A Thornhill Office Park, Ground Floor
Building 17 94 Bekker Road, Vorna
Valley Midrand Gauteng, 1685

T. +27 10 001 0082
F. +27 86 416 8457

26 April 2023

BOARD UPDATE ON LIQUIDATION CASE RAISED BY THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION ("CIPC") CASE 35867/2020

Dear SEI1 Shareholders,

The Board of Selective Empowerment Investments 1 ("SEI1" or the "Company") would like to thank all shareholders who participated and engaged management in the various Roadshows across the country in February & March 2023. In addition, the Board would like to thank all shareholders who participated in the Annual General Meeting held on 24 March 2023. The Board and management of SEI1 really appreciate the positive feedback from shareholders regarding the work done to turn around SEI1 and put it in a path for future success, and better returns for shareholders.

1. Background and key events

As previously disclosed in annual reports and roadshows to shareholders, a case of liquidation was raised by the CIPC in August 2020 to SEI1, based on the provisions of section 81(1)(f) of the Companies Act 71 of 2008 due to non-compliances that arose historically from 2013 – 2017. The liquidation matter was opposed by SEI1 in the Pretoria High Court on the 5th of October 2022, and judgement was reserved for the matter.

The case of liquidation was filed in August 2020, without the consideration of the work which has since taken place in SEI1, post the filing with includes:

- The Annual General Meetings, even through the difficulty of Covid-19, were held virtually, to update shareholders on the performance and other key matters of SEI1.
- Over the counter ("OTC") platform and share trades, with January 2023, marking 3 years since going live on the Singular Systems-operated OTC Express share trading platform.
- Annual Reports provided to shareholders from 2018, with the latest report published in December annually since 2020.
- Roadshows in major shareholder regions from March 2021, with recent roadshows taking place in February & March 2023.
- Newsletters from December 2020 until recently in March 2023.

2. Jugement on CIPC Liquidation Case

On Monday, 24 April 2023, SEI1's legal counsel informed the Board that the judge presiding over the case ruled in favour of the CIPC based on section 262 of the old Companies Act 1973, and not of Section 81(1)(f).

Our legal team advised the Board that there were key matters which were not considered including:

1. SEI1 being solvent, as SEI1 has over R126 million in assets and only R14 million in liabilities that are largely deferred tax assets.
2. The judgement, ignoring the fact that there is now an OTC in place meaning the shareholders may sell their shares whenever they deemed necessary.
3. Acknowledgement that the company **is now compliant yet does not factor in the fact that it is the new board that caused it to be compliant meaning there is now effective management.**
4. The judgment could set a very bad precedent.

A Thornhill Office Park, Ground Floor
Building 17 94 Bekker Road, Vorna
Valley Midrand Gauteng, 1685

T. +27 10 001 0082
F. +27 86 416 8457

Based on the above, SEI1's legal counsel is of the view that it cannot be just and equitable to wind up the company in the circumstances, especially given the costs of liquidation and the prejudice which SEI1 shareholders face through liquidation.

3. Conclusion and Shareholder Support

On the 25 April 2023, our legal counsel filed a notice of leave to appeal (Refer to Annexure A), which was acknowledged by the Master of the Pretoria High Court on 26 April 2023. The documentation which filed with the leave to appeal included additional information set-out under Background and key events.

Our legal counsel believes that in addition to the documentation filed, shareholder support against the liquidation of the company will also help in the appeal process. We will therefore be engaging in a series of communications with yourselves as shareholders to get this confirmation. We have set-up a link https://docs.google.com/forms/d/1A7hk8UEGsZee4yQpxJR_hdiczUZcXzrFNJL-4kHV0uk/edit in which shareholders can click on and sign a petition against the liquidation process which the Company will use in the appeal process. At present, operations continue as normal with caution being exercised as always to ensure that the Company remains stable and continues to grow.

The Board would once again thank the shareholders of for their continued loyalty and support and looking forward to engaging with you further.

Meriam Kekana
Board Chairperson

Mazvita Maradzika
Managing Director

info@seinvest.co.za
www.seinvest.co.za

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 35867/2020

In the matter between:

SELECTIVE EMPOWERMENT INVESTMENTS 1 LTD	Applicant
-and-	
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Respondent
In re:	
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Applicant
-and-	
SELECTIVE EMPOWERMENT INVESTMENTS	Respondent

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

KINDLY TAKE NOTICE that the Applicant intends to apply to the above Honourable Court on a date and time to be determined with the Registrar, for leave to appeal to the **Supreme Court of Appeal**, alternatively the **full bench of this Court** against the whole judgment and the orders of **Acting Judge M Snyman** delivered on the 24th day of April 2023.

