



IN LIQUIDATION
MASTER'S REFERENCE T2610/2018

REPORT OF THE LIQUIDATOR, MR ANOOSH ROOPLAL, IN TERMS OF SECTION 402 OF THE COMPANIES ACT NO. 61 OF 1974, AS AMENDED ("THE ACT"), TO BE SUBMITTED AT THE SECOND MEETING OF CREDITORS TO BE HELD BEFORE THE MASTER OF THE HIGH COURT POLOKWANE ON 8 NOVEMBER 2019 AT 10 AM.



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1. INTRODUCTION

On 11 March 2018, the National Treasury placed VBS Mutual Bank ("the Bank") under curatorship in terms of section 81 of the Mutual Banks Act 124 of 1993, read together with section 69 of the Banks Act 94 of 1990.

The Minister of Finance appointed SizweNtsalubaGobodo Incorporated, duly represented by Mr. Anooshkumar Rooplal ("Rooplal"), as the curator of the Bank on 11 March 2018.

Upon application by the Prudential Authority of the South African Reserve Bank, the Bank was placed in liquidation on 13 November 2018 by the North Gauteng High Court. The Master of the High Court, Johannesburg appointed Rooplal as the Liquidator on 13 November 2018 and thereafter as final liquidator under Certificate of Appointment dated 13 August 2019. The first meeting of creditors was convened on Monday, 11 March 2019, in the Polokwane High Court and was closed on 7 August 2019.

2. GENERAL AND STATUTORY INFORMATION

2.1 Formation of the Bank

The Bank commenced business in 1982 and initially operated as the Venda Building Society. The Bank was subsequently registered as a mutual bank on 11 October 2000 in accordance with the Mutual Banks Act No 124 of 1993 under registration number VBS Mutual Bank Reg. No. 1051.

2.2 Registered office and principle place of business

When it was placed under curatorship, the Bank had branches located in Thohoyandou, Sibasa, Makhado, Durban and Johannesburg. The Credit Department was located in Thohoyandou. The Bank's corporate office is situated in Rivonia, Johannesburg.

2.3 Directors

The board and management were stripped off their powers and these were vested in the curator effective from date of curatorship (11 March 2018).

The directors and/or officers of the Bank at the time of and shortly prior to curatorship were as follows:

Name	Position
T Matodzi	Chairperson
B.L Mapogwana	Deputy Chairperson
A.M.A Ramavhunga	Chief Executive Officer
P.N Truter	Chief Financial Officer / Secretary
M. Manwadu	Non-executive director
M.V Nevhuhulwi	Non-executive director
P.A Ramikosi	Non-executive director
P.N Magula	Non-executive director
T.E Nesane	Non-executive director
T Ramawa	Non-executive director



2.4 Auditors

The external auditors of the Bank are KPMG. The internal auditors are PwC.

3. SECTION 402 (a): CAPITAL, ASSETS AND LIABILITIES

Prior to liquidation, the Bank was placed into curatorship by the Prudential Authority. This was a legal mechanism utilised in terms of the Mutual Banks Act (read together with the Banks Act) as a means to restore the Bank. Shortly after curatorship commenced, a report issued by the investigator, advocate Terry Motau on 10 October 2018, revealed that the Bank had been the victim of a fraudulent scheme and that approximately R1.89 billion had been misappropriated through a series of illicit transactions. During the curatorship process, normal banking operations were ceased, branches were downsized and closed and approximately 80% of the staff were retrenched in an effort to rationalise the Bank and to minimise costs. The Bank currently maintains a small staff complement in order to keep the collections division operational. This is necessary in order to collect all amounts owing under loans and advances that were made to the Bank's clients.

According to information established during curatorship, the financial position of the Bank at the end of curatorship was estimated as follows:

3.1 Capital

The share capital of the Bank is unverified. However, the purported shareholders of the Bank were Public Investment Corporation ("PIC"), Vele Investments (Pty) Ltd ("Vele") and other minority shareholders.

