charitable institutions.

INTERVENTION

16 The depositors agree that the curatorship of the Bank should be terminated immediately.

16.1 I have been informed that the curatorship has cost in the region of R40 million. Depositors cannot afford for these sorts of costs to continue to be incurred.

17 However, the depositors do not agree that a final winding-up order should be granted urgently and on shortened time periods, when the matter is called on Tuesday 8 August 2023.

18 The depositors' attitude is that the Bank should be placed in provisional winding-up when the matter is heard on 8 August 2023. The depositors propose a draft order which will protect the interests of everyone, and which will achieve the following:

18.1 Termination of the curatorship.

18.2 Protection of the depositors' interests by the appointment of a liquidator (or provisional liquidator) who will take control of the assets of the Bank and ensure that they are not dissipated.

- 18.3 Time for the depositors to full explore the possibility of an equity transaction to recapitalise the Bank so as to allow it to continue as a going concern (and for depositors to be repaid in full).
- 19 The reason why the depositors favour provisional winding-up over final winding-up is because:
- 19.1 A provisional winding-up order will preserve the possibility of the shares in the Bank being sold (with the result that the Bank continues as a going concern and depositors are repaid their deposits in full).
- 19.2 By contrast, a final order will mean that depositors are not paid in full. This is because:
- 19.2.1 The liquidator will proceed to sell the assets of the bank; and
- 19.2.2 According to the applicants, the Bank is hopelessly insolvent. In other words, the assets of the bank, if realised, will not be sufficient to pay all creditors (including depositors).
- 20 I am advised that a Court will take the fact that wishes of creditors into account, as one of the relevant factors in the exercise of its discretion, when deciding whether to order winding-up or not.

WHY A PROVISIONAL ORDER IS PREFERABLE AT THIS TIME

- 21 The applicants in the main winding-up application seek a final order and the appointment of Kajee as the liquidator (not the provisional liquidator).
- 22 Once appointed, Kajee:

- 22.1 Will begin the process of selling the assets of the Bank. Once these assets are sold, there will be no prospect of selling the Bank as a going concern because there will be no business left to sell. In other words, an equity transaction to recapitalise the Bank will no longer be feasible. Even if only certain assets are sold, this will reduce the attractiveness of the Bank to potential equity investors.
- 22.2 May discontinue the business of the Bank and/or terminate contracts to which the Bank is a party (including contracts of employment). This will also prejudice any prospect of an equity transaction to recapitalise the Bank.
- 23 Once the affairs of the Bank have been wound up the registration of the Bank will be terminated under section 28 of the Banks Act, 1990.
- 24 Thus, the granting of a final winding-up order may render the prospect of a transaction to recapitalise the Bank impossible, or at least highly unlikely because:
- 24.1 Firstly, the assets of the Bank (or part of the assets of the Bank) may be sold before the depositors have the opportunity to fully canvass a potential equity transaction with prospective buyers.
- 24.2 Secondly, the final order will ultimately result in the cancellation of the Bank's registration as a bank.
- 25 There is value in the Bank's business as a whole (this includes the value of its registration as a bank). If the registration is cancelled, or if it becomes impossible

A handwritten signature, possibly 'AB', followed by a downward-pointing arrow and the date '17'.

or unlikely to achieve an equity transaction to recapitalise the Bank, then this value will be lost (and depositors will lose out).

- 26 If a final order is granted, the liquidator will not be able to sell the Bank as a going concern. The liquidator will only be able to sell the assets of the Bank.
- 27 On the other hand, if the Bank is only placed into provisional winding-up then the liquidator will not be able to sell of the assets of the Bank (and there will be no risk of cancellation of the registration of the Bank). Instead, the depositors' attorneys will be able to canvass potential buyers in relation to an equity transaction to recapitalise the Bank.
- 28 If a prospective buyer were to acquire the shares in the Bank, and were to re-capitalise the Bank, then the Bank would be able to continue as a going concern.
- 29 As I demonstrate below, there is appetite within the market to acquire the shares in the Bank. The depositors require time to fully investigate this option. That is why we ask that the Bank be placed into provisional winding-up only.
- 30 If it transpires that the envisaged sale of shares in the Bank is hopeless, then the depositors will support the final winding-up of the Bank on the return day.

