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MAANDELIKSE NUUSBRIEF: APRIL 2020

Hierdie nuusbrieff word aan u gerig as lid van die Hoëveld Sindikasie Aksiegroep ("HSAG") op grond van u belegging in die Highveld Sindikasiemaatskappye 15-22 en/of u ondersteuning van die HSAG.

Hierdie e-pos is vertroulik en uitsluitlik vir die geadresseerde bedoel. As u dit per ongeluk / verkeerdelik ontvang het, stel asseblief die versender by hsagenquiries@gmail.com onmiddellik in kennis en vernietig dit. U mag nie 'n e-pos, of enige deel daarvan, wat foutiewelik ontvang aan enigiemand anders stuur, kopieer of openbaar nie. HSAG se webmeester gebruik antivirusprogrammatuur om virusse en ander kwaadwillige kodes te voorkom. Hierdie sagteware kan egter nie so 'n kode altyd voorkom of uitwis nie. Die HSAG of sy verteenwoordigers sal nie aanspreeklik wees vir enige verlies of skade wat voortspruit uit ontvangs of gebruik van hierdie e-pos of andersins, of dit voortspruit uit die nalatigheid van HSAG, sy lede, bestuurskomitee en agente of andersins nie.

Alhoewel e-posse, HSAG Nuusflitse en HSAG Inligtingsbrokkies van tyd tot tyd uitgestuur word, is die www.hsaction.co.za webtuiste die primêre plek waar u HSAG inligting, onderhewig aan die vrywaring daarin vervat (en ook hierop van toepassing) kan bekom.

Die verpligting rus op u as HSAG lid om ons op hoogte van enige veranderinge van u persoonlike en/of kontakbesonderhede.

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1. **BRP JACQUES DU TOIT OMSENDSKYWE: ZEPHAN & ORTHOTOUCH IN SAKEREDDING**

Die HSAG ontvang tans talle navrae in verband met 'n skrywe van Jacques du Toit, die sakereddingspraktisyn ("BRP") vir Zephan en Orthotouch, gedateer 6 Mei 2020, wat beleggers ontvang. Die skrywe verwys na die gepubliseerde sakereddingsplanne vir Zephan en Orthotouch, en versoek dat beleggers binne 7 dae sekere sessie en volmag vorms voltooi.

Die regspraak is van mening dat beleggers nie op die skrywe moet reageer nie, aangesien dit 'n poging is van Du Toit om die sakereddingsplan op 'n onreëlmatige wyse in werking te stel, deur te steun op die nasionale inperkings as 'n regverdiging om die voorgeskrewe prosesse in terme van die Maatskappywet te omseil, sonder dat 'n wetlik vereiste vergadering plaasvind waar beleggers besware kan lewer en wysigings van die plan kan voorstel. Hierdie vergadering word verplig deur die Maatskappywet.

Die feite is as volg: Meeste beleggers is bejaarde persone, wat soveel meer kwesbaar is vir die Covid-19 virus. Daardie persone kon dus nie tydens die inperking regsadvies bekom nie, en kon ook nie fisies hul finansiële adviseurs konsulteer nie, buiten op telefoniese of ander tegnologiese wyses. Dit is dus totaal onredelik om te aanvaar dat beleggers enigsins 'n ingeligte besluit kan maak om te stem vir of teen die plan, sowel as om 'n geleentheid gegun te word om na ander se besware en bekommernisse te luister.

Ongeag van die keuse wat u uitoefen, indien u die vorms invul, kan dit 'n sterk aanduiding skep dat u die onregmatige kortpad proses wat Du Toit probeer volg ondersteun, selfs indien u die blokkie invul wat aandui dat u buite stemming bly. Dus, bly weg, of indien u op advies van finansiële adviseurs of ander persone wil steun, kontak u eie prokureur.

Die HSAG se standpunt ten aansien van die sakereddingsplanne, soos deurgegee aan Moneyweb, volg hieronder:

Die twee besigheidsreddingsplanne van Zephan en Orthotouch het presies dieselfde oogmerke ten doel, naamlik, om beleggers in die Hoëveld Sindikasies te intimideer om (a) 'n nóg slegter "terugbetalingsplan" as voorheen te aanvaar; en (b) om die hofgeding en die verhaal van verliese van Georgiou uit te stel.

Ten spyte van voormelde sal Georgiou straks nie slaag nie, aangesien die klas-applikante die Hof versoek dat die klas-aksies teen hom en sy entiteite voortgaan, ondanks die sake-reddingsverrigtinge.

Die twee planne maak 'n algehele bespotting van gevestigde beginsels wat sakeredding reguleer ten opsigte van maatskappye wat blykbaar nie eens finansiële state opgestel, gehou of ingedien het nie! Die BRP het 'n wetlike plig om onreëlmatighede te rapporteer wat hy kennelik nie gedoen het nie. Die planne is bloot opgestel om aan te pas by Georgiou se eie belange en nie by beleggers en bona fide krediteure nie.

As die planne byvoorbeeld aanvaar word, poog Georgiou weer om homself, sy familie, Hans Klopper en ander van eise vry te stel. Dit is grof onreëlmstig en benadeel beleggers wesenlik, maar Du Toit het geen redes daarvoor gegee nie.

Die konsep planne onderskei ook nie enigsins tussen die krediteure van die onderskeie ondernemings nie. 'n Gelykgestelde lys van krediteure van albei maatskappye word gegee (soos die geval met die bates). Vreemd genoeg is daar geen finansiële state beskikbaar gemaak nie, en word daar word ook nie in die planne na (of uittreksels) verwys nie.

Die krediteurelys weerspieël daarby ook 'onbekende derde partye' as krediteure ter waarde van R610 miljoen. Dit is absurd, aangesien die ouditeure en direkteure van die maatskappye sekerlik hierdie identiteite ken.

Dit is ook eienaardig waarom die geheimsinnige “derde party” -finansierder, wat die broodnodige fondse vir die terugbetaling van beleggers wil voorsien, nie geïdentifiseer word nie.

Alhoewel die HSAG van mening is dat die planne, selfs as dit aanvaar word, nie die klasaksie sal beïnvloed nie, word beleggers nietemin gewaarsku en aangeraai om nie sondermeer die voorgestelde stem proses deur wyse van volmagte en sessie vorms (sonder dat daar 'n fisiese vergadering geroep word soos deur die Maatskappyyewet vereis) te ondersteun of aanvaar nie. Deur te stem soos versoek deur Du Toit, selfs indien u aandui dat u teen die plan stem, of buite stemming bly, soos aangedui op die volmagvorm, kan dit gesien word dat die kortpadproses van Du Toit geratifiseer word deur HS beleggers.

