

* AFRIKAANSE TEKS HIERBO

MONTHLY NEWSLETTER: OCTOBER 2017

Dear Mr / Mrs / Ms [Customer Name]

This newsletter is addressed to you as a member of the Highveld Syndication Action Group (“HSAG”) on account of you having made an investment in the Highveld Syndication Companies 15 – 22 and thereafter having joined the class-action through the HSAG.

The www.hsaction.co.za website is the place where you will find information although emails are also sent out from time to time.

Please keep us up to date with any changes to your contact details.

In this newsletter we restate the purpose for which the HSAG was formed, the financing of the class-action litigation, an update of legal matters and our response to media queries.

1. OVERVIEW

The HSAG was initiated when a group of investors across South Africa, who invested in the Highveld Syndication companies (HS) 15 – 22, became unhappy and decided to institute a class action against Mr Nic Georgiou and others because of the damages they suffered as well as losses that they incurred in the failed HS15 – 22 companies.

The legal team is positive about the merits of the case due to the fact that the HSAG members invested their money in property syndication companies in good faith that would have owned billions of rands worth of property, however, the properties and monies paid have in the meantime “disappeared”.

Because of the reckless and/or negligent management and handling of the HS15 – 22 companies and funds, the HS19 – 22 companies purchased properties from Mr Nic Georgiou and his entities and paid for it, but Mr Georgiou did not transfer the properties as agreed.

The properties in HS15 – 18 were supposed to be unmortgaged, however, the HS members complained that they were brought under the false impression that their companies had to be put under business rescue from where the unmortgaged properties were again sold in a reckless and/or negligent manner that caused tremendous losses and damages to the HS members.

Thanks to the HSAG and its members, this unfortunate group of investors could start a distinctive class action. Concerning the fees, the HSAG also requested from each member a fraction of the fees required to manage such an enormous case. Unfortunately, not everyone made their contributions timeously.

2. MOTIVES AND OBJECTIVES OF THE HSAG

The main objective of the HSAG is to approach the High Court of South Africa by means of an application to obtain court orders on behalf of investors in HS15-22, ordering the bringing of a Class Action(s) against Mr Nic Georgiou, his sons, their

entities and others, for the recovery of damages and losses incurred by 18 300 investors in the failed Highveld Syndications Companies 15 – 22.

The two immediate cases that the HSAG is involved in are the certification of the Class Action, as well as the setting aside of the Scheme of Arrangement in terms of Section 155 of the Companies Act. The Scheme of Arrangement (SoA) provides that Mr Nic Georgiou, his sons, their entities and other Respondents have been released and indemnified of any personal liability. The HSAG asserts that the court-sanctioned SoA was obtained in a covert manner and should be set aside so as to continue with the recovery process against the individuals.

Should the court agree with HSAG's case, the SoA would be set aside and the Highveld Syndication Companies 15 – 22 would revert to business rescue. If the aforementioned was to occur, Mr Hans Klopper – the court appointed Business Rescue Practitioner (BRP) – would most likely be requested to resign. HSAG members are of the view that Klopper has not acted in their best interests. If a new BRP were to be appointed independently, he would be requested to take the necessary steps in order to serve the HS companies' best interests, and the HSAG would be able to continue with the application to certify the Class Action.

Until the HSAG successfully challenges the SoA, Orthotouch/Mr Georgiou are obliged, in terms of a Court Order, to pay the monthly interest to investors. Mr Georgiou / Orthotouch can thus not summarily discontinue the payments. However, it is our view that the payment of interest could be continued with in accordance with the income generated by the buildings, without the SoA.

3. FEEDBACK ON HSIF NEWSFLASH

After literally weeks of silence, the HSIF recently sent out a further newsflash to HS investors. As in the past, various false allegations and statements are made to investors.

The general tone of the letter is to criticise and question the actions of the attorneys and the HSAG. The emotions of the investors are being toyed with by the HSIF, in that they are making threats about claiming interest and the refunding of settlement payments already made by Orthotouch.

The letter is furthermore filled with allegations, i.e. professedly that "Theron will summarily remove and replace the BRP", whilst the comment was clear that there will probably be an application for the replacement of the current business rescue practitioner ("BRP"). A final decision will be made in due course.

Similar threats are made as in the previous letters about claiming back monies paid by Orthotouch; the position that Orthotouch would find themselves in if the setting aside of the Scheme of Arrangement application would be successful; and the position of the investors should Orthotouch possibly claim back their money.

With regards to the above threats, we kindly refer you to Paragraph 8 of this letter where the legal opinion of counsel is set out.

