



\*AFRIKAANS HIERBO\*

## COMBINED MONTHLY NEWSLETTER: JULY & AUGUST 2021

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.

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The [www.hsaction.co.za](http://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 as well as to make sure that the contents of your monthly statements are correct rests on you as HSAG member.

### HSAG OFFICIAL NEWSLETTER – CONTENTS

|     |  |    |
|-----|--|----|
| 1.  | INTRODUCTION .....   | 1  |
| 2.  | CONTACT WITH THE CASE MANAGERS AND COURT PROCEEDINGS .....                               | 2  |
| 3.  | COURT DATE WITH REGARDS TO THE CCAF MATTER .....   | 3  |
| 4.  | EXCHANGE AND COMPLETION OF THE DECA HS 15-20 (including HS 21 and 22) DOCUMENTS .....    | 3  |
| 5.  | HIGHEST COURT SAYS: “ENOUGH IS ENOUGH!” FOR THE UNDERMINING OF THE JUDICIAL SYSTEM ..... | 4  |
| 6.  | A TRIBUTE TO THE LATE HYMIE PINSHAW: FORMER APPLICANT IN THE CCAF CASE .....             | 5  |
| 7.  | R 500.00 CREDIT .....  | 6  |
| 8.  | PENDING CCAF ALLOCATIONS .....   | 6  |
| 9.  | HIGHVELD SYNDICATION 21B .....   | 7  |
| 10. | PAYMENTS INTO INCORRECT BANK ACCOUNTS.....   | 8  |
| 11. | BE AWARE OF POTENTIAL INTERNET SCAMS .....   | 9  |
| 12. | HAWKS.....   | 9  |
| 13. | DIRECT ACCESS TO THE CONSTITUTIONAL COURT .....  | 10 |
| 14. | RECENTLY IN THE MEDIA: FOURWAYS MALL JOINT-OWNER WRITES DOWN PROPERTIES BY R660m .....   | 11 |
| 15. | IMPORTANT: USE OF THE CORRECT EMAIL ADDRESSES .....                                      | 14 |
| 16. | IMPORTANT GENERAL TERMS AND CONDITIONS .....   | 15 |

## **1. INTRODUCTION**

If the past month has taught us as South Africans anything, it is that we are stronger together. The rioting and looting in some parts of the country has had a devastating effect on the people of South Africa. We have made so much progress as a country and yet, there are nefarious forces at play seeking to undermine the democratic principles that we have used to rebuild South Africa. Amidst all this anger and criminality we have seen communities stand together and reject this lawlessness and anarchy, by refusing to participate in the rioting and looting, and by cleaning up after the havoc that was caused. By standing together we will overcome the scourge that is corruption and criminality.

CCAF and the HSAG requires, and is evidence of, a similar approach. We need everybody to stand together if we are to overcome the injustices of the guilty in those cases. Much as the communities in large parts of KwaZulu Natal and Gauteng have done, we need to resist the urge to falter in our convictions and remain steadfast as we fight against injustice. The HSAG Steering Committee and legal team is committed to representing you and we need to support them by ensuring that they have sufficient support and resources to prepare as good a case as possible.

The HSAG Steering Committee and legal team are incredibly grateful for all the support and payments received in the CCAF matter in the past month. This has made the legal team and the steering committee's jobs a lot easier as they can now focus on the crux of the matter. Payments in the HSAG matter are however not as forthcoming.

We also hope that you and your families are safe in light of the third wave of the Covid-19 pandemic. It is important that we as a community keep our guard up and follow the government's health and safety guidelines in order to prevent the further spread of the virus.

The third wave has also hit the HSAG Steering Committee as well as the legal team and several staff members and management have been affected. We wish all of them a speedy recovery. We are also thankful for those who have already recovered. We apologise and request understanding if our service delivery was not always, due to these

unusual circumstances, possible to keep to the usual standards. We request that investors be patient in these unusual times.

## **2. CONTACT WITH THE CASE MANAGERS AND COURT PROCEEDINGS**

Case managers have been appointed in both the HSAG and CCAF. Directives were requested from the case managers in both cases for the continuation of such cases.

