

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE: 22763/20

In the matter:

GOLD CIRCILE (PTY) LTD

[Registration: 1998/024366/07]

and

PHUMELELA GAMING & LEISURE LIMITED

[Registration: 1997/016610/06]

**JOHN EVANS N.O (In his capacity as business
rescue practitioner of the first respondent)**

**MARY OPPENHEIMER DAUGHTERS (PTY)
LTD**

[Registration 2017/475601/07]

BETFRED LIMITED

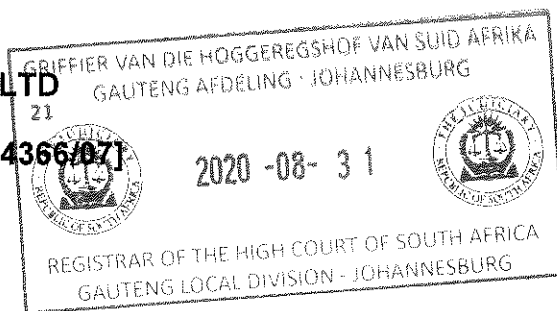
Applicant

First Respondent

Second Respondent

Third Respondent

Fourth Respondent



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TO: **THE REGISTRAR OF THE HIGH COURT**
JOHANNESBURG

AND TO: **PHUMELELA GAMING & LEISURE LIMITED**

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Att: Colin Strime – cstrime@fluxmans.com

AND TO: **JOHN EVANS**

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Att: Colin Strime – cstrime@fluxmans.com

AND TO: **MARY OPPENHEIMER DAUGHTERS (PTY) LTD**

Third Respondent
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Attention: Emma Callister

Chief Operating Officer – emma.callister@eason.co.za

AND TO: **BETRED LIMITED**
Fourth Respondent
Attention: Philip Siers
Chief Commercial Officer – phil.siers@betfred.com

COUNSEL'S CERTIFICATE OF URGENCY

I, **Jonathan Brewer**, hereby certify that this matter is of such urgency that it must be heard during the period of Lockdown, or during a period during which restrictions are in place relating to the free movement of persons owing to measures to combat the covid-19 infection pandemic.

A handwritten signature in black ink, appearing to be 'JB', is written over a horizontal line.

ADV. JONATHAN BREWER

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 IN THE HIGH COURT OF SOUTH AFRICA
 GAUTENG LOCAL DIVISION, JOHANNESBURG
 REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
 GAUTENG LOCAL DIVISION - JOHANNESBURG

2020-08-31

CASE NO: 22763/20

In the matter between:

GOLD CIRCLE (PTY) LTD
 [Registration: 1998/024366/07]

Applicant

and

PHUMELELA GAMING & LEISURE LIMITED
 [Registration: 1997/016610/06]
 In Business Rescue

2020-08-31

First Respondent

JOHN EVANS N.O. (In his capacity as business
 rescue practitioner of the first respondent)

Second Respondent

MARY OPPENHEIMER DAUGHTERS (PTY) LTD
 [Registration: 2017/475601/07]

Third Respondent

BETFRED LIMITED

Fourth Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the applicant will apply to this Court, on an urgent basis, on the 1 September 2020, at 09h00 or so soon thereafter as counsel may be heard, for the following order:

1. The applicant's non-compliance with the rules relating to time periods, service and forms is condoned and the application is heard as one of urgency as contemplated in Uniform Rule 6(12).

2. To the extent necessary, the applicant is granted leave to bring this application in terms of section 133(1)(b) of the Companies Act, 2008.
3. Subject to paragraphs 4 – 6 below, the first and second respondents are, *pendente lite*, interdicted and restrained from:
 - 3.1 putting to any meeting under Section 151 of the Companies Act, 2008 or adopting, implementing, or giving effect to, any business rescue or other plan in respect of the first respondent which contemplates or requires the disposal by the first respondent of any more than 61% of the issued shares in Phumelela Gold International Limited;
 - 3.2 selling, or offering for sale, to anybody, whether as part of the business rescue proceedings or otherwise, any more than 61% of the issued shares in Phumelela Gold International Limited.
4. The applicant is ordered to commence legal proceedings to seek final relief in relation to its claim to ownership of 39% of the shares in Phumelela Gold International Limited, within 20 business days of the grant of this order.
5. If the applicant fails to launch proceedings as required by paragraph 4, the interdict in paragraph 3 shall lapse and be of no further force or effect.

6. If the applicant launches proceedings as required by paragraph 4, then the interdict in paragraph 3 hereof shall endure until such proceedings are finally determined.
7. The first and second respondents are ordered to pay the costs of this application, including the costs of two counsel, jointly and severally, if they oppose the relief sought.
8. Such further and/or alternative relief as this court may deem appropriate.

TAKE NOTICE FURTHER THAT:

- [A] The affidavits of **MICHEL JOSEPH LAURENCE NAIRAC** and **RICHARD McELLIGOTT** will be used in support of the application.
- [B] The applicant has appointed the address of its attorney below at which it will accept service.
- [C] If either respondent intends opposing this application it is required to-

- (i) notify the applicant's attorneys in writing on or before **12h00** on **31 August 2020** at the address below or at the email addresses croberts@barkers.co.za and dfonseca@barkers.co.za;
- (ii) appoint in the notice referred to in (i) an address referred to in rule 6(5)(b) of the uniform rules at which it will accept notice and service of all documents in these proceedings;
- (iii) deliver an answering affidavit, if any, by **18h00** on **31 August 2020** at the address below or the aforesaid email addresses.

[D] If necessary, the applicant will file its replying affidavit by **21h00** on **31 August 2020**.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING.

DATED at JOHANNESBURG this 31ST day of August 2020



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TO: THE REGISTRAR OF THE HIGH COURT
JOHANNESBURG

AND TO: PHUMELELA GAMING & LEISURE LIMITED
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AND TO: JOHN EVANS
Second Respondent
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The Woodlands
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Attention: Colin Strime – cstrime@fluxmans.com

AND TO: MARY OPPENHEIMER DAUGHTERS (PTY) LTD
Third Respondent
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Attention: Emma Callister
Chief Operating Officer – emma.callister@eason.co.za

AND TO: BETFRED LIMITED
Fourth Respondent
Attention: Philip Siers
Chief Commercial Officer – phil.siers@betfred.com

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GOLD CIRCLE (PTY) LTD
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And

PHUMELELA GAMING & LEISURE LIMITED
[Registration: 1997/016610/06]
In Business Rescue **First Respondent**

**JOHN EVANS N.O. (In his capacity as business
rescue practitioner of the first respondent)** **Second Respondent**

MARY OPPENHEIMER DAUGHTERS (PTY) LTD
[Registration: 2017/475601/07] **Third Respondent**


BETFRED LIMITED **Fourth Respondent**

FOUNDING AFFIDAVIT

I, the undersigned, **MICHEL JOSEPH LAURENCE NAIRAC**, state under oath:

1. I am an adult male, Chief Executive Officer of the applicant.

2. The facts deposed to fall within my personal knowledge, save where the context indicates otherwise, and are true and correct.



SUMMARY OF APPLICATION

3. The applicant contends that it owns, and the first respondent holds as the applicant's nominee, 39% of the shares in Phumelela Gold International Limited (a company registered in the Isle of Man). The applicant also contends it is entitled to take transfer of those shares from the first respondent upon demand. The second respondent is the business rescue practitioner in charge of the business rescue of the first respondent. The second respondent refuses to recognise the applicant's 39% ownership and/or entitlement. The second respondent has proposed a business rescue plan for the first respondent in terms of which 100% of the shareholding in Phumelela Gold International Limited will be sold as an asset of the first respondent exclusively. The applicant seeks to interdict the second respondent from implementing this plan and the proposed sale, pending the final determination of the dispute by a court or an arbitrator.

4. Against that broad summary, I structure this affidavit as follows:
 - 4.1 The parties;

 - 4.2 The history of the partnership which gave rise to the applicant's ownership of its shares in Phumelela Gold International Limited (between the applicant, its predecessor and the first respondent);



- 4.3 Evidence supporting the applicant's claim regarding the 39% shareholding;
- 4.4 Recent developments;
- 4.5 Requirements for an interim interdict;
- 4.6 Urgency;
- 4.7 Leave to proceed in terms of section 133 of the Companies Act, 2008.

THE PARTIES

- 5. The applicant is Gold Circle (Pty) Ltd [Registration: 1998/024366/07], a company, with limited liability, duly incorporated and registered according to law, with its principal place of business at 150 Avondale Road, Durban.
- 6. The first respondent is Phumelela Gaming and Leisure Limited:
 - 6.1 It is a public company, duly incorporated and registered according to law, with registration number 1997/016610/06 and its registered address at Turffontein Racecourse, 14 Turf Club Street, Turffontein, Johannesburg, 2001.



6.2 It was placed into business rescue in May 2020.

7. The second respondent is John Evans:

7.1 He is an adult male, business rescue practitioner.

7.2 He conducts business at c/o RS Advisors, 2nd Floor, Building 13, The Woodlands, Woodmead Drive, Sandton.

7.3 He is cited in this application in his capacity as the duly appointed business rescue practitioner for the first respondent.

7.4 In the correspondence traversed below, he has been represented by Fluxmans Attorneys, in particular, Mr Colin Strime who uses email address cstrime@fluxmans.com.

8. The third respondent is Mary Oppenheimer Daughters (Pty) Ltd:

8.1 it is a private company, duly incorporated and registered according to law, with registration number 2017/475601/07 and its registered address at 13 Baker Road, Rosebank, Johannesburg, Gauteng. It will be notified of this application by email, at emma.callister@eoson.co.za, which is the email address of Emma Callister, its Chief Operating Officer.



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- 8.2 it is cited in these proceedings only by reason of its potential interest and no relief is sought against it.
9. The fourth respondent is Betfred:
- 9.1 it is a limited liability company, duly incorporated and registered according to law in the United Kingdom, with registration number 04815730. It will be notified of this application by email, at phil.siers@betfred.com, which is the email address of Philip Siers, its Chief Commercial Officer.
- 9.2 it is cited in these proceedings only by reason of its potential interest and no relief is sought against it.
- 9.3 The notice of motion seeks condonation for non-compliance with the service required by the Rules. This includes non-compliance with Rule 5, which would ordinarily apply to Betfred.
10. Although not a party to this application, as mentioned above, Phumelela Gold International Limited is relevant to this application:
- 10.1 It is a company registered and incorporated in the Isle of Man.
- 10.2 Its registration number is 109784C with registry type '1931 Act Company'.

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- 10.3 Its date of incorporation is 3 December 2003.
- 10.4 As far as I am aware, it holds 50% of the issued shares in a company called Premier Gateway International Limited, which is also registered and incorporated in the Isle of Man.
11. For convenience, the applicant will henceforth be referred to as "Gold Circle", the first respondent as "Phumelela", the second respondent as "the BRP" (meaning, business rescue practitioner) and Phumelela Gold International Limited as "PGI".

HISTORY OF THE PARTNERSHIP BETWEEN GOLD CIRCLE (INCLUDING ITS PREDECESSOR) AND PHUMELELA

12. I have been advised that as this is an application for interim relief (with the main disputes to be finally determined in arbitration or trial) it is not necessary for me exhaustively to canvass all the relevant agreements. I endeavour to sketch a summary below.
13. Prior to November 2002, there existed an arrangement between, on the one hand, a partnership described as Totalisator Agency Board (Natal) and, on the other hand, Phumelela. Totalisator Agency Board (Natal) was commonly known as "TAB". TAB was a partnership between Gold Circle, Clairwood Turf Club, Durban Turf Club, Pietermaritzburg Turf Club and Western Province Racing Club. As explained below, Gold Circle ultimately took over the business run by those partners.



14. The arrangement related to TAB and Phumelela effectively combining their totalisator betting pools and processes.
15. A totalisator is a scheme or system by means of which bets are accepted and aggregated into a pool and dividends are calculated and paid on a proportional basis depending on the result of a horse race or a series of horse races. The horse race operator that runs the totalisator keeps a portion of the pool as its fee. (This explains the concept in broad terms.)
16. Prior to and during 2002, Phumelela owned and operated totalisator businesses in the Eastern Cape, Free State, Gauteng, Mpumalanga, Northern Cape, North West Province and the Northern Province. At the same time, TAB conducted totalisator businesses in KwaZulu-Natal, Western Cape Province and Namibia.
17. Effectively what Phumelela and TAB wanted to do was to combine their totalisator businesses (in South Africa) and run one collective pool. Phumelela and TAB had decided it was better to join the two pools together, accept bets into one pool and declare one dividend. The obvious issue that arose was how to split the proceeds from the totalisator between Phumelela and TAB. The parties agreed at the time that a simple formula for doing so was to compare the independent turnover generated by each of them in their separate pools and apportion revenue from the single pool accordingly. After rudimentary calculations were performed, it transpired that if one combined the totalisator



revenue for all betting streams between Phumelela and TAB separately, Phumelela's share was 61% and TAB's 39%. The respective parties agreed that for all bets into the combined totalisator pool received over the internet or via telephone, the proceeds would be shared according to that ratio. (For over the counter bets at the individual totalisator locations, that party would keep that revenue.)

- 18. It was also agreed that this apportionment would be applied to other ventures and revenue streams including international betting operations, such as PGI which was formed later. As Chief Executive Officer of Gold Circle at the relevant times, I can speak to this and all the other contractual arrangements referred to hereafter because I was involved in the negotiations at the time. Richard McElligott, the Deputy Chairman of Gold Circle's board of directors from 2001 to 2004 and Chairman thereof from 2004 to 2008, was also involved. His confirmatory affidavit is delivered herewith, confirming what I have stated.
- 19. This arrangement led to the conclusion of a partnership agreement in November 2002 between Phumelela and the TAB partners. It became known as the Phumelela Gold Enterprises partnership ("the PGE Partnership").
- 20. I do not want to burden this application by putting up full copies of all the agreements. In order to keep these papers terse, I shall only put up what I consider to be the immediately relevant extracts of these agreements. However, I am advised that should there be a need to interpret these agreements, it will be

necessary to have regard to the full agreement. I shall deliver a separate bundle comprising the full agreements in case these are needed, all of which are in possession of the first and second respondents.

21. The relevant extracts of the PGE Partnership agreement are collectively annexed hereto marked "MN1". The agreement was concluded in Johannesburg on 28 November 2002 between Phumelela and the TAB partners:

21.1 The cover pages reflect the parties to the agreement;


21.2 Paragraphs A – D of the preamble reflect the history and shared intention regarding the partnership as I have outlined above.

21.3 Clause 5 describes the business of the partnership.

21.4 In terms of clause 6.1, the partnership would commence on 1 August 2002 and endure for a period of ten years, terminating on 31 July 2012.

21.5 Clause 7.1 recorded that the partners' participating shares for the purposes of the agreement would be 61% for Phumelela and 39% for TAB.

21.6 In clause 2.2.2, Phumelela acknowledged that the Gold Circle group may be reorganised pursuant to disposals by Clairwood Turf Club, Durban Turf Club and Pietermaritzburg Turf Club of their assets and liabilities, rights



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and obligations to Gold Circle and that as a result the TAB partnership may be reconstituted so as to comprise only Gold Circle and the Western Province Racing Club.

22. PGI was registered in December 2003 in the Isle of Man. That came about because Gold Circle and Phumelela had decided to expand the business of the PGE Partnership to include further international betting activities. The business of PGI would generate more income for the partnership. I point out that the name, Phumelela Gold International, is a combination of the names of the entities that decided to form it, being Phumelela and Gold Circle.
23. It was arranged that Phumelela, as partnership manager, would have the shares in PGI registered in its name and would itself apply for any necessary regulatory approval, in particular, permission from the South African Reserve Bank to transmit funds between South Africa and overseas. The result was that, from the outset, Phumelela held the PGI shares and the related approvals in its name, but in fact on behalf of the PGE Partnership, as the partnership manager.
24. To cut a long story short, the other partners in TAB disposed of their interest therein to Gold Circle in the years that followed the conclusion of the PGE Partnership agreement. The result was that by 2012, the only parties to the PGE Partnership were Phumelela and Gold Circle.

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25. The 2002 PGE Partnership agreement was set to expire in July 2012, but the parties thereto, by agreement and conduct, extended the relevant terms thereof and thereafter concluded a new agreement with effect from 1 August 2012, as is described below.
26. On 25 October 2012, Phumelela and Gold Circle concluded a new agreement, to which I will refer as the "2012 Tellytrack agreement". I signed that agreement on behalf of Gold Circle in my capacity as its Chief Executive Officer.
27. The relevant parts of that agreement are annexed hereto marked "MN2". While other agreements are mentioned, I point out that those agreements are irrelevant to this application and are, accordingly, not dealt with hereunder:
- 27.1 Clause 2.6 recorded that it was necessary for the PGE Partnership agreement dated 28 November 2002 to be amended for the purposes of restructuring the administration and management of the sport of thoroughbred horseracing in South Africa to ensure sustainability thereof;
- 27.2 Clause 2.7 recorded that the parties recognised the need to continue to pool their audio-visual content (from horseracing conducted at their race venues) and related data to achieve the most efficient broadcasting of audio-visual content;
- 27.3 Clause 5.1 read with clause 5.1.2 stated that the partnership would distribute 61 % of the PGI shares to Phumelela and 39% to Gold Circle

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(the PGI shares were defined in clauses 1.29 read with 1.30 to mean 100 shares in PGI).

27.4 Clause 6 read with the definition of "Commencement Date" recorded that the agreement would commence on 1 August 2012.

27.5 Clause 8.1 also reflected the 61:39 split.

28. 39 % of the shareholding in PGI has not been transferred to, or registered in the name of, Gold Circle.

28.1 The reason for that was that any such transfer would have required a related transfer or revision of the approvals from the South African Reserve Bank which were still in the name of Phumelela, as partnership manager.

28.2 It was therefore agreed that Gold Circle's shares would still be left in the name of Phumelela for convenience and Phumelela would hold them as Gold Circle's nominee.

28.3 The obtaining of approvals from the South African Reserve Bank had been a lengthy and complicated process and for the sake of continuity and certainty, both Gold Circle and Phumelela thought it best to leave the existing approvals in place, rather than having to start the approval process again.



29. At approximately this time, a third entity became involved in hosting horseraces in South Africa, namely, Kenilworth Racing (Pty) Ltd. Pursuant thereto, a new Tellytrack partnership agreement was concluded between Phumelela, Gold Circle and Kenilworth Racing (Pty) Ltd in October 2013 ("the 2013 Tellytrack agreement"). A copy of the relevant extracts of the 2013 Tellytrack agreement is annexed hereto marked "MN3":

29.1 Clause 2.9 provided that Phumelela and Gold Circle agreed to terminate the PGE Partnership, as amended by the 2012 Tellytrack agreement, and to constitute the Tellytrack partnership between themselves and Kenilworth Racing.

29.2 Clause 6.1 provided that nothing in the agreement shall derogate from the rights and obligations of each of Gold Circle and Phumelela as recorded in clause 5 of the 2012 Tellytrack agreement. (Clause 5.1.2 of the 2012 Tellytrack agreement recorded *inter alia* Gold Circle's entitlement to 39 % of the shares in PGI.)

29.3 Clause 22 provides for the resolution of disputes by arbitration.

29.4 Clause 24 stipulates that South African law shall apply to the agreement.

29.5 Under clause 25, the parties consented to the jurisdiction of this court for urgent, interim or other appropriate relief that needed to be sought in court.

30. The 2013 Tellytrack agreement remains extant.

31. It is clear that from the very inception of these agreements, the position was that:

31.1 Gold Circle was entitled to 39% of PGI;

31.2 Gold Circle was the beneficial owner of 39% of the issued shareholding of PGI;

31.3 Phumelela held 39% of the shares in PGI as Gold Circle's nominee;

31.4 I am advised that, as a matter of law, it follows that Gold Circle is entitled, upon demand, to the transfer of those shares into its name.

32. Having summarised the agreements, I turn to set out the evidence that Phumelela always recognised Gold Circle's 39% shareholding in PGI.

**EVIDENCE OF GOLD CIRCLE'S ENTITLEMENT TO 39% OF THE PGI SHARES,
AND INCOME**


33. Phumelela, as the partnership manager chosen by the parties of the PGE partnership and the Tellytrack partnership, has always managed the business affairs and finances of PGI and has collected and processed the profits generated as a consequence thereof.
34. Throughout the years, Gold Circle and Phumelela have followed an agreed method by which Phumelela has accounted for Gold Circle's 39% share of the profits generated and has made payment to Gold Circle accordingly.
35. It is necessary to record that the accounting exercise followed by the parties was not simply a matter of calculating profits in PGI and paying 39% thereof to Gold Circle. It involves an accounting for both income and expense incurred, respectively, by Gold Circle and Phumelela, under various categories, all relating to the business operations of the two entities under four co-operative agreements between them (one of which is the 2013 Tellytrack agreement and the others which are not relevant to this application). The reconciliation of these accounts, which was done monthly by Phumelela and audited annually, is a complex affair.
36. That accounting also included, as one of those categories, the accounting by Phumelela to Gold Circle for Gold Circle's share of profit in PGI.