The unfounded allegation that the HSAG is providing its members with false news is just that: an empty allegation. The HSAG has, from the outset, always provided you with the truth relating to the court matters and actions of the HSAG attorneys. We have a comprehensive website that is updated on a regular basis at www.hsaction.co.za.

and we send out monthly newsletters to all members of the HSAG. We also have full-time personnel to answer your telephonic and email enquiries to the best of their abilities.

The HSAG confirms that all funds received are held in a separate attorney's trust account, which is audited annually. Costs consultants draft the legal bills of costs in such a way that it conforms to the general legal practice.

A further allegation that is made is that the HSAG only requests funds on a month to month basis. This may be the case, but it does not reflect the whole truth. The HSAG consists of thousands of members. Every day, week and month there are members making their contributions in lieu of our requests. The HSAG is not preaching to the proverbially converted, but is indeed to those who have not been pulling their weight.

The truth is that court cases are expensive and lengthy. The average High Court case easily takes anything between three to four years to be finalised. However, this is not an ordinary court case. The class action has to work with more than 7 000 members living countrywide and has to deal with Respondents who are doing everything in their power to delay the matter.

As was recently commented by a guest speaker on Moneyweb; that there are two important comments (apart from the continuous warnings not to invest in Picvest) that investors must keep in mind:

- (a) That the Georgiou's would resist in a so-called "Stalingrad" manner. Thus filing every imaginable defence possible, and secondly;
- (b) That Mr Georgiou is a very well-off man. In the Picvest-matter he had according to court documents, collected approximately R4.6 billion of which R3.2 billion is for properties that he sold to HS19 – 22 and that he received money for, but did not transfer the properties! What happened to all that money? Apart from that amount there were properties of approximately R1.4 billion in HS15 – 18 which were not secured with bonds. What happened to those properties or the money that was received with the alienation of the relevant properties?

The abovementioned is exactly why the HSAG is taking him and the other respondents on!

We would like to reiterate to the investors that membership of the HSAG is voluntary. However, if investors want to continue as members of the HSAG class action, we need to be able to count on your financial and moral support. As most of the investors are pensioners with very limited funds, every person's contribution is of great importance. That is why we are continuously encouraging you for your support.

For the HSAG to continue with this enormous legal matter in an effort to claim back the investors' funds (approximately R4,6 billion) from the Respondents, major expenses and costs have to be incurred.

The contributions towards legal and administration costs requested and charged to date were calculated on the basis that all registered members of the HSAG would pay their fees diligently. This is the only way to ensure that the contributions are limited to the bare minimum. However, for this case to be successful, all members must become

involved. By standing together the concept of “Unity is strength” can become the driving force herein.

To accommodate the majority of investors (the elderly and pensioners) we have made provision for the payment of only outstanding fees in instalments and will a debit order facility be implemented shortly (please refer to par. 6 hereunder).

The HSIF claims that we are litigating on behalf of the HSAG’s Administrative personnel that are personally being held liable in certain matters. No litigation costs are being incurred on behalf of the Administrative personnel and are these claims utter nonsense. Any party that disputes this point is welcome to produce concrete proof thereof. The HSIF’s unfounded allegation that the investors’ HSAG contributions are being utilised to fund third parties’ litigation is pure speculation, and in line with its fake newsletters/ashes. Apart from the fact that Mr Helgard Hancke was caught out as being the owner of the HSIF website, the HSIF is a faceless organisation that is undoubtedly being funded by Mr Nic Georgiou and Orthotouch as part of the effort to strengthen their case.

The HSIF is clearly busy with a campaign to discourage the investors to continue with the planned class action, which is according to us the only route for investors to claim back their money.

4. MEMBERSHIP CONTRIBUTIONS & REGISTRATION COSTS

Funding of an enormous case such as this one is and will probably always be one of the most difficult challenges of an action group. Many persons feel grieved and wronged because they have been deprived of their lifesavings. They are also furious because the government’s mechanisms and machinery are not in place to protect them from losses such as this. Serious allegations are regularly made against the prosecuting authorities and the Hawks, which furthermore contribute to the fact that the investors are becoming despondent. The only option left for investors would be to roll up their sleeves to tackle the case themselves, together. This case is after all their case.

It is of the utmost importance that the HSAG members ensure that their registration and legal costs are paid up to date as soon as possible, for the HSAG attorneys to continue with the case on their behalf.

The recent raising of suspicion by Mr Nic Georgiou and his agents that the attorneys of the HSAG would supposedly have received tens of millions of Rands from the investors, is false. Of the approximate 7 000 members of the HSAG there are thousands that are not contributing as they should.

In fact the HSAG attorneys took the lead and has been working for several years without having received all the fees that they are entitled to. Their account has been unpaid mainly due to a large number of members who made little or no contribution.

