

**MINUTES**  
**OF THE 132<sup>nd</sup> ANNUAL GENERAL MEETING**  
**OF THE NATIONAL HORSERACING AUTHORITY**  
**OF SOUTHERN AFRICA, HELD ON MONDAY,**  
**13 JANUARY 2014, AT 14:30.**

**ATTENDANCE:**

**National Board Directors:** Adv A P Joubert (Chairman)  
Mr D J Pillay (Chief Executive)  
Mr C S Beyleveld  
Mr R L Bruss  
Mr W A du Plessis  
Mr G T Hawkins  
Mr R Moodley  
Mr P Rugg  
Mr L Wainstein  
Mr J M Witts-Hewinson

**Members:** Mr T Callaghan  
Mr A M Costa  
Mr M Currie  
Ms J de Nys  
Mr P Do Carmo  
Mr R Garner  
Mr S W Hartley  
Adv G I Hoffman  
Dr L Konar  
Mr D Kyriacou  
Mr W Laird  
Ms R Louw  
Adv B Maselle  
Mr R Mattheyse  
Mr R S Napier  
Mr S J Reid  
Mr T Rivalland

**Apologies:** Mr E G Anderson  
Mr C Baitz  
Mr P Jaeger  
Mr D H McGillivray  
Mr W J C Mitchell  
Mrs S Rowett  
Mr N P Sanan  
Mr R Trotter

**In Attendance:** Mr P Davis  
Mr R A R Fernandes  
Mr C B Hall  
Mr N J Roodt

## **Welcome**

The Chairman welcomed the Members who were in attendance at the 132<sup>nd</sup> Annual General Meeting of the National Horseracing Authority.

## **Quorum**

The Chairman confirmed that the requisite quorum of 20 Members was present. He declared the meeting duly constituted. He advised that a number of proxies had also been received. A schedule showing a summary of the proxies and the voting requested by the Members, who had submitted the respective proxies, was distributed.

## **Notice of Meeting**

The Chairman confirmed that a Notice of the Meeting had been published in the Racing Calendar, on The National Horseracing Authority website, shown on Tellytrack and had been sent to all Members whose e-mail addresses were on record.

### **1. Minutes of the Previous Meeting**

The Chairman confirmed that the Minutes of the Annual General Meeting held on Monday 14 January 2013 had been made available to all Members together with the Annual Report.

Adv Maselle raised an issue arising from Clause 12.6 of the Constitution which states that no Member may accept or vote in respect of more than twenty proxies from other Members. He referred to the fact that the Chairman had been granted more than 20 proxies. He said that this issue had to be resolved before proceeding to the confirmation of the Minutes as proxies had been received both in favour and against the confirmation of the Minutes.

The Chairman responded, saying that it seemed to him that his standing as the Chairman did not alter the application of this Clause and, as such, he was only entitled to vote on behalf of 20 Members. He said that, in order to then decide which proxies could be used, he considered various possibilities. The possibility of using the proxies on a first come first served basis had been considered, but rejected because it was felt that this was not a fair option. He asked Adv Maselle if he had any thoughts on a fair application of the limit on the number of proxies.

Adv Maselle expressed the view that, as there was a limit on the number of proxies that any Member may exercise and because it was not possible to decide which proxies could be used and which could not, the Chairman should not use any proxies at all.

The Chairman disagreed, saying that the Constitution provided for a Member to exercise a vote by proxy. Not voting on behalf of Members who had so requested, would be contrary to his Constitutional obligations, and would be contravening the Members' rights.

He said that, given that he should exercise votes on behalf of 20 Members, he now had to decide how those votes had to be exercised. He expressed the view that there was a distinction to be drawn between those votes where the Member had given him the discretion to vote as he saw fit and those votes where the Member had instructed him to vote in a particular manner. For this reason he had decided that the proxies where he had been given discretion on the voting, would be disregarded.

Adv Maselle said that it should also be considered whether or not the proxy form had been prescribed by the National Board, as required by the Constitution, because if it had not, the proxies would not be valid.

The Chairman confirmed that the proxy form was the same as had been used for many years. He assumed that the form had been prescribed by the National Board when it was first introduced.

The Chairman asked Adv Maselle whether he had any specific facts which might make the proxy forms invalid. Adv Maselle confirmed that he did not.

Mr Currie expressed concern that the votes of a number of Members who had given explicit instructions on how they wanted their votes to be cast, would be ignored. He said that either the Chairman should vote as instructed by all Members who had given him their proxies or that the meeting should be suspended until such time as those Members who had given the Chairman their proxies had been informed that the Chairman was only permitted to exercise 20 of the proxies.