37. The accounting was further complicated by the introduction of Kenilworth Racing (Pty) Ltd in the 2013 Tellytrack agreement. Once again, cutting a long story short, Gold Circle agreed to share some of its 39% profit from PGI with Kenilworth Racing (Pty) Ltd and the result was that, although Gold Circle retained 39% of the shares in PGI, the monthly accounting process now divided Gold Circle's 39% profit share as to 24.96% to Gold Circle and 14.04% to Kenilworth Racing (Pty) Ltd. Payments were consistently made by Phumelela to Gold Circle and Kenilworth on a reconciled monthly basis.
38. I emphasise that this accounting process has consistently been followed throughout the years. By way of example, I refer to paragraph 7.13 of the letter which is annexed hereto marked "MN9" hereto and to the schedule which was annexed to that letter. I confirm the correctness of the contents of that letter and, in fact, of everything said in the correspondence addressed by Gold Circle's attorneys to Phumelela and the BRP's attorneys.
39. In addition to the above and in further confirmation of Gold Circle's shareholding, I attach the minute of a Gold Circle board meeting (marked "MN4"), which took place on 5 July 2007. At paragraph 6.2, under a heading dealing with Gold Circle's finances, it was recorded that:

"PGE International

Following the very successful acquisition of the Isle of Mann Tote, the Board of Phumelela Gold Enterprises had voted the sum of R6 million to participate in a consortium bidding for an overseas totalisator company. Gold Circle's 39% share represented +/- R2,34 million. Phumelela had indicated that they would be willing to take 100% of the investment should Gold Circle not be willing to participate. The transaction was currently highly confidential and



the Chairperson and CEO had been required to give confidentiality undertakings to Phumelela and the sellers in regard to the transaction. Management strongly recommended that authority be given to the CEO and MD who represented Gold Circle on the PGE Board, to vote in favour of this transaction, subject to the Chairperson approving the final PGE proposal in this regard." (emphasis added)

40. Hereafter, I shall explain how the BRP has adopted the position that Gold Circle has no right to any of the shares in PGI:

40.1 In a nutshell, the BRP appears to contend that because of what appears in the annual financial statements of Phumelela and Gold Circle, there is (or must be) a new agreement between the parties in terms of which Gold Circle agreed to forego its shares in PGI.

40.2 As appears from the correspondence to which I refer below, the BRP provides no details about how and when that agreement was concluded, or what its exact terms were. Suffice it to say that I deny that any such new agreement was ever concluded. To this day, the position remains that Gold Circle is the beneficial owner of 39% of the shares in PGI and Phumelela holds them only as nominee.

40.3 I record also that what I have said about the sharing of profit with Kenilworth Racing (Pty) Ltd had nothing to do with the actual shareholding in PGI. There was no agreement that Kenilworth Racing (Pty) Ltd would become entitled to any shareholding in PGI.

- 40.4 I have been involved with Gold Circle (and its predecessors) and the South African horse racing industry generally for much of my working life. As a consequence, I have got to know the people who manage the various bodies involved in horse racing. For obvious reasons, I have also been closely acquainted with the successive management teams of Phumelela. The business relationship between Gold Circle and Phumelela is such that the two management teams are usually in almost daily contact.
- 40.5 It is thus no surprise that I am personally acquainted with several of the executives who were, until relatively recently, involved at a high level in the management of Phumelela and who know about the contractual arrangements between Phumelela and Gold Circle relating to the PGI shares.
- 40.6 The correspondence from the BRP and his attorneys puzzled me because it did not appear to rely upon a version of the facts which emanated from the management personnel at Phumelela whom I have known and dealt with. For that reason, I decided to contact them myself, simply to ask them what was their understanding of Gold Circle's 39% shareholding in PGI. In this regard I attach an affidavit by the former Chief Executive Officer of Phumelela, John Athol Stuart, marked "MN5", which expressly confirms that Gold Circle is the beneficial owner of 39% of the shares in Phumelela Gold. I may be able to obtain further such confirmations if necessary.



Notably, Phumelela's representatives do not state that they have engaged with Phumelela's pre-existing management about Gold Circle's ownership of the shares in PGI.

RECENT DEVELOPMENTS

41. I do not want to burden this affidavit with all of the correspondence. Most of it is not relevant. I set out particulars of only that correspondence which, I am advised, is most relevant to this application.
42. On 27 July 2020, Gold Circle wrote to the BRP explaining its 39% entitlement (annexure "MN6"). The letter asked him to check the necessary records and confirm recognition of this ownership and undertook to send a memorandum detailing the relationship between Phumelela and Gold Circle the following day.
43. That memorandum was indeed sent. A copy of the memorandum (without its annexures) is annexed hereto marked "MN7". It correctly reflects Gold Circle's position and its contents are incorporated by reference.
44. The BRP's attorney sent a letter on 11 August 2020 (annexure "MN8") outlining Phumelela and the BRP's contentions.
45. Gold Circle's attorneys responded on 19 August 2020 addressing these contentions (annexure "MN9").



46. I contend that the BRP's apparent reliance upon the contents of the annual financial statements of Gold Circle and Phumelela is misplaced.
47. Although Gold Circle's financial statements do not refer to its beneficial ownership of shares in PGI, I am advised that it is not a requirement under the Companies Act that such an ownership should be disclosed in a company's financial statements. As pointed out by Gold Circle in the attached correspondence, the financial statements do in fact refer to the income derived by Gold Circle from its appropriate share of profits in PGI. I maintain that the only basis on which Gold Circle is, and always was, entitled to a share of those profits, is by reason of its shareholding.
48. As to Phumelela's financial statements, it is for Phumelela to explain why its financial statements make no direct reference to Gold Circle's shareholding in PGI. Whilst they purport to account for 100% of the income and profits generated by PGI, that cannot be so because I know for a fact that in every relevant year, Phumelela accounted for, and paid to Gold Circle, 39% of those profits.
49. I am not an auditor and it is not for me to say to what extent this renders Phumelela's annual financial statements to be deficient. Even if they are, that does not change the facts which I have stated in this affidavit.



50. On the evening of 18 August 2020, the BRP sent his business rescue plan to Gold Circle.
51. Relevant extracts of the plan are collectively annexed hereto marked "MN10":
- 51.1 At typed page 14, clause 5.5.1 read with 5.5.1.1 reflects that Phumelela owns 100 % of the shares in PGI. This is at typed page 14 of the plan.
- 51.2 Paragraph 8.1.3.5 at typed page 34 of the plan appears to record that the BRP has secured a buyer for PGI. Although Gold Circle has no direct knowledge of the identity of all the third parties who submitted a bid for, or expressed an interest in buying, 100% of the shares in PGI, I understand that those parties are the third and fourth respondents. That is why I am advised it is appropriate to cite them in these proceedings out of an abundance of caution.
- 51.3 Paragraph 8.2.4 at typed page 36 records that the BRP proposes to implement the sale of PGI (which must mean all its shareholding).
- 51.4 Annexure "C.9" to the plan deals with PGI.
- 51.5 Paragraph 7.2.2 in the annexure reflects that significant value lies in PGI, described as a subsidiary. The business rescue plan contemplates that 100% of the shares in PGI are expected to realise R150 million. For

present purposes, that means that what is at stake herein for Gold Circle is about R58 million (i.e. 39% of R150 million).

52. The creditors' meeting intended to consider and vote upon the business rescue plan is scheduled for 1 September 2020 at 11h00. The circular convening the meeting, which Gold Circle received on 18 August 2020, is annexed marked "MN11".
53. On the afternoon of 26 August 2020, Gold Circle received a revised notice of the aforesaid meeting, copy annexed marked "MN12". It contemplates that the fourth respondent will seek an adjournment of the meeting and to propose an amendment to the business rescue plan.
54. It is obvious that, if Phumelela or the BRP is entitled to sell only 61% of the shares in PGI (and not Gold Circle's 39%), this will have financial consequences for the terms of the business rescue plan and what creditors can expect to receive thereunder.
55. Gold Circle cannot ignore the fact that the presentation of the business rescue plan to creditors is imminent and that the dispute regarding Gold Circle's 39% of the shares in PGI must be resolved before the plan is put to the vote. I am advised that Gold Circle will be obliged to accept the consequences of the plan once it is approved by affected persons.

56. That is why I have been advised that the bringing of this application is so urgent that it should be heard before the creditors' meeting on 1 September 2020 at 11h00, as there is no certainty that the meeting will be postponed as suggested by the fourth respondent.


REQUIREMENTS FOR INTERIM RELIEF

57. I respectfully aver that Gold Circle has established, at the very least, *prima facie* a right to 39% of the shares in PGI.
58. Allied to that it has a right to have any dispute about that entitlement fully aired and determined in court or arbitration. Gold Circle has already suggested to Phumelela that an arbitration could be a speedier and just as effective method of determining the dispute. For the sake of completeness, I annex hereto marked "MN13" a copy of a letter dated 27 August 2020 from Gold Circle's attorneys to the attorneys for Phumelela and the BRP. It speaks for itself. Gold Circle requested suitable undertakings to avoid this application. They have not yet been furnished.
59. Both rights stand irreparably to be injured if the business rescue plan is implemented and the entire shareholding in PGI is sold to a third party.
60. Gold Circle respectfully contends that the balance of convenience favours it.

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61. The business rescue plan itself contemplates the lapse of about a year to implement it fully. As I have said, Gold Circle is willing to agree an arbitration procedure to resolve the dispute, which will minimise any disruption to the business rescue procedure.
62. In any event, it would be absurd not to ensure that all creditors (and third-party bidders) are immediately made aware of the present dispute over the shareholding in PGI, so that they can properly consider their position. It stands to reason that they too would want the dispute resolved, once and for all, before the business rescue proceedings are complete, rather than at some unknown future time.
63. I record Gold Circle's willingness to expedite the resolution process, wherever reasonably possible. In addition, Gold Circle has a right to have the dispute as between it and Phumelela / the BRP determined, without the distraction and involvement of a third-party purchaser.
64. For the reasons stated, Gold Circle contends it has no suitable alternative remedy.

URGENCY

65. Gold Circle communicated its position on 19 August 2020 as set out above, having received the proposed business rescue plan late on 18 August 2020. A copy of the letter is attached, above, as "MN9".
- 

66. In the letter, Gold Circle sought a variety of information from Phumelela. Among other reasons, this was sought to avoid unnecessary recourse to the courts. Yet, despite the requests, Phumelela did not respond to the letter and did not provide the information sought.
67. Accordingly, and in yet a further attempt to avoid the costly and protracted recourse to the courts, on 27 August 2020, Gold Circle:
- 67.1 confirmed Phumelela's stated position;
 - 67.2 indicated that Gold Circle was left with no option but to pursue legal recourse;
 - 67.3 suggested an adjournment of the scheduled meeting and that all affected persons be informed of Gold Circle's claim to 39% of the PGI shares;
 - 67.4 suggested an arbitration as the least intrusive, most expedient and most cost-effective manner of determining the shareholding dispute; and
 - 67.5 sought the BRP's consent to institute court proceedings (if an amicable resolution could not be achieved).
68. A copy of the letter is attached as "MN13".
69. On 28 August 2020, Phumelela and the BRP's attorney responded to Gold Circle's letter. A copy of the letter is attached, marked "MN14". In the letter:
- 69.1 Phumelela referred, for the first time, to an alleged shareholders' agreement between PGI and an entity called TabCorp Europe Holdings

Limited ("TabCorp") in respect of Premier Gateway International Limited ("Premier");

69.2 Stated that this alleged shareholders' agreement gave a pre-emptive right to TabCorp to acquire PGI's shares in Premier when Phumelela went into business rescue; and

69.3 Without stating what TabCorp's position is or is likely to be, stated that PGI could not sell the shares in Premier until TabCorp had exercised or waived its rights under the alleged shareholders' agreement;

69.4 Phumelela also tendered to hold 39% of the proceeds of any sale of the shares in escrow pending resolution of Gold Circle's alleged entitlement to the PGI shares.

70. With regard to the above:

70.1 Premier is a joint venture between PGI and TabCorp, in which PGI holds 50% of the issued shares;

70.2 if it is determined that Gold Circle owns 39% of the shares in PGI, then Gold Circle has an interest in 39% of PGI's 50% shareholding in Premier;

70.3 since PGI has always been managed by Phumelela, Gold Circle does not have a copy of the alleged shareholders' agreement between TabCorp and PGI in respect of Premier;



- 70.4 the letter, annexure "MN14", appears to confuse the PGI shares and the Premier shares and, accordingly, the tender is neither clear nor unequivocal;
- 70.5 the business rescue plan contemplates the sale of 100% of the PGI shares, not the Premier shares, and Gold Circle has established, at the very least, a *prima facie* a right to 39% of the PGI shares;
- 70.6 accordingly, the PGI shares (and perhaps even the Premier shares) ought not to be sold by Phumelela and the BRP until the dispute about the PGI shareholding is finally resolved.
71. On the same day, 28 August 2020, Gold Circle responded to Phumelela's letter and requested a copy of the alleged shareholders' agreement and, yet again, in a final attempt to avoid litigation, an undertaking that Phumelela would not sell or attempt to sell any of the disputed shares until after Gold Circle had been given a copy of the shareholders' agreement and had had a chance to take the necessary steps to protect its interests. Gold Circle concluded the letter by stating that it hoped to avoid litigation. A copy of the letter is attached, marked "MN15".
72. But despite the requests for information and the attempts to avoid litigation, on 29 August 2020, Phumelela responded to the letter and refused to provide a copy of the alleged shareholders' agreement and stated that, if the business rescue plan is adopted, Phumelela would give Gold Circle seven days' notice to



bring an interdict to prevent transfer of the shares. A copy of the letter is attached, marked "MN16".

73. Concurrently, once it became apparent that Gold Circle could not avoid litigation, counsel was appointed and a consultation with representatives of Gold Circle was held on 26 August 2020.
74. Thereafter, the application was drafted and launched as soon as reasonably possible.
75. It is important to reiterate that a business rescue meeting is scheduled for 1 September 2020. At this meeting, affected persons will vote in respect of the proposed business rescue plan, which proposes to sell 100% of the shares in PGI. As has been comprehensively set out above, Gold Circle contends that it owns 39% of those shares.
76. Accordingly, I contend that it is appropriate that this matter be dealt with before then, so that those present at that meeting can assess their position properly.
77. For these reasons, I submit Gold Circle will accordingly not receive adequate redress if the matter is heard in the ordinary course.



LEAVE UNDER SECTION 133

78. Gold Circle will argue at the hearing of the application that this application does not constitute legal proceedings in respect of which leave of the court is required under section 133 of the Companies Act, 2008.

79. However, as a matter of caution, the BRP was requested in annexure "MN12" to consent to the bringing of these proceedings. His response is not yet known.

79.1 That notwithstanding, I submit it is just and equitable for this court both to grant that leave and to do so in this application coupled with the interim order.

79.2 This is a proper case for leave to be granted (if it is required). Gold Circle has no other way properly to protect its rights. It is also in the interests of all other creditors that the business plan that is ultimately adopted and implemented can lawfully be capable of implementation. If the BRP is wrong (as Gold Circle contends he is) then that may materially alter the business rescue plan and the approach of creditors to it.

CONCLUSION

80. Gold Circle seeks the relief set out in the notice of motion.





DEPONENT

The terms of Regulation R.1258 published in Government Gazette No. 3619 of the 21st July 1972, as amended, having been complied with, I hereby certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to at Durban on this 31st day of August 2020.


COMMISSIONER OF OATHS

JOSEF LE GRANGE SHAWN VAN HEERDEN
COMMISSIONER OF OATHS
Practising Attorney
ERASMUS VAN HEERDEN ATTORNEYS
8 RYDALL VALE CRESCENT
LA LUCIA, DURBAN



PARTNERSHIP AGREEMENT

between

PHUMELELA GAMING & LEISURE LIMITED

(a company incorporated under the laws of South Africa under Registration No. 1997/016610/06)
("Phumelela")

and

the partners of the TOTALISATOR AGENCY BOARD (NATAL) partnership, being:

GOLD CIRCLE (PROPRIETARY) LIMITED

(a company incorporated under the laws of South Africa under Registration No. 1998/024366/07)
("Gold Circle")

CLAIRWOOD TURF CLUB

(an unincorporated association having a separate corporate existence)
("Clairwood TC")

DURBAN TURF CLUB

(an unincorporated association having a separate corporate existence)
("Durban TC")

PIETERMARITZBURG TURF CLUB

(an unincorporated association having a separate corporate existence)
("Pietermaritzburg TC")

WESTERN PROVINCE RACING CLUB

(an unincorporated association having a separate corporate existence)
("WPRC")

WHEREAS

- A. Phumelela, directly and indirectly, owns, conducts and operates a totalsator business for which it holds the necessary licences, in each of the following provinces: Eastern Cape; Free State; Gauteng; Mpumalanga; Northern Cape; Northwest Province and Northern Province.
- B. The TAB (Natal) Partnership conducts and operates a totalsator business in KwaZulu-Natal Province, Western Cape Province and Namibia, for which it holds the necessary licences.
- C. The Parties have entered into a Commingling Agreement with each other, as of 19 April 2002, to rationalise their totalsator processes, by commingling the TAB (Natal) Partnership's pools with Phumelela's like pools.
- D. The Parties now desire to establish a partnership among themselves for the conduct and operation of all Betting Activities which become available to them anywhere in the world (excluding South Africa and Namibia), and in terms of which they will continue to conduct and operate the business of the Tellytrack Partnership.

NOW THEREFORE THE PARTNERS AGREE THAT:

1. INTERPRETATION AND CONSTRUCTION

1.1 Definitions

For the purposes of this Agreement unless the context requires otherwise:

1.1.1 "Affiliate" means, in relation to any Party, any person which, directly or indirectly, is Controlled by that Party, or Controls that Party or is under common Control with that Party;

1.3 Headings and Sub-headings

All the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it.

2. CONSTITUTION OF THIS PARTNERSHIP

2.1 Agreement to Constitute

The Parties agree to constitute a partnership between Phumelela on the one hand and the TAB (Natal) Partnership on the other, with effect from the Commencement Date and upon and subject to the terms and conditions of this Agreement.

2.2 TAB (Natal) Partners Contracting as a Partnership

2.2.1 The TAB (Natal) Partners acknowledge that they are entering into this Agreement as partners of the TAB (Natal) Partnership and accordingly all their rights and obligations under this Agreement shall be joint and several.

2.2.2 Phumelela in turn acknowledges that the Gold Circle Group may be reorganised pursuant to disposals by Clairwood TC, Durban TC and Pietermaritzburg TC of their assets and liabilities, rights and obligations to Gold Circle, and that as a result the TAB (Natal) Partnership may be reconstituted so as to comprise only Gold Circle and WPRC.

- 5.3.1 continuing to procure the broadcast services which they are procuring from Multichoice Africa (Proprietary) Limited over the television channel currently known as 'Tellytrack';
- 5.3.2 procuring and entering into agreements with subscribers to the 'Tellytrack' broadcast service;
- 5.3.3 'selling' airtime on the 'Tellytrack' channel for advertising and promotional purposes;
- 5.3.4 exploiting all the rights contributed to this Partnership in terms of clause 11.3;
- 5.3.5 continuing to actively promote the use of the 'Tellytrack' broadcast service for betting purposes,
- 5.4 to conduct and operate for the benefit and account of this Partnership any business anywhere in the world outside of South Africa and Namibia which engages in any kind of fixed odds betting activities;
- 5.5 to conduct all other kinds of businesses which are necessary for or incidental to the conduct of any of the other businesses described in this clause 5.

6. DURATION OF THE PARTNERSHIP

6.1 Initial Period

This Partnership shall commence on the Commencement Date and remain in force, subject to all the other provisions of this Agreement, for an initial period of 10 (ten) years until 31 July 2012.

6/2
AS
[Handwritten signature]

Renewal

Unless terminated by either Party at the end of the Initial Period by the giving of at least 18 (eighteen) months prior written notice to that effect before the end of the Initial Period, this Partnership shall be automatically renewed and continue to remain in force for a further period upon all the same terms and conditions as before, except that it may be terminated by either Partner as of any date after a minimum period of a further 10 (ten) years from the end of the Initial Period, by the giving of not less than 18 (eighteen) months prior written notice to that effect before such date of termination.

6/2
AS
[Handwritten signature]

Consequences of a Termination

Upon the termination of this Partnership at the end of the Initial Period, or at the end of the Renewal Period, as the case may be, the business and assets of this Partnership shall be liquidated in accordance with the provisions of clause 18.

7. PROFIT SHARING

7.1 Participating Shares

The Partners' participating shares for the purposes of this Agreement shall be:

Phumelela	:	61% (sixty one percent)
TAB (Natal) Partnership	:	39% (thirty nine percent).

