

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

**CASE NUMBER: 2023-071935**

In the matter between:

**THE PRUDENTIAL AUTHORITY**

First Applicant

**THE SOUTH AFRICAN RESERVE BANK**

Second Applicant

and

**HABIB OVERSEAS BANK LIMITED**

(in provisional liquidation)

First Respondent

**PRICEWATERHOUSECOOPERS INCORPORATED**

(In its capacity as the curator of Habib Overseas Bank Limited) Second Respondent

**CRAIG DU PLESSIS N.O.**

Third Respondent

**THE MINISTER OF FINANCE**

Fourth Respondent

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**REPLYING AFFIDAVIT**

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I, the undersigned,

**FUNDI TSHAZIBANA**

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do hereby make oath and state that –

- 1 I am the Chief Executive Officer of the Prudential Authority ("**Prudential Authority**" or "**PA**"), duly appointed as such in terms of section 36 of the Financial Sector Regulation Act 9 of 2017 ("**FSR Act**"). I am also the Deputy Governor of the South African Reserve Bank ("**the Reserve Bank**"), duly appointed as such in terms of section 4 of the South African Reserve Bank Act 90 of 1989 ("**SARB Act**").
- 2 I am the deponent to the PA and the Reserve Bank's founding affidavit and remain duly authorised to depose to this replying affidavit on their behalf. The PA and the Reserve Bank shall collectively be referred to as 'the Applicants'.
- 3 The facts contained in this affidavit are within my personal knowledge, save where otherwise stated or where the contrary is indicated by the context, and are to the best of my knowledge and belief both true and correct.
- 4 Some of the averments made herein deal with matters of law. It has become necessary to do so, in response to the contentions made in the answering affidavit. Where I make legal submissions, I do so on the advice received from the Applicants' legal representatives, which advice I accept as correct.

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## PURPOSE AND STRUCTURE OF THIS AFFIDAVIT

- 5 I have been advised that, on the eve of the return date, being 19 September 2023, an affidavit was filed in "opposition" to the final winding up order being granted on that day.
- 6 The deponent to that affidavit was fully aware that any answering affidavit, in opposition to the final winding up, was to have been delivered by 29 August 2023. The time periods for the delivery of further affidavits having been proposed by the parties who the deponent represents. In this regard I refer this Honourable Court to paragraph 9 of the answering affidavit.
- 7 By virtue of there having been no opposition to the final winding up of Habib Overseas Bank Limited ("**HOB**") by 29 August 2023 or for that matter until the answering affidavit was received late in the day on 13 September 2023, the matter was placed on the unopposed roll for hearing on 19 September 2023. When the answering affidavit was received and it was apparent that there was opposition to the final winding up being granted on that day, it was evident that the matter could not proceed on the unopposed roll on 19 September 2023 and that the return date would need to be extended to the next available date for the hearing of an opposed application.
- 8 The answering affidavit is deposed by Mr Yahya Hassan, an admitted attorney practicing as such at Larson Falconer Hassan Parsee Incorporated ("**LFHP**"), on behalf of a group of depositors, listed in Annexure A to the



notice of motion in an intervention application which was previously delivered in opposition to the initial urgent application for the winding up of HOB (the "**Group of Depositors**"). The intervention application was not proceeded with by the Group of Depositors in light of them having been pacified by an agreement that was reached between their legal representatives and the Applicants' legal representatives that a provisional winding up order would only be sought as set out in the draft order that was then handed up to the court and subsequently made an order by this court. As such the intervention application was not placed before this court, and a copy thereof is attached hereto marked "**RA1**".

9 The Group of Depositors have thus not as yet been joined to these proceedings and the status of their "answering affidavit" is therefore questionable. I nevertheless proceed to address the contents thereof without in any way waiving the Applicants' rights to contend that they have not been joined and consequently have no *locus standi*.

