RULING OF THE TAKEOVER SPECIAL COMMITTEE

In re the matter of:

THE INDEPENDENT BOARD OF MURRAY & ROBERTS HOLDINGS LTD

HENRY LAAS

and

ATON GMBH

1. The complaints by the parties in this matter mainly covers two provisions of the Companies Act,2008 (the Act) namely sections 123 and 126. These two sections respectively provide as follows:

"Section**123 Mandatory offers,**

(1) - ***In this section "prescribed percentage" means percentage prescribed by the Minister in terms of subsection (5)***

(2) ***This section applies if-***

(a) either -

(i) …

(ii) a person acting alone has, or two or more related or inter-related persons, or two or more persons acting in concert, have, acquired a beneficial interest in voting rights attached to any securities issued by a regulated company;

(b) before that acquisition a person was, or persons contemplated in paragraph (a)(ii) together were, able to exercise less than the prescribed percentage of all the voting rights attached to securities of that company; and

(c) as a result of that acquisition, together with any other securities of the company already held by the person or persons contemplated in paragraph (a) (ii), they are able to exercise at least the prescribed percentage of all the voting rights attached to securities of that company.

(3) Within one business day after the date of an acquisition contemplated in subsection (2), the person or persons in whom the prescribed percentage, or more, of the voting rights beneficially vests must give notice in the prescribed manner to the holders of the remaining securities, including in that notice -

(a) a statement that they are in a position to exercise at least the prescribed percentage of all the voting rights attached to securities of that regulated company; and

(b) offering to acquire any remaining such securities on terms determined in accordance with this Act and the Takeover Regulations.

…

(5) For the purposes contemplated in this section, the Minister, on the advice of the Panel, may prescribe a percentage of not more than 35% of the voting securities of a company".

"126. Restrictions on frustrating action

(1) If the board of a regulated company believes that a bona fide offer might be imminent, or has received such an offer, the board must not –

(a) take any action relation to the affairs of the company that could effectively result in –

(i) a bona fide offer being frustrated; or

(ii) the holders of the relevant securities being denied an opportunity

to decide on its merits'

(b) issue any authorised but unissued securities

(c) issue or grant options in respect of any unissued securities;

(d) authorize or issue, or permit the authorisation or issue of, any securities carrying rights of conversion into or subscription for other securities;

(e) sell, dispose or acquire, or agree to sell, dispose of or acquire, assets of a material amount except in the ordinary course of business; or

(f) enter into contracts otherwise than in the ordinary course of business; or

(g) make a distribution that is abnormal as to timing and amount,

without the prior written approval of the Panel, and the approval of the holders of relevant securities, or in terms of a pre-existing obligation or agreement entered into before the time contemplated in this subsection.

(2) If a regulated company believes that it is subject to a pre-existing obligation contemplated in subsection (1), it may apply to the Panel for consent to proceed".

2. The Independent board of Murray & Roberts Holdings Ltd and Henry Laas (collectively M&R) filed a complaint against Aton GmbH (Aton) that Aton has acquired securities in M&R which pushed its shareholding to over 35% of M&R securities after Aton had made a firm intention announcement to acquire all or a portion of securities of M&R not already owned by Aton and has failed to make a mandatory offer as required by section 123 of the Act. The acquisition of securities which caused Aton to move over the 35% threshold took place pursuant to the conclusion of a Forward Sale Agreement between Aton and Allan Gray. This is common cause. M&R submits that because the acquisition took place independently and outside the provisions of the general offer, Aton should make a mandatory offer to all holders of

M&R securities. Aton on the other hand contends that the acquisition of securities in excess of the prescribed percentage during an offer period does not trigger a mandatory offer in terms of the Act and regulations. The Takeover Special Committee is in agreement with this contention. However, what is in issue, is whether the acquisition was outside and independent of the general offer and if so whether such acquisition falls foul of the provisions of subsection 123(2) of the Act.

3. The provisions of subsection 123(2) as quoted above do not provide for a qualification or a proviso. The provisions are clear and unambiguous. Given the fact that Aton has not disputed that the acquisition in terms of the Forward Sale Agreement was independent and outside the general offer such acquisition does fall foul of the provisions of subsection 123(2) of the Act and Aton should make a mandatory offer to all holders of M&R securities on the same or terms similar to the Forward Sale Agreement.

4. Aton's complaint against M&R is in terms of section 126 of the Act. Given the decision we have arrived at we find it unnecessary to deal with each complaint but only the overarching complaints appearing on pages 303-304 of the paginated documents The overarching complaints are set out as follows:

1. "ATON's overarching complaint regarding continuous frustrating actions on the part of the relevant M&R parties concerns, inter alia, the following:

1.1 the independent Board's Response Announcement, and the conduct of the independent Board since the publication of the Firm Intention Announcement, contravenes and is inconsistent with the requirements of Regulations 109 and 110 of the Takeover Regulations, in that inter alia it was unduly premature, hasty and made without all details or information pertaining to the Offer- dealt with more fully in part B below;

1.2 Mr Henry Laas' involvement in and apparent coordination of the Independent Board's consideration of and response to ATON's Offer- dealt with more fully in part C;