7.2 Sharing of Profits and Losses

All profits and losses of this Partnership shall accrue to and be shared by the Partners in the proportions of their Participating Shares, and shall be credited and debited respectively to their capital accounts.

[Handwritten signatures]

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M.N.Z

Without Prejudice to the Tellytrack Partnership Agreement with Amendment Change 23 Oct 2006

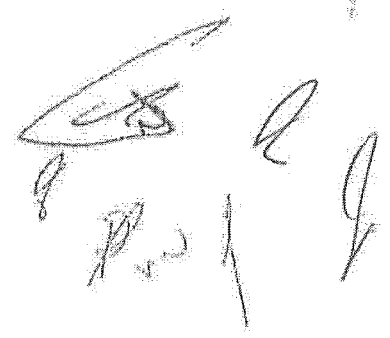
TELLYTRACK PARTNERSHIP AGREEMENT

between

PHUMELELA GAMING AND LEISURE LIMITED
(Registration Number: 1997/016610/06)
("Phumelela")

and

GOLD CIRCLE (PROPRIETARY) LIMITED
(Registration Number: 1998/024366/07)
("Gold Circle")



data by way of audio visual coverage of thoroughbred horse racing on the Tellytrack Channel.

2.6 It is necessary for the Partnership Agreement to be amended for the purposes of restructuring the administration and management of the sport of thoroughbred horse racing in South Africa, to ensure the sustainability thereof.

2.7 The Parties recognise the need to continue to pool their audio visual content and related data in respect of Race Meetings for broadcast on the Tellytrack Channel in order to achieve the most efficient broadcasting of audio visual content in the Territory and for the duration of this Agreement.

2.8 The Parties have agreed to amend the scope of the Partnership Agreement on the terms and conditions set out in this Agreement.

3 NAME OF THE PARTNERSHIP

The name of the Partnership shall be "Tellytrack", provided that in discharging the obligations of the Partnership in terms of the Continuing Contracts, the Partnership shall operate under the name and style of Phumelele Gold Enterprises.

4 PRINCIPAL PLACE OF BUSINESS

The principal place of business of the Partnership, unless and until otherwise agreed by the Parties in writing, is:

Turfontein Racecourse

14 Turf Club Street

Turfontein

5 THE PARTNERSHIP BUSINESS

5.1 The Parties record that the Partnership shall distribute the following assets of the Partnership to the Parties in the proportions set out hereunder:

5.1.1 the PGE (Mauritius) Shares to the Parties in equal proportions as set out in the Betting World (Pty) Ltd Share Sale Agreement concluded between the Parties on 29 September 2011 and Loan Agreement concluded between the Parties on 2 November 2011, so that each Party shall hold the PGE (Mauritius) Shares in equal proportions;

5.1.2 61% (sixty one percent) of the PGI Shares to Phumelela and 39% (thirty nine percent) thereof to Gold Circle; and

5.1.3 the Joint Interests together with the non-exclusive right to conduct the business thereof under the name of Phumelela Gold Enterprises, to Phumelela.

5.2 The Parties hereby agree that with effect from the Effective Date, the exercise of the rights and fulfillment of the obligations under the Continuing Contracts will be undertaken by Phumelela on behalf of the Partnership in its capacity as the Partnership Manager. Accordingly:

5.2.1 with effect from the Effective Date, as between the Parties, the rights and obligations in terms of the Continuing Contracts will be exercised and fulfilled by Phumelela on behalf of the Partnership as if each Continuing Contract had been concluded in the name of Phumelela, and as if the Licence Agreement had been concluded on the Effective Date, until such time as the Continuing Contracts expire or terminate for any other reason. The effect of the foregoing shall be that, anything to the contrary in this Agreement notwithstanding, all revenue derived by the Partnership from the Continuing Contracts shall be applied by the Partnership as follows:

5.2.1.1 as a first charge, an amount equal to 39% (thirty nine percent) of the aggregate of all Operating Profits before tax which are generated, and received, by the Partnership from business conducted in terms of the Continuing Contracts shall be credited to Gold Circle's account in the books of the Partnership; and

5.2.1.2 as to the balance, any profit or loss derived from such revenue shall be credited, or as the case may be, debited to Phumelela's account in the books of the Partnership;

5.2.2 all Future Contracts shall be concluded by Phumelela, either as the owner, licensee or licensor of the rights to content and data exploited in terms of the Future Contracts. The relationship between Phumelela and Gold Circle in regard to the exploitation of these rights to content and data shall not be governed by this Agreement, but shall be governed by the Licence Agreement and shall fall outside of the scope of the Partnership Business.

7.2.1

7.3 Upon termination of this Agreement in terms of clause 7.2, the Partnership Business shall be liquidated in accordance with the provisions of clause 17.

8 PROFIT SHARING AND DISTRIBUTIONS

8.1 Save for profits derived from the Non-Tellytrack Channel Business, which will be allocated between the Parties in terms of clause 5.2.1, the Parties' Participating Shares for the purpose of this Agreement shall be:

8.1.1 Phumelela: 61% (sixty one percent); and

8.1.2 Gold Circle: 39% (thirty nine percent).

8.2 Subject to clause 5.2.1:

8.2.1 the profits and losses of the Partnership shall accrue to and be shared by the Parties in the proportions of their Participating Shares, and shall be credited and debited respectively to their capital accounts in the books of the Partnership; and

8.2.2 the expenses of the Partnership, whether of a capital or a revenue nature, including, *inter alia*, the costs associated with satellite transmission, technical and operating costs necessary to package and broadcast the audio visual content in terms of this Agreement on the Tellytrack Channel, shall be paid out of the funds of the Partnership as provided for in this Agreement.

8.3 The costs of the equipment and employees situated at the Racing Venues which are utilised or engaged for the on-course production and broadcasting of Race Meetings shall not form part of the expenses of the Partnership but shall be borne by the Party which is the administrator of the Racing Venue in question.

8.4 Any shortfall in the funds of the Partnership to meet the expenses referred to in clause 8.2.2 shall, subject to clause 8.5, be contributed by the Parties when such shortfall occurs in the proportions of their Participating Shares, and all such contributions shall be credited to their capital accounts in the books of the Partnership.

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MANU

(EXECUTION VERSION)

TELLYTRACK PARTNERSHIP AGREEMENT

between

PHUMELELA GAMING AND LEISURE LIMITED
(Registration Number: 1997/016810/06)
("Phumelela")

and

GOLD CIRCLE (PROPRIETARY) LIMITED
(Registration Number: 1998/024368/07)
("Gold Circle")

and

KENILWORTH RACING (PROPRIETARY) LIMITED (PREVIOUSLY KNOWN AS VIACOR TRADE 72 (PROPRIETARY) LIMITED)
(Registration number: 2011/008903/07)
("Kenilworth")

6 J 10.

- 2.2.1 Gold Circle disposed of the Western Cape division of its thoroughbred horseracing and gaming business to Kenilworth; and
- 2.2.2 Kenilworth acquired a partnership interest of 14.04% (fourteen point zero four percent) in the partnership established in terms of the Partnership Agreement from Gold Circle in terms of clause 5 read with item 2.1 of Schedule 1 of the Demerger Sale of Business Agreement.
- 2.3 The Parties recognise that none of them can, on its own, benefit fully from audio visual content which it owns in relation to thoroughbred horseracing.
- 2.4 By pooling the audio visual content and data which they own for joint exploitation on the Tellytrack Channel, the Parties will realise opportunities, gains and efficiencies and in doing so, will derive otherwise absent benefits for themselves, and the sport of thoroughbred horseracing and its participants.
- 2.5 For those reasons, and to provide to the participants in thoroughbred horseracing televised audio visual content, Gold Circle and Phumelela entered into the Original Tellytrack Agreement in order to, in the most efficient manner possible, realise the value of their audio visual content and data by way of television broadcasting and other forms of audio and visual coverage of thoroughbred horseracing on the Tellytrack Channel.
- 2.6 The Original Tellytrack Agreement was terminated and replaced by the Partnership Agreement to facilitate the marketing and sale of Gold Circle and Phumelela's pooled audio and visual coverage of thoroughbred horseracing to third parties outside of South Africa and Namibia and which regulated Gold Circle and Phumelela's continued realisation of the value of their audio visual content and data by way of audio visual coverage of thoroughbred horseracing on the Tellytrack Channel.
- 2.7 The scope of the partnership established in terms of the Partnership Agreement was amended by the Tellytrack Partnership Agreement.
- 2.8 In order to implement the Demerger Sale of Business Agreement it is necessary that Kenilworth be admitted as party to the partnership established in terms of the Partnership Agreement the scope of which was amended by the conclusion of the Tellytrack Partnership Agreement.
- 2.9 Phumelela and Gold Circle have agreed, subject to the Demerger Sale of Business Agreement coming into effect, to terminate the partnership established in terms of the Partnership Agreement, the scope of which was

amended by the conclusion of the Tellytrack Partnership Agreement, and agreed to constitute the Partnership between themselves and Kenilworth on the terms and conditions set out in this Agreement.

3 SUSPENSIVE CONDITION

- 3.1 The Implementation of this Agreement is, save for the provisions of clauses 1, 3.2, 22 to 28, inclusive, which will be of immediate force and effect, subject to the Demerger Sale of Business Agreement becoming unconditional according to its terms on or before 15 March 2013, save for the condition that this Agreement is concluded, or such later date as the parties to the Demerger Sale of Business Agreement may agree upon in writing prior to the expiration of the said date.
- 3.2 The Parties shall use all commercially reasonable endeavours to procure the fulfillment of the suspensive condition stipulated in clause 3.1 on or before the date stipulated therefor.
- 3.3 Should the suspensive condition stipulated in clause 3.1 not be fulfilled on or before the date stipulated therefor, or on or before such later dates as the Parties agree upon in writing, then this Agreement shall, save for the provisions of clauses 1, 3.2, 22 to 28 inclusive which shall remain in force, be of no further force or effect and no Party shall have any claim against any other Party arising from this Agreement or the termination thereof, save for any claim arising from a breach by any Party of its obligations in terms of clauses 1, 3.2, 22 to 28.

4 NAME OF THE PARTNERSHIP

The name of the Partnership shall be "Tellytrack", provided that in discharging the obligations of the Partnership in terms of the Continuing Contracts, the Partnership shall operate under the name and style of Phumelela Gold Enterprises.

5 PRINCIPAL PLACE OF BUSINESS

The principal place of business of the Partnership, unless and until otherwise agreed by the Parties in writing, is:

Turffontein Racecourse
 14 Turf Club Street
 Turffontein

Handwritten signature and initials in the bottom right corner of the page.

6 THE PARTNERSHIP BUSINESS

6.1 The Parties record that the partnership constituted in terms of the Tellytrack Partnership Agreement distributed the Joint Interests together with the non-exclusive right to conduct the business thereof under the name of Phumelela Gold Enterprises, to Phumelela and agree that Phumelela shall retain such non-exclusive right in terms of this Agreement. Nothing contained in this Agreement shall derogate from the rights and obligations of each of Gold Circle and Phumelela as recorded at clause 5 of the Tellytrack Partnership Agreement.

6.2 The Parties record that in terms of the Tellytrack Partnership Agreement the exercise of the rights and fulfillment of the obligations under the Continuing Contracts were undertaken by Phumelela on behalf of Gold Circle in its capacity as the manager of the partnership constituted by the Tellytrack Partnership Agreement and agree that the exercise of the rights and fulfillment of the obligations under the Continuing Contracts shall continue to be undertaken by Phumelela as Partnership Manager. Accordingly:

6.2.1 with effect from the Effective Date, as between the Parties, the rights and obligations in terms of the Continuing Contracts will be exercised and fulfilled by Phumelela on behalf of the Partnership as if each Continuing Contract had been concluded in the name of Phumelela, and as if the Licence Agreements had been concluded on the Effective Date, until such time as the Continuing Contracts expire or terminate for any other reason. The effect of the foregoing shall be that, anything to the contrary in this Agreement notwithstanding, all revenue derived by the Partnership from the Continuing Contracts shall be applied by the Partnership as follows:

6.2.1.1 as a first charge:

6.2.1.1.1 an amount equal to 24.96% (twenty four point nine six percent) of the aggregate of all Operating Profits before tax which are generated, and received, by the Partnership from business conducted in terms of the Continuing Contracts shall be credited to Gold Circle's account in the books of the Partnership; and

6.2.1.1.2 an amount equal to 14.04% (fourteen point zero four percent) of the aggregate of all Operating Profits before tax which are generated, and received, by the

their discretion, and each Party may be represented or accompanied by its own accountants at any such meeting unless its accountants are also the Auditors;

- 21.2.4 the Auditors shall in any event have the right to request representations and submissions from a Party at any time and from time to time;
- 21.2.5 the decision of the Auditors shall, in the absence of manifest or clerical error, be final and binding on the Parties.
- 21.3 All costs incurred by the Auditors shall be borne by the Parties in equal shares unless the Auditors determine otherwise.
- 21.4 The amount (if any) which may be payable by a Party to another Party as a result of the Auditors' determination shall become due and payable within 7 (seven) days of the publication of the determination.
- 21.5 The Auditors shall have the power to direct that interest on that amount, at a rate to be determined by them, shall be paid by the Party liable for the payment as compensation for any delay in receiving the amount in question, for the period following the date on which the difference was referred to them.

22 ARBITRATION

- 22.1 Any dispute arising out of this Agreement or the interpretation thereof, both while in force and after its termination, shall be submitted to and determined by arbitration in accordance with the commercial arbitration rules of the Arbitration Foundation of South Africa ("AFSA"), as amended, (for the purpose of this clause 22, "the Rules"). Such arbitration shall be held in Sandton unless otherwise agreed and shall be held in a summary manner with a view to it being completed as soon as possible.
- 22.2 There shall be one arbitrator, who shall be, if the question in issue is:
- 22.2.1 primarily an accounting matter, an independent chartered accountant of not less than 10 (ten) years' standing;
- 22.2.2 primarily a legal matter, a practising Senior Counsel or commercial attorney of not less than 10 (ten) years' standing; and
- 22.2.3 any other matter, a suitably qualified independent person.

- 22.3 The appointment of the arbitrator shall be agreed upon between the Parties, but failing agreement between them within a period of 14 (fourteen) days after the arbitration has been demanded by a Party by notice in writing to the others, any of the Parties shall be entitled to request the Registrar for the time being of AFSA to make the appointment who, in making its appointment, shall have regard to the nature of the dispute, and shall have regard to the Parties' requirement of speedy arbitration. If the appointment is to be made in terms of clause 22.2.2, preference shall be given to attorneys or advocates on the panel of arbitrators of AFSA.
- 22.4 The arbitrator shall have the powers conferred upon an arbitrator under the Rules.
- 22.5 Each Party shall have the right to appeal against the decision of the arbitrator in accordance with the Rules. The decision resulting from such appeal shall be final and binding on the Parties, and may be made an order of any court of competent jurisdiction. The Parties submit to the concurrent jurisdiction of the South Gauteng High Court, Johannesburg, South Africa, the Western Cape High Court, Cape Town, South Africa and the KwaZulu-Natal High Court, Durban, South Africa where a Party wishes to make the arbitrator's decision an order of Court. Each Party shall have the right to appeal against the decision of the arbitrator in accordance with the Rules. The decision resulting from such appeal shall be final and binding on the Parties, and may be made an order of any court of competent jurisdiction.
- 22.6 The fact that any dispute has been referred to or is the subject of arbitration in terms of this clause 22, as well as any information submitted or furnished to the arbitrators or in any other manner forming part of the record of any arbitration proceedings, shall be kept confidential by the Parties, and the Party to such proceedings shall use its reasonable endeavours to procure that all its employees, agents or advisers who are involved in or who obtain knowledge of any confidential information disclosed during such proceedings, shall be made aware of, and shall undertake in writing to be bound by, and to comply with, the provisions of this clause 22.

23 **DOMICILIUM CITANDI ET EXECUTANDI**

- 23.1 Each Party chooses the address set out opposite its name below as its *domicilium citandi et executandi* at which all notices, legal processes and other communications must be delivered for the purposes of this Agreement:



23.1.1 Phumelela c/o The Chief Executive Officer
 Turffontein Racecourse
 14 Turf Club Street
 Turffontein
 2190
 Fax: (011) 681 1895
 Marked for the attention of the CEO
 Email: phumelela@phumelela.com

23.1.2 Gold Circle o/o The Chief Executive Officer
 150 Avondale Road
 Greyville
 4001
 Fax: (031) 914 1767
 Marked for the attention of the CEO:
 Email:
companysecretary@goldcircle.co.za

23.1.3 Kenilworth Western Cape Racing
 Kenilworth Race Course
 Rosmead Avenue
 Kenilworth
 Cape Town
 Fax: (021) 782 1919
 [For attention of V Thurling]
 Email: vthurling@gjlect.co.za

23.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing, and delivered by hand or sent or transmitted by registered post, telefax or by email.

23.3 Each Party may by written notice to the other Parties change its chosen address and/or its chosen telefax number and/or its email address to another physical address, telefax number or email, provided that the change shall become effective on the 14th (fourteenth) day after the receipt of the notice by the addressee.

23.4 Any notice to a Party:

23.4.1 sent to it at its chosen physical address by prepaid registered post contained in a correctly addressed envelope;

- 23.4.2 delivered by hand to a responsible person during ordinary business hours at its chosen physical address;
- 23.4.3 transmitted during ordinary office hours by facsimile to its chosen telefax number; or
- 23.4.4 transmitted during ordinary office hours by email to its chosen email address,

unless the contrary is proved, shall be deemed to have been received, in the case of clause 23.4.1, on the 7th (seventh) Business Day after posting and, in the case of clauses 23.4.2, 23.4.3 and 23.4.4, on the day of delivery or transmission as the case may be.

24 GOVERNING LAW

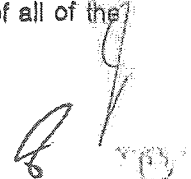
This Agreement shall be governed by and interpreted under the laws of South Africa.

25 JURISDICTION

The Parties hereby consent and submit to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg, South Africa in connection with any dispute arising from or in connection with this Agreement where the Parties seek urgent or interim relief and where the matter in dispute is whether the issue should be referred for arbitration or whether such issue should be adjudicated by the South Gauteng High Court, Johannesburg, South Africa.

26 GENERAL

- 26.1 This document contains the entire agreement between the Parties as to the subject matter hereof.
- 26.2 No Party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this document.
- 26.3 No failure by a Party to enforce any provision of this Agreement shall constitute a waiver of such provision or affect in any way that Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.
- 26.4 No agreement to vary, add to or cancel this Agreement shall be of any force or effect unless reduced to writing and signed on behalf of all of the Parties.



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"MN4"

BOARD MEETING MINUTES 05 JULY 2007

GOLD CIRCLE (PTY) LIMITED

MINUTES OF A BOARD MEETING
HELD AT THE CENTRE BOARD ROOM,
106 AVONDALE ROAD, GREYVILLE, DURBAN
ON THURSDAY 05 JULY 2007 AT 08:30

PRESENT: R B McELLIGOTT [CH] H ADAMS
 R B DUNN D J FURNESS (MD)
 C S HAYNES P MNGANGA
 A A MOHAMED M J L NAIRAC (CEO)
 M M NHLANHLA [V.CH.] T N PILLAY
 V L THURLING [V.CH.]

IN ATTENDANCE: B A Berrill (Regional Executive Manager : WP)

APOLOGIES: M G HOLMES
 PRINCE S ZULU
 C W Simpson (Regional Executive Manager : KZN)

1. **WELCOME**

The Chairperson extended a welcome to all. He reiterated the four pillars for governance stated by past Chairperson, Mr C J Saunders, in 2002:

- o To progress this business it was imperative that the Directors acted with integrity of purpose
- o Secrecy of counsel on behalf of the Board was also imperative
- o Celerity of action was of utmost importance
- o Honesty of purpose was a principle to be enunciated and acted upon

The Chairperson pointed out that considerable profits came from overseas operations and Betting World. However, the task was not yet done and it was important to grow revenue. He suggested that a strategic planning meeting of the Board should be held to fine tune areas of endeavour. Mr Adams added that he felt the strategic planning meeting should have a financial focus. Mr Thurling further added that growing the betting side of the business needed particular focus.

The Chairperson alluded to various incidents involving Board members that had occurred in recent months. He

ef

sought confidentiality and discussion to resolve areas of dispute within the confines of the Board Room. Gold Circle must be seen to be operating on a unified front. Mr Mohamed stressed that the Directors were allies of Management.

NOTED

2. **DECLARATION OF INTERESTS/DIRECTORSHIPS**

No new Directorships were reported.

NOTED

3. **CONFIRMATION OF MINUTES OF THE BOARD MEETINGS HELD ON 05 APRIL 2007**

The Minutes of 05 April 2007 were confirmed.

CONFIRMED

4. **MATTERS ARISING**

4.1 **Utilisation of Assets**

Western Cape

Milnerton.

