



Est. 1892

TongaatHulett®

Takeover Regulation Panel

Attention: Mr A Nikani

19 January 2022

Dear Sirs

APPLICATION IN TERMS OF SECTION 119(6) OF THE COMPANIES ACT, 2008 AS AMENDED, FOR A RULING EXEMPTING, INTER ALIA, MAGISTER INVESTMENTS LIMITED FROM THE OBLIGATION UNDER SECTION 123 OF THE COMPANIES ACT, 2008 TO MAKE A MANDATORY OFFER TO SHAREHOLDERS OF TONGAAT HULETT LIMITED

1. Introduction

- 1.1 This application is sent to you by Tongaat Hulett Limited, a company incorporated in the Republic of South Africa with registration number 1892/000610/06 (**THL**), and on behalf of Magister Investments Limited, a private limited company registered in accordance with the laws of the Republic of Mauritius with registration number: C125293 GBL (**Magister**).
- 1.2 As a public company, THL is a regulated company as contemplated in section 117(1)(i) of the Companies Act, 2008, as amended, (**Companies Act**) as read with section 118(1) of the Companies Act.
- 1.3 THL has one class of authorised and issued shares, being ordinary shares which are listed on the Main Board of the Johannesburg Stock Exchange (**THL Shares**).
- 1.4 The purpose of this application is to request an exemption in terms of section 119(6) of the Companies Act from the possible future obligation of Magister, Magister Related Parties, Magister Inter-related Parties, other Members of the Magister Group and Magister Concert Parties to make a mandatory offer under section 123 of the Companies Act to the shareholders of THL (**THL Shareholders**).
- 1.5 Capitalised words used in this application which are not defined in this application bear the meanings ascribed to them in the “Circular” (as defined below).

2. Magister Transaction

THL entered into an underwriting, subscription and relationship agreement with Magister on 16 November 2021 (**Agreement**) in terms of which, *inter alia*, and subject to the fulfilment or waiver of certain conditions precedent:

- 2.1 THL will make a renounceable rights offer of up to R4 billion to THL Shareholders (**Rights Offer**);

- 2.2 Magister will partially underwrite the Rights Offer, by subscribing for THL Shares not taken up under the Rights Offer up to a maximum amount of R2 billion (**Underwrite**); and
- 2.3 Magister, as a 0.15% THL Shareholder, might also participate in the Rights Offer as a THL Shareholder,

(**Magister Transaction**). THL and Magister have agreed in the Agreement that the total shareholding of Magister and other Members of the Magister Group in THL post implementation of the Magister Transaction will not exceed 60% unless THL and Magister agree otherwise.

3. **Mandatory Offer Waiver**

3.1 As you are aware:

3.1.1 section 123(3) of the Companies Act provides that if, pursuant to the acquisition of a beneficial interest in voting rights attached to any securities of a regulated company, a person (together with its related and inter-related parties and concert parties) is able to exercise at least 35% (thirty five percent) of all of the voting rights attached to the securities of that regulated company, the person is required to make an offer to shareholders of the regulated company to acquire any and all remaining securities of that regulated company on terms determined in accordance with the Companies Act and the Takeover Regulations (contained in the Companies Regulations, 2011) (**Takeover Regulations**) (**Mandatory Offer**);

3.1.2 regulation 86(4) of the Takeover Regulations provides that a rights offer is exempt from the obligation to make a Mandatory Offer if independent holders of more than 50% of the general voting rights of all issued securities of the regulated company concerned have agreed to waive the benefit of such a Mandatory Offer; and

3.1.3 Takeover Regulation Panel 2/2011 contains the Takeover Regulation Panel's recommendations as the procedural guidelines with which waivers of Mandatory Offers should conform (**Mandatory Offer Guideline**).

3.2 Amongst other conditions precedent, the Magister Transaction is subject to the adoption by THL shareholders of a resolution contemplated in regulation 86(4) of the Takeover Regulations in which THL Shareholders waive the requirement for, and of the benefit of receiving, a Mandatory Offer from Magister, Magister Related Parties, Magister Inter-related Parties, other Members of the Magister Group and Magister Concert Parties, which might otherwise be triggered by the Rights Offer and Underwrite (**Mandatory Offer Waiver Resolution**).

