

## **OPEN LETTER NUMBER 2 TO SASCOC MEMBERSHIP**

See below three documents:

- A. Norton Rose Opinion interpretation on the vote**
- B. Mark Alexanders' vote**
- C. Kaya Majekes' vote**

### **A. Norton Rose Fulbright's opinion interpretation on the vote**

Without going into too much detail as the documents speak for themselves, we would like to point out how Norton Rose Fulbright manipulated and colluded with SASCOC's Gideon Sam, Barry Hendricks and Kobus Marais in arriving at the end result that they so desperately were looking to implement.

Clause number 5 in the document reads as follows:

*"In this instance seven members voted in favour of the resolutions and two voted against it. It was thus carried."*

They are also using Clause 1 which reads:

*"A quorum must have exercised votes for a round robin resolution to be carried. Clause 4.46 provides that a quorum at board meetings is 50% + 1 of directors. The board has 14 members and a quorum is thus 8. As indicated above, seven board members voted in favour of the resolution and two board members voted against it. A quorum was thus reached because more than 8 members voted."*

This last assertion is false and incorrect to the extreme, if you look at the response of Mark Alexander (B), you will see clearly that Mr Alexander questions fairness and clear process and that he actually does not vote yes or no and therefore does not exercise a vote. If you look at Mr Majekes' response (C) you will notice that he too questions procedure and fairness and goes further to enquire where and when the SASCOC Board took a resolution to follow the course of action implemented by Norton Rose Fulbright.

If you see his response marked (C) you will find that he also indicated that he has not voted either yes or no but in fact was questioning due and fair process.

This then means that seven (7) voted yes and five (5) questioned the process while two (2) did not participate at all, therefore they do not have a 50% + 1 quorum as they required.

#### **A. Norton Rose Fulbright opinion interpretation on the vote**

----- Original message -----

From: Barry Hendricks <[barry@prosportsa.co.za](mailto:barry@prosportsa.co.za)>

Date: 2018/01/08 12:08 (GMT+02:00)

To: Gideon Sam <[gissa@worldonline.co.za](mailto:gissa@worldonline.co.za)>

Cc: Kobus Marais <[mlwines@mweb.co.za](mailto:mlwines@mweb.co.za)>

Subject: Fwd: Round robin voting [NRFSA-DBN.FID218046]

Dear president

Herewith the opinion in favour of the dismissal as well as the letters of dismissal from NRF.

1. You have to sign the letter to Mr Reddy and instruct the acting CEO to send the other two letters immediately.
2. We can inform the membership with the supporting documentation once the staff members have received their letters.

3. The media can be informed thereafter with the necessary supporting documentation.

Regards

Barry Hendricks  
Vice President  
SASCOC

Begin forwarded message:

**From:** "Nieuwoudt, Hermann"  
<[Hermann.Nieuwoudt@nortonrosefulbright.com](mailto:Hermann.Nieuwoudt@nortonrosefulbright.com)>  
**Subject:** FW: Round robin voting [NRFSA-  
DBN.FID218046]  
**Date:** 08 January 2018 at 11:25:39 SAST  
**To:** "Barry Hendricks ([barry@prosportsa.co.za](mailto:barry@prosportsa.co.za))"  
<[barry@prosportsa.co.za](mailto:barry@prosportsa.co.za)>  
**Cc:** "Moodley, Lovanya"  
<[Lovanya.Moodley@nortonrosefulbright.com](mailto:Lovanya.Moodley@nortonrosefulbright.com)>,  
"Alexander, Murray"  
<[Murray.Alexander@nortonrosefulbright.com](mailto:Murray.Alexander@nortonrosefulbright.com)>

Dear Barry

Our various written and telephonic communications about the round robin resolution pertaining to the proposed dismissals of Messrs Reddy and Maharaj, and Ms Kelly, refer. We have now had the opportunity to consider the wording of the Constitution, the relevant provisions of the Companies Act and the common law pertaining to voluntary associations. There are a number of aspects on which you sought our view, but we only deal with one aspect, namely whether the votes as cast, carried the resolution as it is, which is in our view, determinative of the matter.

