

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

CASE NO.: 2023-071935

In the application of:

PRUDENTIAL AUTHORITY

First Applicant

SOUTH AFRICAN RESERVE BANK

Second Applicant

And

**HABIB OVERSEAS BANK LIMITED
(in provisional winding up)**

First Respondent

PRICEWATERHOUSECOOPERS INCORPORATED

Second Respondent

CRAIG DU PLESSIS N.O.

Third Respondent

THE MINISTER OF FINANCE

Fourth Respondent

AFFIDAVIT

**(filed in opposition to the grant of a final winding up order on 19 September
2023)**

I, the undersigned,

YAHYA HASSAN

do state under oath that -

- 1 I am an adult male attorney and director at the law firm Larson Falconer Hassan Parsee Inc. I am the attorney of record for the group of depositors who sought

leave to intervene in the winding-up of the Habib Overseas Bank Limited (“the Bank”) when the matter was previously heard.

2 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.

3 This is an affidavit filed in opposition to a final winding up order being granted on the return date of 19 September 2023.

4 Paragraphs 4 and 5 of the court order dated 8 August 2023, which placed the Bank in provisional winding up (“the Order”), made provision for interested persons to place an affidavit before the Court setting out the reasons why a final order should not be granted on the return date of 19 September 2023.

5 This affidavit is filed on behalf of the depositors, whose identities are set out in Annexure A to the notice of motion in the intervention application (“the depositors”).

6 I am authorised to depose to this affidavit on behalf of the depositors.

7 In a nutshell, the depositors are opposed to a final winding up order being granted on the return date (19 September 2023) because progress has been made in identifying prospective purchasers of the Bank. These prospective purchasers are interested in buying the equity in the Bank and recapitalising the Bank so that the Bank will continue as a going concern (with the result that depositors do not suffer financial losses). Progressing the potential sales has hit a snag because the liquidator has refused, in the absence of a court order, to provide either the depositors or the prospective purchasers with the financial information required



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by the purchasers to perform an initial due diligence. The depositors have brought an application for such a court order. The depositors require that the return date be extended to allow the requisite financial information to be obtained from the liquidator and for the potential transactions to be fully explored.

8 The adverse consequences which a final winding up order would have on the depositors (as well as the prejudicial effects which such an order would have on the potential for any transaction to recapitalise the Bank) have been dealt with fully in the depositors founding affidavit in the intervention application.

9 The depositors had agreed to a return date of 19 September 2023. This date was agreed to, as this time period would allow for sufficient time to gauge market interest in the acquisition of the Bank. If there was no market appetite, then the depositors accept that the Bank should be finally wound up. What has happened since the Order was granted shows that there is substantial interest to acquire and recapitalise the Bank. However, as also demonstrated below, the depositors require more time to explore the possibility of these transactions with the interested parties.

10 Essentially, what the depositors will seek, when the matter is called on 19 September 2023, is:

10.1 That they be granted leave to intervene in accordance with the pending intervention application;

10.2 That the return date be extended until 15 January 2024 to allow for the parties to fully explore the potential transactions to recapitalise the Bank; and

10.3 That the powers of the provisional liquidator be extended to allow her to:

10.3.1 Engage with any prospective buyers of the equity in the Bank;

10.3.2 Provide prospective buyers of the equity in the Bank (or any agent representing prospective buyers) with copies of any books and records of the Bank.

11 In this affidavit I will:

11.1 Briefly set out the interest of the depositors in the main winding-up application.

11.2 Describe the progress made in engaging with potential buyers of the Bank. In doing so, I will demonstrate that various parties have expressed interest in purchasing and recapitalising the Bank. I do so to show that the prospect of a transaction to recapitalise the Bank is not speculative. There is a realistic possibility that this will happen provided that the depositors are able to provide the Buyers with the information required by them.

11.3 Deal briefly with the information sought by the prospective buyers.

11.4 Set the correspondence exchanged between the parties.

11.5 Seek condonation for the late filing of this affidavit.

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11.6 Finally demonstrate that an extension of the return date is in the interests of all parties. Most importantly, the extension is clearly in the best interests of depositors.

THE DEPOSITORS

- 12 The depositors all have a positive credit balance on their accounts.
- 13 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.
- 14 The credit balances of the depositors' accounts with the Bank constitute incorporeal property belonging to each depositor. The 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.
- 15 The details of the depositors are set out in the founding affidavit in the intervention application.

ACTION TAKEN BY AND ON BEHALF OF THE DEPOSITORS TO FACILITATE THE RECAPITALISATION OF THE BANK

- 16 Yunus Paruk, is a well-known individual in the Islamic banking industry. He was previously a director of, and shareholder in, Al Baraka Bank. Paruk is also a depositor in the Bank.
- 17 As a result of his experience in Islamic banking, Paruk has extensive connections in the banking world and amongst the Muslim business community.

18 Both prior to the granting of the Order, and immediately thereafter, Paruk approached, and has been approached by, various individuals who are involved in the Islamic Banking industry to gauge their appetite to acquire the Bank.

Anwar Khan

19 Soon after the Order was granted, a deal maker who is based in the Middle East, Anwar Khan contacted Paruk. Paruk put Khan in contact with Shaukat Karim. Karim is an attorney and a depositor with the bank.

20 Khan, Karim and I had various telephone discussions. During these telephone discussions Khan told Karim that various parties involved in banking in the Middle East, whom Khan represented, had expressed interest in acquiring the Bank.

21 The essential terms of the proposed transaction were the acquisition of the shares in the Bank and the recapitalisation of the Bank so as to render it solvent and able to meet the statutory capital adequacy requirements.

22 Khan informed me that his principal wishes to remain anonymous at this time. Consequently, I do not have the identity of the persons who Khan represents, and I am unable to disclose these identities in this affidavit.

23 Anwar Khan was previously involved in the management of HBL Bank in Dubai. Now he works as a deal maker and broker. Essentially, he uses the business connections developed during his involvement in the banking industry to broker mergers and acquisition transactions. A copy of Khan's curriculum vitae, along with an email from Khan, is attached hereto marked "YH1". I do this to demonstrate that Khan is a serious player in mergers and acquisitions and that the interest of his principal in acquiring the Bank should be seriously considered.



24 I shared the contact details of Khan with the liquidator's attorneys, and offered to facilitate a meeting between the liquidator and Khan to discuss the possible deal. I attach this email later to this affidavit.

25 In addition, Khan independently addressed correspondence to the liquidator requesting certain information, so that his Principal could perform an initial assessment of the possible deal. The provisional liquidator declined to provide this information. I attach this correspondence later to this affidavit.

Abdul Satar Dada

26 In early September 2023, an individual called Abdul Satar Dada contacted Paruk to express his interest in acquiring the Bank.

27 Dada has extensive experience in business in Africa and is one of the wealthiest individuals in Africa. The curriculum vitae for Dada is attached hereto marked "YH2".

28 Dada and Yunus Paruk are partners in a property development business. Consequently, they have a close working relationship with one another.

29 Dada has been aware of the problems at the Bank for some time through his connections with the Muslim community.

30 After the Order was granted, Dada spoke with Yunus and told him that if the Bank was on the market he would be interested in purchasing the Bank. Paruk gave Dada Karim's contact details.

31 In early September 2023, Karim spoke with Dada to discuss the matter. He confirmed his interest in acquiring the Bank but added that he wanted to see the

financials first. He said words to the effect that: *“show me the numbers and if it makes financial sense there will be a deal placed on the table”*. The essential terms of the potential transaction we discussed were that Dada (through an investment vehicle) would acquire the equity in the Bank. He told me that he would be willing to invest sufficient capital to cover all the depositors (excluding the shareholders debts) and to recapitalise the Bank.

Sainsbury Investments

- 32 Shaukat Karim and I have a professional relationship with Dr B.G. Govender. Dr Govender has a doctorate in Engineering and is a successful businessman. He is a director of Sainsbury Investments (Pty) Ltd.
- 33 Dr Govender heard about the provisional winding up of the Bank via information in the public domain. Dr Govender is also known to me as aforesated.
- 34 Dr Govender phoned me on various occasions after the granting of the order of provisional liquidation. During this telephone call he expressed interest in acquiring the Bank. He also told me that the Public Investment Corporation (“PIC”) has informally expressed its support to fund the acquisition of the shares in the Bank. I was further notified that Sainsbury was merely intended to be used as a Special Purpose Vehicle for the purpose of acquiring the shares in the Bank.
- 35 These telephone calls was followed by a letter sent on 29 August 2023. A copy of this letter is attached hereto marked “YH3”. In the letter, Dr Govender made it clear that an offer would only be submitted after he had received and considered certain financial information pertaining to the Bank.

36 Subsequent to sending the letter of interest, Dr Govender has phoned me repeatedly to ask whether I have been able to obtain the required financial information.