The Chairman responded, saying that efforts had to be made to interpret the intention of the Constitution sensibly. Dr Konar added that whilst it might be a courteous gesture to delay the meeting until the Members had been informed on the limit on the number of proxies, it was not a practical solution.

The Chairman asked whether the Minutes could be approved.

Dr Konar proposed the following amendments:

Page 1, under the heading "Members" - Dr L M Konar" should read "Dr L Konar".

Page 3, Under the heading "Chairman's Report" – "Mr R T Trotter" should read "Mr R J Trotter".

The Minutes were confirmed subject to the above amendments.

## **2. Chairman's Report**

The Chairman advised that the next topic of business for the meeting was to consider the Chairman's Report. He asked Mr Witts-Hewinson, who was Chairman for the period covered by the report, to deal with any matters arising from the report.

Dr Konar reminded the meeting that at the previous Annual General Meeting he had offered his assistance with regard to Corporate Governance and adherence to the King Report. Whilst the new Chief Executive had taken up this offer it had been too late to assist with the Chairman's Report under consideration. He expressed the view that the Report fell far short of the standards set by the King Report.

He said that the King Report stated that the Chairman of an organisation should not Chair the Audit Committee or the H R Committee. The Annual Report showed that the Chairman of the NHA was also the Chair of the Audit Committee and the Transformation Committee.

He said further that the Annual Report did not show the attendance of the respective Board Members at Board and Committee Meetings. This, he said, was a serious omission.

He suggested that the Committees be constituted in accordance with the recommendations of the King Report.

The Chairman thanked Dr Konar for his kind assistance. He added that it was not his intention to Chair any other Committees.

He asked that the Chairman's Report be approved. It then was.

### **3. Audited Financial Statements**

The Chairman said that the next item on the Agenda was to receive and consider the Audited Financial Statements. He asked if any members wished to comment on the statements.

Dr Konar asked whether the Financial Statements complied with the International Standards.

Mr Fernandes, representing the NHA Auditors confirmed that this was the case.

Dr Konar pointed out that no distinction was made between the business that was conducted in South Africa and that which was conducted in Zimbabwe. This, he said, was a fundamental requirement.

Mr Fernandes responded saying that there were no transactions in the Financial Statements which affected Zimbabwe.

Dr Konar said that there should be a statement in the financial Statements to that effect. The statements should also disclose how the oversight of Zimbabwe was undertaken on a day to day basis.

Dr Konar said further that, in terms of the Auditing Professions Act, there was a limit on the time period which an Auditor may audit the accounts of the same organisation. He asked whether the current Auditor complied with this limit. It was confirmed that the current Auditor exceeded this period.

In response to a question from the Chairman, Dr Konar confirmed that it would be acceptable if the auditing of the NHA's accounts was carried out by a different person from the same firm of Auditors.

Dr Konar said that there were other deficiencies in the Financial Statements.

The Chairman asked if he could have a meeting with Dr Konar to determine how the Financial Statements could be brought up to an acceptable standard.

Mr Mattheyse expressed concerned that the Statements were prepared on a "going concern" basis. The reason for this was that the cash reserves of the NHA were reducing significantly. He asked how the funding for the proposed capital expenditure was going to be raised.

The Chief Executive explained that the proposed capital expenditure was for new laboratory equipment. Previously, the Operators had funded the expenditure. On this occasion, however, the Operators had asked that alternative sources of funding be explored. Following discussions with the Operators it was agreed that the monies would be loaned from Gold Circle. The Operators would, in turn, fund the repayment of the loan over the next five years.

Mr Mattheyse also expressed the view that the accounts were prepared in such a way that the Members could not conduct a meaningful analysis. He asked that the accounts be done in such a way that the Members could have a better understanding of the expenditure.

Mr Fernandes explained that the Board could decide whether to show particular expenditure items either with a cost centre or by type. Previously, the Board has chosen to show the expenditure within the various cost centres.

Mr Mattheyse asked where the amount collected on behalf of the TBA was shown as having been paid over to the TBA. The Chairman undertook to find out how this amount was accounted for.

The Chairman said that, with regard to Mr Mattheyse's comments regarding whether or not the NHA was a "going concern", the NHA was a non-profit organisation which, historically, was funded by the Operators. All expenditure was very carefully considered and was not undertaken without the financial support of the Operators.

