**HC97**

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 7689/2023

The application between:

| | |
|---|---|
| **H BESTER N.O.** | First applicant |
| **AW VAN ROOYEN N.O.** | Second applicant |
| **CJ ROOS N.O.** | Third applicant |
| **JF BARNARD N.O.** | Fourth applicant |
| **D BASSON N.O.** | Fifth applicant |
| **CBS COOPER N.O.** | Sixth applicant |
| **K TITUS N.O.** | Seventh applicant |
| **DS NDLOVU N.O.** | Eighth applicant |

(cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | First respondent |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | Second respondent |

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**MOSTERT & BOSMAN**
**PER: PIERRE DU TOIT**
**TEL: 021-914-3322**
**E-MAIL: antoinettee@mbalaw.co.za**

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DATED AT BELLVILLE ON THIS **23rd** DAY OF **MAY 2023**.

**MOSTERT & BOSMAN**
***ATTORNEYS FOR APPLICANTS***
PER: PIERRE DU TOIT
FOURTH FLOOR, MADISON SQUARE
CNR CARL CRONJE & TYGERFALLS BOULEVARD
TYGERVALLEY, **BELLVILLE**
(REF: PIERRE DU TOIT / AE / WJ2301)
E-MAIL: antoinettee@mbalaw.co.za
**C/O MACROBERT INC.**
THE WEMBLEY
3RD FLOOR, SOLAN ROAD
**CAPE TOWN**
(REF: G. VAN DER MERWE)

**TO:** **THE REGISTRAR**
**HIGH COURT**
**CAPE TOWN**

**AND TO:** **THE MASTER OF THE HIGH COURT**
*FIRST RESPONDENT*
DULLAH OMAR BUILDING
45 CASTLE STREET
**CAPE TOWN**
**MASTER'S REF: C906/2020** **BY HAND AND BY E-MAIL**

**AND TO:** **THE COMMISSIONER FOR THE**
**SOUTH AFRICAN REVENUE SERVICE**
*SECOND RESPONDENT*
KHANYSIA BUILDING
271 BRONKHORST STREET
NIEUW MUCKLENEUK
PRETORIA
**C/O DIALE MOGASHOA ATTORNEYS**
*SECOND RESPONDENT'S ATTORNEYS*
8TH FLOOR, CONVENTION TOWER
CNR HEERENGRACHT & WALTER SISULU AVE
**CAPE TOWN**
**REF: MM / MW / M14821** **BY HAND AND BY E-MAIL**

HC97

**IN THE HIGH COURT OF SOUTH AFRICA**

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Case No: 7689/23

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| **K TITUS N.O.** | Seventh applicant |
| **DS NDLOVU N.O.** | Eighth applicant |

(cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

OFFICE OF THE CHIEF JUSTICE
PRIVATE BAG X9020
CAPE TOWN 8000
2023 -05- 16
GENERAL OFFICE
WESTERN CAPE HIGH COURT

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | First respondent |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | Second respondent |

## NOTICE OF MOTION

**BE PLEASED TO TAKE NOTICE** that the abovenamed applicants will make application to this Honourable Court on **TUESDAY, 23 MAY 2023** at **10H00** or so soon thereafter as counsel may be heard, for an order in the following terms:

MOSTERT & BOSMAN
PER: PIERRE DU TOIT
TEL: 021-914-3322
E-MAIL: antoinettee@mbalaw.co.za

1. That the applicants' non-compliance with the rules of court concerning forms, service and time periods otherwise applicable be condoned, that such rules be dispensed with and that this application be heard and adjudicated upon as an urgent application in terms of uniform rule 6(12).

2. That a rule nisi ("**the provisional order**") in the following terms be issued:

   2.1 The conclusion of the settlement agreement between the applicants and the second respondent annexed to the founding affidavit as Annexure "FA7", is approved by the Court in terms of section 387(3) of the Companies Act, 61 of 1973;

   2.2 The provisional order shall be of no effect, until and unless confirmed by this Court, in whole, part or in an amended form, on the return date.

   2.3 That the provisional order, together with an electronic link to a copy of this application:

      2.3.1 Shall be published on the website https://www.investrust.co.za/mti-liquidation.html and https://www.tygerbergtrustees.co.za/mirror-trading-international-pty-ltd.html;

      2.3.2 Shall be distributed to all known interested and affected persons of Mirror Trading International (Pty) Ltd ("**the Company**") by e-mail, to the extent that their e-mail addresses are known to the applicants;

2.3.3 Shall be distributed to all known interested and affected persons of the Company, via the social media applications Whatsapp and/or Telegram, to the extent that their particulars are known to the applicants by arranging, in so far as it is possible, for the publication thereof on the prominent social media groups utilised by certain of the Company's investors;

2.3.4 That the provisional order be published in two nationally circulated newspapers; and

2.3.5 That notice and service of the application and the provisional order in the aforesaid manner shall be effected no less than 30 court days in advance of the return date;

2.4 That any person with an interest in this application and/or the provisional order, be called upon to show cause on a date to be determined by the Registrar of this Honourable Court, as to why the provisional order, or any part thereof, should not be made final.

2.5 That the costs of this application form part of the costs in the winding up of the Company, save in the event of it being opposed, in which event that any such opposing party be directed to pay the costs of this application on the scale as between attorney and client, including the costs consequent upon the employment of two counsel where so employed.

3. Such further and/or alternative relief as may be required.

**TAKE NOTICE FURTHER THAT** the affidavit of **HERMAN BESTER** and the annexures thereto, will be used in support of this application.

**TAKE NOTICE FURTHER THAT** the applicants have appointed Mostert & Bosman Attorneys, with its address as appears hereunder, as their attorneys of record and will receive service of all papers related to this action at the address of their attorneys set out hereunder.

**KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.**

DATED AT BELLVILLE ON THIS 16TH DAY OF MAY 2023.

p.p.

**MOSTERT & BOSMAN**
***ATTORNEYS FOR APPLICANTS***
PER: PIERRE DU TOIT
FOURTH FLOOR, MADISON SQUARE
CNR CARL CRONJE & TYGERFALLS BOULEVARD
TYGERVALLEY, **BELLVILLE**
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**TO:** **THE REGISTRAR**
**HIGH COURT**
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**AND TO:** **THE MASTER OF THE HIGH COURT**
*FIRST RESPONDENT*
DULLAH OMAR BUILDING
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**MASTER'S REF: C906/2020**

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**AND TO:** **THE COMMISSIONER FOR THE**
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8TH FLOOR, CONVENTION TOWER
CNR HEERENGRACHT & WALTER SISULU AVE
**CAPE TOWN**
**REF: MM / MW / M14821** **BY HAND AND BY E-MAIL**

RECEIVED

16 -05- 2023

Diale Mogashoa Attorneys

15H35

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: _____

The application between:

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|---|---|
| **H BESTER N.O.** | First Applicant |
| **AW VAN ROOYEN N.O.** | Second Applicant |
| **CJ ROOS N.O.** | Third Applicant |
| **JF BARNARD N.O.** | Fourth Applicant |
| **D BASSON N.O.** | Fifth Applicant |
| **CBS COOPER N.O.** | Sixth Applicant |
| **K TITUS N.O.** | Sevent Applicant |
| **DS NDLOVU N.O.** | Eighth Applicant |

(cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | First Respondent |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | Second Respondent |

**FOUNDING AFFIDAVIT**

I, the undersigned,

**HERMAN BESTER N.O.**

do hereby make an oath and say that:

1. I am an insolvency practitioner and liquidator of Tygerberg Trustees, First Floor, Cascade Terraces, Tyger Waterfront, Bellville, Western Cape and I

depose to this application in my capacity as one of the duly appointed joint liquidators of Mirror Trading International (Pty) Ltd [registration number: 2019/205570/07] (in final liquidation) (**'MTI'**).

2. The facts deposed to herein are within my personal knowledge and belief, save where the context indicates otherwise.

3. Mostert & Bosman Attorneys ("**MBA**"), of 4th Floor, Madison Square, corner of Carl Cronje and Tygerfalls Boulevard, Tygerfalls, Bellville, are the duly appointed and authorised attorneys of record of the applicants.

4. All steps taken by MBA in relation to this matter are and have been duly authorised and are furthermore, to the extent necessary, ratified.

5. Where I make submissions of a legal nature in this affidavit or where I refer to legal advice, such submissions and advice emanate from the legal advisors who assist the applicants in this matter, the reference to which is not and should not be construed as a waiver of any legal professional privilege that may apply.

6. To the extent that any party wishes to contend that any averment made in this affidavit constitutes hearsay evidence, and if it be found as such by this Court, the applicants apply to this Court to admit such evidence in terms of section 3 of the Law of Evidence Amendment Act, 45 of 1988.

## [A] THE PARTIES:

### (i) The applicants:

7. I am the first applicant in this application.

8. The second applicant is **ADRIAAN WILLEM VAN ROOYEN N.O.,** an insolvency practitioner and liquidator of Investrust, 64 Stella Street, Brooklyn, Pretoria, Gauteng.

9. The third applicant is **CHRISTOPHER JAMES ROOS N.O.**, an insolvency practitioner of Sebenza Trust, Unit 2A, 43 Estcourt Avenue, Wierda Park, Centurion, Gauteng.

10. The fourth applicant is **JACOLIEN FRIEDA BARNARD N.O.**, an insolvency practitioner and liquidator of Barn Trustees, 310 Soutpansberg Road, Rietondale, Pretoria, Gauteng.

11. The fifth applicant is **DEIDRE BASSON N.O**., an insolvency practitioner and liquidator of Tshwane Trust Co., 1207 Cobham Road, Queenswood, Pretoria, Gauteng.

12. The sixth applicant is **CHAVONNES BADENHORST ST CLAIR COOPER N.O**., an insolvency practitioner and liquidator of CK Trust (Pty) Ltd, 120 Edward Street, Tygervalley, Bellville, Western Cape.

13. The seventh applicant is **KEVIN TITUS N.O.**, an insolvency practitioner and liquidator of Titus & Associates Attorneys, situated at 2nd Floor, Waalburg Building, 28 Wale Street, Cape Town, Western Cape.

14. The eighth applicant is **DANIEL SANDILE NDLOVU N.O.**, an insolvency practitioner and liquidator of Siyakhula Administrators, situated at 28 Wale Street, Cape Town, Western Cape.

15. The second to eighth applicants and I bring this application in our capacities as the duly appointed joint liquidators of MTI. In confirmation of our aforesaid appointment as such, I attach hereto copies of the Master's relevant certificates of appointment, as issued to us, as annexures **FA1.1** and **FA1.2** together with a Windeed status report in respect of MTI as annexure **FA1.3**. I will henceforth refer to the applicants collectively as "**the Liquidators**".

16. The Liquidators are acting jointly in pursuance of this application and in this regard, I refer this Honourable Court to the supporting affidavits of the second to eighth applicants filed simultaneously herewith.

**(ii) The respondents:**

17. The first respondent is **THE MASTER OF THE HIGH COURT, CAPE TOWN** ("**the Master**"), with its principal place of business situated at Dullah Omar Building, 45 Castle Street, Central Business District, Cape Town, 8001.

18. The second respondent is **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** ("**SARS**"), with its principal place of business and chosen *domicilium citandi et executandi* at Khanyisa, 271 Bronkhorst Street, Nieuw Muckleneuk, Pretoria.

19. The Liquidators do not, in terms of this application, pursue relief against the Master or SARS who have been joined in these proceedings and cited herein because of the interest they have in the subject matter and any order that may ensue pursuant to this application.

## [B] INTRODUCTION AND THE PURPOSE OF THIS APPLICATION:

### (i) Introduction:

20. In terms of Item 9 of Schedule 5 to the Companies Act, 71 of 2008 ("**the 2008 Companies Act**"), Chapter XIV of the Companies Act, 61 of 1973 ("**the 1973 Companies Act**") remains applicable, notwithstanding the inception of the 2008 Act, to companies that are commercially insolvent.

21. MTI was provisionally liquidated by this Honourable Court on 29 December 2020 and, in confirmation thereof, I attach hereto a copy of the relevant order as annexure **FA2** ("**the Provisional Order**"). The Provisional Order was made final on 30 June 2021 and a copy of the order placing MTI in final liquidation is attached hereto as annexure **FA3** ("**the Final Order**").

22. The winding up of MTI was sought – and this Court placed MTI in final liquidation – on the basis, *inter alia*, that it was unable to pay its debts and that the circumstances attendant upon MTI rendered it just and equitable to do so.

23. The petitioning creditor presented his application for the liquidation of MTI to this Honourable Court on 23 December 2020 and, in terms of section 348 of the 1973 Act, the MTI liquidation proceedings are retroactively deemed to have commenced on this day.

24. MTI is a company, which at all material times was, and still is, unable to pay its debts within the meaning of section 339 and 340 of the 1973 Companies Act, as read with Item 9 of Schedule 5 of the 2008 Companies Act and, accordingly, the provisions of the Insolvency Act, 24 of 1936 ("**the**

**Insolvency Act**") apply to the winding-up of MTI, insofar as it may be appropriate.

25. Although I expand on the aforesaid later in this affidavit, it is important to note same at the outset and to keep in mind, throughout this application, that the MTI liquidation proceedings are, in the circumstances, conducted in terms of the provisions of the 1973 Companies Act, the 2008 Companies Act and the Insolvency Act.

26. MTI initially described the nature of its business as *'an internet based crypto-currency club which performs its business through the website www.mymticlub.com and its official offices in Stellenbosch, Western Cape, South Africa. The benefit of members is in the form of the crypto-currency Bitcoin where member's Bitcoin grows through forex trading by a registered and regulated broker.'*

27. In pursuance of its self-stated purpose, MTI would invite members of the public to register on its website and, once registered, to move bitcoin from the crypto currency wallets of these members to designated crypto currency wallets held by and under the control of MTI. In this manner, MTI and its protagonists were afforded the right to apply and dispose of investors' bitcoin at their absolute and sole discretion.

28. However, stripped to its core, seeing it for what it is and ignoring for the moment what seems to be nothing more than nomenclature employed by the MTI protagonists to conceal the true reason for MTI's existence, MTI in truth and in fact conducted a fraudulent, unlawful Ponzi-type or pyramid-type investment scheme ("**the Scheme**"). MTI lured thousands of

individuals ("**the investors**") to "invest" bitcoin in the Scheme on an unlawful and fraudulent basis. The business model of MTI was at all material times illegal.

29. For this Honourable Court to have further insight into the business model of MTI and the Scheme it conducted, I respectfully refer to the reports issued by the retired Honourable Judge Fabricius, in his capacity as one of the duly Court-appointed Commissioners of the section 417 enquiry convened into the trade, dealings and affairs of MTI ("**the enquiry**"). These reports, which were issued between 10 March 2021 to 11 April 2022, are attached as annexure **FA4.1** to **FA4.4**. I also attach, as annexure **FA4.5**, the consent obtained from the Commissioner to disclose these reports – and to the extent necessary, to disclose evidence from the enquiry relevant to this application – herein. Finally, and as annexure **FA4.6**, I also attach the report issued by the Financial Sector Conduct Authority ("**the FSCA**") on 18 Janaury 2021 which gives further insight into MTI's business dealings, model and the Scheme it conducted.

30. In pursuance of our appointment as liquidators of MTI, and in the performance of the duties and responsibilities bestowed upon us consequent upon our appointment, we proceeded to investigate the affairs of MTI and, ultimately, had to decide upon the most appropriate and beneficial manner in which to approach and conduct the liquidation proceedings.

31. The MTI liquidation proceedings soon proved to be an estate like no other and the first of its sort in a South African context, which resulted in the

Liquidators approaching this Honourable Court previously for declaratory relief and directions in terms of section 387 of the Companies Act, 1973.

32. In an application made by the Liquidators under case number 15426/2021, to which I shall refer hereinafter as the "**Ponzi application**", the Honourable Court, per De Wet AJ, *inter alia*, declared that:

> "*1. The business model of Mirror Trading International (Pty) Ltd (in liquidation) ("MTI") is declared to be an illegal and unlawful scheme.*
>
> *2. All agreements concluded between MTI and its investors in respect of the trading / management / investment of Bitcoin for the purported benefit of the investors, are declared unlawful and void ab initio.*"

A copy of the judgment of the Honourable De Wet AJ is attached hereto and marked annexure **FA5**. It, too, provides useful insight into the business and Scheme conducted by MTI.

33. In a further application made by the liquidators in terms of section 387(3) of the 1973 Companies Act, under case number 13721/2022 ("**the first section 387(3) application**"), the liquidators sought directions from the Honourable Court with regard to, *inter alia*:

33.1. The classification of Bitcoin as movable property as envisaged by section 2 of the Insolvency Act;

33.2. The treatment of claims by investors against the insolvent estate of MTI; and

33.3. The claims of the liquidators against certain recipients of dispositions made by MTI prior to its liquidation.

34. I attach hereto a copy of the notice of motion in the application under case number 13721/22, marked as annexure **FA6**, to which I respectfully refer the Honourable Court. In order not to render these papers unnecessarily prolix, I do not attach a copy of the founding affidavit or the voluminous affidavits exchanged between certain intervening parties and the Liquidators, but same will be made available to this Honourable Court at the hearing of this application.