10 Prior to dealing with the respective paragraphs of the answering affidavit filed on behalf of the Group of Depositors, I wish to highlight the following:

10.1 the Group of Depositors do not dispute the fact that HOB is hopelessly insolvent. In fact the answering affidavit fails to address, in any way, the financial position of HOB and that it is not only hopelessly insolvent but that there are serious concerns regarding HOB's ability to function effectively as a banking institution due to the unsustainability of its



business model and compliance challenges (including regulatory and reporting), governance, operations, accounting, IT systems and lack of necessary skills and expertise from an overall staffing perspective. In this regard I refer this Honourable Court to that set out in paragraphs 24 to 26 and 45 of my founding affidavit;

10.2 the answering affidavit fails to address, in any way whatsoever, the pertinent issues raised by the Curator leading to the recommendations to have HOB wound up;

10.3 no meaningful details or information relating to the prospective purchaser or purchasers has been disclosed. Instead, vague and unsupported information is provided, and which can at best be said to be a possible list of suitors or middle-men who would be interested in looking for potential suitors;

10.4 the allegations contained in the answering affidavit constitute hearsay as no confirmatory affidavits have been filed;

10.5 the answering affidavit cannot truly be said to be an affidavit in opposition to the final winding up of HOB. At best it is a plea for more time to establish whether there are any prospective suitors who may wish to acquire an interest in HOB and recapitalise the bank. It fails to address any factual basis why HOB should not be finally wound up, at this time, based on its financial position and the operational and other

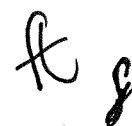
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issues with which it is faced. I am advised that further legal argument will be addressed to this Honourable Court on this aspect at the hearing of this application; and

10.6 the fact that there may in future be a potential acquirer or acquirers of the assets or shares of HOB is not a basis for the refusal of a final winding-up order. There is no reason why a liquidator cannot address these kinds of transactions under a final winding up order.

11 Based on the above alone, the opposition to the final winding up if that is indeed an opposition should be rejected.

12 In addition, and as I have set out in my founding affidavit, it is in the interests of the creditors of HOB, who are mainly its depositors, that it be wound up and, in this case, finally wound up. HOB is not an ordinary company; it is a bank and I have addressed in my founding affidavit, under the section dealing with the relevant regulatory framework, the important role that banks play in an economy. That relates not only to how a bank is treated whilst it is solvent, but also when it is under curatorship or in the future under resolution and in liquidation. The creditors of HOB who are mainly its depositors, will need to obtain access to their deposits or parts thereof (even in liquidation) and that will not occur whilst it is in provisional liquidation. After final winding up the liquidator can proceed to pay creditors (even if it is just a percentage of their claims). The Group of Depositors accordingly delay the winding up to the



prejudice of the general body of creditors and more importantly to the depositors.

13 In this regard I point out that the Second Applicant has already had to step in and provide a mechanism where depositors could receive up to R100 000 of their deposits from the Second Applicant to avoid any hardship arising from the demise of HOB. This was because HOB could not make these payments. The Second Applicant is thus a creditor in HOB for the amounts it has paid to depositors on behalf of HOB. Depositors will receive no further payments until the liquidator can distribute further amounts and that will not occur under provisional liquidation. Extending provisional liquidation beyond that period which is absolutely necessary will also increase the costs of administration and that will ultimately be to the detriment of creditors and depositors.

14 It is not lost on me that the parties who are now seeking to delay final winding up are themselves depositors and who will not have access to their deposits or even part thereof for a longer period, but based on the answering affidavit they appear to do so in the hope that an acquirer can be found who will then save the bank and "keep them whole". However, as a regulator I must act in the interests of all depositors, not only a handful and I cannot make decisions on future uncertain events. Based on the limited information in the answering affidavit I cannot responsibly delay what appears to be the inevitable based on the hope that a transaction may materialise and which at present is nothing more than, at best, parties indicating expressions of interest. I address this in more detail in the sections below.