As 'n belegger ten gunste van die plan stem, sal hy/sy ongetwyfeld van sy of haar eise en regte teen Georgiou en sy entiteite verloor of afstand doen daarvan.

In kort, is die HSAG Bestuur se standpunt dus dat:

1. beleggers nie die BRP (Du Toit) aanbod moet aanvaar nie;
2. die aanbod net nog 'n poging is om beleggers bang te maak (Du Toit dreig met likwidasië en die terugbetaling van rente);
3. die dreigemente bangmaak stories is sonder enige regsgronde;
4. daar 'n groot risiko is dat indien beleggers die aanbod aanvaar deur 'n opsie te kies, hul regte en eise herskik word en Georgiou en ander wegloop met jou geld; en
5. dat die BRP se skrywes ignoreer moet word (moenie enige van hul briewe voltooi nie).

Die HSAG gaan volstroom voort met die relevante hofsake.

Ten einde die gemelde bekommernisse en tekortkoming in die huidige proses wat gevolg word onder Du Toit se aandag te bring, het die HSAG op 12 Mei 2020 'n skrywe na Du Toit as BRP gestuur waarin die volgende punte aangeraak word:

- Die omsendskrywe met aangehegde volmag en sessie vorms wat gestuur is;
- die misleidende dekbriëf wat die skyn skep dat Du Toit bloot 'n aanduiding wil kry of persone die (onregmatige) proses ondersteun;
- die HSAG se voorneme om die Hooggeregshof te nader indien die wetlike proses nie gevolg word nie;
- die onaanvaarbaarheid en onregmatigheid van die huidige voorgestelde proses wat Du Toit poog om te volg;
- die kwytskelding van Georgiou en ander direkteure indien die plan aanvaar word;
- die onbekende identiteit van die derde party befondser wat kommerwekkend is;
- die belang van 'n fisiese vergadering waarop daar gestem kan word vir of teen voorgestelde wysigings, en/of die finale sakereddingsplan;
- Du Toit se versuim om onreëlmatighede aan die onderskeie owerhede te rapporteer; en
- die feit dat Du Toit poog om twee afsonderlike entiteite basies onder dieselfde plan te red, en daardeur 'n enkele gemengde lys van krediteure te voorsien, wat onder andere 'n krediteur van R610 miljoen se identiteit geheim hou.

Indien u die HSAG se skrywe wil lees, kan u dit besigtig by: <http://hsaction.co.za/wp-content/uploads/2020/05/LettertoDuToit20200512.pdf>

2. HUIDIGE COVID-19 INPERKING

Na aanleiding van President Cyril Ramaphosa se aankondiging, is meeste Suid-Afrikaners sedert 27 Maart ingeperk om die verspreiding van die Covid-19 virus te bekamp. Die bovermelde het tot gevolg gehad dat sekere noodsaaklike dienste steeds kon voortgaan. Theron & Vennote, die HSAG regsplan, se kantore moes dus ongelukkig ook sluit. Die regsplan het egter onverpoosd voort gegaan om na u belange om te sien en het van hul tuistes af gewerk. Gedurende hierdie tydperk is daar ook spesifieke direktiewe vir die howe uitgereik. Die direktiewe bepaal dat slegs dringende aangeleenthede aangehoor sal word in hierdie tyd. Dit beteken ondermeer dus dat die howe nie oop sal wees vir algemene siviele litigasie (soos die sake gedryf deur die HSAG) nie.

Sedert die aanvang van vlak 4 van die regulasies is Theron & Vennote se kantore oop ten einde essensiële regsdienste te lewer. U sal dus die kantoor weer telefonies kan skakel.

3. HS 21 & 22 GESERTIFISEERDE KLAS-AKSIE

Die “opt-in” periode vir die gesertifiseerde HS 21 & 22 klas-aksie het reeds op 16 Maart 2020 om middernag gesluit. Die HSAG regsplan is gebonde aan Regter Tolmay se hofbevel, en kan geen uitsonderings maak sonder die Hof se toestemming nie.

Die Covid-19 pandemie het egter ’n noemenswaardige impak op ieder en elk se finansies, sowel as toeganklikheid tot finansiële instellings, finansiële- en regsadviseurs sowel as pos- en rekenaardienste. Hierdie omstandighede, sowel as die derdeparty rekeningkunde diensverskaffer van die HSAG wat die opdatering van state verdrag het tydens Februarie en Maart 2020, het die HSAG Bestuur genoodlot om die afsluiting van die “opt-in” periode, soos bepaal deur die Hof, te oorweeg.

Dit het onder die HSAG Bestuur se aandag gekom dat daar enkele beleggers is wat steeds sou wou deel wees van die HS 21 & 22 gesertifiseerde klas-aksie, maar dat dit weens bovermelde omstandighede nie moontlik was om betyds aan te sluit nie.

In ’n poging om daardie persone by te staan, is die HSAG regsplan bereid om ’n lys saam te stel van sodanige persone, onderhewig daaraan dat hul onmiddellik hul registrasiekoste van R4 500 of R6 500 betaal (R4 500 vir ’n totale gekombineerde belegging in HS 21 & 22 van R100 000 en minder, en R6 500 vir ’n totale gekombineerde belegging van meer as R100 000), met die doel om die Hof te nader om te versoek dat daardie persone ook deel vorm van die klas beleggers wat die “opt-in” opsie uitgeoefen het.

Die HSAG regspan kan egter geen waarborge gee dat laatkommers se insluiting deur die Hof goedgekeur gaan word nie, en sal dit op beleggers se eie risiko wees.

Persone wat van hierdie geleentheid wil gebruik maak, moet sulke versoek rig na admin@ccaf.co.za.

In die versoek moet u asseblief die volgende besonderhede voorsien:

- Volle naam en van
- Identiteitsnommer
- Woonadres
- Selfoonnommer
- e-pos adres
- Verteenwoordiger (indien van toepassing)
- Waarde van belegging in HS 21 en/of HS 22
- Rede waarom u nie teen 16 Maart die “opt-in” vorm kon voltooi nie

U sal 'n antwoord ontvang wat aandui wat die registrasiefooi is wat u moet betaal, sowel as die verwysing wat u moet gebruik wanneer u die betaling maak.