35. The first section 387(3) application was finally argued before the Honourable Justice Maher AJ on 11 April 2023 and judgment has been reserved and is still awaited. That judgment will, however, have no direct bearing on the relief sought in this application. The judgment by the Honourable Justice Maher AJ will, should it become available prior to the hearing of this application, be made available to this Honourable Court.

36. Against this prelude I turn to deal with the purpose of this application.

**(ii) The purpose of this application:**

37. On 11 July 2022, SARS issued the Liquidators with income tax assessments for MTI's 2020 and 2021 tax years. The assessments were estimated assessments in terms of section 95(1) of the Tax Administration Act, 28 of 2011 ("**the TA Act**").

38. Premised on these assessments, SARS submitted claims against the insolvent estate of MTI in the sum of approximately R931 million, which claims were accepted and proved at a special meeting of creditors on 22 July 2022.

39. The Liquidators commenced with steps to dispute the assessments by filing income tax returns for the tax years to which SARS' assessments pertain in terms of section 95(6) of the TA Act and thereafter, by requesting reasons for SARS' assessments to formulate their objection on behalf of MTI, as provided for in Rule 6 of the Rules of the Tax Court ("**the Tax Court Rules**").

40. The Liquidators and SARS, hereafter, had several engagements with a view to conclude a settlement of the tax dispute. The Liquidators entered these discussions based on advice they received from their legal representatives that it is desirable to settle the dispute with SARS.

41. Consequently, a formal settlement of the tax dispute was concluded between the Liquidators and SARS on 25 April 2023 in terms of Part F of Chapter 9 of the TA Act. The liquidators were advised that they should, for their own protection, and to ensure that the best interest of all the creditors is served, apply to this Court to obtain approval of the settlement they reached with SARS. Therefore, and as I will deal with later on herein, the settlement was made conditional upon the Liquidators obtaining an order from this Honourable Court in terms of section 387(3) of the 1973 Companies Act sanctioning the Liquidators' settlement with SARS.

42. The purpose of this application is therefore to obtain the aforesaid approval of this Honourable Court, in terms of section 387(3) of the 1973 Companies

Act. A true copy of the settlement agreement is annexed hereto and marked annexure **FA7**, to which I return later herein below.

43. We have been advised that this is precisely the type of case where the Honourable Court should be approached to give its direction to the Liquidators.

44. I will return to the events giving rise to the conclusions of the settlement agreement, as briefly touched upon above, in greater detail later herein.

45. Furthermore:

45.1. The relationship between the Liquidators and some of the main perpetrators of the Scheme, as well as certain Investors who are mostly so-called winners, has been, to say the least, acrimonious. This appears from the judgment of the Honourable Madam Justice De Wet AJ.

45.2. This state of affairs was persisted with in the first section 387(3) application by some of these individuals. This also appears from the fact that one of the main protagonists of the unlawful MTI scheme, Mr Clynton Marks ("**Marks**"), also made application for the removal of the first to sixth applicants in this Honourable Court under case number 12698/22 (at the time, the seventh and eighth applicants had not as yet been appointed as liquidators of MTI by the Master).

45.3. The Liquidators accordingly have no doubt that they will again be accused of acting improperly in concluding the settlement agreement with SARS, or in the least, we reasonably apprehend that such

accusations will follow once the settlement becomes known to the creditors and protoganists of MTI, if it is not already known to them. In this regard it has already been alleged that the Liquidators are to blame for the fact that SARS submitted a claim for proof against the estate, as the SARS claim, so some allege, resulted solely from the fact that the Liquidators applied for the order declaring the Scheme to be an unlawful scheme.

45.4. Whilst the Liquidators have reached their own commercial decision to settle the claims submitted by SARS, and have throughout acted on legal advice, the perpetrators of the Scheme and some others will no doubt accuse the Liquidators of acting improperly, threaten to claim damages from them and even apply for their removal again.

45.5. For these reasons, the Liquidators propose that, as set out in the notice of motion, this application be moved, initially, for the urgent attainment of a provisional order in the form of a rule nisi, the operation of which to be suspended in full, and for directions to be issued to them to give notice to the creditors of MTI and any other persons who may have a legitimate interest in the affairs of the insolvent estate to demonstrate why, on the return date of the rule nisi, the provisional order should not be made final.

45.6. I return to these issues again later herein.

46. This affidavit is structured and proceeds as follows:

46.1. First, I set out the background facts which are necessary to give context to this application for the Honourable Court's convenience, which facts include and pertain to MTI's business, the Scheme it conducted and how MTI's collapse came about;

46.2. Second, I deal with the fraudulent and unlawful nature of MTI's business beyond which I have already stated to enable this Court to better consider the imcome tax implications arising therefrom;

46.3. Third, I deal with the factual and commercial insolvency of MTI;

46.4. Fourth, I deal with the assessments raised by SARS which resulted in it proving claims against the MTI estate and the events and circumstances which resulted in the settlement agreement ultimately being concluded. This includes, to the extent appropriate, a discussion of the advice received from MTI's legal representatives premised on which the Liquidators agreed to settle the disputed tax liability;

46.5. Fifth, I explain why this application for provisional relief is made urgently, and I advance submissions concerning the Liquidators' proposals concerning the giving of notice of the order – and this application – to creditors and other affected parties; and

46.6. Sixth and finally, I conclude this affidavit.

**[C] BACKGROUND FACTS:**

47. MTI was registered in 2019 as a private for-profit company with limited liability as contemplated by the 2008 Companies Act, whereafter it formally

commenced trading on or about 30 April 2019. The company, at all material times had two shareholders, Mr Johannes Cornelius Steynberg ("**Steynberg**") and Marks. Steynberg and Marks were also the principal protagonists of MTI and in primary control of the affairs of the entity, despite the fact that MTI had a board of directors and a management team.

48. MTI's board of directors, at the time, consisted of Steynberg, Marks, Mr Charles Ward (non-executive) and Ms Monica Coetzee (non-executive). Its board of directors however later expanded to also include other individuals.

49. The MTI management team, in turn, appears to have been comprised of Steynberg [Head of Technical and Research and Development Department], Marks [Head of Referral Program and Members], Charles Ward [Head of Stretegy Implementation], Monica Coetzee [Head of Corporate Services], Romano Samuels [Head of Members Support], Cheri Marks [Head of Communications and Marketing and the wife of Marks], Vincent Ward [Head of International Expansions] and Leonard Gray [Head of Legal Department].

50. As aforesaid, MTI initially contended that it conducts *'an internet based crypto-currency club which performs its business through the website www.mymticlub.com and its official offices in Stellenbosch, Western Cape, South Africa. The benefit of members is in the form of the crypto-currency Bitcoin where member's Bitcoin grows through forex trading by a registered and regulated broker.'*

51. MTI itself professed as such in an electronic document uploaded to the official MTI website, which was ostensibly intended by the MTI protagonists

to regulate the contractual relationship between MTI and its Investors. A copy of this document, which has since been held to be invalid in the judgment in the Ponzi application, is annexed hereto, marked as annexure **FA8** ("**the MTI Agreement**").

52. The financial benefit that Investors could expect to receive from the Scheme eventually, and as time went on, resorted in a number of categories. It is in this respect of importance that I point out that the MTI Agreement, at the time of MTI's liquidation, purported to provide that:

52.1. Investors' bitcoin would grow through forex trading by various registered and regulated brokers.

52.2. The marketing of MTI's business was based on a multi-level marketing strategy. In addition to receiving a share of the trading profits, Investors would also receive a variety of incentive-based remunerations, triggered by the referral of new individuals who also joined MTI and made an investment in the Scheme.

52.3. The proceeds that an Investor would derive from trading profits, would be regulated by the MTI compensation plan, as dealt with and explained in sections 6 and 7 of the MTI Agreement, which consisted of the following five income streams:

52.3.1. 40% Members Daily Trading Bonus;

52.3.2. 10% Direct Once-Off Referral Bonus;

52.3.3. 20% Weekly Profit-Sharing Bonus;

52.3.4. 2.5% P1 Leadership Bonus; and

52.3.5. 2.5% P2 Leadership Bonus ("**the Investor Benefits**").

52.4. Payment by MTI in respect of the Investor Benefits would be made from MTI's daily profits, generated through its trading activities, and not from any of the bitcoin invested by Investors.

53. MTI furthermore summarised its operations in the online presentation, which was applied by MTI in pursuance of luring new Investors, attached hereto as annexure **FA9** and which contains a useful summary of MTI's business and the compensation structure between MTI and its members.

54. In pursuance of the Scheme, MTI and its protagonists, particularly its management and marketing team, continuously represented to existing Investors of MTI, and prospective investors of MTI, being the public at large, that:

54.1. The bitcoin of all of the Investors of MTI were pooled and were all held in one account with a broker;

54.2. MTI is trading extremely profitably on trading platforms, making daily profits;

54.3. MTI's trading history is such that it has never made a loss, except one day;

54.4. The bitcoin trading pool is growing every day;

54.5. MTI's bitcoin investments are showing a continuing growth of up to 1,5% per day;

54.6. That each Investor's so-called bitcoin wallet (an account created for the Investor within MTI, reflecting the number of bitcoin standing to the credit of each MTI Investor within MTI) would accrue daily in fractions of percentages based on the alleged trading profit;

54.7. The bitcoin wallet would also reflect referral commissions for direct referrals by existing MTI members of other members to MTI, and various bonuses, depending on the number of Investors resorting under a particular MTI Investor in binary trees created by Investors by introducing new Investors to MTI. These commissions and bonuses would be credited also in fractions of percentages, based on the trading profit, to each MTI Investor's wallet on a daily basis;

54.8. Each Investor is able to follow the trading results of MTI, and the status of each Investor's MTI wallet in an online electronic forum known as the MTI back office ("**the back office**"), which was represented to Investors as an accurate reflection, in every respect, of MTI's business and trading results;

54.9. MTI had been able to produce positive trading results every day, due to an exceptional electronic code coded by Steynberg, and which was referred to by MTI as a so-called "*bot*" which possessed of artificial intelligence and was able to project foreign currency trades with such accuracy, that it would with great precision predict trading activity in foreign currency (forex) markets, and open and

close on trading positions in forex markets that MTI never made any losses, and the predictions of the bot were so accurate, that it resulted in daily profits;

54.10. Due to the alleged daily profits, the wallets of Investors grew on the data reflected in the back office, exponentially daily;

54.11. The bot had a built-in risk management programme, ensuring that only limited funds of the pooled bitcoin of MTI were being traded with, between 3% and 5% of the total funds; and

54.12. Each trade embarked on by the bot had a built-in stop loss, limiting any loss of an investment to 8% at any given stage.

55. But what the MTI protagonists purported to convey to the outside world did not, to their knowledge, correctly represent the true state of MTI's affairs.

56. In summary, MTI's business should, to best understand what culminated into its liquidation, be dealt with reference to three particular periods:

56.1. The first relevant period is during April 2019 to July 2019, the formative period:

56.1.1. during which MTI Investors had linked sub-accounts on a trading platform called the FXChoice platform ("**FX Choice**");

56.1.2. on which MTI traded on the Foreign Currency Market;

56.1.3. in pursuance of which human traders' trades were "mirrored" onto each client's sub-account (the so-called '**MAM accounts**'); and

56.1.4. which preceded the launch of MTI's website and the implementation of the MTI Agreement.

56.2. The second relevant period is August 2019 to October 2020:

56.2.1. during which MTI launched its website and implemented the MTI Agreement;

56.2.2. when MTI supposedly traded in forex through its regulated broker FXChoice on its regulated platform, under the exclusive supervision of Steynberg;

56.2.3. which period is central to the events that ultimately culminated in MTI's liquidation; and

56.2.4. during which MTI traded in contracts for a difference ('**CFD**') based on forex pairs at substantial losses.

56.3. The third relevant period is between October 2020 and December 2020:

56.3.1. during which period Steynberg alleged to have:

56.3.1.1. transferred all of the Bitcoin in the pool of members' bitcoin from FXChoice to a new, 'unregulated broker' called Trade 300; and

56.3.1.2. traded on CFD's based on crypto currency pairs;

56.3.2. in respect of which it has been conclusively proved that neither the transfer of bitcoin, nor the trading through Trade 300, ever occurred – in fact, Trade 300 was a fictitious platform created by Steynberg.

57. With this context in mind, I emphasise that despite the protestations of the MTI protagonists, its Board of Directors and Management, MTI's business activities were unlawful on various grounds.

58. In pursuance of its business, MTI in truth and in fact lured members of the public to invest in the Scheme by registering on MTI's website, on the initial promise to Investors that their investments would yield massive returns, of 0.5% per day to as much as 10% or more per month. It is in this sense that the Scheme conducted by MTI was advertised as an opportunity to "*grow your bitcoin*".

59. Once registered, these Investors would be able to deposit such Investor's own bitcoin from such Investor's own crypto currency wallet(s) to designated crypto currency wallets held by and under the control of MTI.

60. The Investors of MTI are referred to as members of a so-called "*MTI investors club*" – which is in truth and in fact is the Scheme referred to above, whilst the "members" of the "MTI investors club" are in truth and in fact the Investors in the Scheme.

61. The investments by Investors into the Scheme occurred in the form of bitcoin, which is a type of intangible virtual crypto representation of value *or*

*a type of* crypto currency, and which this Court has found, in the Ponzi application, to be property within the meaning of the Insolvency Act.

62. Bitcoin is typically acquired by opening a crypto account with a crypto currency exchange. Prominent crypto currency exchanges in South Africa include companies such as Luno, AltCoin, Valr and Exodus.

63. A unique crypto wallet is then created for each bitcoin acquirer and bitcoin is purchased by paying the quoted amount in fiat currency (i.e. South African Rand in the instance of Luno South Africa) into the selling/trading platform's nominated bank account The acquiror's wallet is then credited with the corresponding amount.

64. Bitcoin is then purchased by placing an order to buy on the crypto exchange platform. The acquiror's wallet will then be debited with the relevant amount of South African Rand and the wallet will be credited with the corresponding amount of bitcoin purchased.

65. Crypto currency, such as bitcoin, can be freely transferred from one person's crypto wallet to another crypto wallet, free of any regulatory oversight of any government, even if a transfer is made to a wallet in another country.

66. Ultimately, the bitcoin in a wallet is owned and controlled by the person in whose name that wallet is registered.

67. The MTI Investors therefore transferred their bitcoin to MTI in pursuance of investing in the Scheme.

68. In relation to MTI, Investors, lured to invest in MTI's Scheme, would deposit their bitcoin with MTI, to form part of an MTI investment pool.

69. The Bitcoin deposited in these investment pools would then be traded with on the Foreign Exchange Markets and when the Forex positions taken on the market were in the money, the proceeds of such trading activities would then be divided amongst the relevant pool members.

70. But the implementation of a referral fee entitlement, during April 2020 and as part of the Investor Benefits, sunk the MTI Titanic ("**the Referral Bonus System**"). In terms of the Referral Bonus System, the founding members and certain Investors of MTI would apparently qualify for a 10% referral bonus, also compensable in bitcoin, in the event that they were the effective cause for new Investors investing in the Scheme.

71. It is the Referral Bonus System, in conjunction with the lack of any legitimate and sustainable business, that expose the Scheme as an illegitimate Ponzi-type scheme.

72. A Ponzi scheme is a form of fraud that lures investors into investing in a scheme and essentially operates by paying returns/profits to earlier investors with funds generated from investments made by more recent investors. Such a scheme leads victims to believe that profits are coming from product sales or other means [trading on the Forex market in this case], whilst they remain unaware that the benefits that they derive from participating in the scheme, in fact, emanates from investments by more recent investors who are the source of the subsequent investments that ultimately sustain payment of the returns on earlier investments.

73. At the core of such a scheme is a promise of high returns on investments, associated with little risk and it is as such based on using new investors' funds to make payment in respect of earlier investors' returns.

74. In short, new Ponzi scheme income is used to pay original investors their returns, but represented as a profit from an underlying purported legitimate transaction.

75. Ponzi schemes rely on a constant in-flow of new investments in order to continue to provide returns to older investors. These schemes eventually bottom out and collapse when income from new investors become insufficient to sustain payment of returns to earlier investments, at which point such schemes unravel and fall apart.

76. This is precisely what the Scheme operated by MTI became and MTI, from April 2020 onward, never operated a sustainable business because, not only did it not trade as was represented to the Investors, but the 10% referral bonuses were also funded from new bitcoin investments made into the Scheme, thereby commensurately diluting, and eroding the pooled, and ever decreasing, bitcoin deposited with MTI.

77. It is in this sense that the advertised entitlement to the 10% referral bonuses soon outgrew and assumed greater significance than even the disproportionate returns promised to the Investors by MTI itself, as encouragement for Investors to invest in the Scheme and to aggressively procure new Investors for the Scheme.

78. The inevitable consequence of this business model was that the animal created by the MTI protagonists would soon assume a life of its own and ultimately devour itself, in a full-circle of self-destruction.