As approved at the Board Meeting held on 05 April 2007 the purchase agreement for the Milnerton training centre by Devco Group had been concluded at a consideration of R400 million, together with the lease-back option. The required bank guarantees in respect of the purchase price, which guarantees were due at the close of business on 25 June 2007 had not been received. In verbal communication with the seller's agent the company had been advised that the expected outcome with the funding of the development was positive.

The attorneys representing the Devco Group had contacted Barkers on Monday 25 June 2007 and requested a three week extension in order to finalise banking requirements. Their application for extension was based upon a letter from Nedbank Ltd which requested the same to approve the loan applications "in view of the size of the transaction".

Mr Adams suggested that a second offer be sought from the Devco Group which could be used as a benchmark against an offer from Investec. This extension was agreed by the Board, noting that should the matter not reach conclusion on 16 July 2007, the company attorneys be instructed to invoke the breach clause provided in the sale agreement.

AGREED

The original funding agreement on the acquisition of the new training centre at Modderrivier as agreed by Investec, had a termination date of 30 June 2007 and management had requested Investec's consideration to extend this loan facility by two months at which time the finalization of the sale of Milnerton should have reached conclusion. The principle of loan extension by Investec was agreed by the bank.

New Training Centre

The Modderrivier Sub-Committee had met in Cape Town and agreed on the area identification for the location of the new training centre on the farm. This location had been in terms of the geotechnical report received from Graham Payne. Should the preferred area not be acceptable from a zoning perspective, an alternative site had been identified as a fall-back position. A meeting of interested parties had been convened by the CEO on 15 June to discuss the requirements for the training establishment relative particularly to training/race tracks, stabling and ancillary facilities, together with access and egress from the proposed location. The detail of discussions was being documented and the consultant would prepare a schematic diagram of the draft facilities for presentation to the sub-committee in due course.

NOTED

Minutes of the committee meetings together with a sketch of the property had been included in the Board Pack.

The Chairperson confirmed that the Modderrivier Sub-Committee was purely an advisory committee and all decisions would ultimately be made by the Board itself.

NOTED

Durbanville/Philippi

Several applications to purchase the property situated at Durbanville and Philippi had been received by the company. Applicants had been advised that it was not the intention of the company to dispose of these properties in the short term and that a fully transparent process would be undertaken by Gold Circle when a decision was taken to dispose of the properties.

NOTED

KwaZulu-Natal

Ashburton

The KZN Chapter had met and agreed in principle to

dispose of surplus land at the Ashburton Training Centre excluding the training facilities utilized by Gold Circle. The proposal included a cash contribution amounting to R23 million with a balance of R43 million being paid over the development period of the property. The proposal included a rezoning for the entire property notwithstanding that Gold Circle would continue to own the training facility. Should circumstances in the future occur that allowed Gold Circle to dispose of the training centre, it was estimated that a further R38 million would become available for the additional portion of saleable land. In terms of current legislation, Gold Circle would have 30 years to dispose of the training centre.

It was agreed to dispose of surplus land at Ashburton on the basis proposed. It was further agreed that the MD be authorized to sign any documentation required to effect any applications for development and the finalization of the Purchase and Sale Agreement.

AGREED

The Chairperson requested confirmation in writing from the attorneys that in terms of the Constitution the sale of assets up to R60 million did not require to be referred to the stakeholders for authority to act.

NOTED

KZN Asset Strategy

The KZN Chapter had not yet finalized a formal asset strategy for KZN. One of the new options under consideration was the development of a combined racing and training centre, similar to Modderivier.

In this regard, the company was viewing land opportunities for this purpose.

NOTED

The KZN Chapter was to be asked for a final strategic plan for going forward. Mr Adams urged that the Board look comprehensively at its assets and Mrs Nhlanhla suggested that research be done regarding the options of utilizing or disposing of such assets.

4.2

National Horseracing Authority

The CEO and the company attorney met with the W C Gambling Board on 13 June to discuss Gold Circle's restructure proposal of the NHA. The WCGB supported Gold Circle's approach and further indicated that in their

knowledge there was no white paper currently at parliament covering legislative amendments to incorporate the NHA as a licensed entity under the National Gambling Act, as had been indicated by the NHA. The CEO reported that the National Gambling Board had turned down the opportunity for the CEO to make a presentation to a meeting of provincial gambling boards, to be held in Durban on Friday 06 July 2007.

NOTED

In regard to a question from Mr Mohamed the CEO undertook to arrange for Phumelela Gold Enterprises to communicate with the NHRA on the subject of Betting Exchanges.

NOTED

4.3 Club Membership Campaign

Further to discussion at the last Board Meeting, the appointed sub-committee had met with the Flagship agency who had submitted their proposals for the membership campaign and the proposed rollout.

In terms of the required budget allocation the total campaign cost was estimated at R987 000. Details of the campaign proposals were included in the Board Pack. The Board was requested to consider the content of the report and approve the budget allocation in order that the campaign could have an immediate commencement date.

Members would be advised of the Board's decision and would be invoiced accordingly in September. It would be critical that the procedure be managed appropriately and in a sustainable manner. An attempt would be made to give recognition to colour holders.

The three-year project to be embarked upon was unanimously approved by the Board. Administration and marketing were of prime importance and would be closely monitored.

APPROVED

A second advertising company, Adkraal, had also been engaged to specifically focus on Black membership. They would do so by hosting groups of people from suitable databases on a one-to-one basis at night race meetings. A budget of R400 000 had been proposed under the Marketing, PR and Communications Departments, and the project would be embarked upon

to coincide with the launch of the membership campaign.

NOTED

4.4 Phumelela Letter of Intent

The appointed sub-committee had met on 15 June and agreed that negotiations should continue with Phumelela with a proviso of finalizing updated financial information from Phumelela. It was believed that the chances of success of the merger had been hampered by the recent campaign by RA members in Gauteng as well as the inopportune timing of press reports on the merger. The sub-committee was waiting for additional financial information but in any event had recommended to explore further areas of co-operation in the short term to achieve savings.

NOTED

4.5 Centre Lease Agreement

Negotiation of a draft lease agreement with the KZN Gambling Board was continuing and it was not expected that there would be any contentious issues to be dealt with. One area under discussion relating to the Gambling Board's requirement for a right to acquire the leased premises on a freehold basis would only be agreed if Gold Circle did not wish to take freehold ownership in its own name. The Gambling Board would be given a first right of refusal should Gold Circle not wish to take up any offer to purchase the property.

NOTED

4.6 Greyville – Durban View Room

The upgrade to the Greyville Durban View facility had not been progressed as it would not have been completed timeously for the winter season. This upgrade would commence in the week following the Canon Gold Cup raceday.

NOTED

4.7 Royal Durban Golf Club

All negotiations with the RDGC had been concluded in terms of the decision taken at the last Board Meeting, the company having agreed a three year contract with the RDGC.

NOTED

5. ACTION ITEMS

5.1 New Bank Accounts

No new accounts had been opened.

NOTED

5.2 Club Membership

Lists of Member applications had been included in the Agenda for consideration and approval. Member demographics at the end of 2007 were also summarized for information.

NOTED & APPROVED

6. FINANCE

6.1 Financial Statements: 2007

The Financial Statements for the period to May 2007 were considered and approved.

6.2 Capital Expenditure

o Budgeted

A schedule of Capital Expenditure for the period ended May 2007 was considered and approved.

APPROVED

o New England Road – PMB

The Board was requested to approve a building upgrade to the New England Road betting outlet in PMB amounting to R450 000 which made provision for bookmaking cubicle, a bar, a food counter and an LPM area in the outlet. The market value of this property, which was purchased by Gold Circle in 2004 for R372 000 was now estimated at R1,5 million.

APPROVED

o Margate Branch

As advised at the last Board Meeting the company had finalized the acquisition of the Margate Agency at a cost of R263 625. The Board ratified this unbudgeted acquisition.

RATIFIED

o PGE International

Following the very successful acquisition of the Isle of Mann Tote, the Board of Phumelela Gold Enterprises had voted the sum of R6 million to participate in a consortium bidding for an overseas totalisator company. Gold Circle's 39% share represented +/- R2,34 million. Phumelela had indicated that they would be willing to take 100% of the investment should Gold Circle not be willing to participate. The transaction was currently highly confidential and the Chairperson and CEO had been required to give confidentiality undertakings to Phumelela and the sellers in regard to the transaction. Management

strongly recommended that authority be given to the CEO and MD who represented Gold Circle on the PGE Board, to vote in favour of this transaction, subject to the Chairperson approving the final PGE proposal in this regard.

The overseas totalisator would commingle with Phumelela and Gold Circle and as a result would extensively grow revenues. Commingling should start within the next 18 months and from year three onwards the business plan estimates were that the average return on investment would be more than 50% per annum.

There would be no cash flow implications as the investment would be funded from PGE's own resources.

The Board approved the acquisition of an overseas totalisator at a value of R2,34 million. It was agreed that the Chairperson and the CEO further talks and proceed with the proposal if deemed to be beneficial to the Company.

APPROVED

AGREED

6.3 Financial Budget : 2008

The Board considered the proposed 2008 Financial Budget as tabled by Management, which reflected a net surplus of R7,3 million for the year.

Considerable discussion took place on turnover trend projections, having regard to the loss of night race meetings at Newmarket as well as international opportunities. Turnovers had been projected to increase by 8%.

The Board believed that the proposed 2008 budget was a "holding budget" and did not include income generation from new initiatives.

After discussion, Management was directed to increase the turnover budget projection to 8,5% above the prior year which would derive additional revenues of approximately R2,1 million to at least equate to the 2007 projected final surplus of R9,3 million.

Subject to turnovers being amended in accordance

with the above, the financial budget, together with the capital expenditure budget for 2008 was approved in principle.

APPROVED

6.4 Application for Funding : PDI Bookmaking Licence

The company had received an application for funding by a Mr V Xaba for his acquisition of a PDI Bookmaking Licence. Mr Xaba was currently a member of the KZN Gambling Board as well as a member of the KZN Bookmakers' Control Committee and as such it was not believed that there would be any probity difficulties in him acquiring a bookmaking right.

After consideration, the Board declined the loan application on the basis that bookmaking was not a core competence of Gold Circle and this fact had been borne out by the company's exclusion from owning a financial interest in bookmaking as provided for in the new Betting Bill.

AGREED

The Board suggested that Mr Xaba engage with Betting World, the Bookmakers' Society and Province to try and obtain the funding required.

With particular reference to the prior loan approvals to Mr and Mrs Dhlamini, the Board was advised that Management had communicated with the KZN Province to withdraw the funding approvals as the Dhlaminis had not progressed their applications to date, and further were not contactable due to address changes.

NOTED

6.5 Limits of Authority

Included in the Board Pack was a revised policy relating to the limits of authority on management for procurement purposes. The limits that currently existed, set many years ago, were impractical and hampered management in their ability to further the business of the company.

The Board was requested to consider and approve the revised limits of authority policy document. After considering various comments, amendments were made to the draft document and it was approved in principle.

APPROVED

6.6 KZN Betting Bill

The progress on the KZN Betting Bill had reached a stage where the content had been passed in principle by

the Attorney General and the KZN Cabinet. A copy of the "Final" Draft had been passed to the company for information and preparation for the public hearing process, dates for which had not as yet been set.

The Bill was deficient in several areas as might affect the company going forward and these were noted as follows:

- o Provision had been made in the Bill that the racing operator, Gold Circle, would not be able to have ownership in the province of any bookmaking right. This was contrary to the discussion with Province over the past 8 years wherein it was always envisaged that once corporatisation had been achieved, Gold Circle would be afforded the opportunity to become involved in bookmaking. In addition, through Gold Circle becoming involved in bookmaking, the advent of promoting transformation in the racing industry would be enhanced
- o As a result of the above point, the new Bill provided that Gold Circle would need to cease its fixed odds operation within a period of 6 months following the promulgation of the Bill. Once again, this was against the original principles of corporatisation and further, given the fact that the authority to operate a fixed odds licence issued by the Premier of KZN, had been in place since 1993 and there would be a constitutional issue surrounding the termination or withdrawal of this authority
- o The provision for corporatisation had been restricted in the Bill whereby a corporate entity, any person or partnership might not have ownership of more than 3 bookmaking rights. This restriction might have the effect of stunting corporate organic growth in the bookmaking market and might further have constitutional implications
- o The taxation issues as far as pari-mutuel betting was concerned, did not take cognizance of a prior application made to the Province which would provide for host rules applying in respect of international commingling of pools, where the takeout rates might be greater than those provided for in the Bill's tax schedule

Management were liaising closely with the company's attorney and the Chairman of the KZN Premier's Portfolio



Committee, with a view to recording Gold Circle's concerns with the current draft legislation.

NOTED

6.7 SA Jockeys' Association

The Board were advised that SAJA had instituted court proceedings against both Gold Circle and Phumelela, requesting that payment for riding fees earned by jockeys be made to SAJA rather than directly to the individual jockeys concerned. This action was being defended. Advocate David Gordon had been engaged by Gold Circle whose opinion was that SAJA had no legal standing in terms of the law. Mrs Nhlanhla urged that money be lodged by SAJA to cover costs in such a vexatious application.

NOTED

6.8 Tellytrack

At a recent PGE meeting the principle of merging the various television departments of the racing operators into one entity under Tellytrack, had been discussed. It was the recommendation of management that discussions were entered into which would result in all television operations in the country forming part of PGE through Tellytrack. The Board approved the principle of merging the television services under Tellytrack.

NOTED

7. PENDING

7.1 Betting Information – UK Racing

The trial period during which UK racing information was being disseminated to certain outlets in the Cape had expired and no discernable increasing turnover trends over the period had been recorded. Gold Circle would continue disseminating this information for the foreseeable future.

NOTED

7.2 National Telephone Betting

The CEO had reminded the COO of Phumelela of his obligations to provide a business plan for the merging of the two companies' telephone betting operations.

NOTED

7.3 Termination of TAB Partnership

The de-registration of the TAB Partnership from a tax perspective was progressing.

NOTED

8. INCOME GENERATION

- 8.1 COMMERCIAL**
Provincial Reviews NOTED
- 8.2 MARKETING**
Activity reports from both the PR & Communications and Marketing Departments had been included in the Agenda for information purposes. The Chairperson asked Management to inform these Departments that they should be cognizant of Western Cape activities as well as KZN. NOTED
- 9. STATISTICS & GRAPHS**
- o Turnover NOTED
 - o Market Share NOTED
- 10. EXTERNAL BUSINESS REPORTS**
- o **Betting World**
The Chairperson advised that the business was operating extremely well. The BW Board would be expanded to include 3 members each from Gold Circle and Phumelela. The Board ratified the appointment of Mrs P Mnganga on to the Betting World Board. RATIFIED
 - o **Phumelela Gold Enterprises**
The CEO reported on the success of installing a tote on the Isle of Man. Tellytrack was now broadcasting in 40 countries. NOTED
 - o **KZN Slots**
 - o **National Horseracing Authority**
The scheduled meeting of the NHRA set for 04 May 2007 had been cancelled. The NHRA Board would meet on Friday 06 July 2007. NOTED
 - o **Quarterly Transformation Report**
Mrs Mnganga reported that the CSI spend would be set in the budget for the new financial year. NOTED
- 11. INTERNAL REPORTS**

- o **WC Chapter Minutes**

The Minutes of the WC Chapter Meeting of 11 June 2007 were included under the Reports Section. The CEO drew attention to the method of minute preparation in WC where the minutes of the meeting were prepared by the meeting secretary, sent to the Chairman and subsequently altered by Mr Freeman. He felt that this should only be done at the following meeting of the Chapter.

NOTED

- o **KZN Chapter Minutes**

The Minutes of the KZN Chapter Meeting of 11 June 2007 were included under the Reports Section.

NOTED

12. GENERAL

12.1 Leave of Absence

12.2 Racing Distribution

The CEO advised that notice had been given to Racing Distribution, who had been advised that Gold Circle would undertake this activity and produce its own publications in the future. Gold Circle's BEE would benefit from this move.

NOTED

12.3 International Racing Commission

Mr Adams felt that it could become possible to have international horses racing in this country. The opportunities would be followed up with specific regard to featuring an international event during December in the Cape.

NOTED

12.4 Well wishes

The WC Directors wished KZN a successful running of the VDJ.

NOTED

12.5 Wages – Totes and Racecourses

Mr Pillay raised the question of minimum wage payment to waiters in KZN in terms of newly promulgated legislation. The MD would check with Gold Circle's HR Department to enquire the basis of remuneration.

NOTED

12.6 Premier's Race

In response to an enquiry by the Chairperson, the CEO advised that Rural Amateur Racing would be featured on

Gold Cup Day.

NOTED

12.7

Debtors

The Chairperson advised that an investigation had been undertaken into debtors, and was pleased to report that the Company's debtors were well under control.


NOTED

The meeting closed at 13:10.

CONFIRMED AS A TRUE RECORD

CHAIRMAN

DATE



"MN5"

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AFFIDAVIT

I, the undersigned:

John Athol Stuart

do hereby make oath and state:

1.


The facts deposed to in this affidavit are within my personal knowledge and belief, and are true and correct.

2.

I was employed by Phumelela Gaming and Leisure Limited ("Phumelela") during the period 1st March 2002 to 31st May 2020.

3.

Immediately prior to the termination of my employment at Phumelela, I held the position of Chief Executive Officer.

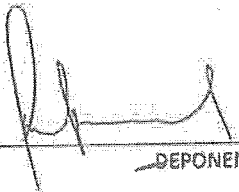

M.C.

4.

During the tenure of my employment at Phumelela I was privy to Phumelela's relations with Gold Circle (Pty) Ltd ("Gold Circle").


5.

I can confirm that as at the time of the termination of my employment at Phumelela, Gold Circle was the beneficial owner of 39% of the shares in Phumelela Gold International Limited, a company registered in the Isle of Man.


DEPONENT

I HEREBY CERTIFY THAT the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at DURBAN on the _____ day of 2020, after the regulations contained in Government Notices R1258 dated 21 July 1972 and R1648 dated 16 August 1977, as amended, had been complied with.

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
SANDTON
2020-08-28
KLIENTE DIENSENTRUM
SANDTON
SUID-AFRIKAANSE POLISIEDIENS


COMMISSIONER OF OATHS





GOLD CIRCLE
HORSE RACING AND BETTING

Proprietor Gold Circle (Pty) Ltd. Reg No. 1998/024366/07
HEAD OFFICE - Durban
P.O. Box 40, Durban, 4000
150 Avondale Road, 4001
Telephone: +27 31 3141500
Email: headoffice@goldcircle.co.za
Website: www.goldcircle.co.za

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"MN6"³¹

27 July 2020

To: The Business Rescue Practitioner
Phumelela Gaming and Leisure Limited
By email: johnnevans@rsadvisors.co.za

Dear John

RE: PGI SHARES

As you know an offer was made by Gold Circle to acquire certain assets and/or interests of PGL. The offer was proposed by Gold Circle's representatives, Capital Efficiency Group, and was made to your representative, FTI Consulting. For that reason, I have copied your representative with a copy of this letter.

In our offer, you will see that in relation to Phumelela Gold International Limited ("PGI"), the offer highlights that PGL does not itself own all of the shares in PGI. Whilst PGL is the registered holder of the shares, it has in fact held these shares:

- until 2012 on behalf of the PGE partnership¹;
- after 2012, on behalf of Gold Circle as to 39% and on its own behalf as to 61%²

In the event that the offer refers to Kenilworth Racing having an interest in PGI, that interest is in fact an interest in the revenues of the PGI business, rather than the ownership of shares in PGI itself.

Please would you, with all haste required, check the records of PGL and consider your own understanding of the structure of the ownership of the shares in PGI. If the records of PGL (and therefore your understanding) do not reflect Gold Circle's ownership of 39% of the shares in PGI, you may, in error, labour under the misunderstanding that PGL, represented by you, is entitled to dispose of Gold Circle's shares.

Please also confirm by the close of business on Wednesday 29 July 2020 that you recognise Gold Circle's ownership of its 39% of the shares in PGI and furthermore that you will not dispose of such shares to any person.

The requested memorandum detailing the relationship between PGL and Gold Circle will be sent to you by latest tomorrow morning.

Kind Regards,



MICHEL NAIRAC
CHIEF EXECUTIVE OFFICER

¹ See, for example, clause 5.1 of the Tellytrack Partnership Agreement entered into between PGL and Gold Circle on 25 October 2012 .

¹ Clause 5.1 of the agreement referred to in footnote 1 above.