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- 15 I have been advised that a party seeking to intervene in an application must seek leave to intervene and accordingly be granted such leave to intervene. The basis for such an intervention must be adequately and appropriately set out.
- 16 It is common cause that on 8 August 2023, the Group of Depositors did not move for any intervention and consequently no leave to intervene was dealt with or granted. A copy of the court order of 8 August 2023 is annexed hereto marked "**RA2**". I am advised that if the Group of Depositors wished to revisit their intervention application, they were duty bound to deliver a properly ventilated intervention application for consideration by the Applicants and this court. They have failed to do so.
- 17 I am further advised that, for the most part, the answering affidavit constitutes hearsay, in that it merely lists potential acquirers and information related to potential acquirers without properly taking this Honourable Court into confidence as to the reliability of the information provided or substantiation as to the veracity of the claims made.

#### **THE BASIS FOR OPPOSITION IS MISPLACED**

- 18 On 26 March 2023, HOB was placed under curatorship due to, *inter alia*, compliance, governance and operational failures. The Second Respondent, represented by the Third Respondent, opined that there was no reasonable

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probability that the continuation of the curatorship would enable HOB to pay its debts or meet its obligations and become a successful concern. This resulted in the Applicants launching the application for the winding up of HOB.

19 The Group of Depositors sought an extension of the return date on the central basis that the parties be permitted to fully explore potential transactions in order to recapitalise HOB. In doing so, they have set out various names of people who are apparently interested in acquiring the shares of HOB and recapitalising the HOB with the view that a transaction by one (or all) of the potential acquirers will "save" HOB and ensure that all depositors are repaid, in full.

20 The fundamental status of HOB has not changed whilst in provisional liquidation (although the position and in particular the financial position has likely deteriorated as a result of the passing of time and incurring of additional costs), in that:

20.1 HOB remains factually insolvent in that its liabilities significantly exceed its assets, and it is commercially insolvent and cannot pay its debts. As addressed in my founding affidavit, HOB's net asset value, in May 2023, was negative R114 million (before taking into account the costs of curatorship). The capital required would be a minimum capital injection of R364 million, factoring in the negative net asset value, given the minimum required statutory capital of R250 million. This capital requirement is before any additional capital that is required in

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people, to reposition the business model and strategy systems, and other contingencies (such as fines or legal actions which may arise) (the underlining is my emphasis and is highlighted for reasons which I will address below and having regard to a submission made in the answering affidavit and which I believe is incorrect or at least misleading); and

20.2 HOB has suffered significant reputational damage due to non-compliance (including regulatory and reporting), poor governance and operational failures.

21 I further note that the Group of Depositors are of the view that the recapitalisation of HOB would be an inexpensive exercise based purely on the capital injection of R364 million as at the date of the institution of the liquidation application. This is an over-simplification of the hurdles that HOB faced, and continues to face. The contentions of the Group of Depositors in this regard are misplaced as this is not a simple shopping exercise that they make it seem to be. It should be apparent to the Group of Depositors that the amount of R364 million addressed by the curator and referred to in the founding affidavit was a minimum amount.

22 The net asset value referred to above was value determined in May 2023 and has likely deteriorated further and probably significantly so. In addition, and as indicated in my founding affidavit, the costs of curatorship are still to be included in assessing the current net asset value. Accordingly, R364 million

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was the minimum amount of the capital injection required at the time and that is now probably significantly higher. In addition, the capital requirement referred to was before any additional capital that would be required in people, to reposition the business model and strategy systems, and other contingencies (such as fines or legal actions which may arise). As should be apparent to the Group of Depositors from the Second Respondents report to the First Applicant and which is referred to in and attached to my founding affidavit, HOB has not functioned effectively as a banking institution due to the unsustainability of its business model. That would require significant additional capital to address. Therefore the amount required to recapitalise HOB, if it is even capable of being recapitalised having regard to the issues faced by it, is likely to significantly exceed R364 million.

23 The process that the Group of Depositors wish to undertake through a potential acquisition can still occur during final liquidation as envisaged in terms of the Banks Act 98 of 1990 (the "**Banks Act**"), the Insolvency Act 24 of 1936 (the "**Insolvency Act**") and the Companies Act 61 of 1973 (the "**Old Companies Act**"). This is something that the Applicants' legal representatives have continuously articulated to the Group of Depositors. A copy of the correspondence is annexed hereto as "**RA2**" and "YH11" to the answering affidavit.

