

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

CASE NO.:

In the application of:

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

Applicants

And

**ZEENATH KAJEE N.O.**

First Respondent

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

Second Respondent

---

**NOTICE OF MOTION**

(in the application to compel disclosure of information pertaining to the Bank)

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**TAKE NOTICE THAT** the parties set out in Annexure A to this notice of motion (hereafter “the applicants”) will, on 19 September 2023, at 10h00 or as soon thereafter as counsel may be heard, make application for relief in the following terms:

1. Dispensing with the forms, service and time periods prescribed in terms of the Uniform Rules of Court and directing that the intervention application be heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court.
2. The applicants are authorised to inspect the books and records of HABIB OVERSEAS BANK LIMITED (in provisional winding up) (“the Bank”).
3. The liquidator (Zeenath Kajee N.O.) is ordered to provide copies of the following documents to the applicants, within three (3) days;

- a. The latest audited financial statement for the Bank;
- b. The balance sheet for the Bank as at present date;
- c. The books of account reflecting the cash on hand for each branch of the Bank;
- d. The current Bank statements for each of the bank accounts held in the name of the Bank at First National Bank and Absa Bank.
- e. The current bank statements for each account held in the name of the Bank with Habib American Bank.
- f. The current bank statements for any other bank account held in the name of the Bank with any other local or foreign bank.
- g. A full set of the most recent management accounts for the Bank.
- h. Statements of account in respect of the account of each customer of the Bank:
  - i. Whose account is in overdraft;
  - ii. Who was advanced money by the Bank under a Term Loan;
  - iii. Is otherwise indebted to the Bank.
- i. Any bank records reflecting the security held by the Bank in respect of each debt owed to the Bank.
- j. Bank statements for each account held with the Bank which has a credit balance.

- k. The asset register of the Bank reflecting a list of all Fixed assets.
  - l. The ledgers of the Bank reflecting all deposits held by the Bank.
  - m. The ledgers of the Bank reflecting all loans advanced by the Bank.
  - n. The list and breakdown of all prepaid expenses;
  - o. The current Bank statements for the Bank's suspense account.
  - p. A list of all loans advanced to subsidiaries.
  - q. A list of all sundry creditors of the Bank, including their names and the amount due to each creditor.
  - r. The curator's report.
  - s. The record of fees paid to the curator.
  - t. The details pertaining the banking platform (the software) used by the Bank.
  - u. The Bank's payroll information including a list of all employees of the Bank and their monthly salaries.
  - v. The monthly reports submitted by the Bank to the Reserve Bank for the past 6 months.
4. The documents are to be provided to the applicants electronically.
5. In the event of opposition, that those parties who oppose the intervention application be ordered to pay the costs of the intervention application.

and that the accompanying affidavit of YAHYA HASSAN will be used in support thereof.

**TAKE NOTICE THAT** the applicant has appointed **LARSON FALCONER HASSAN PARSEE INC.** at the undermentioned address of its attorneys at which it will accept delivery of documents and notices in the proceedings.

**TAKE NOTICE FURTHER** that if you intend opposing this application you are required:

- a) to file your answering affidavits, if any, on or before 16h00 on 15 September 2023; and
- b) that you are required to appoint in such notification an address at which you will accept notice and service of all documents in these proceedings.

*Duggan*  
**DATED at JOHANNESBURG** on this the 12<sup>th</sup> day of **SEPTEMBER 2023.**



**ATTORNEYS FOR THE APPLICANTS IN THE INTERVENTION APPLICATION  
LARSON FALCONER HASSAN PARSEE INC.**

93 Richefond Circle,  
Ridgeside Office Park,  
Umhlanga Rocks,  
4319

**C/O VRA ATTORNEYS PRETORIA INC.**  
Block B, PMA House

Pony Street  
Tijger Vallei Office Park  
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Pretoria  
Tel: 012 348 2167  
Email: [erabie@vra.legal](mailto:erabie@vra.legal)