"MN-7"

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Gold Circle (Pty) Ltd

Re: Claims against Phumelela Gaming and Leisure Limited (in business rescue)

Background:

1. Gold Circle has filed two claims with the business rescue practitioner ("BRP") of Phumelela Gaming and Leisure Limited ("PGL");
 - 1.1. R74 369 168,00 in terms of certain trading agreements and set-off arrangements; and
 - 1.2. R30 460 664,00 in respect of an agreed reimbursement due by PGL (representing Tellytrack) to Gold Circle (and other users of the Tellytrack Channel) in respect of the overpayment of licence fees in relation to the Tellytrack Channel, which licence fees were a matter of dispute at the time payment was made.
2. The BRP has responded to the claims of Gold Circle by way of an email dated 16 July 2020 in which the BRP states:

"I have reviewed your claims, the contracts entered into between Phumelela and Gold Circle and the accounts referenced in your claim calculations. I am unsure that your claim is supported by the contractual rights and obligations set out in the agreements. Please will you provide an explanation of each aspect of your claim, the basis on which it is claimed and provide copies of the documents and agreements that support your claim. I suggest that once you have provided the information that we meet to discuss and hopefully clarify the position".

Claim 1: R74 369 168,00

3. Gold Circle and PGL have operated their businesses in conjunction with each other for in excess of a decade. Their contractual relationship has been regulated by various contractual arrangements. One such contractual arrangement is contained in a written agreement entitled "Tellytrack Partnership Agreement" entered into between Gold Circle and PGL on 25 October 2012 ("the Old Tellytrack Partnership Agreement").
4. A copy of the Old Tellytrack Partnership Agreement will be delivered with this memorandum, as annexure A.

Phumelela Gold International ("PGI")

5. In terms of the Old Tellytrack Partnership Agreement, clause 5.1 states:

5.1 The Parties record that the Partnership shall distribute the following assets of the Partnership to the Parties in the proportions set out hereunder:

5.1.1 ...

5.1.2 61% (sixty one percent) of the PGI Shares to Phumelela and 39% (thirty nine percent) thereof to Gold Circle;

And..."

6. In terms of the Old Tellytrack Partnership Agreement:

6.1. "PGI" is defined as follows:

"Means Phumelela Gold International Limited, a company registered in the Isla of Man under registration number 109784C".

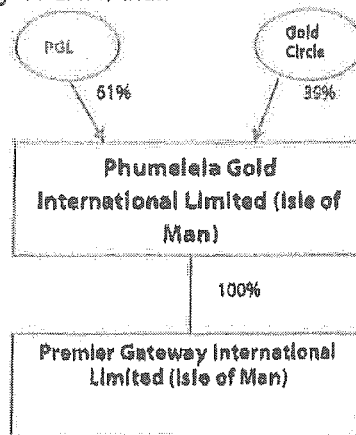
6.2. "PGI Shares" is defined as follows:

"means 100 (one hundred) fully paid ordinary shares of £1 (one pound) each in the Issued share capital of PGI and representing 100% (one hundred percent) of the Issued share capital of PGI, which, as at the Signature Date, are held by the Partnership Manager [PGL]

7. In the circumstances, in accordance with the Old Tellytrack Partnership Agreement, the "PGI Shares" were to be distributed *in specie* as to: PGL – 61% and Gold Circle – 39%.

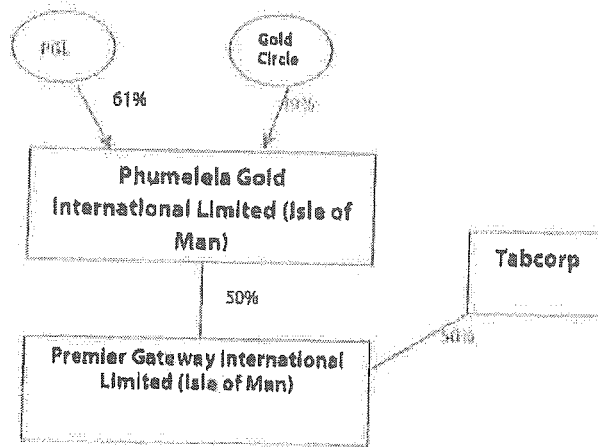
8. Gold Circle was thus, pursuant to the Old Tellytrack Partnership Agreement, the owner of 39% of the shares in PGI.

9. An organogram of the shareholding of PGI was thus:



[Handwritten signature]

10. Premier Gateway International Limited (referred to in the organogram above) is a totalisator hub operated from the Isle of Man. It generates revenue and profits are distributed between its shareholders which are at present Phumelela Gold International Limited (50%) and Tabcorp (50%). Profits generated by Premier Gateway International Limited are therefore distributed to Phumelela Gold International Limited (50%) and the latter, in turn, distributes such profits to Gold Circle and PGL. An organogram of the current shareholding of Phumelela Gaming International Limited is:



11. In terms of an agreement, PGL collects and processes:

- 11.1. the betting revenue due to Gold Circle derived from betting (via PGI) on the South African horse racing product;
- 11.2. the profits generated by PGI by reason of its shareholding in PGI, and distributes to Gold Circle, Gold Circle's portion of the profits.

12. This arrangement has endured since 2012 and is reconciled monthly, with the most recent reconciliation having taken place in April 2020. This reconciliation occurs in conjunction with the other reconciliations referred to below. This is also approved annually by the Board of each of PGL and Gold Circle, and confirmed annually by the external auditors of each of PGL and Gold Circle.

The Tellytrack Partnership Agreement

13. In 2013, PGL, Kenilworth Racing (Pty) Ltd ("KR") and Gold Circle entered into a new partnership called "the Tellytrack Partnership". The Tellytrack Partnership endures and is regulated by a written agreement signed by the partners on 6 May 2013 ("the Tellytrack Partnership Agreement"). A copy of this agreement will be delivered with this memorandum as annexure B.

14. The Tellytrack Partnership Agreement (as It has been amended by way of three addenda):

14.1. does not regulate the Interests of PGL and Gold Circle in PGI because those Interests were distributed *in specie* to each of Gold Circle and PGL pursuant to the Old Tellytrack Partnership Agreement;

14.2. provides at clause 6.1:

"... nothing contained in this Agreement shall derogate from the rights and obligations of each of Gold Circle and Phumelela as recorded at clause 5 of the [Old] Tellytrack Partnership Agreement".

14.3. regulates, *inter alia*, a commercialisation of the audio visual content of the Tellytrack Partners in South Africa, Namibia and Zimbabwe;

14.4. provides at clause 9 for the sharing of profit and distributions;

14.5. provides at clause 10 for the manner in which payments in terms of the Tellytrack Partnership Agreement would be managed and paid. In this regard, clause 10 states:

"Every payment in terms of this Agreement shall be paid in accordance with the set-off arrangement¹ between the Parties on or before the 28th (twenty eighth) day of each month following the month in which such payment becomes due and payable, or, in the event that the set-off arrangement between the Parties is terminated..."

15. The Partners have since 2013 conducted themselves in accordance with the provisions of the Tellytrack Partnership Agreement and in particular, have paid and been paid in accordance with the provisions of clause 10.

Licence Agreement

16. On 25 October 2012, Gold Circle and PGL entered into a licence agreement called "the Licence Agreement". A copy of this agreement will be delivered with this memorandum as annexure C.

17. The Licence Agreement:

17.1. regulates the terms and conditions under which Gold Circle grants to PGL the right to use and exploit Gold Circle's commercial rights (relating to racing pictures at its venues) and its Intellectual property rights (as are further defined in the Licence Agreement);

¹ The set-off arrangement is the arrangement which has been adopted by the parties and which includes set-offs and related financial discharges in relation to payments due by and in favour of each of the parties pursuant to the Tellytrack Partnership Agreement, the Licence Agreement (see below), the Substitute Commingling Agreement (see below), the Substitute Sports Administration Agreement (see below) and the PGI receipts (see above).

17.2. provides a clause for the payment by PGL to Gold Circle of royalties in respect of PGL's use of Gold Circle's commercial rights and intellectual property);

17.3. provides at clause 4.2:

"All payments and royalties referred to in clause 4.1 by the Licensee to the Licensor under this Agreement shall;

4.2.1 be settled in accordance with the set-off arrangement between the Parties by the 28th (twenty-eighth) day of each month following the month in which such payment becomes due and payable, or in the event of a termination of the set-off arrangement..."

18. Gold Circle and PGL have since 2012 conducted themselves in accordance with the provisions of the Licence Agreement and in particular, Gold Circle has received consideration from PGL in accordance with the provisions of clause 4,

Sport Administration Agreement

19. On 9 May 2013, PGL, KR and Gold Circle entered into an agreement called "The Substitute Sport Administration Agreement". A copy of this agreement will be delivered with this memorandum as annexure D.

20. The Substitute Sport Administration Agreement:

20.1. regulates the joint and transparent administration of the Sport of thoroughbred horseracing by PGL, KR and Gold Circle, relating *inter alia* to the allocation of racing events as between themselves;

20.2. provides for the allocation between PGL, KR and Gold Circle of income and expenditure relating to their operations in the administration of the Sport;

20.3. provides at clause 13:

"every payment required in terms of this Agreement shall be settled in accordance with the set-off arrangement between the Parties by the 28th (twenty-eight) day of each month following the month in which such payment becomes due and payable or, in the event of the termination of the set-off arrangement..."

21. PGL, KR and Gold Circle have since 2013 conducted themselves in accordance with the provisions of the Substitute Sport Administration Agreement and in particular, have paid and been paid in accordance with the provisions of clause 13.

Commingling Agreement

22. In 2012, PGL and Gold Circle entered into an agreement called "The Substitute Commingling Agreement". A copy of this agreement will be delivered with this memorandum as annexure E.
23. The Substitute Commingling Agreement:
- 23.1. provides for the regulation of the commingling of totalisator pools by the provision by Phumelela of a host tote and the commingling by Gold Circle (the guest tote) of its pools with those of the host tote;
- 23.2. provides at clause 8:
- "... all payments required to be made in terms of this Agreement shall be paid in accordance with the set-off arrangement between the Parties by the 28th (twenty-eight) day of each month following the month in which such payment becomes due and payable".*
24. PGL and Gold Circle have since 2012 conducted themselves in accordance with the provisions of the Substitute Commingling Agreement and in particular, have paid and been paid in accordance with the provisions of clause 8.

The Set-off Arrangement

25. As between PGL and Gold Circle, the amounts due as between the two of them have since 2012 been dealt with by way of set-off and discharge in relation to:
- 25.1. the betting revenue referred to in paragraph 11.1 above;
- 25.2. the profits of PGL referred to in paragraph 11.2 above;
- 25.3. the Tellytrack Partnership Agreement referred to in paragraph 13 above;
- 25.4. the Licence Agreement referred to in paragraph 16 above;
- 25.5. the Substitute Sport Administration Agreement referred to in paragraph 19 above; and
- 25.6. the Substitute Commingling Agreement referred to in paragraph 22 above.
26. By way of the set-off arrangement referred to above, amounts due as between PGL and Gold Circle were set off and discharged from time to time as those amounts became due and payable. A record of these set-offs and related discharges is set forth in the schedule which will be delivered with this memorandum as annexure F.

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Claim 2: R30,160,664,00

27. In October 2013 PGL, as the majority partner of Tellytrack, resolved to significantly increase the subscription fee payable by commercial subscribers to the Tellytrack Channel (which constitutes a large number of bookmakers). This resolution gave rise to an industry-wide dispute, which in turn gave rise to a number of civil, regulatory, competition and criminal proceedings.
28. This industry-wide dispute endured for approximately 7 years, and in some respects still endures. During the course of this industry-wide dispute:
- 28.1. PGL undertook to bookmakers that where they paid the new subscription price (the higher price), and a Court, tribunal or agreement subsequently resolved a lower price, then Tellytrack (represented by PGL) would refund to such bookmakers the difference between the former amount and the latter amount;
- 28.2. a number of bookmakers deemed the cost of subscribing for the Tellytrack Channel to be unaffordable;
- 28.3. In order for such bookmakers to continue to operate, Gold Circle (with the acquiescence of Tellytrack and PGL) undertook to pay to Tellytrack (to PGL's account) on behalf of such bookmakers,
- 28.4. this undertaking by Gold Circle to pay was discharged by Gold Circle in whole, by Gold Circle paying to Tellytrack the full (higher) new monthly subscription price on behalf of the applicable bookmakers,
- 28.5. It was agreed that these payments by Gold Circle would to the extent that they exceeded the resolved lower price contemplated in 28.1, constitute overpayment of the nature contemplated in 28.1 above, which would entitle Gold Circle to be refunded such overpayments in the manner contemplated in 28.1.
29. In March 2020, PGL, representing the Tellytrack Partnership, agreed with the commercial subscribers to Tellytrack a new subscription price to be applied to the period during which the industry-wide dispute endured, and thereafter. The table below sets forth the amount thus agreed, the amount which Gold Circle had in fact paid on behalf of the applicable commercial subscribers and the difference between these amounts:

Period	Monthly amount	Monthly amount paid during dispute	Difference (per month)
01 Oct 2013 - 31 Jan 2014	5 575,00	6 000,00	- 425,00
01 Feb 2014 - 28 Feb 2014	5 904,00	16 532,25	- 10 628,25
01 Mar 2014 - 31 Mar 2014	4 428,00	16 474,35	-12 046,35
01 Apr 2014 - 31 Aug 2014	4 428,00	22 075,00	-17 647,00
01 Sept 2014 - 31 Mar 2015	6 282,00	22 075,00	-15 793,00

01 Apr 2015 - 31 Aug 2015	6 282,00	26 594,00	-20 312,00
01 Sept 2015 - 31 Mar 2016	6 571,00	26 594,00	- 20 023,00
01 Apr 2016 - 31 Aug 2016	6 571,00	31 112,00	- 24 541,00
01 Sept 2016 - 31 Jul 2017	6 959,00	31 112,00	- 24 153,00
01 Aug 2017 - 31 Aug 2017	6 959,00	34 000,00	- 27 041,00
01 Sept 2017 - 31 Aug 2018	7 293,00	34 000,00	- 26 707,00
01 Sept 2018 - 31 Jul 2019	7 650,00	34 000,00	- 26 350,00
01 Aug 2019 - 31 Mar 2020	7 956,00	34 000,00	- 26 044,00

30. A copy of a schedule recording the commercial subscribers in respect of whom the overpayments were made, and the amounts thus refundable will be delivered with this memorandum as annexure G.

29

fluxmans

ATTORNEYS

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Private Bag 241, Saxenwald, 2132, South Africa
Boxes 54 Johannesburg, Website: www.fluxmans.com
Fluxmans Inc. Registration No: 2000/024775/21

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Our Ref : CJS/lp/145028/3988780_1
Your Ref :
Date : 11 August 2020

Writer's Direct Line: 011 328 1843
Email: csf@fluxmans.com
Fax: 011 880 2261

BY EMAIL

BARKERS ATTORNEYS

MR DEAN FONSECA
dean@barkers.co.za
dfonseca@barkers.co.za

MS VANESSA HUTTON
vanessa@barkers.co.za

Dear Dean and Vanessa

PHUMELELA GAMING & LEISURE LIMITED (IN BUSINESS RESCUE) / GOLD CIRCLE (PTY) LTD

1. Thank you for your emails.
2. I note that your email sent at 07:27am was:
 - 2.1 thereafter recalled;
 - 2.2 sent again with the epithet "*without prejudice*".
3. Our client's queries are genuine.
4. Our client has secured all the necessary information from Phumelela, your client and others.
5. Having considered these our client has a number of genuine concerns which we set out below.
6. Accordingly, your criticism of our client is unfounded, unnecessary and unwarranted.
7. Our client's concerns are the following:
 - 7.1 100% of the issued share capital of PGI is registered in Phumelela's name;
 - 7.2 the shares are thus a wholly owned subsidiary of Phumelela and its asset;
 - 7.3 its audited financial statements record this as such and also record all the substantial dividend income received from PGI as solely for the benefit of Phumelela;

Directors: CJ Sibiya (Joint Chief Executive Officer), JS Epstein (Joint Chief Executive Officer and Managing), DO Pruthi (Exec), AJ Pholiso (Exec),
CP Anon, G Moch, L dos Passos, RE Dingo, SR Fisher, KM Fuchs, J Gung, D Guman, PL Kanyo, LA King, AC Kung'u, J Lovitz, RP Ushidi, DF Abrques, US Mor, All Poni,
B Sule, J Shello, CB Shamba, W Shapiro, SP Shoba, SA Shool, TA Simoa, S Slem, AC Soldatos, EH Tsimi, EJ Van Hysstam Santos Consultants: C Coates, CD Stein,
P Vohar Chief Financial Officer: YD Rubin C.A. (S.A.), M.B.A. Santos Associates: C Ommantoh, L Dandison, JS Kubi Associates: DR Hirschowitz, MS May, FN Sibiya,
J Vaughn Office Managers: H Smit

- 7.4 your client's audited financials make no reference whatsoever of it owning any shares in PGI, certainly in the substantial alleged amount of 39% of its issued share capital. Your client also reflects none of the substantial dividend income distributed by PGI;
- 7.5 Phumelela's auditors are KPMG and its financial year-end is 31 July in each year. Your client's auditors are also KPMG and its financial year-end is also 31 July;
- 7.6 Phumelela's shares are listed on the JSE and thus its financials are published on SENS, distributed to its shareholders and available to the public on its website;
- 7.7 Your client's financials are published on its website for public viewing;
- 7.8 It would appear inconceivable that such a material error in both the income statement and balance sheets in the accounts of each of the companies could have endured for so long. This is especially so considering the wide interest in these accounts from shareholders, owners, trainers, bankers, SARS and many other persons. We also note that the current CEO of your client has been listed as a Director and the CEO of your client in its Annual Report since December 2012. Mr Tembe, who was the Chairman of your client's Audit Committee at the time of the dissolution of "2002 Partnership" remained a Director and Vice Chairman of your client until his resignation as a Director in your client's 2019 financial year. Mr Tembe thereafter became the Lead Independent Director of Phumelela and is now its Chairman, in which position he has presented under his name financial accounts which were released on the JSE's SENS news service. It is noteworthy that Mr Tembe includes in his curriculum vitae that he has over 30 years of business experience including directorships with major listed companies such as Mr Price. Phumelela's Financial Director, Mr Heide, held the position from 2009 until March 2020. In addition, Phumelela's executive and non-executive Directors have always included a number of Chartered Accountants (SA).

7.9 We draw attention to your client's 2014 Annual Report:

The 2014 balance sheet reflects:

Investment in Joint Venture (Note 4) = R2 064 358
Investment in Associates (Note 5) = R0

The comparative numbers for 2013 are:

Investment in Joint Venture (Note 4) = R21 462 878
Investment in Associates (Note 5) = R5 159 822

Note 4 to the accounts states:

"As from 1 August 2014, the International Division of the PGE Partnership was taken over by Phumelela Gaming and Leisure due to the objective of changing all

commercial arrangements with Phumelela to a normal customer/supplier relationship.

During the financial year, Phumelela was involved for revenues relating to Gold Circle's racing product sold internationally and profits owing to Gold Circle, hence disclosed as trade receivables"

2014 Disclosure:

Investment in Tollytrack Partnership = R2 064 358

Phumelela Gold International = R0

TOTAL: Investment In Joint Venture = R2 064 358

Phumelela International Trade Debtor = R54 174 371

2013 Disclosure:

Investment in Tollytrack Partnership = R 14 695 982

Phumelela Gold International = R6 766 896

TOTAL: Investment In Joint Venture = R21 462 878

Phumelela International Trade Debtor = R0

Note 5 to the accounts states:

2014 PGE Mauritius = R0

2013 PGE Mauritius = R5 159 822

PGE Mauritius was liquidated during the current financial year. PGE Mauritius liquidation resulted in Gold Circle Proprietary Limited receiving a dividend in specie in respect of 421 382 shares in Automatic Systems Limited, which has been classified as available for sale (refer to note 12).

The Chairman's report states:

INTERNATIONAL

The Licence Agreement between Gold Circle and Phumelela Gaming and Leisure Limited, whereby the company's racing product is sold internationally, remains a significant source of revenue for Gold Circle contributing in excess of R53 million for the year. It is expected that revenue from this source will be sustained in the year ahead. The unbundling of the company's

Investment through PGE (Mauritius) in Automatic Systems Limited ("ASL") is now complete. Shares held in ASL are now held directly by Gold Circle. Cash disbursements of R2 million from the liquidation of PGE (Mauritius) have already been received and the transaction resulted in a profit of R8,6 million which has been reported in the financial statements for the year. The Racing Operators continue to prepare their racing fixtures to facilitate and enhance the sale of South African product overseas, and ensuring at the same time that betting opportunities locally are maximised. South Africa continues to be regarded as an international leader in commingling of betting pools and Tellycasting.

- 7.10 It is thus clear from the above that by agreement between Phumelela and your client, your client no longer held any shares in PGI and that a new agreement was entered into (which appears to include Kenilworth) pursuant to which your client no longer owned any shares in PGI and the terms and conditions of the agreement as implemented are now reflected in Phumelela's and your client's audited financial statements.
- 7.11 Thus all fees and other income amounts payable by Phumelela to your client are clearly defined and set out in the 2013 Partnership Agreement, Comingling Agreement, Licence Agreement and Sports Administration Agreement.
- 7.12 It is thus clear to us that your client at present is not a shareholder in PGI and has not been since the execution of the 2013 Partnership Agreement.

