

16 August 2017

Michael Jackson
c/o Cox Yeats

By email

Dear Michael

RE: PWC BOARD MEETING
Our Ref: Carla Roberts/vh/DUR7/0001 and DUR8/0001

PYC's Commodore read the attached statement at the PWC Board meeting held on Monday afternoon.

Our clients have instructed us to reply to the notes in that statement, which we hereby do:

1. These comments are made in the order in which the PYC Commodore's statements are made.
2. The PWC Directors appointed by DUC and DSBC are cognisant of, and comply with, their statutory duties in terms of the Companies Act No. 71 of 2008 ("the Act") and their common law fiduciary duties.
3. Section 75(5) of the Act requires a director who has a personal financial interest (not any interest, financial or otherwise, as stated by the PYC Commodore) to disclose same to the Board. As no such disclosure has been made, it ought to be taken as read that no PWC Director (of those appointed by DUC and DSBC) or a related party to any such director has a personal financial interest in respect of the leases or any other matter tabled before the PWC Board to date.
4. The PWC Directors appointed by DUC and DSBC have already disclosed all information they have regarding the leases, as contemplated by Section 76(2)(b) of the Act.

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5. Accordingly, none of the PWC Directors can be held liable in terms of Section 77 of the Act for any loss, damages or costs sustained by PWC pursuant to a breach of either of those sections (as there has been no breach). Similarly, the act of voting to sign and signing the leases does not constitute an offence in terms of the Act.
6. Sections 214 and 215 are not relevant and it is not understood why they have been referred to.
7. The matter is urgent because DPDC requires PWC to sign the leases now to secure PWC's participation in the development. PWC has had since 8 June 2017 to do so. DPDC is presently constructing the temporary clubhouse. It is critical that PWC acts to preserve its rights. DUC and DSBC mandated its representatives on the PWC Board to sign the leases and accordingly those Directors are obliged to act in accordance with their mandates.
8. PYC's representatives on the PWC Board confirmed at the meeting yesterday afternoon that they, too, attended and voted at the meeting in accordance with a mandate from their members and General Committee.
9. DPSC was not invited to the meeting because it has no directors on the PWC Board. As it was a PWC Board meeting and not a PWC members' meeting, the comments in relation to DPSC's membership of PWC are not relevant. However, we point out that it is not correct that DUC and DSBC have disputed the DPSC's members' rights to become members of PWC, quite the opposite: DUC and DSBC have undertaken to accommodate DPSC's members in PWC as required in the 2008 MOA and the Settlement Agreement, and both PYC and DPSC are well aware of this.
10. It is also not correct to say that the leases will have to be set aside if it is determined by the arbitrator that DPSC must be a member of PWC, for the reasons in 9 above.
11. PYC's Commodore said that:

"one of the issues before the arbitrator is whether the MOI of PWC should contain a provision that the PWC enters into a lease agreement (as opposed to a sale agreement) with the DPDC".
12. As you know, our clients' contention is that the nature of the transaction between PWC and DPDC is not relevant to PWC's corporate governance and can easily be deleted altogether from the MOI.
13. In any event, it is not correct that the question of a sale or a lease is an issue in dispute in the arbitration and it is not correct that an agreement has been reached by the parties that this issue would be determined by the arbitrator. The statement made by PYC's Commodore at the meeting on Monday afternoon and quoted in 11 above was the first time that this issue has been raised by a Claimant in the context of the arbitration. Neither of the Claimants have pleaded the question of a sale or a lease as an issue in dispute in the arbitration. It is not competent for the Claimants to seek, by asking the arbitrator to determine that their version of the proposed MOI accords with the letter and spirit of the 2008 MOA and must be adopted by the parties, to enforce the position that PWC pursues a sale agreement with DPDC pursuant to several oblique references in their version of the proposed MOI to an acquisition by PWC of property. If the Claimants wish to pursue this line, then the Claimants must properly plead the question of

a sale or a lease as an issue in dispute, in order to give our clients an opportunity to respond thereto. Further, in that event, DPDC ought to be informed of the Claimants' intention to pursue this line so that DPDC can join in the arbitration proceedings in its capacity as tenant or seller. We suggest that the parties to the arbitration agree that the Rule 37 conference scheduled for Friday 18 August 2017 is cancelled, so that the parties have an opportunity to discuss this issue as well as the issues raised by us in our letter of 14 August 2017. If the parties cannot reach agreement to cancel the Rule 37 conference, then our instructions are to raise this new issue in the presence of the Arbitrator at the conference.

14. The suggestion that PWC must seek independent legal advice can only be a dilatory tactic.
15. DSBC's representatives on the PWC Board were mandated to vote in favour of signing the leases, as they have done. The scrutineers who considered the results of the votes on behalf of the DSBC "Concerned Members" immediately after the meeting confirmed that they were satisfied with those results. Had they not been satisfied, their remedy would have been to approach a Court to reverse the resolution, which they have not done. Instead they waited until the eleventh hour to deliver a letter (through PYC's representative) to PWC.
16. The DSBC Constitution is silent on proxies in general. The Constitution states that any matter which is not specifically provided for therein shall be decided upon by the Committee, whose decision shall be binding on members. Accordingly, the decision to allow voting by proxy (which has a rational basis given the tight timing between the Order of Court denying the DSBC "Concerned Members" an interdict and the commencement time of the DSBC meeting) is binding on members and the mandate given to DSBC's representatives on the PWC Board stands. In any event, the DSBC Constitution also contemplates that no decision taken at a general meeting can simply be reversed.
17. DUC and DSBC's representatives on the PWC Board cannot agree not to forward the signed leases to DPDC for two weeks to enable PYC to prepare an urgent application. DUC and DSBC dispute that PYC has grounds to bring an urgent application, but more than that, PWC is obliged to sign and deliver the leases to DPDC to preserve PWC and the clubs' (including PYC and DPSC) rights to participate in the development. A PWC Board meeting was properly convened and held, and resolutions to sign the leases were passed by a simple majority of 4 for and 2 against, in circumstances where PYC was entitled to participate and in fact participated in the decision. PYC does not have a basis to bring an urgent application having attended, spoken at and voted at the meeting.
18. DPSC's Counsel in the arbitration informed our clients' Counsel in the arbitration yesterday afternoon that your Firm no longer represents DPSC in the arbitration. Please confirm whether that is the case.

Yours sincerely

**CARLA ROBERTS
BARKERS**

