

GEN – General – Ms Naahied Gamielien - Former CFO and director of AYO Technology Solutions Limited
Censure imposed by the JSE on Ms Naahied Gamielien in her capacity as the former Chief Financial Officer of AYO Technology Solutions Limited (“**Company**” or “**AYO**”)

The JSE hereby informs stakeholders of the following findings in respect of Ms Gamielien:

Background

1. AYO listed on the JSE on 21 December 2017. The day after its listing on the JSE, on 22 December 2017, AYO entered into the first of three performance management agreements (“**PMAs**”) with an asset manager, 3 Laws Capital (Pty) Ltd (“**3 Laws**”), in terms of which 3 Laws would manage funds invested for and on behalf of AYO to diversify AYO’s treasury risk function.
2. At the time of entering into the PMAs, the majority shareholder in 3 Laws was Sekunjalo Investment Holdings (Pty) Ltd which held 85% of 3 Laws. Sekunjalo Investment held 61% of African Equity Empowerment Investment Holdings Limited which in turn held 49% of AYO. Therefore, 3 Laws was a related party to AYO in terms of paragraph 10.1 of the JSE Listings Requirements.
3. In accordance with the provisions of section 10 of the Listings Requirements, a related party transaction means an acquisition or disposal, or other agreement, or any variation or novation of an existing agreement, between the issuer or any of its subsidiaries and a related party, as defined.
4. Related party transactions must be categorised to determine the percentage ratios calculated as a percentage of consideration to market capitalisation or dilution of number of shares in issue. Related party transactions with a percentage ratio of more than 5% requires a SENS announcement, circular to shareholders incorporating a fairness opinion, and shareholder approval of the transaction (votes of the related party and its associates excluded), prior to completion and/or implementation of the transaction. Small related party transactions are classified as transactions with a percentage ratio of more than 0.25% but less than or equal to 5% which requires that, prior to completing and/or implementing the transaction, an issuer must inform the JSE of the transaction in writing, provide the JSE with written confirmation from an independent professional expert that the terms of the transaction are fair as far as shareholders are concerned, publish details of the proposed transaction on SENS including the fairness thereof, and if the independent professional expert finds the transaction to be unfair, then the usual related party transaction requirements referred to above apply.

Transactions with 3 Laws

5. Details of the PMAs entered into between AYO and 3 Laws are set out hereunder:

PMA1

- Verbal agreement entered into on 22 December 2017
- R70 million advanced to 3 Laws on 22 December 2017 and returned to AYO on 22 February 2019

PMA2

- Written agreement entered into on 28 February 2018 in terms of a resolution of the board of directors of AYO subject to these funds being returned to AYO by 31 August 2018
- R400 million advanced to 3 Laws on 5 March 2018 and returned to AYO on 20 August 2018

PMA3

- Written agreement entered into on 27 November 2018 in terms of a resolution of the board of directors of AYO
- R400 million advanced to 3 Laws on 29 November 2018 and returned to AYO on 22 February 2019.

6. As confirmed by AYO and recorded as such in the PMAs, the salient terms of the PMAs highlighted the following:

- No funds should be transferred to 3 Laws or to any account in the name of 3 Laws in carrying out its duties in terms of the agreements
- The funds must be placed in an AYO custodian account / AYO bank account for the benefit of AYO as are typical with such asset management agreements.
- 3 Laws is only entitled to earn a fee which is market related.
- Any investment made on behalf of AYO must be within the terms of the investment mandate set out in the PMAs.
- Any investment instruction given by 3 Laws must be made in the name of AYO and the value of the investment is recognised and recorded as part of AYO's assets in the financial statements.

7. On 12 March 2020, the Report of The Judicial Commission of Inquiry into Allegations of Impropriety at the Public Investment Corporation ("**PIC Report**") was released and published. The PIC Report included an analysis of 3 Laws' Nedbank current account indicating the movement of monies between AYO, Sekunjalo Capital (Pty) Ltd and 3 Laws. Based thereon and after robust investigation and engagement with AYO, the JSE discovered that the funds were not invested by AYO with 3 Laws in accordance with the terms and

provisions of the PMAs and that the transfer of funds to 3 Laws therefore constituted related party transactions in terms of the Listings Requirements. This was evident from the following:

- All funds were transferred by AYO directly into 3 Laws current bank account held with Nedbank and Standard Bank and not paid into a separate banking account in the name of AYO, in conflict with the express provisions of the PMAs.
- R70 million was invested with 3 Laws in terms of PMA1 on 22 December 2017, of which R35 million was deposited into 3 Laws' bank account and a further R35 million into the bank account of Sekunjalo Capital (Pty) Ltd.
- AYO's bank records reflect that on 31 August 2018 an amount of R400 million previously transferred to 3 Laws in terms of PMA2 was returned into AYO's bank account and referenced as "3 Laws Capital", however it was not returned to AYO by 3 Laws but from some other source.
- 3 Laws returned an amount of R470 million to AYO on 22 February 2019 in terms of PMA1 and PMA3 in two separate payments. On the same day that 3 Laws returned the R470 million to 3 Laws, 3 Laws received payments of R35 million from Africa News Agency (ANA) and R30 million from SGB Securities. The total of R470 million returned by 3 Laws to AYO included the monies received from ANA and SGB Securities on the same day, therefore confirming that there was no segregation of funds or accounts for purposes of AYO's investment. This was also a direct result of AYO paying the funds directly into 3 Laws current bank account.

Ms Gamiendien's conduct as a director of a listed company

8. Ms Gamiendien, in her capacity as the Chief Financial Officer and director of AYO at the time, carried out all three payments directly into 3 Laws bank account contrary to the prescripts and provisions of the PMAs and she was the signatory of the PMAs that gave effect to the transactions with 3 Laws, a related party to AYO. The Listings Requirements requires that, prior to completing and/or implementing the transactions with related parties, the JSE and the market must be informed through SENS of the details of the transactions, the approval of shareholders must be obtained (where required) or a confirmation to shareholders that the terms of the transactions were fair. Ms Gamiendien, through her actions, caused and/or contributed to AYO's breach of the JSE's Listings Requirements.
9. Furthermore, in preparing the unaudited interim financial statements for the six months ended 28 February 2018 ("**unaudited 2018 interim results**"), the Company, through Ms Gamiendien as the Chief Financial Officer at the time, omitted to disclose in AYO's unaudited 2018 interim results that an amount

of R400 million was paid to 3 Laws in terms of PMA2 on 5 March 2018 under “events after reporting period” in accordance with IFRS, specifically IAS 34.

10. Accordingly and for these reasons, the JSE found Ms Gamielien to be in breach of the following provisions of the Listings Requirements:
- a) Paragraph 8.57(a) for omitting to disclose a material investment of R400 million paid to 3 Laws on 5 March 2018 as a (non-adjusting) post-balance sheet event in accordance with IAS 34 in the unaudited 2018 interim results which directly resulted and/or contributed to AYO breaching the Listings Requirements;
 - b) Paragraph 10.4 for her role in carrying out the payments directly into 3 Laws bank account in respect of the PMAs to which she was the signatory, which payments directly resulted and/or contributed to AYO breaching the Listings Requirements; and
 - c) General Principle (v) which required her to ensure that all parties involved in the dissemination of information into the marketplace, whether directly to holders of relevant securities or to the public, observe the highest standards of care in doing so.

JSE’s decision to censure Ms Gamielien

11. Directors of issuers fulfil a critical role in ensuring that listed companies comply with the Listings Requirements. Issuers of securities listed on the JSE are only able to comply with the Listings Requirements if their directors take the appropriate actions to ensure that such issuers comply in all aspects with its provisions.
12. Directors of companies listed on the JSE are bound by and must comply with the JSE’s Listings Requirements, as amended from time to time, and undertake and agree to discharge their duties in ensuring such compliance whilst they are directors.
13. For these reasons and with reference to the JSE’s findings of breach, the JSE has decided to impose a public censure and a fine in the amount of R250 000 (two hundred and fifty thousand rand) on Ms Gamielien for her failure to comply with important provisions of the Listings Requirements.
14. In arriving at this decision, the JSE considered amongst other factors, that Ms Gamielien was constructive and transparent in admitting her shortcomings to the JSE and fully co-operated with the JSE’s investigation.

15. The fine imposed against Ms Gamiendien will be appropriated in accordance with section 11(4) of the Financial Markets Act, 19 of 2012 read with section 1.25 of the Listings Requirements which includes, inter alia the settlement of any external costs incurred by the JSE which may arise through the enforcement of the provisions of the Listings Requirements and/or in furtherance thereof.
16. The investigation into the conduct of other individuals that presided at the Company during the periods in question and who were bound by the Listings Requirements is ongoing.

29 November 2022