79. Then, if this was not enough, certain Investors soon devised their own strategy within the Scheme. They proceeded to establish their own fraudulent schemes within the Scheme, through what we now refer to as ghost accounts. Essentially, these Investors would represent to MTI and the Scheme that they had secured new investors for the scheme whilst these "new investors" in truth and in fact never existed. These accounts were in fact opened by the same Investors under one of more pseudonyms and therefore one Investor held more than one account, albeit under different names. In this manner, these Investors, in fraud of the Scheme itself, drew 10% referral bonuses from the MTI investment pools on their own accounts – effectively stealing bitcoin from MTI and other Investors.

80. By June 2020, MTI was presenting with a substantial growth in Investors, with substantial investments being made into the Scheme. However, by then, the bitcoin invested in the Scheme and deposited into the MTI investment pools was already not being traded with profitably at all (and used for other fraudulent purposes). It was being eroded through the payment of referral bonuses and diluted because of the ghost accounts referred to above. This was, however, not disclosed to new Investors, for obvious reasons.

81. Around this time, MTI's broker, FxChoice became concerned about the manner in which MTI was trading and when MTI did not satisfy its requests

to clear up these concerns, FxChoice terminated MTI's access to its trading account and banned MTI from its trading platform, thereby freezing 1281 MTI bitcoin in that account, which at the time was worth approximately R150 million ("**the frozen bitcoin**" or "**the FX Choice bitcoin**").

82. But this too was not disclosed to existing or prospective Investors. It was rather concealed by MTI, who introduced an "unregulated broker" Trade300 as substitute for FxChoice, creating the impression that the frozen bitcoin had been transferred to Trade300, when it was in truth and in fact not.

83. The FSCA in the meantime caught wind of MTI's operations during July 2020, pursuant to which it initiated its own investigation into the trade and dealings of MTI.

84. Manifestly alive to the true circumstances prevalent upon MTI and its looming collapse, the top tier Investors of MTI who knew about the true state of MTI's affairs, then started to rapidly liquidate their investments in the Scheme, in anticipation of what the future held in for MTI.

85. But the amount of MTI Investors continued to grow until the Scheme, and MTI, self-destructed. MTI was simply doomed in that the illegalities that plagued its very existence could never be countered by any lawful trading endeavours open to it.

86. Despite the MTI protagonists' protestations to the contrary, from 29 January 2020 to 3 June 2020 the bitcoin traded by MTI through FxChoice presented with a capital loss of 30% on the total 1846.72 Bitcoin that MTI traded

through its broker, representing an approximate loss in value of R94 million at that point in time.

87. This too was not disclosed to the MTI Investors.

88. MTI was eventually liquidated as aforesaid.

89. Fortunately, MTI kept record of transactions between it and each of its Investors on a database hosted by Maxtra Technologies in India ('**the MTI database**'). Stored on this database is information concerning the details of each Investor's bitcoin deposit(s) with MTI in the Scheme, the purported referral commissions, bonuses and profits credited to Investors' crypto currency accounts (in bitcoin), as well as the actual number of bitcoin that each member withdrew from his or her 'investment' in MTI.

90. The relevant information obtained from the MTI database is dealt with in an affidavit of Mr Craig Pedersen ('**Pedersen**') of TCG Digital Forensics CC ('**TCG**'), which was attached to the first section 387 application and which is again attached hereto as annexure **FA10**.

## [D] MTI'S BUSINESS WAS AT ALL MATERIAL TIMES FRAUDULENT AND UNLAWFUL:

91. As stated before, this Honourable Court has already held that MTI was an illegal and unlawful scheme, and I again refer the Honourable Court to the judgment by the Honourable De Wet AJ, annexure FA5 above.

92. I still deem it necessary to place the additional information in the following paragraphs before the Honourable Court so as to enable the Honourable

Court to form a clear view of the income tax implications of the carrying on of the unlawful and fraudulent Scheme.

93. After the FSCA had started an investigation into the affairs of MTI during July 2020, and interviewed Steynberg on 20 July 2020, Steynberg and the main promotor of MTI, Ms Cheri Marks, represented to the FSCA, and to all of MTI's Investors, widely by way of circulars, website notices, YouTube clips and on public social media forums, that:

93.1. Due to concerns expressed by the FSCA concerning the lawfulness of the activities of MTI, MTI had moved the entire bitcoin trading pool of MTI from the trader where it was allegedly held (FX Choice, at the time) to a new trading platform known as Trade 300, in anticipation of a fear expressed by Steynberg that FX Choice may freeze all the bitcoin held by it pursuant to a cease and desist notice MTI had received from the Texas State Security Board;

93.2. The said Trade 300 was not a licensed Forex trader and having been registered in Nevis, it did not require Forex trading licenses;

93.3. The bitcoin frozen at that stage in the FX Choice account, amounting to approximately 1282 bitcoin, were not part of MTI Investors' bitcoin, but belonged to MTI and Steynberg; and

93.4. MTI had moved the bitcoin held by it in the trading pool, previously held at FX Choice, to Trade 300, in four transfers over a period from 21 July 2020 to 24 July 2020, with the number of bitcoin allegedly transferred to Trade 300 being 16444 bitcoin.

94. All of the above representations made by MTI, Steynberg and the management and marketing team, to the investors of MTI, were false, as already explained before and further below, in one or more of the following respects:

94.1. MTI had not moved the bitcoin from FX Choice because MTI's account with FX Choice had been frozen and the bitcoin could not be moved;

94.2. Trade 300 was not a broker but was no more than an alter ego for Steynberg;

94.3. The bitcoin frozen by FX Choice was not the property of Steynberg but belonged to MTI and formed part of the so-called trading pool.

94.4. The bitcoin of the MTI Investors, as pooled in MTI, were also not transferred immediately to any FX trader account but, instead, diverted to accounts under control of Steynberg and the management and marketing team, most notably Marks and his wife, Cheri Marks;

94.5. Only a limited number of bitcoin were traded with by MTI at FX Choice, but for this trading, losses were incurred, in the following approximate respects:

94.5.1. for bitcoin deposited into specified MAM accounts, 50,95 bitcoin were deposited of which 22 bitcoin were lost;

94.5.2. for a subsequent period from approximately January 2020 to 03 June 2020, a limited number of bitcoin were deposited with FX Choice in a total number of 1846,72, of which MTI made a loss

in trading of 566,68 bitcoin, resulting in an approximate capital loss of 30%.

94.6. There were no profits on any trading platform;

94.7. All trading reports published daily, of daily trading profits, were false;

94.8. All reports that MTI Investors' bitcoin grew every day, as a result of trading profits, by way of trading bonuses, were false;

94.9. All reports that MTI had continuously traded profitably, were false;

94.10. All reports that the trading of MTI's bitcoin was effected by a bot with artificial intelligence, were false;

94.11. Reports that the bot traded in real time were false;

94.12. The report that the bitcoin of MTI that were held at FX Choice were transferred to a new broker, were false. The alleged new broker, Trade 300, never existed and was a platform, a mere sham, created by Steynberg himself;

94.13. Unlike what was represented to MTI Investors, and the public at large:

94.13.1. MTI never achieved any growth in bitcoin as a result of trading activities;

94.13.2. MTI could never reflect such growth in bitcoin to MTI Investors, as it daily did;

94.13.3. MTI could never, from any *bona fide* trading activities, pay Investors withdrawing bitcoin, and growth in bitcoin, and MTI used bitcoin received from later investors to pay earlier investors.

95. First and foremost, seeing MTI for what it truly was, and not what its protagonists portrayed it to be, it conducted an unlawful and fraudulent Ponzi-type Scheme. In terms of this Scheme, it defrauded hundreds of thousands of Investors of their bitcoin which those benefitting from the Scheme, hiding behind MTI, appropriated and which appropriation they concealed under the ruse of the MTI Agreement contemplated Investor Benefits.

96. The FSCA's investigations concluded with the report it on 18 January 2021 ('**the FSCA report**'), which I already attached as annexure FA4.7. The FSCA report, together with the annexures thereto, is a voluminous document and the attachment of the annexures thereto will unnecessarily render this application prolix.

97. The FSCA report ultimately concludes that MTI's business was unlawful in a number of respects, for numerous reasons and particularly that MTI:

97.1. operated an un-paralleled and massive fraudulent and unlawful investment scheme, in flagrant disregard of the relevant financial sector laws as such and otherwise;

97.2. conducted an illegal, unregistered financial services business in contravention of (at least) section 7 of the Financial Advisory and Intermediary Services Act, 37 of 2002 ('**the FAIS Act**'); and

97.3. That the conclusion is inescapable that the investments made by Investors into MTI and the Scheme conducted by it, were misappropriated.

98. Further hereto, I again also refer to the reports issued by the Commissioner at the enquiry. The reports of the retired honourable Judge Fabricius issued speak for themselves. I will, in the circumstances, not repeat their contents in this affidavit.

99. Based on the aforesaid, the comprehensive affidavit of Mr Pederson to which I already made reference, the FSCA report and the reports issued by the Commissioner of the enquiry, the Liquidators always contended that MTI's business activities and the Scheme were fraudulent and otherwise unlawful, as also now held by this Court in the judgment of the Honourable De Wet AJ.

100. MTI conducted, beyond any doubt, an illegal an unlawful scheme. SARS, even prior to the judgment of the Honourable De Wet AJ, also considered the Scheme operated by MTI to be fraudulent and unlawful and issued their assessments in respect of MTI, as dealt with later below, from this premise.

**[E] MTI IS INSOLVENT AND ITS LIABILITIES EXCEED ITS ASSETS:**

101. As will be seen from the judgment of the Honourable De Wet AJ, annexure FA5 hereto, the Honourable Judge declined to grant a declaratory order on application to the effect that MTI was at all relevant times insolvent and that its liabilities exceeded its assets. I accordingly deem it necessary, *ex*

*abundanti cautela*, to briefly appraise the Honourable Court of the relevant facts in this regard.

102. As a general proposition, an unlawful Ponzi-type or pyramid-type investment scheme is insolvent from inception because once an investor makes an investment into such a scheme, pursuant to a fraudulent and void investment agreement, that investor will immediately be entitled to claim restitution of what was performed in terms of the void investment agreement. Full restitution is invariably impossible, because what was invested from day one will never again be available for return to investors, due to the nature of the scheme, the theft of what had been invested, costs associated with running the scheme, and repayment of undue 'profits' and the payments made to earlier investors.

103. The effect of the aforesaid is that none of the investments made into the Scheme can be considered to contribute to MTI's solvency because of the neutralising corresponding liability created, as explained above, that comes into existence immediately on date of investment.

104. We have established, through our investigations, that MTI's liabilities exceeded its assets from at least August 2019, being the first day of MTI's so-called second period. We believe that further investigation could well reveal factual and commercial insolvency since before this date, as it appears that, apart from MTI trading at a considerable loss, the funds invested with MTI were plundered from the very beginning by Steynberg and his cohorts.

105. As a result of the aforesaid, MTI incurred a massive liability to Investors, which it could never pay, and a great number of bitcoin remain unaccounted for. Further, as a result of the unlawful nature of the business of MTI, as already explained, MTI could not pay later bitcoin Investors demanding withdrawals of their bitcoin balances, and this led to the liquidation of MTI in December 2020.

106. At the date of its liquidation and because of the fraud perpetrated by MTI and the theft and loss of Bitcoin, MTI had a shortfall of bitcoin of at least 6,900 bitcoin, which does not include the 1,281 bitcoin that the Liquidators have recovered to date from FX Choice.

107. The difference between bitcoin deposited in and withdrawn out of MTI is at least 6,900 bitcoin with a present Rand value of approximately R520,000 per Bitcoin, representing a total unaccounted-for loss of approximately R3.5 billion at the present prevailing value of bitcoin.

108. It is in the circumstances evident that MTI's liabilities exceeded its assets from at least since 18 August 2019, being the first day of MTI's so-called second period, and it is further evident that MTI is unable to pay all its debts, at least also from the aforesaid date, and it has remained unable to do so ever since.

109. MTI's insolvency is further demonstrated by the MTI database extracted by Pedersen. In addition to his affidavit already referred to before, Pedersen also deposed to an affidavit in the Ponzi application. A copy of Pedersen's aforesaid affidavit is annexed hereto as annexure **FA11**. The Liquidators'

further investigations into the affairs of MTI and the facts uncovered pursuant thereto, have since overtaken what Mr Pedersen stated in annexure FA11, as is dealt with by Mr Pedersen in annexure FA10 hereto.

110. As appears from annexure FA11, at that stage, the Liquidators established that a total amount of 39,139.29 bitcoin had been deposited with MTI, of which an amount of 28,272.42 bitcoin was subsequently withdrawn. It follows, according to the MTI database, that a total of some 10,866.87 bitcoin was known not to have been withdrawn.

111. However, as dealt with in annexure FA10, the liquidators have subsequently established, with the assistance of Mr Pedersen, that there were more withdrawals of bitcoin and the total amount of bitcoin withdrawn from the Scheme is now known to amount 32,285 bitcoin. As with any data analysis, the Liquidators and their advisors are working with a collection of complex data that requires in-depth and extensive consideration, the analysis of which is an evolving process.

112. Save for the 1,281 bitcoin that the provisional liquidators located and recovered from FX Choice, no further bitcoin vesting in MTI, or over which MTI has control, has been recovered to date, notwithstanding extensive attempts by the FSCA, the Liquidators and their forensic experts, to do so.

113. The Liquidators have liquidated MTI's recovered bitcoin, amounting to 1,281 bitcoin, and pursuant thereto sold same for the aggregate sum of R1,058,176,013.69.

114. However, the Liquidators have now established that at least 6,853.29 bitcoin is unaccounted for within MTI. MTI consequently has liabilities to the tune of at least 6,853.29 bitcoin. Even if the Liquidators could locate and take into possession further MTI bitcoin, any such recovery will be met by a corresponding liability, for the aforesaid reasons already dealt with in paragraph 102 above.

115. Further, if all the MTI bitcoin is secured and recovered, which is, I submit, simply not achievable, the operational losses suffered by MTI during the period when it purported to trade, as aforesaid, which will retain the position of MTI's liabilities exceeding its assets.

116. MTI's liabilities, on any and every permutation, accordingly, exceed its assets and it is thus evident that MTI is unable to pay its debts as envisaged by section 340 of the 1973 Companies Act.

117. Ironically, and to the extent that there might have been any doubt about the insolvency of MTI, the claims of SARS which had been submitted for proof and accepted by the Master, in an amount in excess of R930 million, put this issue beyond any doubt. I deal in more detail with the claim hereinbelow.

## [F] THE SARS CLAIM

### (i) SARS' estimated assessments

118. Following several engagements between the Liquidators and SARS since July 2021 concerning SARS' investigation into the tax affairs of MTI, SARS, on 11 July 2022, issued a letter to the Liquidators in which SARS informed

the Liquidators that it had concluded and finalised its audit of MTI's affairs and that it had made adjudstments to MTI's taxable income. The adjustments were reflected in additional, estimated assessments issued by SARS in respect of MTI's 2020 and 2021 tax years.

119. I attach, as annexure **FA12.1**, the aforesaid letter of finalisation of audit ("**letter of assessment**"), and the respective assessments issued by SARS as **FA12.2** and **FA12.3**.

120. On the strength of these assessments, SARS, on 12 July 2022, submitted three claims against the MTI estate which it sought to prove at the meeting of creditors which was scheduled, initially, for 15 July 2022, as follows:

120.1. The first claim submitted was for the capital portion of the income tax SARS had assessed MTI for, which was in the amount of R349,663,528.08 (approximately R32.2 million for the 2020 tax year and approximately R317.4 million for the 2021 tax year);

120.2. The second claim was for understatement penalties ("**USP**") SARS imposed in terms of section 222, read with section 223, of the TA Act in an amount of R580,441,463.208 (approximately R48.3 million for the 2020 tax year and approximately R476.2 million for the 2021 tax year). The USP's were imposed at 150% on the basis that MTI's behaviour constitutes "intentional tax evasion"; and

120.3. The third claim was for interest levied by SARS in terms of section 89*quat*(2) of the Income Tax Act, 58 of 1962 ("**the IT Act**").

121. SARS' claims amounted to the total sum of R931,121,989.35.

122. Each of the claims were, as required by the Insolvency Act, supported by an affidavit deposed to by SARS and supporting documents. Since the affidavit submitted in respect of each of the claims of SARS is the same, and to avoid unnecessary prolixity, I only attach SARS' affidavit for the proof of its first claim, without annexures, as annexure **FA13.1**, and the front page of the affidavits submitted in respect of each of the second and third claims as annexures **FA13.2** and **FA13.3**. Complete copies of each of SARS' claims will be made available at the hearing of this application if necessary.

123. The special creditors' meeting of 15 July 2022 was postponed for a week and SARS' claims were eventually tendered for proof at the resumption of the meeting on 22 July 2022. The claims were accepted by the Master and proven and in consequence thereof, SARS became a preferent creditor in the estate of MTI for the amount mentioned before.