Beleggers wat reeds die “opt-in” opsie uitgeoefen het en skriftelik aansoek gedoen het om die registrasiefooi oor ses maande af te betaal deur wyse van die voorgeskrewe aansoekvorm, moet hul totale registrasiefooi binne 6 maande vanaf die datum waarop hul die opt-in vorm voltooi het, ten volle betaal om deel te wees van die gesertifiseerde HS 21 & 22 klas-aksie. Indien die volle registrasiefooi nie binne ses maande vanaf die “opt-in” tydperk, soos vasgestel, betaal is nie, sal daardie persone ongelukkig nie deel kan wees van die gesertifiseerde klas-aksie (“CCAF”) nie.

U word weereens daaraan herinner (indien u dit nog nie gedoen het nie) om solank u FICA dokumente stuur na accounts@ccaf.co.za.

Die dokumentasie tans benodig is 'n afskrif van u Identiteitsdokument, sowel as 'n bewys van adres (nie ouer as drie maande).

Die regspan bedank diegene wat reeds hul dokumentasie gestuur en hul goeie samewerking tot dusver gegee het.

Die Kennisgewing van Mosie kan besigtig word by:

<http://hsaction.co.za/wp-content/uploads/2019/10/Amended-Notice-of-Motion-Fast-Tracking-of-buyback-claims.pdf>

Die Hofbevel en uitspraak gelewer deur Regter Tolmay op 10 Desember 2019 kan besigtig word by die volgende skakel:

<http://hsaction.co.za/wp-content/uploads/2020/01/HS2122Order.pdf>

4. BELEGGERS MET EISE IN HS 15 TOT 20

Die HS 15 – 20 sertifiserings-aansoek is reeds uitgereik en beteken op Georgiou en andere, en is die onderskeie regsverteenwoordigers tans besig om stukke uit te ruil. Huidig is die regspan besig om op die teenkant te wag.

Die gerugte wat die rondte gedoen het dat die plasing van Zephan en Orthotouch in sakeredding sal beteken dat alle litigasie gestaak sal word, is nie waar nie. Die Maatskappywet bepaal uitdruklik dat litigasie teen 'n maatskappy in sakeredding kan voortgaan met die toestemming van die sakereddingspraktisyn of indien die Hof so gelas. Indien die Hof dit gelas, kan daar dus voortgegaan word met litigasie al stem die sakereddingspraktisyn nie daartoe in nie.

Dit is ook belangrik om kennis te neem dat die litigasie nie alleenlik teen Orthotouch of Zephan gevoer word nie, maar dat daar talle ander Respondente is wat onder andere Mnr. Georgiou en van sy familieledede in hul persoonlike hoëdanigheid insluit. Van die ander Respondente is Mnr. Hans Klopper, die sakereddingspraktisyn van die HS maatskappye.

Die HSAG Bestuur poog om te alle tye in die beste belang van al sy lede op te tree en is steeds van voorneme om, soos voorheen bekend gemaak, namens elke HSAG-lid wat opbetaal is te onderhandel indien daar enige skikkingsonderhandelinge sou plaasvind. Hierdeur word daar opgetree namens elke lojale lid wat dit vir die HSAG oor die jare moontlik gemaak het om, deur hul ondersteuning, hierdie punt te bereik.

5. ONLANGS IN DIE MEDIA: ZEPHAN & ORTHOTOUCH SAKEREDDINGSPLANNE

'n Finansiële joernalis van Moneyweb het onlangs 'n artikel gepubliseer oor die sakereddingsplanne van Orthotouch en Zephan.

Soos in vorige nuusbriewe gaan ons voort om 'n kort en bondige opsomming van die artikel te gee, maar ons wil u graag uitnooi om die amptelike artikel te lees.

Orthotouch bied voormalige HS-beleggers slegs 'n paar sent in die Rand aan

'n Ongeïdentifiseerde derde party bied beleggers R201 miljoen in Accelerate aandele en kontant aan om eise ten bedrae van R3,9 miljard te vereffen.

Voormalige beleggers in die Hoëveld Sindikasie (HS) -skemas sal slegs 'n paar sent in die rand op hul oorspronklike beleggings ontvang as die besigheidsreddingsplan vir Orthotouch en Zephan aanvaar word. Dit volg nadat Orthotouch en Zephan in Desember 2019 in besigheidsredding geplaas is. Die besigheidsreddingsplan ter sprake is einde Maart 2020 gepubliseer.

Die 60 bladsy Orthotouch sakereddingsplan bied beleggers twee opsies aan as die finale skikking van hul eise teen Orthotouch, wat hulle óf aandele in Accelerate Property Fund Ltd aanbied, of 'n onmiddellike kontant betaling. Michael Georgiou, Nic Georgiou se seun, is die meerderheidsaandeelhouer en huidige hoofuitvoerende beampte van Accelerate.

Jacques du Toit, die sakereddingspraktiysn ("BRP"), sê in die reddingsplan dat hy al die eiendomstransaksies ondersoek het en geen bewyse van wanbesteding met betrekking tot die eiendomstransaksies kon vind nie. Hy het egter gevind dat die oordragprokureurs verkeerde transaksiewaardes by die Aktekantoor ingedien het met betrekking tot talle eiendomstransaksies waardeur eiendomme verkoop is deur die HS maatskappye en maatskappye besit deur, of verwant aan, Nic Georgiou, insluitend Zephan, via Orthotouch aan Accelerate.

Du Toit noem dat hierdie verkeerde waardes 'n wanpersepsie geskep het dat Orthotouch eiendomme teen 'n hoë waarde van die HS-maatskappye of van Zephan koop, en dan die eiendomme teen 'n beduidende / aansienlike afslag weer verkoop aan Accelerate. Hierdie persepsie is volgens Du Toit verkeerd en heeltemal onwaar, aangesien die verkeerde waardes 'n wanpersepsie van onbehoorlikheid geskep het.

Die besigheidsreddingsplan het ook aan die lig gebring dat die Du Toit ongeouditeerde finansiële inligting moes ontleed, aangesien Zephan laas geouditeerde finansiële state in 2009 gepubliseer het, en Orthotouch in 2015.