In response to a question, Mr Fernandes confirmed that the auditor's fees were shown in the Financial Statements as a result of it being discussed at the previous AGM. He confirmed further that the audit of the NHA's finances took approximately 4 weeks.

The Chairman asked that the Financial Statements be adopted. It then was.

#### 4. Appointment of the NHA Auditors

The Chairman confirmed that the next item on the agenda was to appoint the NHA's Auditors.

It was agreed that Howarth, Leveton, Boner be appointed as the NHA's Auditors subject to the provisions discussed earlier in the meeting.

#### 5. Any Other Business

##### 5.1 Proposals made by Adv B Maselle

*Based on the NHA's functions, its objectives and its representations to members as well as to Parliament (in September 2013 by Mr D Pillay and Mr R Bruss that the NHA be granted statutory recognition):*

1. *to consider whether the NHA exercises public powers and its conduct is sufficiently public in nature to warrant the application of the Promotion of Administration of Justice Act No 3 of 2000.*

Mr Costa stated that, in his view, this was neither the forum nor the occasion for a discussion as proposed by Adv Maselle. He said that this proposal was a very technical legal issue and whatever considerations given, and decisions made, at this meeting would have no value. He suggested that if any member wished to obtain particular information from the NHA then that Member should make application to Management for the information. Management should refer the application to the National Board which may or may not choose to get legal advice on the matter.

Adv Maselle advised that it was not his intention that voting took place on the matters that he had raised. He said that in his correspondence, he had requested that the matters be considered. He had been surprised that the NHA has indicated that voting was to take place. As a result he had asked for certain information so that he may provide Members with more information. His request had been denied. Nevertheless, it was not his intention for any decisions to be taken through a voting process.

Adv Maselle proposed that the Board consider his proposals and obtain legal advice.

The Chairman explained to the meeting that the PAJA Act dictated that when any organ of state or any public organisation or body dealt with matters which affected the rights of any person, then that public organisation or body was governed by the provisions of the Act. In terms of the Act all decisions taken by the public organisation or body had to be procedurally fair, had to be taken without any mala fides and had to be rational. The Chairman said that although the NHA was not an organ of state nor was it technically a public body, there was case law to suggest that the provisions of the Act might extend to organisations such as the NHA.

He said that the National Board was very alive to this issue and has kept a close eye on how it evolved in recent years. He confirmed that the National Board would continue to monitor this closely.

Mr Currie suggested that all the matters placed on the Agenda for voting should be referred to the National Board for its consideration as they were not matters which could be resolved at an AGM.

The Chairman said that the AGM was the only opportunity that Members could speak directly to the National Board. He said that whilst the first matter on the Agenda was a difficult legal issue, the others were not. They could therefore be discussed at this forum.

- 2 *to consider whether it is appropriate for the NHA to continue to regulate horseracing in Zimbabwe especially when the NHA seeks to be regulated and recognized by the Parliament of South Africa, the latter having no territorial jurisdiction over Zimbabwe.*

Adv Maselle advised that the NHA had approached Government and requested that it be granted statutory recognition. If the NHA were to be given statutory recognition, it would not be able to exercise any jurisdiction in Zimbabwe. He argued that this was not the established will of the Members of the NHA.

The Chairman said that if legislation was promulgated to this effect, a method of dealing with Zimbabwe would have to be found. There was no intention to abandon the regulation of racing in Zimbabwe.

Mr Rugg confirmed that horseracing in Zimbabwe relied on the support of the NHA, without which it would cease to exist.

Mr du Plessis added his support for the continued assistance with regard to the regulation of horseracing in Zimbabwe. He said that the Operators, who funded a large portion of the costs of the NHA, were in favour of horseracing in Zimbabwe being regulated by the NHA.

Mr Rivalland suggested that when important matters were considered by the National Board, the members should be advised of all issues relating to the matter. A meeting could then be called so that the Members could vote on the matter.

The Chairman advised that it would not be practically possible to have the Membership vote on all matters considered by the National Board. He explained that the National Board comprised persons who represented various constituents of the industry. When matters were discussed by the National Board the views of the Members were put forward by their respective representatives.

Mr Rivalland said that there were serious matters, such as statutory recognition of the NHA which should be decided by the Members.

Mr Witts-Hewinson reminded the meeting that the statutory recognition of the NHA was a demand made many years ago by the Minister of Trade and Industry. The Minister had advised the NHA that it should seek statutory recognition or otherwise Government control would be forced on the NHA. He said that the fears that the Government would then take over the operations of the NHA were unfounded as there were many institutions which had statutory recognition, but which were run independently.

