
TAKEOVER REGULATION PANEL INVESTIGATION INVOLVING EXTRACT GROUP LIMITED, ENX GROUP LIMITED, ZARCLEAR HOLDINGS LIMITED, AFRICAN PHOENIX INVESTMENTS LIMITED AND OTHERS

1 INTRODUCTION

The Panel has received written complaints from certain persons (together, the "**Complainants**"), who each made separate but common allegations relating to the following transactions:

- a) the share repurchase in African Phoenix Investments Limited ("**API**") by way of a scheme of arrangement for the purposes of de-listing API on or about April 2020;
- b) the general offer involving Peresec Prime Brokers Proprietary Limited¹ ("**Peresec**") and Zarclear Holdings Limited² ("**Zarclear**") on or about September 2020;
- c) the share repurchase by Zarclear, by way of a scheme of arrangement, on or about August 2021 (the "**2021 Zarclear Repurchase**");
- d) the mandatory offer in ENX Group Limited ("**enX**") on or about April 2022 ("**enX Transaction**"); and
- e) the scheme of arrangement involving API and Zarclear on or about May 2022, (Collectively, the "**Transactions**").

2 THE NATURE OF THE COMPLAINT

- 2.1 The crux of the complaints is that certain parties involved in the Transactions (the "**impugned parties**") failed to disclose that they were acting in concert, in relation to the Transactions, during the Panel's consideration and approval thereof. Alternatively, if these relationships were disclosed to the Panel, they were not disclosed timeously, and as stipulated by the Companies Act 71 of 2008 (the "**Act**") and the takeover regulations (collectively, the "**Takeover Provisions**"). Instead, this status was disclosed much later, allowing the impugned parties to maximize the value that accrued to them at the expense of other shareholders under some or all of these Transactions.
- 2.2 Concerning the 2021 Zarclear Repurchase, the Complainants alleged that the impugned parties failed to disclose their concert party relationships with the offerors therein and voted during the scheme meeting in contravention of the Takeover Provisions.
- 2.3 Further, concerning the enX Transaction, they alleged that the impugned parties acquired shares in enX at prices higher than that offered to offeree shareholders, in contravention of the Takeover Provisions. Furthermore, the the composition of the board of enX may have been altered during the enX Transaction in violation of the Takeover Provisions.
- 2.4 Lastly, concerning the scheme of arrangement between API and Zarclear, in 2022, the potential liability of API in respect of the Extract Group Limited ("**Extract**") mandatory offer was not considered by the independent expert.
- 2.5 The complaints, among others, mention the following impugned parties:
 - a) API and some or all of its directors at all material times of the complaints;

¹ Formerly known as Legae Peresec Capital Proprietary Limited

² formerly known as Sandown Capital Limited

- b) Extract and some or all of its directors at all material times of the complaints;
- c) Zarclear and some or all of its directors at all material times of the complaints;
- d) Peresec South Africa Limited and some or all of its directors at all material times of the complaints;
- e) Nkhohli Consolidated Investments Proprietary Limited and some or all of its directors at all material times of the complaints;
- f) Zolospan Proprietary Limited and some or all of its directors at all material times of the complaints;
- g) MCC Contracts Proprietary Limited and some or all of its directors at all material times of the complaints;
- h) SBSA ITF Sui Generis LPFP H4 QHF and some or all of its officers or beneficiaries at all material times of the complaints; and
- i) Peresec and some or all of its directors at all material times of the complaints.

3 COMMENCEMENT OF THE PANEL INVESTIGATION IN TERMS OF CHAPTER 7 OF THE ACT

- 3.1 Having considered the complaints, the Executive Director of the Panel determined that these complaints are neither frivolous nor vexatious and give rise to a reasonable suspicion that an infringement of the Takeover Provisions may have occurred in respect of the Transactions. At this stage, no adverse findings have been against any of the impugned parties.
- 3.2 On that basis, he appointed Mr Zano Nduli, the Deputy Executive Director of the Panel, as an inspector in terms of section 209(1)(a) of the Act, to investigate the complaints in terms of Chapter 7 of the Act and then report to him on the outcome of the investigation.
- 3.3 Having regard to the above, the inspector has deemed it fit to invite interested parties who wish to make submissions concerning the Transactions and the impugned parties to do so within 14 days from the date of publication of this announcement.

4 RESPONSIBILITY STATEMENT

The TRP accepts responsibility for the information contained in this announcement which relates to the above-mentioned potential transaction and confirms that, to the best of its knowledge and belief, such information is true and the announcement does not omit anything likely to affect the importance of such information.