

11 August 2023

**To ALL KNOWN CREDITORS**

Dear Sir/Madam

**RE: HABIB OVERSEAS BANK LIMITED (IN PROVISIONAL LIQUIDATION) ("HOB")**

1. This circular is addressed to you to advise of the provisional liquidation of HOB.
2. By way of background:
  - 2.1. On 26 March 2023:
    - 2.1.1. HOB was placed under curatorship due to, amongst other things, compliance, governance and operational failures.
    - 2.1.2. On 27 March 2023, PricewaterhouseCoopers Incorporated ("**PWC**"), represented by Craig du Plessis N.O., was appointed as the curator.
  - 2.2. On 21 July 2023, the Prudential Authority ("**PA**") and the South African Reserve Bank ("**SARB**") issued an application for the final liquidation of HOB under case number 2023/071935 ("**liquidation application**"). The liquidation application was set-down for hearing on the urgent roll of 8 August 2023.
  - 2.3. In terms of the liquidation application, the liquidation of HOB was sought on the following bases:
    - 2.3.1. HOB is factually insolvent (i.e. its liabilities exceed its assets) and commercially insolvent (i.e. it cannot pay its debts as they become due); and
    - 2.3.2. PWC formed the opinion that there is no reasonable probability that the continuation of the curatorship will enable HOB to pay its debts or meet its obligations and become a successful concern.

- 2.4. On 7 August 2023, various depositors brought an intervention application ("**intervention application**"). In terms of the intervention application:
- 2.4.1. It was agreed that the curatorship of HOB should be terminated;
- 2.4.2. However, it was proposed that a provisional order of liquidation should be granted, instead of a final order of liquidation;
- 2.4.3. The reason for the aforesaid proposal was to allow time for the depositors to explore possible options in respect of HOB.
- 2.5. On 8 August 2023, being the hearing of the liquidation application and intervention application, a provisional order of liquidation was granted in respect of HOB ("**provisional order**"). In terms of the provisional order:
- 2.5.1. The curatorship of HOB was terminated;
- 2.5.2. HOB was placed in provisional liquidation;
- 2.5.3. I, Zeenath Kajee, was appointed as the provisional liquidator of HOB and the Master of the High Court ("**Master**") was directed to appoint me as such within 48 hours of the provisional order;
- 2.5.4. All parties with a legitimate interest in the final liquidation of HOB are called upon to put forward their reasons why a final order of liquidation should not be granted on 19 September 2023;
- 2.5.5. Any party wishing to file an affidavit in support of or in opposition to the final liquidation of HOB is required to do so by 29 August 2023, with responding affidavits to be filed by 12 September 2023; and
- 2.5.6. Directions were given in terms of service, notice and publication of the provisional order.
- 2.6. On 10 August 2023, and pursuant to the provisional order, the Master issued a certificate of appointment in terms of which I was appointed as the provisional liquidator of HOB.

- 2.7. Copies of the liquidation application, intervention application, provisional order and certificate of appointment are available on request and will be sent by email only.
3. I have requested various documents and information relating to HOB from PWC to ensure that a proper handover of the HOB matter takes place.
4. The provisional liquidation of HOB has brought about the following consequences
  - 4.1. The assets of HOB vest in the provisional liquidator;
  - 4.2. A *concurso creditorum* has been instituted in respect of HOB. This essentially means that the position of all creditors is frozen and that creditors cannot improve their position after the date of liquidation – all claims against HOB are crystallised at this point and dealt with in accordance with the applicable statutory provisions;
  - 4.3. The directors of HOB are *functus officio*. This essentially means that the former directors no longer have a mandate or role to play in the management of HOB;
  - 4.4. The employment contracts of the employees are immediately suspended;
  - 4.5. All litigation against the company is suspended until the appointment of a final liquidator; and
  - 4.6. Any disposition of HOB's assets and property is void.
5. Due to the fact that HOB was not placed in final liquidation, there will be no formal statutory meetings of creditors and members at this stage. These formal meetings are only convened in the event that a final order of liquidation is granted.
6. Creditors will also only be required to prove their claims at the first and second statutory meetings. Notwithstanding the aforesaid, creditors are urged to complete their claim forms as soon as possible. A blank claim form is attached hereto for completion, with instructions as to how they should be completed. The original completed and commissioned claim forms must be delivered to 2<sup>nd</sup> Floor, Building B, Sunnyside Office Park, 32 Princess of Wales Terrace, Parktown, 2193. In addition to the aforesaid, my powers as a provisional liquidator are limited. I am accordingly considering bringing an application to extend certain of my powers to deal with the administration of HOB during its provisional liquidation.
7. As I have just been appointed and am awaiting a full handover of the HOB matter from PWC, I am unable to provide further details on the provisional liquidation at this stage.