1.3 the independence of the Independent Board having been compromised, due to the involvement of Ms. Dianne Radley, who in terms of Regulation 108 (8) (c) of the Takeover Regulations, is regarded as non-independent – as explained in part D. Given her non- independent status, in the circumstances, Ms. Radley should not have taken part in nor be taking part in any of the Independent Board's deliberations and/or meetings in relation to the Offer;

1.4 the Independent Board making and repeating various misleading statements to M&R Shareholders regarding ATON's Offer, which is contrary to, inter alia, the requirements in Regulation 111(8) of the Takeover Regulations to exercise care not to issue statements that may mislead holders of relevant securities and the market or may create uncertainty – dealt with more fully in part E;

1.5 the Independent Board's unjustified and highly irregular withdrawal of its published cautionary announcement - dealt with more fully in part F;

1.6 M&R's conduct, in raising technical points without basis in fact and law is contrary to the principles underpinning Sections 119 and 126(1) of the Companies Act in the M&R Letter – mentioned in part G, and explained more fully in ATON's Response Letter;

1.7 the Independent Board's open statement of its intention to delay the regulatory approval process in connection with the Offer – dealt with more fully at part H;

1.8 the Independent Board's open instructions to M&R Shareholders to act contrary to the terms of the Offer and contrary to the Takeover Regulations – dealt with more fully at part I;"

5. Before the hearing of this matter the Chairperson of the Takeover Special Committee (Committee) issued a directive that given the fact that Aton's complaint essentially relates to conduct the parties were requested to agree on matters in dispute and those that are not in dispute. The Chairperson further indicated that the complaint relating to conduct would need the leading of evidence. Aton did not lead evidence and submitted

that the Committee should make its decision based on facts that are common cause and/or conceded by M&R at the hearing.

6. M&R's main defence against Aton's overarching complaints was based on fiduciary duties of the directors of any company to act in the interest of the company and shareholders which inter alia include advising the shareholders whether the offer price per share is fair and reasonable and ward off any conduct by the offeror that is prejudicial to the interest of the shareholders of the offeree. M&R strongly submitted that the provisions of section 119(1)(c) are aimed at preventing an independent board's actions that are "designed to impede, frustrate, or defeat an offer, or the making of fair and informed decisions by holders of that company's securities". M&R further argued that its conduct cannot be construed as a contravention of the provisions of section 126(1) of the Act. By implication, M&R's contention is that the offer by Aton does not constitute a bona fide offer and that it is obliged to advise the shareholders of M&R to reject it.

7. On the papers presented to the Committee and concessions made by Counsel for both parties to the Committee during their submissions the following facts are common cause:

7.1. Conference call transcript and participants which included Laas;

7.2. Financial Mail of 19 April to 25 April 2018 with prominent face of Laas;

7.3 Response Announcement to Firm Intention Announcement(FIA) of Aton a day after FIA;

7.4. The Response Announcement was made before the Board had knowledge of the independent expert's report on the valuation of the securities;

7.5. The Response announcement was based on a 2017 valuation;

8. The Committee is in agreement with the following submission by Aton: ***"Regulation 110 of the Takeover Regulations requires the Independent Board to obtain appropriate external advice from the Independent expert in the form of a fair and***

reasonable opinion, and that the Independent Board "must take cognizance of the fair and reasonable opinion received in forming its own opinion on an offer consideration" (Regulation 110(2))" (page 305 of the record para 18). The Committee is of the view that in doing so the Independent Board should take cognizance of the provisions of regulation 109(c) which provides as follows:

"While respecting regulatory timetables, allow sufficient time to discharge all duties and responsibilities and resist haste and pressured time deadlines".

The timeline between the FIA and the Response is in our view very short and the Response was made hastily. This conduct on the part of the Independent Board is prohibited by section 119(1)(c) read with section 126(1)(a) of the Act.

In light of the arguments heard and the common cause facts and concessions made during the hearing the Committee makes the following unanimous ruling:

1. ATON is directed to withdraw the offer it made (through its wholly owned subsidiary ATON AT) to the M&R shareholders (other than ATON and ATON AT) and it is ordered to made a mandatory offer on the same or similar terms to those contained in the Forward Sale Agreement entered into between ATON and Allan Gray (Pty) Ltd dated 29 March 2018 to all the shareholders of M&R in accordance with the mandatory offer provisions as set out in the Act and the Takeover Regulations.
2. The conduct of the Independent Board of M&R constituted a contravention of section 119(1)(c) reas with section 126(1)(a) of the Act.
3. Mr Laas in his capacity as CEO of M&R is orderd to refrain from making any public statements regarding or concerning the offer.
4. The rulings of the Committee must be published by the Takeover Regulation Panel in terms of Regulation 119(4).
5. The parties are ordered to pay the costs of the Panel in equal proportions.

DATED 25 MAY 2018

TAKEOVER SPECIAL COMMITTEE MEMBERS

1. NANO MATLALA
2. SANDILE SIYAKA
3. PROF. STEPHANIE LUIZ
4. TONY TSHIVHASE