37 As dealt with below, the liquidator has declined to provide the requested information until such time as the depositors obtain a court order.

Other parties who have expressed interest (but who wish to remain anonymous)

38 There is a further prominent business family from Limpopo who want to put together a consortium to purchase the equity in the Bank.

39 Karim has personally spoken with a representative of the family on various occasions after the grant of the Order. The representative has requested that their identities be kept confidential. They have investors from the US who are interested in acquiring the Bank.

40 On 13 September 2023, Karim received a call from a representative of a Saudi Arabia based consortium. He too informed Karim that the consortium was interested in acquiring the shares in the Bank. Again, Karim was informed that this consortium required certain financial information before an offer could be made. Karim informed the individual about the situation and advised him that the depositors had brought an application for an order which would allow them access to the requested information. This individual informed Karim that the consortium wished to remain anonymous at this time.

The interest in acquiring and recapitalising the Bank

41 As demonstrated above, there are various potential purchasers who have expressed serious interest in buying the shares in the Bank and recapitalising the Bank. The effect of this transaction would be to save the Bank and to ensure that all depositors are repaid the full amount of their deposits.

42 The interest expressed by the above three prospective buyers demonstrates that the Bank is capable of being saved. However, this is subject to the liquidator providing the information sought in this application so that the potential transactions to save the Bank can be fully explored.

43 The reason why there is substantial interest in the acquisition of the Bank is two-fold:

43.1 Firstly, HBZ Bank (which is owned by cousins of the shareholder in the Bank) is a successful bank which earns profits of around R60 million per annum. HBZ Bank has a similar model to the Bank and services a similar segment of the market. Unlike the Bank, it has not been plagued by the same management problems which led to the downfall of the Bank. The success of HBZ Bank thus demonstrates the potential for the Bank to become a profitable enterprise.

43.2 Secondly, the recapitalisation of the Bank would not be an expensive exercise and represents a relatively inexpensive way for investors to enter the South African banking market. According to the applicants in the main winding up application, the Bank will require a capital injection of R364 million. This is not an expensive price to pay for a bank.

Moreover, the true cost of recapitalising the Bank may in fact be lower since I believe that this figure is arrived at based upon conservative valuations of the Bank's assets (in particular the values assigned to the loans advanced by the Bank). Karim has spoken with the shareholders in the Bank. They have confirmed that they are not looking to realise anything from their investment in the Bank. In other words, provided that the depositors are fully covered, they will be willing to dispose of their shares for free so that the entire cost of the transaction will go towards recapitalising the Bank.

THE INFORMATION REQUIRED BY THE PROSPECTIVE BUYERS

- 44 Understandably, the prospective purchasers want to perform an initial due diligence on the Bank before submitting any offer. To do this they require certain financial information.
- 45 Essentially, they require access to the certain of the books and records of the Bank so as to make an assessment as to whether the purchase of the Bank will make financial sense.
- 46 By way of example: Anwar Khan has requested sight of the following documents to enable them to make an offer for the equity in the Bank:
 - 46.1 Latest audited financial statements;
 - 46.2 Banking records reflecting the size of deposits and the size of loans advanced;
 - 46.3 The curator's report and the record of fees paid to the curator;

46.4 The details pertaining the banking platform (the software) used by the Bank; and

46.5 Payroll details.

An email addressed to me by Anwar Khan, in which this documentation was requested, has already been attached to this affidavit.

RECENT CORRESPONDENCE BETWEEN THE PARTIES

47 On 14 August 2023, I addressed a letter to the liquidator requesting the information required. A copy of the letter is attached marked “YH4”.

48 On 18 August 2023 and 21 August 2023, attorneys representing the liquidator responded to my letter. A copy of the response is attached marked “YH5.1” and “YH5.2”. In essence, the attorneys recorded that the liquidator was amenable to engaging with interested parties but refused to provide the information sought unless the depositors had first obtained a court order.

49 I responded to these letters on 23 August 2023. A copy of my response is attached marked “YH6”.

50 On 24 August 2023, the attorneys acting for the liquidator responded to my letter. In addition to requiring a court order before the requested information would be provided, this email emphasised that the liquidator also required that the identities of the prospective buyers be disclosed to the liquidator. A copy of this email is attached marked “YH7”.

51 On 28 August 2023, I responded to the liquidator’s attorney’s letter of 24 August 2023. In my response I provided the details of the broker representing one of the

interested buyers. I also proposed that the liquidator, the broker, myself and the South African Reserve Bank hold a meeting to explore the transaction. I requested the liquidator to provide me with three alternative dates to hold such a meeting. A copy of my letter is attached marked "YH8".

52 On 1 September 2023, the liquidator's attorneys addressed a letter to the broker representing one of the interested buyers refusing to provide him with information he had requested. This email was forwarded to me by the broker. I attach this email as annexure "YH9".

53 On 5 September 2023, I addressed a letter to the attorneys representing the SARB. In this letter I requested their assistance in resolving the impasse with the liquidator. I did so in the hope that the intervention of the SARB would have expedited the process of obtaining the required documentation (and would have obviated the need for this application). A copy of this letter is attached marked "YH10".

54 On 12 September 2023, I received a response from the attorneys representing the SARB. A copy of this letter is attached as annexure "YH11". In effect, the SARB declined to assist the depositors in obtaining the information from the liquidator.

THE EXTENSION OF THE RETURN DATE IS IN THE INTERESTS OF ALL PARTIES

55 The curatorship of the Bank posed a major threat to the interests of depositors because of the excessive fees which were being charged. This was dealt with in the founding affidavit in the intervention application. Consequently, the

depositors supported the termination of curatorship and the placing of the Bank into provisional winding up.

56 The Order terminated the curatorship and therefore brought an end to the risk of depositor's funds being denuded through a grossly expensive curatorship process.

57 The provisional liquidator is in control of the Bank and there is no risk to depositors (or any other party) if the provisional winding up continues through the extension of the return date.

58 In addition, the extension of the return date will be hugely beneficial to the depositors because it will allow for the continued exploration of the transactions referred to above.

59 What has been amply demonstrated since the Order was granted, is that there is significant market appetite to acquire and recapitalise the Bank. This interest justifies an extension of time to fully explore these options. This is especially so because of what the depositors stand to lose if the Bank is finally liquidated.

CONDONATION

60 The Order required that affidavits to be filed in opposition to the grant of the final winding up were to be filed by 29 August 2023. This affidavit is therefore late.

61 The reason for the late filing of this affidavit is that the depositors had hoped to be in a position to place concrete details, in relation a firm offer to acquire the Bank, before the Court in the affidavit.

62 Instead, what transpired is that:

62.1 Firstly, the process of canvassing the market for interest in the acquisition of the Bank has taken longer than expected. As the above chronology demonstrates, the representatives of the depositors have been fielding expressions of interest from prospective buyers until as recently as 13 September 2023. Clearly it would not have been possible to put forward these facts in an affidavit prior to today.

62.2 Secondly, the depositors were delayed in progressing the potential transactions as a result of the liquidator's refusal to provide the required information without a court order. The depositors have brought an application to inspect the information under section 360 of the Companies Act, 1973, however, as the above chronology shows, the depositors sought (up until 12 September 2023) to avoid the need for such an application by engaging with the liquidator and the SARB.

63 As demonstrated above, there is substantial interest in a transaction to recapitalise the Bank. These are pertinent facts which the Court should have consideration to when considering whether to grant a final winding up order.

64 It would not be in the interests of justice for this affidavit to be excluded simply because it has been filed late. The effect of excluding the affidavit would be that the Court would determine the main application without the benefit of a complete picture of all the relevant facts. This would be hugely prejudicial to the depositors, who are the persons who stand to suffer financial losses, if the Bank is finally wound up.



65 In the circumstances, I ask that the late filing of this affidavit be condoned.



YAHYA HASSAN

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 13 day of SEPTEMBER 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:

Address:

Capacity:

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

"YH1"

Anwar Ali Khan

Founder of Adsum Capital which leverages a long-established network of high net-worth individuals and institutions to streamline transactions for its clients. Adsum is involved primarily in new technology markets and helps its clients navigate market and economic challenges.

Anwar's career highlights include the following:

- 30 years' experience in international banking and finance
- Specialising in MENA and South-East Asia based clients and emerging markets
- Focused on the aviation, healthcare, commodities, technology, logistics, technology and hospitality sectors.
- Managed over USD 2 Billion in private banking assets.
- Began and oversaw the private client business for Habib Bank Limited with clients based all over Asia, Europe and the MENA region.
- Personal focus on emerging technologies in underdeveloped countries and their use in optimizing productivity.