For the HSAG to drive these enormous legal matters in the struggle to claim back the investors’ money (approximately R4.6 billion) from the Respondents requires full-time attention and the incurring of large expenses.

Members are requested to continue showing their support to the HSAG and its process of recovering the enormous investor losses by diligently making annual contributions.

Although it places a burden on the administration of the HSAG, these can even be paid in instalments.

The contributions towards legal and administration costs charged to date were calculated on the basis that all registered members of the HSAG would pay their fees diligently. This is the only way to ensure that the contributions are limited to the minimum. However, for this case to be successful, all members must become involved. By standing together our motto of "Unity is strength" can become the driving force.

We can give you the assurance that all membership contributions are dealt with in a diligent manner and that all funds received in connection with the HSAG are paid into a separate trust fund for *inter alia* legal costs, disbursements and the administration of the HSAG, which group consists of approximately 7 000 individuals.

This account that were opened specifically for this purpose by the HSAG attorneys, are properly audited by independent auditors. The HSAG attorneys only request funds and disbursements as and when it is required and only after the work had been done.

You are urgently requested to make an effort to bring your membership contributions up to date, in order to take this matter forward.

5. HSAG INFORMATION SESSIONS – NOVEMBER 2017

The HSAG management intends to present information sessions in November 2017 at the following cities/towns:

- 2 November 2017 Port Elizabeth (Eastern Cape)
- 3 November 2017 Mossel Bay (Western Cape)
- 13 November 2017 Potchefstroom (North West)
- 14 November 2017 Johannesburg (Gauteng)
- 15 November 2017 Pretoria (Gauteng)
- 16 November 2017 Bloemfontein (Free State)
- 24 November 2017 Paarl (Western Cape)

These sessions will serve as a trial for future visits and information sessions to cities and towns throughout South Africa to enable the members of the HSAG to interact directly with the HSAG Steering Committee and/or legal team. The idea is to fund those sessions by requiring paid-up and more affluent individuals to sponsor those loyal registered members who are in financial dire straits. The total number of sponsorships required will be communicated to the conveners of the information sessions of each city/town.

Even though we would have preferred to present an information session in every town and city, it is unfortunately impossible. Should you want to arrange for an information session in your city or town in 2018, kindly contact us at hsagenquiries@gmail.com.

We kindly request HSAG members to register and attend the information sessions, as both the head of the litigation team as well as a member of the HSAG steering

committee will address the investors about the latest developments and the road ahead.

A detailed email regarding the information sessions will be forwarded to investors during the next week.

Please feel free to contact our offices or visit our website at www.hsaction.co.za for more information.

6. DEBIT ORDER FACILITY FOR OUTSTANDING COSTS

The HSAG is in the process of implementing a debit order facility only applicable to investors who have outstanding contributions towards legal and registration costs, whereby these investors can pay their contributions in monthly instalments.

To curb administration and costs, the minimum amount for a debit order is R300 per month until the outstanding trust requisitions have been made up to date. This amount shall be renewed on an annual basis.

As soon as the debit order facility has been implemented, an email will be sent to those investors and could persons who would like to use the facility, reply.

The debit order facility shall only be available to members that are in arrears with their registration and legal costs.

7. COURT CASES AND TIMING THEREOF

On 2 October 2017 the HSAG wrote to the Registrar of the Supreme Court of Appeal (SCA) requesting that the Johannesburg and Pretoria appeal matters of the HSAG be heard simultaneously and on an expedited basis. We have received a swift reply from the Registrar of the SCA and is the process ongoing.

The attorneys of record for Orthotouch/Mr Nic Georgiou must acquire the record of the court proceedings, where after it will be submitted to the Supreme Court of Appeal.

As soon as we have been provided with a date for the hearing of the Appeal in the Supreme Court of Appeal, investors will be advised thereof.

8. LIQUIDATION OF COMPANIES (HS15-22 AND ORTHOTOUCH)

The good news for HSAG members is that no liquidation processes would have any direct impact on the legal processes against Mr Nic Georgiou, his family or other respondents personally and would the HSAG continue with its goal to recover its members' losses and damages.

The HSAG received numerous emails and telephone calls with regards to a letter from business rescue practitioner, Mr Hans Klopper, and the HSIF website newsletters stating that, should Orthotouch be liquidated, its liquidators might be able to reclaim monthly payments made to investors.