THE PREVIOUS NEGOTIATIONS IN RELATION TO THE SALE OF THE BANK

- 31 Prior to the institution of the main winding-up application, there were negotiations (with a buyer who has insisted that it must not be named) in relation to the sale of the Bank. I am advised that these negotiations were at an advanced stage. The prospective buyer was an entity which is licensed to render payment services (but not registered as a bank) by the SARB.

- 32 My attorneys requested particulars of this transaction from attorneys representing the shareholder of the Bank. A copy of the response to this request is attached marked "**AD2**".
- 33 The response describes the particulars in vague terms. Essentially, the prospective purchaser would have acquired the shares in the Bank in exchange for recapitalizing the Bank, paying for its tangible assets and even paying the shareholder a "premium" as consideration for the goodwill of the Bank.
- 34 The prospective buyer has insisted that its name must not be disclosed.
- 35 The sale of the Bank pursuant to this transaction would have allowed for the continued existence of the Bank as a going concern and therefore for repayment (in full) of all amounts due to the depositors.
- 36 I am also advised that the transaction was not concluded because of the institution of the main winding-up application. The prospective buyer informed a representative of the depositors that it will not pursue the transaction any further due to the winding-up application having been launched. The reason is that the buyer is not willing to risk its relationship with the SARB by becoming a party to litigation involving the SARB.
- 37 However, if the depositors are afforded time to do so, by the granting of a provisional winding-up order only on 8 August 2023, then:
- 37.1 The depositors' attorneys will approach the prospective buyer and attempt to revive their interest in the transaction.

37.2 The depositors' attorneys will, at the same time, approach the Reserve Bank to gauge whether, in principle, the Reserve Bank would approve of such a transaction.

37.3 If the Reserve Bank is, in principle supportive of the transaction, then this will allay the fears of the prospective buyer (who does not want to run the risk of antagonising the Reserve Bank in any way).

37.4 In addition, the depositors' attorneys will seek to approach other prospective buyers.

37.4.1 By way of example, Habib Bank AG Zurich ("HBZ") is a Swiss multinational commercial bank which is based in Zurich. It is a registered bank in, amongst other places, South. This is a separate and distinct bank to the Bank (however there is a family connection between the ultimate beneficial shareholders of the Bank and HBZ). HBZ have previously expressed interest in buying the Bank, but have also declined to pursue this any further in light of the curatorship and winding-up application, and the desire to avoid any potential for conflict with the Reserve Bank. HBZ could also be approached if assured that the Reserve Bank was in principal, supportive of a deal to save the Bank.

38 The failed transaction to sell the Bank demonstrates that it is possible for the Bank to be sold as a going concern (and for the rights of depositors to be safeguarded fully in this way). There is interest in the market to acquire the shares in the Bank.

39 The depositors do not agree that there are no prospects of attracting an alternative equity investor as alleged in paragraph 24.2.4 of the founding affidavit.

39.1 Firstly, the Bank may not be as unattractive a proposition to investors as is suggested. The Reserve Bank's report dated 27 March 2023. confirmed that the Bank *"remains liquid, with a liquidity coverage ratio above the regulatory requirement, and there are no immediate concerns for depositors, which means their funds remain safe at the bank"*. A copy of the report is attached marked **"AD3"**. Withdrawals have not been permitted since the Bank was placed under curatorship. Therefore, the Bank's position should not have deteriorated to such an extreme extent since March 2023. The reason behind the statement that the Bank has a negative net asset value is likely to be due to provisions having been made in respect of the recoverability of loans advanced by the Bank. The making of such provisions is a subjective exercise and the provisions made may have been overly conservative (with the result that the Bank's assets have been overstated).

39.2 Secondly, the interest expressed in purchasing the shares in the Bank described above indicates that such a transaction is a possibility.

THE URGENCY OF THIS INTERVENTION APPLICATION

40 The main application is set down for Tuesday 8 August 2023.

41 Unless this intervention application is treated as urgent, the main application will be heard and determined without the depositors having an opportunity to be heard.

42 The depositors accept that part of the relief sought in the main application is urgent. This warrants this intervention application being heard as urgent.

THE TIMING OF THIS INTERVENTION APPLICATION

43 I first heard of the winding-up application on or about 21 July 2023. I received a copy of the application shortly thereafter.