8. Re the Set-Off Agreement

- 8.1 There is only one Set-Off Agreement which we can find. It is dated 2009 and it is entered into between Phumelela and your client.
- 8.2 It is limited in its scope and operation.
- 8.3 No reference is made to this agreement in any of your client's accounts and communications with our client.
- 8.4 Rather, this set-off is henceforth and after 2013 referred to in correspondence and agreements as an "arrangement".
- 8.5 It is for this reason that we have asked you to provide us with the detail of this set-off arrangement.
- 8.6 You still haven't yet provided it to us.
- 8.7 Does it exist in writing? If it does, please let us have this agreement. If it doesn't, please confirm to us that no such written agreement exists and if this is the case, that the

R 4

written agreements between the parties and amounts that from time to time become payable in terms of those agreements are the subject of the set-off arrangement referred to therein.

- 9. Our failure to deal with any other allegation in your communication is not to be construed as an admission of the correctness of the content thereof.

Kind regards

COLIN STRIME
FLUXMANS INC.

TRANSMITTED ELECTRONICALLY
AND THEREFORE UNSIGNED



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"MN 9"

BARKERS

19 August 2020

Colln Strlme
c/o Fluxmans Attorneys

By email

Dear Colln

YOUR CLIENT: MR JOHN EVANS, IN HIS CAPACITY AS THE BUSINESS RESCUE PRACTITIONER OF PHUMELELA GAMING AND LEISURE LIMITED (IN BUSINESS RESCUE)
OUR CLIENT: GOLD CIRCLE PROPRIETARY LIMITED ("Gold Circle")
RE: PGI SHARES AND SET OFF ARRANGEMENTS
Our Ref: Dean Fonseca/FK/G0614/0961
Your Ref: CJS/lp/145028

1. Thank you for your email of 11 August 2020.
2. At the outset, our client has asked us to note that your client has not dealt pertinently, or at all, with the excerpts contained in our client's memoranda which were addressed to your client, which excerpts record the express agreement and undertaking of the parties to the effect that:
 - 2.1 our client is the beneficial owner of the PGI shares in question; and
 - 2.2 your client holds the shares for and on behalf of our client.
3. For your convenience, we reiterate that in terms of the 2012 Partnership Agreement, clause 1.30 states:

"1.30 PGI shares: means 100... shares in the issued share capital of PGI... , which as at the Signature Date, are held by the Partnership Manager [Phumelela]"

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KwaZulu-Natal, Republic of South Africa.

and clause 5.1 states:

"5.1 The Parties record that the Partnership shall distribute the following assets of the Partnership...

5.1.2 61% (sixty one percent) of the PGI Shares to Phumelela and 39% (thirty nine percent) thereof to Gold Circle..."

4. Likewise, your client has not dealt with what is recorded by our client in its letter to your client dated 27 July 2020, in which our client records:

"... PGL does not itself own all of the shares in PGI. Whilst PGL is the registered holder of the shares, it has in fact held these shares:

- until 2012 on behalf of the PGE Partnership; and
- after 2012 on behalf of Gold Circle as to 39% and on its own behalf as to 61%".

5. Our client has asked us to record that your client, rather than dealing with these pertinent issues, has apparently relied on select accounting records and has thus concluded that it is:

"... clear from the above [the accounting records] that by agreement between Phumelela and your client, your client no longer held any shares in PGI and that a new agreement was entered into... pursuant to which your client no longer owned any shares in PGI..."

6. We are instructed that your client's conclusion (set forth in your letter) is incorrect in fact and in law, and that it:

- 6.1 Ignores the written recordal of ownership (which remains unanswered by your client);
- 6.2 Ignores the distribution of funds in accordance with that ownership for almost a decade;
- 6.3 relies on a particular selective, but incorrect (see below) construction of accounting entries, predominately by Phumelela, a party over which our client has no control; and
- 6.4 relies on the conclusion of a hitherto undisclosed "new agreement", which is not put up or even described by your client.

7. Having recorded our client's position (again), our client has instructed us to deal as set forth below in relation to those numbered paragraphs of your email which require specific comment.

Ad paragraph 7.1 and 7.2

- 7.1 The issued shares in Phumelela Gold International Limited ("PGI") are registered in the name of Phumelela. Phumelela holds these shares for our client, which retains beneficial ownership. This arose for practical reasons, at the request of Phumelela. This fact is known to your client and was in fact re-iterated in our client's letter to your client dated 27 July 2020.

Ad paragraph 7.3

- 7.2 This is not correct. It appears from Phumelela's 2014 audited annual financial statements that it chose to treat all the income from the Isle of Man as its income but, at the same time, it deducted 39% thereof as an expense to be accrued to Gold Circle. In terms of a subsequent agreement, Gold Circle agreed to split a portion of the share to which it was entitled, with Kenilworth Racing, such that the proceeds were split 61%, 24.96%, 14.04% to Phumelela, Gold Circle and Kenilworth Racing respectively.
- 7.3 It is unclear to our client why Phumelela's directors and KPMG chose to deal with Gold Circle's share of profit in this way.
- 7.4 Likewise, our client cannot be expected to explain why Phumelela's directors and KPMG did not mention that Phumelela held 39% of the shares in PGI for the benefit of Gold Circle.
- 7.5 In Gold Circle's view, there is only one explanation for the fact that 39% of the net income from the Isle of Man was paid to Gold Circle: it is that Gold Circle was the beneficial owner of 39% of the shares in PGI and was thus entitled to that percentage of its profits. The fact that Gold Circle elected to share a portion of the profits with Kenilworth Racing (as part of a wider commercial agreement) did not detract from that.

Ad paragraph 7.4

- 7.6 It is not correct that the income derived from PGI is not reflected in Gold Circle's accounts. By way of example, we refer you to note 4 of Gold Circle's audited annual financial statements for 2014. Gold Circle invoiced Phumelela for Gold Circle's share of the income from the Isle of Man. That is the way in which Phumelela has paid what was due to Gold Circle for Gold Circle's interest in PGI for a number of years.
- 7.7 Nothing contained in Gold Circle's audited annual financial statements affected or detracted from Gold Circle's ownership of the shares in PGI and its entitlement to the income derived from those shares.

Ad paragraph 7.8

- 7.8 It is not clear to our client precisely what "material error" you refer to. To the extent that any financial statements do not correctly record Gold Circle's beneficial ownership of the shares in PGI, such financial statements are deficient in that respect.
- 7.9 Reference is made by you in your letter to Mr Moses Tembe and Mr Andreas Helde. Our client has asked us to request from you an explanation as to what those two gentlemen have to say about Gold Circle's interest in PGI and the sharing in the profits from the Isle of Man. Our client would appreciate your response in this regard.

Ad paragraphs 7.10, 7.11 and 7.12

- 7.10 Gold Circle does not agree with the conclusion postulated in this paragraph. The agreements underlying the financial relationship which gives rise to Gold Circle's claim are as have been explained already (in detail). To the extent that your client now contends that a new agreement supersedes this relationship, please provide to our client the following information:
- 7.10.1 does Phumelela itself also contend for this new relationship?
- 7.10.2 have the previous managers of Phumelela (those who were responsible for managing the relationship) been consulted in order to establish the "new position" (now postulated by your client)?

- 7.10.3 when was this "new agreement" concluded?
- 7.10.4 who represented Phumelela and who represented Gold Circle in concluding this "new agreement"?
- 7.10.5 was this new agreement oral or in writing?
- 7.10.6 if in writing, a copy of the writing is required;
- 7.10.7 If oral, a detailed explanation of the terms is required.

Ad paragraph 8

- 7.11 Please send to us a copy of the "2009 set-off agreement" to which you refer.
- 7.12 You have also asked for information regarding the set-off arrangement. The set-off arrangement relates to the various amounts due by and between Phumelela and Gold Circle pursuant to their business dealings. It is the arrangement that has operated throughout. Gold Circle has provided to Phumelela a full and detailed accounting of the operation of the set-off arrangement in relation to its claim. It is still unclear to Gold Circle what further information Phumelela requires. Gold Circle is happy to send to you copies of the underlying vouchers to support the detailed accounting, but has asked us to point out to you that much of the amount of the monthly set-offs is in fact made up of amounts (vouchers) provided by Phumelela to Gold Circle.
- 7.13 By way of example, attached hereto is a schedule dated 29 February 2020, provided by Phumelela to Gold Circle in relation to certain components of the set-off arrangement, particularly in relation to the PGI distributions. In that regard:
 - 7.13.1 Phumelela prepares and delivers to Gold Circle a schedule, in the same format as the attached schedule, on a monthly basis;
 - 7.13.2 the attached schedule refers to "share of equity accounted investee", which is a reference in terms of the International Accounting Standards to distribution pursuant to joint ownership;
 - 7.13.3 the attached schedule records that in relation to the revenue from PGI and its subsidiary (and the International Income), Gold Circle is entitled as at 29 February 2020 to the sum of R52 204 257.00;
 - 7.13.4 Gold Circle invoices Phumelela each month for its share of the various international revenue based on the schedule prepared and delivered to it by Phumelela;
 - 7.13.5 the schedule thus constitutes a monthly demonstration of Phumelela's acknowledgement of Gold Circle's right to receive the proceeds of its shareholding in PGI.
- 8. In the circumstances, our client has instructed us to record that it owns the shares in PGI for which it contends and is entitled to the past and future proceeds of those shares.
- 9. Our failure to deal with any of the allegations contained in your email of 11 August 2020 is not to be construed as an admission by our client of the correctness thereof. Our client reserves the right to deal therewith at a later stage if necessary.

Yours sincerely

electronically transmitted therefore unsigned

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**SUMMARY INCOME STATEMENT
AS AT 29 FEBRUARY 2020**

	ACTUAL	BUDGET	PRIOR YEAR	VARIANCE	
TELLYTRACK PARTNERSHIP	(35 060 892)	(0 067 390)	(37 624 853)	(26 001 183)	
INTERNATIONAL DIVISION					
- SHARE OF RIGHTS ON LOCAL INTERNATIONAL SALES	126 893 821	168 058 457	126 468 274	(19 121 617)	
- PGI - PROFIT/(LOSS)	2 684 450		3 034 000	2 684 450	
- SHARE OF EQUITY ACCOUNTED INVESTEE	77 853 304	83 073 490	73 274 700	(5 426 190)	
TOTAL PROFITS BEFORE TAX	178 093 689	226 867 529	177 161 418	(48 074 450)	
Phumelela Gaming & Leisure	61,00%	99 317 761	83 162 376	95 347 611	6 135 366
- TellyTrack		20 066 079	2 908 561	10 883 984	17 769 439
- Share of locals rights sold internationally		79 251 682	80 253 815	74 463 627	(11 004 125)
Gold Circle (Pty) Ltd	24,98%	39 879 461	38 763 166	39 428 990	676 296
- TellyTrack		7 457 674	1 798 547	6 262 806	5 098 027
- Share of locals rights sold internationally		32 421 787	36 964 619	33 166 184	(4 772 731)
Kentworth Racing (Pty) Ltd	14,04%	22 895 261	22 187 274	22 318 036	607 986
- TellyTrack		4 892 838	1 400 291	4 278 371	3 452 647
- Share of locals rights sold internationally		18 002 423	20 786 983	18 039 665	-2 684 061
PROFIT BEFORE PGI & SHARE OF ASSOCIATE	161 092 893	164 122 637	166 950 637	7 089 666	
PGI					
Phumelela Gaming & Leisure	61,00%	1 684 314		1 851 233	1 684 314
Gold Circle (Pty) Ltd	24,98%	640 086,7		757 488,0	640 087
Kentworth Racing (Pty) Ltd	14,04%	360 048,8		428 087,0	360 048
PROFIT BEFORE SHARE OF ASSOCIATE	2 684 450		3 034 000	2 684 450	
SHARE OF EQUITY ACCOUNTED INVESTEE					
Phumelela Gaming & Leisure	61,00%	47 366 513	50 678 488	44 697 587	(3 309 976)
Gold Circle (Pty) Ltd	24,98%	19 382 284	20 736 641	18 289 385	(1 354 377)
Kentworth Racing (Pty) Ltd	14,04%	10 902 523	11 804 380	10 287 788	(781 837)
TOTAL	77 853 304	83 073 490	73 274 700,00	(6 426 190)	
SUMMARY BY COMPANY					
Phumelela Gaming & Leisure		148 250 589	143 890 867	141 896 311	4 369 722
Gold Circle (Pty) Ltd		59 701 831	59 469 825	57 474 943	212 008
Kentworth Racing (Pty) Ltd		34 287 833	33 851 835	33 026 891	408 198
GRAND TOTAL	242 240 253	237 212 527	232 398 145	5 007 926	
AMOUNTS TO INVOICE					
		Gold Circle (Pty) Ltd	Kentworth Racing (Pty) Ltd		
SHARE OF RIGHTS ON LOCAL INTERNATIONAL SALES July Adjustment		62 204 267	28 364 886		
		62 204 267	28 364 886		
Less: Invoiced					
Less: Working capital requirements					
TellyTrack International					
AMOUNTS TO INVOICE		62 204 267	28 364 886		

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ANNEXURE C.9 PHUMELELA GOLD INTERNATIONAL

Phumelela Gold International Limited

- 1. Phumelela Gold International Limited (PGI) is incorporated in the Isle of Man and is a wholly owned subsidiary of Phumelela Gaming and Leisure Limited.

PGI is an investment holding company whose only assets are investments in Premier Gateway International Limited and Premier Gateway International Services Limited. These investments are based in the Isle of Man and provide PGI with access to international betting and gaming operations and simultaneously expose South African horse racing and other sports to the international gambling and gaming industry.

Financial statements are prepared in GBP audited and signed off in the Isle of Man. The extract from the audited financial statements has been converted to South African Rand at R 19.4 to the GBP

- 2. Income Statement

Phumelela Gold International Limited		
Audited Income Statement - R'000's	FY 2019	FY 2018
Admin expenses	(215)	(198)
Operating loss	<u>(215)</u>	<u>(198)</u>
Dividend Income	133 299	113 328
Interest receivable	1	2
Profit before taxation	<u>133 085</u>	<u>113 132</u>
Taxation	-	-
Profit for the year	<u>133 085</u>	<u>113 132</u>
Total comprehensive income for the year	<u>133 085</u>	<u>113 132</u>

- 2.1. Dividend income relates to dividends received from:
 - 2.1.1. Premier Gateway International – R 131.96m (GBP 6.79m)
 - 2.1.2. Premier Gateway Services International – R 1.34m (GBP 0.07m)

- 2.2. Phumelela Gaming and Leisure Limited reported half year earnings to 31 January 2020 from PGI of R65.1m.



3. Balance Sheet

Phumelela Gold International Limited

Audited Balance Sheet - R'000's

	FY 2019	FY 2018
ASSETS		
Non-current assets	1	1
Associated Companies	1	1
Current assets	3 196	3 252
Trade and other receivables	2 416	2 442
Cash and cash equivalents	780	810
Total assets	3 197	3 253
EQUITY AND LIABILITIES		
Total equity	3 137	3 192
Share capital	2	2
Retained earnings	3 135	3 190
Current liabilities	60	61
Trade and other payables	60	61
Total equity and liabilities	3 197	3 253

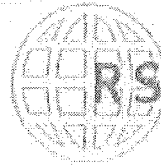
3.1. Associated companies

3.1.1. PGI is in a joint venture with Tabcorp Europe Holdings Ltd ("Tabcorp") via Premier Gateway International Limited ("Premier"). PGI and Tabcorp each own 25 ordinary shares (50 shares issued) in Premier. In addition, Tabcorp owns 1 ordinary A class share (1 share issued) and PGI owns 1 ordinary B class share (1 share issued) in Premier.

3.1.1.1. Dividends are paid based on trading that takes place in the home markets of each shareholder and shared equally after expenses for international trading (with the exception of Hong Kong trading where Tabcorp gets two thirds and PGI one third).

3.1.2. PGI is in a joint venture with Tabcorp via Premier Gateway Service Isle of Man Limited. Each shareholder holds 50% of the issued shares.

3.1.2.1. Dividends are paid proportionally based on profits for the year.



4.3. At these meetings the BRP informed Creditors and Employees *inter alia* that in his opinion there was a reasonable prospect of rescuing the Company.

5. THE BUSINESS OF THE COMPANY

5.1. The business of Phumelela Gaming and Leisure Limited comprises horse racing and betting.

5.2. The Horse Racing Business

5.2.1. The Company as at commencement of business rescue owns and operates the following horse racing tracks and training centres:

5.2.1.1. Turffontein Racecourse In Johannesburg – This is a racetrack

5.2.1.2. The Vaal Racecourse in Vereeniging – This is a racetrack

5.2.1.3. Flamingo Park In Kimberly – This is a racetrack

5.2.1.4. Fairview Racecourse in Port Elizabeth – This is a racetrack

5.2.2. The Company stages about 240 race meetings in a normal calendar year.

5.2.3. The Horse Racing Business generates revenues from, *inter alia*:

5.2.3.1. production and distribution of its racing picture (via a TV channel on DSTV known as TellyTrack);

5.2.3.2. distribution of the racing data feed to customers;

5.2.3.3. the sale and receipt of sponsorships in respect of races, race days and venues;

5.2.3.4. totaliser betting operations and comingling fees; and

5.2.3.5. a share of the betting taxes levied on horse racing betting by the various gambling boards. (the share of levy due to the Company has not been paid since March 2019 and is the subject of a legal dispute between the Company and the Gambling Boards to enforce Phumelela's rights)

5.3. TellyTrack

5.3.1. Phumelela, in about May 2013, entered into a partnership with Gold Circle (Pty) Limited and Kenilworth Racing (Pty) Limited to produce and distribute the racing picture and feed.

This racing product is distributed, *inter alia*, to:

5.3.1.1. DSTV Channel 239 – TellyTrack;

5.3.1.2. South African Bookmakers and their retail outlets;

5.3.1.3. International partners in Africa, Europe, Asia, Australasia and North America.

5.3.2. The TellyTrack partnership agreement provides that the partners will share in revenues and costs in the following shares:

5.3.2.1. Phumelela – 61%

5.3.2.2. Gold Circle – 24.96%

5.3.2.3. Kenilworth Racing – 14.04%

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- 5.3.2.4. Phumelela is the appointed partnership manager of the TellyTrack partnership
- 5.4. Totaliser Licence and Totaliser Betting Outlets ("TAB")
- 5.4.1. The Company holds the following Totaliser Licences:
- 5.4.1.1. Gauteng Gambling Board
 - 5.4.1.2. Eastern Cape Gambling and Betting Board
 - 5.4.1.3. Free State Gambling, Liquor and Tourism Authority
 - 5.4.1.4. Mpumalanga Gambling Board (branch licences)
 - 5.4.1.5. Limpopo Gambling Board (site licences)
- 5.4.2. These licences cover the operations of the following retail outlets:
- 5.4.2.1. TAB Online
 - 5.4.2.2. Turffontein Racecourse
 - 5.4.2.3. Fairview Racecourse
 - 5.4.2.4. Vaal Racecourse
 - 5.4.2.5. Flamingo Park
 - 5.4.2.6. 108 TAB Branches and
 - 5.4.2.7. 74 TAB Agencies
- 5.5. Subsidiary Companies and Investments
- 5.5.1. The Company is the 100% shareholder of the following trading companies:
- 5.5.1.1. Phumelela Gold International Limited (Incorporated in the Isle of Man) ("PGI")
- 5.5.1.1.1. PGI Owns a 50% share in:
 - 5.5.1.1.1.1. Premier Gateway International Limited (Isle of Man); and
 - 5.5.1.1.1.2. Premier Gateway International Services Limited (Isle of Man).
- 5.5.1.2. Betting World (Pty) Limited
- 5.5.1.2.1. Betting World has:
 - 5.5.1.2.1.1. 55 Betting World Branches and Agencies
 - 5.5.1.2.1.2. 7 Franchise Betting World stores; and
 - 5.5.1.2.1.3. Betting World Online operations.
 - 5.5.1.2.1.4. 100% shareholding in Cerino Trading 13 (Pty) Limited, which provides Tote management software to Phumelela.
 - 5.5.1.2.1.5. 50% of the equity of Supaworld (Pty) Limited;
 - 5.5.1.2.1.6. 50% + 1 share of Betting World Eastern Cape (Pty) Limited which has another 7 Betting World stores;
 - 5.5.1.2.1.7. 40% of the equity in Vullindlela Betting World Consortium (Pty) Ltd (a wagering business) and
 - 5.5.1.2.1.8. 5% of the equity in Omphe Tshiamo Investment (Pty) Ltd (a wagering business);

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- 8.1.2.4. Ongoing trading, inter alia, enhances the collectability of accounts receivable, saleability of the business as a going concern and value of the Interconnected operations of the Company and Group.
- 8.1.2.5. Trading the business, even on a limited basis, allowed the BRP to explore the possibility of selling certain of the Company's businesses or part thereof as a going concern. There were and are advantages to a sale as a going concern such as the saving of jobs and the avoiding of retrenchment costs and the value created from a sale of assets in situ as a going concern as opposed to a break up or auction sale.
- 8.1.2.6. The BRP received many expressions of interest for the component parts of the business or assets and following a fast track sale process received formal proposals from the interested parties.
- 8.1.3. Taking the above into account the BRP elected to trade the business during the proceedings which:
- 8.1.3.1. enhanced the value of the various business operations of the Group,
- 8.1.3.2. facilitated collection of book debts,
- 8.1.3.3. secured funding to facilitate the orderly sale of the business operations and assets of the Company whilst providing a guaranteed minimum contribution to the Plan Fund,
- 8.1.3.4. secured a buyer for the Horse Racing Business and assets,
- 8.1.3.5. secured a buyer for Phumelela Gold Investments Limited,
- 8.1.3.6. retained employment of almost all employees as a result of the going concern sale of the horse racing and potential sale of Betting World businesses, and
- 8.1.3.7. elicited bids for the other assets of the Company.
- 8.1.4. Taking all of the above into account the BRP is of the view that it is best for the Company and Affected Persons to achieve the following:
- 8.1.4.1. Continue to trade the business so that the sale of the Horse Racing Business and assets and the sale of the Betting World business can be concluded;
- 8.1.4.2. Draw down against the PCF agreements to fund trading and to fund the minimum guaranteed contributions to the Plan Fund;
- 8.1.4.3. Assess the profitability and trading outlook of the remaining subsidiaries and investee companies and either continue to hold these assets for the benefit of the Creditors

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- 8.2.4. Implement the Sale of Phumelela Gold International Limited,
- 8.2.5. sell the property, plant and equipment assets of the Group that are not part of and or Included in the above transactions,
- 8.2.6. participate in the management of the subsidiaries and other investments as contemplated in the respective shareholder agreements,
- 8.2.7. consider and pursue opportunities to sell these investments in subsidiary and investee companies or recover the equity in each after the sale of the assets and winding up of the entity,
- 8.2.8. If any of the above mentioned agreements cannot be implemented to sell all the business and / or Assets of the Company by private treaty or public auction at his sole discretion, It being agreed that if the sale by private treaty has not been concluded by 31 July 2021, the business rescue practitioner will commence with the sale of unsold Assets by public auction, and
- 8.2.9. pursue and collect all of the accounts receivable;
- 8.2.10. Institute new and pursue and finalise the outstanding and pending litigation matters both by and against the Company; and
- 8.2.11. sell the Company's shares in each of its subsidiaries and failing that take such steps as required to recover the Company's investment in each subsidiary; and
- 8.2.12. enter into short term contracts of employment with selected employees to assist with the implementation of the Business Rescue Plan, and
- 8.2.13. pay whatever funds remain to the Employees, Creditors and Shareholders of the Company per the payment waterfall and preferences as set out below.

