

FOUNDING AFFIDAVIT

IN THE HIGH COURT OF NAMIBIA
(MAIN DIVISION – WINDHOEK)

CASE NUMBER:

In the matter between –

THE BANK OF NAMIBIA

APPLICANT

and

SMALL AND MEDIUM ENTERPRISES BANK
LIMITED (S.M.E. BANK LIMITED)

FIRST RESPONDENT

GOVERNMENT OF THE REPUBLIC OF NAMIBIA

SECOND RESPONDENT

NAMIBIA FINANCING TRUST (PROPRIETARY)
LIMITED

THIRD RESPONDENT

METROPOLITAN BANK OF ZIMBABWE LIMITED

FOURTH RESPONDENT

WORLD EAGLE PROPERTIES (PROPRIETARY)
LIMITED

FIFTH RESPONDENT

THE MINISTER OF INDUSTRIALIZATION, TRADE
AND SME DEVELOPMENT

SIXTH RESPONDENT

THE MINISTER OF FINANCE

SEVENTH RESPONDENT

I, the undersigned,

IPUMBU WENDELINUS SHIIMI

do hereby make oath, and say that –

1. I am –

1.1. a major male person and the Governor of the Bank of Namibia (“the Bank”). As such, I am also the chairman of the Bank’s Board. In as far as I express any opinions herein, particularly regarding the financial affairs relevant to the first respondent (herein referred to as “SME Bank”), I am duly qualified and experienced to do so;

1.2. duly authorized and able to initiate this application and for that purpose depose to this affidavit;

1.3. duly able to depose to this affidavit, the content hereof (save where the context otherwise indicates, or it is otherwise stated) falling within my personal knowledge and being both true and correct.

2. In as far as submissions of a legal nature are made herein, these are made on the advice of the Bank’s legal practitioners of record, which advice I verily believe to be both true and correct.

THE PARTIES

3. The APPLICANT is the BANK OF NAMIBIA, a juristic person provided for under Article 128 of the Namibian Constitution and established as such in terms of the Bank of Namibia Act, 1990 (Act 8 of 1990), and which continues to exist as such by virtue of the provisions of section 2 of the Bank of Namibia Act, 1997 (Act 15 of 1997) (“the Bank of Namibia Act”). The applicant’s principal place of business is located at 71 Robert Mugabe Avenue, Windhoek, Republic of Namibia.



4. The FIRST RESPONDENT is the SMALL AND MEDIUM ENTERPRISES BANK LIMITED (S.M.E. BANK LIMITED), a company and banking institution, registered and incorporated in accordance with the applicable laws of the Republic of Namibia, and with its registered address located at 172 Jan Jonker Road, Windhoek, Republic of Namibia.

5. The SECOND RESPONDENT is the GOVERNMENT OF THE REPUBLIC OF NAMIBIA, served care of the Government Attorneys, 2nd Floor, Sanlam Centre, Independence Avenue, Windhoek; Republic of Namibia.

6. The THIRD RESPONDENT is the NAMIBIA FINANCING TRUST (PROPRIETARY) LIMITED, a company with limited liability, registered and incorporated in accordance with the applicable laws of the Republic of Namibia, and with its registered address located at 2, Barbie Street, Suiderhof, Windhoek, Republic of Namibia.

7. The FOURTH RESPONDENT is the METROPOLITAN BANK OF ZIMBABWE LIMITED, a company and banking institution, registered and incorporated in accordance with the applicable laws of the Republic of Zimbabwe, and with its head office and principal place of business located at Head Office, Central House, 3 Central Avenue, Harare, Republic of Zimbabwe. Service will also be effected by email (I deal with this below) and care of the fourth respondent's legal practitioners of record, Victor Nkhwashu Attorneys Incorporated, 171 Katherine Street, Liberty Life Office Park Building No 1, First Floor, Sandton, Johannesburg, South Africa.

8. The FIFTH RESPONDENT is WORLD EAGLE PROPERTIES (PROPRIETARY) LIMITED, a company with limited liability, registered and incorporated in accordance with the applicable laws of the Republic of Zimbabwe, and with its registered address or principal place of business located at 23 Tamar Road, Vanona Borrowdale, Harare, Republic of Zimbabwe and (being the address appointed by the fifth respondent in the shareholders' agreement concluded with the other shareholders of the first respondent) 11th Floor, Metropolitan House, Central Avenue, Harare. Service will also be effected by facsimile (I deal with this below) and

B. J. J.

care of the fifth respondent's legal practitioners of record, Victor Nkhwashu Attorneys Incorporated, 171 Katherine Street, Liberty Life Office Park Building No 1, First Floor, Sandton, Johannesburg, South Africa.

9. The SIXTH RESPONDENT is the MINISTER OF INDUSTRIALIZATION, TRADE AND SME DEVELOPMENT, a Minister of State, duly appointed as such in terms of the applicable provisions of the Namibian Constitution, and also cited herein as representative of the second respondent and as representative of the majority shareholder of the first respondent, served care of the Government Attorneys, 2nd Floor, Sanlam Building, Independence Avenue, Windhoek, Republic of Namibia.

10. The SEVENTH RESPONDENT is the MINISTER OF FINANCE, a Minister of State, duly appointed as such in terms of the applicable provisions of the Namibian Constitution, and also cited herein as representative of the second respondent, served care of the Government Attorneys, 2nd Floor, Sanlam Building, Independence Avenue, Windhoek, Republic of Namibia.

11. The second to seventh respondents are cited herein in as far as they may have an interest in these proceedings. No relief is sought against them, save for costs against any such respondent electing to oppose this application.

STATUTORY ENVIRONMENT

12. The Bank is, in terms of section 3 of the Bank of Namibia Act, established with the object of, *inter alia* –

12.1 promoting and maintaining a sound monetary, credit and financial system in Namibia and to sustain the liquidity, solvency and functioning of that system;

12.2 promoting and maintaining internal and external monetary stability and an efficient payments mechanism; and

12.3 fostering monetary, credit and financial conditions conducive to the orderly, balanced and sustained economic development of Namibia.

B J

13. In terms of section 36(1) of the Bank of Namibia Act, the Bank is to exercise such other powers and perform such other functions and duties as may be conferred upon or assigned to it by any other law.

14. The Bank is conferred with certain powers and responsibilities in terms of the Banking Institutions Act, 1998 (Act 2 of 1998), as amended ("the Act"). Section 28(4) of the Act provides that –

Notwithstanding any provision of this section, the Bank may, if it is of the opinion that there is a risk of the existing capital funds of a banking institution being impaired, require the banking institution to, in addition to the capital funds required by or under subsection (1), acquire such further capital funds as the Bank may specify.

15. Section 52 of the Act empowers the Bank to conduct an examination of the affairs of a banking institution to determine whether a banking institution is in a sound financial condition and whether the provisions of the Act or any other legal requirements pertaining to banking business have been, and are being, complied with by the banking institution.