HBL, United Arab Emirates

General Manager, Private Clients, 2005 – 2018

Began the private client business from scratch in 2005 following the privatization of the bank.
Managed the private client business and managed a team of relationship managers with a cumulative book worth USD 1 Billion in AUM.
Personally, managed a portfolio of heritage clients scattered across all regions.
Tracked y/y growth of 20% of revenues, NNC and NNA.
Member of the Management Executive Committee of UAE business.

Merrill Lynch International, United Arab Emirates

Vice President, Private Banking, 1999-2001

Initiated and managed a nine-figure client investment book.
Senior Partner of the best new team for 2000 which gathered new assets for the firm.
Liaised with research teams to engineer new investments and transacts for clients.

EDUCATION

NASD Certified (NYSE)
SFA Certification (UK)
Bachelor of Commerce

Citibank N.A., United Arab Emirates

Vice President, Investment Business, 2001 – 2005

Managed a team of bankers and large-scale revenue.
Worked closely with product team to generate suitable and agile solutions for clients.
Joint responsibility for strategy and asset allocation, security selection across all asset classes and all return profiles.
Coordination of fundamental analysis of selected investments, quarterly advisory letters, market reviews and microeconomic papers.

ABN Amro Bank, United Kingdom

Senior Relationship Manager, 1998 – 1999

Elevated the client book on the Pakistani market from USD 3 Million to USD 70 Million in one year. Managed client relationships and helped develop ideas for investments. Promoted the UK as a booking centre for the bank.

INTERESTS

Aviation, Cricket, Golf, History, Biographies, Watches.

Adsum Capital Management LLC | +97150 453 5799 | anwar@adsum.ae



Muhammad Yusuf Jamal

From: Anwar Khan <anwar@adsum.ae>
Sent: Thursday, 10 August 2023 12:08
To: Yahya Hassan
Cc: parukyunus@gmail.com
Subject: Habib Overseas Bank

Dear Mr. Hassan,

My name is Anwar Khan – I run a boutique advisory firm out of Dubai, UAE.

I am writing to you with reference to the recent situation with Habib Overseas Bank. My clients have shown interest to acquire the defunct bank and would like to know relevant details including following information:

- Latest / last audited financials
- Size of Deposits
- Size of Advances
- Curator's report & fees paid
- Banking platform details i.e. which banking software they used.
- Staff details along with remuneration details

I am happy to get on a Zoom call if you need and do an NDA if needed.

Kind regards,

Anwar Khan
Managing Partner
Adsum Capital Management LLC
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ABDUL SATAR DADA

"YH2"

P.O. BOX 786 GABORONE, BOTSWANA, SOUTHERN AFRICA
DIRECT LINE: (267) 395 2904 OFFICE (267) 395 1736 CELL: (267) 72 101 003
Email: asd@aidc.co.bw

Personal details:

Date of Birth: 09 January 1940

Nationality: Botswana

Identity: 609913009

Passport: BNO489302

Profile:

- I. Executive Chairman – Associated Investment & Development Corporation (Pty) Ltd (AIDC) and Motor Centre Botswana (Pty) Ltd.

Over 50 years experience as a successful entrepreneur in group of companies comprising highly diverse range of commercial operations.

Group annual turnover in excess of 4 billion with a net asset base over 3 billion Pula and a staff compliment of over 2000 employees.

AIDC & Motor Centre group comprise of:

- Motor Franchises – Multiple Motor Dealerships with franchises of Toyota, Lexus, Mercedes Benz, Jaguar, Land Rover, Hyundai, Chrysler, Jeep, Dodge, Alfa Romeo and Fiat in Botswana as well as in RSA
- Real Estate and Property Management – Commercial and Residential Properties in Botswana, RSA, UK, USA & UAE in excess of 3 billion Pula.
- Poultry Farming – Market leader with complete vertical integration in Poultry industry, comprising Feed Production, Hatchery, Farming, Sales & Distribution
- Printing and Publishing – one of the leading enterprises in Botswana in printing industry with latest technology.

- II. Major Investor to Sibaya developments, comprising of residential and commercial properties in excess of 5 billion Rands in Umhlanga, Durban South Africa.

- III. Chairman of Orange, Botswana

- IV. Chairman of University of Botswana Foundation

- V. Treasurer - Botswana Democratic Party – the ruling Party in Botswana and a member of the Central Committee & Economic and Finance Committee



VI. Patron – Gaborone Disabled Society

Other Appointments:

- Former Member of Parliament (Specially Elected)
- Former Member – Parliamentary Committees – Finance & Estimates, Powers & Privileges.
- Former Director of First National Bank, Botswana.
- Former Deputy Chairman – Botswana Railways
- Former Chairman Finance & Audit Committee– Botswana Railways
- Former President – Botswana Muslim Association
- Founder – A.S. Dada Foundation
- Trustee & Former President – World Memon Organisation
- Member – Business Botswana
- Former Chairman – Organ Donor Fund
- Former Committee Member – President Housing Appeal
- Member – Kalahari Conservation Society

Achievements & Awards:

- Presidential Order of Honour presented by the President of Botswana in 1991
- Executive Chairman's award of Excellence by the Executive Chairman of Toyota SA in 1997
- Executive Chairman's Gold award of professionals by Professional Management Review Africa in 2005
- Lifetime Achievement Award for contribution to sport in 2010
- A.S. Dada - Presidential Order of Meritorious service in 2014



SAINSBURY INVESTMENTS (PTY) LTD

"YH3"

Reg No. 2007/05356/07

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Facsimile: +27 31 309 5580
Email: intercon@iafrica.com

102 Cowey Road
Morningside, Durban
South Africa
PO Box 10862
Marine Parade, 4056
South Africa

Our ref : G/BANK/01 Date: 29 August 2023
Your Ref :
Email to : yhassan@lfhp.co.za
Attention : Yahya Hassan
LFHP Attorneys
2nd Floor, 93 Richefond Circle
Ridgeside Office Park
Umhlanga Rocks
4319

Dear Sir,

RE : EXPRESSION OF INTEREST TO ACQUIRE - HABIB OVERSEAS BANK LIMITED (In Provisional Liquidation)

1. We are aware that your firm is acting for certain parties in respect of Habib Overseas Bank Limited (in provisional liquidation) and would appreciate it if you could submit this expression of interest to the relevant parties.
2. This Indicative Expression of Interest at this stage is non – exclusive to Sainsbury Investments (Pty) Ltd.
3. Sainsbury Investments (Pty) Ltd ("**Sainsbury**") or its nominee, represented by Dr. B.G. Govender, wishes to express its interest to acquire from Habib Overseas Bank Limited (in provisional liquidation) ("**HOB**") the business, all its claims, the movable and immovable assets ("**the assets**") reflected hereunder :

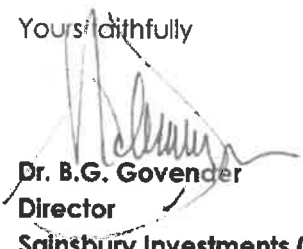
| Item | Description of Business | Purchase Price Offer |
|------|--|-------------------------------------|
| 3.1 | Habib Overseas Bank Limited (in provisional liquidation) including all claims it may have and including the movable and immovable assets, licences, etc. | To be submitted after due diligence |

4. The offer by Sainsbury is based on the quality of the assets, deposits book, creditor books, market conditions, age, quality and lease profile (if any) of property, plant and equipment, the contracts in place and debtor book and most importantly, during due diligence, Sainsbury will be engaging with the management and staff of HOB and/or respective clients of HOB and advise that any Financial Institution backing this transaction will stipulate the conditions as a precedent for any gearing. It is therefore necessary for HOB to seriously consider this condition.

5. Furthermore, the Sainsbury proposal shall be subject to the following terms and conditions:
- 5.1 Sainsbury conducting a due diligence investigation at its own cost and expense, within 90 (Ninety) days from the date of signature of the relevant sale agreement;
 - 5.2 Sainsbury furnishing HOB with such guarantees from banks and/or other financial institutions, for payment of the purchase price upon registration of the transfer of the relevant property, 60 (sixty) days from conclusion of the due diligence and Sainsbury informing HOB of the outcome thereof;
 - 5.3 the Board of Directors of Sainsbury approving the acquisition of the assets on completion of the due diligence investigation;
 - 5.4 the Liquidator/ Business Rescue Practitioner and the Board of Directors of HOB approving the sale of the assets; and
 - 5.5 such other conditions which may be necessary for purposes of giving effect to the acquisition and registration of transfer of the assets.
6. The purchase price in respect of the assets shall be payable against registration of transfer of the immovable property on which date ownership, benefit, title, interest, possession and risk shall be transferred to Sainsbury. Accordingly, the benefit of all income arising from all contracts shall accrue to Sainsbury on registration of transfer.
7. Kindly be advised that the aforementioned proposal shall be open for acceptance by HOB for a period of 45 days hereof, whereafter the parties shall negotiate and conclude the necessary agreements for the exchange of documents in order to commence with a due diligence and to give effect to the proposed terms contained herein.