44 The depositors formed a Whatsapp group to discuss the matter and to coordinate their response. On about 1 August 2023, certain of the depositors mandated the depositors current attorneys to represent them. Subsequently, further depositors mandated the depositors' attorneys to act on their behalf.

45 The depositors requested the applicants to consent to their intervention on Tuesday 1 August 2023. The applicants in the main application refused to the intervention on 2 August 2023. Copies of this correspondence is attached marked **"AD4a"** and **"AD4b"**.

46 On 3 August 2023, counsel advised the depositors to obtain the details relating to the previous failed transaction for the sale of the shares in the bank. Later, on the same day, the depositors' attorneys addressed an email to the attorneys acting for the shareholders in the Bank requesting this information. A copy of the email is attached marked **"AD5"**.

47 A response to the email was received on 5 August 2023.

48 On 6 August 2023, the depositors' attorneys were instructed to bring this application.

CONCLUSION

49 The depositors have demonstrated:

49.1 A direct and substantial interest in the main winding-up application; and

49.2 That the application is made seriously.

50 If a final winding-up order is granted, then the prospect of a transaction for the sale of the shares in the Bank will become highly unlikely. If the Bank is hopelessly insolvent then this will mean that depositors will not be paid the full value of their deposits. It is well documented that a fire sale of banking assets in liquidation will result in the assets being sold at a substantial discount.

51 By contrast, if a provisional winding up order is granted, then depositors will be adequately protected, however the prospect of an equity investment which recapitalises the Bank and ensures that depositors are repaid in full remains a possibility.

52 No case has been made out as to why a final order should be granted rather than a provisional order. Given the public interest in the winding-up, there should be notice to all creditors and other interested parties, as would be the case if there's a provisional order in terms of the normal practice.

53 These factors all militate in favour of the Court exercising its discretion in favour of the depositors and granting a provisional order only.

WHEREFORE I ask that the Court grants the intervention order as set out in the notice of motion.



DEPONENT

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at UMHLANGA ROCKS on this the 07 day of AUGUST 2023, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS

Full names: THIRUNEELAN MANDRI

Address: 93 RICHEFOND CIRCLE, RIDGESIDE OFFICE PARK
UMHLANGA ROCKS

Capacity: COMMISSIONER OF OATHS

COMMISSIONER OF OATHS (RSA)
THIRUNEELAN MANDRI CA (SA)
Practice No: 08123281
1st Floor, 93 Richefond Circle
Ridgeside Office Park, UMHLANGA ROCKS

"AD1a"



2 August 2023
11:51:19

Account Statement

Account : 11448180806
Customer : 101610 **CARTOON CLOTHING-CURR**
Currency : ZAR

Book Date	Reference	Descript	Value Date	Debit	Credit	Closing Balance
		Balance at Period Start				666,821.87
		*** NO ENTRIES FOR PERIOD ***				—
		Balance at Period End				666,821.87



1 August 2023
13:50:48

Account Statement

Account : 11449126805
Customer : 101610 CARTOON CLOTHING MANUFACTURERS PTY
Currency : ZAR

Book Date	Reference	Descript	Value Date	Debit	Credit	Closing Balance
		Balance at Period Start				5,630,863.63
31 MAY 23	AAACT23151X1KJK CM2	Interest - Capitalise	31 MAY 23		28,694.26	5,659,557.89
20 JUN 23	FT23171XXGC6	Transfer SARB-FNB	20 JUN 23	100,000.00		5,559,557.89
30 JUN 23	AAACT231814L7GLY ZD	Interest - Capitalise	30 JUN 23		27,729.33	5,587,287.22
		Balance at Period End				5,587,287.22



"AD1b"

2 August 2023
11:52:10

Account Statement

Account : 11447798806
Customer : 105538 ELITE MODA PTY - CURR
Currency : ZAR

Book Date	Reference	Descript	Value Date	Debit	Credit	Closing Balance
		Balance at Period Start				719,404.56
		*** NO ENTRIES FOR PERIOD ***				-----
		Balance at Period End				719,404.56