24 The Banks Act makes it possible for the "acquisition" of a bank to occur through two mechanisms, namely, section 37 (Permission for acquisition of shares in a bank or controlling company) and which addresses a transfer of

shares and section 54 (amalgamations, mergers and arrangements) relating to the transfer of assets, liabilities or assets and liabilities.

- 25 By virtue of the fact that the acquisition of shares in a bank or a bank controlling company or the transfer of assets, liabilities or assets and liabilities of a bank is a regulated transaction, particularly having regard to the relevant regulatory framework which applies to banks, a transaction of this nature can take a significant amount of time, requires compliance with the requirements of the Banks Act and the regulations prescribed in terms thereof and the outcome is uncertain. It is not uncommon for these types of transactions to take many months (that is after a party has submitted an application) and it is often an iterative process, where the outcome is uncertain. These transactions are also often subject to the approval of other regulatory bodies.
- 26 To seek to delay a final winding up of a bank in the hope that there may be a possible acquisition and recapitalisation of the bank (when currently there is no transaction) and that regulatory approval will be forthcoming, is in my respectful opinion reckless and misguided. The process will certainly not be completed by January 2024 and is unlikely to have formally commenced by then, even if a prospective acquirer expresses a firm interest by then. The regulatory process would then likely, again if there is even a prospective acquirer, take the better part of 2024 to conclude and the outcome would be uncertain.

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- 27 The Group of Depositors cannot seriously expect that the final winding up of a bank that is hopelessly insolvent (which has not been disputed) and that has not functioned effectively as a banking institution due to the unsustainability of its business model, is delayed in the hope that an acquirer will be found and who will also adequately recapitalise the bank and that regulatory approval for the transaction will be forthcoming.
- 28 It is clear from the two mechanisms that the regulatory processes envisaged may result in a protracted process which, in the PA's experience, can take many months to complete as addressed above. There is no certainty, at least from a regulatory stand point that permission or consent, as the case may be, will be granted. This element of uncertainty means that, should HOB remain in provisional liquidation all in the name of a potential acquisition, this would have a dire further impact on the state of the bank, to the detriment of the creditors, including the Group of Depositors.
- 29 In sum, notwithstanding any views by the Group of Depositors, it is not in the best interests of the creditors, that HOB is not placed in final liquidation as soon as possible. The longer HOB remains in provisional liquidation, the more the administrative costs increase, the less creditors, including the Group of Depositors receive. It is in the best interest of HOB and its creditors that a final winding-up order be granted immediately. If an acquiror does come forward then the liquidator can deal with this under final winding up and the relevant applications will be made to the regulatory authorities including the Applicants' in the normal course.

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30 I know turn to deal with the allegations made by the Group of Depositors in the respective paragraphs of their answering affidavit. In doing so, I address those paragraphs that are relevant for purposes of the order sought and do not repeat what I have already addressed above. Any averment not specifically addressed should be taken to be denied.

### ***AD SERATIUM RESPONSES***

#### **Ad paragraphs 3 - 4**

31 Although the affidavit is said to be filed in opposition to the final winding up order, no basis is laid out for such opposition, other than a request for more time. The reasons advanced are not adequate to justify the refusal of the final winding-up of HOB.

#### **Ad paragraphs 7 - 9**

32 Save to state that it is correct that an application to compel the disclosure of the financial information has been instituted against the provisional liquidator, the contents of these paragraphs are denied.

33 As previously stated, it is incorrect that an order for the final winding-up of HOB will have adverse consequences for depositors or the potential for any transaction to recapitalise HOB. Such an allegation is a clear

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misunderstanding of the legal framework associated with banks and entities in liquidation. The correct position is that:

33.1 the adverse consequences on the depositors is in actual fact associated with HOB not being placed in final liquidation; and

33.2 the envisaged transaction, could occur in final liquidation.