Please return a duly countersigned copy of this letter to the writer.

Yours faithfully


Dr. B.G. Govender
Director

Sainsbury Investments (Pty) Ltd

Signed at _____ on this _____ day of August 2023.

Director who is duly authorised
For and on behalf of:



ENS AFRICA

ATTENTION: LETITIA FIELD

PER EMAIL: lfield@ensafrica.com

14 AUGUST 2023

Our Ref: 21/P514/000

Your Ref: L Field / G Oertel

Dear Letitia Field

**RE: PRUDENTIAL AUTHORITY, THE SOUTH AFRICAN RESERVE BANK /
HABIB OVERSEAS BANK LIMITED AND TWO OTHERS – CASE NO:
2023/071935**

1. Your letter of 11 August 2023 refers.
2. We confirm that we act for the depositors who intervened in the Liquidation Application.
3. It is indeed correct that our offices have been contacted by a party expressing an interest to acquire the bank as a growing concern.

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
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• Website: www.lfhp.co.za

Directors: G.E. Larson • P.R. Falconer • Y. Hassan • S.R. Parsee • N. Kinsley
Senior Associates: T. Botha
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4. This party requires the following:-
- a) Latest / last audited financials and/or management accounts for the relevant periods in the event of the 2022 financial statements not being finalized;
 - b) Size of the deposits;
 - c) Size of Advances;
 - d) Confirmation of the amount paid to the curator for the period that the curator was in control of the bank;
 - e) The banking software platforms used by the bank; and
 - f) Staff details along with remuneration details including names of the key individuals.
5. This party is prepared to sign a non-disclosure agreement and further prepared to make known their identity once it has been agreed in principle to make the information sought above available.
6. The party that have contacted us operates a boutique advisory firm out of Dubai, UAE and represent a principal who is interested in acquiring Habib Overseas Bank.

Larson Falconer Hassan Parsee Inc. (Reg. No. 1994/001445/21)
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7. In the circumstances please can you at this stage confirm what information your client has at its disposal to make available to the party that have expressed an interest.
8. In the event of your client requesting to meet the representative of the advisory firm representing its principle then such arrangements can be made.
9. We would like to be involved in those discussions as we represent a significant amount of depositors.
10. If necessary it may be in the interest of all the parties including your client and those that we represent to extend the dies outlined in the Order placing the bank in provisional liquidation to engage with the party showing interest so that the party showing an interest is given a fair and reasonable opportunity to carry out a due diligence on the Bank.
11. Kindly acknowledge receipt.

Yours faithfully

Y HASSAN
LARSON FALCONER HASSAN PARSEE INC.

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Muhammad Yusuf Jamal

From: Letitia Field <lfield@ensafrica.com>
Sent: Friday, 18 August 2023 15:33
To: Yahya Hassan
Cc: Beverly Sheik; Gary Oertel; Calvin Kekana; Kathryn Kotze
Subject: RE: Habib Overseas Bank - In Provisional Liquidation

Dear Sirs

Thank you for your confirmation that you represent both the depositors (i.e. creditors) and the interested party, as represented by the advisory firm.

While our client is amenable to engage with interested parties, our client is bound by the provisions of various statutes that regulate HOB and the furnishing of information and documentation.

By way of example, the Banks Act requires compliance with certain provisions relating to the furnishing of financial information of HOB. Moreover, the 1973 Companies Act requires a court order to be obtained in respect of the books and papers of HOB. This is in addition to any confidentiality undertaking and compliance with any other statutory requirements relating to the information sought.

Please advise how and when your client/s will comply with same.

In addition, you will appreciate that our client cannot progress the matter further without a full disclosure of the identity of the interested party and its advisory firm.

Regards

Letitia Field

Executive

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Muhammad Yusuf Jamal

From: Yahya Hassan
Sent: Monday, 21 August 2023 16:22
To: Pravisha Ramsunder
Subject: Fwd: Habib Overseas Bank Limited (in provisional liquidation) ("HOB")

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From: Letitia Field <lfield@ensafrica.com>
Sent: Monday, August 21, 2023 4:04:38 PM
To: Yahya Hassan <yhassan@lfhp.co.za>
Cc: Beverly Sheik <Beverly.Sheik@lfhp.co.za>; Gary Oertel <goertel@ensafrica.com>; Calvin Kekana <ckekana@ensafrica.com>; Kathryn Kotze <kkotze@ensafrica.com>
Subject: Habib Overseas Bank Limited (in provisional liquidation) ("HOB")

Dear Yahya

Insofar as the 1973 Companies Act is concerned, please refer to section 360(1). Under any circumstances, your client/s is/are required to obtain a court order authorising the inspection of the books and papers of HOB.

Insofar as the Banks Act is concerned, please refer to section 7.

In addition, there are further statutory provisions that must be complied with depending on the transaction contemplated. In this regard, reference has been made to an "equity transaction", however, we note that your email also refers to a "buyer". It is not entirely clear what the proposed transaction entails, i.e. purchase of the business / assets of HOB or shares therein. This will determine which further statutory provisions must be complied with and will require further engagement with our respective clients and SARB as to its requirements insofar as any transaction is contemplated.

We require the details of the proposed transaction and the identity of the interested purchaser, including its advisory firm.

You are again invited to advise how and when your client/s will comply with the various statutory requirements.

Regards

Letitia Field

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From: Yahya Hassan <yhassan@lfhp.co.za>

Sent: 18 August 2023 04:44 PM

ENS AFRICA**PER EMAIL:** lfield@ENSafrica.com**Our Ref: 21/D396000****23 AUGUST 2023****RE: HABIB OVERSEAS BANK (in provisional liquidation)**

Dear Letitia

We refer to our request for information dated 14 August 2023 and to your recent emails of 18 August 2023 and 21 August 2023 ("the response"). In the response, you recorded that the provisional liquidator was not permitted to provide the requested information without:

- compliance with section 7 of the Banks Act; and
- our clients having first obtained a court order as envisaged by section 360(1) of the 1973 Companies Act.

As your client is duty bound to act in the best interests of creditors, we are confident that your client will engage constructively with the depositors and will provide the requested information. We are also confident that your client will appreciate the urgency of the situation and will not adopt a course which may delay matters and jeopardise the possibility of an equity transaction which will save the Bank.

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We respectfully point out that your client's interpretation of section 7 of the Bank's Act and section 360(1) of the Companies Act, 1973 are both incorrect. Neither section prohibits your client from providing the requested information.

The Banks Act

Section 7(5) of the Bank's Act provides that:

"No person shall without the written consent of the Authority disclose to any other person, except to the bank whose financial condition was the subject of the due diligence audit, any information contained in a report referred to in subsection (4)."

Section 7(4) of the Banks Act refers to the "audit report" in relation to "a due diligence audit of the financial condition of a bank".

In other words, it is only the audit report in respect of the findings of a due diligence audit into the financial condition of a bank which requires the consent of the Authority before it may be disclosed. Our clients have not requested disclosure of an audit report pertaining to a due diligence audit into the financial condition of a bank. Therefore, the prohibition on disclosure contained in section 7(5) of the Banks Act is clearly not applicable.

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The 1973 Companies Act

Section 360(1) of the Companies Act, 1973 provides that:

“Any member or creditor of any company unable to pay its debts and being wound up by the Court or by a creditors’ voluntary winding-up may apply to the Court for an order authorising him to inspect any or all of the books and papers of that company, whether in possession of the company or the liquidator, and the Court may impose any condition it thinks fit in granting that authority.”

The provision is permissive. It provides that a creditor may invoke the section in order to obtain inspection of the company’s books. The section does not purport to prohibit the provisional liquidator from providing our clients with the requested information.

Conclusion

Consequently, our clients repeat the request for information contained in our previous letter of 14 August 2023. We ask that this request be acceded to as a matter of urgency given the time sensitivity of the matter.

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To the extent that your client requires a meeting in order to discuss the request (or any matter pertaining to the request – such as a confidentiality agreement), we make ourselves available to do so.

In the event that your client is not amenable to providing the requested information, we will approach the Court for an order compelling the production of the requested information. In that event, this letter will be annexed to the application.

Sincerely,

Yours faithfully


Y HASSAN

LARSON FALCONER HASSAN PARSEE INC.

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Yahya Hassan

From: Letitia Field <lfield@ensafrica.com>
Sent: Thursday, 24 August 2023 16:44
To: Beverly Sheik
Cc: Yahya Hassan; Calvin Kekana; Gary Oertel
Subject: RE: Habib Overseas Bank Limited (in provisional liquidation) ("HOB")

Dear Yahya

We refer to your letter of 23 August 2023.