3.2 Assets

Description	Note	Realizable value/ forced sale value (ZAR)*
Claims in favour of the estate: Restitution and civil claims	1	Unknown
Claims in favour of the estate: Loans and advances	2	266 443 686
Government Bonds (pledged to SARB for SAMOS liquidity reserving requirements)	3	117 259 850
Office park building		35 000 000
Movable assets	4	Unknown
Cash and cash equivalents		1 105 170
TOTAL ASSETS		419 808 706

* These are estimates and may be materially different to what is eventually recovered /realised as part of the liquidation process.

3.3 Liabilities

Description	Note	ZAR
<u>SECURED</u>		
South African Reserve Bank (SAMOS liquidity loan facility)	3	83 078 648
<u>PREFERENT</u>		
South African Revenue Services (SARS)	5	Unknown
Employees' claims	6	617 601
<u>CONCURRENT</u>		
Municipal depositors		1 548 263 016
Business depositors		296 700 297
National Treasury/SARB	7	260 879 594
Retail depositors		75 680 758
Employees' claims	6	1 598 936
Other creditors	8	Unknown
<u>SUBORDINATED</u>		
Public Investment Corporation (PIC)	9	412 961 589
TOTAL LIABILITIES		2 679 780 439
NET ASSETS / (LIABILITIES)		(2 259 971 733)

Notes:
1. Claims in favour of the estate (restitution claims and civil litigation)

I am pursuing civil litigation against certain directors, management and their related entities that were purported beneficiaries of the fraudulent scheme. Legal action is also being taken against customers who are defaulting on their loan obligations to the Bank. These processes are time consuming and entail substantial legal costs. In those instances where I believe there are reasonable prospects of success (and which are likely to result in recoveries for the benefit of creditors), I have instituted legal proceedings. This is being done, whilst simultaneously co-operating with the relevant enforcement authorities who are investigating the criminal aspects. Recoveries are linked to the probability of legal actions being successful.

2. Claims in favour of the estate (loans and advances)

These comprise of mortgage loans, contract finance and fuel finance advances, overdrafts and overdrawn accounts, vehicle finance accounts and personal loans. Certain loans were also made to certain related parties as part of the fraudulent scheme. We have therefore estimated the recoverable amounts based on our assessment of the underlying loan portfolios (which comprised of assessing customer payment profiles, collateral provided for loans, the credit quality of the borrower and other factors).

3. SAMOS liquidity reserve requirements

The Bank holds two government instruments which are reserved as collateral for the SAMOS loan. Should the Bank default on their SAMOS loan, the Reserve Bank will have access to these instruments. The Bank is allowed to utilise 75% of the collateral reserved for intraday loans, and SARB withholds or protects 25% from being utilised for loans. The current VBS position in the SAMOS system will not allow for removal of any of the financial



instruments reserved as they are all pledged against a standing loan and the balance available falls within the protected 25% of assets.

4. Movable assets

The movable assets represent office furniture and equipment as well as entity vehicles.

5. South African Revenue Service

The amount of the SARS claim is unknown until the claim of SARS has been submitted. It should be noted by creditors that the claim by SARS is preferent in terms of the Insolvency Act.

6. Employee claims

Leave pay and retrenchment pay due to former employees and which claims have a preference pursuant to the Companies Act and in particular the Insolvency Act.

7. National Treasury/SARB

This represents the guarantee amounts paid by the National Treasury, through the South African Reserve Bank (SARB), to facilitate the repayment of up to R100, 000 per qualifying VBS retail depositor. As a result, the SARB is a creditor in the estate of the Bank (having substituted itself as a creditor for those depositors who were paid out) per the Payment of Depositors Agreement dated 9 July 2018.

8. Other creditors

The number of concurrent creditors' claims can only be determined once concurrent creditors' claim forms have been received from all creditors who claim to have rights against the Bank and proved against the estate.

