

## **MONTHLY NEWSLETTER: NOVEMBER 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 your membership and/or support of the HSAG.**

**The [www.hsaction.co.za](http://www.hsaction.co.za) website is the primary place where you will find HSAG information although emails are also sent out from time to time.**

**Please keep us up to date with any changes to your personal and/or contact details.**

**In this newsletter we reiterate the purpose for which the HSAG was formed, the funding of the Class action, the recent developments with the legal actions and feedback on media queries.**

### **1. OVERVIEW**

The HSAG was initiated when a group of investors across the Republic of South Africa who invested in the Highveld Syndication Companies (HS15-22), decided to institute a class action against Mr Nic Georgiou and others, for damages and losses 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 were these properties not transferred 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 guiltily manner that caused tremendous losses and damages to the HS members.

Thanks to the HSAG and its many (thousands) 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 and is the requisition of fees and frequency thereof higher than what the HSAG management would have preferred.

## **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 other Respondents, for the recovery of damages and losses incurred by investors in the failed Highveld Syndication Companies 15-22. The dissatisfied investors feel that Mr Nic Georgiou has not once fulfilled any of his agreements since becoming involved with the Highveld Syndication Companies and that justice must take its course. The two immediate cases that the HSAG is involved in are the certification (registration) 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.

If 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. MEMBERSHIP CONTRIBUTIONS & REGISTRATION COSTS**

Funding of a case with a protectable interest of R4.6 billion 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 they are of the opinion that the government's mechanisms and machinery are not in place to protect them from damages and losses such as this and that they now have to pay their way to claim back the money that they lost

Serious allegations are regularly made against the prosecuting authorities and the Hawks, contributing thereto that investors are becoming despondent. In addition, Mr Nic Georgiou is not keeping his word with a commercial settlement; is Orthotouch in financial trouble, and bound to a Section 155 Scheme of Arrangement. The only option left for HSAG investors would be to join hands and to drive the court case to recover their losses. This is after all, their case and fortunately since 2013, the South African Law makes provision for HS investors to enforce their rights by means of a class action.

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 earlier raising of suspicion by Mr Nic Georgiou and his agents (amongst others Helgard Hancke) 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 with the support in the class action, 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.

Members are requested to continue showing their support to the HSAG and its process of recovering the enormous investor losses by diligently making annual financial contributions. Although it places a burden on the administration of the HSAG, these can even be paid in instalments.

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.

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. Notwithstanding the huge amount of some million rands involved in the case, as well as the large amount of time and energy that this case demands, outside of office hours and even during weekends, the attorneys have to date only claimed their nominal legal fees.

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

#### **4. NEWSLETTER FORMAT**

The HSAG management decided to send all monthly statements and newsletters separately in future. The monthly newsletters will, as usual, also be available for all HSAG investors on the website at [www.hsaction.co.za](http://www.hsaction.co.za) under the heading: Newsletters.

Should you experience any difficulty with the opening or with the format of the newsletters you could notify us thereof at [hsactiongroup@gmail.com](mailto:hsactiongroup@gmail.com).

## **5. 2017 HSAG INFORMATION SESSIONS**

During October 2017, at the request of members of the HSAG, the HSAG Management decided to host information sessions on a trial base in different regions in order to establish whether there is a need therefor and whether these are practically feasible. This would also serve as an opportunity to inform the investors about the history of the HS companies and to explain the legal procedure of the HSAG class action.

Three information sessions were held on 2, 3 and 24<sup>th</sup> November 2017 in Port Elizabeth (Eastern Cape), Mossel Bay and Paarl (Western Cape) respectively. The sessions were successful and the attendance of the first two sessions exceeded our expectations.

At these sessions it was broadly explained what the class action is about, that it entails new law and that we are dealing with an exceptionally large claim and many claimants. The pros and cons as well as the legal position of class actions in general, were explained.