3.3 THL distributed a circular to THL Shareholders on 15 December 2021 convening a general meeting (**General Meeting**) at which the shareholder resolutions required to enable THL to implement the Magister Transaction were proposed (**Circular**). One of those resolutions - ordinary resolution number 1 on page 50 of the Circular - is the Mandatory Offer Waiver Resolution. A copy of the Circular is **Annexe A** to this letter.

3.4 The TRP approved the Circular in a letter dated 10 December 2022, a copy of which is **Annexe B** to this letter.

3.5 The draft of the Circular submitted to the Takeover Regulation Panel was accompanied by a schedule demonstrating compliance with the requirements of Regulation 106 of the Takeover Regulations. In this regard, we refer to paragraph 1 of the Mandatory Offer Waiver Guideline.

3.6 As stated on page 25 of the Circular:

“A vital consideration in Magister’s decision whether or not to enter into the Magister Transaction is whether Implementation might result in an obligation to make a Mandatory Offer. Magister sees value investing in a publicly traded entity with the associated governance framework. Magister has high regard for the independence and expertise that the Directors bring to the business to ensure considered decisions are made, that due regard is given to risk factors and that appropriate control mechanisms are in place. Magister accordingly advised that it would not proceed with the Magister Transaction unless the Mandatory Offer Waiver Resolution is adopted, and it is exempted by the TRP from the obligation to make a Mandatory Offer.

Without the Underwriting, there is a real risk that, from a commercial perspective, the Company will not be in a position to proceed successfully with the Rights Offer. Magister not proceeding with the Underwriting will accordingly negatively impact the Company’s ability to reduce its indebtedness to the South African Lenders, and, in the Board’s view, be prejudicial to the Company’s best interests, and as a consequence the best interests of Shareholders and other stakeholders.

This being the case, the Company is seeking the Mandatory Offer Waiver in terms of ordinary resolution number 1 set out in the Notice of General Meeting. This will provide Magister with comfort that, by agreeing to the Magister Transaction, Magister will not expose itself, or any Magister Related Parties, Magister Inter-related Parties, other Members of the Magister Group and Magister Concert Parties to the risk of having to make a Mandatory Offer.”

3.7 As stated on pages 25 and 26 of the Circular - in this regard we refer to paragraph 2 of the Mandatory Offer Waiver Guideline:

“The TRP has advised that it is willing to consider an application to grant an exemption from the obligation to make a Mandatory Offer if the Mandatory Offer Waiver Resolution is adopted.

Any Shareholder who wishes to make representations relating to the exemption will be entitled to make such representations to the TRP before a ruling is made by the TRP. Representations should be made in writing and delivered by hand, posted or emailed to the addresses set out below; provided that the representations must reach the TRP by no later than 17:00 on Friday, 14 January 2022 in order to be considered.”

3.8 It is our understanding that no such representations have been made by THL Shareholders.

3.9 The Magister Transaction is also subject to the following condition precedent:

“the TRP Waiver Ruling having been granted by the TRP, and such ruling having been obtained unconditionally, or subject to Acceptable Conditions; and either:

- no Person having applied to the Takeover Special Committee for a hearing regarding the TRP Waiver Ruling within 5 (five) Business Days after the TRP Waiver Ruling is announced on SENS; or*