**TO:** THE REGISTRAR OF THE ABOVE HONOURABLE COURT

**AND TO:** **ENS AFRICA**  
**Attorneys for the respondent**  
**The MARC, Tower 1**  
**129 Rivonia Road**  
**Sandton**  
**Johannesburg**  
**Ref: L Field / G Oertel**  
**Tel: 011 269 7600**  
**Email: [lfield@emsafrica.com](mailto:lfield@emsafrica.com) / [goertel@ensafrica.com](mailto:goertel@ensafrica.com)**

## ANNEXURE A

1. ELITE GROUP
2. MINTWAY INVESTMENTS
3. NEWFARM
4. SADERS ATTORNEY
5. MILITARY SURPLUS STORES CC
6. ARIFULLAH INTERNATIONAL CC
7. JOOSAB GROUP
8. SHAUKAT KARIM TRUST
9. PHOENIX MUSLIM SCHOOL
10. AL FALAL COLLEGE
11. INDEPENDENT GIVING
12. PROGRESS OFFICE MACHINES
13. HI 5 INVESTMENTS CC
14. ASHRAF VALLY
15. ESTATE LATE SIKANDER ALLY
16. E E MOOSA
17. SOHAIB ABOO
18. K I WHOLESALERS
19. R VALLY
20. TRIANGLE GROUP OF COMPANIES
21. N RAVAT

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

CASE NO.:

In the application of:

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

Applicants

And

**ZEENATH KAJEE N.O.**

First Respondent

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

Second Respondent

---

**FOUNDING AFFIDAVIT**

**(in the urgent application to compel disclosure of information pertaining to the  
Bank)**

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I, the undersigned,

**YAHYA HASSAN**

do state under oath that -

- 1 I am an adult male attorney and partner 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 I am authorised to depose to this affidavit, and to bring this on behalf of the parties set out in Annexure A to the notice of motion.
- 4 This is an application to inspect the books and records of HABIB OVERSEAS BANK LIMITED (in provisional winding up) (“the Bank”).
- 5 As I illustrate below various parties have expressed interest in purchasing and recapitalising the Bank. This transaction would safeguard the rights of depositors. However, the potential buyers require access to certain financial information of the Bank before they will make an offer. The liquidator has refused to provide this information without a court order. This is an application to obtain such a court order directing the liquidator to provide the depositors with the required information, so that the potential transactions can be fully explored.

### **THE APPLICANTS IN THIS APPLICATION**

- 6 The applicants in this application (“the depositors”), are all depositors with the Bank who have a positive credit balance on their accounts.
- 7 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.





- 8 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.
- 9 The details of the depositors are set out in the founding affidavit in the intervention application. I attach a copy of the intervention application (excluding annexures) hereto as annexure "YH1".

### **THE RESPONDENTS**


- 10 The first respondent is Zeenath Kajee N.O. an adult female liquidator whose principal place of business is located at second floor, Building B, Sunnyside Office Park, 32 Princess of Wales Terrace, Parktown. The first respondent was appointed as the provisional liquidator of the second respondent on 8 August 2023. The first respondent is represented by her attorneys ENS Africa.
- 11 The second respondent is HABIB OVERSEAS BANK LIMITED (in provisional winding up) a registered bank which was placed under provisional winding up by this Court on 8 August 2023.

### **THE INTEREST IN THE ACQUISITION AND RECAPITALISATION OF THE BANK**


- 12 There are at least three 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.



- 13 The prospective purchasers who have expressed interest in acquiring the Bank so far, are:
- 13.1 Sainsbury Investments (Pty) Ltd, represented by Dr B. G. Govender. A copy of the letter of interest submitted by Sainsbury is attached hereto marked "YH2". Sainsbury Investments is backed by the Public Investment Corporation. An accompanying letter to be forwarded by the PIC is anticipated to be received soon.
- 13.2 **Abdul Satar Dada.** Mr Dada is a businessman with diverse interests and is one of Botswana's richest individuals.
- 13.3 Anwar Khan, of Adsum Capital Management LLC, acting on behalf of an undisclosed Principal. I forwarded the contact details of Anwar Khan to the attorneys of the provisional liquidator.
- 14 I have been in contact with the above prospective buyers and have personal knowledge that they are interested in buying the shares in the Bank.
- 15 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 investigated further.
- 16 The applicants require the information both for the sake of providing the information to the above prospective buyers, but also in order to canvass for other prospective buyers. Certain of the depositors, for example Shaukat Karrim, an attorney, has access to numerous contacts within the South African Muslim community who may be interested in purchasing the Bank. The liquidator does