TAKE FURTHER NOTICE THAT the grounds for the application for leave to appeal are the following:

1. The Applicant brought the main application seeking the winding of the Respondent on the basis that it is a solvent company, and in the alternative that it is just and equitable to wind up the Respondent. The Court misdirected itself in respect of the issues raised below in this application.

Locus standi argument (in terms of Section 81(1) (f) and on the basis of just and equitable basis

1.1. The learned judge misdirected himself on the true inquiry for purposes of determining whether the applicant has legal standing or not in relation to relief in terms of Section 81(1) (f) **(the first species of relief)** because the relevant section provides jurisdictional facts for that purpose itself. In order for the applicant to have jurisdiction in terms of this provision, (a) the company to be wound up must be solvent (b) the company, its directors or prescribed officers or other persons in control of the company are acting or have acted in a manner that is fraudulent or otherwise illegal, the Commission or Panel, as the case may be, has issued a compliance notice in respect of that conduct, and the company has failed to comply with that compliance notice and within the previous five years, enforcement procedures in terms of this Act or the Close Corporations Act, 1984 (Act No. 69 or 1984), were taken against the company, its directors or prescribed officers, (c) or other persons in control of the company for substantially the same conduct, resulting in an administrative fine, or conviction for an offence. The aforegoing are the peremptory jurisdictional facts which we say it is the requirements upon which the commission may come to court for purposes of this inquiry.

1.2. For the **(second species of relief)** which is winding up on the basis that it is just and equitable to wind up a **solvent** company, the Applicant lacks locus standi to bring such an application and indeed the relevant section does not contemplate such instances where the Applicant as a Commission (or Panel) may bring applications of such a nature. The relevant section limits such applications for persons only as contemplated by Section 81 (c), (d) and (e) and not for persons envisaged in terms of Section 81(1) (f)[1]. The legislature was clear and unmistaken in this issue.

1.3. The Applicant does not have locus standi to bring application for winding up of companies on the basis that it is just and equitable to do so, and this Court cannot extend the meaning of the legislature by any invoking purposive interpretation. It is submitted the legislature was very intent to exclude instances where the Applicant can seek such a species of relief in relation to winding up solvent companies on the basis of what it considers just and equitable and the Court in relying on Section 344[2] of the repealed Companies Act misdirected itself.

1.4. The findings of fact and law as contained in the judgment on the basis of just and equitable for purposes of locus standi when the Applicant sought to wind up the Respondent are patently wrong and beyond the reach of the Applicant and the court acted *ultra vires*. In any event, the Court is equally wrong and misdirected itself because the determination of just and equitable on the basis of possible insolvency of any company during the process of dissolution in terms of Section (81) (1) (f) is not contemplated for purposes of Section 79 (2) and (3)[3]. The learned judge misdirected himself in relation to this inquiry as contemplated in Section 79 (3) in that it requires **a further application** by any

---

1 Act No: 71 of 2008.

2 Act 61 of 1973.

3 Act No: 71 of 2008

interested party and the Applicant in law cannot be such an interested party.

1.5. The learned judge further misdirected himself on the proper legislative construction of Section 79 (2 read together with 79 (3) in respect of the circumstances in terms whereof a company may be wound up on the basis that it is just and equitable inclusive of insolvency while there is an ongoing application to dissolve a company while solvent[4]. In the present case, Section 79 (3) application is not brought by the Commission and the Court had no jurisdiction to invoke Section 79 (3) in making the findings it made at paragraph 106-112 for purposes of what is just and equitable.

1.6. The relevant section reads as follows:

"If, at any time after a company has adopted a resolution contemplated in section 80, or after an application has been made to a court as contemplated in section 81, it is determined that the company to be wound up is or may be insolvent, a court, on application by any interested person, may order that the company be wound up as an insolvent company in terms of the laws referred to or contemplated in item 9 of Schedule 5[5]."
[own emphasis]

1.7 The Applicant is a regulator and not an interested person for purposes of an application on the basis that it is just and equitable to wind up the Respondent. The Commission may only apply to court to dissolve a solvent company within the four corners of Section 81 (f) and the relevant section provides no further jurisdictional facts for winding up in terms of the engaged section.

---

4 Judgment para 57 p16.

5 Section 79 (3) of Act No: 71 of 2008.

1.8 In order for the Applicant to have locus standi to wind up a company which is solvent on the basis that it is just and equitable it cannot do so on the basis of Section 81(1) (f) and the Applicant is enjoined to establish an interest beyond being a regulator in order to have jurisdiction.