124. As appears from the letter of assessment, the basis for SARS' assessments can be summarised as follows:

124.1. SARS included in MTI's gross income the Rand equivalent of bitcoin received by MTI from Investors during the course of its existence. The amount is based on MTI's "back office". SARS relied on the judgment in **MP Finance Group CC (in liquidation) v Commissioner, South African Revenue Service**, 2007 (5) SA 251 (SCA) (**"the MP Finance judgment"**) to do so;

124.2. SARS permitted bitcoin actually withdrawn by members from MTI as deductions in terms of section 11(a) of the IT Act, read with section 23(g) thereof;

124.3. SARS refused the deduction of expenditure and losses incurred by MTI as a result of, inter *alia*, embezzlement, fraud or theft of bitcoin by MTI's senior management, actual trading losses suffered by MTI at the time when it traded through FX Choice and expenses actually incurred by it through another company owned and controlled by Steynberg, JNX Online (Pty) Ltd; and

124.4. USP's were imposed on the behaviour, as envisaged in the USP percentage table in section 223 of the TA Act, of "intentional tax evasion".

125. The Liquidators thereafter sought advice on the merits of SARS' assessments and whether the assessments should be disputed by them. The Liquidators, pursuant hereto, obtained several legal opinions and advice from its legal representatives to which reference is made briefly hereinbelow to the extent necessary. I pause to mention, however, that the advices and opinions obtained are confidential and privileged and whilst I refer to the gist of those opinions and some selected excerpts therefrom below where necessary, the MTI Liquidators do not, in any way, and should not be perceived to, in any way, waive the privilege attaching to those opinions and advice. I therefore do not attach the relevant opinions and advices received by the Liquidators to this affidavit.

126. Premised on the advice obtained by the Liquidators, we caused income tax returns to be filed in October 2022 on MTI's behalf in terms of section 95(6) of the TA Act, which put forward a different position relating to MTI's tax affairs as which SARS contended the position is in its letter of assessment.

The income tax returns filed are attached as annexure **FA14.1** and **FA14.2** respectively, and would result therein, if accepted, that MTI had no income tax liability towards SARS. The said returns were therefore filed by MTI with a view to dispute SARS' assessments, as section 95(5) of the TA Act requires, before the Liquidators could embark upon the objection and appeal process against the assessments.

127. In December 2022, SARS informed the Liquidators, in terms of section 95(8) of the TA Act, that it stood by its estimated assessments issued in July 2022 and that SARS would not, therefore, make reduced assessments on account of the returns submitted. I attach a copy of this letter as annexure **FA15**.

128. The Liquidators have since also submitted a request for reasons in terms of Rule 6 of the Tax Court Rules for the purpose of formulating its objection against the assessments, a copy of which I attach, for completeness, as annexure **FA16**.

129. In February 2023, a roundtable meeting was held between SARS' officials and me, the fourth and sixth applicants. During the meeting, which was held on 22 February 2023, the possibility of a settlement between the Liquidators and SARS was discussed amongst other matters with SARS concerning its assessments. It was agreed during this meeting that the Liquidators, if they decide to do so, would make an offer of settlement to SARS in March 2023.

**(ii) The advice received by the Liquidators in respect of the merits of SARS' assessments**

130. The complexity of determining whether SARS' assessments had merit or not is demonstrated by the divergent advice the Liquidators obtained from its legal representatives on different occasions:

130.1. Initially, on 22 October 2022, counsel for MTI – comprising of a senior counsel and a junior counsel – were instructed to give an opinion on whether there was any merit for the Liquidators to object to the assessments raised against MTI.

130.2. In the opinion obtained from counsel, which, for the reasons I already advanced before, I refrain from disclosing in full herein due to the confidential and privileged nature thereof, counsel opined, *inter alia*, that –

130.2.1. The MTI matter appeared to be substantially on the same factual footing as in the **MP Finance judgment** on which SARS' assessments are based and could not be distinguished therefrom;

130.2.2. SARS correctly found that losses incurred as a result of the embezzlement of bitcoin would not be deductible;

130.2.3. There exists no reasonable public policy or basis for a constitutional attack which could conceivably be relied upon to impugn the basis upon which SARS' assessments were raised; and

130.2.4. Save that an argument could be made, in so far as the imposition of USP's are concerned, that the understatements occurred as a

result of a *bona fide* inadvertent error which, if the argument succeeded, would result in all the USPs being written back, SARS' imposition of the USP's imposed by SARS was competent and in accordance with the provisions of the TA Act.

130.3. The opinion expressed by counsel was effectively that there would be no real merit in disputing SARS' assessments. This entailed, necessarily, that the entire claim of SARS, in an amount in excess of R931 million, would then stand as a preferent claim against the insolvent estate of MTI. Considering the amount for which the bitcoin retrieved from FX Choice was realised for, SARS' claim would then, effectively, almost wipe out the entire available cash reserve in the estate which stood to be paid to Investors with claims against MTI, which claims are concurrent.

130.4. The Liquidators were therefore minded to obtain a further, second opinion. Such an opinion was obtained on 17 October 2022 from two senior counsel and two junior counsel. Again, I do not, beyond what I state below, attach the opinion obtained or divulge more detail of the advices set out therein due to the confidential and privileged nature thereof. In this second opinion, counsel opined, *inter alia*, that:

130.4.1. Even if SARS was correct in applying the principles in the **MP Finance judgment** as it did, that judgment did not decide nor deal with the allowable deductions which should be allowed against illegal receipts by the taxpayer concerned.

130.4.2. Premised on the principles I already alluded to before in the context of an illegal and unlawful Ponzi-scheme in paragraph 102, being that upon an Investor investing bitcoin in the illegal MTI Scheme in terms of the void investment agreement that such Investor immediately obtained a claim for the bitcoin invested, counsel advised that the claim in the hands of the Investor constitutes an unconditional liability actually incurred by MTI which stand to be deducted from MTI's gross income in terms of section 11(a) of the IT Act.

130.4.3. In the result, and due to the illegal nature of the Scheme, each investment of bitcoin in MTI would attract an immediate, unconditional liability in the hands of MTI which is deductible, and consequently, no taxable income would ultimately remain in MTI which SARS could impose tax on.

130.4.4. Premised hereon, the Liquidators were advised to complete and submit income tax returns to SARS in terms of section 95(6) of the TA Act which reflect that MTI's deductible expenditure, in the form of Investor claims, is equal to its receipts of bitcoin for both tax years.

131. Although the Liquidators accepted and implemented the advice obtained in the later opinion we received from counsel, it was obvious that there was no guarantee that the position we adopted in respect of the disputed tax liability would, in due course and through dispute resolution proceedings, ultimately be upheld.

**(iii) Advice obtained in respect of settlement**

132. It is against the aforesaid background and information that the Liquidators, after the roundtable meeting held with SARS in February 2023, considered to seek to settle the matter with SARS. In this regard, the Liquidators again sought advice from counsel whether a settlement proposal should be made to SARS and if so, what would, in counsel's view, constitute a proper and appropriate settlement in the circumstances.

133. An opinion was obtained by the Liquidators on 3 March 2023 from two senior counsel and a junior counsel on the question of settlement. For the reasons already advanced before, I again refrain from attaching the opinion or dealing with it in more detail than what is strictly necessary for the purposes of this application. What is contained in this opinion is, similar to the other opinions, confidential and legally privileged.

134. In broad terms, the advice obtained from counsel in this instance was that it would indeed be desirable for the Liquidators to possibly settle SARS' claims and counsel opined that the amount for which the settlement agreement was ultimately concluded, as dealt with below, would constitute a good settlement of the dispute between MTI and SARS. These advices were given by counsel taking into account the risks of litigation and the costs associated therewith, the merits of the intended tax dispute and the prospects of that dispute ultimately being decided in MTI's favour through dispute resolution proceedings, the financial position of the estate of MTI and the interests of the creditors in the estate as a whole.

135. I quote relevant excerpts from the opinion below (redacted where necessary) to demonstrate that the advice to seek to settle SARS' claim was properly considered, thought through and reasoned:

> *"10. The basis upon which the liquidators will, in due course, seek to dispute the assessments raised by SARS has been set out in the opinion … on 17 October 2022. The details of that opinion are well known to the liquidators and are not repeated herein. In broad terms, the dispute will be formulated along the following lines:*
>
> *10.1 The inclusion of the Rand equivalent of all bitcoin received from investors by MTI in its gross income, premised on the* ***MP Finance*** *principle, is accepted;*
>
> *10.2 From the aforesaid amount of gross income, the liquidators will dispute the disallowance of certain expenses which had actually been incurred by it, being those set out in paragraph 3.3 supra (which, it appears, SARS will accede to); and*
>
> *10.3 The liquidators will contend, on the basis of the scheme being illegal in terms of the principle that an investor, when investing in such a scheme, immediately obtains a claim against the scheme, constitutes a deductible expense. Consequently, MTI's taxable income should be reduced to at least R nil and in fact, due the other expenses it incurred, MTI was in a loss position for tax purposes.*

11. *The result, if the dispute is decided in MTI's favour, is that no income tax whatsoever would be payable by it to SARS. Consequently, all penalties and interest would then also fall away.*

12. *We have not come across any authority demonstrating that the aforesaid position is incorrect in law. To the contrary, we are of the view that the existing, analogous authorities lend support to the contentions on which the liquidators will rely when disputing SARS' assessments.* ***MP Finance****, on which SARS relies, only dealt with whether illegal income was "received". It did not deal with what deductions could be claimed against that illegal income.* ***Fourie NO v Edeling*** *remains good law and any ostensibly contrary authority, such as the so-called diamond-case reported as* ***ITC 1545****, appear to be distinguishable from MTI's facts. That being said, regard must also be had to the fact that there is also no authority directly on point supporting the proposition for which the liquidators will contend.*

13. *In our view, the liquidators have a well arguable case on the basis of the legal opinion referred to above. Litigation, however, is not free of risk. This risk, on a very basic level, is apparent from the advice received by the liquidators in the initial legal opinion they obtained … on 21 August 2022, the details of which are also known to the liquidators and therefore, not repeated herein. In that opinion the view was expressed that SARS' assessments appeared to be unassailable.*

14. *Moreover, the general risks of litigation must also be taken into account and so too, the adverse effects which continued tax litigation may have over an extended period of time on the estate and the costs thereof. A further consideration is that settlement will secure that at least a reasonable portion of the residue available in the estate, before any recoveries through further litigation are made, will be available to be distributed to proven creditors as a liquidation dividend. Conversely, if the tax appeal is decided against MTI, the residue available in the estate will effectively be depleted due to SARS' status as a preferent creditor, thereby leaving practically nothing which could be distributed as a liquidation dividend to proven concurrent creditors.*

15. *Premised on these considerations, in our view it is indeed desirable for the liquidators to seek to settle SARS' claims in order to mitigate the aforesaid risks. That said, settlement will only be desirable in circumstances where the settlement amount is reasonable and justifiable, taking into account the risks mentioned herein, the interests of creditors and the overall financial position of the estate."*

136. As appears from the aforegoing advice, it was clear to the Liquidators that it would be in the best interests of MTI to settle SARS's claims in order to mitigate its risks. In this regard, and as already pointed out before, there are diverging views as to the correct legal position and neither MTI, nor SARS, have any guarantee of ultimate success after protracted litigation. Consequently, the Liquidators accepted counsels' advice that it is in the best interests of MTI to settle the dispute with SARS for a reasonable amount.

137. As to the amount for which he dispute should be settled, it is impossible to determine any exact amount of settlement with any degree of accuracy. The determination of an appropriate settlement amount called for a commercial assessment of the risks and the amounts involved in the dispute, the amount claimed by SARS and the financial position of the estate. Ultimately, it was concluded that a settlement for approximately R280 million would not only be in line with counsels' considered advice but also be in line with our own assessment of the facts, circumstances and legal implications.

138. It was therefore our commercial decision to settle the SARS dispute in the amount ultimately stated in the settlement agreement.

139. On 21 March 2023, the liquidators made a formal, confidential and without prejudice settlement proposal pursuant to Part F of Chapter 9 of the TA Act in accordance with the advice we received from counsel. The proposal is confidential and privileged and is therefore not attached to this affidavit.

140. The proposal eventually gave rise to the Liquidators and SARS agreeing to settle the matter in accordance with the terms contained in the settlement agreement.

**(iv) The settlement agreement**

141. On 25 April 2023, the settlement agreement was concluded between SARS and MTI. A copy of the settlement agreement already appears as annexure FA7 hereto.

142. The crux of the agreement of the settlement between SARS and MTI is contained in clause 4.2 of the settlement agreement, which provides as follows:

> "*4.2 The dispute, subject to what is contained in clause 6, between SARS and MTI is fully and finally settled on the basis that MTI will make payment of the Settlement amount in full and final settlement of MTI's obligations to SARS in respect of the 2020 and 2021 income tax years of assessment.*"

143. The "*settlement amount*" is defined as R283,428,110.70 in clause 3.8.5 of the settlement agreement, and the arrangements for payment is set out in clause 5 therein. The payment arrangements entailed, *inter alia*, that SARS' claim against MTI be reduced in terms of section 45(3) of the Insolvency Act, and payment of the settlement amount would be made within 3 business days from the date on which the agreement was concluded on the basis that it is deemed to be payment of an advanced preferent dividend, paid prior to the confirmation of the liquidation and distribution account of MTI.

144. The settlement was, however, made conditional upon the attainment of an order from this Honourable Court in terms of section 387(3) of the 1973 Companies Act, as appears from clause 6 of the settlement agreement. This condition was included in the advice the Liquidators received from counsel in the opinion obtained in respect of settlement. I again quote the relevant extract from that opinion below:

"25. *Notwithstanding what we have set out herein, any settlement of the dispute with SARS should be conditional upon the liquidators obtaining the sanction of the High Court to conclude such a settlement in terms of s 387 of the Companies Act, 1973. Whilst we deem it unnecessary to repeat the relevant authorities herein for the purposes of this memorandum, we have considered the aforesaid section and the commentary thereon and concluded that s 387(3) caters for a situation such as the present in which the liquidators can seek directions from the High Court."*

145. The Liquidators believe that the settlement is a good commercial settlement and that it was in the best interests of MTI to conclude the settlement:

145.1. The settlement represents only approximately a third of the total claim of SARS. By settling the tax dispute for the settlement amount, the MTI estate is entirely indemnified against the risk of SARS retaining a further preferent claim against the MTI estate for almost R650 million;

145.2. The settlement will save the estate an enormous amount of interest and legal costs. It will also provide certainty as to the financial position of the estate. The liquidators certainly cannot embark on tax litigation against SARS in light of the uncertainty of the prospects of success of such a dispute and in so doing, place the limited funds currently available for distribution to proven creditors at risk. An adverse outcome in such litigation against SARS could wipe out all the funds presently in the estate; and

145.3. By settling the tax dispute, the only preferent claim against the MTI estate becomes settled whilst a considerable residue remains, being the balance of the proceeds from the disposal of the FX Choice bitcoin, which can ultimately be applied towards payment of Investor-creditors' claims.

146. Consequently, the Liquidators respectfully submit that it would be appropriate for this Honourable Court to sanction or approve the settlement reached with SARS, as contained in the settlement agreement, in terms of section 387(3) of the 1973 Companies Act.

147. Due to the secrecy provisions of the TA Act and those contained in the settlement agreement, and due further to the confidential and privileged nature of much of the advice, discussions and negotiations which resulted in the conclusion of the settlement and to which I made reference before, I have endeavoured to appraise the Honourable Court of all the relevant facts in circumstances, to the extent that I can do so, without being in breach of such secrecy or confidentialiy provisions. Should the Honourable Court require any further information, counsel acting for the liquidators will be instructed to make whatever information required by the Court available to the extent that the Liquidators are able to do so, and I have no doubt that SARS, who will be represented at Court, will co-operate to fully appraise the Honourable Court of the relevant facts and circumstances so as to enable the Honourable Court to make a decision in terms of section 387(3) of the 1973 Companies Act.

## [G] URGENCY, THE PROPOSED HEARING AND THE PROVISIONAL ORDER:

### (i) An expedited hearing:

148. We bring this application on an urgent basis.

149. I am advised that:

149.1. the question as to whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in the application in due course; and

149.2. whether an applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case.

150. The Liquidators, and the MTI stakeholders, will not receive adequate substantive redress in respect of this application if we are compelled to prosecute same in the ordinary course of this Honourable Court's motion roll.

151. It is in the interest of all the investors in MTI and also in the interest of the *fiscus* that clarity on the status of the settlement agreement be obtained as soon as possible.

152. If this application is only adjudicated upon in the normal course of application proceedings, and if it is unopposed, it will only be adjudicated upon in the third or fourth term of 2023. If the application is heard in the normal course and on an opposed basis it will equally likely only be

adjudicated upon late in 2023 or even in 2024. These dates were confirmed by Mr Reece Lechet, a candidate legal practitioner employed by Mostert & Bosman Attorneys.

153. A delay of this nature, within the context of the MTI liquidation proceedings, will be catastrophic for the administration of the estate because the uncertainty that prevails upon the Liquidators will effectively stagnate the proceedings.