16. In terms of section 56(2) of the Act (read with section 56(1)), the Bank is empowered – in the circumstances contemplated by the relevant sections of the Act – to assume control of the entire property, business and affairs of the banking institution, or any part thereof, and or the part so assumed control of, conduct the entire business and affairs of the banking institution, for and on behalf of the banking institution, or appoint a person to so conduct the business and affairs of the banking institution in the name of the Bank.

17. Section 58(4) of the Act provides that, the Bank may, notwithstanding section 346 of the Companies Act or notwithstanding having taken any action in terms of section 56 or 57 of the Act, make an application to this Honourable Court for the winding-up of a banking institution, such as SME Bank.

18. In terms of section 58(5) of the Act, the Master of the High Court may not appoint a person as provisional liquidator, provisional judicial manager or judicial manager of a banking institution, other than a person recommended by the Bank.

PURPOSE OF APPLICATION

19. The purpose of this application is to seek the winding-up of SME Bank.

20. The Bank's decision to apply for the winding-up of SME Bank is based on the following –

20.1 SME Bank is insolvent as contemplated by section 1 read together with section 58 of the Act, in that its liabilities exceed its assets;

20.2 SME Bank is, in any event, commercially insolvent in that it is unable to pay its debts as they fall due, as contemplated by section 350(1)(c) and (2) of the Companies Act, 2004 (Act 28 of 2004), read with section 349(f);

20.3 it is just and equitable that SME Bank be wound-up. I refer to section 349(h) of the Companies Act, 2004.

LOCUS STANDI

21. I respectfully submit that the Bank has the requisite *locus standi* to bring this application and to pray for the relief set forth in the accompanying Notice of Motion. I also refer to section 58(4) of the Act.

JURISDICTION

22. I respectfully submit that this Court has the requisite jurisdiction to hear this application and to grant the relief prayed for in the accompanying notice of motion in that SME Bank was incorporated in terms of the applicable Company Laws of the Republic of Namibia and duly registered as a banking institution in terms of the Act. I further refer to the certificate of authorization to conduct banking business and the

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certificate of incorporation annexed hereto and marked "BON1" and "BON2", respectively.

FACTUAL BACKGROUND

23. SME Bank was granted authorization to conduct business as a banking institution in Namibia with effect from 30 November 2012 by the Bank. The shareholders of SME Bank are –

23.1 the Government of the Republic of Namibia, through Namibia Financing Trust (Proprietary) Limited, which holds 65%;

23.2 Metropolitan Bank of Zimbabwe Ltd, a commercial bank registered and operating in Zimbabwe, which holds 30% shareholding; and

23.3 World Eagle Properties (Proprietary) Limited, which is a real estate and properties development company based in Harare, Zimbabwe and currently holds 5% shareholding.

24. At inception, SME Bank's business model was based on pursuing a niche competitive strategy, targeting the Small and Medium Size Enterprise (SME) segment, and those catering to Rural Communities, Micro Enterprises and Previously Disadvantaged Individuals (PDIs), which had at the time of its licensing been underserved by existing banks in the country. With the head office in Windhoek, at 172, Jan Jonker Avenue, SME Bank has three more branches in Windhoek, Rundu and Ongwediva. The second Windhoek branch is located at 89 Monte Christo Road, Lafrenz, Windhoek. The Rundu branch is located at Shop Number 29, Rundu Shopping Mall, and the Ongwediva branch is located at Shop Number 3, Oshana Regional Mall.

ASSUMPTION OF CONTROL, INVESTIGATION AND FINDINGS

25. During August 2016, SME Bank's external auditors, BDO Namibia ("BDO"), brought to the attention of the Bank's Banking Supervision Department, that it

intended disclosing information regarding certain investments by SME Bank, made with Mamepe Capital ("Mamepe"), seemingly a South African investment company. BDO raised concerns regarding these investments.

26. The concerns raised by BDO resulted in various consultations held between the Bank, SME Bank and BDO. During August 2016, Mr Romeo Nel, Director of the Banking Supervision Department of the Bank, was contacted by BDO and informed that BDO had in their possession statements reflecting that an initial investment of NAD 196 million had been made in Mamepe of which, NAD 150 million (being funds invested with Mamepe by SME bank) was disinvested at Mamepe and invested in VBS Mutual Bank in South Africa ("VBS Bank"). Mr Nel was informed that although BDO received confirmation from SME Bank, the evidence was not persuasive.

27. According to account statements purportedly from VBS Bank and Mamepe (for the period ended 31 August 2016), provided by Mr Joseph Banda (SME Bank's Finance Manager at the time), SME Bank seemingly made three investments. The statements reflected that the investments of NAD 10 million, NAD 150 million (transferred from Mamepe) and NAD 25 million (transferred from Mamepe), were made in VBS Bank. The total investment purportedly made of NAD 185 million exceeded the approval limit of SME Bank's Chief Executive Officer at the time, Mr Tawanda Mumvuma, and therefore required approval from the Board of Directors of SME Bank. SME Bank had set internal approval limits in its signing arrangement and limits policy guideline ("BON3") which required that all investments exceeding NAD 150 million be approved by the said Board. Mr Banda could not furnish any proof that such approval had been granted, despite requests to do so by the Bank's examiners, Mr Imanuel Hawanga and Ms Karin Elago. Mr Banda thereafter confirmed that SME Bank's Board Credit committee would be requested to ratify the investments. I refer to "BON4".

28. The Bank enquired from Mr Banda why VBS only provided one account statement (this occurred during an interview with him. Mr Alec Gore, SME Bank's former General Manager: Treasury and Investments, was also present. The interview was conducted by Mr Hawanga and Ms Elago), while three different accounts with different maturities are displayed on the placement maturity sheet (annexure "BON5"



hereto). On 30 September 2016, Mr Banda explained to the Bank's examiners that the alleged investments placed with VBS were apparently treated as one call account with different placement and maturity dates, although there was only one bank statement. Mr Banda promised the Bank's examiners that he would provide the Bank with supporting information, but he did not deliver on his promise.

29. Mr Banda further indicated that NAD 35.3 million reported on the placement maturity sheet of SME Bank in the 8-31 days' bucket (annexure "BON6"), would mature on 30 September 2016, and that proof of notice of withdrawal would be provided to the Bank.

30. The Bank went on-site represented by Ms Elago and Mr Hawanga (both of whom act under the supervision of Mr Nel, and who comprise part of the Bank's Banking Supervision Department), and being the examiners referred to, who obtained statements from SME Bank's management (relevant to the placement of investments, being Mr Banda) relating to the purported South African investments. The Bank remained dissatisfied.