1 August 2023
13:49:39

Account Statement

Account : 11449153918
Customer : 105538 ELITE MODA PTY LTD
Currency : ZAR

Book Date	Reference	Descript	Value Date	Debit	Credit	Closing Balance
		Balance at Period Start				3,130,613.93
31 MAY 23	AAACT23151RMDKS 70Z	Interest - Capitalise	31 MAY 23		15,953.27	3,146,567.20
20 JUN 23	FT23171JB3VT	Transfer SARB-FNB	20 JUN 23	100,000.00		3,046,567.20
30 JUN 23	AAACT23181NCPT9 JDW	Interest - Capitalise	30 JUN 23		15,336.50	3,061,903.70
		Balance at Period End				3,061,903.70



"AD1c"

1 August 2023
13:39:12

Account Statement

Account : 11449154205
Customer : 100392 ELITE MODA MANUFACTURERS PTY LTD
Currency : ZAR

Book Date	Reference	Descript	Value Date	Debit	Credit	Closing Balance
		Balance at Period Start				12,620.54
31 MAY 23	AAACT23151J4HDC 6FG	Interest - Capitalise	31 MAY 23	64.31		12,684.85
30 JUN 23	AAACT231814L7GM 929	Interest - Capitalise	30 JUN 23	62.56		12,747.41
		Balance at Period End				12,747.41

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2 August 2023
11:25:51

Account Statement

Account : 11448027404
Customer : 100392 ELITE MODA MNFRS - CURR
Currency : ZAR

Book Date	Reference	Descript	Value Date	Debit	Credit	Closing Balance
		Balance at Period Start				199,471.97
20 JUN 23	FT23171982W7	Transfer SARB-FNB	20 JUN 23	100,000.00		99,471.97
		Balance at Period End				99,471.97



"AD1d"

2 August 2023
11:54:46

Account Statement

Account : 11448176507
Customer : 106978 KINTYRE INVEST - CURR
Currency : ZAR

Book Date	Reference	Descript	Value Date	Debit	Credit	Closing Balance
		Balance at Period Start				1,011,333.43
		*** NO ENTRIES FOR PERIOD ***				_____
		Balance at Period End				1,011,333.43



1 August 2023
13:47:13

Account Statement

Account : 11449187006
Customer : 106978 KINTYRE INVESTMENTS PTY LTD
Currency : ZAR

Book Date	Reference	Descript	Value Date	Debit	Credit	Closing Balance
		Balance at Period Start				1,356,773.96
31 MAY 23	AAACT23151X1KJKV PT	Interest - Capitalise	31 MAY 23		6,913.97	1,363,687.93
20 JUN 23	FT23171RTJBY	Transfer SARB-FNB	20 JUN 23	100,000.00		1,263,687.93
30 JUN 23	AAACT231811GSTL5 RC	Interest - Capitalise	30 JUN 23		6,544.21	1,270,232.14
		Balance at Period End				1,270,232.14

"AD1e"



2 August 2023
11:50:50

Account Statement

Account : 11447934300
Customer : 100231 POINT ZERO CREATIONS PTY LTD
Currency : ZAR

Book Date	Reference	Descript	Value Date	Debit	Credit	Closing Balance
		Balance at Period Start				651,371.64
01 JUL 23	FT231829GSJ7	Inward EFT Payment CASHFOCUS L4807 61941WRSETAMG 6 3200	30 JUN 23		1,544.02	652,915.66
		Balance at Period End				652,915.66

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✍



2 August 2023
10:7:21

Account Statement

Account : 11449073302
Customer : 100231 POINT ZERO CREATIONS PTY LTD
Currency : ZAR

Book Date	Reference	Descript	Value Date	Debit	Credit	Closing Balance
		Balance at Period Start				8,069,749.34
31 MAY 23	AAACT23151CJ7GK H5J	Interest - Capitalise	31 MAY 23		41,122.56	8,110,871.90
20 JUN 23	FT23171CRWH6	Transfer SARB-FNB	20 JUN 23	100,000.00		8,010,871.90
30 JUN 23	AAACT23181PZ5KL QKP	Interest - Capitalise	30 JUN 23		39,818.00	8,050,689.90
		Balance at Period End				8,050,689.90

↓
AS

Muhammad Yusuf Jamal

From: Alten du Plessis <Alten.duPlessis@adams.africa>
Sent: Saturday, 05 August 2023 11:48
To: Yahya Hassan; Muhammad Yusuf Jamal; Beverly Sheik; Pravisha Ramsunder
Cc: Jac Marais; Misha Van Niekerk; Naledi Poee
Subject: Fwd: HABIB OVERSEAS BANK: INFORMATION REQUEST BY DEPOSITORS
Attachments: N77 AFS 2021 Signed.pdf; HOB 2021 AFS Signed.pdf

Dear Yahya and Muhammad,

Please see feedback from our client to your questions below, as well as the attached documents, for your attention.