Adv Maselle pointed out that the Gauteng Gambling Act already recognized the NHA to the extent that racing had to be conducted in terms of the Rules of the NHA.

The Chief Executive explained that the process of amending the Gambling Legislation, particularly as it affected horseracing, had been conducted by the Government for a long time. He said that amendments to the Gambling Act proposed in 2004 made provisions for the regulation of horseracing. The Director General at the time, however, withdrew the section relating to horseracing as she felt that it was inadequate. Since then many discussions have taken place in an effort to bring horseracing into the regulatory framework. Subsequently, a Gambling Review Commission had been appointed by the DTI to conduct a review of gambling in South Africa. Following this, an investigation was conducted by the Parliamentary Portfolio Committee. The Chief Executive had been invited to address the Portfolio Committee on the matter of transformation in the horseracing industry. That was the reason for his visit with the Portfolio Committee.

Mr Bruss confirmed that the meeting with the Portfolio Committee had been to deal specifically with the subject of transformation. He reported that he had argued that the biggest barrier to transformation was Government itself, because of the legislation which dictated the structure and funding of horseracing. He said that horseracing accounted for 6% of all gambling in South Africa, yet it paid 14% of the taxation. This proved that the structure was unfair.

He said further that in a different funding model, the NHA could be funded directly from the taxation and not by the Racing Operators. The NHA would then not have to rely on the Operators to fund necessary expenses such as laboratory equipment.

## **5.2 Proposal made by Mr Reid**

*Request the National Board to amend the rules so that every member of the NHA is:*

1. *at all times granted free entrance to every racecourse in South Africa.*
2. *issued with an NHA identity card.*



Mr Reid said that he was obliged, in terms of the Rules, to apply for Colours if he intended to own a horse for racing purposes. He had, however, chosen not to be a Member of the Racing Association. Because he was not a Member of the Racing Association he was not allowed free access to the race course even if a horse he owned, was racing on the day. He said that there had been an occasion where he had a runner in a Graded Race, but still had to pay for admission to the racecourse.

He said that what compounded this issue, was the fact that nomination and acceptance fees that were paid by him, were, in turn, paid to The Racing Association in terms of an agreement between Phumelela and The Racing Association. He said that, as a matter of principle, this was grossly unfair.

Mr Wainstein advised that The Racing Association did not set the admission fees for big race days; this was done by the event organizer. He confirmed that on the big race days, The Racing Association invited all Owners who had runners on the day. The Owners who were not Members of the Racing Association were required to pay for the facilities if they accepted the invitation.

He said that the NHA badge was a separate issue altogether. The purpose of the badge was to recognize persons who were entitled to enter the Parade Ring.

Mr Hawkins confirmed that the Owners of all horses which ran on any major race day on tracks managed by Gold Circle, were given entrance tickets.

Mr du Plessis explained that the relationship between The Racing Association and Phumelela was complex, particularly with regard to the funding of the sport. He corrected the misconception that horseracing conducted in South Africa generated enormous profits, saying that without the betting on other sports and the low pay-out machines, Phumelela would not be profitable.

He said that Phumelela encouraged Owners to become Members of The Racing Association as it made it much easier to deal with Owners.

### **5.3 Proposals made by Mr Mattheyse**

- 1 *TO CONSIDER making representations to the operators and/or the relevant Provincial and/or National Legislature to amend any legislation and/or agreements whereby the NHA should receive, in place of the operators, as part of its annual funding:*
  - *Annual bookmakers levies which the operators receive (which as an example Phumelela received R54 130 000 [Fifty Four Million One hundred and Thirty thousand Rands] for the year ended 31 July 2013).*

- *The unclaimed tote dividends and breakages which the operators receive (which as an example Phumelela received R29 194 000 [Twenty Nine Million One hundred and Ninety Four thousand Rands] for the year ended 31 July 2013).*
- 2 *TO CONSIDER making representations to the operators and/or the relevant Provincial and/or National Legislature to amend any legislation and/or agreements whereby all dividends/payouts received by the punters are rounded down to the nearest 10c. The technology exists to pay the correct calculated dividend/payout.*

Mr Mattheyse said that he had made the proposals with regard to alternative methods of funding the NHA because the current model in terms of which the Operators paid most of the costs of the NHA, put enormous pressure on the Members of the Board to comply with the will of the Operators.

The Chairman advised that, in all the time he had served on the Board of Directors, he had never felt that the Operators had put pressure on the NHA. He said that recently a decision had been taken to address certain shortcomings in the NHA. The Operators did not oppose the costs to resolve these shortcomings, despite the costs not having been budgeted for.