Your allegations relating to the applicability of section 7 of the Banks Act and s360 of the 1973 Companies Act are misplaced:

- Section 7(3) requires prior written notification of any due diligence of the financial position of a bank to the Prudential Authority. We have not been provided with same.
- Section 360 of the 1973 Companies Act permits an application to be brought to inspect the books and records, it does not provide a right to do so. The commentary on this section is also clear that an order is required before a liquidator is allowed to provide the books and records.

For record purposes, our response of 21 August 2023 indicated that in addition to section 7 of the Banks Act and section 360 of the 1973 Companies Act, there are further statutory provisions that must be complied with depending on the transaction contemplated.

To date, and despite repeated requests for same, you have not:

- disclosed the identity of the interested party or its advisory firm that you represent; or
- provided any details on the proposed transaction to enable constructive engagement regarding the applicable statutory provisions.

Once again, we request that you provide the aforesaid information.

We remind you that it is our client who first approached your firm and requested the aforesaid information. Any delay has not been occasioned by our client but rather your clients' failure to provide the information requested and comply with the applicable provisions.

We are available to discuss the position as recorded herein. We note, however, that representatives from SARB would have to be present to confirm SARB's requirements insofar as the proposed transaction is concerned.

Regards

Letitia Field

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From: Beverly Sheik <Beverly.Sheik@lfhp.co.za>

Sent: 23 August 2023 03:36 PM

ENS AFRICA

ATTENTION: LETITIA FIELD

PER EMAIL: lfield@ensafrika.com

Our Ref: 21/D396/000

28 AUGUST 2023

Dear Letitia

RE: HABIB OVERSEAS BANK LIMITED

1. Your letter of 24 August 2023 refers.
2. For the time being we will agree to disagree in respect of our respective interpretations of the relevant legislation.
3. Be that as it may, the party that we are dealing is one Anwar Khan, of Adsum Capital Management LLC and his contact details are attached hereto.
4. Mr Khan is acting for a Principal.
5. We are available to discuss the position and we have no objection to a representative of SARB, being present.
6. Please revert with your availability and please propose 3 alternative dates and times.

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Associates: C. Larsen • E. Parsee • M.Y. Jamal





Larson
Falconer
Hassan
Parsee

Yours faithfully

Dictated by MR Y HASSAN and sent electronically.

LARSON FALCONER HASSAN PARSEE INC.

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A handwritten signature, possibly 'A', followed by a large, stylized checkmark or flourish.

"YH9"

From: Letitia Field <lfield@ensafrica.com>

Date: Friday, 1 September 2023 at 6:19 PM

To: Anwar Khan <anwar@adsum.ae>

Cc: Gary Oertel <goertel@ensafrica.com>, Calvin Kekana <ckekana@ensafrica.com>

Subject: RE: Habib Overseas Bank Limited (in provisional liquidation) ("HOB")

Dear Anwar

We refer to your email below.

As indicated to LFHP:

- The South African Banks Act, 94 of 1990, requires compliance with certain provisions relating to the furnishing of financial information of HOB. Moreover, the South African Companies Act, 61 of 1973, requires a court order to be obtained in respect of the books and papers of HOB.
- In addition, there are further statutory provisions that must be complied with depending on the transaction contemplated. In this regard, it is not entirely clear what the proposed transaction entails, i.e. purchase of the assets of HOB or shares therein. This will determine which further statutory provisions must be complied with and will require further engagement with our respective clients and/or SARB as to its requirements insofar as any transaction is contemplated.

In regard to the second sub-paragraph above, if the proposed transaction contemplates:

- An equity transaction, please note that your principals would be required to engage directly with HOB's shareholders and the Prudential Authority, and make an application to the Prudential Authority in terms of the relevant provisions of the Banks Act.
- An asset transaction, please note that your principals would have to engage with our client and the Minister, through the Prudential Authority, and make the necessary application contemplated in the Banks Act. We point out that the banking licence cannot be purchased and requires a new application to be made. Please refer to SARB's website for further details in this regard ([Functions of the Prudential Authority \(resbank.co.za\)](https://www.resbank.co.za)).

We reiterate that any further engagement will require the disclosure of your principals and compliance with the aforesaid.

Regards

Letitia Field

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EMAIL: cmoraitis@werksmans.com

ATTENTION: MR C MANAKA

EMAIL: cmanaka@werksmans.com

ATTENTION: MS K RAPOO

EMAIL: krapoo@werksmans.com

05 SEPTEMBER 2023

Our Ref: Y Hassan / Visha / D396/000

Your Ref: Sout3267.273

Dear All

RE: HABIB OVERSEAS BANK INTERVENTION

1. We act for and instructed by the intervening parties ("the depositors who intervened").
2. We annex hereto a series of exchanges in correspondence between ENS-Africa and LFHP Inc. attorneys.
3. ENS Africa as you well know represents the provisional liquidator of Habib Overseas Bank, Zeenat Kajee.

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4. The purpose of writing is to address to you our clients' concerns regarding the provisional liquidator's refusal to hand over documentation to the party who is interested in purchasing the bank as a going concern.
5. Naturally any party interested in purchasing the bank relies on information that can readily be made available to make an informed decision on a proposed acquisition.
6. The return date is 19 September 2023 and if required our client will launch the relevant application as suggested by ENS in their correspondence. In Letitia Fields letter of 18 August 2023 she mentions that a court order is to be obtained in respect of the books and papers of Habib Overseas Bank.
7. In our letter of 22 August 2023 in a response to Letitia's letter of 14 August 2023 we essentially state that we have a contrary view.
8. The purpose of this letter is to request your client through your offices to intervene to resolve the impasse and to direct the provisional liquidator to make available the information sought so that Mr Anwar Khan representing his principal (signing a non-disclosure agreement if necessary) can revert with a proposal based on information upon which reliance can be placed.

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9. It would appear that by not making this information available, only after the issue of a court order is with respect dragging the matter on unnecessarily and with each passing day the likelihood of depositors receiving value for their investment becomes diminished.

10. A representative of your client is on record stating that the South African Reserve Bank would assist the depositors in recovering their monies in the event of the bank being sold. This interview was aired on national television on ENews on the same day when the matter was previously enrolled in court on 08 August 2023.

11. In the circumstances we kindly await your urgent acknowledgement and response and we will ensure that a copy of this letter is being forwarded to ENS Africa for the attention of Letitia Field and her client.

12. All our clients' remain reserved.

Yours faithfully



Y HASSAN

LARSON FALCONER HASSAN PARSEE INC.

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LARSON FALCONER HASSAN PARSEE INC.

By email

L Field / G Oertel our ref
lfield@ensafrica.com
goertel@ensafrica.com

your ref

11 August 2023 date

Dear Sirs

RE: PRUDENTIAL AUTHORITY AND ANOTHER // HABIB OVERSEAS BANK LIMITED (IN PROVISIONAL LIQUIDATION) ("HOB") AND OTHERS [CASE NO.: 2023-071935]

1. We act for and on behalf of the provisional liquidator of HOB, Zeenath Kajee ("our Client").
2. We refer to the intervention application filed by your clients in the above matter ("the Intervention Application") and the provisional order of liquidation in respect of HOB, dated 8 August 2023 ("the Provisional Order").
3. In terms of the Intervention Application, your clients submitted *inter alia* that:
 - 3.1. a provisional order of liquidation should be granted, instead of a final order of liquidation;
 - 3.2. the reason for the aforesaid was to allow time for your clients to explore the possibility of an equity transaction to recapitalise HOB so as to allow it to continue as a going concern;
 - 3.3. prior to the institution of the liquidation application, there were negotiations with a prospective buyer in relation to the sale of HOB, which negotiations were at an advanced stage, and in respect of which your offices requested the particulars of the negotiations that took place with HOB's prospective buyer; and
 - 3.4. there was appetite in the market to acquire the shares in HOB.
4. With particular reference to the above, and in light of the imminent return date of 19 September 2023 directed in the Provisional Order, we request that you urgently furnish our Client with all documentation and/or particulars relating to any negotiations, proposals and/or expressions of interest in respect of HOB.

Yours faithfully

LETITIA FIELD

(electronically transmitted without signature)

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ENS AFRICA

ATTENTION: LETITIA FIELD

PER EMAIL: lfield@ensafrica.com

14 AUGUST 2023

Our Ref: 21/P514/000

Your Ref: L Field / G Oertel

Dear Letitia Field

**RE: PRUDENTIAL AUTHORITY, THE SOUTH AFRICAN RESERVE BANK /
HABIB OVERSEAS BANK LIMITED AND TWO OTHERS – CASE NO:
2023/071935**

1. Your letter of 11 August 2023 refers.
2. We confirm that we act for the depositors who intervened in the Liquidation Application.
3. It is indeed correct that our offices have been contacted by a party expressing an interest to acquire the bank as a growing concern.