8. Please note that all correspondence and queries relating to the provisional liquidation of HOB will only be dealt with in writing by way of email address to [hob@gcwadmin.co.za](mailto:hob@gcwadmin.co.za). No correspondence and/or queries will be dealt with telephonically, by text messaging, via social media or otherwise.

Yours faithfully

**Zeenath Kajee**

***Provisional Liquidator***



## EXPLANATORY NOTES TO THE CLAIM DOCUMENTS

### **1. Affidavit**

- 1.1 In the event of the claim being based on a promissory note, cheque or other bill of exchange, the relevant affidavit will be required to be obtained from our offices.
- 1.2 If security is being claimed under (6) of the affidavit, the nature and particulars of the security must be stated and the amount at which the creditor values such security must be inserted. A creditor who relies upon his security for the satisfaction of his claim should state that fact on the affidavit above the signature of the declarant.
- 1.3 A claim based on a mortgage or notarial bond or hire purchase agreement requires the original bond or agreement to be attached to the claim together with a statement reflecting the calculation of the amount due.
- 1.4 The affidavit must be attested to before a Commissioner of Oaths who must insert his full names and business address as well as his designation. The omission of such detail may result in the claim being rejected for technical reasons.

### **2. Statement of Account**

- 2.1 A statement of account is required to be completed in terms of Section 44 (6) of the Insolvency Act by all creditors who wish to prove a claim for goods supplied on an open account. "A" and "B" must reflect the full period of trading or a period of twelve (12) months before date of liquidation, whichever is the lesser. If no payments were received or credits given state "NIL" under "B".
- 2.2 In the case of depositors, the Statement of Account may reference your bank statement which will be acceptable as a supporting document.

### **3. Power of Attorney**

- 3.1 The attention of creditors is drawn to Section 53 (2) of the Insolvency Act whereby a Trustee/Liquidator and/or his employee or employer is precluded from representing creditors at statutory meetings. The name of the Trustee/Liquidator, or any member of his staff should therefore not appear on the Power of Attorney attached to the claim document.
- 3.2 Creditors should insert therein the name of the person/s whom they desire to represent them at the said meetings, or alternatively, should they be prepared to agree to the representative to be appointed by the general body of creditors (with no charge), it is suggested that the Power of Attorney be completed with the relevant portion (leave blank).

### **4. Resolution**

- 4.1 Where a company proves a claim the affidavit and Power of Attorney may be signed by a director or any other person properly authorised to do so. The resolution need only be completed if the said documents are not signed by a director. Where the company has already passed such a resolution, this must be annexed to the claim document and the attached resolutions may be ignored.

**IN THE MATTER OF: HABIB OVERSEAS BANK LIMITED (IN LIQUIDATION) (1990/004437/06)**

1. NAME IN FULL OF CREDITOR: \_\_\_\_\_
2. ID NO. / PASSPORT NO / COMPANY REG NO. OF CREDITOR: \_\_\_\_\_
3. ADDRESS IN FULL \_\_\_\_\_  
P.O. Box No \_\_\_\_\_ Postal Code: \_\_\_\_\_  
Tel No \_\_\_\_\_ E-mail \_\_\_\_\_
4. TOTAL AMOUNT OF CLAIM: R \_\_\_\_\_
5. BANK ACCOUNT DETAILS: Bank Name \_\_\_\_\_ Branch \_\_\_\_\_  
Account No \_\_\_\_\_

I \_\_\_\_\_ do hereby make oath and say:

- 1) That I am the \_\_\_\_\_ of \_\_\_\_\_  
(hereinafter referred to as the said creditor)
- 2) That I have personal knowledge of the facts hereinafter stated.
- 3) That **HABIB OVERSEAS BANK LIMITED (IN LIQUIDATION) (1990/004437/06)**  
(hereinafter referred to as the said company/insolvent estate)

which company has been placed in liquidation, was at the date of liquidation/sequestration and still is indebted to the said creditor in the sum of