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not have access to these same contacts and the chances of a successful sale and recapitalisation of the Bank are increased by the involvement of the depositors. For example, it was through the agency of Karrim that Sainsbury Investments came to express an interest in acquiring the Bank.

## **THE REQUIRED INFORMATION**

- 17 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.
- 18 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.
- 19 By way of example: Sainsbury Investments have requested sight of the following documents to enable them to make an offer for the equity in the Bank:
  - 19.1 Latest audited financial statements;
  - 19.2 Banking records reflecting the size of deposits and the size of loans advanced;
  - 19.3 The curator's report and the record of fees paid to the curator;
  - 19.4 The details pertaining the banking platform (the software) used by the Bank; and
  - 19.5 Payroll details.



An email addressed to me by Anwar Khan, in which this documentation was requested, is attached hereto marked “YH3”.

- 20 On 14 August 2023, I addressed a letter to the liquidator requesting the information required. A copy of the letter is attached marked “YH4”.
- 21 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.
- 22 I responded to these letters on 23 August 2023. A copy of my response is attached marked “YH6”.
- 23 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”.
- 24 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”.



- 25 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".
- 26 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".
- 27 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 NEED FOR THIS APPLICATION**

- 28 It is clear from the above correspondence that the liquidator will not provide the required information in the absence of a court order. We do not agree with the liquidator's approach. None of the provisions cited by the liquidator prevent her from disclosing the required information so as to facilitate the potential transactions.
- 29 Without the required information being provided, the potential transactions to recapitalise the Bank cannot progress. This has obvious prejudicial consequences for the depositors.



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30 Consequently, it is necessary for the depositors to bring this application so as to avert the seriously prejudicial consequences which will flow inevitably from the final winding up of the Bank.

31 **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.”*

32 “Books and papers” includes accounts, deeds, writings, electronic data reduced to paper format and other documents.

33 The depositors are all creditors of the Bank (which is a company unable to pay its debts).

34 Consequently, the depositors are entitled to an order directing the liquidator to produce the books and papers of the Bank.

## **URGENCY**

35 The winding up application was itself brought on an urgent basis. This was because of the allegedly precarious financial position of the Bank which meant that the application could not wait to be heard in the ordinary course.


36 Similarly, this application cannot wait to be heard in the ordinary course.



- 37 The depositors need to be able to provide the prospective buyers with the required information so that the potential buyers can make an assessment as to whether to submit an offer to the liquidator. It is unlikely whether the prospective buyers will wait around (potentially for months) just to have sight of the information which will enable them to decide whether to submit a formal offer.
- 38 Even more importantly, the financial position of the Bank is likely to deteriorate with time, with the result that the acquisition of the Bank will become less attractive as a proposition for the prospective buyers. In other words, the delay in obtaining the information will jeopardise the potential sale and recapitalisation of the Bank, with the result that the Bank will not be saved and depositors will lose out.
- 39 Critically, the return date of the main winding up application is 19 September 2023. There is a possibility that the Court will grant a final order on the return date. Once the liquidator begins the process of selling the Bank's assets, the prospect of a buyer recapitalising the Bank will become remote. The adverse consequences of the Court granting a final winding up order have been dealt with in the intervention application.
- 40 It is therefore essential that the applicants obtain the order sought so that they can provide the prospective buyers with the necessary information so as to meaningfully pursue the transactions to recapitalise the Bank.