Opsies Vir Beleggers

Die totale eise teen Orthotouch beloop ongeveer R3,9 miljard, terwyl 'n ongeïdentifiseerde derde party beleggers R201 miljoen in Accelerate-aandele en kontant aanbied om hierdie eise te vereffen.

Die BRP noem dat die rente van die oorspronklike kapitaalbelegging afgetrek word omdat alle beleggers nie rentebetaling ontvang het nie. Dit sou volgens Du Toit dus onbillik

wees indien alle beleggers 'n finale uitbetaling ontvang op grond van die aanvanklike beleggings.

Opsie 1

Hierdie opsie stel beleggers in staat om aandele in Accelerate te ontvang in vereffening van hul eise. Hulle sal Accelerate-aandele kry gebaseer op 25% van hul oorspronklike HS-belegging, minus rentebetaling. Die Accelerate-aandele word teen R7,99 per aandeel uitgereik, wat die huidige netto batewaarde per aandeel is. Dit is ondanks Accelerate se huidige aandeelprys van ongeveer 67 sent per aandeel.

Dit beteken dat 'n belegger met 'n eis van R100 000 Accelerate aandele aangebied raak teen R7.99 per aandeel, vir 25% van hul belegging, dus R25 000. So 'n belegger sal dus 3 129 Accelerate aandele ontvang. Teen Accelerate se huidige aandeelprys van 62 sent, is die 3 129 aandele R1 940 werd.

Beleggers sal daarby baat vind as Accelerate se aandeelpryse in die toekoms styg, sowel as uit alle dividenduitbetalings terwyl hulle die aandele besit.

Indien 'n belegger rentebetaling ontvang het, sou die rente van die beleggingsbedrag afgetrek word en aandele sal dan teen 25% van die netto bedrag uitgereik word.

Opsie 2

Hierdie opsie stel beleggers in staat om kontant te ontvang eerder as Accelerate aandele. Beleggers sal kwalifiseer om dieselfde aantal Accelerate-aandele te ontvang as bereken in opsie een, maar 'n derde party koop onmiddellik hierdie aandele teen R2 per aandeel. Dit beteken dat 'n belegger met 'n eis van R100 000 steeds 3 129 aandele sal ontvang, maar R6 258 kontant sal ontvang.

In terme van die analise, sal beleggers beter af wees indien hul opsie 2 kies.

Die reddingsplan lui ook dat, indien krediteure die plan goedkeur, alle voormalige HS-beleggers alle moontlike eise teen Georgiou, Klopper en Connie Myburgh in hul hoedanigheid as die huidige en voormalige direkteure van Orthotouch aan die derde party sal sedeer.

Likwidasiestenario

Daar word verskeie kere in die sakereddingsplan genoem dat, indien beleggers nie die plan goedkeur nie, Zephan en Orthotouch in likwidasiestatus geplaas sal word. Ingevolge die plan, sal beleggers dan 1.7 sent in die Rand ontvang by likwidasiestatus. Die plan voeg by dat indien Orthotouch gelikwideer word, die beleggers die risiko loop om al die rente wat hulle

tot op hede ontvang het, terug te betaal, maar dat hulle geregtig sou wees om in die opbrengste daarvan te deel.

Volgens Du Toit kan die terugbetaling van rentebetalinge wat deur beleggers ontvang word, plaasvind op grond van die bepalinge wat handel met vernietigbare transaksies in terme van die Insolvensiewet.

Hy noem dat die klas-aksie litigasie en die aansoek om die Art 155 Reëlinskema (SoA) tersyde te stel omdat die skemas 'onwettig' is, daartoe kan lei dat beleggers die rente wat hulle ontvang het, moet terugbetaal.

Goedkeuring

Alle krediteure, insluitend voormalige beleggers van HS, het 'n geleentheid om vir of teen die voorgestelde sakereddingsplan te stem by 'n krediteursvergadering. Vir die plan om aanvaar te word, moet krediteur wat 75% of meer van die totale eise besit ten gunste van die plan stem.

Die stemming sal plaasvind by die vergadering. Diegene wie nie in staat is om die vergadering by te woon nie, kan 'n volmag met hul stem-keuse aan die Du Toit stuur voor die vergadering. Die datum vir die vergadering is nog nie vasgemaak nie weens die Covid-19 inperking.

Die Naamlose Derde Party

Die besigheidsreddingsplan identifiseer nie die derde party wat die eise van beleggers sal vereffen in terme van die opsies soos hierbo uiteen gesit nie.

Du Toit het egter in 'n brief aan beleggers gesê dat Georgiou 'n belangrike rol gespeel het in die fasilitering van die ongeveer R200 miljoen wat nodig is om die eise te vereffen.

In die brief sê Du Toit dat hy steeds Nic Georgiou, direkteur van Zephan en Orthotouch, sien as 'n baie belangrike skakel in besigheidsreddingsprosesse van die maatskappye, veral in die mate waarin hy die vermoë het om fondse uit 'n derde party te bekom om aandele en/of betalings aan betrokke beleggers aan te bied.

Volgens Du Toit sou daar geen ander oplossing as likwidasië wees sonder die betrokkenheid van die derde party nie.

Reaksie

Moneyweb het die lede van die krediteurkomitee gevra wat hulle van die plan dink.

Helgard Hancke, voorsitter van die Hoëveld Sindikasie Beleggers Forum ("HSBF") en houer van 'n eis teen Orthotouch, het gesê dat beleggers in gedagte moet hou wanneer

hulle 'n besluit neem dat, indien die voorgestelde reddingsplan nie aanvaar word nie, die BRP onmiddellik 'n aansoek sal indien om beide Orthotouch en Zephan te likwideer.”

Die BRP waarsku in sy brief, gedateer 31 Maart 2020, dat beleggers in die geval van likwidasies die risiko loop om beveel te word om alle rente ontvang terug te betaal. Die beleggers wat hul rente terug betaal sal dan geregtig wees om te deel in die ingesamelde opbrengs.

“Ons (HSBF) is van mening dat die likwidasie sal lei tot 'n uitgerekte proses en dat daar geen opgehoopte opbrengs, soos daarna verwys deur die BRP, oor sal wees nadat die likwidasie-koste verhaal is nie. Beleggers sal uiteindelik alles verloor en kan moontlik gelas word om 'n kontribusie tot kostes te lewer deur die likwidateurs

Dr Gert Holtzhauzen, 'n gespesialiseerde besigheidsreddingspraktisyn en 'n amptelike verteenwoordiger van 'n groep beleggers, bevraagteken die wettigheid van die besigheidsreddingsplan.