34 The Group of Depositors will have sufficient time to gauge market interest even if the bank is in final liquidation.

35 Furthermore, whether or not there are potential acquirers is merely hearsay at this point.

**Ad paragraph 10**

36 The contents of this paragraph are noted.

37 It should however be stated that the Group of Depositors have no *locus standi* to request that the powers of the liquidator be extended, as such, the order sought is incompetent.

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**Ad paragraphs 12 - 15**

38 The contention advanced that the winding up application affects the property rights of the depositors since there is a likelihood that the depositors will not be paid the full amounts standing to the credit of the bank accounts is not a basis for the refusal of the final winding up order.

**Ad paragraphs 16 - 40**

39 The contents of these paragraphs constitute hearsay and should be struck out as they are not confirmed nor verified.

40 In any event and as I have addressed above, vague, often anonymous and unsupported information is provided by the deponent to the answering affidavit in relation to potential acquirors of shares in the bank and who could also recapitalise the bank, and which can at best be said to be a possible list of suitors or middlemen who would be interested in looking for potential suitors. Nothing concrete is presented by the Group of Depositors. It is nothing more than a plea for more time. The Group of Depositors must have known this when they proposed the 19<sup>th</sup> of September 2023 as the return day for the winding up of HOB. Despite this, they have not presented any credible admissible evidence as to why HOB should not have been wound up on 19 September. Instead, they delivered an affidavit on the eve of the court that had the inevitable consequence of delaying the winding up order being sought.

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41 The provisions of Section 7 of the Banks Act have not been complied with.

**Ad paragraphs 41 - 43**

42 No potential buyers have expressed serious interest in buying the shares in HOB as alleged. An expression of interest to consider acquiring the shares of the HOB if any, is not a basis for opposition of a final winding up order in circumstances where HOB is hopelessly insolvent.

43 The contents of these paragraphs constitute hearsay.

44 I have addressed, earlier in this affidavit, the issue of the amount required to recapitalise the bank and do not repeat that here, save to record that the recapitalisation of the bank has nothing to do with the current shareholders' expectations in relation to a sale price for their shares.

**Ad paragraph 44 - 46**

45 These paragraphs clearly demonstrate that there is no basis for alleging that there is any serious interest in acquiring the shares in HOB, at this time or recapitalising the bank. At best there is nothing more than possible expressions of interest which amount to anything more, if that is even possible (having regard to the fact that HOB has not functioned effectively as a

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banking institution due to the unsustainability of its business model), than requiring time to conduct due diligence and obtaining information.

46 However, the Group of Depositors don't even appear to take account of the many issues which HOB currently faces, and which have been highlighted in the founding affidavit and the report of the curator attached thereto. In addition, financial information is attached to the founding affidavit and which the curator extracted from the books of HOB whilst it was under curatorship.

47 As for the latest audited financial statements of HOB, the Group of Depositors would note, if they had regard to paragraph 45.9 of my founding affidavit, that the last audited financial statements of HOB are for the period ended 31 December 2021. HOB's auditors have not prepared any further financial statements and have raised concerns around the completeness, accuracy and reliability of the financial information. This would all impact any possible acquisition, and it is for that reason that questions have been raised regarding the sustainability of the business model. This is not a simple question of receiving information and undertaking due diligence. The bank was dysfunctional.

**Ad paragraph 55 - 59**

48 It is denied that the extension of the return date is in the interest of all parties. The delay in granting the final winding up of the hopelessly commercially insolvent HOB is detrimental to the creditors, including the Group of

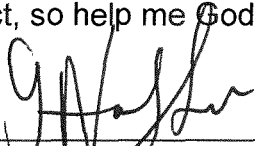
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Depositors. The ongoing costs of a provisional liquidation have a negative effect even to what the Group of Depositors purport to safeguard.

