



Habib Overseas Bank Limited

(In Provisional Liquidation)

Master's Reference Number: T1374/2023

Registered Credit Provider – Reg. No: NCRCP24

Reg. No. 1990/004437/06

care of GCW Administrators (Pty) Ltd, 2nd Floor, Block B
Sunnyside Office Park, 32 Princess of Wales Terrace, Parktown, 2193

Private Bag X68, Braamfontein, 2017

EMAIL: HOB@GCWadmin.co.za

Dear Sir / Madam

22 September 2023

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

1. This circular is addressed to you to advise of updates in the provisional liquidation of HOB.
2. For ease of reference, we repeat the brief background provided in the first circular to creditors, dated 10 August 2023 ("**first circular**"):
 - 2.1. On 26 March 2023, HOB was placed under curatorship due to, amongst other things, compliance, governance and operational failures.
 - 2.2. On 27 March 2023, PricewaterhouseCoopers Incorporated ("PWC"), represented by Craig du Plessis N.O., was appointed as the curator.
 - 2.3. 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 for 8 August 2023.

Provisional Liquidator: Zeenath Kajee

- 2.4. In terms of the liquidation application, the liquidation of HOB was sought on the following bases:
- 2.4.1. 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
 - 2.4.2. 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.
- 2.5. On 7 August 2023, a group of depositors ("**intervening parties**") brought an intervention application ("**intervention application**"). In terms of the intervention application:
- 2.5.1. It was agreed that the curatorship of HOB should be terminated;
 - 2.5.2. However, it was proposed that a provisional order of liquidation should be granted, instead of a final order of liquidation; and
 - 2.5.3. The reason for the aforesaid proposal was to allow time for the depositors to explore possible options in respect of HOB.
- 2.6. 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:
- 2.6.1. The curatorship of HOB was terminated;
 - 2.6.2. HOB was placed in provisional liquidation;
 - 2.6.3. 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;
 - 2.6.4. 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;

- 2.6.5. 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
 - 2.6.6. Directions were given in terms of service, notice and publication of the provisional order.
 - 2.7. 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.
 3. Update on events pursuant to the grant of the provisional order:
 - 3.1. Liquidation Application
 - 3.1.1. On 13 September 2023, the intervening parties delivered an answering affidavit in the liquidation application opposing the grant of a final order of liquidation on 19 September 2023 and seeking, amongst other things, a further extension of the return day set out in the provisional order to a date in January 2024 ("**answering affidavit**").
 - 3.1.2. Pursuant to the answering affidavit, the parties to the liquidation application agreed to an order which provided for the filing of further papers and the extension of the return day to 22 January 2024.
 - 3.1.3. HOB accordingly remains in provisional liquidation.
 - 3.2. Urgent Application in terms of Section 360 of the 1973 Companies Act
 - 3.2.1. Pursuant to the provisional order, various correspondence was exchanged with the attorneys representing the intervening parties ("**intervening parties' attorneys**") to ascertain the details relating to the interest in HOB, as referred to in the intervention application.
 - 3.2.2. As part of the correspondence, the intervening parties' attorneys made requests for documentation and information relating to HOB, including confidential information, for purposes of providing same to the interested party. In response, the intervening parties' attorneys

were advised that, whilst I am amenable to engage with interested parties, I am bound by the provisions of various statutes that regulate HOB and the furnishing of information and documentation, including the type of transactions contemplated in respect of HOB. The intervening parties' attorneys were also advised that interested parties are required to engage directly with me.

3.2.3. The aforesaid resulted in a dispute among the parties, which culminated in an urgent application being brought by certain of the intervening parties in terms of section 360 of the 1973 Companies Act, as read with item 9 of schedule 5 to the 2008 Companies Act, for an order directing me to provide numerous and confidential information and documentation relating to HOB and its customers ("**urgent application**").

3.2.4. The urgent application was issued on 13 September 2023 and set down for hearing on the urgent roll of 19 September 2023.

3.2.5. Ultimately, the parties to the urgent application agreed to an order which provides for the removal of the urgent application from the urgent roll and the filing of further papers. The order also provides for the parties to seek a hearing date to argue the matter as soon as possible after the parties have delivered their papers and heads of argument in terms of the order.

3.2.6. I will accordingly deliver an answering affidavit in the urgent application in accordance with the terms of the order.

3.3. Extension of Powers

An application was brought in terms of section 386(5) of the 1973 Companies Act, as read with item 9 of schedule 5 to the 2008 Companies Act, to extend certain of my powers to deal with the administration of HOB during its provisional liquidation. The order was granted on 22 August 2022 ("**s386(5) order**").

4. In light of HOB remaining in provisional liquidation, I will continue to exercise my duties and functions as the provisional liquidator of HOB.

5. As indicated in the first circular:
 - 5.1. The provisional liquidation of HOB has brought about the following consequences
 - 5.1.1. The assets of HOB vest in the provisional liquidator;
 - 5.1.2. A *concursum 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;
 - 5.1.3. 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;
 - 5.1.4. The employment contracts of the employees are immediately suspended;
 - 5.1.5. All litigation against the company is suspended until the appointment of a final liquidator; and
 - 5.1.6. Any disposition of HOB's assets and property is void.
 - 5.2. 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.
 - 5.3. 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 2nd Floor, Building B, Sunnyside Office Park, 32 Princess of Wales Terrace, Parktown, 2193.
 - 5.4. My powers as a provisional liquidator remain limited and have only been extended in accordance with the terms of the s386(5) order.

6. The papers filed in the liquidation application and the urgent application, as well as the s386(5) order, are available on HOB's website: www.habiboverseas.co.za
7. 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. No correspondence and/or queries will be dealt with telephonically, by text messaging, via social media or otherwise.

Yours faithfully
Zeenath Kajee
Provisional Liquidator