Hy het genoem dat “Orthotouch geen besigheid doen nie en dus geen sake het om te red nie en daarom geen reg op toekomstige bestaan het nie en dat dit dus gelikwideer moet word. Enige poging om onder die omstandighede met reddingsverrigtinge te begin, sou die proses misbruik.”

Holtzhauzen voer ook aan dat die huidige plan nie die werklike vloei van fondse ondersoek nie. Volgens Holtzhauzen sal die logiese beweging van fondse behels dat die beleggings eerstens geplaas was in 'n toegewyde bankrekening(e) waaruit fondse sal vloei vir die aankoop van eiendom, die kostes verbonde daaraan, en daar dan dus 'n papierspoor sal wees wat maklik versoenbaar behoort te wees met wat werklik plaasgevind het. Weens die afwesigheid van geouditeerde finansiële state kon die praktisyn geen betroubare afleiding maak nie.”

Jacques Theron, prokureur van die Hoëveld Sindikasie Aksie Groep, sê die besigheidsreddingsplanne is daarop gemik om beleggers van die Hoëveld Sindikasies te intimideer. Die doel van die intimidasie is volgens hom eerstens om die beleggers te oortuig om 'n swakker terugbetalingsplan te aanvaar as voorheen, en tweedens om die hofgeding en die invordering van verliese vanaf Georgiou uit te stel. Volgens Theron sal Georgiou sal nie slaag nie aangesien die klas-aansoekers hofbevele aanvra wat sal voorsien dat die klas-aksies, ondanks die sakereddingsverrigtinge, teen hom en sy entiteite voortduur. Die twee planne maak 'n bespotting van die gevestigde beginsels wat sakeredding reguleer rakende maatskappye wat blykbaar nie eens finansiële state opgestel, gehou of ingedien het nie.

Hierdie is 'n vertaalde weergawe van die oorspronklike artikel, en die akkuraatheid van die vertaling word nie gewaarborg nie. Die oorspronklike artikel is geskryf deur Ryk van Niekerk, die besturende redakteur van Moneyweb. Hierdie artikel is gepubliseer op 28 April 2020 en die amptelike weergawe is beskikbaar by: <https://www.moneyweb.co.za/in-depth/investigations/orthotouch-offers-former-hs-investors-only-a-few-cents-in-the-rand/>

(Weens 'n beperking op die woordetal van die artikel, is die HSAG se volle reaksie nie in die artikel vervat nie, maar 'n skakel daarna is vervat in die amptelike artikel. Dit word onder punt 1 van hierdie Nuusbrief herhaal vir u kennisname.)

6. GEBRUIK VAN KORREKTE E-POS ADRESSE

Die korrekte gebruik van e-pos adresse (soos vervat op ons webtuiste en e-posse) asook HSAG-lede se voorletters en van, sindikasiennommers en verwysingsnummers (bv. identiteitsnommer ens.) vir alle kommunikasie, is uiters noodsaaklik en verpligtend.

Die amptelike en bestaande e-pos adresse vir die HSAG, is as volg:

- **hsactiongroup@gmail.com** vir alle Algemene Navrae (Byvoorbeeld – selfoon of adres veranderinge, betalingsbewyse, kennis van lede wie gesterf het, ensovoorts);
- **hsagenquiries@gmail.com** vir Spesifieke Navrae (Byvoorbeeld – navrae rakende besonderhede van 'n spesifieke belegger, navrae rakende kwytstelling van 'n spesifieke belegger, ensovoorts);
- **hsagregister@gmail.com** vir die Registrasie en Deregistrasie van HSAG- lede;
- **hsagwhistle@gmail.com** vir alle Vertroulike Inligting wat anoniem aan ons gestuur moet word;
- **hsagestates@gmail.com** vir alle Boedel navrae.

Die amptelike en bestaande e-pos adresse vir CCAF (gesertifiseerde HS 21 & 22 klas-aksie), is as volg:

- **accounts@ccaf.co.za** vir betalingsbewyse
- **admin@ccaf.co.za** vir die amptelike versoek vir afbetaling-vorm
- **enquiries@ccaf.co.za** vir ander CCAF navrae

Indien 'n belegger of enige persoon 'n epos na die verkeerde adres sou stuur sal dit daartoe lei dat daardie e-pos nie spoedig of enigsins die nodige aandag geniet nie. Indien u nie verder enige verdere e-posse wil ontvang nie, stel ons ook asseblief skriftelik in kennis daarvan.

7. BELANGRIKE ALGEMENE TERME EN VOORWAARDES

Die algemene en herhalende terme, voorwaardes en ander algemene inligting wat voorheen in die Nuusbrief vervat was, word nou beskikbaar gestel op die HSAG se webtuiste by www.hsaction.co.za en kan direk besigtig word by die volgende skakel: <http://hsaction.co.za/wp-content/uploads/2020/01/HSAGTsCs.pdf>

Die HSAG Bestuur wil iedere en elke lid alle voorspoed en sukses toewens met die afsienbare toekoms.

Vriendelike groete

HSAG-Bestuurskomitee

Kontak die HSAG en prokureurs by:

Tel: (021) 887 7877

hsactiongroup@gmail.com



AFRIKAANS HIERBO

MONTHLY NEWSLETTER: APRIL 2020

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/or support of the HSAG.

This email is confidential and is exclusively meant for the addressee. If you have received it in error/ wrongly, please notify the sender immediately at hsagenquiries@gmail.com and delete it. You may not copy, disclose or deliver any email received in error or any part of it to anyone else. HSAG’s webmaster uses antivirus software to prevent viruses and other malicious code. However, such software cannot prevent or eradicate all such code. The HSAG or its representatives will not be liable for any loss, harm or damage whatsoever arising from receipt or use of this email or otherwise, whether arising through negligence of the HSAG, its members, steering committee, and agents or otherwise.

The www.hsaction.co.za website is the primary place where you will find HSAG information, subject to the disclaimer contained therein (and also applicable hereto), although emails are also sent out from time to time.

The obligation to keep us up to date of any changes to your personal and/or contact details rests on you as HSAG member.