(amount in words) \_\_\_\_\_  
for \_\_\_\_\_ (Cause of action)

- 4) That the said debt arose in the manner and at the time set forth in the schedule hereunto annexed.
- 5) That no other person besides the said company is liable (otherwise than as surety) for the said debt or any part thereof.
- 6) That the said creditor has not, nor has any other person, to my knowledge on the said creditor's behalf received any security for the said debt or any part thereof save and except: \_\_\_\_\_  
which security I value at R \_\_\_\_\_.
- 7) That this claim was not acquired by cession after the institution of the proceedings by which the company was placed in liquidation.

**SIGNATURE OF DECLARANT** \_\_\_\_\_

I certify that this Affidavit was signed and sworn to before me on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ by the Deponent who has acknowledged that he knows and understands the contents of this Affidavit which was deposited in accordance with the Regulations Governing the Administration of an Oath as more fully set out in Government Notice No. R1258 dated 21 July 1972, as amended by Government Gazette Notices No. R1648 dated 19 August 1977, No. R1428 dated 11 July 1980 and No. R774 of 23 April 1982

**GCW Administrators (Pty) Ltd**  
Sunnyside Office Park  
2nd Floor, Building B  
32 Princess of Wales Terrace  
Parktown, 2193  
Private Bag X68  
Braamfontein, 2017

**COMMISSIONER OF OATHS**

FULL NAMES: \_\_\_\_\_

FULL ADDRESS: \_\_\_\_\_

CAPACITY: \_\_\_\_\_



# RESOLUTION

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CERTIFIED EXTRACT FROM THE MINUTES OF A MEETING OF DIRECTORS/MEMBERS OF THE ABOVEMENTIONED COMPANY/CLOSE CORPORATION (NOT APPLICABLE TO INSOLVENT ESTATES)

HELD AT \_\_\_\_\_

ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_

**IT WAS RESOLVED:**

THAT MR/MRS/MISS \_\_\_\_\_ a director / member / secretary /accountant/official

of the Company/Close Corporation, be and is hereby authorised and empowered to nominate a provisional or final Trustee /Liquidator / on behalf of the Company/Close Corporation to sign all the necessary documents to enable the Company/Close Corporation to prove its claim against

**HABIB OVERSEAS BANK LIMITED (IN LIQUIDATION) (1990/004437/06)**

and to attend meetings of creditors of the said Estate / Company / Close Corporation, and to speak and vote on behalf of the Company / Close Corporation with power, in his discretion to substitute and appoint any other person or persons to attend such meetings on the Company's / Close Corporation's behalf and to vote thereat.

**CERTIFIED A TRUE COPY**

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**AUTHORISED OFFICIAL**



**POWER OF ATTORNEY TO PROVE CLAIMS ETC.**

I, the undersigned, \_\_\_\_\_  
in my capacity as \_\_\_\_\_  
of \_\_\_\_\_

(herein referred to as the said creditor) do hereby nominate, constitute and appoint any of

**OLGAR MALEMA AND/OR ZELDA HATTINGH AND/OR C KROUKAMP AND/OR AB MPETE AND/OR  
J MONNANA AND/OR D THLAGWANE**

with power of substitution and delegation to be the said creditor's lawful attorney and agent in the said creditor's name, place and stead, to attend all meetings of creditors in the matter of

**IN THE MATTER OF HABIB OVERSEAS BANK LIMITED (IN LIQUIDATION) (1990/004437/06)**

on the said creditor's behalf to prove the said creditor's claim and to exercise on the said creditor's behalf all voting and other powers in respect of such claim particularly in respect of the appointment of a Trustee / Liquidator or submission to arbitration of any dispute and admission of any claim against the Estate / Company and to give the Trustee / Liquidator directions as to the administration of the Estate / Company and generally to act on the said creditor's behalf at all meetings of the Estate / Company in all matters and things in which the said creditor's interest are concerned, hereby promising to ratify and confirm whatsoever the said agent may do or perform by virtue of these presents.

DATED AT \_\_\_\_\_ THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**SIGNATURE**