8.3. Security for Creditors

8.3.1. To ensure that all monies received by the BRP from trading and sales from Commencement Date to date of payment of distributions and that the proceeds from the sale of assets and businesses are secured for the benefit of the BRP, his advisors, employees, Creditor(s) and potentially Shareholder the BRP will:

8.3.1.1. open the Plan Fund account;

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- 8.5.3.3. With the Business Rescue Plan that was finally adopted as contemplated in terms of section 152 of the Companies Act; and
- 8.5.3.4. That all acquisition agreements in respect of the acquisition of the Horse Racing Business and assets and Phumelela Gold International Limited have been signed by parties thereto.
- 8.5.4. The 2nd PCF Facility will only participate in distributions from the Plan Fund once R550m has been distributed from the Plan Fund in accordance with the provisions of this plan. MOD will from that point participate in distribution from the Plan Fund in accordance with the provisions of paragraph 8.4.3.
- 8.6. **The Estimated recoveries in this scenario are summarised in paragraph 10.3 below and attached hereto marked Annexure E.**

9. PROPOSED PAYMENT ARRANGEMENT AND EFFECT ON CREDITORS

- 9.1. At the Substantial Implementation Date, the Company, under the auspices of the BRP, would have made payment to all Creditor(s) their entitlement to receive payments as provided for in this Business Rescue Plan.
- 9.2. At the Substantial Implementation Date the Company will have no assets except if the proceeds from the sale of some or all of the assets is sufficient to make all payments set out in paragraph 8.4.3 and in so doing discharge the claims of all creditors, in which case the Company will have cash and any assets that it was not necessary to sell. In both cases there will be no money in the Plan Fund, which bank account will then be closed.

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THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION

CIRCULAR TO CREDITORS AND SHAREHOLDERS RELATING TO THE PUBLICATION OF THE PROPOSED BUSINESS RESCUE PLAN OF:

PHUMELELA GAMING AND LEISURE LIMITED (IN BUSINESS RESCUE)

REGISTRATION NUMBER: 1997/016610/06

("THE COMPANY")

1. This proposed Business Rescue Plan is published in terms of the provisions of Sections 150(5) of the Companies Act for subsequent consideration at a meeting to be held in terms of Section 151 of the Companies Act on Tuesday, 1 September 2020 at 11h00 via a Zoom webinar. All affected persons will be invited to the meeting via a separate email with the necessary joining details. A separate email will be sent in good time with relevant details.
2. If you are in any doubt as to the action you should take, immediately consult your legal adviser, accountant, banker, or other professional adviser.
3. If you are unable to attend the meeting to be held in terms of Section 151 of the Companies Act on Tuesday, 1st September 2020, at 11:00am via Zoom Webinar and want to vote at this meeting, kindly complete the attached proxy (being the page immediately after this Circular) (in accordance with the instructions contained therein) and return it, to RS Advisors, 2nd Floor, Building 15, The Woodlands, Woodmead Drive, Sandton to be received by no later than 17h00 on Monday, 31 August 2020 or email same to johnny@rsadvisors.co.za by no later than 10h59 on the day of the meeting.
4. Voting at the meeting will be conducted using a bespoke voting tool. The creditors duly authorised representatives will be required to register on the voting website in order to cast a vote electronically. Details to be included on the instructions for the meeting.

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NOTICE OF PUBLICATION OF BUSINESS RESCUE PLAN

PHUMELELA GAMING AND LEISURE LIMITED

(IN BUSINESS RESCUE)

REGISTRATION NUMBER: 1997/016610/06

("THE COMPANY")

Notice is hereby given of the publication of the Business Rescue Plan of the Company, which incorporates:

- Important Dates, Times and Venue schedule, stipulating the dates, times and venue of the meeting;
- Proxy forms for those creditors who wish to vote but cannot personally attend the meeting to vote (at 11:00am on Tuesday, 1 September 2020);
- An Agenda for the meeting;
- An Explanatory Statement; and
- All the relevant information as required by Section 150 of the Companies Act;

VENUE & IMPORTANT DATES AND TIMES

Method of conduct of meeting and Venue:

The meeting will be held electronically on the Zoom platform on Tuesday, 1 September 2020 at 11am, for purposes of considering and, if deemed fit, approving with or without modification, this Business Rescue Plan.

Time and Date of meeting:

11:00 am on Tuesday, 1 September 2020

PROXY

Last day to lodge form of proxy for the Creditors' meeting:

By email: 10:59 am on Tuesday, 1 September 2020 to john.evans@madvisors.co.za

By delivery: 17:00 on Monday, 31 August 2020 to 2nd Floor, Building 13 The Woodlands, 20 Woodmead Drive, Gallo Manor, Gauteng

Notes:

- These dates, times and venue are subject to change. Any such change will be published to all Affected Persons.

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PHUMELELA GAMING AND LEISURE LIMITED (IN BUSINESS RESCUE)
REGISTRATION NUMBER: 1997/016610/06

FORM OF PROXY

For use by the creditors at a meeting convened in terms of Section 151 of the Companies Act 71 of 2008 to be held electronically via Zoom Webinar on Tuesday, 1 September 2020 at 11am ("the meeting") or at any subsequent adjournment of the meeting.

I/We _____ being a secured/preferent/concurrent creditor of the Company for the sum of R _____ (_____ Rand) do hereby appoint (see note 1)

- 1. _____ ; or falling him/her
- 2. _____ ; or falling him/her
- 3. the Chairman of the meeting;

as my/our proxy to act for me/us and on my/our behalf at the meeting which will be held for the purpose of considering and, if deemed fit, voting: (Indicate with an X)

In favour of the approval of the proposed Business Rescue Plan, with or without modification: _____

Against the approval of the proposed Business Rescue Plan, with or without modification: _____

SIGNED at _____ on this _____ day of _____ 2020,

SIGNATURE

Assisted by me (where applicable)

NOTES

- 1. A creditor may insert the name of a proxy or the names of two alternative proxies of his/her choice in the space provided, with or without deleting "the Chairman of the meeting". The person whose name stands first on the form of proxy and who is present at the meeting will be entitled to act as proxy to the exclusion of those whose names follow.
- 2. The form of proxy must either be:
 - 2.1. Delivered and lodged at RS Advisors, Second Floor, Building 13, The Woodlands, Woodmead Drive, Sandton to be received by not later than 17:00 on the day prior to the meeting; or
 - 2.2. emailed to tbl@rsadvisors.co.za by not later than 1 minute before the meeting is due to commence (commencement time is 11h00).
- 3. The completion and lodging of this form of proxy will not preclude the relevant creditor from attending the meeting and speaking and voting in person thereat to the exclusion of the proxy appointed in terms thereof, should such creditor wish to do so.

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[Handwritten initials]

AGENDA FOR THE MEETING

THE AGENDA FOR THE MEETING IS AS FOLLOWS:-

1. To Introduce this Business Rescue Plan for consideration by the Creditors;
2. To Inform the meeting whether the BRP continues to believe that there is a reasonable prospect of the Company being rescued;
3. Provide an opportunity to any representatives of the employees to address the meeting;
4. Invite discussion, and entertain and conduct a vote, on any motion to:-
 - 4.1. amend the proposed plan, in any manner moved and seconded by holders of Creditors' voting interests, and satisfactory to the Business Rescue Practitioner;
 - 4.2. direct the Business Rescue Practitioner to adjourn the meeting to revise the plan for further consideration;
5. Unless adjourned, call for a vote for preliminary approval, by Creditors, of the proposed plan, as published or if applicable as amended at the meeting.

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Business Rescue Plan

of

**PHUMELELA GAMING AND LEISURE LIMITED
(IN BUSINESS RESCUE)**

REGISTRATION NUMBER (1997/016610/06)

("Phumelela")

Published: 26 August 2020

Update on New Development

and

New Proxy as a result thereof

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New Information

The business rescue practitioner received an offer from BetFred on 25 August 2020. The offer documents are attached. BetFred has requested that this offer be circulated to affected persons. The offer document as received is attached. Betfred has further indicated that it will propose a motion to direct the practitioner to adjourn the meeting in order to revise the plan for further consideration in terms of section 152(1)(d)(ii).

New Proxy

The BRP has, as a result of the above, updated the voting proxy to include voting instructions in respect of a motion to adjourn the meeting.

Registration, Meeting Format and Voting Procedures

The mechanics of the meeting to be held on the 1st September 2020 at 11:00 am are as follows:

Zoom Meeting

The meeting is to be held via Zoom. Users will be invited to the Zoom meeting and need to register prior to the meeting. In order to do this, you need to have downloaded Zoom for your Windows PC or Apple Mac (<https://zoom.us/support/download>). Should you wish to use a phone you will need to go to the App Store or the Google Play store to download. As you will only be a participant and will not be setting up any meetings there is no cost.

Once you have downloaded Zoom you can register to attend the meeting at:

https://us02web.zoom.us/webinar/register/WN_5t03Q0pXT0IZl3rFU4ic2g

Voting

Voting will take place using the brpa.co.za voting tool. No application is needed, it is a secure website with a URL (<https://brpa.co.za>).

Creditors need to complete and return a duly authorised proxy form (attached) that mandates an individual to vote on behalf of the company. Please send these forms to

la@stockill@rsadvisors.co.za.

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Once the form has been returned the users will be invited, via the tool, to register on the website. Passwords must be a minimum of 8 characters and include at least one upper case character, one lowercase character, one number and one non letter or digit. The website is built on a Microsoft Azure platform and applies the latest POPI principles of information management. The appointed proxy will be able to cast votes only once they have registered on the brpa.co.za voting tool.

The meeting questions will only be available once the meeting commences. In the interim there is a 'voting test' question that users can vote to familiarise themselves with the process.

During the meeting when voting takes place users may vote as many times as they wish (should they change their minds). However only the last vote cast will count in the final tally and only one vote per creditor will count. You may set up more than one user to vote in case you are concerned about availability of attendance. The users are then ranked in terms of which persons vote will supersede others.

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THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION

CIRCULAR TO CREDITORS AND SHAREHOLDERS RELATING TO THE PUBLICATION OF THE PROPOSED BUSINESS RESCUE PLAN OF:

PHUMELELA GAMING AND LEISURE LIMITED (IN BUSINESS RESCUE)

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1. This proposed Business Rescue Plan is published in terms of the provisions of Sections 150(5) of the Companies Act for subsequent consideration at a meeting to be held in terms of Section 151 of the Companies Act on Tuesday, 1 September 2020 at 11h00 via a Zoom webinar. All affected persons will be invited to the meeting via a separate email with the necessary joining details. A separate email will be sent in good time with relevant details.
2. If you are in any doubt as to the action you should take, immediately consult your legal adviser, accountant, banker, or other professional adviser.
3. If you are unable to attend the meeting to be held in terms of Section 151 of the Companies Act on Tuesday, 1st September 2020, at 11:00am via Zoom Webinar and want to vote at this meeting, kindly complete the attached proxy (being the page immediately after this Circular) (in accordance with the instructions contained therein) and return it, to RS Advisors, 2nd Floor, Building 13, The Woodlands, Woodmead Drive, Sandton to be received by no later than 17h00 on Monday, 31 August 2020 or email same to info@rsadvisors.co.za by no later than 10h59 on the day of the meeting.
4. Voting at the meeting will be conducted using a bespoke voting tool. The creditors duly authorised representatives will be required to register on the voting website in order to cast a vote electronically. Details to be included on the instructions for the meeting.

Legal Advisors

fluxmans
ATTORNEYS



NOTICE OF PUBLICATION OF BUSINESS RESCUE PLAN

PHUMELELA GAMING AND LEISURE LIMITED

(IN BUSINESS RESCUE)

REGISTRATION NUMBER: 1997/016610/06

("THE COMPANY")

Notice is hereby given of the publication of the Business Rescue Plan of the Company, which incorporates:

- Important Dates, Times and Venue schedule, stipulating the dates, times and venue of the meeting;
- Proxy forms for those creditors who wish to vote but cannot personally attend the meeting to vote (at 11:00am on Tuesday, 1 September 2020);
- An Agenda for the meeting;
- An Explanatory Statement; and
- All the relevant information as required by Section 150 of the Companies Act;

VENUE & IMPORTANT DATES AND TIMES

Method of conduct of meeting and Venue:

The meeting will be held electronically on the Zoom platform on Tuesday, 1 September 2020 at 11am, for purposes of considering and, if deemed fit, approving with or without modification, this Business Rescue Plan.

Time and Date of meeting:

11:00 am on Tuesday, 1 September 2020

PROXY

Last day to lodge form of proxy for the Creditors' meeting:

By email: 10:59 am on Tuesday, 1 September 2020 to john@rsaadvisors.co.za

By delivery: 17:00 on Monday, 31 August 2020 to 2nd Floor, Building 13 The Woodlands, 20 Woodmead Drive, Gallo Manor, Gauteng

Notes:

- These dates, times and venue are subject to change. Any such change will be published to all Affected Persons.

Legal Advisors



Handwritten initials or signature



Advisors

PHUMELELA GAMING AND LEISURE LIMITED (IN BUSINESS RESCUE)
REGISTRATION NUMBER: 1997/016610/06

FORM OF PROXY

For use by the creditors at a meeting convened in terms of Section 151 of the Companies Act 71 of 2008 to be held electronically via Zoom Webinar on Tuesday, 1 September 2020 at 11am ("the meeting") or at any subsequent adjournment of the meeting.

I/We _____ being a secured/preferent/concurrent creditor of the Company for the sum of R _____ Rand) do hereby appoint (see note 1)

- 1. _____ ; or failing him/her
- 2. _____ ; or failing him/her
- 3. the Chairman of the meeting;

as my/our proxy to act for me/us and on my/our behalf at the meeting which will be held for the purpose of considering and, if deemed fit, voting: (Indicate with an X)

To direct the practitioner to adjourn the meeting in order to revise the plan for further consideration:

In Favour _____ Against _____

Approval of the proposed Business Rescue Plan, with or without amendment:

In Favour _____ Against _____

SIGNED at _____ on this _____ day of _____ 2020.

SIGNATURE

Assisted by me (where applicable)

NOTES

- 1. A creditor may insert the name of a proxy or the names of two alternative proxies of his/her choice in the space provided, with or without deleting "the Chairman of the meeting". The person whose name stands first on the form of proxy and who is present at the meeting will be entitled to act as proxy to the exclusion of those whose names follow.
- 2. The form of proxy must either be:
 - 2.1. Delivered and lodged at RS Advisors, Second Floor, Building 13, The Woodlands, Woodmead Drive, Sandton to be received by not later than 17:00 on the day prior to the meeting; or
 - 2.2. emailed to lobhe@rsadvisors.co.za by not later than 1 minute before the meeting is due to commence (commencement time is 11h00).
- 3. The completion and lodging of this form of proxy will not preclude the relevant creditor from attending the meeting and speaking and voting in person thereof to the exclusion of the proxy appointed in terms thereof, should such creditor wish to do so.

Legal Advisors



Handwritten initials or signature.



AGENDA FOR THE MEETING

THE AGENDA FOR THE MEETING IS AS FOLLOWS:-

1. To introduce this Business Rescue Plan for consideration by the Creditors;
2. To inform the meeting whether the BRP continues to believe that there is a reasonable prospect of the Company being rescued;
3. Provide an opportunity to any representatives of the employees to address the meeting;
4. Invite discussion, and entertain and conduct a vote, on any motion to:-
 - 4.1. amend the proposed plan, in any manner moved and seconded by holders of Creditors' voting interests, and satisfactory to the Business Rescue Practitioner;
 - 4.2. direct the Business Rescue Practitioner to adjourn the meeting to revise the plan for further consideration;
5. Unless adjourned, call for a vote for preliminary approval, by Creditors, of the proposed plan, as published or if applicable as amended at the meeting.

"MN13"

BARKERS

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27 August 2020

Colin Strime
c/o Fluxmans Attorneys

By email

Dear Colin

YOUR CLIENTS: PHUMELELA GAMING AND LEISURE LIMITED (IN BUSINESS RESCUE) AND MR JOHN EVANS (IN HIS CAPACITY AS THE BUSINESS RESCUE PRACTITIONER)
OUR CLIENT: GOLD CIRCLE PROPRIETARY LIMITED ("Gold Circle")
RE: PGI SHARES
Our Ref: C Roberts/vh/G0614/0961
Your Ref: CJS/lp/145028

1. Our instructions are:

- 1.1 your client has published a business rescue plan in respect of Phumelela which records that:
 - 1.1.1 Phumelela owns 100% of the Issued shares in Phumelela Gold International Limited (page 7, paragraphs 5.5.1 and 5.5.1.1 of the business rescue plan); and
 - 1.1.2 your client has secured a buyer for those shares and intends to implement the sale thereof (page 34, paragraph 8.1.3.5 and page 36, paragraph 8.2.4 of the business rescue plan);
- 1.2 our client owns 39% of the issued shares in Phumelela Gold International Limited, which are held by Phumelela on behalf of our client (your client holds as nominee);
- 1.3 your client is thus not authorised to procure the sale and transfer of our client's 39% shareholding in Phumelela Gold International Limited;
- 1.4 your client does not accept our client's contentions about its shareholding in PGI.

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Email: mailroom@barkers.co.za
DoceX: DX 107, Durban

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4321, Republic of South Africa

M. Domingos B.Com., LL.B. C.S. Finlay B.Com., LL.B. D. Fonseca B.Soc. Sci., LL.B.
C.L. Molyneux B.Soc. Sci., LL.B. J.G. Murdoch B.A., LL.B.
C.L. Roberts BA, LL.B. R. Simmons B.Soc. Sci., LL.B.

La Lucia Ridge: 8 Rydal Vale Crescent (off Douglas Saunders Drive),
La Lucia Ridge Office Estate, 4051, KwaZulu-Natal, Republic of South Africa

Associates: M.A. Bisset LL.B. S. Campbell LL.B. T.M. Edy LL.B.
B.S. Goschen BA, LL.B. D. Naidoo B.Com., LL.B. B.E. Steyn B.A., LL.B.