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4. This party requires the following:-
- a) Latest / last audited financials and/or management accounts for the relevant periods in the event of the 2022 financial statements not being finalized;
 - b) Size of the deposits;
 - c) Size of Advances;
 - d) Confirmation of the amount paid to the curator for the period that the curator was in control of the bank;
 - e) The banking software platforms used by the bank; and
 - f) Staff details along with remuneration details including names of the key individuals.
5. This party is prepared to sign a non-disclosure agreement and further prepared to make known their identity once it has been agreed in principle to make the information sought above available.
6. The party that have contacted us operates a boutique advisory firm out of Dubai, UAE and represent a principal who is interested in acquiring Habib Overseas Bank.

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Senior Associates: T. Botha
Associates: C. Larsen • E. Parsee • M.Y. Jamal



Larson
Falconer
Hassan
Parsee

7. In the circumstances please can you at this stage confirm what information your client has at its disposal to make available to the party that have expressed an interest.
8. In the event of your client requesting to meet the representative of the advisory firm representing its principle then such arrangements can be made.
9. We would like to be involved in those discussions as we represent a significant amount of depositors.
10. If necessary it may be in the interest of all the parties including your client and those that we represent to extend the dies outlined in the Order placing the bank in provisional liquidation to engage with the party showing interest so that the party showing an interest is given a fair and reasonable opportunity to carry out a due diligence on the Bank.
11. Kindly acknowledge receipt.

Yours faithfully

Y HASSAN
LARSON FALCONER HASSAN PARSEE INC.

Larson Falconer Hassan Parsee Inc. (Reg. No. 1994/001445/21)
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2nd Floor, 93 Richefond Circle, Ridgeside Office Park, Umhlanga Rocks, 4319
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• 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

Yahya Hassan

From: Yahya Hassan
Sent: Tuesday, 15 August 2023 15:02
To: Letitia Field; Pravisha Ramsunder
Cc: Beverly Sheik; Gary Oertel; Calvin Kekana
Subject: Re: PRUDENTIAL AUTHORITY, THE SOUTH AFRICAN RESERVE BANK / HABIB OVERSEAS BANK LIMITED AND TWO OTHERS - CASE NO: 2023/071935

Dear Letitia

Your letter refers.

We act for the party showing an interest.

We are trying to move forward as we have time limits to put a business case together to salvage the situation.

We seek the information requested as a matter of urgency.

Regards

Y.Hassan
LFHP Inc.

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From: Letitia Field <lfield@ensafrica.com>
Sent: Tuesday, August 15, 2023 1:34:11 PM
To: Pravisha Ramsunder <Visha.Ramsunder@lfhp.co.za>
Cc: Yahya Hassan <yhassan@lfhp.co.za>; Beverly Sheik <Beverly.Sheik@lfhp.co.za>; Gary Oertel <goertel@ensafrica.com>; Calvin Kekana <ckekana@ensafrica.com>
Subject: RE: PRUDENTIAL AUTHORITY, THE SOUTH AFRICAN RESERVE BANK / HABIB OVERSEAS BANK LIMITED AND TWO OTHERS - CASE NO: 2023/071935

Dear Sirs

We refer to your letter of 14 August 2023.

We note from your letter that you record that you represent the Intervening applicants in the liquidation application under the above case number.

However, it is not clear from your letter if you have also been appointed as the attorneys of record for the "boutique advisory firm" and its "principal".

Please advise if you have been appointed as the attorneys of record for the aforesaid parties.

Regards

Letitia Field

Executive

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+27 82 787 9504

lfield@ENSafrica.com

Yahya Hassan

From: Yahya Hassan
Sent: Wednesday, 16 August 2023 16:55
To: Letitia Field
Cc: Beverly Sheik
Subject: Habib Overseas Bank - In Provisional Liquidation

Dear Letitia

In addition to the documents already requested we require the Advanced Report which is a monthly report all branches of the bank submits containing the collateral held by the bank with values of properties , sureties , deposit held under lien.

This information is crucial for an investor interested in buying the bank.

As stated in our previous mail we have time challenges and the sooner we are given the information the sooner we can revert with offers to the provisional liquidator and the SARB.

Your acknowledgement and response is kindly awaited on a priority basis.

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
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Handwritten signature and a checkmark-like mark in the bottom right corner of the page.

Yahya Hassan

From: Yahya Hassan
Sent: Friday, 18 August 2023 15:36
To: Shahnaaz Nelson
Subject: Fwd: Habib Overseas Bank - In Provisional Liquidation

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From: Letitia Field <lfield@ensafrica.com>
Sent: Friday, August 18, 2023 3:33:02 PM
To: Yahya Hassan <yhassan@lfhp.co.za>
Cc: Beverly Sheik <Beverly.Sheik@lfhp.co.za>; Gary Oertel <goertel@ensafrica.com>; Calvin Kekana <cckekana@ensafrica.com>; Kathryn Kotze <kkotze@ensafrica.com>
Subject: RE: Habib Overseas Bank - In Provisional Liquidation

Dear Sirs

Thank you for your confirmation that you represent both the depositors (i.e. creditors) and the interested party, as represented by the advisory firm.

While our client is amenable to engage with interested parties, our client is bound by the provisions of various statutes that regulate HOB and the furnishing of information and documentation.

By way of example, the Banks Act requires compliance with certain provisions relating to the furnishing of financial information of HOB. Moreover, the 1973 Companies Act requires a court order to be obtained in respect of the books and papers of HOB. This is in addition to any confidentiality undertaking and compliance with any other statutory requirements relating to the information sought.

Please advise how and when your client/s will comply with same.

In addition, you will appreciate that our client cannot progress the matter further without a full disclosure of the identity of the interested party and its advisory firm.

Regards

Letitia Field

Executive

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lfield@ensafrica.com

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Yahya Hassan

From: Yahya Hassan
Sent: Friday, 18 August 2023 16:44
To: Letitia Field
Cc: Beverly Sheik; Gary Oertel; Calvin Kekana; Kathryn Kotze
Subject: Re: Habib Overseas Bank - In Provisional Liquidation

Categories: Red Category

Dear Letitia

Your mail is acknowledged.

Kindly direct us to the relevant provisions of the Banks and Companies Act being the 2 statutes you referred to so that we can consider its provisions and act upon it if required.

We act for creditors (depositors) and remain entitled on behalf of those we represent to be given access to relevant information to secure a buyer to salvage the Bank.

The authority for this is trite.

We have little time left and urge your client to engage with our clients meaningfully.

We will let the interested party know of your request and we will revert to you in the new week of their position to make a disclosure your client seeks.

Regards

Yahya Hassan
LFHP Inc.

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From: Letitia Field <lfield@ensafrica.com>
Sent: Friday, August 18, 2023 3:33:32 pm
To: Yahya Hassan <yhassan@lfhp.co.za>
Cc: Beverly Sheik <Beverly.Sheik@lfhp.co.za>; Gary Oertel <goertel@ensafrica.com>; Calvin Kekana <ckekana@ensafrica.com>; Kathryn Kotze <kkotze@ensafrica.com>
Subject: RE: Habib Overseas Bank - In Provisional Liquidation

Dear Sirs

Thank you for your confirmation that you represent both the depositors (i.e. creditors) and the interested party, as represented by the advisory firm.

While our client is amenable to engage with interested parties, our client is bound by the provisions of various statutes that regulate HOB and the furnishing of information and documentation.

By way of example, the Banks Act requires compliance with certain provisions relating to the furnishing of financial information of HOB. Moreover, the 1973 Companies Act requires a court order to be obtained in respect of the books and papers of HOB. This is in addition to any confidentiality undertaking and compliance with any other statutory requirements relating to the information sought.

Please advise how and when your client/s will comply with same.

Pravisha Ramsunder

From: Yahya Hassan
Sent: 21 August 2023 04:22 PM
To: Pravisha Ramsunder
Subject: Fwd: Habib Overseas Bank Limited (in provisional liquidation) ("HOB")

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From: Letitia Field <lfield@ensafrica.com>
Sent: Monday, August 21, 2023 4:04:38 PM
To: Yahya Hassan <yhassan@lfhp.co.za>
Cc: Beverly Sheik <Beverly.Sheik@lfhp.co.za>; Gary Oertel <goertel@ensafrica.com>; Calvin Kekana <ckekana@ensafrica.com>; Kathryn Kotze <kkotze@ensafrica.com>
Subject: Habib Overseas Bank Limited (in provisional liquidation) ("HOB")

Dear Yahya

Insofar as the 1973 Companies Act is concerned, please refer to section 360(1). Under any circumstances, your client/s is/are required to obtain a court order authorising the inspection of the books and papers of HOB.

Insofar as the Banks Act is concerned, please refer to section 7.