In the DECA case, Judge Janse van Nieuwenhuizen ordered, as the presiding officer, on 11 August 2021, that the business rescue practitioner of Orthotouch and Zephan, Jacques du Toit, file court documents before or on 30 August 2021, regardless of his legal representatives' arguments that they are waiting on a court directive on the way forward. Mr du Toit, should have served his documents by mid-July. The Honourable Judge has postponed the meeting to 31 August 2021, to give further directives in respect of the process (e.g. with regards to Mr Connie Myburgh, the former director of Orthotouch and director of the failed Sharemax property investments). Mr Myburgh has defended and has not, as some other respondents, abided by the court order. The few respondents that have not yet filed their documents will be ordered, at the next case management meeting, to file such documents.

In the CCAF case our legal team and correspondents have made contact with the case manager but have not yet received feedback, other than that Judge Potterill is no longer the Acting Deputy Judge President of the North Gauteng High Court and has been assigned to the Appeal court. Our correspondents have also requested written confirmation that she will remain the case manager of this case. In light of the aforementioned, and if she returns to her post in time, the court processes will resume, alternatively another case manager will have to be appointed.

The South African courts have, in addition, only been out of Covid-19 Level 4 since Monday, 26 July 2021, and most cases, can now move forward again.

The past 18 months have been very difficult, and the courts are under enormous pressure. The legal system has been significantly affected and most cases that had to stand back in the ordinary course of events, can only be heard now.

The courts' pressure was further exacerbated by a huge amount of Covid-19 related cases having to be heard. In addition to that, cases have been opened and special investigations have been initiated as a result of the R50 billion looting in Gauteng and KwaZulu Natal.

However, we can give the assurance to all HSAG members and stakeholders that, although our cases have been seriously affected and delayed, it has certainly not been derailed, and will continue.

The HSAG demonstrated resilience and adaptability and will not be stopped, despite difficult circumstances.

### **3. COURT DATE WITH REGARDS TO THE CCAF MATTER**

The CCAF case is a full-fledged certified court case and is fully integrated with the legal system and courts. It is considered a 'normal' court case, therefore 'not urgent', and was affected by the events stated above.

We do not yet have a court date and have yet to receive an answer with regards to the hearing of HS 21B interlocutory application. We trust that Judge Potterill will remain on board and will be able to resume her duties when she has returned.

We have requested that HS 21B's case be heard along with the main case but we do not want to overplay our hand. The opposition is desperate for it to be heard before the main application in order to waste even more time. Even if it is heard separately, a positive result for the respondents, which is not admitted, will be a hollow victory for them because those plaintiffs will still form part of the main case.

### **4. EXCHANGE AND COMPLETION OF THE DECA HS 15-20 (including HS 21 and 22) DOCUMENTS**

Unfortunately, the non-exchange of the HS15-22 DECA Court Documents has not yet been completed, primarily due to the reasons as set out above.

DECA is also a normal case that needs to be dealt with in the prescribed way. It is much earlier in the process and will take more time.

Georgiou's sons are also actively part of this case along with other role players, such as Connie Myburgh, a co-director of Nic Georgiou and Hans Klopper at Orthotouch. Myburgh has indicated that he wants to be a part of proceedings and has defended same. He has not indicated that he will reconcile himself with the court's order. Myburgh was involved in the failed Sharemax property syndications.

Myburgh had previously escaped the Sheriff's service of the DECA court documents but has since been tracked down by a tracing agent, opposed it, and now has to answer in written form to the High Court in terms of the Court Rules. The case manager, Judge Janse van Nieuwenhuizen, has postponed the case management meeting to Tuesday 31 August 2021, where further directives will be given.

The HSAG conducts the case on a structured basis and will not give any respondent an unjust advantage to reply again before all respondents have done so, even if it may take longer. However, we would like to appeal to all HSAG members to contribute financially because without it, the case cannot proceed. The case comprises of billions of rands. Currently, there are a large number of HSAG members riding on the proverbial back of faithful members.

We understand the financial challenges that everyone faces but it is, especially during the second half of the year, the loyal member who pulls us through. Continue to support us, every contribution helps.

