

AFRIKAANS HIERBO

SPECIAL INTERIM HS 21 & 22 HSAG NEWSLETTER: NOVEMBER 2018

Dear HSAG Investor / Mr / Mrs / Ms [Customer Name]

This Notice 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 21 & 22 and/or support of the HSAG.

The 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.

Kindly take note that HSAG Monthly Statements and a full HSAG Newsletter will be send out during next week.

NB: SEE POINTS 4, 7 & 8 BELOW.

1. INTRODUCTION

The HSAG confirms that you form part of the HSAG ‘fast-track’ process to approach the courts, by way of an expedited application, in which the HSAG is requesting that a class action be certified in respect of certain contractual claims of HS 21 & 22.

The HSAG deemed it best to clarify certain points regarding the process in this notice.

2. WHY HAS THE HSAG CONSIDERED THE DECISION TO MOVE FORWARD WITH A “FAST TRACK” CLASS ACTION REGARDING HS 21 & 22?

The prospectuses in HS 21 & 22 contained a “Buy Back” agreement, which stipulated amongst others that Mr Georgiou/Zephan, should repay the investors' investments over 5 years.

Mr Georgiou/Zephan failed to repurchase the investors' investments and argued that the Business Rescue Plan and thereafter the Sec 155 Scheme of Arrangement restructured the payments to investors and that the “Buy Back” clause was therefore no longer enforceable.

However, earlier this year, there were two successful Supreme Court judgments against Georgiou's Zephan, where the Courts found that the previous Business Rescue Plan and the Sec 155 Scheme of Arrangement had no effect on the “Buy

Back" clause regarding claims made by investors in HS 21 and HS 22 against Mr Nic Georgiou, Zephan and Georgiou's Trusts.

The HSAG legal team has decided, with a strong message from the courts in its favour, to proceed with the certification of the abovementioned claim for the aforesaid parties without delay, on the basis of the relentless attitude of the appeal judges earlier this year in reaction to Georgiou and Orthotouch's contempt of court rules, delaying tactics as well as the abovementioned judgments on a contractual basis in the class action, with regard to investors in the abovementioned syndications, as there is no reason why Mr Georgiou/Zephan should not comply with the "Buy Back" clause.

3. ISSUING OF THE APPLICATION

On July 27, 2018, the HSAG legal team requested an application for the certification of a class-action in respect of the relevant claims against Mr Georgiou/Orthotouch and other Respondents in which the HSAG requested the Court for such a certificate to be granted.

In terms of the Rules of Court, the Respondents had 5 Court Days in which they could file their Notice to Oppose.

The HSAG received a Notice of Opposition from certain Respondents, including Mr Georgiou and Orthotouch.

The court rules further stipulate that if the Respondents oppose the Application, they must file their Opposing Affidavit(s) within 15 Court days.

The HSAG has, despite requests thereto, until now not received any Opposing Affidavit(s) from the Respondents.

In such a case, the Rules of the High Court determine that an Applicant, the HSAG, may place the application on the unopposed Court Roll for hearing.

However, the HSAG legal team anticipated that the Respondents would only deliver their Opposing Affidavit(s) on the day of the Application, which would then result in the matter being postponed.

4. APPOINTMENT OF A CASE MANAGER - HIGH COURT, PRETORIA

On Friday, 19 October 2018, the Deputy Judge President, Judge AP Ledwaba, of the High Court, Pretoria, appointed a Case Manager, to oversee this matter, on request by the HSAG.

Judge RG Tolmay (who was appointed as the Case Manager) is independent of any party to the proceedings and must, *inter alia*, ensure that parties do not delay the process unnecessarily.

The failure to file opposing paper was brought to the attention of the Case Manager who has been appointed in the matter and a meeting with her was arranged.

The legal team of the HSAG contacted the Registrar of Judge Tolmay in order to convene an urgent meeting with her and other interested parties.

The case manager, Judge Tolmay, informed the parties on 6 November 2018 that she wanted a meeting at **08h15 on Thursday, 8 November 2018** at her chambers. The matter was so important to the HSAG that their legal team reshuffled their other work in order to make travel and accommodation arrangements.

The meeting between the respective legal representatives and the Case Manager Judge to fast-track the certification of the HS21&22 Buy-back claims took place and went very well.

The judge took cognisance of the urgency to expedite the matter and made positive remarks towards the importance and urgency of a matter where the rights of elderly people are concerned.

A timetable was set to enable the first part of the application to be heard early in 2019. If the HSAG is successful therein, the certification application for the buyback claims will follow suit.

The legal team of Nic Georgiou abandoned two of the technical points which they took earlier which is another victory for the HSAG. The third point was also resolved by the undertaking of Georgiou's legal team to file their papers on an agreed date

If the HSAG succeeds in the Buy-back certification application, the other certifications will follow. A victory for one certification is a victory for all.