**WHEREFORE** the Applicants pray for a final winding-up order of HOB.

  
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**FUNDI TSHAZIBANA**

I certify that this affidavit was signed and sworn to before me at **PRETORIA** on this the **29<sup>th</sup>** day of September 2023, by the deponent who acknowledged that she knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on her conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

  
 \_\_\_\_\_  
**COMMISSIONER OF OATHS**

**Name:**

**Address:**

**Capacity:**

**GERTRUIDA ANNÉ VAN STRAATEN**  
 Commissioner of Oaths  
 Practising Attorney RSA  
 Suite 1 Selati Park  
 36 Selati Street Alphen Park Pretoria

*Rg*

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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**NOTICE OF MOTION**

**(In the intervention application)**

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**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

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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.**

Block B, PMA House  
Pony Street  
Tijger Vallei Office Park  
Silverlakes Drive  
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  
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5<sup>th</sup> Floor  
Suite 519  
Premium Towers



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

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## 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 603 365.60
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 600 000.00
FEIZUL AYOB: ESTATE LATE SIKANDER ALLY AYOB	R 7 100 000.00
ASHRAF VALLI VALLI	R 7 000 000.00
SHAUKAT KARIM AND COMPANY IN TRUST FOR GULFSTREAM	R 7 344 529.01
HI 5 INVESTMENTS CC	R 4 648 840.50
MAHOMED SHABIR OMAR	R 396 318.94

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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)**

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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.

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## 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

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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.

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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:

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- 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

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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 initials and a date: "AB", "J.", "8", "R", "g".

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.

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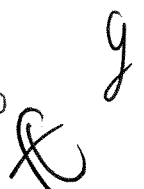
37.2 The depositors' attorneys will, at the same time, approach the Reserve Bank to gauge whether, in principle, the Reserve Bank would approve of such a transaction.

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.

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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.

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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.

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## 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.

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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 MAJORI

Address: 93 RICHEFOND CIRCLE, RIDGESIDE OFFICE PARK  
UMHLANGA ROCKS

Capacity: COMMISSIONER OF OATHS

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

"AD1a"



2 August 2023  
11:51:19

Account Statement

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

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

*[Handwritten signature]*





1 August 2023  
13:50:48

Account Statement

Account : 11448126805  
Customer : 101610 CARTOON CLOTHING MANUFACTURERS PTY  
Currency : ZAR

Book Date	Reference	Descript	Value Date	Debit	Credit	Closing Balance
		Balance at Period Start				5,630,863.53
31 MAY 23	AAACT23151X1KJK CM2	Interest - Capitalise	31 MAY 23		28,694.26	5,659,557.89
20 JUN 23	FT23171XXGC6	Transfer SARB-FNB	20 JUN 23	100,000.00		5,559,557.89
30 JUN 23	AAACT231814L7GLY ZD	Interest - Capitalise	30 JUN 23		27,729.33	5,587,287.22
		Balance at Period End				5,587,287.22

*Handwritten initials/signature*

"AD1b"



2 August 2023  
11:52:10

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

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

*[Handwritten initials and signature]*



1 August 2023  
13:49:39

Account Statement

Account : 11449152916  
Customer : 105938 ELITE MODA PTY LTD  
Currency : ZAR

Book Date	Reference	Descript	Value Date	Debit	Credit	Closing Balance
		Balance at Period Start				3,130,813.93
31 MAY 23	AAACT23151RMDK570Z	Interest - Capitalise	31 MAY 23		15,953.27	3,146,567.20
20 JUN 23	FT23171JB3VT	Transfer SARB-FNB	20 JUN 23	100,000.00		3,046,567.20
30 JUN 23	AAACT23181NCPT9JDW	Interest - Capitalise	30 JUN 23		15,336.50	3,061,903.70
		Balance at Period End				3,061,903.70

*Handwritten initials/signature*



"AD1c"

1 August 2023  
13:39:12

Account Statement

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

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

*Handwritten initials and signature*



2 August 2023  
11:25:51

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

Book Date	Reference	Descript	Value Date	Debit	Credit	Closing Balance
		Balance at Period Start				189,471.97
20 JUN 23	FT23171962W7	Transfer SARB-FNB	20 JUN 23	100,000.00		99,471.97
		Balance at Period End				99,471.97