31. On 20 September 2016, the Bank requested, *via* email (annexure "BON7", addressed to Mr Banda), for the top depositors return (i.e. an accounting by SME Bank of its top depositors) from SME Bank to understand the risk of wholesale depositors calling up their funds. The information obtained from Mr Banda (which he copied to Mr Simbarashe Magombedze, the accountant or officer in the Finance Department of SME Bank), indicated that there was an outflow of NAD 172.8 million compared to inflows of NAD 102.1 million since 31 July 2016 to September 2016. This was contrary to the explanation given by Mr Mumvuma (then of SME Bank), in an email dated 12 September 2016 (annexure "BON8"), to the effect that SME Bank did not have any withdrawals from other large depositors. The top depositors' balance stood at NAD 779.7 million as at September 2016.

32. As a result of the liquidity challenges experienced by SME Bank, the Bank also decided to undertake a targeted examination at SME Bank to better understand the situation on the ground. This commenced on 26 September 2016. Before the finalisation of the on-site examination on 30 September 2016 (at which Ms Elago and

Mr Hawanga were present), Mr Banda communicated verbally to the said examiners that NAD 50 million was expected from VBS by 30 September 2016. However, on 11 October 2016 Mr Banda and Mr Gore, at the exit meeting between SME Bank and the Bank (then represented by Mr Nel), confirmed that the invested funds were not received yet. Mr Banda then indicated that a notice was only given on 30 September 2016. However, on 14 October 2016 the Bank received an email from Mr Banda (annexure "BON9" hereto) confirming that only NAD 37 million as opposed to NAD 50 million was received from VBS and deposited into the account of SME Bank, held at FNB Namibia.

33. By mid-December 2016, no confirmation could be established of the investments allegedly made by SME Bank at Mamepe and VBS.

34. The Bank performed calculations to confirm what the impact would be on SME Bank, if the NAD 196 million that had been allegedly placed with VBS and Mamepe, was lost. The Bank used the Capital Adequacy Return (BIR-401) as submitted by SME Bank (Declaration of statutory returns submitted – BSD 999, signed off by Mr Mumvuma and Mr Banda that information was true and correct, annexure "BON10") to calculate the solvency position of SME Bank, following the likely loss of the purportedly invested funds. The Bank's assessment revealed that the Qualifying Capital, as reported on the Capital Adequacy Return submitted by SME Bank for the quarter-ended 30 September 2016, stood at NAD 178.0 million (rounded off). Considering the likely loss of NAD 196 million (funds that are reflected to have been purportedly invested with Mamepe and VBS, but which are unrecovered), SME Bank would have a negative capital position of NAD 17.0 million. A copy of the Capital Adequacy Return submitted by SME Bank for the quarter-ended 30 September 2016 is attached, marked "BON11". The implication thereof was that SME Bank was insolvent, or at least likely to become insolvent.

35. Ultimately, from 1 March 2017 the Bank assumed control of the entire property, business and affairs of SME Bank under section 56 of the Act. This is subject to challenge in separate review proceedings before this Court. This, however, does not in the light of the provisions of section 58(4) – I respectfully submit – preclude the initiation of the present proceedings and the granting of the relief sought.

B J

36. After the Bank assumed control of SME Bank, it requested the account statement from VBS (number 10043026001). The VBS is where the bulk part of the money was allegedly invested. An account statement for the period 1 January 2014 to 22 March 2017 was received from VBS on 23 March 2017 in this regard (annexure "BON12"). Mr Nhlanhla Mduduzi Nkuna, an employee employed at VBS as a financial officer, provided the aforementioned account statement. This account statement shows that only an amount of NAD 10 million from SME Bank was deposited into this account on 11 August 2016, but this amount was then withdrawn the next day. No other amount was deposited into this account for that period. This means that account was only active for one day. However, if the recent account statement (referred to above) is compared with the purported statement of the same account given to BDO, the auditors of SME Bank, on 8 September 2016 (annexure "BON13" hereto, and as referred to above), significant discrepancies are notable. The statement given to BDO shows (annexure "BON14" hereto) a balance in the same account of NAD 185.3 million. Another account statement (annexure "BON15" hereto) sent by VBS on 10 January 2017 to SME Bank, shows a balance of NAD 153.8 million as at 31 December 2016. Both periods are also covered by the statement received on 23 March 2017 and no such amounts are evident in the latest statement. This information also contradicts the sworn statements of Mr Mumvuma and Mr Banda, submitted to the Bank (annexures "BON16" and "BON17" hereto). This shows that the information presented by SME Bank (*via* the mentioned persons) and its counterpart, VBS, to the Bank and SME Bank's external auditors, BDO, is contradictory, unreliable, highly questionable and suspicious.

37. On 23 March 2017, Mr Nkuna orally confirmed to Ms Venencia Olobilwe, an employee employed at SME Bank (in its Treasury Department) that only an amount of NAD 458,855.74, as at 22 March 2017, is available in the name of SME Bank at VBS. This stands in stark contrast to what was represented to the Bank by senior officials within SME Bank's structures. Mr Phopi Mukhodobwane (also an employee at VBS, and being the head of treasury and capital markets), in his discussions with Ms Olobilwe, expressed surprise when he was presented with the account statements mentioned above (annexure "BON18"). He indicated that these account statements (annexures "BON19") appear to be different from the VBS normal

B J

system-generated statements. I further refer to the email received, marked “BON20” hereto.

38. In addition to the alleged investments with VBS and Mamepe, SME Bank management reported as part of the liquidity reporting, that an investment of NAD 10 million was invested with Tulive Capital (Proprietary) Limited. About NAD 6.7 million of this amount is allegedly invested in a speculative equity investment in South Africa and the rest with a local bank. According to a monthly investment report provided by Tulive Capital dated 28 March 2017, the funds invested in South Africa in highly speculative and risky contracts for difference (also known as CFDs) have allegedly suffered significant losses, such that the balance stood at NAD 48,296.45 on the 28 June 2017 as compared to the initial investment of NAD 6.7 million. I refer to an investment report provided by the relevant official comprising annexure “BON21” hereto. In this regard, it is important to note that by investing in equity products, SME Bank has violated section 39 of Act. Section 39(1) provides that a banking institution shall only conduct financial business or transactions which are usually or ordinarily conducted by banking institutions in terms of the Act or any other law. Section 39(2) provides that – as a general rule – a banking institution shall not, subject to section 39(6), conduct, or have any direct interest in, any activities relating to merchandise, trade, industry, insurance, mining, agriculture, fisheries or commerce. It further shows that SME Bank’s board and officers who were involved in the placement of this investment were, with respect, reckless and gambling with the depositors’ and shareholders’ funds.

