

OUR REFERENCE

BS Jennings/lv/D.508

YOUR REFERENCE

5 August 2016

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To: The Trustees of the Durban High School Foundation Trust

Attention: Rob Mutch

Per E-mail: rmutch@dhsfoundation.co.za

Dear Sirs

PROTECTOR'S REPORT

In my capacity as protector, the Compliance Attorneys sent me copies of the following on 28 July 2016: –

1. Minutes of the four Trustee Meetings of the DHS Foundation Trust held during the 2015 calendar year;
2. the Compliance Questionnaire for the Trust's financial year ended 31 December 2015, signed off by BDO South Africa Incorporated;
3. the Trust's Annual Financial Statements for the year ended 31 December 2015;
4. a Compliance Certificate, dated 27 July 2016, signed by Shepstone & Wylie, the Trust's "Compliance Attorneys".

I have perused all of the above documents and have noted that no irregularities are reported or otherwise apparent save for the following: -

1. In the Compliance Certificate, the Compliance Attorneys indicate that there were four meetings of the Trustees held during 2015 but that "*none of the meetings was designated as an Annual General Meeting*". It is apparent therefore that they were not given a copy of the Minutes of the AGM held on 19 November 2015. Clearly it is important, going forward, that they be furnished with all of the necessary documents to facilitate their compliance report. As it transpires, it appears that there was compliance with the requirements of clause 22 of the Deed of Trust relating to the holding of a general meeting although it is not clear, from the documents sent to me, whether notice of not less than 30 (thirty) business days

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DIRECTORS B Mgaga (Chief Executive Officer) BS Jennings (Chairman) BM Bernardis-Larratt YL Boden AS De Lange IAE Esat PL Forbes AW Liebenberg
PP Magwaza SM Maphumulo VJ McDonald RGJ Meneses SM Nyasulu GC Palmer S Pather GF Phillips DH Ramsay BA Rist CJ Seger HJ Stephenson
EXECUTIVE CONSULTANTS TS Mjoli NR Pistorius AH Trikamjee DRD White CONSULTANTS MG Hands D Pistorius
SENIOR ASSOCIATES CJ Martin T Mbili JN Will FINANCIAL MANAGER R Mun-Gavin

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before the date of the AGM was given to each invitee (there is a long list of invitees in clause 22.1) and by publication on the Trust's website not less than 30 (thirty) BUSINESS DAYS before the date of the AGM. It is notable that the notice itself is not dated. Evidence of compliance with the notice requirements as set out in clause 22 of the Deed of Trust will, in future, have to be provided to the Compliance Attorneys.

2. In terms of clause 26.4 of the Deed of Trust, the Trustees are obliged to ensure that the Annual Financial Statements of the Trust, the Annual Compliance Certificate and the Notice of the Annual General Meeting are made available to the Protector within 6 months of each financial year end (that is, by the end of June). As it transpires, the Annual Financial Statements and the Annual Compliance Certificate were made available on 28 July and the notice of the AGM, (plus the Agenda thereof) held in 2015 plus a copy of the Minutes of the 2015 AGM were sent to me on 2 August 2016. The non-compliance in the above regard is not material and has in any event been remedied. Clearly the parties are dealing with a new "system" and a learning process is involved; once the parties are familiar with what is required, it should run smoothly.

The Agenda for an Annual General Meeting will normally indicate whether the written consent of the protector will be required in terms of clause 26 of the Deed of Trust. Such consent is required to facilitate the exercise by the Trustees of their power to pass any resolution to –

- (i) change the terms of the Trust Deed;
- (ii) dissolve the Trust and distribute to beneficiaries in terms of clause 24;
- (iii) change the compliance attorneys;
- (iv) change the auditors;
- (v) make any income or capital awards or loans to secondary or optional beneficiaries. (The secondary or optional beneficiaries are the beneficiaries defined in clause 5.2).

The main beneficiary, which is defined in clause 5.1 of the Trust Deed, is the school and awards or loans to the school do not require the consent of the protector.

I have considered the Agenda relating to the AGM to be held on 5 August 2016 and none of the matters contemplated in clause 26.1 are due to be dealt with at the AGM. As such, it is apparent that the prior written consent of the protector will not be required in respect of any resolutions that may be taken at the AGM.

Finally, I note that the Compliance Attorneys were unable to assess or comment on the compliance issues listed in the Compliance Questionnaire under the headings "Accounting" and "Taxation", nor in respect of the issue regarding remuneration of trustees, as they were not provided with records to facilitate such assessments. The same applied in respect of the 2014 financial year. In terms of clause 22.2.5 of the Trust Deed, the Annual Compliance Certificate from the Compliance Attorneys should confirm that all the provisions of the Trust Deed have been complied with in that year alternatively it must detail any non-compliance and which of the trustees, in their opinion, were responsible for the non-compliance. Whilst the BDO responses on their "Factual Findings Report" cover the matters which the Compliance Attorneys were not able to deal with, technically the "Compliance Certificate" is incomplete and perhaps the accounting and tax issues are best dealt with by the auditors and excluded from the matters on which the Compliance

Attorneys are required to report. This could be provided for by way of an addendum to the Deed of Trust.

With kind regards

A handwritten signature in black ink that reads "Brian". The signature is written in a cursive style with a prominent initial 'B'.

BRIAN JENNINGS
GARLICKE & BOUSFIELD INC

cc: Erica Petersen-Holmes (petersen@wylie.co.za)