## **5. HIGHEST COURT SAYS: "ENOUGH IS ENOUGH!" FOR THE UNDERMINING OF THE JUDICIAL SYSTEM**

As most of you are aware, the controversy surrounding former President Jacob Zuma and the abuse of the legal system has once again reared its ugly head.

In an article by *IOL*, secretary of the Zondo Commission, Professor Itumeleng Mosala sets out Jacob Zuma's continuous undermining of the court processes by individuals (and

specifically former President Jacob Zuma). For example Zuma made an urgent application to the Pietermaritzburg High Court to interdict Minister of Police Bheki Cele and the police from arresting him when he knew that this exceeded the jurisdiction of the High Court. Furthermore Zuma had “persistently and belligerently” refused to recognise and engage in the court processes, leading up to the order holding him in contempt of court and his imprisonment order by the Constitutional Court. Zuma also made public statements undermining the rule of law and encouraged others to do the same.

Comparisons between Zuma and some of the respondents in the HSAG cases have long been drawn and for good reason. Mr Nic Georgiou have similarly abused the court rules and processes and have continuously promoted “form” over “substance”. That means that he has chosen to litigate by incessantly obsessing over tiny procedural and technical matters rather than focussing on the core legal aspects in issue, i.e. the merits of the case. Georgiou recognised that his legal position is weak and have thus tried to steer clear from any arguments on the merits. The legal team believes this bodes well for any litigation. Only time will tell what the outcome herein will be.

## **6. A TRIBUTE TO THE LATE HYMIE PINSHAW: FORMER APPLICANT IN THE CCAF CASE**

Written by co-applicant in CCAF: Lea Magdalena Meyer

“About six or seven years ago, I had the privilege of meeting Hymie after seeing that he was also one of the CCAF applicants, and I immediately contacted him via telephone. I was so grateful that there was someone in Bloemfontein I would be able to talk to, to get advice from and to discuss CCAF money matters with.

Hymie was a very smart and well-read man and never hesitated to give his opinion and advice.

Our beloved Hymie called me almost every day for the past year. Sharing news with me and discussing family matters. He had a beautiful sense of humour and could easily laugh at himself. He proudly called himself a "Boer Jew". We could and did talk a lot about our

investments and HSAG matters. His dedication, sincerity and sense of justice, his compassion for his fellow man and friendship enriched my life.

On the 2nd of June, Hymie called to tell me that he had gone for the COVID-19 vaccination the previous day. He mentioned that he did not feel very well due to typical flu symptoms.

For two weeks after that, I tried to contact him two to three times a day, but in vain. Luckily, Hymie had named a lady at his bank, and I went to see her to find out if she knew or heard anything about Hymie.

It was with great shock that I had to find out that Hymie passed away on the 16th of June.

Now his voice is silent, he leaves a void ... what a privilege to have known him.”

## **7. R 500.00 CREDIT**

It seems as if there are some members who do not yet know whether they can qualify for the application for R 500.00 credit. The credit is **exclusively for HSAG members** who were **paid up in the HSAG class action as of 30 April 2021** (these members need to **also form part of CCAF**). If you do qualify and you wish to apply for the R 500.00 credit for the 2022 HSAG requisition, kindly send such written request **before/on 31 August 2021** to the following email address: [hsactiongroup@gmail.com](mailto:hsactiongroup@gmail.com)

If you do qualify and your application has been received and confirmed, then the R 500.00 **HSAG credit** will be uploaded as soon as possible. The credits are uploaded continuously. Kindly be patient until such time as your credit has been loaded. Unfortunately, the cut-off date cannot be postponed.

## **8. PENDING CCAF ALLOCATIONS**

Some HSAG members have received an email which contained a message about an incorrect payment into Trust Account Number 3 instead of Trust Account Number 2, or vice versa. The large majority of these cases are members who have incorrectly paid a part (or whole) of their CCAF requisition into Trust Account Number 2 (which is

**EXCLUSIVELY for the HSAG).** This has resulted in members' HSAG statements incorrectly being in "credit".

This is of course not what the majority of members have intended and we will accordingly transfer this credit to CCAF (i.e. Trust Account Number 3) via a pending account, unless we are expressly, and in writing, told to withhold transfer to CCCAF, and rather to keep it in the HSAG account. We will therefore transfer the credit into the pending account. . If we have not received express written instruction from you by the end of September 2021 then the credit will be transferred from the HSAG account to the CCAF account.