In addition, there are further statutory provisions that must be complied with depending on the transaction contemplated. In this regard, reference has been made to an "*equity transaction*", however, we note that your email also refers to a "*buyer*". It is not entirely clear what the proposed transaction entails, i.e. purchase of the business / assets of HOB or shares therein. This will determine which further statutory provisions must be complied with and will require further engagement with our respective clients and SARB as to its requirements insofar as any transaction is contemplated.

We require the details of the proposed transaction and the identity of the interested purchaser, including its advisory firm.

You are again invited to advise how and when your client/s will comply with the various statutory requirements.

Regards

Letitia Field

Executive

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From: Yahya Hassan <yhassan@lfhp.co.za>
Sent: 18 August 2023 04:44 PM

To: Letitia Field <lfield@ensafrica.com>
Cc: Beverly Sheik <Beverly.Sheik@lfhp.co.za>; Gary Oertel <goertel@ensafrica.com>; Calvin Kekana <ckekana@ensafrica.com>; Kathryn Kotze <kkotze@ensafrica.com>
Subject: Re: Habib Overseas Bank - In Provisional Liquidation

Dear Letitia

Your mail is acknowledged.

Kindly direct us to the relevant provisions of the Banks and Companies Act being the 2 statutes you referred to so that we can consider its provisions and act upon it if required.

We act for creditors (depositors) and remain entitled on behalf of those we represent to be given access to relevant information to secure a buyer to salvage the Bank.

The authority for this is trite.

We have little time left and urge your client to engage with our clients meaningfully.

We will let the interested party know of your request and we will revert to you in the new week of their position to make a disclosure your client seeks.

Regards

Yahya Hassan
LFHP Inc.

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From: Letitia Field <lfield@ensafrica.com>
Sent: Friday, August 18, 2023 3:33:32 pm
To: Yahya Hassan <yhassan@lfhp.co.za>
Cc: Beverly Sheik <Beverly.Sheik@lfhp.co.za>; Gary Oertel <goertel@ensafrica.com>; Calvin Kekana <ckekana@ensafrica.com>; Kathryn Kotze <kkotze@ensafrica.com>
Subject: RE: Habib Overseas Bank - In Provisional Liquidation

Dear Sirs

Thank you for your confirmation that you represent both the depositors (i.e. creditors) and the interested party, as represented by the advisory firm.

While our client is amenable to engage with interested parties, our client is bound by the provisions of various statutes that regulate HOB and the furnishing of information and documentation.

By way of example, the Banks Act requires compliance with certain provisions relating to the furnishing of financial information of HOB. Moreover, the 1973 Companies Act requires a court order to be obtained in respect of the books and papers of HOB. This is in addition to any confidentiality undertaking and compliance with any other statutory requirements relating to the information sought.

Please advise how and when your client/s will comply with same.

In addition, you will appreciate that our client cannot progress the matter further without a full disclosure of the identity of the interested party and its advisory firm.

Regards

ENS AFRICA

PER EMAIL: lfield@ENSafrica.com

Our Ref: 21/D396000

23 AUGUST 2023

RE: HABIB OVERSEAS BANK (in provisional liquidation)

Dear Letitia

We refer to our request for information dated 14 August 2023 and to your recent emails of 18 August 2023 and 21 August 2023 ("the response"). In the response, you recorded that the provisional liquidator was not permitted to provide the requested information without:

- compliance with section 7 of the Banks Act; and
- our clients having first obtained a court order as envisaged by section 360(1) of the 1973 Companies Act.

As your client is duty bound to act in the best interests of creditors, we are confident that your client will engage constructively with the depositors and will provide the requested information. We are also confident that your client will appreciate the urgency of the situation and will not adopt a course which may delay matters and jeopardise the possibility of an equity transaction which will save the Bank.

Larson Falconer Hassan Parsee Inc. (Reg. No. 1994/001445/21)
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Senior Associates: T. Botha
Associates: C. Larsen • E. Parsee • M.Y. Jamal



We respectfully point out that your client's interpretation of section 7 of the Bank's Act and section 360(1) of the Companies Act, 1973 are both incorrect. Neither section prohibits your client from providing the requested information.

The Banks Act

Section 7(5) of the Bank's Act provides that:

"No person shall without the written consent of the Authority disclose to any other person, except to the bank whose financial condition was the subject of the due diligence audit, any information contained in a report referred to in subsection (4)."

Section 7(4) of the Banks Act refers to the "audit report" in relation to "a due diligence audit of the financial condition of a bank".

In other words, it is only the audit report in respect of the findings of a due diligence audit into the financial condition of a bank which requires the consent of the Authority before it may be disclosed. Our clients have not requested disclosure of an audit report pertaining to a due diligence audit into the financial condition of a bank. Therefore, the prohibition on disclosure contained in section 7(5) of the Banks Act is clearly not applicable.

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The 1973 Companies Act

Section 360(1) of the Companies Act, 1973 provides that:

“Any member or creditor of any company unable to pay its debts and being wound up by the Court or by a creditors’ voluntary winding-up may apply to the Court for an order authorising him to inspect any or all of the books and papers of that company, whether in possession of the company or the liquidator, and the Court may impose any condition it thinks fit in granting that authority.”

The provision is permissive. It provides that a creditor may invoke the section in order to obtain inspection of the company’s books. The section does not purport to prohibit the provisional liquidator from providing our clients with the requested information.

Conclusion

Consequently, our clients repeat the request for information contained in our previous letter of 14 August 2023. We ask that this request be acceded to as a matter of urgency given the time sensitivity of the matter.

Larson Falconer Hassan Parsee Inc. (Reg. No. 1994/001445/21)
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Senior Associates: T. Botha
Associates: C. Larsen • E. Parsee • M.Y. Jamal



To the extent that your client requires a meeting in order to discuss the request (or any matter pertaining to the request – such as a confidentiality agreement), we make ourselves available to do so.

In the event that your client is not amenable to providing the requested information, we will approach the Court for an order compelling the production of the requested information. In that event, this letter will be annexed to the application.

Sincerely,

Yours faithfully



Y HASSAN

LARSON FALCONER HASSAN PARSEE INC.

Larson Falconer Hassan Parsee Inc. (Reg. No. 1994/001445/21)
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Senior Associates: T. Botha
Associates: C. Larsen • E. Parsee • M.Y. Jamal



Yahya Hassan

From: Letitia Field <lfield@ensafrica.com>
Sent: Thursday, 24 August 2023 16:44
To: Beverly Sheik
Cc: Yahya Hassan; Calvin Kekana; Gary Oertel
Subject: RE: Habib Overseas Bank Limited (in provisional liquidation) ("HOB")

Dear Yahya

We refer to your letter of 23 August 2023.

Your allegations relating to the applicability of section 7 of the Banks Act and s360 of the 1973 Companies Act are misplaced:

- Section 7(3) requires prior written notification of any due diligence of the financial position of a bank to the Prudential Authority. We have not been provided with same.
- Section 360 of the 1973 Companies Act permits an application to be brought to inspect the books and records, it does not provide a right to do so. The commentary on this section is also clear that an order is required before a liquidator is allowed to provide the books and records.

For record purposes, our response of 21 August 2023 indicated that in addition to section 7 of the Banks Act and section 360 of the 1973 Companies Act, there are further statutory provisions that must be complied with depending on the transaction contemplated.

To date, and despite repeated requests for same, you have not:

- disclosed the identity of the interested party or its advisory firm that you represent; or
- provided any details on the proposed transaction to enable constructive engagement regarding the applicable statutory provisions.

Once again, we request that you provide the aforesaid information.

We remind you that it is our client who first approached your firm and requested the aforesaid information. Any delay has not been occasioned by our client but rather your clients' failure to provide the information requested and comply with the applicable provisions.

We are available to discuss the position as recorded herein. We note, however, that representatives from SARB would have to be present to confirm SARB's requirements insofar as the proposed transaction is concerned.

Regards

Letitia Field

Executive

Insolvency, Restructuring and Business Rescue

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From: Beverly Sheik <Beverly.Sheik@lfhp.co.za>

Sent: 23 August 2023 03:36 PM



Larson
Falconer
Hassan
Parsee

ENS AFRICA

ATTENTION: LETITIA FIELD

PER EMAIL: lfield@ensafrica.com

Our Ref: 21/D396/000

28 AUGUST 2023

Dear Letitia

RE: HABIB OVERSEAS BANK LIMITED

1. Your letter of 24 August 2023 refers.
2. For the time being we will agree to disagree in respect of our respective interpretations of the relevant legislation.
3. Be that as it may, the party that we are dealing is one Anwar Khan, of Adsum Capital Management LLC and his contact details are attached hereto.
4. Mr Khan is acting for a Principal.
5. We are available to discuss the position and we have no objection to a representative of SARB, being present.
6. Please revert with your availability and please propose 3 alternative dates and times.