HSAG OFFICIAL NEWSLETTER –CONTENTS

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1. **BRP JACQUES DU TOIT CIRCULAR: ZEPHAN & ORTHOTOUCH IN BUSSINESS RESCUE**

The HSAG legal team is currently receiving numerous enquiries regarding a letter from Jacques du Toit, the business rescue practitioner (“BRP”) of Zephan & Orthotouch, dated 6 May 2020. The letter refers to the published business rescue plans for Zephan and Orthotouch, and requests that investors complete the cession and proxy forms within 7 days.

The legal team is of the opinion that investors should not react or reply to the letter, as it is an attempt by Du Toit to have the business rescue plan implimented in an unlawful manner by relying on the national lockdown period as a justification for circumventing the prescribed processes in terms of the Companies Act, without convening a statutory required meeting where investors can voice objections and propose amendments to the plan. This meeting is mandatory in terms of the Companies Act.

The facts are as follows: Most investors are elderly people who are much more vulnerable to the Covid-19 virus. These persons are therefore unable to obtain legal advice during the lockdown or cannot physically consult their financial advisers, except via telephone or other technological means. It is therefore completely unreasonable to assume that investors can make any informed decision to vote for or against the plan. They will also not be given an opportunity to listen to the objections and the concerns of others.

Regardless of the choice you make, if you complete the forms it can create a strong impression that you support the unlawful shortcut process that Du Toit tries to follow. Even if you vote "no" or complete the box indicating that you abstain from voting, the same deduction can be made. Therefore, stay away, or if you want to rely on the advice of a financial advisor or other person, contact your own attorney.

The HSAG’s position relating to the business rescue plans, as provided to Moneyweb, follows hereunder:

The two business rescue plans of Zephan and Orthotouch have exactly the same objectives, namely to intimidate Highveld Syndication investors into (a) accepting an even worse "repayment" plan than before; and (b) to delay the class action litigation and recovery of losses from Georgiou.

Despite this, Georgiou will not succeed, as the class applicants seek orders that the class actions against Georgiou and his entities continue, despite the business rescue proceedings.

The two plans make a complete mockery of established principles regulating business rescue in respect of companies that apparently didn't even prepare, keep or file financial statements! The BRP has a statutory duty to report irregularities which he admittedly did not do. The plans were clearly drafted to suit Georgiou's own interests and not those of the investors and bona fide creditors.

For instance, Georgiou once again attempts to exempt himself, his family, Hans Klopper and others from claims if the plans are adopted. This is highly irregular and prejudicial to investors but no reasons for it were given by Du Toit.

Further, the draft plans do not distinguish between the creditors of the respective companies in any manner. A mere combined list of creditors of both companies are given (as is the case with assets). Strangely, no financial statements have been made available, nor are they (or extracts) referred to in the plans.

The creditors list also reflects “undisclosed third parties” as creditors to the value of R 610 million. This is absurd, as surely those identities are known to the accountants and directors of the companies.

It is also peculiar why the mysterious “third party” funder, who is to provide the much needed funds for repayment of investors, is not identified.

Although the HSAG is of the view that the plans, even if accepted, will not affect the class action, investors are nevertheless cautioned and advised without a doubt not to support the proposed voting process (without a physical meeting being convened as prescribed by the Companies Act) to vote against the business rescue plan (or to ignore the voting process). By voting as requested by Du Toit, even if you indicate that you vote against the plan or that you abstain from voting as indicated on the proxy form, it may be held that HS investors ratify Du Toit’s the shortcut process.

If an investor votes in favour of the plan, he/she may lose (waive) certain claims and rights against Georgiou and his entities.

In short, the HSAG Steering Committee’s position is therefore that:

1. investors must not accept the BRP’s (Du Toit’s) offer;
2. the offer is just another attempt to scare investors (Du Toit threatens with liquidation and repayment of interest received);
3. the threats and scare tactics are without legal basis;
4. there is a substantial risk that investors’ claims and rights may be rearranged and that Georgiou and others will walk away with your money if the offer is accepted; and
5. that the BRP’s circulars should be ignored (do not complete any of their forms).

The HSAG will continue with the relevant Court cases, full steam ahead.

To bring the concerns and shortcomings to Du Toit’s attention, the HSAG sent a letter to Du Toit as BRP on 12 May 2020, in which letter the following points are discussed:

- The circular with attached proxy and cession forms that was sent;
- the misleading cover letter that creates the perception that Du Toit merely wants an indication that investors support the (unlawful) process;
- the HSAG’s intention to approach the High Court if the lawful process is not followed;
- the impermissibility and unlawfulness of the current proposed process that Du Toit attempts to follow;

- the exemption of Georgiou and other directors from liability for claims in the event that the plans are adopted;
- the unknown identity of the third party funder that is troubling;
- the importance of convening a physical meeting of creditors at which it can be voted for or against proposed amendments, and/or the final business rescue plan;
- Du Toit's neglect to report irregularities to respective authorities; and
- the fact that Du Toit attempts to rescue two separate entities in basically the same plan, and thereby provides a single mixed list of creditors that includes, amongst others, a creditor of R610 million whose identity is kept a secret.

If you would like to read the HSAG's letter, you can view it at: <http://hsaction.co.za/wp-content/uploads/2020/05/LettertoDuToit20200512.pdf>

2. CURRENT COVID-19 NATIONAL LOCKDOWN

Following President Cyril Ramaphosa's announcement, most South Africans have been in lockdown since March 27 to curb the spread of the Covid-19 virus. The above had the resulted in only some essential services being able to operate. Unfortunately, the offices of Theron & Partners, the HSAG legal team, had to close. However, the legal team has continued to look after your interests and worked from their homes. During this period a direct address was also issued by the courts. The directive stipulates that only urgent matters will be heard at this time. This means, among other things, that the courts will not be open to general civil litigation (such as the cases conducted by the HSAG).

Since the implementation of Level 4 of the regulations, Theron & Partners' offices have been open to provide essential legal services. Thus, you will now be able to contact the offices via telephone again.

3. HS 21 & 22 CERTIFIED CLASS ACTION

The opt-in period for the certified HS 21 & 22 class action already closed at midnight on March 16, 2020. The HSAG legal team is bound by Judge Tolmay's court order, and are not allowed to make any exceptions without the Court's consent.

However, the Covid-19 pandemic has a significant impact on each and every person's finances, as well as access to financial institutions, financial and legal advisors as well as postal and computer services. These circumstances, as well as the third party accounting services provided that delayed the updating of statements during February and March 2020, necessitated the HSAG Steering Committee to reconsider the close of the opt-in period as determined by Court.