The HSAG again confirms that a written opinion on this legal question was sought from its Counsel. According to the opinion the liquidators would not be able to claim

back any of the monthly interest/income payments made to the HSAG investors. All paid-up HSAG members will furthermore receive legal support in the event that they receive such threats. Here is a summary of Counsel's reasons:

- 8.1 Monthly payments are made to investors under an obligation by Orthotouch, in the Scheme of Arrangement document, in return for acquiring various fixed properties from the Highveld companies. The payments made by Orthotouch were therefore not made "without value" as meant in section 26 of the Insolvency Act of 1936 ("the Act"), and monies cannot therefore be reclaimed;
- 8.2 In so far as sections 29 and 30 of the Act are concerned, one creditor (such as an investor) can never be preferred above another as long as payments are made in accordance with the formula set out in the SoA document.
- 8.3 Payments by Orthotouch are made within the "ordinary course of business". This is a further reason why the liquidators will not be able to reclaim their monies.
- 8.4 The creditors of Orthotouch are the Highveld companies. It is the Highveld companies, who upon receipt of payments from Orthotouch, will repay the investors. This means that if Orthotouch were to go into liquidation, the liquidators only have potential claims against the Highveld companies – not against the investors.
- 8.5 Should the Highveld companies ever be liquidated, the liquidators will not be able to reclaim payments from investors for similar reasons to those mentioned above.

The HSAG is not at all in favour of liquidations and the HSAG has never threatened or attempted to liquidate Orthotouch or the Highveld Companies. These misleading statements were made by Messrs Georgiou, Hancke and Klopper and Ms Visagie. If you were to peruse all the previous litigation correspondence, you would see that it was only Mr Georgiou and his supporters who made the threats of liquidation. Liquidation would be the last resort for the HSAG. Liquidations are regulated by law/legislation. Should a company or entity be insolvent or trade whilst in insolvent circumstances there is undoubtedly a risk that the specific company could be liquidated by any creditor or interested party and would neither the HSAG have any control over the company, nor could the HSAG be blamed therefor.

9. ADMINISTRATIVE CUT-OFF DATE FOR HSAG REGISTRATION

Due to various requests the cut-off date for late-registrations to join the HSAG has been extended to 30 November 2017 at 24:00. Registration forms are available on our website at www.hsaction.co.za or can be requested from us at hsagregister@gmail.com. All requests and completed registration forms must be sent to hsagregister@gmail.com.

10. STATEMENT FOR PARTICIPATION IN THE HSAG

Please find attached your statement for contribution in the HSAG.

Kindly take note of the following:

- i. If no trust requisition regarding registration, legal or administration costs or a credit appears on your statement, it means that you are in a group which has not yet been processed and/or allocated and will the amount only reflect on a later statement.
 - a. The requested amount for 2016 legal costs was R1 000 per syndication.
 - b. In May 2017 a further requisition for contribution towards legal and administration costs of R2 000 per person were made.
 - c. A once-off registration fee per syndication was also levied and should also be reflected on your statement.
 - d. If a credit balance appears on your statement, you are a registered member, but we have not received your completed application form. Kindly download it from our website or request same from hsagregister@gmail.com.
- ii. Please be advised that the information on our records was gathered from the application forms.
 - a. If your application form is faulty, vague or incomplete there is a possibility that you may not receive statements or emails from us.
 - b. Kindly complete the HSAG Questionnaire in the Survey Monkey that is posted from time to time on our website in order to update your information or send an email to hsagregister@gmail.com.
- iii. Please click on the **email link** at the bottom of the newsletter to enter the "Customer Zone" where you will see all your trust requisitions for registration and legal costs, as well as all payments made.
- iv. Due to the ongoing high volume of enquiries, registrations, the amendment of personal information and allocations it is possible that your payment/s and/or registration/s will not yet appear on the attached statement but on a later statement. Please ensure that your information is correct.
- v. Automated statements will be sent out from time to time (usually monthly), but your link to the "Customer Zone" will stay active and you may therefore view your future payments and transactions as they are being allocated.
- vi. If there are any outstanding amounts you are kindly requested to pay such outstanding balances as soon as possible to prevent unnecessary administration and/or further costs and also to prevent such members' membership from being suspended from the HSAG.

- vii. Registration surcharges are payable on all new and arrear (90 days and older) registrations. Registration cost currently amount to R1 500 per syndication and, if further registrations are allowed beyond the deadline, it is probable that there will be a further requisition for registration costs per syndication for new registrations, in order to relieve the financial contributions made by our current HSAG members.
- viii. Participation in the HSAG is voluntarily, however, persons that do not belong to the HSAG or who are not up to date with their requested payments, would not be able to claim any rights or privileges that faithful members of the HSAG can. Persons' who persistently refuse or neglect to pay their membership contributions membership will be suspended.
- ix. We thank you for your loyal support without which the HSAG and class action would not have been possible.
- x. At the same time you can be sure of our undivided loyal support to the members and associates of the HSAG.
- xi. All enquiries must be sent to hsagenquiries@gmail.com.

Kind regards

HSAG Steering Committee

Contact the HSAG Attorneys at:

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