39. According to the financial records (general ledger/trial balance) of SME Bank, the total funds allegedly invested by SME Bank with South African institutions amounted to NAD 207.6 million as at 28 February 2017. The records showed that NAD 52.4 million was allegedly invested with Mamepe and NAD 155.2 million was allegedly invested in VBS, at that date. These amounts did not include interest accrued for February 2017, which was approximately NAD 1.5 million.

40. According to the preliminary findings of the Bank’s investigation after assuming control of SME Bank, funds sent to South Africa and alleged to have been invested by SME Bank, amount to only NAD 199.7 million as at 28 February 2017. This

amount was arrived at by compiling cash flow (inflows and outflows) data from the bank statements of SME Bank and performing cash flow assessments pertaining to SME Bank (and which records are located with SME Bank). Of the allegedly invested funds of NAD 199.7 million, an amount of NAD 32.7 million is seemingly with Mamepe, while NAD 167 million was paid into various accounts belonging to other beneficiaries namely "Asset Movement Financial Services", "DMA Consultants", "Moody Blue" and "Transparency.com". The amount invested with VBS was confirmed to be zero.

41. The Bank is firmly of the belief that the amount of at least NAD 174.4 million (if not all) of the alleged VBS / Mamepe "investment" has been lost and will not be recovered –

41.1 the funds were, in the main, paid into various accounts belonging to other unknown beneficiaries namely "Asset Movement Financial Services", "DMA Consultants", "Moody Blue" and "Tranparency.com", and nature of the business (if any) of these beneficiaries is unknown;

41.2 there are (as far as the Bank is aware) no separate written contractual agreements properly (if at all) in place to underpin the existence of, and properly detailing the specific terms and conditions governing, any of the "investments" between –

(a) SME Bank and any one or more of the entities referred to in the preceding paragraph;

(b) Mamepe and any one or more of the entities referred to in the preceding paragraph;

(c) VBS and any one of more of the entities referred to in the preceding paragraph

41.3 this matter has also been reported to the police. During proceedings governed under the South African International Co-operation in Criminal

B L J

Matters Act, 1996 (Act 75 of 1996), a certain Mauwane Kotane (describing himself as a director of Mamepe) deposed to an affidavit (not all annexures were however supplied). I annex same hereto, marked "BON22". Its content raises questions. The Bank is now informed – for the first time (this not having been disclosed by SME Bank's directors and its officers referred to above) – that NAD 175 million (and contrary to the provisions of section 39 of the Act) **"was invested in a consumable product (Fertilizer). The nature of the investment in the commodity was purely for trading purposes ... The maturity will equally be informed by the capacity of the various vendors to sell the product. The investment is held under a Product Consignment Note on behalf of or in the account of Mamepe Capital (Pty) Limited held by the suppliers of the fertilizer, Rawfert Offshore Sal"**. Rawfert Offshore Sal, as far as the Bank can at present determine, is a Lebanese company;

41.4 the deponent (Mr Kotane) then provided a "maturity analysis", reflecting that the sum of NAD 88,201,341.00 would mature on 30 June 2017. Until date and time of the deposing to of this affidavit, the aforementioned sum has not been paid to SME Bank, and this despite Mr Kotane's allegation that "the funds are held and invested safely by my organization as per our mandate". I point out that an amount of NAD 40 million was already supposed to have matured and been paid out in February 2017. SME Bank was alerted during January 2017 that it was in contravention of the Determination on Minimum Local Asset Requirements (BID-7) (annexure "BON22A"), in terms whereof a banking institution is required to, at all times, maintain minimum local assets situated in Namibia of an aggregate value not less than 100 percent of the amount of its liabilities payable in Namibia Dollars, excluding capital funds. In response, SME Bank indicated that they will return ZAR 40 million from the investments at Mamepe / VBS Mutual Bank on the 7th of February 2017 to meet the requirements of BID-07. On this score, on 23 January 2017 SME Board Chairman, Mr George Simataa, unequivocally stated that in a letter addressed to the Bank ("BON23") that "given that the Bank has determined that the investment action is a contravention of the Act, SME Bank undertakes to call back NAD 40 million from South African investments by 7 February 2017 to rectify such breach". This did not happen. Later, Mr Simataa claimed in Court



papers delivered in other review proceedings pending before this court that “indeed the NAD 40 million matured on 7 February 2017 but was rolled over to pave way for the unwinding of the entire portfolio on the basis of the first respondent's (referring to me) insistence that the investment be recalled.” This – of course – totally contradicts SME Bank's undertaking to the Bank and points to serious mismanagement. Further, the recurring theme is now obvious – repeated delays and excuses in the repayment of the amounts allegedly invested with or through Mamepe;

41.5 no (proper) proof of whatsoever nature was provided by Mamepe demonstrating that the aforementioned sum was reflected in Mamepe's bank account (or in any other account for that matter), at the disposal of SME Bank or for its benefit, ready for transfer to SME Bank. The truth of the matter is that the funds are, in the Bank's view, lost and unrecoverable. These recent events simply affirm that;

41.6 I have serious reservations whether Mr Kotane's conclusion that “the funds are held and invested safely” is accurate. The paucity of underlying and supporting documentation is notable. The distinctly vague allegations contained in the said affidavit are also notable;

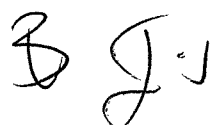
41.7 Mr Kotane alleges in his affidavit (under oath) that “it has already been communicated to the Bank of Namibia (BON) that should the client orders (sic) the repatriation of the funds before the maturity dates in terms of the agreement entered into between the parties, there will be a 20% (percent) penalty that will be levied on the total funds held by ourselves”. Firstly, the Bank finds no provision in any agreement (duly and properly concluded and signed between the parties) known to it, which permits the levying of the alleged “penalty”. Secondly, what Mr Kotane does not disclose is that SME Bank did – in fact – “order the repatriation of the funds” (this is dealt with below). Until date, not a single cent has been “repatriated” by Mamepe. The deponent Mr Kotane rather thought it fit to – instead of fully and properly dealing with the Bank's legitimate concerns – criticise the Bank and make unfounded and meritless allegations and insinuations;



41.8 in an attempt to recover the funds, the person acting in the position of SME Bank's Chief Executive Officer, Mr Benestus Herunga, formally demanded the return of the investments purportedly made in South Africa. The formal requests addressed to Mamepe and VBS are hereto annexed and marked "BON24" and "BON25", respectively. Upon demand by SME Bank, VBS returned funds amounting to NAD 458,855.74 to SME Bank. I refer to annexure "BON26". VBS confirmed that these were the only accounts of SME Bank on its books and that the accounts had been closed in a letter dated 19 April 2017 annexed hereto and marked "BON27". As stated, nothing has – until date – been received by SME Bank from Mamepe;

41.9 the status *quo* is that despite demand by SME Bank, Mamepe has up until today, failed to return the aforementioned funds and has further failed to provide any satisfactory accounting (with proper documentary evidence in place) explanation or reasons. Mamepe had not (prior to the initiation of the aforementioned proceedings in terms of the South African legislation) provided a proper response, despite numerous requests to provide information regarding the status of the investments. The written instructions by Mr Herunga to Mamepe's Chief Executive Officer, are hereto annexed and marked "BON28". Furthermore, the external auditors of SME Bank, BDO, have been unable to obtain persuasive evidence confirming the value and existence of the investments with (or placed through) Mamepe for the year ended 29 February 2016 to date. I refer to annexure "BON29".