If you did not receive an email from the legal team or steering committee then you need not be concerned by this section of the newsletter, unless you have a reasonable suspicion that such allocation should be done.

## **9. HIGHVELD SYNDICATION 21B**

The legal team and the steering committee are still receiving enquiries about the composition and importance of HS 21B.

We would, once again, like to reiterate that HS 21B investors, are investors who have bought 'over-sold' shares from Georgiou's Zephan Properties (Pty) Ltd ("Zephan") in HS 21 or HS 22 which shares were not initially subscribed to by members of the public and then purported to be taken up by Zephan.

Georgiou's Rule 30(1) application and CCAF deals with HS 21B, however it is relevant to all CCAF members as the legal team is determined (as the HS 21B investors are) to hear this matter concurrently with the main application. We will update you in this matter in due course and as soon as such information is available to us. It is clear that the respondents, without exception, previously regarded HS 21B as being part of the Highveld Syndication Companies.

Although, HS 21B members have always been regarded as a part of the certified class action, these members have been made aware that Georgiou disputes this and brought an application to exclude them from the certified class action. This was also conveyed in

a previous newsletter. As with all litigation, there are risks involved but the legal team and counsel are not convinced with the opposition's bona fides and as such believe that the court will, as the factual position, keep HS 21B as part of the certified class action. Time will tell in due course what the outcome will be and we shall keep our members posted and informed.

## **10. PAYMENTS INTO INCORRECT BANK ACCOUNTS**

We would like to repeat an important aspect in June's newsletter:

Incorrect payments into incorrect accounts create not only an administrative nightmare but it is also a waste of precious time and money. By analogy, if an investor for example wants to open a HSAG Standard Bank account one would have to go to Standard Bank. It is impossible to open a HSAG Standard Bank account by going to Capitec Bank. Capitec Bank can only open HSAG Capitec accounts and Standard Bank can only open HSAG Standard Bank accounts. Similarly, HSAG and CCAF have two separate accounts. The High court stated that the CCAF funds have to be paid into a separate bank account and through the certification ordered that the CCAF case stands on its own two legs. As such it was necessary, for the furtherance of that High Court case, to do a CCAF requisition. The HSAG, Account No. 2, is completely separate from Acc. No. 3, the CCAF account. This has been explained numerous times in the past and investors are reminded that they should pay attention to which email addresses enquiries and proof of payments should be sent. If you are unsure, kindly consult the newsletters, specifically the point titled **IMPORTANT: USE OF CORRECT EMAIL ADDRESSES.**

**CCAF** proof of payments must be sent to [accounts@ccaf.co.za](mailto:accounts@ccaf.co.za) and all payments must be paid, as per the statement, to Theron & Partners **Trust 3**. CCAF queries should be sent to [enquiries@ccaf.co.za](mailto:enquiries@ccaf.co.za). Kindly take note of the reference to be used for example: ASmith2122CCAF (InitialsSurnameSyndications/CCAF)

**HSAG** proof of payments must be sent to [hsactiongroup@gmail.com](mailto:hsactiongroup@gmail.com) and all payments must be paid as per the statement, to Theron & Partners **Trust 2**. HSAG queries should

be sent to [hsagenquiries@gmail.com](mailto:hsagenquiries@gmail.com). Kindly take note of the reference to be used for example: ABC SMITH, HS18,20,21 (Initials, Surname, HS – insert syndication numbers)

Kindly check your statements to make sure of the amounts and specifications of each requisition. Also make sure that your recent payments have been made into the correct bank account.

We understand that we may be metaphorically preaching to the converted however this remains the most effective way to spread the word. If we as members cannot commit to doing these small things correctly, we will keep placing an unnecessary administrative and financial burden on the legal team. That being said, the large number of members are doing this correctly, and we would like to thank you for doing so.

## **11. BE AWARE OF POTENTIAL INTERNET SCAMS**

Luckily this does not seem to be a widespread problem, but we would be remiss if we did not mention that members who have received suspicious e-mails (usually characterised by plenty of spelling and grammatical errors) should report such messages to the steering committee or legal team using [hsagwhistle@gmail.com](mailto:hsagwhistle@gmail.com).

