

GEN – General – AYO Technology Solutions Limited

Censure imposed by the JSE on AYO Technology Solutions Limited (“**Company**” or “**AYO**”)

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

#### **BACKGROUND**

1. AYO listed on the JSE on 21 December 2017. Between 2017 and 2019, AYO entered into various transactions and/or agreements with related parties as defined in the JSE Listings Requirements, namely AYO’s holding company and material shareholder, African Equity Empowerment Investment Holdings Limited (“**AEEI**”), and/or AEEI’s associates and/or subsidiaries of AYO. These transactions did not comply with the peremptory requirements for transactions with related parties stipulated in section 10 of the Listings Requirements.
2. In terms 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.
3. 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.
4. In addition thereto, in terms of paragraph 10.8 of the Listings Requirements, the JSE will require all transactions to be aggregated that are entered into by the issuer, or any of its subsidiaries, with the same

related party, and/or any of its associates, in any twelve month period and which have not been approved by shareholders or announced in terms of paragraph 10.7.

#### **TRANSACTIONS WITH 3 LAWS CAPITAL (PTY) LTD (“3 Laws”)**

5. 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 in terms of which 3 Laws would manage funds invested for and on behalf of AYO to diversify AYO’s treasury risk function.
6. 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 AEEI 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.
7. A summary of some of the important provisions of the PMAs 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

8. The provisions of the PMAs (and as confirmed by AYO) recorded that:
  - No funds may 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.

9. 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. The JSE investigated these matters, engaged with AYO and considered all the facts and information at its disposal. The facts indicated 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. In summary, the information and documentation indicated that:

- All funds were transferred by AYO directly into 3 Laws' proprietary and current bank account ("**3 Laws' bank account**") held with Nedbank and Standard Bank and not paid into a separate and/or segregated 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, on 3 Laws instruction.
- 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 by a different entity.
- 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, further 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.

10. In accordance with the principles of categorisation and aggregation as set out in section 10 of the Listings Requirements, categorisation of PMA1 in December 2017 (0.47%) and PMA2 in March 2018 (2.70%), individually and on an aggregated basis, exceeded 0.25% of AYO's market capitalisation at the time which constituted two separate small related party transactions in terms of paragraph 10.7 of the Listings Requirements. In November 2018, AYO entered into PMA3 (5.21%) which, when categorised on its own and/or with other related party transactions, exceeded 5% of AYO's market capitalisation at the time which constituted a related party transaction in terms of paragraph 10.4 of the Listings Requirements.

#### **TRANSACTIONS WITH OTHER RELATED PARTIES**

11. Stakeholders are referred to the disclosures contained on pages 57 to 60 of AYO's group annual financial statements for the year ended 31 August 2018 and similar disclosures on pages 87 to 93 of AYO's group annual financial statements for the year ended 31 August 2019 wherein AYO disclosed numerous balances and transactions with its related parties as referred to in paragraph 1 above, in accordance with the International Financial Reporting Standards ("IFRS").
12. The JSE found that several of these categorisable transactions which were implemented between March 2018 and July 2019 individually or on an aggregated basis, were classified as small related party transactions and/or related party transactions and that AYO failed to comply with the related party provisions contained in section 10 of the Listings Requirements when it proposed to enter into the transactions or prior to completing these transactions, or at any point thereafter.
13. Amongst these transactions, AYO provided 7 (seven) loans to its related parties, and the percentage ratio for these loans, individually and on an aggregated basis, exceeded 0.25% of AYO's market capitalisation at the time and therefore each of the 7 (seven) loans amounted to a small related party transaction.
14. In addition hereto, the JSE identified discrepancies in certain disclosures, information and dates contained in AYO's group annual financial statements for the year ended 31 August 2019 and in AYO's correspondence to the JSE.

### **JSE'S FINDINGS AGAINST AYO**

15. The Company did not, prior to completing and/or implementing the related party transaction with 3 Laws in respect of PMA3; the small related party transactions in respect of the 7 (seven) loans to other related parties; and the transactions with 3 Laws in respect of PMA1 and PMA2, inform the JSE and the market through SENS of the details of the transactions, confirm to shareholders that the terms of the transactions were fair and issue a circular and obtain the approval of shareholders for PMA3, as required.
  
16. Accordingly and for these reasons, the JSE found AYO to be in breach of the following provisions of the Listings Requirements:
  - (a) Paragraph 10.7 for its failure to inform the JSE, and publish details of the transactions and the opinion of the independent expert on SENS, prior to completing/implementing PMA1, PMA2 and the 7 (seven) loans to other related parties which each constituted small related party transactions;
  - (b) Paragraph 10.4 of the Listings Requirements in respect of PMA3 for its failure to comply with the applicable requirements for related party transactions at the time of, or prior to entering into the related party transaction/s;
  - (c) Paragraph 8.57(a) in respect of AYO's unaudited interim results for the six months ended 28 February 2018 in that it omitted to disclose 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;
  - (d) Paragraph 8.62(b) of the Listings Requirements in respect of AYO's annual financial statements for the year ended 31 August 2018 as AYO incorrectly recorded the R70 million paid to 3 Laws in terms of PMA1 as 'other financial assets' when this was not the case and contrary to IFRS, specifically IAS 1; and
  - (e) General Principles (v) and (vii) for failing to observe the highest standard of care when disseminating information into the market place and ensuring that the Listings Requirements promote investor confidence in standards of disclosure and corporate governance, regarding the discrepancies in AYO's group annual financial statements for the year ended 31 August 2019 as well as the true and correct facts relating to the PMAs entered into with 3 Laws.

### **JSE'S DECISION TO CENSURE AYO**

17. The Listings Requirements contain stringent regulations governing transactions and agreements with related parties to provide safeguards against parties that may take advantage of their positions as a

related party and/or exert undue influence for their own benefit. Crucial decisions undertaken by the Company such as related party transactions require the JSE and the market to be timeously informed thereof especially on matters which require investors to exercise important investment decisions or voting rights. Compliance with the Listings Requirements is aimed at ensuring investors and potential investors receive complete, relevant and important information to allow investors to make informed decisions and is simultaneously aimed at investor protection and investor confidence.

18. 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 R1 500 000 (one million five hundred thousand rand) on AYO as a result of its failure to comply with important provisions of the Listings Requirements.
19. The fine imposed against AYO 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.

**AYO'S APPLICATION FOR A RECONSIDERATION OF THE JSE'S DECISIONS AND ITS APPLICATION FOR THE SUSPENSION OF THE JSE'S DECISIONS PENDING THE RECONSIDERATION APPLICATION IN TERMS OF SECTIONS 230 AND 231 OF THE FINANCIAL SECTOR REGULATION ACT ("FSRA")**

20. On 9 December 2022, AYO applied to the Financial Services Tribunal in terms of section 231 of the FSRA for an order suspending the decisions of the JSE Ltd. On the same day, AYO also applied for the reconsideration of the decisions of the JSE in terms of section 230(1) of the FSRA. The JSE will oppose AYO's reconsideration application.
21. The JSE did not oppose AYO's suspension application, agreed not to implement the decision and sanctions pending the finalisation of AYO's suspension application, and informed the Tribunal and AYO that it will abide by the decision of the Tribunal.

22. Judge LTC Harms, the Deputy Chair of the Financial Services Tribunal dismissed AYO's application for the suspension of the JSE's decision on 21 December 2022. The JSE's decisions and the sanctions imposed pursuant to these decisions are therefore enforceable.
  
23. The investigation into the conduct of individuals that presided at the Company during the periods in question and who were bound by the Listings Requirements is ongoing.

22 December 2022