42. I further submit that the confirmation received from VBS (referred to in paragraph 41.8 above) contradicts the sworn statements deposed to by Mr Banda and Mr Mumvuma, hereto annexed and marked "BON30" and "BON31", in that the actual value of the investment in VBS is significantly lower than those indicated in their sworn statements. While Mr Banda and Mr Mumvuma stated under oath that the funds invested were to the value of NAD 12 million, NAD 41 million and NAD 50 million with VBS, VBS confirmed that the account in the name of SME Bank had a balance of no more than NAD 459,000.00. Furthermore, in a letter dated 23 January 2017, the Chairperson of the Board of Directors of SME Bank, Mr George Simataa,



misrepresented the value of the funds invested in VBS and Mamepe. Mr Simataa (representing SME Bank at the time) represented to the Bank (during January 2017 and by letter dated 16 January 2017) that –

42.1 “the amount that has been called back from the South African investments after it matured is actually R57m not R37m, made up of R37m from VBS Bank and R20m from Mamepe Capital”; and

42.2 the “current exposure after the aforementioned maturities are Mamepe Capital - R26m and VBS Bank- R152m.”

The letter is hereto annexed and marked “BON32”.

43. According to representations made by SME Bank Board members to the Bank on 23 January 2017 (I refer to the annexure, marked “BON33”), an amount of NAD 27 million was purportedly invested in Mamepe. This was further stated in sworn affidavits by SME Bank’s executive officers, which I have made reference to above.

44. The Bank subsequently prepared two reports, authored by Ms Elago (a senior examiner in the Banking Supervision Department), namely an Investment Recoverability and Solvency Assessment Report (issued on 22 May 2017) and an Investment Reconciliation Report (also issued on 22 May 2017), attached and marked “BON34” and “BON35” respectively. I refer to the annexures. These reports were prepared on the basis of SME Bank’s records and further information gathered by the authors of the report.

45. The findings of the above reports reveal that –

45.1 the financial records of SME Bank were overstated at 28 February 2017 and SME Bank should write down the investment balance in Mamepe by NAD 19.7 million from NAD 52.4 million to NAD 32.7 million as recalculated by the Bank. Also, the investment balance in VBS is to be written down by NAD 154.7 million from NAD 155.2 million to approximately NAD 459 000.00, being the amount confirmed by VBS at that date;

45.2 the purported investments made in Mamepe were determined to be unsound and there is reasonable doubt that any material part of, or the full balance, is recoverable. The assessment provides objective evidence in terms of accounting standards and principles that the investment in Mamepe is impaired, in that:

- (a) SME Bank management misrepresented to the Bank and the Auditors where and with whom (precisely), and precisely in what the funds were invested;
- (b) the Bank found that a bulk of the funds of NAD 167 million were paid to other beneficiaries who are not investment entities (as far as the Bank can establish) and this was never disclosed as such by SME Bank management;
- (c) any funds paid to other beneficiaries cannot be recognised in the financial records as an investment as there are, as far as the Bank can establish) no contracts with these persons;
- (d) VBS has provided confirmation that funds invested with them were only approximately NAD 459 thousand and not NAD 155.2 million as reported by management. The approximate amount of NAD 459 thousand was repaid in April 2017 and the accounts closed. Therefore, the rest of the balance of NAD 154.7 million is impaired as there is no (proper, if any) evidence that the balance exists;
- (e) Mamepe had not properly (if at all) confirmed the nature of the assets the funds were purportedly invested in and the identity of asset managers with whom these assets are invested or if these investments are even held in the name of SME Bank or other parties;

45.3 the expected investment losses amounted to NAD 174.4 million (NAD 154.7 million VBS and NAD 19.7 million Mamepe), and relate to funds paid

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directly into the accounts belonging to other beneficiaries and believed to have been used for non-investment purposes;

45.4 investment losses of this magnitude deplete the current capital levels of SME Bank and result in its liabilities exceeding assets, therefore making the institution insolvent as at 28 March 2017, and which remains the position.

46. Meanwhile, BDO, SME Bank's external auditors, have formally notified the Public Accountants and Auditors Board of Namibia of a material irregularity relevant to SME Bank. I refer to "BON36" and its content.

47. On 10 May 2017, the Bank wrote a letter to SME Bank (addressed to the chairperson of the persons appointed to conduct the business and affairs of SME Bank) ("BON37" hereto), in which the Bank advised that –

1. The Bank of Namibia has performed an investigation and assessment of the funds reportedly invested by the former management of SME Bank Limited with Mamepe Capital and VBS Mutual Bank in South Africa. The investigation revealed that these investments were unsound and the recoverability thereof is remote and improbable, and hence the investments were impaired, accordingly, and have to be written off against the capital funds of SME Bank Namibia Limited. Quite apart from the impaired investments, SME Bank incurred losses from its lending activities and other operations, which further eroded the capital position of the banking institution. In sum, the total shareholder's equity amounted to negative NAD 177.6. million as at 30 April 2017. This means that SME Bank Namibia Limited is insolvent.

2. In view of the above, SME Bank Namibia Limited is prohibited – in terms of Section 62(1) of the Act – from taking deposits from any persons and advancing credit. Your attention is also drawn to Section 62(3) of the Act.

4(3). It is against the above-mentioned background that the Bank has formed the view that the existing capital funds of SME Bank Namibia Limited have been impaired, and are at risk of being further impaired. In

terms of section 28(4) of the Act, the Bank requires SME Bank Namibia Limited to acquire further capital, in addition to the funds required by or under section 28(1) of the Act, which will aid in restoring the solvency position. The amount of further capital required is NAD 359.2 million...”

48. The above-mentioned letter further invited the shareholders of SME Bank to a meeting to be held at the Bank’s premises on 11 May 2017 at 10h00 am. It is worth noting that the Bank received apologies from SME Bank’s minority shareholder, Metropolitan Bank, represented by Mr Wilson Manase, on 15 May 2017 (I refer to annexure “BON38”). In terms of the letter, addressed to me, Mr Manase stated that he would not be able to attend the meeting and requested a postponement. I responded in a letter dated 17 May 2017 (I refer to annexure “BON39”), in which I agreed to the postponement, however, it was required that the meeting take place no later than 26 May 2017, bearing in mind the urgency of the situation.