154. A delayed adjudication of this application in and of itself flies in the face of the substantive relief applied for in pursuance of the application.

155. It is in the interest of all interested parties that this application be finalised urgently, so as to enable the liquidators to proceed with the administration of the estate, without a R930 million preferent claim hanging over the estate.

**[G] INTERESTS OF AFFECTED PARTIES:**

156. For the sake of transparency in the administration of the estate, the Liquidators have, despite advice received that it is not necessary for them to make this application on notice to the proven creditors of MTI or any other persons alleging to have an interest in the estate, elected to nevertheless do so.

157. However, since the giving of notice to all creditors, possible inrerested parties and any other persons will likely, if not almost certainly, derail the urgent hearing of this application on an expedited timeframe, the relief sought herein has been framed, as set out in the notice of motion, on a

provisional basis, in the form of a rule nisi, returnable on a date to be determined by the registrar.

158. The Liquidators therefore respectfully propose:

158.1. That the prosecution of this application, for a provisional order, be done on notice only to the Master and SARS and on an urgent basis;

158.2. That the effect of the provisional order be suspended pending the confirmation thereof on the return date to be determined by the registrar; and

158.3. That the provisional order be published in the manner suggested in the notice of motion, and that notice hereof be given, accordingly, to the proven creditors of MTI and all other interested parties, calling upon them to show cause, if any, why the provisional order should not be confirmed.

159. It is indeed so that the dividend which concurrent creditors can expect to be paid will be affected by the outcome of the SARS dispute. In our respectful view, the *bona fide* creditors can only benefit from the settlement agreement concluded with SARS. We have, however, in the past been accused by certain people, such as Marks and even certain Investors of having acted improperly by obtaining an *ex parte* provisional order in the first section 387(3) application, despite the fact that it was from the outset made clear that no interim order with any immediate effect was sought. It was merely a mechanism to facilitate notice to all interested parties.

160. To avoid a repeat of the situation, the Liquidators request that the above proposed manner of prosecuting this application be endorsed by this Honourable Court.

161. That being said, on the advice received from our legal representatives, it is prudent to point out to the Honourable Court that there are various factors militating against giving notice to all the creditors or even potentially interested parties. These factors include the following:

161.1. No single creditor or other potentially interested party has a direct and substantial legal interest in the outcome of this application. The only interest potentially interested parties might have would be a financial interest, which is in an interest shared by all the thousands of investors in MTI.

161.2. The SARS claim is a proven claim. It was proved at a meeting of creditors where no single creditor or other interested party objected to the proof of the claim.

161.3. The liquidators have investigated the claim and have, in the process of so doing, managed to conclude a settlement agreement with SARS as dealt with herein. In accordance with the resolutions which have been adopted at the second meeting of creditors and members of MTI, on 10 December 2021, a copy of which appears as annexure **FA17** hereto, the Liquidators have, in addition to all the powers mentioned in the Companies Act, 1973, also the authority and power –

*"...in their sole discretion to compromise or admit any claim against the Company, with liquidated or unliquidated arising from any guarantee, damages claim or any other cause whatsoever, as a liquidated claim in terms of Section 78(3) of the Insolvency Act, as amended, at such amount as may be agreed upon by both the creditor concerned and the liquidators..."*

161.4. It is therefore highly doubtful, I submit, that any creditor could lawfully interfere with this discretion bestowed upon the Liquidators in the present circumstances.

161.5. Further, In terms of section 45(3) of the Insolvency Act, the Master has the power to expunge the proven claim, reduce same or confirm the claim in the amounts proven. We have accordingly been advised that, where we will effectively be applying for the reduction of the SARS claim to the settlement amounts, there is no legal requirement that notice be given to other creditors of the procedure.

162. All things considered, whilst it may be so that it is not necessary to give notice of this application to any creditors or otherwise interested parties, I submit that the proposed manner of disposing of this application, as set out before, is reasonable and will guard against any adverse consequences which could ensue if notice of this application is given prior to the hearing of this matter on an urgent basis or otherwise, where relief is obtained without giving notice to any of the creditors or other interested parties at all.

**[G] NOTICE AND SERVICE OF THIS APPLICATION:**

163. Service on the Master and SARS will pose no problem.

164. However, service of the Provisional Order on the thousands of possible Investors may very well pose a problem.

165. These individuals are the persons whom the Liquidators have identified as possible creditors of MTI, from the records of the company as stored on the MTI database.

166. There are thousands of investors in MTI. Many of these investors are foreigners.

167. We do not presently know the identities of all the investors. Many investors invested using aliases or fictitious entities which exacerbates this issue.

168. There are websites operated by the Liquidators where the Provisional Order and this application can and will be published. That website is accessible by all persons interested in and affected by the liquidation of MTI.

169. There are also numerous social media (Telegram) groups of investors where the Provisional Order can be published. Two specific Telegram groups assume particular significance in this regard, being the Get-A-Quid and Recovery Action Groups respectively, which collectively have approximately 15,000 participants. Our attorneys will attempt to liaise with the administrators of these groups and will, in so far as it may be possible, arrange that the Provisional Order be published on these groups.

170. The Liquidators believe that effective notice of the Provisional Order can be achieved by way of publication on the MTI website, by e-mail notice to all interested and affected parties [to the extent that we in possession of their e-mail addresses] and by publication on the Whatsapp groups of Investors.

171. We furthermore propose that this entire application, together with the Provisional Order, be made available to all Investors in electronic format and that investors be advised that they have the right to participate in the proceedings and to place their views before the Honourable Court on the return day of the Provisional Order.

172. In addition to the aforesaid, we propose that the Provisional Order also be published in two nationally circulated newspapers, such as the Rapport and the Sunday Times.

173. The accompanying notice of motion provides for notice to interested and affected persons, particularly investors, in the aforesaid manner, which we submit is the only meaningful way, in the circumstances of this matter, that presents with any prospect of effective notice of this application and the Provisional Order, to ensure that this application is brought to the attention of Investors.

174. We verily believe that service contemplated aforesaid is the most expeditious and effective manner in which the Provisional Order and this application can and should be served.

**[H] CONCLUSION:**

175. It is submitted that a proper case is made out for such relief to ensue, in the circumstances of this matter.

176. We accordingly pray for an order in the terms of the notice of motion.

DEPONENT

I hereby certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn before me at Bellville on this the 15th day of MAY 2023, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

Ex Officio COMMISSIONER OF OATHS (RSA)
**CHARL THOMAS HAMBRIDGE**
(Member) Chartered Management Accountant
Business Consultant
CTH Consulting
25 Dolfyn Street, Yzerfontein
Western Cape, 7351

REPUBLIC OF SOUTH AFRICA

**SERTIFIKAAT VAN AANSTELLING VAN LIKWIDATEUR**

[Maatskappywet, No 61 van 1973 (soos gewysig)]

**CERTIFICATE OF APPOINTMENT OF LIQUIDATOR**

[Companies Act, No 61 of 1973 (as amended)]

**NO:** C000906/2020

Hierby word gesertifiseer dat:
This is to certify that:

| | |
|---|---|
| 1. BARNARD, JACOLIEN FRIEDA | **ID.** 8210030014085 |
| 2. BASSON, DEIDRE | **ID.** 7009290090087 |
| 3. BESTER, HERMAN | **ID.** 7009235139080 |
| 4. COOPER, CHAVONNES BADENHORST ST CLAIR | **ID.** 6905045153081 |
| 5. ROOS, CHRISTOPHER JAMES | **ID.** 8409215014080 |
| 6. VAN ROOYEN , ADRIAAN WILLEM | **ID.** 6911185280080 |
| 7. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX | **ID.** XXXXXXXXXXXXXXXXXXXX |

aangestel is as Likwidateur met die magte soos uiteengesit in Artikel 386(1) van Wet No 61 van 1973 saamgelees met item 9 van Skedule 5 van Wet 71 van 2008 van die Maatskappy bekend as:

appointed as Liquidator with the powers as set out in Section 386(1) of Act 61 of 1973 read together with item 9 of Schedule 5 of Act 71 of 2008 of the Company known as:

**MIRROR TRADING INTERNATIONAL (PTY) LIMITED T/A MTI 2019/205570/07**

wat onder Likwidasie geplaas is
which has been placed under Liquidation 30-6-2021

van die Hoë Hof van Suid-Afrika,
by Order of the High Court of South Africa, WESTERN CAPE HIGH COURT (CAPE TOWN) Afdeling / Division

Geteken te
Signed at CAPE TOWN

op
on 11 NOVEMBER 2021

MASTER OF THE WESTERN CAPE HIGH COURT
CAPE TOWN
2021 -11- 11
A/N: INSOLVENT ESTATES 2
11 NOVEMBER 2021
MEESTER VAN DIE WES KAAP HOË HOF
DATUMSTEMPEL
DATE STAMP

DOJCD\HBOUWER
**MEESTER VAN DIE HOË HOF VAN SUID-AFRIKA**
**MASTER OF THE HIGH COURT OF SOUTH AFRICA**

URN: 8992020INS000906

J409

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

# MASTERS CERTIFICATE

## MIRROR TRADING INTERNATIONAL (PTY) LTD
## C906/2020

This is to certify that

**DANIEL SANDILE NDLOVU**
**&**
**KEVIN TITUS**

are added as co-Liquidators in terms of section 374 the Companies Act 61 of 1973 with,

**ADRIAAN WILLEM VAN ROOYEN**
**CHRISTOPHER JAMES ROOS**
**CHAVONNES BADENHORST ST CLAIR COOPER**
**HERMAN BESTER**
**DEIDRE BASSON**
**JACOLIEN FRIEDA BARNARD**

**ASST. MASTER OF THE HIGH COURT, CAPE TOWN**

REGISTRAR OF THE WESTERN CAPE HIGH COURT
CAPE TOWN
2023 -04- 05
A/M: INSOLVENT ESTATES
MEESTER VAN DIE WES KAAP HOË HOF

# Company
MIRROR TRADING INTERNATIONAL, K2019/205570/07

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## SEARCH CRITERIA

| | | | |
|---|---|---|---|
| Search Date | 2022/07/26 11:28 | Company Name | MIRROR TRADING INTERNATIONAL |
| Reference | - | Company Name Search Type | Contains words starting with |
| Report Print Date | 2022/07/26 11:28 | Information Source | COMPANIES AND INTELLECTUAL PROPERTY COMMISSION |

## COMPANY SUMMARY

| | | | |
|---|---|---|---|
| Name | MIRROR TRADING INTERNATIONAL | Status | FINAL LIQUIDATION |
| Registration Number | 2019/205570/07 | Registration Date | 2019/04/30 |

## DIRECTORS AND OTHER SUMMARY (2)

ACTIVE

| Name | ID/Reg. Number | Type | Status |
|---|---|---|---|
| STEYNBERG, CORNELIUS JOHANNES | 8307135016088 | DIRECTOR | ACTIVE |

INACTIVE

| Name | ID/Reg. Number | Type | Status |
|---|---|---|---|
| RADEMAN, FREDERIK COENRAAD | 7910055051083 | DIRECTOR | RESIGNED |

## AUDITOR SUMMARY

No auditor summary to display

## COMPANY INFORMATION

| | | | |
|---|---|---|---|
| Enterprise Name | MIRROR TRADING INTERNATIONAL | Status | FINAL LIQUIDATION |
| Registration Number | 2019/205570/07 | Enterprise Type | PRIVATE COMPANY |
| Tax Number | 9060362267 | Business Start Date | 2019/04/30 |
| Short Name | - | Registration Date | 2019/04/30 |
| Translated Name | - | Financial Year End | 2 |
| Old Registration Number | - | Financial Effective Date | - |
| Conv. Enterprise Number | - | CK Date Received | - |
| Region | - | CK Date | - |

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| | | | |
|---|---|---|---|
| Country | SOUTH AFRICA | Date of Type | 2019/04/30 |
| Country of Origin | - | | |
| Issued Shares | - | | |
| Issued Capital | - | | |
| Authorized Shares | 1 000 | | |
| Authorized Capital | - | | |
| Industry Code | - | | |
| Industry | - | | |
| Principal Business | BUSINESS ACTIVITIES NOT RESTRICTED. | | |
| Registered Address | 43 PLEIN STREET<br>UNIT 1 GROUND FLOOR<br>STELLENBOSCH<br>WESTERN CAPE<br>7600 | Postal Address | P O BOX 7149<br>DROSTDY CENTRE<br>STELLENBOSCH<br>WESTERN CAPE<br>7599 |

## DIRECTORS AND OTHER (2)

RADEMAN, FREDERIK COENRAAD — 1 of 2 Directors

| | | | |
|---|---|---|---|
| Name | FREDERIK COENRAAD | Status | RESIGNED |
| Surname | RADEMAN | Type | DIRECTOR |
| Initials | F | Appointment Date | 2019/04/30 |
| ID/Passport Number | 7910055051083 | Resignation Date | 2020/05/16 |
| Date of Birth | 1979/10/05 | Member Size (%) | - |
| Profession | - | Member Contribution (R) | - |
| Country of Residence | SOUTH AFRICA | | |
| Residential Address | 34 PROAPERITY PLACE<br>GROBLERSPARK<br>ROODEPOORT<br>GAUTENG<br>1724 | | |
| Postal Address | 34 PROAPERITY PLACE<br>GROBLERSPARK<br>ROODEPOORT<br>GAUTENG<br>1724 | | |

STEYNBERG, CORNELIUS JOHANNES — 2 of 2 Directors

| | | | |
|---|---|---|---|
| Name | CORNELIUS JOHANNES | Status | ACTIVE |
| Surname | STEYNBERG | Type | DIRECTOR |
| Initials | C | Appointment Date | 2019/04/30 |
| ID/Passport Number | 8307135016088 | Resignation Date | - |
| Date of Birth | 1983/07/13 | Member Size (%) | - |
| Profession | - | Member Contribution (R) | - |
| Country of Residence | SOUTH AFRICA | | |

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| | | | |
|---|---|---|---|
| Residential Address | 31 TAWNY HAWK<br>CRESCENT<br>EGALES CREST ESTATE<br>POLOKWANE<br>LIMPOPO<br>0787 | | |
| Postal Address | 31 TAWNY HAWK<br>CRESCENT<br>EGALES CREST ESTATE<br>POLOKWANE<br>LIMPOPO<br>0787 | | |

## SECRETARY COMPANIES AND CCS

No secretary companies and CCS to display

## COMPANY SECRETARY NATURAL PERSONS

No company secretary natural persons to display

## BOTH DIRECTOR / OFFICERS

No both director / officers to display

## ALTERNATIVE DIRECTORS

No alternative directors to display

## OFFICERS

No officers to display

## LOCAL MANAGERS

No local managers to display

## TRUSTS

No trusts to display

## AUDITOR

No auditor to display

## CAPITAL INFORMATION (1)

| Type | No of Shares | Parri Value | Capital Amount (R) | Capital Premium |
|---|---|---|---|---|
| AUTHORIZED ORDINARY | 1 000 | 1 | - | - |

## HISTORY (7)

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| Effective Date | Change Type |
|---|---|
| 2022/07/01 | IN LIQUIDATION<br><br>(NO INFORMATION TO DISPLAY) |
| 2022/07/01 | IN LIQUIDATION<br><br>(NO INFORMATION TO DISPLAY) |
| 2020/09/09 | CO/CC ANNUAL RETURN<br><br>(COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 5299710142) |
| 2020/06/02 | DIRECTOR/MEMBER/SECRETARY/TRUST/BOTH DIRECTOR AND OFFICER<br><br>(DIRECTOR CORNELIUS JOHANNES STEYNBERG DETAILS WAS CHANGED) |
| 2020/06/02 | DIRECTOR/MEMBER/SECRETARY/TRUST/BOTH DIRECTOR AND OFFICER<br><br>(DIRECTOR FREDERIK COENRAAD RADEMAN DETAILS WAS CHANGED) |
| 2020/05/15 | REGISTERED ADDRESS CHANGE<br><br>(43 PLEIN STREET UNIT 1 GROUND FLOOR STELLENBOSCH WESTERN CAPE7600) |
| 2019/05/02 | NAME CHANGE<br><br>(K2019205570 (SOUTH AFRICA)) |

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"X"
29-12-2020

**IN THE HIGH COURT OF SOUTH AFRICA**
**(WESTERN CAPE DIVISION, CAPE TOWN)**

**CASE NO: 19201/2020**

BEFORE THE HONOURABLE MR JUSTICE ROGERS
AT CAPE TOWN: ON TUESDAY, 29 DECEMBER 2020

In the matter between: -

**ANTON FRED MELCHIOR LEE** Applicant

and

**MIRROR TRADING INTERNATIONAL (PTY) LIMITED** First Respondent
**T/A MTI**
**(REGISTRATION NUMBER: 2019/205570/07)**
Registered office at: **43 Plein Street**
**Unit 1**
**First Floor**
**Stellenbosch**
**Western Cape**

**FINANCIAL SECTOR CONDUCT AUTHORITY (FSCA)** Second Respondent
Private Bag X5020, Cape Town 8000

2020 -12- 28
DRAFT ORDER
WCD-010

Having read the documents filed of record and having heard Counsel for the Applicant, it is hereby ordered that:

1. The First Respondent is hereby placed under provisional liquidation in the hands of the Master of the High Court, Cape Town.