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



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 Durban on this the 12 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:

**APHSANA YUSUPH**  
COMMISSIONER OF OATHS  
PRACTISING ATTORNEY  
**APHSANA YUSUPH ATTORNEYS**  
SUITE 205, FNB HOUSE  
151 MUSGRAVE ROAD, DURBAN, 4001





"YH1"

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO.: 2023-071935

In the intervention application of:

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

Applicants  
(In the intervention application)

and

**PRUDENTIAL AUTHORITY**

First Respondent

**SOUTH AFRICAN RESERVE BANK**

Second Respondent

**HABIB OVERSEAS BANK LIMITED  
(in curatorship)**

Third Respondent

**PRICEWATERHOUSECOOPERS INCORPORATED**

Fourth Respondent

**CRAIG DU PLESSIS N.O.**

Fifth Respondent

**THE MINISTER OF FINANCE**

Sixth Respondent

*In Re:*

**PRUDENTIAL AUTHORITY**

First Applicant

**SOUTH AFRICAN RESERVE BANK**

Second Applicant

And

**HABIB OVERSEAS BANK LIMITED  
(in curatorship)**

First Respondent

**PRICEWATERHOUSECOOPERS INCORPORATED**

Second Respondent

**CRAIG DU PLESSIS N.O.**

Third Respondent

**THE MINISTER OF FINANCE**

Fourth Respondent

**NOTICE OF MOTION**

**(In the intervention application)**



**TAKE NOTICE THAT** the parties set out in Annexure A to this notice of motion (hereafter "the applicants") will, when the main application is heard, make application for relief in the following terms:

1. Dispensing with the forms, service and time periods prescribed in terms of the Uniform Rules of Court and directing that the intervention application be heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court.
2. The applicants are granted leave to intervene in the main application as fifth to further respondents.
3. In the event of opposition, that those parties who oppose the intervention application be ordered to pay the costs of the intervention application.

and that the accompanying affidavit of AHMED ISMAIL DESAI will be used in support thereof.

**TAKE NOTICE THAT** the applicant has appointed **LARSON FALCONER HASSAN PARSEE INC.** at the undermentioned address of its attorneys at which it will accept delivery of documents and notices in the proceedings.

**TAKE NOTICE FURTHER** that if you intend opposing this application you are required:

- a) to file your answering affidavits, if any, on or before 10h00 on 8 August 2023;
- and



b) that you are required to appoint in such notification an address at which you will accept notice and service of all documents in these proceedings.

**DATED at PRETORIA** on this the 7<sup>th</sup> day of AUGUST 2023.



**ATTORNEYS FOR THE APPLICANTS IN THE INTERVENTION APPLICATION  
LARSON FALCONER HASSAN PARSEE INC.**

93 Richefond Circle,  
Ridgeside Office Park,  
Umhlanga Rocks,  
4319

**C/O VRA ATTORNEYS PRETORIA INC.**

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Tijger Vallei Office Park  
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Pretoria

Tel: 012 348 2167

Email: vra@vra.legal

**TO:** THE REGISTRAR OF THE ABOVE HONOURABLE COURT

**AND TO:** **WERKSMANS ATTORNEYS**  
**Attorneys for the First and Second Applicants**

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Ref: Mr C Moraitis/ Mr C Manaka/ Ms K Rapoo/ SOUT3267.273

C/O Mabuela Incorporated Attorneys

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Premium Towers



Corner Lilian Ngoyi and Pretorius Streets  
Pretoria  
Tel: 012 325 3966  
Email: [mabuela@tiscali.co.za](mailto:mabuela@tiscali.co.za)

A handwritten signature in black ink, consisting of a stylized, cursive letter 'A' or similar character.A handwritten mark or signature in black ink, consisting of a simple, stylized shape that resembles a checkmark or a similar symbol.