49. The Bank was unable to obtain a firm position from the shareholders of SME Bank. Therefore, the Bank drafted a request, in terms of section 28(4) of the Act, to the shareholders of SME Bank on 31 May 2017, requiring a capital injection of NAD 359.1 million by 13 June 2017. The Bank further informed the shareholders if they failed to comply, the Bank shall invoke its powers as provided for in sections 57 and or 58 of the Act. The letter is annexed and marked “BON40”.

50. A letter was thereafter addressed to me by the representative of Metropolitan Bank, Mr Manase, on 31 May 2017, stating that he was unable to attend the meeting, but that a proxy would be attending the meeting. Mr Manase further requested that I brief the proxy in detail on the predicament SME Bank finds itself in (I refer to “BON41”). Mr Manase’s proxy did not contact me.

51. On 7 June 2017, the Bank received a letter from the representative of the majority shareholder, the Minister of Industrialization, Trade and SME Development, Mr Immanuel Ngatjizeko (annexure “BON42” hereto). For ease of reference, an extract of paragraphs 2.1. – 2.3. is provided below –

You refer to an investigation which was conducted by the Bank of Namibia,

in terms of which an assessment was made of funds reportedly invested by the management (at the time) of SME Bank with Mamepe Capital and VBS Mutual Bank Limited. I hereby request a copy of the investigative report, together with the supporting documentation upon which the report relies in making its findings.

Kindly provide the above report and findings to me as soon as possible in order for my Ministry to consider same expeditiously.

Having had a preliminary meeting with the proxies of Government's co-shareholders (Metbank and World Eagle) today, to discuss the request for additional capital funds, it is my intention to review the said report, provide it to Metbank and World Eagle for response and thereafter make a submission to Cabinet on the matter on behalf of my Ministry.

52. The Minister of Industrialization, Trade and SME Development was provided with the documents as requested. Despite the due date imposed by the Bank (13 June 2017), the Bank received a further letter from the Minister of Industrialization, Trade and SME Development on the 15th of June 2017 (annexure "BON43"), seeking an extension of a fortnight (2 weeks) in order to be able to decide on an executive level on whether government, as the majority shareholder, should or should not recapitalize SME Bank. The Bank responded that due to the fact that SME Bank faces serious liquidity challenges, the Bank could only grant an extension until 21 June 2017 (annexure "BON44").

53. On 21 June 2017, a letter was received from the sixth respondent (annexure "BON45"). In terms of that letter the sixth respondent (representing the first respondent's majority shareholder), unequivocally stated that –

53.1 all avenues have been exhausted in terms of SME Bank recapitalization from the majority shareholder perspective;

53.2 there are thus no resources available to ensure timely recapitalization of SME Bank as per the Bank's request; and

53.3 the sixth respondent looked forward to further consultation on the matter as the Bank contemplated and invoked its powers in terms of the Act.

54. My clear understanding from my interactions with the sixth respondent is that Government, as the majority shareholder, has given up on the resuscitation of SME Bank and now favours the winding up of SME Bank on an urgent basis. This much is also confirmed by subsequent correspondence received from the Minister of Finance. I refer to annexure "BON46" hereto.

55. On 23 June 2017 correspondence was received from attorneys representing the minority shareholders of SME Bank (annexure "BON47"). The Bank replied ("BON48"). I refer to that reply. Until date, there has been no further correspondence received from the minority shareholders. Earlier calls for capitalization came to naught. I have little doubt that the renewed call for capitalization will similarly produce no positive results. Given the present circumstances in which SME Bank finds itself, the launching of this application could simply not be held back any longer.

ACTUAL INSOLVENCY

56. Section 1 of the Act, provides that "insolvent", in relation to a banking institution, includes a banking institution, (a) of which the liabilities exceed its assets; or (b) which has committed an act of insolvency in terms of the Insolvency Act, 1936 (Act 24 of 1936).

57. The Bank has performed calculations to confirm the impact of the impairment of the investments, once effected, and has found that the losses of the investments (based on unlikelihood of recovery) will have a total impact of NAD 175 million on the balance sheet and income statement of SME Bank. The Investment Recoverability and Solvency Report, referred to above, reflects the impact on the balance sheet of SME Bank as a negative position of NAD 59.4 million as at 28 February 2017. The confirmatory affidavit of the author of the Investment Recoverability and Solvency Report, Ms Karin Elago, will accompany this application.

58. As far as the Bank is concerned, for all intents and purposes, the “investments” in South Africa or elsewhere are unsound, and there is no reliable evidence that such investments will be recovered. This conclusion is based on the findings of the investigations which are expounded on herein. From the conclusion that the Bank drew from the above reports, it is evident that investment impairment of SME Bank, will deplete its current capital and result in liabilities exceeding assets, thereby rendering SME Bank insolvent.

59. I annex a report relevant to SME Bank, dated 23 June 2017 and signed by Mr Nel (annexure “BON49”). It makes for concerning reading. I refer thereto and pray that same be incorporated herein by reference. I also refer to Mr Nel’s confirmatory affidavit. He confirms the content of the report and that it is based on financial information obtained by the Bank from the SME Bank. Table 2 reflects the revised balance sheet position as at 31 March 2017, and reflects that the total assets of the SME Bank, as at 31 March 2017, total some NAD 997,966,000 while the total liabilities total some NAD 1,160,031,000. The total shareholder’s equity is thus negative NAD 162,065,000. The information therein contained is verily believed to be true and accurate as at the date thereof, and reflects that SME Bank is insolvent. The solvency position is not expected to improve as the SME Bank continues to incur operating losses.

60. On 26 June 2017 Mr Nel prepared another report titled SME Bank Cash Flow, Liquidity and Solvency Scenario (annexure “BON50”) hereto. The report considers what the hypothetical impact would be (in the most unlikely event) that the funds invested with or through Mamepe are repatriated. As I have already demonstrated, this will – in the Bank’s view – not occur for reasons addressed above. Be that as it may, I refer to the report for illustrative purposes. At 22 June 2017, SME Bank held liquid assets of NAD 76.5 million, the liquid asset ratio stood at 7.2 percent or 72 percent, which is below the minimum level of 75% of the average daily amount of liquid assets required to be held. If the investments on 30 June 2017 were received (which we now know, did not occur), the liquid assets ratio would have increased to 15.5 percent and SME Bank would have been compliant with the requirements of the Minimum Liquid Asset Return (BIR-610) (Annexures “BON51”). However, these