- *if any Person or Persons has/have applied to the Takeover Special Committee within that 5 (five) Business Day period for a hearing regarding the TRP Waiver Ruling, the Takeover Special Committee confirms the TRP Waiver Ruling, or otherwise exempts Magister, Magister Related Parties, Magister Inter-related Parties, other Members of the Magister Group and Magister Concert Parties from having to make a Mandatory Offer as a result of the Rights Offer and the Underwrite, in either case either unconditionally, or subject to Acceptable Conditions”.*
- 3.10 The “TRP Waiver Ruling” is defined on page 12 of the Circular as “a ruling to be requested from the TRP exempting Magister, Magister Related Parties, Magister Inter-related Parties, other Members of the Magister Group and Magister Concert Parties from having to make a Mandatory Offer as a result of the Rights Offer and the Underwrite”.
- 3.11 The General Meeting was held on 18 January 2022. As was announced on the JSE Stock Exchange News Service on 18 January 2022, all resolutions, including the Mandatory Offer Waiver Resolution, were approved by the requisite majority. The Mandatory Offer Waiver Resolution was approved by 77.30% of the votes exercised thereon. A copy of the announcement is **Annexe C** to this letter. In this regard we refer to paragraph 3 of the Mandatory Offer Waiver Guideline.
- 3.12 As stated in the Circular:
 - 3.12.1 “Magister has advised that it is controlled by Mauritian International Trust Company Limited as Trustee of the Casa Trust, a trust operating for the benefit of Hamish Rudland, his wife, and their children”; and
 - 3.12.2 “THL has been advised by Magister that the sole shareholder and director of Braemar [Trading Limited] is a member of the Rudland family, Adrienne Rudland”, and Braemar Trading Limited (**Braemar**) beneficially owns “c. 9.98% of the issued THL Shares.
- 3.13 It is our understanding that none of Magister, Braemar or any other Member of the Magister Group or Magister Concert Party voted on the Mandatory Offer Waiver Resolution, and that only independent holders of THL Shares exercised votes on the Mandatory Offer Waiver Resolution. Accordingly, independent holders of more than 50% of the general voting rights of all issued THL Shares have agreed to waive the benefit of a Mandatory Offer.

4. Request for a ruling

- 4.1 In light of the above, THL and Magister hereby request a ruling exempting Magister, Magister Related Parties”, Magister Inter-related Parties, other Members of the Magister Group (including Braemar) and Magister Concert Parties from the potential future obligation to make a Mandatory Offer to THL Shareholders, and from any requirement (if any) to obtain a compliance certificate, by reason of the Magister Transaction.
- 4.2 It is submitted that such an exemption is reasonable and justifiable in the circumstances having regard to the principles and purposes of the Takeover Regulations, the provisions of the Circular and the Mandatory Offer Waiver Resolution passed at the General Meeting. THL and Magister respectfully reserve the right provide greater detail in this regard, if required.
- 4.3 If this ruling is granted, then, as contemplated in the Mandatory Offer Waiver Guideline, THL will “make an Announcement of the ruling and inform shareholders that they may request the

Takeover Special Committee to review the ruling within 5 business days of the Announcement The announcement will be provided to the Takeover Regulation Panel for approval before it is released.

Yours faithfully



Type text here

Johann van Rooyen
Group Company Secretary
Tongaat Hulett Limited

ANNEXE A

CIRCULAR

Amanzimnyama Hill Road, Tongaat, 4400 • P O Box 3, Tongaat, 4400, KwaZulu-Natal, South Africa
Telephone: +27 32 439 4000 Fax: +27 32 945 3333 • www.tongaat.com

Tip-offs anonymous - Email: Tongaat@tip-offs.com Website: www.tip-offs.com FreeCall: 0800 212 187

Tongaat Hulett Limited Registration Number 1892/000610/06

ANNEXE B

TRP APPROVAL LETTER

Amanzimnyama Hill Road, Tongaat, 4400 • P O Box 3, Tongaat, 4400, KwaZulu-Natal, South Africa
Telephone: +27 32 439 4000 Fax: +27 32 945 3333 • www.tongaat.com

Tip-offs anonymous - Email: Tongaat@tip-offs.com Website: www.tip-offs.com FreeCall: 0800 212 187

Tongaat Hulett Limited Registration Number 1892/000610/06

ANNEXE C

RESULTS ANNOUNCEMENT

Amanzimnyama Hill Road, Tongaat, 4400 • P O Box 3, Tongaat, 4400, KwaZulu-Natal, South Africa
Telephone: +27 32 439 4000 Fax: +27 32 945 3333 • www.tongaat.com

Tip-offs anonymous - Email: Tongaat@tip-offs.com Website: www.tip-offs.com FreeCall: 0800 212 187

Tongaat Hulett Limited Registration Number 1892/000610/06