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"AD1d"

2 August 2023  
11:54:46

Account Statement  
Account : 11448176507  
Customer : 108978 KINTYRE INVEST - CURR  
Currency : ZAR

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

*Handwritten initials/signature*



1 August 2023  
13:47:13

Account Statement

Account : 11449187906  
Customer : 106978 KINTYRE INVESTMENTS PTY LTD  
Currency : ZAR

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

*[Handwritten signatures and initials]*

"AD1e"



2 August 2023  
11:50:50

Account Statement  
Account : 11447934300  
Customer : 190231 POINT ZERO CREATIONS PTY LTD  
Currency : ZAR

Book Date	Reference	Descript	Value Date	Debit	Credit	Closing Balance
		Balance at Period Start				651,371.64
01 JUL 23	FT231829GSJ7	Inward EFT Payment CASHFOCUS L4807 81941WRSETAMG 6 3200	30 JUN 23		1,544.02	652,915.66
		Balance at Period End				652,915.66

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2 August 2023  
10:7:21

Account Statement

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

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

*Handwritten signature and initials*

"AD2"

**Muhammad Yusuf Jamal**

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

Dear Yahya and Muhammad,

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

Kind regards,  
Alten

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

Dear Jac

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

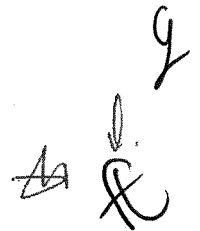
With respect to point 3, please note that the Buyer has specifically requested to maintain confidentiality as to their identity, and therefore must remain anonymous. Key terms of the deal were as follows:

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

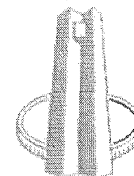
Kind regards

Imad

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

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"AD3"



SOUTH AFRICAN RESERVE BANK

**Media release**

**27 March 2023**

**Habib Overseas Bank Limited placed under curatorship**

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

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

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

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

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

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

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

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

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

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

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

Mr Du Plessis, the curator of Habib Overseas Bank, can be reached on [curatorhabiboverseas@pwc.com](mailto:curatorhabiboverseas@pwc.com).

## Background

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

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

Handwritten initials: "R L" and "A D".

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

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

**Issued by SARB Media Relations**

**Thoraya Pandey 082 416 8416**

**Ziyanda Mtshali 078 143 0553**

[media@resbank.co.za](mailto:media@resbank.co.za)

RG  
ZM

**ATTENTION: WERKSMANS ATTORNEYS**

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

**DATE: 01 AUGUST 2023**

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

**OUR REF: 21/P514/000**

Dear Sir/Madam

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

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

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

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) / [mjamal@lfhp.co.za](mailto:mjamal@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

*[Handwritten initials: R, G, A, D]*

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

Yours faithfully

*Y Hassan*

**Y HASSAN**

**LARSON FALCONER HASSAN PARSEE INC.**

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

*RG*  
*AS*

## 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

R G

to ↓



DELIVERED BY EMAIL

**LARSON FALCONER HASSAN PARSEE INC.**  
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2 August 2023

Dear Sirs

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

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

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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 Laltha 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 Matshebela JE Meiring H Michael  
SM Moerane R Moitse C Moraitis PM Mosebo NPA Motsiri L Naidoo K Neluheni JJ Niemand BW Ntuli BPF Olivier WE Oosthuizen Z Oosthuizen S Padayachy  
M Pansegrouw S Passmoor D Pisanti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdhin MDF Rodrigues BR Roothman W Rosenberg NL Scott TA Sibidla  
FT Sikhavhakhavha LK Silberman S Sinden DE Singo JA Smit BM Sono CI Stevens PO Steyn J Stockwell DH Swart PW Tindle SA Tom JJ Truter KJ Trudgeon M Tyfield  
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

*Ry* *AB* *J*



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

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

Yours faithfully

Werksmans Inc

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

RG  
A J 2

"AD5"

Muhammad Yusuf Jamal

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

Dear Jac

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

As discussed we request the following:-

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

The matter is urgent and please revert expeditiously.