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inflows will do very little to improve liquidity situation, due to large expected outflows that will be falling due on 30 September 2017. The liquid asset ratio is expected to drop as low as 1.54 percent and this is not likely to improve beyond that point. SME Bank will not be able to honour obligations maturing beyond September 2017 without any intervention to inject capital and liquidity into the institution. It is clear that even if the inflows of this investment materialize as reported, the liquidity position of SME Bank will not improve. SME Bank will only be able to meet the minimum liquid asset requirements up to 30 September 2017, but this position is expected to reverse, once the amount owed to Strategic Oil Storage Facility is paid out. Scenario 2 of the said report is self-explanatory, I refer thereto. Ultimately, if an additional amount of NAD 88.2 million is to be impaired by SME Bank, it will result in an insolvent position as at 31 May 2017 with a negative net capital of NAD 46.7 million. Furthermore, if these inflows do not materialize during the month of June 2017 (which they have not), SME Bank will not be able to honor its liabilities for September 2017 and will have a shortfall of approximately NAD 71.9 million. Mr Nel concludes –

It is clear from the two scenarios on the cash flows/liquidity and the solvency assessments of SME bank it is inevitable that both factual and commercial insolvency will befall the banking institution, even in the event that the investments are returned as reported, the high levels of losses will deplete the current inflows. Further the bank will continue to experience challenges with liquidity even with the expected inflows from the maturing investments amounting to NAD188.2 million, since that amount will not sufficient to meet the needs for expected cash outflow needs between July 2017 and September 2017, which will amount to NAD248.4 million. SME Bank will eventually find itself in a position where it is unable to honour its obligations as they fall due. The bank will be faced with both factual and commercial insolvency in the near future, which is inevitable.

61. This is also relevant to the following grounds for winding-up, referred to below.

COMMERCIAL INSOLVENCY

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62. In September 2016, the Bank's analysis of the top 20 depositors found material weaknesses and shortcomings in the liquidity risk measurement, monitoring and oversight within SME Bank, all of which impacted upon the overall liquidity risk management at SME Bank. Mr Nel has personal knowledge regarding the content of the targeted examination report, (annexure "BON52") and confirms the correctness of what I state herein pertaining thereto. I refer the Court to Mr Nel's confirmatory affidavit, which will be delivered herewith.

63. On or about beginning September 2016, the Bank, through its Banking Supervision Department, made enquiries about the inability of SME Bank to timely repay a deposit of NAD 150 million called upon by Namibia Water Corporation Limited ("Namwater"), which according to SME Bank's executive management, was caused by the delay in receipt of funds from the main shareholder (the Namibian Government). The liquidity challenges experienced support the finding that SME Bank has found it harder to honour its obligations regarding repayment of deposits.

64. A request was also made to SME Bank to provide loan disbursement information, to which SME Bank indicated that cash outflows from approved loans are approximately NAD 61.9 million. According to SME Bank, it pays out on average NAD 3.0 million in loan disbursements weekly. The liquidity report referred to above provides an analysis of expected outflows between 22 May 2017 and 16 June 2017.

65. The liquidity report dated 30 June 2017 is attached and marked "BON53. As at 29 June 2017, the liquid asset ratio of SME Bank stood at 5.0 percent and remained below the regulatory minimum of 10.0 percent. Liquid asset holding stood at NAD 52.8 million. SME Bank reported a liquidity shortage of NAD 53.6 million from NAD 56.1 million. Liquid assets consisted of NAD 17.4 million in notes and coins, NAD 1 thousand call account balance with Bank of Namibia, NAD 33.8 million Treasury Bills and NAD 1.5 million balances held with other banks. SME Bank has collateral pledged of NAD 34.6 million and made use of the overnight repo of NAD 33.0 million. According to Mr. Nel, the next few days will be critical for SME Bank and the bank is already below the 75 percent of the average daily amount of liquid assets required

B 29

to be held. With liquid assets of merely NAD 52.8 million, SME Bank is likely not to honour their obligations as liquid assets will soon be depleted.

66. In view of the impairment of the so-called investments in South Africa or elsewhere, SME Bank's capital will be depleted to the extent that the liabilities exceed its assets. Furthermore, the banking institution is unable to meet its liabilities. The minority shareholders have, to date hereof, not responded positively to the request for recapitalization of SME Bank. There is no basis to believe that they ever will avail capital for this purpose.

JUST AND EQUITABLE

67. In addition, the Bank respectfully submits, for reasons already addressed and as will be elaborated upon in argument, it is also just and equitable for the first respondent to be wound-up. The submission in broad terms will be that, when taking the competing interests into account, the Court will be compelled to conclude that it is correct and appropriate and fair and reasonable that SME Bank be placed in liquidation.

68. It is quite plain that the first respondent's shareholders are disinclined to recapitalise (which is clearly necessary) the first respondent.

69. Given the current financial and operational state of affairs, it is clear that the first respondent is no longer able to attain its purpose and main object, being – TO OPERATE AND TRADE AS A BANKING INSTITUTION AND TO TRADE AND/OR INVEST IN FINANCIAL MARKET INSTRUMENTS. EQUITIES. DEPOSIT INVESTMENTS. PROVIDING MONEY MARKET SERVICES. CONSULT CORPORATE CLIENTS AND ALL RELATED ACTIVITIES. I annex SME Bank's Memorandum and Articles of Association hereto, marked "BON54".

70. The substratum of SME Bank has disappeared, either as a whole or in a material part. The realization of SME Bank's object (particularly the first mentioned, which is material) has become, or will shortly, become objectively impossible (and as things presently stand). I also refer to section 62 of the Act.

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71. In addition, SME Bank neither has the required management (not here referring to the persons temporarily appointed by the Bank pursuant to its statutory intervention, and which intervention was not intended to be, and also cannot be permanent) nor the required capitalization (current or future), in order for SME Bank to attain its object. This is moreover so in the circumstances under which three of SME Bank's senior executives (Mr Joseph Banda, SME Bank's former Finance Manager; Mr Gore (SME Bank's former General Manager: Treasury and Investments) and Mr Tawanda Jiles Mumvuma, SME Bank's former Chief Executive Officer) were caused to be removed by the Bank in terms of section 56(2)(a)(iii) of the Act, read with section 56(1). There has, prior to the Bank's statutory intervention, been substantial and material mismanagement of funds. The said officers are currently challenging their removals in separate proceedings before this Court. This mismanagement has led to a loss of confidence in SME Bank as a banking institution.

72. Government (as the majority 65% shareholder) has over the years injected approximately NAD 448,774,901.00 into SME Bank. Where there has been a mismanagement of public funds, Government cannot permit the situation to continue, and the Bank is, furthermore, compelled to seek a winding up of SME Bank to protect the State from the further mismanagement and wastage of public funds. As a matter of interest, the minority shareholders have only contributed NAD 57,749,965.00.

73. When exercising a discretion and weighing up the competing interests, due regard – I would submit – must be given to the views of the majority shareholder.

ADVANTAGE TO CREDITORS

74. I respectfully submit that the winding-up of the first respondent will be to the advantage of the creditors.

75. Given the precarious financial position SME Bank finds itself in, the imminent initiation of legal proceedings by creditors cannot be excluded. In addition, prompt steps are required in order to protect, as best possible, the interests of *inter alia* persons who have deposited money and/or made investments with or through SME Bank.