The investors were informed of the structure of the legal team of the HSAG. This team consists of Theron & Partners Attorneys, Senior and Junior Advocates and correspondents with excellent experience in law.

The process of business rescue and why this step was necessary, was highlighted, and within this scenario the goals of the HSAG were discussed. Reference was made to the facts and merits of the case as well as the rights of the HSAG.

Prescription was another topic of discussion and more details are provided in paragraph 5 of this newsletter.

As many investors enquired about the length of the matter, reference were made to the duration of the court case and to important happenings within the process. Investors were informed that progress was indeed made and that many issues had been attended to in court. Reasons were also provided for the proposed settlement and eventual withdrawal from the settlement negotiations. The dangers of the proposed HSIF settlement were also highlighted.

Amidst threats of the HSIF, a Georgiou platform, that Orthotouch and the HS Companies may possibly be liquidated, the subject of liquidation as well as the possible results thereof for the HSAG investors were discussed with reference to the HSAG advocate's opinion as was requested by the HSAG management committee.

After having presented the trial information sessions, and due to the substantial interest in the meetings and attendances thereof, the HSAG management decided to postpone the planned HSAG information sessions because of practical and logistical reasons to 2018, possibly to include more provinces/regions. Investors would thus have enough time to register for the attendance of the planned information sessions and would the HSAG management be able to source suitable venues therefor.

Information in this regard will be provided to investors in the monthly newsletter, via WhatsApp and SMS messages as well as via email.

## **6. PRESCRIPTION OF INVESTORS' CLAIMS AND HSAG CLAIMS**

The attorneys of record on behalf of the HSAG have received many requests from HSAG investors to explain prescription in simple terms and the effect that it may have on the claims of investors who invested in the HS 15-22 companies.

Here is a short summary:

### **What does prescription mean?**

Prescription is when a claim/debt (i.e. obligation to pay money) is extinguished by law after a period of time. In terms of the Prescription Act 68 of 1969, prescription begins to run as soon as a claim/debt becomes due or when the creditor knew or reasonably should have known the identity of the debtor and the facts given rise to the claim/debt.

In South African law, the Prescription Act states that contractual and delictual claims/debts prescribe after three years from the date when the claim/debt became due and payable (i.e. when the claim/debt arose).

### **What are the consequences of a claim/debt that prescribed?**

When a claim has prescribed, the party with the claim may not institute legal action for such claim.

Thus, the debt becomes extinguished after the three year lapse and the debtor will not be liable to pay such debt.

### **When will a prescription period be interrupted?**

In terms of S13 of the Prescription Act there are circumstances that can delay or interrupt the running of prescription.

Issuing of a summons served by the Plaintiff on the Defendant, or in the case of an obligation to pay money, an acknowledgment of debt by a debtor, are just some examples of reasons which will cause prescription to be interrupted.

### **The HSAG and prescription**

A court application for leave to register a class action was issued on behalf of investors in Highveld Syndications 19 to 22 in the Pretoria High Court in October 2014 under case number 80811/14.

Fortunately, the issuing of such application has interrupted the running of prescription in respect of all the class action claims as referred to in such application, including the claims based on the so-called buy back agreements. That prescription is interrupted by means of the mere issuing of such class action application, was stated by the Supreme Court of Appeal in the matter of *Children's Resource Centre Trust v Pioneer Food (Pty) Ltd 2013 (2) SA 213 (SCA) ([2012] ZASCA 182)* at paragraph 89 of the judgment.

## **7. 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. Applications for 2017 and received after the above expiry date, shall be considered on a strictly *ad hoc* basis. Registration forms are available on our website at [www.hsaction.co.za](http://www.hsaction.co.za) or can be requested from us at [hsagregister@gmail.com](mailto:hsagregister@gmail.com). All requests and completed registration forms must be sent to [hsagregister@gmail.com](mailto:hsagregister@gmail.com).**

Kind regards

HSAG Steering Committee

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