Mr du Plessis also pointed out that the increase in the cost of the NHA in recent years has been greater than the increases in the Operator's own costs. He confirmed that the Operators supported the efforts being made to obtain other funds for the NHA. He explained that the totalisators, which conducted 42% of the betting on horseracing, were funding 85% of the costs of the sport.

Mr Rivalland expressed the view that certain functions now being performed by the NHA, such as the handlers and the handicappers, should actually be performed by the Operators. This would allow the NHA to focus on its core activities.

The Chairman submitted that narrowing the role of the NHA may not be in the best interests of racing.

Mr du Plessis said that if the proposals made by Mr Mattheyse were to be implemented, horseracing in the Western Cape would cease.

Mr Wainstein added that some of the revenue from the sources referred to by Mr Mattheyse went towards the payment of stakes.

With regard to Mr Mattheyse's suggestion that the dividends received by winning punters be rounded to the nearest 10 cents, Mr du Plessis advised that the dividends were regulated by the Gambling Boards.

#### 5.4 Proposal made by Mr Kyriacou

*To CONSIDER that in order to create independence and full impartiality within The National Horseracing Authority, the NHA requests its National Board of Directors to call a Special General Meeting in terms of clause 13 of the Constitution, to amend the Constitution, so as to ensure that the Operators (Phumelela and Gold Circle), the Thoroughbred Breeders Association and the Racing Association and any other entity is/are not given an entrenched and/or secured seat on the National Board of the NHA.*

Mr Kyriacou stated that the primary object of the NHA was to regulate the sport of horseracing. In order to properly achieve this object it was important that the NHA remained objective. He said that it appeared that over the last 2 – 3 years the NHA was no longer focusing on this core function. The cause of this seemed to be the influence that other organisations had on the National Board.

He referred to the recent situation with regard to the Jockeys' International race where the NHA had become a member of the Equestrian Federation then later decided to withdraw its membership. He also referred to the NHA's support for the prohibition of bookmakers being allowed to conduct the "open bet". These actions, he said, appeared to be directly influenced by the Operators.

The Chairman responded, saying that it was actually important to have participants from the Racing Industry on the National Board. He said that it would be extremely difficult to have a Board which comprised of persons who had no special interest in horseracing. Furthermore, it would be impractical to have meetings where decisions could not be executed until further meetings had taken place with the affected parties.

Mr Hawkins said further that the Operators were often harsh critics of the NHA in that they wanted it to perform at the highest levels. The Operators therefore had a positive presence on the National Board. He said that all organisations on the National Board had the same objective and that was to ensure that horseracing was regulated to the highest international standards.

Dr Konar emphasised that all boards needed a range of different skills and experts. It was important that when matters were discussed different views were put forward. When a decision was made, however, it was to be made in the best interests of horseracing, notwithstanding the different positions of the individual Board Members.

Mr Kyriacou responded that whilst he respected Dr Konar's response, another incident indicated that the NHA was not impartial. He said that when he had requested that a Special General be called he was advised that his request would be considered by the National Board whereas, when Kenilworth Racing requested a Special General Meeting, it had been granted.

The Chairman corrected Mr Kyriacou, explaining that the calling for a Special General Meeting to consider the request from Kenilworth Racing (Pty) Ltd originated from the National Board, not from Kenilworth Racing. Kenilworth Racing had written to the National Board requesting representation on the Board. As this required an amendment to the Constitution, it was necessary to call a Special General Meeting. The National Board had therefore called for a Special General Meeting.

On the other hand, when a Member wished to call a Special General Meeting, the Constitution dictated that the Member had to obtain the signatures of 100 Members.

Dr Konar stated that he was opposed to Kenilworth Racing being given a seat on the National Board because the Board was already sufficiently represented to deal with any matters referred to it by Kenilworth Racing. He said that Boards should not comprise more than 8 to 10 persons, and allowing Kenilworth Racing a seat on the Board would open the door for other Organisations to request representation.

Mr du Plessis said that Kenilworth racing contributed 15% of the funding of the NHA and whilst this was a small percentage, it was a significant amount of money, particularly for Kenilworth Racing. He confirmed that the Board of Kenilworth Racing, was different to that of Phumelela.

## **6. Vote of Thanks**

Mr Costa expressed his gratitude for the time and effort contributed by the Members of the Board to the running of the NHA. He extended special thanks to Mr Witte-Hewinson for having served as Chairman of the NHA for the three-year term.

**Adv A P Joubert**  
**Chairman**