# ANNEXURE "A"

NAME OF DEPOSITOR	AMOUNT
LOCKHAT ISLAMIA COLLEGE T/A FALAAH COLLEGE	R 3 469 819.00
TRIANGLE CASH AND CARRY UMZINTO	R15 000 000.00
EBRAHIM EBRAHIM	R 190 451.59
SAHAAN PROPERTY INVESTMENTS	R 594 382.43
IMBRIDEX	R 227 785.53
E EBRAHIM FAMILY INVESTMENT HOLDING	R 210 992.53
BUNKER HILLS INVESTMENTS 624	R 603 365.00
FARTAH PROPERTY INVESTMENTS	R 381 939.47
BURNT OAK INVESTMENTS	R 42 409.03
AMBER FALCON PROPERTIES 181	R 287 978.15
CAR BOSS CC: ACCOUNT NO: 1144 140 4407	R 519 351.08
INTERFIRST INVESTMENT CORPORATION (PTY)	R 1 064 725.18
BLUE MAGNOLIA TRADING 868 CC	R 1 226 445.86
NULLI SECONDAS DISTRIBUTORS (PTY) LTD	R 3 012 297.80
NULLI SECONDAS DISTRIBUTORS (PTY) LTD	R 2 990 153.98
APPLEPARK TRADING (PTY) LTD	R 231 137.00
CARTOON CLOTHING (PTY) LTD	R 6 254 109.00
ELITE MODA (PTY) LTD	R 3 781 308.00
ELITE MODA MANUFACTURERS (PTY) LTD	R 112 219.00
ESCORTGOLD TRADING (PTY) LTD	R 6 739 102.00
FERNCREST TRADING (PTY) LTD	R 2 514 206.00
KINTYRE INVESTMENTS (PTY) LTD	R 2 281 566.00
POINT ZERO CREATIONS (PTY) LTD	R 8 703 606.00
PROGRESS OFFICE MACHINES CC	R 7 166 095.69
NEWFARM INVESTMENTS	R 20 625 709.29
RETBO INVESTMENTS	R 4 908 354.24
THE OSMAN ADAM FAMILY TRUST	R 5 432 332.53
AHMED ADAM	R 227 599.82
TRAINWAY INVESTMENTS (PTY) LTD	R 251 000.00
TRAINWAY	R 150 000.00
PURPOSEFUL GIVING	R 800 000.00
FEIZUL AYOB: ESTATE LATE SIKANDER ALLY AYOB	R 7 100 000.00
ASHRAF VALLI VALLI	R 7 000 000.00
SHAIKAT KARIM AND COMPANY IN TRUST FOR GULFSTREAM	R 7 344 529.01
HI 5 INVESTMENTS CC	R 4 646 840.50
MAHOMED SHABIR OMAR	R 396 318.94

DUNRITE ACCOUNTING SOLUTIONS CC	R 681 824.58
WAHEEDA OMAR	R 443 383.04
NAZMIRA CARRIM	R 1 182 719.40
THE CAR HOUSE (PTY) LTD	R 4 701 601.31
NAMPOSE (PTY) LTD	R 33 239.23
S ABOO	R 44 538.57
KHARBHAI MOTORS CC T/A CARS	R 48 726.98
ARIFULLAH INTERNATIONAL CC T/A SUPER	R 12 551 346.34
PHOENIX MUSLIM SCHOOL	R 692 393.58
103 AMPHILL INVESTMENT	R 326 752.76
N ABOO	R 165 287.08
MISS FARHAAN ABDUL AZIZ DAUD	R 423 000.00
AHSAN ABDUL AZIZ DAUD	R 2 200 000.00
K I WHOLESALERS (PTY) LTD	R 849 367.77
KI WHOLESALERS (PTY) LTD	R 8 272 082.82
BIMAL AGGARWAL FAMILY TRUST	R 3 524.12
BIMAL AGGARWAL FAMILY TRUST	R 2 617 262.09
DARUL YATAMAH	R 5 000 000.00




IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO.: 2023-071935

In the intervention application of

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

Applicants  
(In the intervention application)

and

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

In Re:

<b>PRUDENTIAL AUTHORITY</b>	First Applicant
<b>SOUTH AFRICAN RESERVE BANK</b>	Second Applicant