Larson Falconer Hassan Parsee Inc. (Reg. No. 1994/001445/21)
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Senior Associates: T. Botha
Associates: C. Larsen • E. Parsee • M.Y. Jamal



Larson
Falconer
Hassan
Parsee

Yours faithfully

Dictated by MR Y HASSAN and sent electronically.

LARSON FALCONER HASSAN PARSEE INC.

Larson Falconer Hassan Parsee Inc. (Reg. No. 1994/001445/21)
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Senior Associates: T. Botha
Associates: C. Larsen • E. Parsee • M.Y. Jamal

A handwritten signature in black ink, appearing to be the initials 'YH'.

A handwritten signature in black ink, appearing to be a cursive name.

Kind regards,

Anwar Khan
Managing Partner
Adsum Capital Management LLC

502A Sama Towers
Sheikh Zayed Road
PO Box 57025
Dubai, UAE
M: +971 50 453 5799
T: +9714 333 1861
E: anwar@adsum.ae
W: www.adsum.ae

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Pravisha Ramsunder

From: Letitia Field <lfield@ensafrica.com>
Sent: 28 August 2023 01:04 PM
To: Pravisha Ramsunder
Cc: Yahya Hassan; Beverly Sheik; Muhammad Yusuf Jamal
Subject: RE: HABIB OVERSEAS BANK LIMITED (in provisional liquidation)("HOB")

Dear Yahya

We confirm receipt of the email below.

Thank you for providing the details of the advisory firm. We note, however, that you have still not disclosed the details of the principal.

Please provide the details of the principal, whereafter we will be in a position to revert with our availability to meet.

Regards

Letitia Field

Executive

Insolvency, Restructuring and Business Rescue

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From: Pravisha Ramsunder <Visha.Ramsunder@lfhp.co.za>
Sent: 28 August 2023 12:20 PM
To: Letitia Field <lfield@ensafrica.com>
Cc: Yahya Hassan <yhassan@lfhp.co.za>; Beverly Sheik <Beverly.Sheik@lfhp.co.za>; Muhammad Yusuf Jamal <mjamal@lfhp.co.za>
Subject: FW: HABIB OVERSEAS BANK LIMITED (in provisional liquidation)("HOB")
Importance: High

Dear Letitia

Please see attached herewith for your perusal .

Kindly acknowledge receipt.

Kind Regards



**Larson
Falconer
Hassan
Parsee**

Marlene Govender | Legal Secretary to Mr. Y Hassan

Tel: (031) 534 1600 Direct: (031) 534 1614

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

Physical Address: 2nd Floor 93 Richefond Circle, Ridgeside Office Park, Umhlanga
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A handwritten signature in black ink, consisting of a stylized 'A' followed by a long, sweeping horizontal stroke.

ENS AFRICA

ATTENTION: LETITIA FIELD

PER EMAIL: lfield@ensafrica.com

Our Ref: 21/D396/000

29 AUGUST 2023

Dear Letitia

RE: HABIB OVERSEAS BANK LIMITED

1. Your letter of 28 August 2023 (01.04 PM) refers.
2. We do not have the details of the Principal.
3. We urge you to contact the said Agent who in turn can make the information available to you as to all of the details relating to his Principal.
4. We are trying to convene a meeting in facilitating the convening of such meeting
5. We seem to be moving too slow in the context of this matter and we would appreciate it if your client through your offices arranges this meeting forthwith.
6. Kindly revert.

Yours faithfully

Y HASSAN

LARSON FALCONER HASSAN PARSEE INC.

Larson Falconer Hassan Parsee Inc. (Reg. No. 1994/001445/21)
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Senior Associates: T. Botha
Associates: C. Larsen • E. Parsee • M.Y. Jamal



Pravisha Ramsunder

From: Yahya Hassan
Sent: 30 August 2023 01:54 PM
To: Pravisha Ramsunder
Subject: Fwd: HABIB OVEREAS BANK LIMITED

Print and see me for dictation

Y

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From: Letitia Field <lfield@ensafrica.com>
Sent: Wednesday, August 30, 2023 11:38:32 AM
To: Pravisha Ramsunder <Visha.Ramsunder@lfhp.co.za>
Cc: Yahya Hassan <yhassan@lfhp.co.za>; Beverly Sheik <Beverly.Sheik@lfhp.co.za>; Muhammad Yusuf Jamal <mjamal@lfhp.co.za>; Gary Oertel <goertel@ensafrica.com>; Calvin Kekana <ckekana@ensafrica.com>
Subject: RE: HABIB OVEREAS BANK LIMITED

Dear Yahya

We refer to your letter of yesterday.

It appears from your letter that, despite your prior confirmation, your firm does not in fact act for the advisory firm or its principal.

We will proceed to contact the advisory firm directly.

Regards

Letitia Field

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From: Pravisha Ramsunder <Visha.Ramsunder@lfhp.co.za>
Sent: 29 August 2023 12:22 PM
To: Letitia Field <lfield@ensafrica.com>
Cc: Yahya Hassan <yhassan@lfhp.co.za>; Beverly Sheik <Beverly.Sheik@lfhp.co.za>; Muhammad Yusuf Jamal <mjamal@lfhp.co.za>
Subject: RE: HABIB OVEREAS BANK LIMITED

Dear Letitia

Kindly find attached herewith a letter for your attention.

We trust you find same in order.

Kind Regards



**Larson
Falconer
Hassan
Parsee**

Pravisha Ramsunder | Legal Secretary to Mr. Y Hassan

Tel: (031) 534 1600 Direct: (031) 534 1614

E-mail: Visha.Ramsunder@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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DELIVERED BY EMAIL

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Attention: Y Hassan

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YOUR REFERENCE: Y Hassan / Visha / 21 / D396/000
OUR REFERENCE: Mr C Moraitis / Mr C Manaka / Ms K Rapoo/kr/SOUT3267.273/#8315464v1
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EMAIL ADDRESS: cmoraitis@werksmans.com / cmanaka@werksmans.com / krapoo@werksmans.com

12 September 2023

Dear Sirs

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

- 1 We refer to your letter dated 5 September 2023, but which you only forwarded to us on 7 September 2023. We represent the Prudential Authority of the South African Reserve Bank ("**our client**").
- 2 At the outset it is necessary to record that although your clients, prior to the order for provisional liquidation having been granted, delivered an intervention application, your clients have not intervened in the proceedings, as is apparent from the order of the High Court of South Africa, Gauteng Division, Pretoria (the "**High Court**") when Habib Overseas Bank Limited ("**Habib**") was placed in provisional liquidation.
- 3 The provisional liquidator is in control of Habib and is responsible for the administration of the bank, in liquidation. Our client is the regulator of banks and performs its duties and responsibilities in terms of various financial sector laws, including the Banks Act 94 of 1990, as amended ("**Banks Act**").





- 4 Any party interested in acquiring an interest in a bank or a controlling company of a bank or entering into an arrangement for the transfer of the assets, liabilities or assets and liabilities of a bank, must comply with the requirements of, *inter alia*, the Banks Act and any application in relation thereto would be submitted to our client.
- 5 The provisional liquidator of the bank is, as indicated above, in control of and responsible for the administration of the bank. Our client is the regulator and cannot and does not (unlike in relation to curatorship and where the Banks Act regulated our client's role, but then only in relation to curatorship) issue directions to the provisional liquidator in relation to the acquisition of an interest in a bank or a controlling company of a bank or in relation to an arrangement for the transfer of the assets and liabilities of a bank. In the circumstances your request that our client should intervene and direct the provisional liquidator to do something is misplaced. We remind you that when Habib was placed under provisional liquidation, the High Court ordered that curatorship had come to an end.
- 6 From our consideration of the correspondence it would not appear that the provisional liquidator has refused to make the information available but rather has requested that there is compliance with the requirements of the applicable legislation before this can take place.
- 7 Our client would always perform its regulatory function in the interests of depositors of an institution but that does not entitle our client, as the regulator, to intervene in areas where it cannot or should not do so.
- 8 We remind you that the date for the return date in this matter and the date for the filing of opposing affidavits, if any, were based on the dates proposed by you and your clients. The date for the filing of opposing affidavits has passed. It is not in the interests of creditors, which would include depositors, that this matter is further delayed.
- 9 We further remind you that there is no reason why any transaction, whether by way of the acquisition of shares or the transfer of assets and liabilities, cannot be concluded when Habib is under final liquidation. The fact that Habib is hopelessly insolvent is apparent from the papers which are already before court.
- 10 Our clients' rights remain reserved.

A handwritten signature in black ink, appearing to be 'AV'.

A large, sweeping handwritten flourish or scribble in black ink.



Yours faithfully

WERKSMANS INC

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

Handwritten initials 'AJ' and a signature.