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

Regards

**LFHP**  
ATTORNEYS

Larson  
Falconer  
Hassan  
Parsee

Yahya Hassan | Attorney, Conveyancer and Solicitor

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

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gk

AS

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

"RA2"  
0002-1  
SS  
8/8/2023

CASE NO.: 2023-071935

BEFORE THE HONOURABLE JUSTICE VAN DER SCHYFF  
DATE: 8 AUGUST 2023

In the matter of:

**PRUDENTIAL AUTHORITY**

First Applicant

**SOUTH AFRICAN RESERVE BANK**

Second Applicant

And

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

2023 -08- 08

First Respondent

**PRICEWATERHOUSECOOPERS INCORPORATED**

Second Respondent

**CRAIG DU PLESSIS N.O.**

Third Respondent

**THE MINISTER OF FINANCE**

Fourth Respondent

~~DRAFT ORDER~~

HAVING heard counsel, read the documents filed by the parties and having considered the matter, the following, is by agreement between the parties, made an order of Court.

**IT IS ORDERED THAT:**

1. The curatorship of the first respondent is terminated with immediate effect.
2. The first respondent is hereby placed under provisional winding-up.

*[Handwritten signature]*

0002-1

S.S

3. Ms Zeenath Kajee is hereby appointed as the provisional liquidator of the first respondent and the Master of the High Court, Pretoria is directed to appoint Ms Kajee as the first respondent's provisional liquidator within 48 hours of this court order.
4. All parties who have a legitimate interest in the final winding-up of the first respondent are called upon to put forward their reasons why this court should not order the final winding up of the first respondent on 19 September 2023, at 10:00 am or so soon thereafter as the matter may be heard.
5. Any party who wishes file an affidavit in support of, or in opposition to, the final winding-up of the first respondent is to do so by 29 August 2023.
6. Any responding affidavits are to be filed by 12 September 2023.
7. A copy of this order shall forthwith be:-
  - 7.1. served on the persons listed and in the manner prescribed in Section 346A of the Companies Act 61 of 1973;
  - 7.2. served on the first respondent at its registered address;
  - 7.3. sent to all known creditors and depositors by email; and,
  - 7.4. published in the Government Gazette and Citizen newspaper.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA  
JUDICIAL DIVISION,  
PRETORIA  
Private Bag X67, Pretoria 0001  
2023 -08- 08  
BY ORDER OF THE COURT  
GD-PHET-010  
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA  
*M. M. M. M.*

REGISTRAR

*g*

**DELIVERED BY EMAIL**

**LARSON FALCONER HASSAN PARSEE INC.**

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14 September 2023

Dear Sirs

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

- 1 The abovementioned matter and your clients' "answering affidavit" received on 13 September 2023, which seeks to, amongst others, extend the return date for the final liquidation order refer.
- 2 Our clients are amenable to an extension of the return date however propose that same be in either late November 2023 or early December 2023.
- 3 The basis for our proposal in paragraph 2 stems from one of the core reasons our clients have sought to liquidate Habib Overseas Bank Limited ("**Habib**"), namely, to do what is in the best interests of the creditors, which would include depositors. It therefore follows that, any further delays in the finalisation of the matter would be prejudicial to all creditors, which include your clients, due to, *inter alia*, the costs of administration while in provisional liquidation.
- 4 Furthermore, we wish to place on record that our clients agreement to the extension of the return date should not be construed as an admission to the remainder of the other orders stated in your

*kg*

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papers, in particular, the granting of your clients' intervention or the extension of the powers of the liquidator. We pause to mention that your request for the extension of the powers of the liquidator is in any event incompetent as your clients do not have the necessary *locus standi* to seek such an order.

- 5 We wish to again 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 the Honourable Court.
- 6 Please advise by no later than 12h00 tomorrow, Friday 19 September 2023, if your clients are agreeable to an earlier return date.
- 7 Our clients' rights remain reserved.

Yours faithfully

**WERKSMANS INC**

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

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