## **12. HAWKS**

Following on the report in last month's newsletter regarding the Hawks, it is understood that a request has been sent to all the relevant Deeds offices to get a complete history of all the buildings involved. All Pickvest articles written by *Moneyweb* were provided to the investigating officer, a senior police official with a colonel rank. These reports and the previous dossier were referred to the National Prosecuting Authority (NPA). The focus must be on the buildings and their sales. The NPA will have to decide what to focus on and what to possibly charge the responsible parties for.

The state advocate who previously handled the matter, unfortunately passed away due to COVID-19 during December 2020. The HSAG would like to extend its sincere condolences to his family and colleagues. Unfortunately someone else must be appointed

to study the facts, but luckily the facts and records are set out. As and when things happen, we will, continuously, keep you informed.

### **13. DIRECT ACCESS TO THE CONSTITUTIONAL COURT**

With the recent Court case involving former President Jacob Zuma in the Constitutional Court (the highest Court in South Africa); certain investors might be curious as to why the HSAG does not approach the Constitutional Court directly.

Typically, cases reach The Constitutional Court, as an appellate Court from cases that start in the High Court and are taken on appeal. The Constitutional Court Judges will decide if an important legal principle relating to the interpretation of the Constitution has been raised and will consider whether there is a reasonable prospect that the appeal may succeed, but there is no automatic right of appeal.

As for direct access to the Constitutional Court, Section 167 of the Constitution of South Africa allows a person (or a class) “when it is in the interest of justice and with leave of the Court” to bring a matter directly to the Constitutional Court; or to appeal directly to the Constitutional Court from any other Court. This procedure is only permitted in exceptional circumstances.

In the case of *Dudley v City of Cape Town and Another* (CCT 5/04), the Constitutional Court deals with the matter of direct access. The Constitutional Court is an appellate court, which means that in the ordinary course it only hears appeals from lower courts. It is also the highest court in South Africa — once it has ruled, that is the end of the road. It is therefore risky for the highest court to be the first and the last court because it has not had the benefit of other judges’ views. This is one of the reasons why, even though direct access is allowed, it is only in truly exceptional circumstances that it will be granted.

Unless the case involves something that falls within the exclusive jurisdiction of the Constitutional Court, the test set in the court’s rules for when direct access will be granted is “the interests of justice”.

Over the years, the Constitutional Court has fleshed out what this means in practice. The court will ask whether someone has exhausted all other available legal avenues, how urgent and important the issues raised are, whether there will be factual disputes (which often requires evidence to be led and appellate courts are not set up for this), the time and costs involved, and whether the case has good prospects of success.

What is more important to note is that the decision is made on a case by case basis and with all the competing factors to be weighed up, the test can be a slippery one, making it difficult and expensive for a litigant to know whether they will succeed. The unsuccessful party can be burdened with a sizeable legal account.

The HSAG has obtained legal opinion from an eminent legal expert on the possibility of direct access to the Constitutional Court and was informed that due to the nature of direct access and the factors taken into consideration for a matter to fall within the direct access interest of justice ambit, the HSAG will most likely not succeed with such an application. This is due to the fact that the HSAG has not exhausted all other avenues, and the matter has not been decided upon the merits in another court yet. There has not been litigated on the factual disputes yet and the Constitutional Court, as an appellate court, is not designed to deal with factual disputes as a Court of first instance. We can therefore deduct that this is not a viable avenue for the HSAG or CCAF class actions.

#### **14. RECENTLY IN THE MEDIA: FOURWAYS MALL JOINT-OWNER WRITES DOWN PROPERTIES BY R660m**

**A financial journalist from *Moneyweb* recently published this article. As in previous newsletters, we continue to provide the article, but wish to invite you to read the official article at: <https://www.moneyweb.co.za/news/companies-and-deals/fourways-mall-joint-owner-writes-down-properties-by-r660m/>. In this instance, the article will be repeated verbatim to ensure its accuracy.**

**Covid-19 rental relief of over R180m in the year to end March dealt a significant blow to operating income.**

Small-cap real estate investment trust (Reit) Accelerate Property Fund has become the latest counter not to pay a full-year dividend, due to significant pandemic pressure on rental income and a R660 million write-down of its investment properties.