2. A rule *nisi* is hereby issued calling upon all persons interested to show cause, if any, on Monday, 1 March 2024 at **10h00**, or as soon thereafter as the application may be heard, why a final order should not be granted in the following terms:

   2.1 That the First Respondent be placed under Final Liquidation; and

   2.2 That the costs of this application shall be costs in the Liquidation.

3. A copy of this provisional order is to be served as follows:

   3.1 On the Respondent at its principal place of business at 43 Plein Street, Unit 1, First Floor, Stellenbosch, Western Cape;

   3.2 On the employees of the First Respondent, if any, at 43 Plein Street, Unit 1, First Floor, Stellenbosch, Western Cape; and at 341 Beyers Naude Drive, Randburg, Gauteng.

   3.3 By one publication in each of the *Sunday Times* and *Rapport* newspapers respectively; and

   3.4 On the South African Revenue Service, Cape Town at 22 Hans Strijdom Avenue, Cape Town.

4. The Registrar of this Honourable Court shall transmit a copy of this provisional order to the Sheriff of the province in which the registered office of the First Respondent is situated and to the Sheriff of every province in which it appears the First Respondent owns businesses.

5. The Sheriff of this Honourable Court shall attach all property that appears to belong to the First Respondent and transmit to the Master an inventory of all property attached by him or her in terms of section 19 of the Insolvency Act 24 of 1936.

**BY ORDER OF THE COURT**

Private Bag X9020, Cape Town 8000

2020 -12- 28

WCD-010

**COURT REGISTRAR**

*VEZI & DEBEER INC: YASIN ALLI (REF: YALLI) Yasin@vezidebeer.co.za*
*3RD FLOOR, EQUITY HOUSE, 107 ST GEORGES MALL, CAPE TOWN, TEL: (012) 361 2746*
*HC BOX: 763*

"FA 3"



# Final Liquidation

**IN THE HIGH COURT OF SOUTH AFRICA**
**WESTERN CAPE DIVISION, CAPE TOWN**

Case No: 19201/2020

**BEFORE THE HONOURABLE ACTING JUSTICE DE WET**
**CAPE TOWN: WEDNESDAY, 30 JUNE 2021**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
Private Bag X9020, Cape Town 8000
2021 -06- 30
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,

In the matter between:

**ANTON FRED MELCHIOR LEE** Applicant

and

**MIRROR TRADING INTERNATIONAL (PTY) LTD t/a MTI** First Respondent
(Registration Number: 2019/205570/07)
Registered Office at 43 Plein Street, Unit 1
1st Floor, Stellenbosch
Western Cape

**FINANCIAL SECTOR CONDUCT AUTHORITY (FSCA)** Second Respondent

**CLYNTON HUGH MARKS** Third Respondent

and

**ADRIAAN WILLEM VAN ROOYEN N.O.** First Proposed Intervening Party
**HERMAN BESTER N.O.** Second Proposed Intervening Party
**CHRISTOPHER JAMES ROOS N.O.** Third Proposed Intervening Party
**JACOLIEN FRIEDA BARNARD N.O.** Fourth Proposed Intervening Party
**DEIDRE BASSON N.O.** Fifth Proposed Intervening Party

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**ORDER**

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Having heard Counsel for Applicant, First and Third Respondents as well as First to Fifth Proposed Intervening Parties;

**IT IS ORDERED THAT:**

1. The application for the reconsideration of the provisional order in terms of Rule 6(12)(c) is dismissed;

2. The *rule nisi* granted on 29 December 2020, is made absolute and First Respondent is placed under Final Liquidation;

3. The costs of this application, are costs in the administration of First Respondent;

4. The costs occasioned by the intervention of Third Respondent, as taxed on an attorney and client scale, be paid by Third Respondent;

5. The application for intervention by First to Fifth Proposed Intervening Parties as well as their counter application is postponed in terms of an order issued separately from this order for sake of convenience.

**BY ORDER OF THE COURT**

Private Bag X9025 C

2021 -06- 30

WCD-002

**COURT REGISTRAR**

**763** Coombe Commercial
c/o Vezi & De Beer Inc
CAPE TOWN

**Enquiry in terms of Sections 417/418 of the Companies Act 61 of 1973 read with item 9 of Schedule 5 of the Companies Act 71 of 2008.**

In the matter of:

**MIRROR TRADING INTERNATIONAL (PTY) LTD t/a MTI (IN PROVISIONAL LIQUIDATION)**

**Interim Report of the Commissioner, Judge H. Fabricius (r.) dated 10 March 2021**

The purpose of a report at this stage (prior to the scheduled continuation of the enquiry before me on 23-26 March 2021, and if necessary before a Magistrate in Stellenbosch on 29-30 March 2021) is to demonstrate why and how the unlawful conduct of the company and its directors and certain management officials has been perpetrated. It would assist the liquidators in examine the affairs of MTI more closely, once the evidence that has still to be presented, has been critically examined. Even at this stage the available evidence is of such a compelling nature that it is clear to me that the unlawfulness business activities should not be permitted to continue for the protection of thousands of members of the public.

**A. Background:**

1. Bitcoin is a new technology. It is digital currency that is not issued or controlled by a government or a central bank. It is managed by its users who secure the system using software that anyone can download. Persons can send Bitcoin to each other without the need for a bank or a financial intermediary. It can be stored in their own digital wallets. A wallet can also be held as a crypto currency exchange which would however not be as safe as a personal wallet held on a laptop, phone or wallet device.

2. Crypto Assets are not regulated by the Financial Sector Conduct Authority ("FSCA" hereafter); but the Authority has proposed that crypto assets be bought within the definition of "financial product" in Section 1 of the Financial Advisory and Intermediary Services Act 37 of 2002 ("FAIS Act").
3. This proposal of the Authority should in my view be implemented urgently. It has identified a number of crypto asset platforms operating in South Africa with an estimated registered users of some 800,000 persons, controlling about 80%-90% of the market with an estimated R6.5 billion value. This proposal was published in November 2020 when the price of a Bitcoin was between 15,000 and 18,000 USD. The price fluctuates wildly and was almost 60,000 USD during February 2021. Its unregulated use opens the door to fraud as an unprecedented scale and has a major impact on the regulation of foreign exchange and the Revenue Services.
4. Bitcoin transactions are irreversible and do not contain a traders / purchasers or seller's personal information.
5. During the third quarter of 2020 MTI by way of a written "Referral Programme Success Guide" represented to its existing and new members that it used a "Forex Trading Bot" between August 2019 – August 2020 (which was unlawful inasmuch as it had no licence to do so), and that it used a "Crypto Trading Bot" from August 2020 until its demise in December 2020.
6. The founder of the Company was Johann Steynberg and his co-director, and 50% shareholder was Clynton Marks.
7. On 24 December 2020 a Mr. A. Lee brought an urgent application in the Western Cape High Court under case no. 19201\2020 for the provisional liquidation of the company. His cause of action was based on the allegation that the company was indebted to him in an admitted amount of some 34,705 USD which it was unable to pay. Further, it owned no assets and earned no income. During August 2020, the FSCA informed the company that its business

model required it to be in possession of a financial service provider licence. During October 2020 it was informed, that it was conducting an illegal unregistered financial services business. Up to at least August 2020 it was trading (on its own version) in derivative instruments whilst it was not registered to do so.

8. He alleged that a criminal case was opened at the Stellenbosch Police Station during November 2020 under case no. 245\11\2020. The person solely in control of the particular details or password to retrieve the coins under the control of the company, the said Mr. Steynberg, "disappeared" on 2 December 2020. There are allegations that he fled to Sao Paulo in Brazil, whilst a private investigator filed a report alleging that he is hiding in Polokwane to the knowledge of his wife, Mrs. Nerina Steynberg, who was also alleged to be in the possession of all relevant information that would enable the company's members to retrieve their bitcoins. It is not clear at this stage why a warrant of arrest has not yet been issued against Mr. Steynberg. He was also subpoenaed to testify at the second stage of the present enquiry, as was Mrs. Steynberg, who did not appear at the first stage, due to alleged psychological problems diagnosed by a Counselling Psychologist who is in terms of the relevant rules of the Health Professions Council, not authorised to make a clinical diagnosis. Apparently she was also referred to a Psychiatrist, but I have no details of such a visit.

9. The second stage of the enquiry will take place from 23 to 26 March 2021. Mrs. Steynberg has been subpoenaed to appear and if she fails to do so, she will be obliged to appear before the Magistrate Stellenbosch, who will be in law entitled to impose a criminal sanction. It has not been explained why Mrs. Steynberg suffers from psychological problems some 3 months after her husband's "disappearance" whilst having failed to have filed a missing person report under oath.

10. The said Mr. Lee explained the alleged operations of the company in some detail in his founding affidavit. Members of his family have also invested in the company and some 68,000 USD is due to them.

11. I will make reference to the company's alleged operations when I deal in summary form with the said report of the FSCA, which has consented by way of an affidavit dated 9 March 2021 that the report may be used as evidence in the enquiry. It has also confirmed the correctness thereof and the relevant Annexures thereto.

12. A Steven Watkins bought a similar application on 29 December 2020 under case no. 19204\2020. He had a claim against the company for at least R150 000. He described the operations of the company as an illegal investment or "pyramid" scheme as contemplated in section 43 of the Consumer Protection Act No 68 of 2008.

13. On 29 December the Western Cape High Court granted the provisional liquidation order with the return dated being 1 March 2021. On that date, the rule-nisi was extended to 31 May 2021 to enable opposition papers to be filed by 31 March.

14. On 22 January 2021 the joint provisional liquidation sought an order from the Western Cape High Court under case no. 935\2020 extending their powers in terms of Section 386 (5) and 387 (3) of the Companies Act 61 of 1973, and for the convening of a Commission of Enquiry in terms of s.417 and 418 of the said Act, and well as for the appointment of a Commissioner. The court granted such order on the same day appointing me as one of 4 Commissioners. My personal details were not before the Court at the time for reasons of urgency. I commenced practice as an Advocate at the Pretoria Bar in 1975 and remained a member until my appointment to the Gauteng Bench in 2010. I was Senior Council for 21 years, and an Acting Judge for about 2 years and 3 months. My total period on the Bench was therefore about 12.5 years. It is noted that paragraph 11 of the said Court order provided "that all persons summoned before the Commissioners may be examined concerning the trade, dealings, affairs and property of MTI". This order mirrors the

provisions of Section 418 (2) of the said Act. I mention this at this stage as I was informed on 1 March 2021 by Mr. P. du Toit, the Attorney representing the joint liquidators that Mrs. N. Steynberg legal representative had tendered to answer written questions posed to her under oath. In my experience, such answers can indeed provide a solid starting point for an examination, but would in all likelihood in a matter of this nature and complexity, result in further questions and debates. I informed the said Attorney therefore that an oral examinations be insisted upon.

15. The said Section 418 enquiry commenced before me on 19 February until 26 February 2021. It became clear from all the evidence that "members" of the company and its management team and employees placed their complete trust in Mr. Steynberg who by all accounts was the only person in complete control of the technical aspects of the alleged trades/purchases and sales. Mr. C. Marks, the co-director and 50% shareholder professed to have no technical knowledge whatsoever and confined his role to the recruitment of new members. He also placed his trust in a report by a firm of Attorneys who confirmed that the company was operating within the confines of the law. His wife, Mrs. Cheri Marks confirmed her husband's total lack of any technical expertise and was furthermore of the view that according to Mr. Steynberg himself, his wife Nerina was his "21C" and that "if something happened to him" she would be able to continue to operate the system used by the company and continue to return the members' investments. In my view Mrs. Nerina Steynberg will be a crucial witness in these proceedings and the prosecuting and law enforcement authorities should interview her urgently.

**B. The FSA Report**

16. The "Executive Summary" in my view, having regard to the evidence presented, correctly refers to the 3 periods relevant to the activities of MTI (or lack thereof). For the sake of convenience, I intend to quote this summary in full.

**"EXECUTIVE SUMMARY**

The report addresses the unlawful activities of Mirror trading International (Pty) Ltd ("MTI") and its senior management from April 2019 to August 2019 ("the first period"), from August 2019 to October 2020 ("the second period") and from October 2020 to December 2020 ("the third period").

**The First Period**

MTI first started trading in April 2019. Members of the public were invited to move their Bitcoin from their Bitcoin wallets to MTI Bitcoin wallets. Steynberg was in full control of these MTI Bitcoin wallets. From the MTI Bitcoin wallet, the Bitcoin were transferred to FXChoice Ltd ("FXChoice"), a forex platform broker.

Steynberg testified under oath, that from April 2019 to July 2019, member trading accounts were linked to a professional trader appointment by MTI through a multi account manager arrangement linked to Meta Trader 4. Trading was conducted in derivative instruments based on forex pairs.

However, according to Steynberg MTI experienced substantial losses (of up to 80%), and as a result, MTI requested its members to delink their respective FXChoice accounts from the multi account manager account and move their bitcoin to a pooled account.

**The Second Period**

From August 2019 Steynberg claimed that MTI employed a bot (high frequency artificial intelligence trading) together with a head-trader and trading team to make all its trading decisions, with great success.

**What evidence we obtained with reference to the First and Second Period**

The FSCA obtained evidence from FXChoice, a Belize registered on-line trading platform, that is in complete contradiction with the claims of Steynberg and Marks. According to FXChoice MTI's clients provided them with "trading statements" that were based on demo trading accounts and not actual trades. As a result, FXChoice froze the balance of the crypto assets linked to MTI on the FXChoice platform.

However, the total frozen crypto assets on FXChoice is a negligible amount, taking into account the total assets that MTI claimed it invested on behalf of its clients. In addition the little trading that was done resulted in a capital loss of approximately 30%.

This is in stark contrast to the repeated claims of MTI that they average trading profits of 10% per month. In addition, the trading volumes and amount of Bitcoin on the platform as provided by FXChoice falls far short from the volumes claimed by MTI. It is clear that the public claims by MTI senior management are false.

**The Third Period**

During October 2020, MTI claimed that it changed its trading activities to trade in derivative instruments based on Bitcoin, so that it no longer required and FSP licence (financial services provider licence). It is not correct as the submissions received from Steynberg revealed that the crypto assets were alleged to be traded in the form of a derivative product, which means MTI still required a licence from the FSCA.

MTI, Steynberg, and Cheri Marks claim that the trading activities of MTI were transferred from FXChoice to Trade300, transferring all the clients' crypto assets from FXChoice to Trade300.

According to Steynberg, Trade300 is another on-line trading platform. At Trade300 MTI experienced the same extraordinary profits utilising the bot – but at this stage in trading in crypto derivatives.

Steynberg stated under oath and repeatedly in the press that the bot trading averaged a return of 10% per month, and that MTI has never had a negative profit trading day, but for one exception. Marks also repeatedly confirmed the trading successes on social media.

**What evidence we obtained with reference to the Third Period**

The FSCA followed all possible links on the internet to establish whether Trade300 existed. It could only find one reference to Trade300; i.e. the website of Trade300. However, the website was and still is "under maintenance", and the only reference linked to the website is the name of "Joe Steyn", a known alias of Steynberg.

The FSCA obtained search and seizure warrants and executed them at the homes of Steynberg and Marks, and the offices of MTI. On the desktop computer of Steynberg the investigation team found evidence of Steynberg having created the website of Trade300.

The evidence that MTI, Steynberg and Marks provided to the FSCA about the transfer of clients' assets from FXChoice to Trade300, is false.

We have found no evidence of any significant store of Crypto assets on any trading platform and that most crypto balances appear in the name and under control of

Steynberg. The amount of such balances is well below the advertised balance on the MTI trading platform as being due to investors of MTI.

**Contravention of section 7(1) of the FAIS Act**

Section 7(1) of the FAIS Act prohibits any person from conducting financial services unless authorised to do so by the FSCA. MTI was conducting financial services with reference to a financial product (during the first and second periods, a derivative linked to forex pairs, and during the third period with reference to a derivative relating to Bitcoin). MTI required a category II licence (discretionary asset management).

MTI, through the activities of Steynberg and Cheri Marks, and with the assistance of others, conducted illegal financial services in contravention of section 7(1) of the FAIS Act for a period of at least 2 years.

This is a criminal offence.

Steynberg and Marks attempted to argue that MTI only receives Bitcoin from clients, and as Bitcoin is not a financial product yet, MTI are not conducting financial services as defined. (Financial services can only be conducted with reference to a financial product).

This argument is not sound in law. During the first period MTI conducted financial services with reference to derivatives in forex pairs (a financial product). The method of payment is not relevant to the licence requirements. During the second period MTI conducted financial services with reference to CFDs in Bitcoin (a financial product). As before, the method of payment is not relevant to the licence requirements.

**What did MTI and Steynberg do with the clients' assets**

Clients' assets were pooled into one FXChoice account alleged to be in the name MTI. However, the account at FXChoice was in fact in the name of Steynberg. More

importantly, an immaterial amount of Bitcoin remained on the platform, and the trading history by no stretch of the imagination reflects their claims of extensive trading and extraordinary profits. In fact, the little actual that was conducted on the platform produced substantial capital losses.

