



# Takeover Regulation Panel

a member of **the dti** group

02 June 2022

To

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Dear Sirs

**RULING: MAGISTER INVESTMENT LIMITED RELATED AND/OR INTERRELATED PARTIES: INVESTIGATION**

1. I refer to the Takeover Special Committee’s (the “**TSC**”) ruling (the “**TSC Ruling**”) issued on or about 18 March 2022 in relation to a matter involving Artemis Investments Proprietary Limited, Louis Marie Joseph Robert Maingard, Karl Maingard Family Trust, Anton Maingard Family Trust, Paul Cyril Maujean, Marie Joseph Gerhard Guy Francois Mamet, (collectively the “**applicants**”), Magister Investments Limited (“**Magister**”) and Tongaat Hulett Limited (“**Tongaat**”).
2. The TSC at paragraph 23 of the TSC Ruling, directed the Takeover Regulation Panel (the “**Panel**”) to investigate allegations made by the applicants that Ebrahim Adamjee is an inter-related party with Magister and that Betelgeux Investments Proprietary Limited is “probably” an inter-related party with the Magister, through Ebrahim Adamjee. The Panel’s investigation was conducted in accordance with Section 169 of the Companies Act, 71 of 2008 (the “**Companies Act**”).
3. By way of background, on or about 5 October 2021, Tongaat wrote to the Panel in relation to a potential Rights Offer in relation to which Magister, its related parties, its inter-related parties and its concert parties (“**Magister Group**”) would be the underwriter of the Rights Offer to Tongaat’s shareholders (the “**Transaction**”) and would subscribe for the shares in Tongaat not taken up under the Rights Offer. The Transaction envisaged that Magister Group would act as an underwriter, provided that it is exempted from making a mandatory offer under Section 123 of the Companies Act in the event that it underwrites 35% or more of the issued shares in Tongaat.
4. The exemption process contemplates an application for dispensation following the passing of a waiver resolution by the independent shareholders of Tongaat under Regulation 86(4) of the Takeover Regulations. Regulation 86(5) of Takeover Regulation however, nullifies

the waiver resolution should “... *any acquisitions are made by an acquirer or a subscriber or underwriter, or by any of their respective concert parties, in the period between the transaction announcement and date of the waiver*”. The applicants alleged that the Magister Group contravened Regulation 86(5), and as such the waiver resolution is a nullity, and on that basis the Exemption Ruling must be withdrawn.

5. On or about 17 November 2021, Tongaat issued an announcement informing the market of the underwriting, subscription and relationship agreement between Tongaat and Magister. In terms of the agreement, Magister committed R2 billion to partially underwrite the Rights Offer. On 10 December 2021, the Panel approved the publication of the Tongaat Regulation 86(4) circular to shareholders in relation to the waiver by independent shareholders of the mandatory offer in terms of Section 123 of the Companies Act, from the Magister Group, which may be triggered by the Rights Offer.
6. On or about 18 January 2022 Tongaat issued an announcement that the ordinary resolution contemplated in Regulation 86(4) was passed by the requisite majority. On or about 19 January 2022 Magister, Tongaat on behalf of the Magister Group applied for a ruling to be exempt from Chapter 5 Part B and C, and the Takeover Regulations as contemplated in Section 119(6) of the Companies Act. On or about 20 January 2022, I issued a ruling approving the application by the Magister Group to be exempt from making a mandatory offer to Tongaat’s shareholders. On 25 January 2022 Tongaat sought further details in relation to our exemption ruling: on the same date, I supplemented the exemption ruling (the “**Exemption Ruling**”).
7. On 27 January 2022, the applicants submitted a notice of appeal to the TSC to appeal the Exemption Ruling issued by the Panel alleging, *inter alia*, that the Magister Group contravened Regulation 86(5), and as such the waiver resolution is a nullity. On 25 February 2022, the TSC heard the appeal from the applicants and Magister as well as Tongaat. On 18 March 2022, the TSC issued its ruling and dismissed the allegations by the applicants. However, the TSC directed the Panel to investigate the allegation relating to

Regulation 86(5), that Ebrahim and Magister are inter-related parties and Betelgeux is “probably” an inter-related party with Magister, through Ebrahim.

8. On 22 March 2022, in my capacity as the Executive Director of the Panel, I appointed Mr. Zano Nduli, who is the Deputy Executive Director of the Panel, as an inspector (the “**Inspector**”) in terms of Section 209(1) of the Companies Act to further investigate the allegation made by the applicants pursuant to the TSC Ruling of 18 March 2022. Consequently, the Inspector commenced the investigation on 22 March 2022 as set out in the Inspector’s report submitted to me on 31 May 2022, herein attached.
9. As indicated in the Exemption Ruling, Regulation 118(5) states that all rulings of the Panel are given on the assumption that all information provided to the Panel is correct and complete. I have read the Inspector’s report, and thank the Inspector for the thoroughness of the investigation process. It is not necessary to repeat the contents of the Inspector’s report in this ruling, save to say that the information on which the Exemption Ruling was based was incorrect or incomplete.
10. I am persuaded by the outcome of the investigation and the recommendations of the Inspector. For reasons set out in the Inspector’s report, I hereby declare the waiver resolution a nullity, rendering the same of no legal force or effect. Further, for the same reasons advanced by the Inspector in his report, I hereby withdraw the Exemption Ruling in terms of Regulation 118(6) of the Takeover Regulations.
11. The effect of this ruling is that should Magister wish to underwrite the Rights Offer herein contemplated, and reach the bright line of 35% of the total issued share capital in Tongaat, Magister, acting alone or with its concert parties, will be compelled to make a mandatory offer to the shareholders of Tongaat. Further, should Magister, acting as a shareholder, reach the bright line of 35% of the total issued share capital in Tongaat, Magister, acting alone or with its concert parties, will be compelled to make a mandatory offer to the shareholders of Tongaat. Furthermore, should any of the concert parties of Magister reach the bright line of 35% of the total issued share capital in Tongaat, Magister, acting alone

or with its concert parties, will be compelled to make a mandatory offer to the shareholders of Tongaat.

12. The Panel did not, in making this ruling, consider the commercial advantages or disadvantages of the proposed transactions in accordance with section 201(3) of the Act. Further, the parties' attention is drawn to Regulation 118(8) stating:

*“Any person issued with a Ruling of the Panel may apply to the Takeover Special Committee for a hearing regarding the ruling within –*

- (a) 5 business days after receiving that Ruling; or*
- (b) Such longer period as may be allowed by the Committee on good cause shown.”*

Please do not hesitate to contact the Panel should you wish to discuss.

Yours faithfully,



**TAKEOVER REGULATION PANEL**  
**Andile Nikani**  
**Executive Director**