76. In terms of section 364 of the Companies Act, 2004, when the Court has made an order for the winding-up of a company, all civil proceedings by or against the company concerned must be suspended until the appointment of a liquidator and any attachment or execution put in force against the estate or assets of the company after the commencement of the winding-up are void. The section contains further provisions applicable in the event of persons who have initiated proceedings wishing to proceed with same.

77. I am advised and respectfully submit that winding-up brings about a *concursum creditorum*. The claim of each creditor must be dealt with as it existed at the date of the commencement of the *concursum creditorum*, and no transaction can thereafter be entered into with regard to estate matters by a single creditor to the prejudice of the general body of creditors. A winding-up order will also preclude the unfair treatment of a specific creditor or group of creditors, and will enable a duly appointed liquidator to attend to the orderly winding up of SME Bank.

78. Further, once a liquidator is appointed, he or she can (and must) take such measures, subject to the applicable law, for the protection and better administration of SME Bank's affairs and property. Section 366 of the Companies Act, 2004 will become applicable should the winding-up relief be granted.

79. Once appointed, the liquidator who will stand in a fiduciary position to SME Bank must immediately take possession of all assets of SME Bank and apply them in satisfaction of the costs of winding-up and the claims of creditors, distributing the balance among the members according to their rights and interests in SME Bank. I refer to section 397 of the Companies Act, 2004 and the Determination on the Priority of Claims in the event of winding-up of a banking institution or controlling company (BID-26), which is annexed hereto and marked "BON55". The liquidator has defined powers, duties and functions in terms of law, and could also conduct the necessary investigations, as a matter of urgency, *inter alia* into the questionable transactions referred to above, and in terms of Part 9 of the Companies Act, 2004.

80. Further, if the financial situation at SME Bank is arrested now and a liquidator is appointed, there are some prospects that the creditors' claims will, at least in part, be satisfied.

81. If an order for the winding-up of SME Bank is not granted and the banking institution continues to trade under insolvent conditions, depositors, which are both creditors and customers of the institution, are likely to lose their funds. An inability to pay its debts may further lead to a run on the bank, which will cause the imminent dissipation of SME Bank's remaining assets, and negatively affect the public's confidence in the banking system as a whole. In addition, certain creditors may be preferred (i.e. those who are able to litigate against SME Bank and re-claim their deposits) and others (with limited resources and unable to fund protracted litigation against SME Bank) will be prejudiced. I pause to point out that should there be a run on SME Bank, the Bank intends, and reserves the right, to anticipate the hearing date in these proceedings, alternatively to initiate separate urgent proceedings seeking the appropriate interdictory relief premised on these papers, and such further oral or other evidence as may, in that event, need to be placed before this Court.

82. On the above grounds, and those which will be further addressed in argument, it will be to the benefit of the creditors if the relief sought is granted, as it will ensure an orderly exit of SME Bank out of the banking system.

URGENCY

83. I am advised and respectfully submit that applications of this nature are, by their very nature, urgent. The applicant respectfully submits that, for reasons addressed herein (and to which I refer), the applicant cannot be afforded substantial redress at a hearing in due course. Simply put, the applicant is left with no option but to launch this application on an urgent basis, particularly given what is stated above. A hearing in due course (which could well take months, if not longer, to finalise) would defeat the very purpose of this application and allow the occasioning of the very harm which the applicant seeks to avoid by launching this application now (and as one of urgency).

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84. I refer to what is stated in the preceding paragraphs, particularly those under the heading *Advantage to Creditors*. Civil proceedings by creditors may well be imminent and, for reasons already addressed above (to which I refer), it is important for a winding-up order to be granted and for a liquidator to be appointed as a matter of urgency. Such a liquidator will then be in a position to take charge of SME Bank's business and assets and to realise the business and/or the assets for the benefit of SME Bank's general body of creditors.

85. In addition, certain significant investments made at SME Bank are on call and, as a result, may be called up on short notice (24 hours). I include a list of these call funds ("BON56"). Should this happen, SME Bank would in the absence of a provisional order of liquidation, be required to pay such amounts out, to the detriment of the general body of creditors. SME Bank, at present, only has a buffer of approximately NAD 25 million to meet any such calls.

SERVICE ON THE MASTER & SECURITY

86. The application will be duly served on the Master of the High Court. In addition, attempts will be made to serve on the fourth and fifth respondents at the business and registered addresses provided. I am informed by the Bank's instructing legal practitioners that difficulties have been experienced in locating the relevant Deputy Sheriff in Zimbabwe to attend thereto. Legal practitioners in Zimbabwe will be instructed to serve these papers on the said respondents. In addition, these papers will be served on the physical address of the said respondents' legal practitioners located in South Africa. The Bank's legal practitioners will also endeavour to send the founding papers by email and facsimile (in respect of the fourth respondent, info@metbank.co.zw and in respect of the fifth respondent, by facsimile 002634733014). I respectfully submit that service in the proposed manners will be effective.

87. Due security will be given to the Master of the High Court for the payment of all fees and charges necessary for the prosecution of the winding-up proceedings and all costs of administering SME Bank in liquidation until a provisional liquidator has been appointed or, if no provisional liquidator is appointed, for all the fees and charges

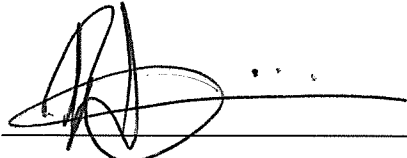
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necessary for the discharge of SME Bank from the winding-up, as will appear from the certificate of the said Master that will be filed of record.

88. The Bank proposes the appointment of Messrs Ian Robert McLaren and David John Bruni (both being seasoned and well-experienced liquidators) as the provisional and final liquidators. These persons have been approached provisionally, and have signified their consent to being appointed.

CONCLUSION

89. In the circumstances, and for the foregoing reasons, I respectfully submit that the Bank has made out the case for the relief sought in the accompanying notice of motion.

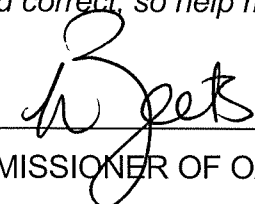


IIPUMBU WENDELINUS SHIIMI

I hereby declare that the deponent has sworn to and signed this statement in my presence at WINDHOEK on this 3RD day of JULY 2017 and he declared as follows:

- (a) that the facts herein contained fall within his personal knowledge and that he understands the contents thereof;
- (b) that he has no objection to taking the oath; and
- (c) that he regards the oath as binding on his conscience and has declared as follows:

"I swear that the contents of this Sworn Affidavit are true and correct, so help me God."



COMMISSIONER OF OATHS

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