According to MTI/Steynberg, these assets were moved to Trade300. This is a misrepresentation. No material amount of Bitcoin was moved out of FXChoice.

With reference to Trade300 it seems highly likely that it is a fabrication of Steynberg, and there is no evidence that the FSCA could find, or that MTI provided, of it being the source of any trading or any profits.

In summary, the evidence shows that very little of the clients' Bitcoin reached any forex or other trading platforms".

17. Mr. K. Badenhorst was interviewed by representatives of the FSCA on 26 October 2020. The correctness of transcription has been confirmed. This was a telephonic interview in the presence of Mr. Steynberg. There was a "first audio" and Mr. Steynberg was not prepared to make any comments in the absence of his Attorneys when Mr. Badenhorst said "I have assisted in writing the Bot program. So I was busy with it and that is where like I said to you previously (Ms. Parratt) I had stopped doing a while back on the development." He denied that he had access or got access or was responsible for the trading on behalf of Mr. Steynberg.
18. A "second audio" conversation was held, and Ms. Coetzer on behalf of FSCA administered the oath to Mr. Badenhorst. He said that he had known Mr. Steynberg for 15 years. They were friends. He knew what a Bot was. He had created a Bot many years ago that could "do some analysis on forex trading. He then "walked away from it". He said that it was a

product that he and Mr. Steynberg "sort of dabbled with for a while." This would have been around 2014/2015. He was asked whether they created the Bot together and whether at some point it was given to him or sold to him. He replied: "I sort of walked away from the project". At some stage Mr. Steynberg transferred a bitcoin to his bitcoin wallet. The Bot however did do trading in the sense that he tested it on a couple of forex derivatives. He explained that they first tested it on a demo and then they moved into a live system. He added that "we were playing a bit of forex markets in terms of Rand Dollar and we were making extremely good profit". The Bot was actually "rule based". That happened six years ago. He confirmed that he was involved in that particular Bot but not in any new version of the current Bot. What he basically did "was using forex stuff".

19. In my opinion all the evidence available at this stage supports the conclusions reached by the FSCA. Mr. Steynberg and probably to the knowledge of Mrs. Nerina Steynberg made a number of material misrepresentations to their investors and even their employees who were naïve enough to trust him explicitly, although red flags appeared when he repeatedly failed or refused to provide details about the so called "back office" which contained all relevant information required for the company's alleged operations – apart from the opinion of Mrs. Cheri Marks who allegedly saw a live trade (contrary to the opinions of the FSCA) there is no evidence that Trade300 was an actual trading platform. Similarly he created the "Camilla" who allegedly sent various emails representing Trade300. Mr. Marks, as director, also had a fiduciary duty but fully relied on a written opinion by his attorneys, Ulrich Roux that everything was legal. He did not present this opinion to me.

20. Mr. Marks estimated that MTI owed him 1400 coins with a value as set at the end of February of about 2 Billion Rand. Mrs. Marks estimated that 140 coins were due to her. She added when she last saw Trade300 actually trading, she saw 14,000 coins in MTI's pooled account. This specific trade took place in the company of officials from FSCA including a Mr. Topham and van Deventer. Mr. Steynberg did this "trade" on his I-pad in

their presence. In her opinion there was overwhelming proof that trading took place via Trade300 from August until the "last day" which was on 14/15 December 2020, and allegedly done by Mr. Steynberg from an unknown location if regard is had to the contents of the minutes of a Board Meeting on 15 December 2020 attended by Mr. Steynberg, Clynton Marks, Charles Ward, Monica Coetzee, Mrs. C. Marks, Andrew Caw and V. Ward. According to the minutes of a Management Meeting on 9 December 2020 it was recorded under the heading "Appointment of 21C" in par 4 that "Nerina Steynberg knows how everything works and she is currently assisting RS with the allocation of pending deposits. ("RS" is Romano Sameuls). Mr. Steynberg attended this meeting on-line (after his "disappearance" on 2 December) and said the following: "CJS advices that should he not log into the server for a period of 12 hours, the system will automatically send an automated e-mail to Nerina Steynberg and Clynton Marks containing instructions of how to contact the server team in India, as well as the broker. This e-mail will include the necessary details and passwords for the accounts".

21. This e-mail was allegedly never sent or received and in any event the evidence was that Mr. Steynberg had left strict instructions that the server team in India should only deal with him personally.

22. It must be remembered that the FSCA exercised their right of search and seizure on 2 occasions prior to December 2020, the latest date being 26 October 2020. It is therefore not clear what "system" or devices was/were in place during mid-December 2020 for Mr. Steynberg to have conducted the alleged handling of deposits. Replacement items of some sort must have been in place, if this version of trading in December is to be believed. Mrs. N Steynberg would be the ideal person to be examined on this topic.

23. It appears that on 17 December Mrs. Marks contacted the said server team in India and disabled all deposits into MTI. The business of the company has come to a standstill. The only available information at this stage relating to the flaw and whereabouts of Bitcoin

invented by members and Bitcoin held by MTI is that only a total of about 1845 was transferred to the said FXChoice platform and 0.16 was withdrawn. Taking into account the trading losses mentioned by FXChoice, 1280 Bitcoin remained on its platform. MTI informed the FSCA that 18.444 Bitcoin was transferred to Trade300 during July 2020. It was confirmed in a letter from MTI's Attorneys dated 7 October 2020 and it was stated that "deposits of all members Bitcoin was made to Trade300 prior to our client being enable to access FXChoice". There is no record of that alleged transfer and FXChoice in addition has denied it.

24. It appears therefore that except to the Bitcoin referred to in paragraph 23 above, the majority, if not all of the Bitcoin invested by members did not reach any forex or trading platforms and that they were misappropriated before they could reach such platforms.

25. It is clear from the evidence that, unless access can be gained to the database of MTI with the assistance of Mr. Steynberg (and most probably also Mrs. Steynberg or the server team in India) it will not be possible to determine:

    25.1 The exact number of Bitcoin invested by members;

    25.2 The exact number of members which have most likely been overstated by MTI in its marketing materials;

    25.3 The transfer of Bitcoins after investment by members;

    25.4 The withdrawal of Bitcoins by members;

    25.5 Where the Bitcoins are held at, with the mentioned exception of the 1280 on the FXChoice platform.

26. 26.1 On 9 March I received a letter from Mr. P du Toit for Attorneys Mostert and Bosman, annexed thereto was the requested affidavit from the FSCA, which would be signed and dated on 10 March. I was informed on 10 March that this was indeed done. I also received a confirmatory affidavit of Mrs. Coetzer.

26.2 As far as the 2 homes of Mr. and Mrs. Marks were concerned, which were registered in the name of Uprobuzz (Pty) Ltd, I was informed that a subpoena was issued to obtain the FNB bank accounts of Mr. Nkomo, the sole director of that company, who was allegedly a friend of the Marks'.

26.3 The said affidavit of the FSCA was drafted by Mr. J.G. van Deventer. He re-stated the statutory role of the FSCA and its responsibility to investigate breaches of financial sector laws. He confirmed that the lead investigator was Mrs. Coetzer. Her confirmatory affidavit was attached as well as that of the Divisional Executive Mr. B. Topham. Mrs. E. Parratt was also part of the team.

26.4 Their report made available to the hearing is dated 18 January 2021. He confirmed that the report reflected their findings. The transcriptions of the relevant interviews was correct.

26.5 He confirmed their conclusion that MTI, Mr. Steynberg, Mrs. Cheri Marks and Mr. Clynton Marks had conducted a unregistered financial services business in contravention of s. 7(1) of Act 37 of 2002 (" the FAIS Act"). He also confirmed their view that the same persons had made material misrepresentations to their clients over an extensive period of time and that such clients were misled in the process.

26.6 As far as the alleged trading screen that Mrs. C Marks had referred to, was concerned, the particular occasion was on 21 August 2020. This was the second time Mr. C. Steynberg was interviewed. Mr. B. Topham requested some proof of trading volumes and the Bitcoin account balances at the trading platform they were utilising. The background to this was, as I have already mentioned above, that MTI had claimed to have transferred the clients' Bitcoin from FXChoice through Bitcoin wallets to its "new broker", i.e. the trading platform Trade300. This was false as the Bitcoin balances at FXChoice was a fraction of the total Bitcoin received from their clients. A demonstration was requested and Mr. Steynberg opened his laptop and entered a site that looked like an MTI branded front-end

programme. He proceeded to show Mr. Topham some trading information on the screen. It seemed as if the programme (and the screen) was dynamic – as opposed to live.

26.7 Mr. C. Steynberg then claimed that he was inside the platform trading application and that he was demonstrating a live trading scenario. They could not confirm the correctness of his claims, and they did not take that matter further at that stage.

26.8 The transcriptions of the occurrence in fact reflects that Mr. Topham was far from satisfied and raised his concerns about the existence of Trade300.

26.9 Mr Topham then requested that the FSCA be provided with proof of transfer of Bitcoin into the Trade300 account. Mr. Steynberg promised to do so by e-mail but did not do so.

26.10 He confirmed their view as set out in their report (paras 110-114 and 119-129) that Trade300 was a mere fiction created by Mr. Steynberg, and that crypto assets were not transferred to it at any stage. This of course, is fraudulent conduct (and/or theft) on the part of MTI, who on other occasions had fabricated trading records (paras 80-98 of the report).

**27. Statutory Offences: Conducting Business Unlawfully – Failure To Register**

26.1 The FSCA is of the view that the nature of MTI's business compels it to be licenced in terms of the Financial Advisory and Intermediary Services Act, 37 of 2002, and the Collective Investment Schemes Control Act, 45 of 2002.

26.2 According to the FSCA, MTI has been conducting business unlawfully in contravention of the provisions of those statutes because it has been operating without a licence. There can be no real dispute about that.

26.3 By virtue of the following statutory provisions and having regard to the evidence adduced at this enquiry, the stance adopted by the FSCA is justified.

**Financial Advisory and Intermediary Services Act, 37 of 2002 ("FAIS")**

28. Section 7(1) of FAIS prohibits any person from conducting financial services unless issued with a licence by the FSCA.

29. For present purposes, the following provisions of FAIS are relevant:

> *"financial service" – "any service contemplated in paragraph (a), (b) or (c) of the definition of "financial services provider", including any category of such services;"*
>
> *"financial services provider" – "any person, other than a representative, who as a regular feature of the business of such person-*
>
> *(a) furnishes advice; or*
>
> *(b) furnishes advice and renders any intermediary service; or*
>
> *(c) Renders an intermediary service;"*
>
> *"intermediary service" – "... any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier -*
>
> *(a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or*
>
> *(b) with a view to –*
>
> *(i) buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier or in which the client has invested;*
>
> *(ii) collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product: or*

*(iii) receiving, submitting or processing the claims of a client against a product supplier;"*

30. MTI was conducting financial services with reference to a financial product (during the first and second periods, a derivative linked to forex pairs, and during the third period a derivative linked to crypto currency). MTI required a licence in terms of FAIS because it acted as the intermediary between members and the investment made by those members. This cannot be disputed either.
31. MTI, however, failed to obtain such a licence and continued to conduct its business despite being informed by FSCA representatives during two interviews conducted during July and August 2020 that MTI was conducting business unlawfully.
32. MTI therefore committed an offence in terms of section 36 of FAIS.

**Collective Investment Schemes Control Act, 45 of 2002 ("CIS")**

33. In section 1 of the CIS, "*collective investment scheme*" is defined as:

*"a scheme, in whatever form, including an open-ended investment company, in pursuance of which members of the public are invited or permitted to invest money or other assets in a portfolio, and in terms of which –*

*(a) two or more investors contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest; and*

*(b) the investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis determined in the deed,*

*but not a collective investment scheme authorised by any other Act"*

34. "*Participatory interest*" is defined as:

*"any interest, undivided share or share whether called a participatory interest, unit or by any other name, and whether the value of such interest, unit, undivided share or share remains constant or varies from time to time, which may be acquired by an investor in a portfolio"*

35. *"Manager"* means a person who is authorised in terms of CIS to administer a collective investment scheme.
36. *"Authorised agent"* means a person authorised by a manager to solicit investments in a portfolio from members of the public or to perform a function contemplated in the definition of "administration", and includes any person to whom a function has been delegated in terms of section 4(5).
37. *"Administration"* means any function performed in connection with a collective investment scheme.
38. Section 5 (read with 1A) provides that no person may perform any act or enter into any agreement or transaction for the purpose of administering a collective investment scheme, unless such person: (a) is registered as a manager by the FSCA or is an authorised agent; or (b) is exempted from the provisions of CIS by the FSCA by notice on the official web site.
39. In terms of section 115, a person who is not a manager or an authorised agent of a manager and who performs and act amounting to administration, is guilty of an offence and section 116 provides for penalties.
40. It appears that MTI conducted a *collective investment scheme* without being registered as a manager by the FSCA or being an authorised agent or being exempted from the provisions of CIS by the FSCA by notice on the official web site. Consequently, MTI committed an offence in terms of section 115.

**Unlawful Scheme**

41. In these circumstances MTI has been conducting business unlawfully and the whole scheme has been unlawful.

**Statutory Offences: Companies Act, 71 of 2008**

42. Section 214 (1) of the Companies Act, 71 of 2008, provides that a person is guilty of an offence if the person:

    (a) *"is a party to the falsification of any accounting records of a company;*

    (b) *with a fraudulent purpose, knowingly provided false or misleading information in any circumstances in which this Act requires the person to provide information or give notice to another person;*

    (c) *was knowingly a party to an act or omission by a company calculated to defraud a creditor or employee of the company, or a holder of the company's securities, or with another fraudulent purpose; or*

    (d) *is a party to the preparation, approval, dissemination or publication of a prospectus or a written statement contemplated in section 101, that contains an untrue statement as defined and described in section 95."*

43. In this matter, these provisions ought to be read with the provisions of section 75 relating to the fiduciary duties of directors in particular.

44. There is strong *prima facie* evidence that the directors of MTI have not only breached their fiduciary duties but that, at least Mr. Steynberg, has been committing offences contemplated in section 214.

**Fraud**

45. There is credible evidence, that MTI, represented by Mr. Steynberg, and Steynberg in his personal capacity, committed fraud to the prejudice of members of the public, investors in MTI, the board of directors and management of MTI and the FSCA.

46. Moreover, it appears that Mr. Steynberg has been assisted by his spouse in perpetrating fraud.

47. The evidence in this regard is so compelling that it is surprising that the South African Police Service has not made an effort to arrest Mr. Steynberg (if this is so). Apparently the FSCA is the complainant in a criminal matter against him and/or MTI as I have already mentioned (as is Mr. Lee). It may be advisable to lay this report before the Director of Public Prosecutions. It is clear that billions of Rand have been lost to the investors at this stage.

**Civil Liability**

48. The available evidence shows that there may be a basis for claims by the MTI in liquidation against individuals based on *inter alia:*

    48.1 a breach of fiduciary duties by the directors of MTI;

    48.2 impeachable transactions contemplated in the Insolvency Act, 24 of 1936.

49. This report will be supplemented in the likely event of further relevant evidence being adduced at a continuation of this enquiry on 23 March 2021.

**COMMISSIONER**
**JUDGE (RETIRED) H J FABRICIUS**
Duly appointed as Commissioner by
the High Court of South Africa (Western
Cape Division) under the case number 935/2021
Signed and sent electronically to pierred@mbalaw.co.za

**Enquiry in terms of Sections 417/418 of the Companies Act 61 of 1973 read with item 9 of Schedule 5 of the Companies Act 71 of 2008.**

In the matter of:

**MIRROR TRADING INTERNATIONAL (PTY) LTD t/a MTI (IN PROVISIONAL LIQUIDATION)**

**Second Report of the Commissioner, Judge H. Fabricius (r.) dated 22 April 2021**

## 1. Introduction:

In my first report I set out the necessary background to this enquiry with particular reference to the report of the Financial Sector Conduct Authority dated 18 January 2021, and especially the "Executive Summary". Mr. J.G. Louw van Wyk and Mrs. Carolina Susanna Lombard, did relevant investigations for the FSCA and gave evidence on 1 February 2021 regarding the report and their findings. They confirmed that the report had been made available to the enquiry. It will be noted from my first report that I did not deal with the evidence, or the material points thereof, or the witnesses called during the first part of the enquiry. The reason was that a second session would be required as from 23 March, and that I wanted a more complete and accurate picture of all relevant evidence concerning the activities of the major role-players before I made conclusions on facts. It appeared from the outset that the persons involved in the unlawful activities of MTI first and foremost wanted to protect their own interests, disassociate themselves from any unlawful conduct, relied on hear-say evidence and speculative opinions and professed to have had a deep trust in Mr. Steynberg, although

he at no stage disclosed the essential parts of the company's activities to them. In my view they were either remarkably naïve and/or not completely honest. The second session of the enquiry therefore resulted in an overall better picture of all relevant dealings and failures. In an enquiry of this nature, unless arranged otherwise, there are no specific identifiable issues as one would have in civil litigation. The result is that the version of a witness, not being the first one, could not be put to other witnesses for comment. A good example of this disadvantage occurred in these proceedings where the evidence of Mrs. N. Steynberg regarding the complete absence of knowledge of the workings of the back-office could not be put to other witnesses who had given evidence to the contrary.