Kind regards,
Alten

From: Imad Riaz <imadriaz@gmail.com>
Sent: Friday, August 4, 2023 8:03 PM
To: Jac Marais <Jac.Marais@adams.africa>
Cc: Zain Habib <zh22@hotmail.com>; Ahmed Habib <ahabib@outlook.com>; Qumail Habib <qumail.habib@gmail.com>; Misha Van Niekerk <Misha.VanNiekerk@adams.africa>; Alten du Plessis <Alten.duPlessis@adams.africa>; Naledi Poee <Naledi.Poee@adams.africa>
Subject: Re: HABIB OVERSEAS BANK: INFORMATION REQUEST BY DEPOSITORS

Dear Jac

Please find attached the audited financials for the year ended 2021. The sponsors in their capacity as board members have access to management accounts for February 2023 as well as books debts, cash on hand, treasury bonds etc, however, this is not public information and the sponsors cannot disclose material sensitive and confidential information.

With respect to point 3, please note that the Buyer has specifically requested to maintain confidentiality as to their identity, and therefore must remain anonymous. Key terms of the deal were as follows:

Purchase price: Tangible Net Asset Value as of the closing date plus pre-agreed goodwill premium plus value of property owned by N77 (wholly owned subsidiary of the bank) with certain adjustments primarily related to the bank's loan portfolio and upward adjustment for any capital injected by the sponsors. Insofar as the capital injection plan by the buyer is concerned, the same was submitted to the Prudential Authority as part of their acquisition application with a commitment to increase the paid-up capital to R250M as per a specified timeframe acceptable to the Prudential Authority. However, this plan was not shared with us.

Kind regards

Imad

WARNING: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

"AD3"



SOUTH AFRICAN RESERVE BANK

Media release

27 March 2023

Habib Overseas Bank Limited placed under curatorship

On 26 March 2023, the Minister of Finance, on a recommendation from the Prudential Authority (PA) at the South African Reserve Bank (SARB), placed Habib Overseas Bank Limited (Habib Overseas Bank) under curatorship to deal with its governance, compliance and operational failures.

Over the past four years, the PA had intensified its supervision of Habib Overseas Bank because of identified weaknesses in the bank's governance process, its internal control environment as well as the various investigations and reviews which have repeatedly confirmed the bank's non-compliance with a number of financial sector regulations. This non-compliance also relates to significant findings relating to breaches of exchange control regulations.

Having duly considered the continuing failure of the bank's Board of Directors (Board) and management to deal effectively with the weaknesses in controls and its poor regulatory compliance, as well as the growing risks over its ability to meet future obligations as required by the Banks Act 94 of 1990 and the Regulations relating to Banks, the Minister of Finance, on a recommendation from the PA, decided to place Habib Overseas Bank under curatorship with immediate effect. This is being done to proactively protect the bank's depositors.

Upon the appointment of a curator, the Board and management of Habib Overseas Bank have been relieved of all their powers, which are now vested with the curator, subject to the supervision of the PA. Any other person vested with the management of the affairs of the bank shall be divested thereof.

The curatorship provides the legal framework within which the necessary initiatives can take place to enable an orderly resolution. The Minister of Finance has appointed

AS *d*

PricewaterhouseCoopers Inc. (PwC) as the curator, with Mr Craig du Plessis as the representative of PwC who will be responsible for Habib Overseas Bank with immediate effect, and with the full authority the law confers on a curator.

Habib Overseas Bank will continue to operate during the period of curatorship, subject to the assessment of the curator. The curator will assume the powers of the Board and management, and will make decisions regarding the bank's continued granting of loans and sound banking activities generally. The curator is also required to recover and take possession of all the assets of Habib Overseas Bank.

Habib Overseas Bank remains liquid, with a liquidity coverage ratio above the regulatory requirement, and there are no immediate concerns for depositors, which means their funds remain safe at the bank. The curator will keep customers informed of any significant new developments at the bank.