9. Public Investment Corporation

This relates to the drawdown facility granted to the Bank by the PIC in terms of the Revolving Credit Facility Agreement granted to the Bank. In terms of the agreement, the facility was ring-fenced for the funding of the Contract Fuel Financing book only and was subordinated to the claims of the other creditors.

10. Liquidation and legal costs, and costs in terms of s89

The above forecasts does not include legal or other costs associated with the recovery and realisation of the assets.

DIVIDEND PROSPECTS

From the above it would appear that awards will accrue to all creditors. Should claim forms be required please contact our offices and these will be forwarded to you.

4. SECTION 402 (b): CAUSES OF THE BANK'S FAILURES

A report issued by the investigator, advocate Terry Motau on 10 October 2018, revealed that the business of the Bank was conducted in a fraudulent manner which resulted in the widespread impoverishment of the Bank's depositors, stakeholders and shareholders for the benefit of certain individuals. It emerged that the Bank had been operated fraudulently and negligently in the conduct of its affairs. The purported liquidity crisis at the Bank was mainly as a result of misappropriation of the Bank's funds.



The report was published by the South African Reserve Bank, where it was found that about R1.89 billion had been looted from the Bank by approximately 53 personalities, including Bank executives and officials between March 2014 and June 2018.

The South African Reserve Bank's Prudential Authority therefore applied for the final liquidation of the Bank as it was hopelessly insolvent, both factually and commercially. The North Gauteng High Court issued a final order on 13 November 2018 to liquidate the Bank.

5. SECTION 402 (c): REPORT UNDER SECTION 400(2) OF THE ACT

Should it be deemed necessary, a confidential report in terms of the provisions of Section 400(2) of the Act will be submitted directly to the Master of the High Court before the Final Liquidation and Distribution Account is lodged.

6. SECTION 402 (d): LIABILITY OF DIRECTORS AND /OR OFFICERS

An investigation authorised by The South African Reserve Bank into the affairs of the Bank determined that a number of individuals were responsible personally for the losses of the Bank.

I instituted sequestration proceedings against certain of these individuals and final sequestration orders were granted on five former Bank executives, Mr. Tshifhiwa Matodzi (the previous Chairperson), Mr. Andile Ramavhunga (the former Chief Executive Officer), Mr. Phillipus Truter (the former Chief Financial Officer), Mr. Phophi Mukhodobwane (the former Head of Treasury), and Mr. Robert Madzonga (the previous Chief Operations Officer and Group Executive Officer of Vele Investments).

As the final sequestration orders for Ramavhunga and Madzonga were only granted on 23 August 2019, claims for recoveries against their estates have not yet been lodged, but will be lodged in due course. It is possible that criminal actions will also be instituted by the relevant enforcement authorities against these 5 former Bank executives.

7. SECTION 402 (e): LEGAL PROCEEDINGS

There are various pending matters herein.

7.1 Pending matters instituted by the Bank

In total 119 legal claims have been instituted by the Bank.

7.2 Pending matters against the Bank

- **SME Bank of Namibia** – The Liquidator of SME Bank have launched a Section 417 enquiry and have subpoenaed VBS Mutual Bank to provide documentation regarding the relationship and transactional history with SME Bank of Namibia. I am cooperating with their investigation and have submitted the available information.



- **ALEMIE Group of Companies (Pty) Ltd** – The liquidator of this entity is claiming the return of certain funds recovered by the Bank under a mortgage bond which they claim was registered by the Bank after commencement of the liquidation proceedings. After a detailed internal investigation, I have established that the mortgage bond was indeed registered after the effective liquidation date, and our respective legal advisors are in contact to remedy this matter.
- **Other** – Given the nature of the fraud perpetrated against the bank, there may be challenges or opportunistic attempts to claim monies from the bank, to discredit the liquidator, to delay the liquidation efforts or to employ frustration tactics against claims that I have lodged against certain counterparties. We will monitor this and will keep creditors and the Master apprised as the process moves forward.