And

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

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**FOUNDING AFFIDAVIT**

**(In the intervention application)**

---



1






I, the undersigned,

**AHMED ISMAIL DESAI**

do state under oath that -

- 1 I am an adult male businessman residing at 22 Kings Avenue, Westville, Durban.  
I am depositor in Habib Overseas Bank Limited ("the Bank").
- 2 I am a director in the following companies, all of which are depositors in the Bank  
–
  - 2.1 Cartoon Clothing (Pty) Ltd;
  - 2.2 Elite Moda (Pty) Ltd;
  - 2.3 Elite Moda Manufacturers (Pty) Ltd;
  - 2.4 Kintyre Investments (Pty) Ltd; and
  - 2.5 Point Zero Creations (Pty) Ltd.
- 3 The facts set forth in this affidavit fall within my personal knowledge unless the contrary is stated or appears from the context. To the best of my knowledge and belief they are true and correct.
- 4 I am authorised to depose to this affidavit, to bring this intervention application and to oppose the winding up on behalf of the parties set out in Annexure A to the notice of motion.

 J. 2  
 







## THE APPLICANTS IN THE INTERVENTION APPLICATION

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

↓ 3  
A  
C

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

- 11 The depositors therefore have a direct and substantial interest in the main winding up application.
- 12 The depositors are businesses, individuals or charitable institutions. By way of example:
  - 12.1 Nazmira Carrim is a single mother who sold her house and had the proceeds of the sale paid into her bank account with the Bank. She stands to lose most of her wealth through the winding-up of the Bank.
  - 12.2 Darul Yatamah is an orphanage which deposited R 5 million with the Bank.
  - 12.3 Phoenix Islamic School is a school which deposited about R700 000.00 with the Bank.
  - 12.4 Al Falaah is a school which deposited about R3.5 million with the Bank.
- 13 The deposits of the charitable institutions represent donations given to the institutions, and fees raised by the institutions, for the purpose of carrying on their charitable work.
- 14 The loss of the deposits belonging to these charitable institutions will have a detrimental effect on their ability to carry out their work and threatens their continued existence.

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15 Leave to intervene is therefore sought:

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

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

## INTERVENTION

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





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

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

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

18.1 Termination of the curatorship.

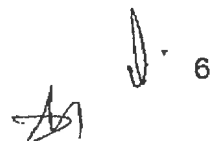
18.2 Protection of the depositors' interests by the appointment of a liquidator (or provisional liquidator) who will take control of the assets of the Bank and ensure that they are not dissipated.

   . 5  


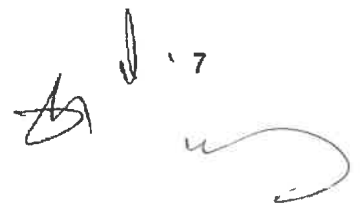
- 18.3 Time for the depositors to full explore the possibility of an equity transaction to recapitalise the Bank so as to allow it to continue as a going concern (and for depositors to be repaid in full).
- 19 The reason why the depositors favour provisional winding-up over final winding-up is because: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

### **WHY A PROVISIONAL ORDER IS PREFERABLE AT THIS TIME**

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



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

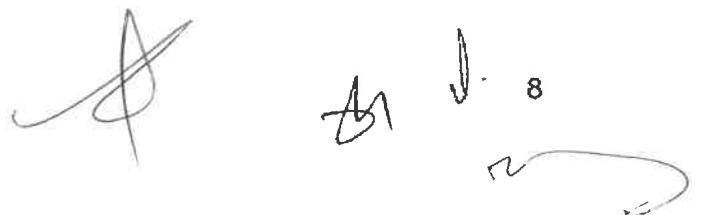


or unlikely to achieve an equity transaction to recapitalise the Bank, then this value will be lost (and depositors will lose out).

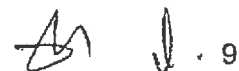
- 26 If a final order is granted, the liquidator will not be able to sell the Bank as a going concern. The liquidator will only be able to sell the assets of the Bank.
- 27 On the other hand, if the Bank is only placed into provisional winding-up then the liquidator will not be able to sell of the assets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

#### **THE PREVIOUS NEGOTIATIONS IN RELATION TO THE SALE OF THE BANK**

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

Handwritten signatures and initials at the bottom of the page. On the left is a large, stylized signature. To its right are several smaller initials and a signature, including a small '8' and a long, sweeping flourish.