South Africa's banking sector remains healthy and robust, and it is unlikely that other South African banks will be negatively affected by Habib Overseas Bank's current situation. The governance challenges and reasons for this curatorship are not related to the recent difficulties with banks in the United States and Switzerland.

Habib Overseas Bank is a small financial institution that was licensed as a bank by the SARB in 1990. It provides, among other things, term loans, overdrafts, mortgages, bills of exchange and credit facilities to customers in South Africa.

Habib Overseas Bank is not related to, and should not be confused with, Habib Bank AG Zurich (HBZ), which also operates in South Africa but is a different bank and not under curatorship.

Mr Du Plessis, the curator of Habib Overseas Bank, can be reached on curatorhabiboverseas@pwc.com.

Background

The Financial Sector Regulation Act 9 of 2017 mandates the PA at the SARB to:

- promote and enhance the safety and soundness of financial institutions that provide financial products; and
- protect financial customers against the risks that may arise should those financial institutions fail to meet their obligations.



The role of the PA is to make every effort to ensure that South Africa's banks have adequate capital, liquidity and leverage ratios.

The PA is, and will remain, an active supervisor. However, this can never substitute for management's role at a bank and its responsibility to manage a bank. It also cannot replace a Board's responsibility to ensure that sound policies and practices are in place in relation to corporate governance, effective risk management and the strategic direction of a bank.

Issued by SARB Media Relations

Thoraya Pandey 082 416 8416

Ziyanda Mtshali 078 143 0553

media@resbank.co.za



ATTENTION: WERKSMANS ATTORNEYS

PER EMAIL: kradoo@werksmans.com
cmoraitis@werksmans.com
cmanaka@werksmans.com

DATE: 01 AUGUST 2023

**YOUR REF: Mr C Moraitis/ Mr C Manaka /
Ms K Rapoo/ SOUT3267.273**

OUR REF: 21/P514/000

Dear Sir/Madam

**RE: PRUDENTIAL AUTHORITY, THE SOUTH AFRICAN RESERVE BANK v HABIB
OVERSEAS BANK & OTHERS – CASE NO: 2023-071935**

1. The above matter has reference.
2. We act for, and are instructed by, a group of depositors ("our clients") of Habib Overseas Bank Limited ("the Bank"). A list of the names of our clients who have already provided us with a mandate is set out in the schedule attached marked Annexure A. We anticipate being mandated to act for additional depositors over the next few days.

Larson Falconer Hassan Parsee Inc. (Reg. No. 1994/001445/21)
ATTORNEYS • NOTARIES • CONVEYANCERS

2nd Floor, 93 Richefond Circle, Ridgeside Office Park, Umhlanga Rocks, 4319
P.O. Box 3313, Durban, 4000 • Docex 129, Durban, South Africa
Tel: (031) 534 1600 • E-mail: yhassan@lfhp.co.za / mjamal@lfhp.co.za • Website: www.lfhp.co.za

Directors: G.E. Larson • P.R. Falconer • Y. Hassan • S.R. Parsee • N. Kinsley
Senior Associates: T. Botha
Associates: C. Larsen • E. Parsee • M.Y. Jamal

Handwritten initials/signature

3. We have been provided with a copy of your clients' application for the final winding up of the Bank.
4. Our clients clearly have a direct and substantial interest in the application. We call upon you to agree to their intervention as creditors in the winding-up.
5. If you agree to the intervention, we will send you a draft order with a proposed timetable for the filing of further affidavits.
6. Please revert urgently by close of business tomorrow (2 August 2023), failing which we shall bring an intervention application.
7. Kindly acknowledge receipt hereof.
8. All our clients' rights remain reserved.

Yours faithfully

Y Hassan

Y HASSAN

LARSON FALCONER HASSAN PARSEE INC.