Accelerate, which owns a 50% stake of Fourways Mall and the landmark Portside Tower office building in Cape Town, did not report a distributable income for the year ended March 31, 2021.

The other 50% stake in Fourways Mall is effectively owned by the Georgiou family. However, Accelerate's CEO Michael Georgiou is listed as a major shareholder in the JSE-listed fund.

Accelerate's latest R660 million write-down brings the total devaluation of its property portfolio to R1.66 billion over the last two financial years (FY 2020: just over R1 billion).

The group's share price weakened almost 3% and closed at R0.56 a share on the JSE on Wednesday, valuing the fund at just under R670 million.

Accelerate's decision to retain distributions is aimed at bolstering its weakening balance sheet in the face of the Covid-19 financial fallout.

Its move not to pay dividends, which was expected, comes as the fund provided R182.5 million in rental relief to tenants most affected by pandemic-related lockdowns during the financial year.

This knock to rental income, together with property vacancies hitting 15%, had a ripple effect on property values. However, the increase in vacancies (from 10% to 15%) excludes the vacancies under a "head lease" structure for Fourways Mall.

Nevertheless, the group pointed out that the Fourways Mall head lease has been reduced from around 22 000m<sup>2</sup> to 15 000m<sup>2</sup> and that post year-end its overall portfolio vacancy had reduced to 14%.

Reits that have urban mega malls in the country – such as Liberty Two Degrees, Hyprop and Attacq – have been particularly badly affected by property devaluations. However, these groups have comparatively lower vacancies in major shopping centres such as Sandton City, Canal Walk and Mall of Africa.

Despite the sale of properties during FY2021, Accelerate's loan-to-value (LTV) or gearing level deteriorated.

"Fair-value adjustments include the R660 million write-down in investment properties as a result of Covid-19 impacts, as well as a positive mark-to-market revaluation on swaps of R63 million," the group revealed in a results media statement.

"This increased LTV from 46% to 48.5% in the year under review is due to additional valuation write downs counteracting the effects of property sales, whilst the interest cover ratio remained stable at 2 times," it added.

Accelerate pointed out that revenue for the reporting year reduced from R1.09 billion to R742.7 million, mainly due to Covid-19 rental relief assistance and a negative straight-lining rental adjustment of R 78 million.

"The financial year ended 31 March 2021 has no doubt been one of the most challenging in Accelerate's history as a listed company," Georgiou said in a media statement.

"Notwithstanding the structural shifts within the sector and Covid-related headwinds, we have used this time to stabilise the fund and are busy positioning it for growth as the economy starts to recover ... Considering the third wave we are currently operating under, this recovery will largely depend on effective vaccine rollouts," he added.

The group however noted that it expects "another difficult 12 months" considering the third Covid wave, slow vaccine rollout and continued consumer pressure.

"For us to achieve our goals, we have to execute in two areas, namely the selling of non-core assets and secondly, the unlocking of additional income and value on existing assets," Accelerate's chief operating officer Andrew Costa said.

"In 2018, we embarked on our balance sheet strengthening exercise in anticipation of payments we would have to make for the equalisation of ownership at the redeveloped Fourways Mall. Since then, we have successfully disposed of R1.3 billion worth of assets," he pointed out.

“In 2020 we completed disposals worth R188 million with approximately R200 million in disposals currently awaiting transfer, whilst R759 million of non-core assets remain in our disposal pipeline.”

**This article was written by Moneyweb and was published on 1 July 2021, the official version is available at: <https://www.moneyweb.co.za/news/companies-and-deals/fourways-mall-joint-owner-writes-down-properties-by-r660m/>.**

## **15. IMPORTANT: 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. Failure to comply herewith may lead to unnecessary delays or any reply at all.

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;
- **hsagestates@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.

If you have a question regarding your monthly newsletter or statement, do not reply to the e-mail from **admin3@theronlaw.co.za** but use the correct email address as set out above.

## **16. 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](http://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)