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

 J. 9


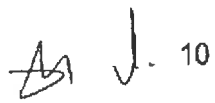

37.2 The depositors' attorneys will, at the same time, approach the Reserve Bank to gauge whether, in principle, the Reserve Bank would approve of such a transaction.

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

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

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

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

  10  




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

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

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

#### **THE URGENCY OF THIS INTERVENTION APPLICATION**

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

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



11



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

### THE TIMING OF THIS INTERVENTION APPLICATION

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

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

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

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

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

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



## CONCLUSION

49 The depositors have demonstrated:

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

49.2 That the application is made seriously.

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

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

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

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



AS J. 13



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

  
DEPONENT

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



COMMISSIONER OF OATHS

Full names: THIRUNEELAN MANDRI

Address: 93 RICHEFOND CIRCLE, RIDGESIDE OFFICE PARK  
UMHLANGA ROCKS

Capacity: COMMISSIONER OF OATHS

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





# SAINSBURY INVESTMENTS (PTY) LTD

# "YH2"

Reg No. 2007/05356/07

Telephone: +27 31 309 5561  
Facsimile: +27 31 309 5580  
Email: Intercon@lafica.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  
2<sup>nd</sup> 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:



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

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**ENS AFRICA**

**ATTENTION: LETITIA FIELD**

**PER EMAIL: [lfield@ensafrika.com](mailto:lfield@ensafrika.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

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





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)  
ATTORNEYS • NOTARIES • CONVEYANCERS

---

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



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)  
ATTORNEYS • NOTARIES • CONVEYANCERS

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

Two handwritten signatures in black ink, one on the left and one on the right, appearing to be initials or names.

**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

Insolvency, Restructuring and Business Rescue

+27 21 410 2500

+27 82 787 9504

[lfield@ENSafrica.com](mailto:lfield@ENSafrica.com)

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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@fhf.co.za>  
**Cc:** Beverly Sheik <Beverly.Sheik@fhf.co.za>; Gary Oertel <goertel@ensafrica.com>; Calvin Kekana <cckekana@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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+27 82 787 9504

[lfield@ensafrica.com](mailto:lfield@ensafrica.com)

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**From:** Yahya Hassan <yhassan@fhf.co.za>

**Sent:** 18 August 2023 04:44 PM

**ENS AFRICA**

**PER EMAIL:** [lfield@ENSafrica.com](mailto: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)  
ATTORNEYS • NOTARIES • CONVEYANCERS

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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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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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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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+27 82 787 9504

[lfield@ENSAfrica.com](mailto:lfield@ENSAfrica.com)

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[ENSAfrica email disclaimer](#)

**From:** Beverly Sheik <[Beverly.Sheik@lfhp.co.za](mailto:Beverly.Sheik@lfhp.co.za)>

**Sent:** 23 August 2023 03:36 PM

**ENS AFRICA**

**ATTENTION: LETITIA FIELD**

**PER EMAIL: [lfield@ensafrica.com](mailto: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.

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



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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# "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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Falconer  
Hassan  
Parsee

"YH10"

**WERKSMANS ATTORNEYS**

**ATTENTION: MR C MORAITIS**

**EMAIL: [cmoraitis@werksmans.com](mailto:cmoraitis@werksmans.com)**

**ATTENTION: MR C MANAKA**

**EMAIL: [cmanaka@werksmans.com](mailto:cmanaka@werksmans.com)**

**ATTENTION: MS K RAPOO**

**EMAIL: [krapoo@werksmans.com](mailto:krapoo@werksmans.com)**

**05 SEPTEMBER 2023**

**Our Ref: Y Hassan / Visha / D396/000**

**Your Ref: Sout3267.273**

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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.

Larson Falconer Hassan Parsee Inc. (Reg. No. 1994/001445/21)  
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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.