Larson Falconer Hassan Parsee Inc. (Reg. No. 1994/001445/21)
ATTORNEYS • NOTARIES • CONVEYANCERS

2nd Floor, 93 Richefond Circle, Ridgeside Office Park, Umhlanga Rocks, 4319
P.O. Box 3313, Durban, 4000 • Docex 129, Durban, South Africa
Tel: (031) 534 1600 • E-mail: yhassan@lfhp.co.za / mjamal@lfhp.co.za • Website: www.lfhp.co.za

Directors: G.E. Larson • P.R. Falconer • Y. Hassan • S.R. Parsee • N. Kinsley
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Handwritten initials/signature

ANNEXURE A

1. ELITE GROUP
2. MINTWAY INVESTMENTS
3. NEWFARM
4. SADERS ATTORNEY
5. MILITARY SURPLUS STORES CC
6. ARIFULLAH INTERNATIONAL CC
7. JOOSAB GROUP
8. SHAUKAT KARIM TRUST
9. PHOENIX MUSLIM SCHOOL
10. AL FALAL COLLEGE
11. INDEPENDENT GIVING
12. PROGRESS OFFICE MACHINES

DELIVERED BY EMAIL

LARSON FALCONER HASSAN PARSEE INC.

Attention: Y Hassan

Email: yhassan@lfhp.co.za

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: 21/P514/000
OUR REFERENCE: Mr C Moraitis / Mr C Manaka / Ms K Rapoo/kr/SOUT3267.273/#8251192v1
DIRECT PHONE: +27 11 535 8271 / +27 11 535 8145 / +27 11 535 8152
DIRECT FAX: +27 11 535 8771 / +27 11 535 8645 / +27 11 535 8753
EMAIL ADDRESS: cmoraitis@werksmans.com / cmanaka@werksmans.com / krapoo@werksmans.com

2 August 2023

Dear Sirs

PRUDENTIAL AUTHORITY AND ANOTHER / HABIB OVERSEAS BANK LIMITED AND THREE OTHERS - CASE NO. 2023-071935

- 1 We refer to the abovementioned matter wherein we act on behalf of the Prudential Authority and South African Reserve Bank ("our clients") and your letter dated 1 August 2023 ("your letter").
- 2 At the outset, we record that our clients do not intend to address all the matters referred to in your letter, at this time, and their failure to do so should not be construed as and is not an admission of the correctness thereof. Our clients shall address these matters, if required, in the appropriate forum and at the appropriate time.
- 3 As you are aware, or ought to be aware, our client has applied for the liquidation of the First Respondent, Habib Overseas Bank Limited ("**HOB**"), on the basis that, *inter alia*, pursuant to assessments and analysis undertaken by the Second Respondent, PricewaterhouseCoopers Incorporated, it found that there was no reasonable probability that the bank would be able to pay its debts and meet its obligations nor is it in a position to function effectively as a banking institution. To put it plainly, HOB is hopelessly insolvent. The decision to apply for the liquidation of HOB was made



with the best interests of the creditors of HOB, which are mainly depositors such as your clients, in mind.

- 4 Despite plainly alleging that your clients have a direct and substantial interest, you have not advised why this in any way warrants the postponement of our clients' application. In this regard, our instructions are to advise you, as we hereby do, that our clients are not agreeable to your request to intervene and should you wish to bring an intervention application, our instructions are to oppose same.
- 5 Our clients' rights remain reserved.

Yours faithfully

Werksmans Inc

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

Muhammad Yusuf Jamal

From: Yahya Hassan
Sent: Thursday, 03 August 2023 18:41
To: jac.marais@adams.africa; alten.duplessis@adams.africa
Cc: Elzaan Rabie; Pravisha Ramsunder
Subject: Habib Overseas Bank - Liquidation Application

Dear Jac

Thank you for being available to discuss the matter of the Habib Overseas Bank with us after hours.

As discussed we request the following:-

- 1 all AFS and management accounts of the Bank in your possession,
- 2 brief analysis of the book debts; cash on hand ; treasury bonds and all other securities and assets;
- 3 full details of the offer and purchase of the bank as a going concern (please furnish name of purchaser; amount of purchase price ; details to increase share capital);
- 4 any other information to assist our client in intervening.

The matter is urgent and please revert expeditiously.

Adv R Bhana SC and Adv Luc Spiller are currently drafting the intervening application papers.

Regards



**Larson
Falconer
Hassan
Parsee**

Yahya Hassan | Attorney, Conveyancer and Solicitor

Tel: (031) 534-1600 | Direct: (031) 534-1601 | Fax: (031) 536-8038

E-mail: yhassan@lfhp.co.za | Website: www.lfhp.co.za

Physical Address: 2nd Floor 93 Richefond Circle, Ridgeside Office Park, Umhlanga Rocks, 4319
Postal Address: P.O. Box 3313, Durban, 4000 | Docex 129, Durban, South Africa

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