We analysed the voting papers and believe that you may have erred on your interpretation of the vote of Mr Majeke. We believe that he voted against the resolution. Accordingly the table below should be amended to reflect that out of the 14 board members, 2 did not respond to the round robin resolution, 3 abstained, 2 voted against and 7 voted in favour of the resolution:

SASCOC voting		Yes	No	Abstain	Total
Gideon Sam	President	1			1
Hajera Kajee	Deputy president			1	1
Barry Hendricks	Vice president	1			1
Merril King	Elected board member	1			1
Kobus Marais	Elected board member	1			1
Debbie Alexander	Elected board member	1			1
Mark Alexander	Elected board member		1		1
Les Williams	Elected board member			1	1
Lwandile Semilane	Co-opted board member	1			1
Jerry Segwaba	Co-opted board member	1			1
Khaya Majeke	Co-opted board member		1	1 0	1
Natalie Du Toit	Athletes commission			1	1
Sam Ramsamy	IOC				0
Anand Singh	IOC				0
		7	1 2	4 3	12

The key to this matter is the wording of clause 11.3.10. It reads "A resolution will have been adopted as a Board Resolution if it has been supported in writing by the requisite majority of the Board members in person who are entitled to exercise and exercise voting rights on the resolution proposed, and, if so adopted, such a resolution will have the same effect as if it had been adopted at a quorate Board meeting."

The use of the capitalised word "Resolution" is confusing because the word is not defined. This is of no relevance.

We considered sections 60 [shareholders acting other than at a meeting] 65 [shareholder resolutions] and 74 [directors acting other than at a meeting] of the Companies Act, 2008 and Bamford: The Law of Partnership and Voluntary Association in South Africa (third edition).

Bamford is of the opinion that the constitution of a voluntary association is subject to the ordinary rules of construction of contracts. This means that, generally speaking, the golden rule of interpretation must be applied when interpreting a constitution.

In *Coopers & Lybrand and Others v Bryant* 1995 (3) SA 761 (A) at 768A – E court confirmed the following rules of interpretation:

*The correct approach to the application of the golden rule of interpretation after having ascertained the literal meaning of the word or phrase in question is, broadly speaking, to have regard:*

(1) to the context in which the word or phrase is used with its interrelation to the contract as a whole, including the nature and purpose of the contract . . . ;

(2) to the background circumstances which explain the genesis and purpose of the contract, ie to matters probably present to the minds of the parties when they contracted . . . ;

(3) to apply extrinsic evidence regarding the surrounding circumstances when the language of the document is on the face of it ambiguous, by considering previous negotiations and correspondence between the parties, subsequent conduct of the parties showing the sense in which they acted on the document, save direct evidence of their own intentions.' [Citations omitted.]

The Supreme Court of Appeal subsequently reformulated the process of interpretation to one step, constituting the elements set out above.

The provisions of the Companies Act are only relevant to the extent that the sections contain wording similar to the wording in clause 11.3.10.

Applying the principles summarised above, our view is that:

- 1 A quorum must have exercised votes for a round robin resolution to be carried. Clause 4.46 provides that a quorum at board meetings is 50% +1 of directors. The board has 14 members and a quorum is thus 8. As indicated above, seven board members voted in favour of the resolution and two board members voted against it. A quorum was thus reached because more than 8 members voted.
- 2 An ordinary resolution is carried if the majority of the directors who exercised votes, voted in favour of the resolution. The authority for this proposition is found in the Companies Act. Section 65(7) and (9) deal with ordinary resolutions and special resolutions and provide that they are approved if the required percentage of "the voting rights exercised on the resolution" supports the resolution. Henochsberg on the Companies Act 71 of 2008 states the following about resolutions of shareholders: "*It is submitted that "votes exercised" in eg subs(9) is similar to the requirement in s 199 (5) the 1973 Act of "votes cast" and that the principles applied in the Quintessence Opportunities case supra will apply. A shareholder has two rights in respect of the voting, ie to exercise the vote or to abstain (Afrikaans: "buite stemming" ie not voting). If a shareholder decides to vote, it can be for or against and it is then a vote "exercised". A decision to abstain will therefore not be a vote exercised.*"
- 3 It is true that the learned authors question whether this approach is valid for round robin resolutions taken by either shareholders or

directors. However, this is based on the particular wording of sections 60 [shareholders' round robin] and 74 [directors' round robin] of the Companies Act. Those sections read differently to clause 11.3.10 and the issue with the wording does not present itself in this matter due to the golden rule of interpretation with regard to the wording of clause 11.3.10 as quoted above.

4 In conclusion, clause 11.3.10 means that an ordinary resolution on a round robin basis is carried when the majority of the board members who exercised a vote (meaning that they voted either for or against the resolution) voted in favour of the resolution; provided that the number of votes cast constitutes a quorum.