Larson Falconer Hassan Parsee Inc. (Reg. No. 1994/001445/21)  
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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@ensafrika.com](mailto:lfield@ensafrika.com)  
[ooertel@ensafrika.com](mailto:ooertel@ensafrika.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 Kajeer ("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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Parsee

**ENS AFRICA**

**ATTENTION: LETITIA FIELD**

**PER EMAIL: [lfield@ensafrica.com](mailto: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)  
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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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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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**LFHP**  
ATTORNEYS

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Hassan  
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## 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**

Insolvency, Restructuring and Business Rescue

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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](mailto:yhassan@lfhp.co.za) | Website: [www.alfhp.co.za](http://www.alfhp.co.za)

Physical Address: 2<sup>nd</sup> Floor 93 Richefond Circle, Ridgeside Office Park, Umhlanga Rocks, 4319

Postal Address: P.O. Box 3313, Durban, 4000 | Doceex 129, Durban, South Africa

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A handwritten signature in black ink, appearing to be 'YH' or similar initials, written in a cursive style.

## 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 <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

### Letitia Field

Executive

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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 <cckekana@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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lfield@ENSAfrica.com

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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





Larson  
Falconer  
Hassan  
Parsee

**ENS AFRICA**

**PER EMAIL:** [lfield@ENSafrica.com](mailto: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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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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Senior Associates: T. Botha  
Associates: C. Larsen • E. Parsee • M.Y. Jamal



## 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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• Website: [www.lfhp.co.za](http://www.lfhp.co.za)

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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**  
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lfield@ENSafrica.com

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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@ensafrica.com](mailto: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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• Website: [www.lfhp.co.za](http://www.lfhp.co.za)

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

A handwritten signature in dark ink, appearing to be 'S. R. Parsee', is located in the bottom right corner of the page.

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](mailto:anwar@adsum.ae)  
W: [www.adsum.ae](http://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

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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](mailto:Visha.Ramsunder@lfhp.co.za) | Website: [www.lfhp.co.za](http://www.lfhp.co.za)

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Two handwritten signatures in black ink, one on the left and one on the right, appearing to be initials or names.

**ENS AFRICA**

**ATTENTION: LETITIA FIELD**

**PER EMAIL: [lfield@ensafrica.com](mailto: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

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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

Executive

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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](mailto:Visha.Ramsunder@lfhp.co.za) | Website: [www.lfhp.co.za](http://www.lfhp.co.za)

Physical Address: 2<sup>nd</sup> Floor 93 Richefond Circle, Ridgeside Office Park, Umhlanga  
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**LARSON FALCONER HASSAN PARSEE INC.**

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Email: [yhassan@lfhp.co.za](mailto:yhassan@lfhp.co.za)

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[www.werksmans.com](http://www.werksmans.com)

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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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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**").

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Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa  
Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Arteiro K Badal T Bata JD Behr AR Berman P Bhagattjee  
NMN Bhengu AL Bilaty RE Bonnet HGB Boshoff TJ Boswell MC Brönn W Brown PF Burger HLE Chang PG Cleland JG Cloete PPJ Coetser C Cole-Morgan J Darling  
R Driman KJ Fyfe S Gast D Gewer JA Gobetz R Gootkin A Govuza GF Griessel N Harduth NA Hlatshwayo J Hollesen MGH Honiball BB Hotz AE Human T Inno  
HC Jacobs TL Janse van Rensburg AV Jara G Johannes S July J Kallmeyer A Kenny R Killoran N Kirby HA Kotze S Krige CJ Laitha H Laskov P le Roux MM Lessing  
E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Mardon PD Mashalane NT Mathebela JE Meiring H Michael  
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DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield L Watson D Wegierski G Wickins M Wiehahn  
DC Willans DG Williams E Wood BW Workman-Davies Consultant DH Rabin





- 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.

Two handwritten signatures in black ink. The first is a stylized signature on the left, and the second is a more fluid signature on the right with a small '2' written above it.



Yours faithfully

**WERKSMANS INC**

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

A handwritten signature in black ink, appearing to be a stylized name, followed by the number 3.