8. SECTION 402 (f): FURTHER ENQUIRY INTO THE FORMATION, PROMOTION OF FAILURE OF THE BANK

At this stage, it is highly likely that a further forensic investigation would be necessary, which will be discussed with the major creditors.

I am currently instituting legal action as and when required to recover outstanding monies. I will consider a Section 417 Insolvency Enquiry, in order to obtain additional statements and information with regards to payments and loans made by the Bank.

I am co-operating with the relevant authorities in their various investigations. This is a very time-consuming exercise that might require additional specialist staff in order to properly discharge our support and co-operation to the following institutions:

Financial Intelligence Centre
Financial Services Conduct Authority
Directorate of Priority Crime Investigation ("Hawks")
SARS Illicit Economy Unit
South African Reserve Bank
Prudential Authority
National Credit Regulator
National Prosecuting Authority of South Africa
Commission of Inquiry – Public Investment Corporation

9. SECTION 402 (g): ACCOUNTING RECORDS

The records of the Bank were obtained during the commencement of curatorship but due to the fraud that was perpetrated during the 2017 financial year and thereafter, the completeness, accuracy and validity of transactions and balances cannot be established with sufficient certainty.

Due to the pervasive nature and extent of the fraud, the compromised internal control environment and management override of internal controls which contributed to the fraud, the accounting records do not fairly present the state of affairs and business of the Bank and do not explain the transactions and financial position of the Bank.



As a result, I am restating certain information where required in order to recover the correct amounts which are owed to the Bank. This is a time-consuming exercise and is an ongoing process.

10. SECTION 402 (h): PROGRESS AND PROSPECTS OF WINDING UP/LIQUIDATION

- 10.1 In order to continue the collection efforts and to assist in the winding up of the Bank's affairs, certain former staff members were employed on fixed term contracts to assist in the liquidation process. External specialists were also contracted in to assist with the collection efforts, restating of the account balances, liaison with the enforcement authorities and overall management of the collection operations.
- 10.2 I am engaging with various potential purchasers in order to sell the advances book and other assets of the bank. Various parties have also made unsolicited offers to acquire the Bank and/or its assets, but nothing concrete has presented itself as yet. All unsolicited offerors are required to demonstrate financial capability and compliance with basic checks (background information, no PEP's, etc) before any further discussions can take place.
- 10.3 The Liquidation Account will be distributed to the Master of the High Court when this would be practical to do so.

11. SECTION 402 (i): MATTERS REQUIRING THE FURTHER DIRECTION OF CREDITORS

Such directions as may be required from creditors are contained in the draft resolutions numbered 1 to 30 which are submitted for consideration and adoption by creditors at the SECOND CREDITORS MEETING in conjunction with this report.

Creditors are requested to adopt these resolutions to enable the administration of the affairs of the Bank in liquidation to continue.

SIGNED at Rivonia on 9 October 2019

A handwritten signature in black ink, appearing to read 'Anoosh Rooplal', is written over a horizontal line.

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**VBS MUTUAL BANK (PTY) LTD (IN LIQUIDATION) (referred to as "bank, VBS, state or entity")
MASTER'S REFERENCE G2610/2018**

**RESOLUTIONS SUBMITTED AT THE SECOND MEETING OF CREDITORS TO BE HELD BEFORE THE
MASTER OF THE HIGH COURT, POLOKWANE, ON FRIDAY 8 NOVEMBER 2019 AT 10H00**