It has come to the attention of the HSAG Management that there were some investors who still wanted to be part of the HS 21 & 22 certified class action, but that due to the above circumstances, it was not possible to register in time.

In an effort to assist those persons, the HSAG legal team is prepared to compile a list of such persons, subject to those persons immediately paying their registration costs of R4 500 or R6 500 (R4 500 for a total combined investment in HS 21 & 22 of R100 000 or less, and R6 500 for a total combined investment in HS 21 & 22 of more than R100 000). The goal is to approach the Court to requests that those persons also form part of the class of investors who exercised the "opt-in" option.

However, the HSAG legal team can make no guarantees that latecomers' inclusion will be approved by the Court. It will therefore be at the investor's own risk.

Persons wishing to utilise this opportunity should direct such request to admin@ccaf.co.za.

In the request please provide the following details:

- Full name and surname
- Identity number
- Home address
- Cellphone number
- Email address
- Representative (if applicable)
- Value of investment in HS 21 and / or HS 22
- Reason for not completing the opt-in form by 16 March

You will receive a reply indicating the registration fee that you will have to pay. The message will also contain the reference that you must use when making the payment.

Investors who have already exercised the "opt-in" option and applied in writing to pay the registration fees over six months by means of the prescribed application form, must pay their total registration fee within 6 months after submission of the opt-in form. Their account must be paid in full to be part of the certified HS 21 & 22 class action. Unfortunately, if the full registration fee is not paid within six months of the opt-in period, as determined, those persons will not be part of the certified class action (CCAF).

Once again you are reminded (if you have not already done so) to send your FICA documents to accounts@ccaf.co.za.

The current required documentation is a copy of your Identity Document, as well as a proof of address (not older than three months).

The legal team thanks those who have already submitted their documentation and have given their good cooperation so far.

The Notice of Motion is available at:

<http://hsaction.co.za/wp-content/uploads/2019/10/Amended-Notice-of-Motion-Fast-Tracking-of-buyback-claims.pdf>

The Court order and judgment delivered by Judge Tolmay on 10 December 2019 can be viewed at the following link:

<http://hsaction.co.za/wp-content/uploads/2019/12/HS21and22judgment.pdf>

4. INVESTORS WITH CLAIMS IN HS 15 TO 20

The HS 15 - 20 certification application has already been issued and served on Georgiou and others and the various legal representatives are currently exchanging documents. The legal team is currently waiting on the opposition.

The rumours that have been circulated that the placement of Zephan and Orthotouch in business rescue will not mean that all litigation will be stopped. The Companies Act expressly provides that litigation against a company in business rescue may proceed with the consent of the business rescue practitioner or if the Court so directs. Therefore, if the Court gives consent, litigation can be continued even if the business rescue practitioner does not agree to it.

It is also important to note that the litigation is not only being brought against Orthotouch or Zephan, but that there are numerous other Respondents, among others, Mr. Georgiou and some of his family members in their personal capacity as well as Mr. Hans Klopper, the business rescue practitioner of the HS companies.

The HSAG Management attempts to act in the best interest of all its members at all times and still intends, as previously mentioned, to negotiate on behalf of each paid up HSAG member should settlement negotiations occur. This is done on behalf of every loyal member who has made it possible for the HSAG over the years, through their support, to reach this point.

5. RECENTLY IN THE MEDIA: ZEPHAN & ORTHOTOUCH BUSINESS RESCUE PLANS

A financial journalist from Moneyweb recently published an article about the business rescue plans of Orthotouch and Zephan.

As in previous newsletters, we continue to provide the article, but wish to invite you to read the official article.

Orthotouch offers former HS investors only a few cents in the rand

An unidentified third party will offer investors R201m in Accelerate shares and cash to settle claims amounting to R3.9bn.

Former investors in the Highveld Syndication (HS) schemes will receive only a few cents in the rand on their original investments if the business rescue plan for Orthotouch and Zephan is adopted.

Orthotouch and Zephan were put into business rescue in December last year, and the business rescue plan was published at the end of March.

The 60-page Orthotouch business plan offers investors two options as the final settlement of their claims against Orthotouch, which would either give them shares in the JSE-listed Accelerate Property Fund or immediate cash payment. Michael Georgiou, son of former property tycoon and patron of the scheme Nic Georgiou, is the majority shareholder and current chief executive of Accelerate.

Jacques du Toit, the business rescue practitioner (“BRP”), states in the rescue plan that he investigated all the property transactions and “could not find any proof of misappropriation in regard to the property transactions”.

He did, however, find that the transfer attorneys filed incorrect transaction values with the Deeds Office regarding numerous property transactions through which properties were sold by the HS companies and companies owned or related to Georgiou Senior, including Zephan, via Orthotouch to Accelerate.

Du Toit states these incorrect values “created a false perception of Orthotouch purchasing properties at a high value, either from the HS Companies or from Zephan, and then selling the properties, at a significant/substantial discount, to Accelerate. This perception is inaccurate and completely false, as the incorrect values created the false perception of impropriety.”

This follows an in-depth Moneyweb analysis of the properties’ title deeds which revealed that Orthotouch suffered losses of R782 million as a direct result of these transactions.

The business rescue plan also revealed that the BRP had to analyse unaudited financial information as Zephan last published audited financial statements in 2009 and Orthotouch in 2015.

Options for investors

The total claims against Orthotouch amount to approximately R3.9 billion, while an unidentified third party offers investors R201 million in Accelerate shares and cash to settle these claims.

The BRP states that the interest is subtracted from the original capital investment because not all investors received interest payments. Hence, it would be unfair if all investors receive a final pay-out based on the initial investments.

Option 1

This option allows investors to receive shares in Accelerate as settlement of their claims. They will be issued Accelerate shares for 25% of their original HS investment minus interest payments. The Accelerate shares will be issued at R7.99 a share, being the company’s current net asset value per share. This is despite Accelerate’s current share price of around 67c.

This means an investor with a claim of R100 000 will be issued Accelerate shares at R7.99 each for 25% of their investment, being R25 000. They will therefore receive 3

129 Accelerate shares. At Accelerate's current share price of 62c, these shares are worth R1 940.

Investors will benefit if Accelerate's share prices increase in value in future, as well as from all dividend payouts while they hold the shares.

If an investor had received interest payments, that amount would be subtracted from the R100 000 and shares will be issued at 25% of the net amount.