1.9. In the premise, the definition of an interested person must be beyond just being a regulator, the Applicant is required to show that it is entitled to bring the application for liquidation within the context of the legislative provision[6] it relies upon on the basis of demonstrable interest to itself beyond requiring compliance. In deciding what is just and equitable the Court determines that it is just and equitable to finally liquidate the Respondent absent (a) locus standi and (b) demonstrable interests to the Applicant besides its claim that it is a regulator which is outside the purview of the legislative provision relied upon for this application. It is apposite to point out that at no point was the court seized with an application in terms of Section 79 (3) from which it derives the meaning of <u>any interested person</u>.[7]

1.10 The Court for its conclusions relies on Section 344 of the repealed Companies Act8 when the provisions relied upon are of no force and effect. **(this section is not applicable any longer for solvent companies – even on just and equitable winding up basis)**

No basis for winding up on the basis of just and equitable

6 Section 80(1) (f) of Act No: 71 of 2008.

7 Judgment para 106-112.

8 Act No: 61 of 1973.

2 The Court misdirected itself on the pleaded case in as far as just and equitable

2.1 The Applicant avers that the applicant is liable to be wind up on the basis of Section 81 (1) (f), alternatively on the basis of Section 108 (6) on the basis that it is just and equitable to do so[9].

2.2 The relevant read as follows:

> **"108. Restrictions on allotment. —(**1) A company that has offered securities to the public must not allot any of those securities or accept any subscription for any of those securities unless—
>
> (6) If the circumstances contemplated in subsection (2) have not been realised within 40 business days after the issue of the prospectus, all amounts received from applicants must be repaid to them promptly without interest.

2.3 The Court in judgment does not rely on this legislative provision for a basis that it is just and equitable to wind up the Respondent. The Court instead it relies on Section 79(3) to suggest it is just and equitable to wind up the Respondent. It is with respect that the court acted ultra vires and not empowered to consider any other facts not pleaded and its reliance on Section 79(3) is misplaced.

The Court may not wind up if the directors responsible resigned in relation to just and equitable

3 The directors who are responsible resigned and therefore the Court in determining whether it should wind up or not it is enjoined to deal with this fact and in not dealing with it, it misdirected itself in as far as the facts

---

9 Founding Affidavit para 80 – 83.

stand which led to the misdirection on the law in orbiting the legal concept of just and equitable.

3.1 The relevant legislative provision as reads as follows[10:]

> (3) A court may not make an order applied for in terms of subsection (1) (e) or (f) if, before the conclusion of the court proceedings—
>
> (a) any of the directors have resigned, or have been removed in terms of Section 71, and the court concludes that the remaining directors were not materially implicated in the conduct on which the application was based; or
>
> (b) one or more shareholders have applied to the court for a declaration in terms of section 162 to declare delinquent the directors, if any, responsible for the alleged misconduct, and the court is satisfied that the removal of those directors would bring the misconduct to an end.

3.2 Even in the event, that the Court were to suggest that it was just and equitable to wind up the company when all is equipoised, it would not be just and equitable to wind up the company when the current directors have taken a sustainable path in contrast to what occurred before them.

4 It is submitted that this application for leave to appeal must be granted on the basis that[11]:

4.1 The appeal would have a reasonable prospect of success.

---

10 Section 81(3) of Act No: 71 of 2008.

11 Section 17 of Act No: 10 of 2013.

4.2 There is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration and;

4.3 The appeal would lead to a just and prompt resolution of the real issues between the parties.

TAKE NOTICE THAT, the Applicant reserves the right to amend the grounds of appeal before the date of the hearing for leave to appeal.

THUS DONE AND SIGNED IN PRETORIA ON THIS DAY THE 25th day of April 2023

NKOANA MATLALA INC
1-5 RESPONDENT'S ATTORNEYS
BUILDING 1 MAINE
PAGASUS 210 AMARAND AVE
MENLYN, PRETORIA
TEL: 012 003 2879
MOBILE: 079 516 4896
Email: mmuso@nmincattorneys.co.za

AND TO THE REGISTRAR OF THE THIS HONOROUBLE COURT

AND TO: THE STATE ATTORNEY
ATTORNEYS FOR CIPC
GROUND FLOOR SALU BUILDING
255 THABO SEHUME STREET

PRETORIA

EMAIL: wmotsepe@justice.gov.za

AND TO: THE MASTER OF THE HIGH COURT

SALU BUILDING

316 THABO SEHUME STREET

PRETORIA