1. THAT the Liquidator's actions in that arrangements were made for banking facilities to meet the necessary administrative expenses be approved and confirmed.
2. THAT all the actions of the Provisional Liquidator/Liquidator to date hereof, be and is hereby ratified and confirmed
3. THAT the Liquidator be and is hereby authorised to engage the services of Attorney and/ or Counsel and/or Shorthand Writers for the purpose of;
 - (i) Taking any legal action that may be considered necessary in the interest of the estate;
 - (ii) Instituting or defending any action in respect of any matters affecting the estate in any Court of Law;
 - (iii) Instituting an enquiry into the affairs of the estate, and/ or matter relating thereto.
4. THAT the Liquidator be and is hereby authorised to collect any outstanding debts due to the bank in Liquidation, and for the purpose thereof either to sell or compound any of the debts for such sum and on such terms and conditions as they in their sole discretion may deem fit, or to abandon any claim which they in their sole discretion may deem, appropriate and that all legal costs incurred shall be costs of the estate.
5. THAT costs incurred in respect of travelling, whether by way of road travel or air travel, for purposes of securing assets belonging to the entity and/or conducting business of the entity subsequent to liquidation and/or investigating the affairs of the entity, costs so incurred be and are hereby agreed and ratified by the creditors to be treated as costs of administration in the estate.
6. THAT the Liquidator be and is hereby authorised to employ Auditors, specialists and/or former staff of the estate to investigate and write up the books of the entity to the date of liquidation and to produce an audited balance sheet as at that date, and to complete any necessary Income Tax and other Government Returns and that all costs so incurred shall be costs in the liquidation of the entity
7. THAT the Liquidator be and is hereby authorised to dispose of the immovable and movable assets of the entity by Public Auction, Private Treaty or Public Tender and that the mode of sale for any one or more of the assets shall be determined by the Liquidator and that all costs incurred in relation thereto be costs of administration.
8. THAT should costs be incurred for the use of a recording machine where the Government does not provide this service without costs, the costs incurred herein and the costs to obtain copies of such Court Records be allowed against the estate as costs of administration.
9. THAT the Liquidator be and is hereby authorised and empowered in his discretion to hold an enquiry into the formation, and affairs of the entity, and/or any matters relating hereto, should he deem it to be in the best interest of creditors, and to employ Attorneys and/or Counsel and/or Recording Agents, to assist in the

said enquiry to summons any person who they he deem necessary to be present at the enquiry, all costs so incurred to be cost of administration.

10. THAT the Liquidator be and is hereby authorised and empowered to investigate any apparent voidable and/or undue preference and/or any disposition of property, and to take any steps which he in his discretion may deem necessary, including the instituting of legal action and the employment of attorneys and/or Counsel, to have these set aside and to proceed to the final end or determination of any such legal action or to abandon same at any time as they in his sole discretion may consider appropriate and that all costs incurred in terms hereof be treated as cost of administration.
11. THAT in the event of any assets which is subject to a Mortgage Bond, Pledge, or other form of security not realising sufficient amounts to pay the claim of the secured creditors plus the pro-rated share costs of administration in full then the Liquidator be and is hereby authorised in his discretion to abandon such assets to the creditors concerned at an agreed valuation, subject to the payment by such creditors of a pro-rated share of the costs of administration in terms of Section 89 of the Insolvency Act, as amended.
12. THAT the Liquidator be and is hereby authorised and empowered, in his discretion to Compromise or admit any claim against the estate, whether liquidated or unliquidated claim in terms of Section 78(3) of the Insolvency Act, as amended, provided that thereof had been tendered at a meeting of creditors.
13. THAT the action of the Liquidator in utilising the services of specialists and of former VBS staff members of the entity for the purpose of collecting the debts of the entity, liaising with the relevant enforcement authorities and administering the affairs of the estate be and is hereby confirmed, and that his/her remuneration be treated as a cost of administration of the estate.
14. THAT the action of the Liquidator in utilising the services of former staff of the entity and/or representatives for the purpose of tracing assets, compiling an inventory of stock and taking possession of the assets, be and is hereby confirmed, that his/her remuneration plus travelling expenses be paid by the estate.
15. THAT the Report submitted by the Liquidator in terms of section 402 of the Companies Act, be and is hereby approved and adopted and that the further administration of the affairs of the estate be left to the discretion of the Liquidator.
16. THAT the Liquidator have the right to cancel any or all Lease Agreements entered into, and that any action taken by the Liquidator in the cancellation of any or all Leases, before the holding of this meeting is hereby ratified and confirmed.
17. THAT the costs incurred by the Liquidator in furnishing the Master of the High Court with the required fidelity guarantee and/or any renewal thereof at the rate prescribed by the Master of the High Court or at a rate in excess thereof be and are hereby agreed and ratified by the creditors, and that all future related costs be approved as costs of administration.
18. THAT the actions of the Liquidator in continuing with the collections division of the entity, which entails utilising the outsourced IT infrastructure, the core banking systems, former staff of the estate and collections specialists subsequent to liquidation, is hereby ratified and confirmed and that any costs so incurred be approved as costs of administration and paid for by the estate.
19. THAT the actions of the Liquidator in continuing with the maintenance and upkeep of the Office Park buildings; leasing of the remaining branches of the Bank; continuation of the Bank subsidiary's cell captive