Option 2

This option allows investors to receive cash and not Accelerate shares. Investors will qualify to receive the same number of Accelerate shares as calculated in option one, but a third party will immediately buy these shares at R2 each. This means an investor with a claim of R100 000 will still receive 3 129 shares but will receive R6 258 cash.

The rescue plan also states that if creditors approve the plan, all former HS investors will cede all potential claims against Georgiou, Klopper and Connie Myburgh as the current and former directors of Orthotouch, as well as all other parties related to the HS companies to the third party.

Liquidation scenario

The BRP states numerous times that if investors do not approve the plan, both Zephan and Orthotouch will be placed into liquidation. The plan adds that if Orthotouch is liquidated, investors "run the risk of having to repay all the interest they have received to date, but would be entitled to share in those collected proceeds".

According to Du Toit, "the clawback of payments received by investors can take place by virtue of the impeachable transaction provisions in term of the Laws of Insolvency".

He said the class action litigation and the application to have the Scheme of Arrangement (SoA) set aside due to the schemes being "illegal" may result in investors having to repay the interest they have received.

Approval

All creditors, including former HS investors, have an opportunity to vote for or against the proposed business rescue plan at a creditors' meeting. For the plan to be adopted, creditors holding 75% or more of the total claims must vote in favour of the plan.

Voting will take place at the meeting. Those who are not able to attend can complete and submit a proxy form with their vote to the business rescue practitioner prior to the meeting. The date for the meeting has not been set due to the Covid-19 lockdown.

The unnamed third party

The business rescue plan does not identify the third party who will settle investors' claims in terms of the options described above.

However, Du Toit stated in a letter to investors that Georgiou played a pivotal role in facilitating the approximately R200 million needed to settle the claims.

In the letter, Du Toit says he “still see[s] Nic Georgiou, as director of Zephan and Orthotouch, as a very important link in the business rescue processes of the companies, especially insofar as his ability to facilitate funds from a third-party proposer in order to offer shares and/or payments to investors is concerned”.

“Without the involvement of the third-party proposer, I would not have been able to propose any other solution other than liquidation,” he states.

Response

Moneyweb asked the members of the creditors’ committee what they think of the plan.

Helgard Hancke, chair of the Highveld Syndication Investment Forum (“HSIF”) and holder of a claim against Orthotouch, said “investors must bear in mind when making a decision that if the proposed rescue plan is not adopted the BRP will with immediate effect file an application to liquidate both Orthotouch and Zephan.

“The BRP warns in his letter 31st March 2020 that in the case of liquidations investors will run the risk of having to repay all interest received, but will then be entitled to share in the collected proceeds.

“We (HSIF) are of the opinion that liquidation will result in a drawn out process and the collected proceeds which the BRP refers to will be reduced to nil after liquidation costs are recovered. Investors will eventually lose everything and can even be confronted with a contribution towards cost order by the liquidators.

Dr Gert Holtzhausen, a specialist business rescue practitioner and an official representative of a group of investors, questioned the legality of the business rescue plan as:

He added that “Orthotouch had no business and thus has no business to rescue and therefore has no right to future existence and should be liquidated. Any attempt to proceed with business rescue proceedings under the circumstances would be an abuse of the process.”

Holtzhausen also contends the current plan does not investigate the actual flow of funds. “In short, the logical movement of funds will be the investments made by the investors into a dedicated bank account/s, account/s from which funds will flow in the acquisition of properties, cost-related thereto and then a paper trail which should be easily reconcilable with the transactions that have taken place. Due to the absence of audited financial statements, no reliable deduction could have been made by the practitioner.”

Jacques Theron, attorney of the Highveld Syndication Action Group, said the business rescue plans are aimed to intimidate Highveld Syndication investors into accepting an even worse “repayment” plan than before; and to delay the class action litigation and recovery of losses from Georgiou.

“Despite this, Georgiou will not succeed, as the class applicants seek orders that the class actions against him and his entities continue, despite the business rescue proceedings. The two plans make a complete mockery of established principles

regulating business rescue in respect of companies that apparently didn't even prepare, keep or filed financial statements.

This article was published on 28 April 2020 and the official version is available at: <https://www.moneyweb.co.za/in-depth/investigations/orthotouch-offers-former-hs-investors-only-a-few-cents-in-the-rand/>

(Due to the article being limited, the HSAG's full statement is not included in the article, but a link to it was posted on the article. It is repeated under point 1 of this Newsletter for your notice.)

6. USE OF THE CORRECT EMAIL ADDRESSES

The correct use of e-mail addresses (as stipulated on our website and e-mails) as well as HSAG members' initials and surnames, syndication numbers and reference numbers (e.g. identity number, etc.) for all communications are essential and obligatory.

The official and existing e-mail addresses for the HSAG are as follows:

- **hsactiongroup@gmail.com** for all General Enquiries; (For Example - to change contact details, Proof of Payments, Death of a Member etc.);
- **hsagenquiries@gmail.com** for Specific Enquiries; (For Example requesting information/statements regarding a specific member, exemption queries for a specific member);
- **hsagregister@gmail.com** for the registration and deregistration of HSAG members;
- **hsagwhistle@gmail.com** for all Confidential Information that you would like to send to us anonymously;
- **hsagstates@gmail.com** for all estate related questions.

The official and existing e-mail addresses for CCAF (HS 21 & 22 certified class action) are as follows:

- **accounts@ccaf.co.za** for proof of payments
- **admin@ccaf.co.za** for the official request to pay registration fees over 6 months - form
- **enquiries@ccaf.co.za** for all other CCAF questions and enquiries

If an investor or any person sends an email to the wrong address, it will result in the email not receiving the speedy or necessary attention, if any. If you do not wish to receive any further emails, please inform us thereof in writing.

7. IMPORTANT GENERAL TERMS AND CONDITIONS

The general and repetitive terms, conditions and other general information that was previously contained in the Newsletter, is now available on the HSAG website at www.hsaction.co.za and can directly be accessed via the following link: <http://hsaction.co.za/wp-content/uploads/2020/01/HSAGTsCs.pdf>

The HSAG Steering Committee wishes prosperity and success to each and every member for the foreseeable future.

Kind regards

HSAG Steering Committee

Contact the HSAG's attorneys at:

Tel: (021) 887 7877

[**hsactiongroup@gmail.com**](mailto:hsactiongroup@gmail.com)