North Coast: Unit B 228 Simbithi Office Park, Shaka's Rock Road,
North Coast, KwaZulu-Natal, Republic of South Africa

South Coast: 7 Strapp Lane (off Kingsway), Amanzimtoti, 4126,
KwaZulu-Natal, Republic of South Africa.

Barkers Attorneys is a Level Five B-BBEE Contributor -QSE Scorecard

2. In the absence of an undertaking by your client to preserve the *status quo* pending the resolution of the dispute over the shareholding, our client will have no option but to commence proceedings to establish its case for ownership of 39% of the shares in PGI and we have instructions to commence that process as quickly as possible.
3. That gives rise to a number of matters which we raise for your client's attention. The first of these concerns the preservation of the *status quo* and the concomitant urgency of an Interim interdict against your client disposing of the shares before the dispute is finally determined. A related second matter is the effect which the dispute has on the business rescue plan and the meeting to be held, to consider it, on 1 September 2020.
4. If possible, our client would like to avoid having to interdict the holding of that meeting. However, as things presently stand, creditors who are expected to vote on the business rescue plan and those third parties who are interested in purchasing the PGI shares may not even know that the present dispute exists. We suggest that, if they did, it may have a significant effect on creditors' attitude to the business rescue plan and third parties' attitude to bidding for the shares. In the absence of some other solution, that would suggest that the meeting to vote on the plan should be adjourned until the dispute is resolved. However, there may be other solutions, such as informing creditors and those third parties of the existence of the dispute so that they can consider their position and take such steps as they think best.
5. Our client's objective is to cause the least possible disruption to the business rescue process whilst ensuring that its rights remain protected. We would be obliged if your client would consider this aspect of the problem and if any practical solutions arise, our client would be pleased to hear them. In the absence of such a solution, there may be no alternative but for the interim relief sought by our client to include an interdict against the meeting proceeding.
6. The next matter concerns the forum in which the dispute should be finally resolved. The dispute resolution mechanism contemplated by the business rescue plan is clearly intended to deal only with disputes over creditors' claims and does not cover the present dispute. Unless something else is agreed between the parties, Court proceedings are the only present option. Our client is open to agreeing with your client on some form of arbitration, which would result in a speedy and effective resolution of the dispute. We mention that the Tellytrack Agreement already provides for the arbitration of disputes. Our client will again be grateful if your client would consider some alternative process to litigation and advise us accordingly.
7. The next matter concerns the identity of the third parties who have either bid for, or expressed an interest in, the acquisition of the PGI shares. It seems to us that they would have sufficient interest in the outcome of the dispute that it is necessary that they be included in the process. Although our client has some idea of who those third parties may be, it would be simpler if your client disclosed who they are, so that they can be cited accordingly.
8. The last matter concerns the provisions of Section 133 of the Companies Act No. 71 of 2008. Although our client does not think that the nature of this dispute is one covered by that section, it can do no harm to remove any potential for dispute over this by asking the business rescue practitioner to consent to the contemplated proceedings under Section 133(1)(a) of the Companies Act No. 71 of 2008. Please take instructions on that matter.
9. Unless we receive an undertaking from your client by 10h00 tomorrow morning that it will not procure the sale and transfer of 39% of the shares in Phumelela Gold International Limited pending the resolution of the dispute over the shareholding, our client will commence legal proceedings. However, given the circumstances, our client has no alternative but immediately to commence the drawing of papers directed at interim relief.

///

Page 3

Yours sincerely

electronically transmitted therefore unsigned

**CARLA ROBERTS
BARKERS**

BARKERS

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ATTORNEYS

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"MN14"
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30 Jellicoe Avenue, Rosebank, Johannesburg, 2196
Private Bag 241, Saxonwold, 2132, South Africa
Dorcx 54 Johannesburg, Website: www.fluxmans.com
Fluxmans Inc. Registration No: 2000/024775/21

Our Ref : CJS/lp/145028/4004694_2
Your Ref : C Roberts/vh/G0614/0961
Date : 28 August 2020

Writer's Direct Line: 011 328 1843
Email: cstrime@fluxmans.com
Fax: 011 880 2261

BY EMAIL

BARKERS ATTORNEYS

MS CARLA ROBERTS
croberts@barkers.co.za

MS VANESSA HUTTON
vanessa@barkers.co.za

MR BRADLEY GOSCHEN
bgoschen@barkers.co.za

Dear Carla

PHUMELELA GAMING & LEISURE LIMITED (IN BUSINESS RESCUE) / GOLD CIRCLE (PTY) LTD

1. Thank you for your email received at 12h35 with attached letter and your subsequent one received a few hours later. As requested, we are ignoring the one received at 12h35 and are only responding to your replacement letter.
2. We reply to your replacement letter using your numbering as follows:
 - 2.1 Ad paragraphs 1.1, 1.1.1 and 1.1.2
 - 2.1.1 Our client has published Phumelela's business rescue plan.
 - 2.1.2 Your client has received, *inter alia*, a copy thereof.
 - 2.1.3 Your quote of the contents of the plan is not entirely correct.
 - 2.2 Ad paragraph 1.2
 - 2.2.1 We are aware that your client alleges it owns 39% of the issued shares in PGI.
 - 2.2.2 You are also aware that our client on good grounds disputes this allegation.
 - 2.3 Ad paragraph 1.3
 - 2.3.1 We deny the contents of this paragraph.

Directors: CJ Strime (Joint Chief Executive Officer), JS Epstein (Joint Chief Executive Officer and Managing), DO Pretorius (Exco), JH Pholane (Exco)
CP Ancer, G Bloch, L dos Passos, BE Duma, SR Fisher, KM Fuchs, J Fang, D Furman, PL Kemp, LA King, AC Kruger, J Levitz, RP Lisinski, BF Marques, DS Mer, AH Perol,
B Seleka, J Shafir, CB Shapiro, IG Shapiro, SP Shoba, SA Shoot, TA Simon, S Slom, AC Soldatos, EB Tonini, KJ Van Huyssteen Senior Consultants: C Canides, CD Stein,
P Valle Chief Financial Officer: VD Rubin C.A. (S.A.), M.B.A. Senior Associates: C Blumenthal, L Donaldson, JS Kadish Associates: DR Hirschowitz, MS Mei, FN Sithole,
J Vaughn Office Managers: H Smit

- 2.3.2 Certainly we deny that your client owns 39% of the shareholding in Phumelela Gold International Limited.
- 2.4 Ad paragraph 1.4
- 2.4.1 We admit the contents hereof.
- 2.5 Ad paragraph 2
- 2.5.1 We note the contents.
- 2.6 Ad paragraph 3
- 2.6.1 Re your first concern – preservation of status quo and concomitant urgency of an interim interdict against our client disposing of the shares before the dispute is finally determined
- 2.6.1.1 these shares are the subject of various rights in favour of TabCorp Europe Holdings Limited (“TabCorp”) in terms of a shareholders agreement between Phumelela and Premier Gateway International (“PGI”);
- 2.6.1.2 the placing of Phumelela in rescue per the shareholders agreement has triggered these rights to acquire the shares in favour of TabCorp;
- 2.6.1.3 TabCorp have issued a notice of default indicating that they may wish to exercise their rights;
- 2.6.1.4 this being so, Phumelela won't be able to sell the shares it owns in PGI to any potential purchaser thereof unless and until Tabcorp waives its rights in terms of the default and its pre-emptive rights in respect of the shares;
- 2.6.1.5 at best, if TabCorp exercises its rights it will have to pay the proceeds of the purchase by it to Phumelela;
- 2.6.1.6 accordingly, if you wish to bring an interdict it would have to be launched against TabCorp and not Phumelela;
- 2.6.1.7 there is thus no urgency;
- 2.6.1.8 your client thus has no rights to interdict Phumelela from selling the shares as our client can't sell the shares until TabCorp has waived its rights ;

- 2.6.1.9 in any event our client disputes on bona fide and good grounds that your client owns 39% of the issued share capital of PGI including, but not limited to the following:
- 2.6.1.9.1 there is no record hereof in any of PGI's books, records or agreements;
- 2.6.1.9.2 there is no record hereof in any of Phumelela's books and records. On the contrary, all such books and records indicate that Phumelela owns 100% of the issued share capital of PGI;
- 2.6.1.9.3 your client's audited financial statements do not record any such shareholding;
- 2.6.1.9.4 your client's audited financial statements do not reflect any dividends being paid to your client as a result of this alleged shareholding;
- 2.6.1.9.5 our client's audited financials reflect that it owns 100% of the issued share capital of PGI and it receives 100% of any dividends pursuant to these shares.
- 2.6.1.10 accordingly, your application will be opposed on *inter alia* these grounds;
- 2.6.1.11 there are other grounds upon which we will oppose any application and an action for the shares. These are grounds that seriously concern our client and deal with exchange control contraventions and breaches of Income Tax Acts;
- 2.6.1.12 we don't want to go into detail here and will amplify hereon in the litigation;
- 2.6.1.13 we merely draw this to your attention as any agreement you contend for upon which you base your allegation for ownership of the shares is tainted by illegality.
- 2.6.2 Re your second matter you wish to deal with in this paragraph – "the effect which the dispute has on the business rescue plan and the meeting to be held to consider it, on 1 September 2020"
- 2.6.2.1 in our view your client's alleged claim to ownership of these shares has nothing to do with the plan;
- 2.6.2.2 our plan clearly indicates that MOD, the potential purchaser of the PGI shares, will recognise and honour TabCorp's pre-emptive rights to the shares;

- 2.6.2.3 any attempts to delay or interfere in the business rescue process, the holding of a meeting, the conduct of the meeting and the like will be met with appropriate resistance and sanction where necessary.
- 2.6.3 To the extent that your client's interference or delay in the business rescue process causes any harm or damage to Phumelela, your client will face a claim for the recovery thereof.
- 2.7 Ad paragraph 4
- 2.7.1 We appreciate your client's views. We don't in any event believe your client can interdict the holding of the meeting. Any application to interdict will be opposed.
- 2.7.2 We cannot and do not agree with your contentions about the potential purchasers of the PGI shares for a number of reasons, including but not limited to the following:
- 2.7.2.1 we cannot speak for these parties but suspect they may be aware of the dispute;
- 2.7.2.2 as stated we do not believe that whether or not they are aware, this would affect their thinking given TabCorp's rights;
- 2.7.2.3 they certainly are aware of TabCorp's rights and the exercise thereof.
- 2.8 Ad paragraph 5
- 2.8.1 We appreciate your client's objective to cause the least possible disruption to the business rescue process.
- 2.8.2 The only prejudice your client can suffer is a financial one.
- 2.8.3 This being so, without admission of liability and without novating or waiving any of our client's rights (in and to all of its defences to your client's alleged claims to the 39% ownership in PGI shares) we suggest that pending the outcome of your client's threatened litigation (including any appeal of any single judge thereof) we hold in trust interest bearing or escrow 39% of the proceeds our client receives for these shares either from TabCorp or a third party purchaser.
- 2.8.4 If the litigation resolves against your client these monies are released to Phumelela and if your client is successful they be released to your client.
- 2.8.5 Kindly let us have your views hereon.



2.9 Ad paragraph 6

2.9.1 We note the contents.

2.9.2 Our client at this stage is not keen to arbitrate the issues. Its views may change. If they do, we will let you know.

2.10 Ad paragraph 7

2.10.1 We believe we have dealt with this above.

2.10.2 There are only two potential bidders for PGI shares, namely MOD (whose full name you can determine from the business rescue plan) and BetFred (again, whose full name you can ascertain from the document our client circulated two days ago to affected parties in which their proposed offer is set out).

2.10.3 Our client is not aware of any other interested purchasers for the PGI shares.

2.11 Ad paragraph 8

2.11.1 We will take an instruction hereon and revert to you.

2.12 Ad paragraph 9

2.12.1 We have addressed these issues above. We merely await your advices to our proposal in paragraph 2.8.3 above.

2.12.2 Kindly revert to us urgently hereon.

2.12.3 If you launch any proceedings kindly note they will be defended / opposed.

3. Our failure to deal with any other allegation in your letter is not an admission of the correctness of the content thereof.

Kind regards

COLIN STRIME
FLUXMANS INC.

TRANSMITTED ELECTRONICALLY
AND THEREFORE UNSIGNED



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"MN15"

BARKERS

28 August 2020

Colin Strime
c/o Fluxmans Attorneys

By email

Dear Colin

YOUR CLIENTS: PHUMELELA GAMING AND LEISURE LIMITED (IN BUSINESS RESCUE) AND MR JOHN EVANS (IN HIS CAPACITY AS THE BUSINESS RESCUE PRACTITIONER)
OUR CLIENT: GOLD CIRCLE PROPRIETARY LIMITED ("Gold Circle")
RE: PGI SHARES
Our Ref: C Roberts/vh/G0614/0961
Your Ref: CJS/lp/145028

Thank you for your letter of 28 August 2020.

1. By way of our letter of 27 August 2020, our client sought from your client an undertaking:

"... by 10h00 tomorrow morning [28 August 2020], that it will not procure the sale and transfer of 39% of the shares in Phumelela Gold International Limited pending the resolution of the dispute over the shareholding."
2. Nothing contained in your letter appears to our client to constitute an irrevocable undertaking of the nature sought.
3. Your letter does however make reference to a subsidiary of Phumelela Gold International Limited ("PGI"), being Premier Gateway International Limited ("Premier"), and the apparent shareholders' arrangement in relation to that subsidiary.
4. The business rescue plan contemplates the sale of the shares in PGI (and not Premier). Your letter under reply appears, as aforesaid, to focus on PGI's shares in Premier. That, quite clearly, requires additional measures by our client to protect its interests.

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Fax: (+27) 31-580-744
Email: mailroom@barkers.co.za
Docex: DX 107, Durban

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C.L. Molyneux B.Soc. Sci., LL.B., J.G. Murdoch B.A., LL.B.,
C.L. Roberts BA, LL.B., R. Simmons B.Soc. Sci., LL.B.

Associates: M.A. Bisset LL.B., S. Campbell LL.B., T.M. Edy LL.B.,
B.S. Goschen BA, LL.B., D. Naidoo B.Com., LL.B., B.E. Steyn BA, LL.B.

Barkers Attorneys is a Level Five B-BBEE Contributor – OSE Scorecard

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South Coast: 7 Strapp Lane (off Kingsway), Amanzimtoti, 4126,
KwaZulu-Natal, Republic of South Africa.

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Page 2

5. In the circumstances, and in the absence of the undertaking previously sought (and referred to in our letter of 27 August 2020), our client is left with no alternative but to proceed with the legal proceedings previously stated. In addition to this, our client requires the following additional measures:
 - 5.1 a copy of the shareholders' agreement and other contractual documents to which you refer in your letter (para 2.6.1) which give rise to the "various rights in favour of Tabcorp...";
 - 5.2 an undertaking by 12 noon tomorrow, 29 August 2020, that your client will not procure the sale and transfer of any asset or shares of PGI (including its shares in Premier) to any party until our client has had a reasonable opportunity (after having received the documents referred to above) to consider the documents and its position in that regard, such that it can take such steps as may be appropriate for it to protect its interests in relation thereto.
6. The purpose of this letter is to deal with the proposal at paragraph 2.8.3 and 2.8.4 of your letter. Accordingly, our failure to deal with the allegations contained in your letter under reply is not to be construed as an admission by our client of the correctness of those allegations. Our client reserves the right to deal with them in future.
7. We do hope that your client can give the undertakings sought by our client so that we can avoid litigation.

Yours sincerely

electronically transmitted therefore unsigned

CARLA ROBERTS
BARKERS

BARKERS



fluxmans

ATTORNEYS

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"MN16"

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Private Bag X41, Saxonwold, 2132, South Africa
Docex 54 Johannesburg, Website: www.fluxmans.com
Fluxmans Inc. Registration No: 2000/024775/21

Our Ref : CJS/p/145028/4005713_1
Your Ref : C Roberts/vh/G0614/0961
Date : 29 August 2020

Writer's Direct Line: 011 328 1843
Email: cstrime@fluxmans.com
Fax: 011 880 2261

BY EMAIL

BARKERS ATTORNEYS

MS CARLA ROBERTS
croberts@barkers.co.za

MS VANESSA HUTTON
vanessa@barkers.co.za


MR BRADLEY GOSCHEN
bgoschen@barkers.co.za

Dear Carla

PHUMELELA GAMING & LEISURE LIMITED (IN BUSINESS RESCUE) / GOLD CIRCLE (PTY) LTD

1. Thank you for your letter.
2. It does not appear as if you have read and understood our letter of this morning or the workings of the business rescue plan insofar as the PGI shares are concerned.
3. Given the short time period you afford us to respond to your letter we only deal with the pertinent aspects thereof.
4. Ad paragraph 5.1
 - 4.1 If your client was a shareholder or is a shareholder as you allege, it should have a copy of the shareholders agreement. The fact that it doesn't is telling.
 - 4.2 The shareholders agreement in question contains extensive confidentiality clauses which precludes our client from providing you or your clients with a copy thereof.
 - 4.3 Thus, until such time as your client proves its ownership we cannot provide a copy and your client is not entitled to a copy of the agreement.
5. Ad paragraph 5.2
 - 5.1 There is no immediate possibility of our client selling all of the PGI shares.
 - 5.2 Certainly it cannot do so until the business rescue plan has been adopted and will take at least a number of weeks thereafter to do so.

Directors: CJ Strime (Joint Chief Executive Officer), IS Epstein (Joint Chief Executive Officer and Managing), DO Pretorius (Exco), JH Phalane (Exco)
CP Ancer, G Bloch, L dos Passos, BE Duma, SR Fisher, KAA Fuchs, J Fung, D Furman, PL Kemp, LA King, AC Kruger, J Levitz, RP Lisinski, BF Marques, DS Mer, AH Peral,
B Seleke, J Shafir, CB Shapiro, IG Shapiro, SP Shoba, SA Shoot, TA Simon, S Slom, AC Soldatos, EB Tonini, KJ Van Huyssteen Senior Consultants: C Caridos, CD Stein,
P Vallet Chief Financial Officer: VD Rubin C.A. (S.A.), M.B.A. Senior Associates: C Blumenthal, L Donaldson, JS Kadish Associates: DR Hirschowitz, MS Mer, FN Sithole,
J Vaughan Office Manageress: H Smil



- 5.3 There is thus no urgency and your client can bring its proceedings in the normal course. We are authorised to accept service of your proceedings.
- 5.4 If the business rescue plan is adopted and it appears that our client is going to sell 100% of the PGI shares, our client will afford your client seven days notice of this fact to enable your client at that time to bring an interdict if necessary.
- 5.5 Our tender to hold 39% of the proceeds of the sale of the PGI shares in trust remains and is repeated. We would recommend that you strongly entertain and accept this proposal. If you don't we certainly will rely on this tender *inter alia* in our pleadings / affidavits opposing your client's relief which it will claim.
6. Our failure to deal with any other allegation is not an admission of the correctness of the content thereof.

Kind regards

COLIN STRIME
FLUXMANS INC.

TRANSMITTED ELECTRONICALLY
AND THEREFORE UNSIGNED

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IN THE HIGH COURT OF SOUTH AFRICA
SOUTH GAUTENG DIVISION, JOHANNESBURG

CASE NO: _____

In the matter between:

GOLD CIRCLE (PTY) LTD
[Registration: 1998/024366/07]

Applicant

and

PHUMELELA GAMING & LEISURE LIMITED
[Registration: 1997/016610/06]
In Business Rescue

First Respondent

JOHN EVANS N.O. (In his capacity as business
rescue practitioner of the first respondent)

Second Respondent

MARY OPPENHEIMER DAUGHTERS (PTY) LTD
[Registration: 2017/475601/07]

Third Respondent

BETFRED LIMITED

Fourth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned, **RICHARD McELLIGOTT**, state under oath:

1. I am an adult male businessman.
2. From 2001 to 2004, I was the deputy chairman of the board of directors of Gold Circle.
3. From 2004 to 2008, I was the chairman of the board of directors of Gold Circle.

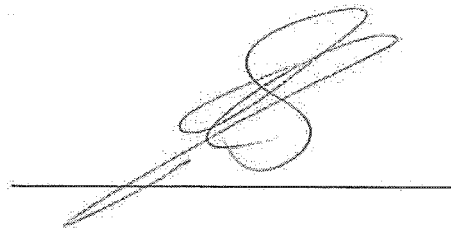


4. I have read the founding affidavit deposed to by Michel Joseph Laurence Nairac. I confirm the allegations therein pertaining to me.



DEPONENT

The terms of Regulation R.1258 published in Government Gazette No. 3619 of the 21st July 1972, as amended, having been complied with, I hereby certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to at Durban on this 31st day of August 2020.



COMMISSIONER OF OATHS

JOSEF LE GRANGE SHAWN VAN HEERDEN
COMMISSIONER OF OATHS
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