collection operations (which is effectively security provided to an extent for the Bank's advances), which entails utilising systems, former staff of the estate, outsourced service providers and specialists is hereby ratified and confirmed and that any costs so incurred be approved as costs of administration and paid for by the estate.

20. THAT the Liquidator are hereby authorised to submit for determination and/or arbitration any dispute concerning the entity or any claim or demand by or upon the entity and that any costs so incurred to be costs of administration and paid for by the estate.
21. THAT it is resolved that in the event of the Liquidator having to advance funds to the estate in order to finance disbursements in respect of administration costs, of whatever nature, such loans will attract interest at a rate equal to the prime overdraft rate of a commercial bank prevailing at the time of the making of the loan and that such interest cost be admitted as a cost of liquidation.
22. THAT costs incurred by the Liquidator in maintaining, conserving and realising any assets of the estate be and are hereby ratified and confirmed and such costs be costs of administration and/or costs in terms of Section 89(1) of the Insolvency Act No 24 of 1936, as amended, If applicable and payable by the estate or the creditors as the case may be.
23. THAT the action of the Liquidator in selling the immovable property in the estate by private treaty prior to the holding of this meeting, with the consent of the Master of the High Court and/or per the extension of the powers granted by the Registrar, is hereby ratified and confirmed.
24. THAT the Liquidator is hereby authorised and empowered to pass transfer on all the immovable property registered in the name of the entity in his sole and absolute discretion.
25. THAT the action of the Liquidator in realising the assets of the entity in liquidation, with the consent of the Master of High Court and/or per the extension of the powers granted by the Registrar, prior to the holding of this meeting, is hereby ratified and confirmed.
26. THAT the action of the Liquidator to provide information as required by the various enforcement authorities (which requested information in terms of their respective legislative powers) and his continuing obligation (and related costs) to do is hereby ratified, confirmed and approved .
27. THAT the action of the Liquidator to assist vulnerable retail depositors(creditors) in terms of administrative support, direction and guidance to these depositors to access their monies which were guaranteed by the National Treasury is hereby ratified and confirmed (this represents the guarantee amounts paid by the National Treasury, through the South African Reserve Bank (SARB), to facilitate the repayment of up to R100, 000 per qualifying VBS retail depositor. As a result, the SARB is a creditor in the estate of the Bank (having substituted itself as a creditor for those depositors who were paid out) per the Payment of Depositors Agreement dated 9 July 2018).
28. THAT the action of the Liquidator to finalise the Bank's restated unaudited financial statements for the year ended 31 March 2017 and the distribution of the said financial statements to be at the discretion of the liquidator at any time as he in his sole discretion may consider appropriate is hereby ratified and confirmed and that all costs incurred in terms hereof be treated as administration costs.
29. THAT the action of the Liquidator in changing the Bank's insurance broker in order to reduce operational costs of liquidation be hereby approved and ratified.



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30. THAT the action of the Liquidator to refund mortgage and vehicle finance clients who have deposited excess funds in their loan accounts in lieu of bond cancellation charges or cancellation of charges related to the release of vehicles provided as security of the client and the requirement to such refund future clients is hereby approved and ratified.

CREDITORS

PRESIDING OFFICER