5. WHAT WILL THE “FAST TRACK” CLASS ACTION CERTIFICATION OF SPECIFIC HS 21 & 22 CLAIMS MEAN FOR INVESTORS

Since the specific cause of actions in HS 21 & 22 are based on facts which differ from the other HS-Companies, it is not necessary to set aside the Sec 155 Scheme of Arrangement before the HS 21 & 22 claims can be enforced.

Thus, the route followed by the HSAG in respect of HS 21 & 22 investors is a bit shorter and could mean that those who invested in the abovementioned syndications have their contractual claims enforced earlier.

Should the HSAG be successful with the Application for the Certification of a class action in these claims, it will mean that the HSAG can immediately proceed to enforce their claims of all HS investors who invested in HS 21 & 22.

The HSAG's claims, which are *delictual* claims (unlawful acts), which include these Respondents, are not affected by the “fast track” application, and proceed as usual like the rest of the HS Companies 15 - 20.

6. WHAT ABOUT INVESTORS THAT HAVE INVESTED IN THE OTHER SYNDICATION COMPANIES?

HSAG members who have invested in other HS Companies should not be concerned regarding their claims. These claims are not lost or in jeopardy and the HSAG is still proceeding with steps to enforce investors' claims. You must remember, however, that the claims of HS 15 to 20 (and also partially in HS21 & 22) are based on other facts and circumstances, amongst others including fraud and misrepresentation, and this route must be followed with these claims, which differ to the contractual claims of HS 21 & 22.

As stated above, HS 15-22 claims, based on unlawful acts will also proceed against all Respondents. The reason for this is that any shortfall that may exist in the claims will be recovered from such parties.

The abovementioned investors' claims have already been instituted by way of the Application for Certification and this Application suspends the running or prescription of HSAG members' claims.

Although the HSAG intends to set aside the Sec 155 Scheme of Arrangement, (SoA) Orthotouch is obliged, in terms of the SoA, to pay monthly interest to HS investors, at least until the SoA is set aside.

Since Orthotouch disregard the Scheme of Arrangement by not paying HS members their monthly interest on time or at all, there is no reason why the Scheme of Arrangement should remain in effect and the HSAG will strongly consider taking steps as soon as possible to set the Scheme of Arrangement aside.

7. 2018 SPECIAL REQUEST – “FAST TRACK” APPLICATION

Since it requires an enormous amount of work in order to bring the specific Application for the Certification of the Class Action for HS 21 & 22 to Court, the HSAG Management has decided on a special 2018 contribution in the amount of R500.00 per person, for those who have invested in the HS21 and/or HS22 companies.

This nominal 2018 contribution is additional to the usual yearly contribution and will appear on your statement.

All HSAG members contribute towards a common pool. However, it is necessary that those who have invested in HS 21 & 22, make an additional contribution to support the litigation of HS 21 & 22 specifically.

Therefore it is necessary for the HSAG management to make this special request.

The abovementioned special contribution already appears on your HSAG Statement and we request that you settle this amount as soon as possible.

The process will be phased in over time and the relevant HSAG member statements

will be updated over time, but members are specifically requested not to wait until their statements have been updated and are requested to immediately deposit the required amount in to the trust account, with the correct reference, as follows:

Theron & Partners Account. No. 2
Standard Bank
Stellenbosch
Acc. No. 063163160
Branch Code 050610
Swift Code SBZA ZA JJ
Reference: "**RQ1- Initials and Surname**".

Important: if you have already paid the above amount and it does not appear on your statement, please be patient, it will appear in due course.

8. SUSPENSION OF HSAG MEMBERSHIP

The HSAG Steering Committee decided at a previous meeting, which decision was welcomed by many of the paid-up HSAG members, that membership to the HSAG would unfortunately immediately be suspended if such members do not settle their outstanding 2014/2015 registration costs by 31 December 2018.

The above arrangement will also apply specifically to HSAG investors who form part of the HS 21 & 22 "Fast Track" Application for Certification.

The consequences of HSAG membership being suspended are far-reaching, and may mean, amongst other things, that the HSAG investor's claim against Orthotouch/Georgiou has prescribed. In the current scheme of the class action application, it may also mean that you will not be able to re-join the HSAG class action at a later stage.

In view of the abovementioned favourable developments in respect of HS 21 & 22, we encourage members to settle their registration costs as soon as possible and to provide proof of payment in order to prevent the suspension of your membership.

It is extremely unfair to paid-up members, that some members have received full services, while they have not made any contributions for the past 2 to 3 years.

If members' membership is suspended, they will unfortunately not be able to share in any success or even settlements that the HSAG and its members may negotiate or reach.

The HSAG also intends to send out a new letter to its members before the end of 2018 providing guidelines in this regard.

Kind regards

HSAG Steering Committee

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