5 In this instance 7 members voted in favour of the resolution and 2 voted against it. It was thus carried.

Due to the fact that we are relatively certain about the legal position as set out above, we do not express a firm view on the interpretation of clause 11.2.6, which reads: "*The voting majority of the board shall consist of the votes casted by the Olympic Sports Federations or their representatives.*" Our view is that the word "consist" should not be interpreted literally but rather to mean "calculated on" as it could never have been intended that all the Olympic Sports Federations would have to vote in favour of any motion for it to be carried. We do not need to get into this interpretational question at this stage but, if it is correct, the clause means that only the votes of the representatives of Olympic Sports Federations on the board will be taken into account and, on this basis too, the resolution would have been carried.

Our advice accordingly is that the Board of SASCOC has validly resolved to summarily terminate the employment of Messrs Reddy and Maharaj, and Ms Kelly. Accordingly, the President should address the letter of dismissal to Mr Reddy and the Acting CEO should address letters of dismissal Mr Maharaj and Ms Kelly.

I attach the amended draft letters of termination.

Regards

**Hermann Nieuwoudt** | Director

Norton Rose Fulbright South Africa inc

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[hermann.nieuwoudt@nortonrosefulbright.com](mailto:hermann.nieuwoudt@nortonrosefulbright.com)

## B. Mark Alexanders' vote

From: Mark Alexander <[marka@sarugby.co.za](mailto:marka@sarugby.co.za)>

Sent: Tuesday, January 2, 2018 16:03

Subject: Re: Disciplinary hearing findings and SASCOC board round robin resolution on the matter

To: Jerry Segwaba <[sobisegwaba@gmail.com](mailto:sobisegwaba@gmail.com)>

Cc: Barry Hendricks <[barry@prosportsa.co.za](mailto:barry@prosportsa.co.za)>, Gideon Sam <[gideon@swimsa.co.za](mailto:gideon@swimsa.co.za)>, <[rsanoc2014@gmail.com](mailto:rsanoc2014@gmail.com)>, Sam Ramsamy <[helsam@mweb.co.za](mailto:helsam@mweb.co.za)>, Ms. Patience Shikwambana <[patiences@sascoc.co.za](mailto:patiences@sascoc.co.za)>, Mr. Les Williams <[sakf@mweb.co.za](mailto:sakf@mweb.co.za)>, Kobus Marais <[mlwines@mweb.co.za](mailto:mlwines@mweb.co.za)>, Merrill King <[merrill@capitolcaterers.co.za](mailto:merrill@capitolcaterers.co.za)>, Dr. Debbie Alexander <[debbie@privateclient.co.za](mailto:debbie@privateclient.co.za)>, <[kkmajeke@kkwajima.co.za](mailto:kkmajeke@kkwajima.co.za)>, <[anant@videovision.co.za](mailto:anant@videovision.co.za)>, Lwandile Semilane <[lwandi@hotmail.com](mailto:lwandi@hotmail.com)>, Natalie du Toit <[scottburn30@gmail.com](mailto:scottburn30@gmail.com)>

1. I take note of the findings by the independent Chairman.
2. I am not comfortable with us implementing these findings and punitive measures without the defendants been given an opportunity to respond.
3. I think in the interest of due process and to provide more clarity of the charges listed, we request that the defendants provide evidence in mitigation ( written or in person )
4. Based on the responses we receive implement the relevant punitive measures.

Sent from my iPhone

## C. Kaya Majekes' vote

----- Original Message -----

Subject: Disciplinary Finding Pertaining the Three Sascoc Senior Management Staff Members

From: [kkmajeke@kkwajima.co.za](mailto:kkmajeke@kkwajima.co.za)

To: gissa ,gideon

Dear Mr Sam

In light of the aforesaid matter that pertains firstly Mr Tubby Reddy, you will recall that i abstained when the board Intended to suspend him regarding the charges that were tabled at that point in time. Regarding other charges that are appearing on his charge sheet ,I'm totally not privileged to make any comments, as I don't recall the board taking a resolution regarding such.

I've noted the fact that Mr Reddy together with Mr Maharaj and Ms Kelly did not appear to represent themselves at the hearing, therefore noting the fact that our country respect everyone's rights, and we are all equal before the court of law, im not in a position respect and support a process that prevail to compromise individuals human rights.

I would expect this matter to be tabled on a board meeting based on its sensitivity and seriousness, let alone the timing whilst on holiday,it raises eyebrows and serious concern.

Therefore, i regard this process as mischievous and unfair.

Yours faithfully  
Kaya Majeke  
Sascoc Board Member  
Cell : 0732323782

Sent from my Huawei Mobile

Regards,

Tubby Reddy, Vinesh Maharaj and Jean Kelly