

TAKEOVER SPECIAL COMMITTEE

In the matter between:

ABRAHAM ALBERTUS CILLIERS

Applicant

and

TAKEOVER REGULATION PANEL

First Respondent

and

EXECUTIVE DIRECTOR

Second Respondent

and

DEPUTY EXECUTIVE DIRECTOR

Third Respondent

and

AFRICAN PHOENIX INVESTMENTS LIMITED

Fourth Respondent

and

ENX GROUP LIMITED

Fifth Respondent

and

EXTRACT GROUP LIMITED

Sixth Respondent

and

AFRICAN PHOENIX INVESTMENTS LIMITED

Seventh Respondent

DECISION

1 INTRODUCTION AND BACKGROUND FACTS

- 1.1 On 17 July 2023, the Applicant through its attorneys, Pike Law wrote to the executive director of the Takeover Regulation Panel (“Panel” or “Executive Director”), giving formal notice of its request for a review of certain decisions of the Executive Director and/or the deputy executive director of the Panel relating to some affected transactions involving the 4th to the 7th Respondent by the Takeover Special Committee”) (“TSC”).

- 1.2 On 18 July 2023, the Executive Director addressed an email attaching the Applicant's letter of 17 July 2023 to, *inter alia*, the TSC chairperson and members. The email reads:

"Dear Mr Siyaka and TSC Members

We trust you are well.

Please see attached a letter noting a review of the investigation process and the Panel's settlement.

We shall be in touch regarding the scheduling of the pre-hearing meeting wherein the dates regarding the actual hearing and exchange of papers will be decided.

Warmest regards,

Andile Nikani"

- 1.1 On 21 July 2023, the attorneys of the 4th to the 7th Respondent, Herbert Smith Freehills ("HSF") wrote to the Executive Director challenging the basis of the review application launched to by the Applicant. HSF, in effect questioned the legal appropriateness of the Applicant's initiation of the review proceedings in terms of regulation 120 of the companies regulations, 2011 ("Regulations") as well as the jurisdiction of the TSC to hear and decide on the matter under review. The 4th to 7th Respondent were of the view that "until such time as an application for review has been filed and the jurisdiction of the Takeover Special Committee confirmed, a meeting on the matter will serve no purpose"
- 1.2 In light of respective submissions by the parties on the appropriateness of the initiation of the review proceedings and question on the TSC's jurisdiction, the TSC requested the parties to make formal submissions through heads of argument for a hearing on the appropriateness of the initiation of the review and the on the question of the TSC's jurisdiction.
- 1.3 The hearing was held on 26 July 2023.
- 1.4 The 1st to 3rd Respondent did not participate in this hearing.

2 JURISDICTION OF THE TSC

- 2.1 The Applicant, in the main, submitted that the matter was properly before the TSC and that the TSC has jurisdiction to hear and decide the matter having being referred to it for a decision by the Executive Director in accordance with section 202(3) (a)(ii) of the Companies Act 2008 ("Act").
- 2.2 The 4th to 7th Respondent contended, *inter alia*, that the Applicant had not utilised the appropriate provisions of the Act to initiate the review proceedings before the TSC and that the Applicant was out of time in initiating review proceedings challenging the

Executive Director's ruling in terms of Regulation 118(8) or a compliance notice in terms of section 172(1) of the Act. The Applicant submitted that he was unsuited to bring the review before the TSC in terms of Regulation 118(8) nor section 172(1) of the Act because there was neither a ruling nor a compliance notice by the Executive Director to challenge but rather had brought his review application before TSC *via* the Executive Director in terms of section 202(3) (a) (ii) of the Act which does not have a time limit for bringing a review.

2.3 Section 202 of the Act provides:

“(3) The Takeover Special Committee may—

(a) hear and decide—

(i) any matter referred the Panel; to it by and

*(ii) **any matter that the Executive Director, or a deputy Executive Director acting in the capacity of the Executive Director, may refer to it**” (our emphasis)*

2.4 We are of the view that the email by the Executive Director to the TSC of 18 July 2023 quoted in paragraph 1.2.above constituted the referral of the matter in terms of section 202(3) (a) (ii) of the Act finding the TSC's jurisdiction .

3 DECISION

3.1 Having heard and considered the submission of the parties, we find and confirm that the TSC has jurisdiction to hear and decide the matter referred to it by the Executive Director in terms section 202(3) (a) (ii) of the Act.

Mr Sandile Siyaka

Chairperson: Takeover Special Committee

We Agree:

Mrs Neo Dongwana and Ms Nocamagu Mbulawa

Members of the Takeover Special Committee

APPEARANCES:

For applicant: G Elliot SC

Instructed by Pike Law, Cape Town

For Respondents A Subel SC

Instructed by Herbert Smith Freehills South Africa LLP, Johannesburg