2. **The Evidence:**

The evidence of Van Wyk and Lombard confirmed the investigated parties, the details of the directors, the management team as it existed only from late July 2020, and the various roles played by such persons. They also confirmed that in their view the company had traded (assuming it did so trade in the latter half of 2020) unlawfully since its inception in April 2019 for reasons set out in paragraphs 27 to 42 of my first report. It is also clear that intentionally false representations were made to the members of the public and the investors regarding the company's activities, and its likely profits. Material non-disclosure also occurred which would have (and did) mislead investors.

3. MTI gave details of how the "profits" would be distributed, which would be 40% to all members, a binary tree / multilevel marketing "team" bonus of 20%, a leadership bonus part 1: 2,5%, a leadership bonus part 2: 2.5%, a traders fee: 25% and MTI's fee:

10%. These leadership bonuses would be paid subject to certain conditions. At this stage it is appropriate that I deal with parts of the role of Cheri Marks. She was Head of Communication and Marketing. In September 2020 "My Broadband" reported on a group calling itself "Anonymous ZA" which had leaked an anonymised copy of MTI's entire database – including account names, e-mail addresses and bitcoin balances. They called it the "MTI Leaks". On 26 October the FSCA raided the offices and homes of MTI leaders, seizing electronic equipment, which has yet to be returned to the liquidators. "My Broadband" published certain details on public media platforms. During that period, Mrs. Cheri Marks apparently gave a number of interviews on "YouTube" and in January 2021 on "Carte Blanche", a television programme which specializes in investigative journalism. They published an analysis of the comments of Mrs. Cheri Marks on "www.mybroadband.co.za" and did an analysis of the various statements made by Mrs. Marks which contained material conflicts of fact and discrepancies between her numerous interviews. This evidence was not put before me and I suggest that the Attorneys for the liquidators and the forensic investigators draw a bundle of the verbatim statements, news and opinions of Mrs. C. Marks made by her on the various platforms. One learned for the first time that there existed a "Founders Pool", which was never mentioned in any of MTI's profit-share reports. She said that "[Founder Pool Members] were simply people that invested $10,000 worth of bitcoin with Steynberg with the start-up of MTI". However, the "MTI Leaks" shared that there were several Founder Pool members who were promoted to Founder status long after the launch of MTI and apparently invested less than $10,000. They also said that 10% of the profit share that MTI made was proportionately divided between all Founder Pool Members. However, previously she had stated that the Founders Pool was an

entirely separate pool of funds which has no bearing on members' profits. Assuming it was actually a profit-share arrangement, it is not clear where the extra 10% came from.

4. I therefore suggest that once all the relevant information relating to her various versions has been collated, that she to be issued with a further subpoena to give evidence in that regard. She also thanked Clynton Marks (her husband) and MTI for her new Jeep Grand Cherokee Trackhawk on a Facebook post dated 30 May, but during an interview stated that any funds utilized by herself and her husband, were "proceeds" from trading done outside of MTI". I have no evidence of such.
5. In addition to that the vague and unsatisfactory evidence of the Marks' relating to the properties registered in the name of UPROBUZZ (Pty) Ltd, to which I have briefly referred in par. 26.2 of my first report, should be dealt with at such re-call. Mr. Nkomo has not yet testified but I was informed that the bank statements of himself and the company have been obtained. As at date hereof I do not have any details relating thereto, but the whole transaction involving the registration of these 2 properties would seem to fall within the ambit of the provisions of at least s.29(1) of the Insolvency Act 24 of 1936 as amended.
6. Mrs. Marks made an affidavit dated 23 December 2020. This contains material allegations which conflict with the evidence of Mrs. Nerina Steynberg regarding her role in the affairs of MTI and her knowledge of how J. Steynberg was conducting business. During her evidence, she denied having any knowledge of value or that she could access the MTI back-room or do any withdrawals (see par. 29 and 55 of the C. Marks affidavit). According to par. 35 of the same affidavit she was in fact aware that MTI had a referral programme. Steynberg allegedly tried to conceal this fact but the

marketing material created by Mrs. Cheri Marks (after August 2020) clearly refers to a "Referral Program" on the 1st page. "Referral Selling", extensively dealt with by MTI in their "Referral Program Success Guide" is prohibited by s.38 (1) of the Consumer Protection Act. (Assuming that this Act applies, an aspect that I deal with hereunder).

7. Her "turn-about" and attempt to dissociate herself from unlawful or fictitious trading after FXChoice had closed the MTI account in June 2020, is apparent from par. 103 of her affidavit which deals with the moving of their trader from FXChoice to Trade300, without anyone having been informed thereof: "It is now evident that this move was made with the sole purpose of taking control over the bitcoin invested by members, in order to misappropriate it". I believe that this is partially true in the sense that her own role relating to her enrichment referred to, and the dubious evidence of Mrs. N. Steynberg, must be kept in mind. I agree with the conclusion made in the FSCA report paragraphs 161-162.
8. I return to the evidence of Van Wyk and Lombard. They also noted "YouTube clips" posted by MTI on "YouTube". The voice was that of Cheri Marks. She was also reported in newspapers and spoke on radio. This is also relevant to her "evidence bundle" which I suggested above. She represented that in November 2020 that there were some 260,000 members. The "loop hole" was that multiple profiles of persons had been created. There was no unique identifier that enabled management to identify whether persons were included on the membership list multiple times. This meant that members could earn income on different levels. This topic is dealt with in paragraphs 157 to `160 of the FSCA report.
9. In their opinions (and see par. 161-162 of the FSCA report) the characteristics of the scheme was that:

9.1 It was illegal;

9.2 It was a vague business model;

9.3 A high return was promised;

9.4 Not all relevant information was shared;

9.5 It was a referral scheme;

9.6 Trading was not conducted;

9.7 So-called "returns" were just "money on paper";

9.8 They needed to grow more members to sustain the scheme;

9.9 They had screen shots of some terms and conditions. Members were encouraged not to leave the scheme, and to return any profit as well as a referral bonus to the pool that was allegedly created;

9.10 From August 2019 a Bot (a high frequency artificial intelligence trader) was allegedly employed. The FSCA report deals with this aspect in par. 152-156. I dealt with this topic in par. 17 and 18 of my first report and will again deal with the evidence of Mr. K. Badenhorst hereunder.

9.11 During the 2nd phase referred to in the FSCA report (August 2019 – October 2020), low volume trading took place, mainly manually from a cellular phone, suggesting that no Bot existed.

9.12 There was no proof of trading in derivatives and only demo trade were effected.

9.13 From August 2020 trade was allegedly done through Trade300 which in reality did not exist as a trading platform. The FSCA report deals with this question in par. 152 of its report and I referred to this in par. 26.10 of my first report.

10. A "Joe Steyn" maintained this alleged platform. It is the alias of Mr. J. Steynberg. This is common cause and was also confirmed by his wife. He had purchased a software package for this purpose.

11. On the probabilities J. Steynberg has control over the bitcoin. There is no exact data available yet. The server is in India and both the FSCA and the liquidators have requested their assistance. They would have a record of what went to MTI and what was returned to members. As yet no flow of funds analysis has been (or could be) completed without access (at least) to the back-office. The 10% referral fee was not paid from any "paper returns" but from MTI funds.

12. The scheme was a multi-level marketing set-up. Members replicated themselves to benefit from the binary stream. "Camilla" who purportedly represented Trade300 was merely the creation of Steynberg.

13. **Rademan:**

    He confirmed that his wife was a friend of Cheri Marks. Clynton Marks had a history in marketing and held 50% in MTI. He was involved in the referral programmes. In the "first period" referred to he communicated on a day-to-day basis with Steynberg. They discussed the Bot on WhatsApp. I have no further information regarding details thereof.

14. **Charles Ward:**

    He was the head of Strategy Implementation and a non-executive director of MTI. He was an investor, "not really active", and is the brother of Cheri Marks. He provided some details of members of the (later) management team. Cheri Marks and her husband, Clynton had more than 1 account with MTI. Cheri had property (price of R11 million mentioned) and a Jeep was bought with bitcoin. A vehicle was also bought for

her mother. The Durban homes were registered in the name of a UPROBUZZ Pty Ltd. I have mentioned that a Mr. N. Nkomo was the sole director. I will deal with this company hereunder. Vincent Ward was the youngest brother of Cheri. He was a "trainer" for MTI. Leonard Gray was Cheri's ex-husband and as a non-practicing Attorney, he was the Head of the Legal Department.

15. **Mrs. C. Lombard**

15.1 Mrs. C. Lombard from FSCA gave additional evidence on 22 February 2021. She confirmed that J. Steynberg left South Africa early in December to Doha via Qatar Airlines and onwards to Brazil. I have at this stage no information either from the Department of Home Affairs, nor from Qatar Air. There is some speculation that he is "hiding" in Polokwane. One Private Investigators report is vague and inconclusive, whilst another one is yet to testify. In her opinion the Stellenbosch Police have sufficient information to apply for a warrant of arrest. I have referred to this topic in par. 47 of my first report.

15.2 The majority of bitcoin are under his control and they have "disappeared". If he converted bitcoin to cash it would be easier to detect. He could do this through small exchanges. After he disappeared members were unable to withdraw from the system. The company is unable to pay its creditors. In the main, all the evidence was that he had sole control of the back-office and all inputs and outputs, though there are some suggestions, some of them plausible, that his wife had sufficient knowledge and experience to take over his role should he disappear or be unable to function for some reason. Minutes of Meetings, especially that of 9 December 2020, indicate, in the presence of J. Steynberg (online) that "it is recorded that Nerina Steynberg knows how everything works and she is currently

assisting RS with the allocation of pending deposits". (RS refers to Romano Samuels). The Minute dated 4 December 2020 (online – Zoom), but which according to Cheri Marks was actually held on 13 December, again in the presence of J. Steynberg states under the heading "Withdrawals" that "CJS has programmed a fail-safe for the instance where CJS does not access his accounts in 12 hours, Nerina gets access to everything". A further sub-paragraph repeats this in essence and states: "CJS states that it will be made available to Nerina..." referring to "info for database, passwords, broker, bitcoin".

15.3 I have dealt with this topic in par 20 and 21 of my first report. I have serious reservations about the truthfulness of the evidence of Mrs. Nerina Steynberg. There is also a serious contradiction in the evidence as to who dropped off Mr. Steynberg at the airport and what transpired, there and why it is likely that further evidence will be presented on that aspect. The name of a Mr. Worst was mentioned at a late stage in this context.

15.4 She gave evidence about certain deposits and withdrawals made:

15.4.1 Nerina Steynberg deposited 14.6, and withdrew 7.2019 bitcoin. She had 2 user names. Her mother, D. Marais also had a user name: she deposited 3.88 and withdrew 2.89. Monica Coetzee, Head of Corporate Services, made deposits and withdrawals. Her husband also invested and possibly her children too. This could apparently be determined from a spread sheet (but not by me). Romano Samuels made an "investment which resulted in a short-fall. Gerald Laassen of the Strand Office had 1 account in his own name. He deposited 3.286 and withdrew 26.882, being a gain of 23.596. Mrs. Laassen had 3 users, deposited 1.58 and withdrew 6.75. J. Eckley and

his wife similarly made deposits and withdrawals. Mrs. Cheri Marks had 3 users: deposited 5.915 and withdrew 24.022 with a gain of 18.107. Clynton Marks had 4 users: deposited 39.04, drew 180.48 with a gain of 141.35. In her view, an "estate" was then bought (the UPROBUZZ Company topic). Two daughters also had bitcoin accounts as minors, contrary to the "Terms and Conditions" with which I will deal with under a separate heading. Charles Ward had 2 users limited to his name and a further 2 not directly linked. There was a deposit of 2.44 and a withdrawal of 3.29, a gain of .84. Vincent Ward deposited 4.98 and withdrew 3.69. Leonard Gray also made a gain of 0.246. (On 12 March 2021 the price of a bitcoin was 60,487. 7045 Dollars, being R881,766.10).

15.4.2 An investor could open an account in other names. Most had multiple accounts most likely because of the referral bonus system. J.S. Steynberg apparently (to her knowledge) had 4 users directly linked to him. He made a gain of 18.876.

16. The problems with these examples are many-fold:

16.1 See par. 123-129 of the FSCA report;

16.2 The system was hacked and certain details were made public. The topic was discussed by the MTI Board on 15 November 2020 (note the presence of Mrs. Cheri Marks). This meeting was after the first media release by FSCA. According to the minutes the deposit history was deleted substantially. The "hacker" was also stealing deposits but J. Steynberg could not say how many.

16.3 The minute of 15 December alleges that J. Steynberg made more than 3000 withdrawals.

16.4 The affidavit by D. Stephenson, the Administrative Director of FXChoice, dated 28 October 2020, and signed before a Notary Public in London, stated that when FX blocked the account of MTI for reasons of "Fraud", 1280.045 bitcoin remained. I was informed that there had recently been transferred to the liquidators. It is hoped that he will be available for a virtual hearing.

16.5 There is in my view no accurate evidence, if indeed any, of how many bitcoin were transferred to either Mr. J. Steynberg personally, or to the "new trader Trade300", which Mr. Steynberg himself created as FSCA has found, and with which finding I agree.

16.6 Reference should be had to par. 25 of my first report in this context.

17. **Monica Coetzee**

17.1 She got to know J. Steynberg at a strategy conference at the end of July 2020. She was initially approached by Cheri Marks. After a Zoom interview with Mrs. Marks, J. Steynberg and T. Fraser she was offered the position of non-executive director. The Minutes of 28 August indicate her presence as well. Her role was largely confined to put a proper corporate governance system in place if regard is had to par. 6 of the same Minutes. The next meeting of 22 September that a book-keeper Mrs. R. Kritzinger had been approached. Her expectation as far as investment was concerned, was that a minimum of $100 in bitcoin had to be invested. An investment of $200 entitled one to a participation in a "compensation plan". The relevant platform required and provided by MTI was referred to as the "back-office". She invested on behalf of her husband and children but in $200. She never met Mrs. Steynberg. She worked remotely from Randburg. In July it was

discussed that trading would be done with bitcoin. An A1 Bot had to do such but it was actually not discussed in what form.

17.2 I note from the Minutes of 28 August 2020 that in her presence Cheri Marks had said that MTI had moved to crypto trading. It was also said that (per par. 5.4) Mr. J. Steynberg was developing a second Bot to serve as a back-up which he would start testing separately and independently from MTI in the near future. He was also working on a "crypto-specific Bot". He was comfortable with the current Bot but noting that it was not a crypto trading Bot. There is no evidence of any second Bot and it is note-worthy that no-one present asked for any details concerning the "current Bot". She thought that there was Forex trading with bitcoin merely used as currency. This was allegedly reportedly stated and understood by all. Only J. Steynberg dealt with the technical department. No audit of the company's financial affairs had ever been done. The server team was based in India and J. Steynberg was the only person who dealt with it. She knew nothing about Trade300 until it was referred to by the FSCA. From October 2020 1 coin per month was added to her salary. She thought this emanated from the service provider to the "coin buyers' club", she would then tell them what to do. Andrew Caw was behind this "club". Any records of MTI in the form of spread sheets indicating what this "club" paid was handed to the mentioned book-keeper. Any information required was given to her by Charlie Ward. Each member could request a withdrawal from the back-office. This was managed exclusively by J. Steynberg. He did however say, as per the Minutes of 9 December that if something happened to him his wife Nerina could do what he did. Monthly salaries stemmed from bitcoin being transferred by Steynberg to the said "coin-buyers' club" which in her view was a "Pty Ltd for the

sale of crypto currencies". This club was paid for services on a percentage basis of amounts paid and invoiced, but she agreed the original source must have been MTI. Her evidence regarding the exact role of this club and its standing in law is not a model of clarity.

17.3 All monies in the "pool" (this may be the "club") belonged to MTI. Only J. Steynberg knew where the bitcoin were at any given time. The daily profits were obtained from the broker. She was not involved with FXChoice and all coin was transferred to the new broker. Membership data was only reflected in the back-office. A member gave a name, a cell number and email address when he registers, a password and his/her country. As at date of her evidence one could get access to the back-office only if the server in India was paid the fee that was asked for. She did not agree that MTI needed growth to survive as profits were made by trading. One could see the information from the back-office but would not know if it was genuine. She had no clear answer to where the MTI part of the alleged daily profit would go. J. Steynberg and Clynton Marks would do the profit split every Monday. This is reflected in par. 6.2.3 of the Minute of 22 October 2020.

18. It is clear from her evidence and the Minutes of the various meetings that her role was to establish and maintain proper corporate governance. Her evidence regarding the financial aspects is rather opaque. It is however clear that at no stage were any financial statements drawn for the company.

19. **J. Eckley:**

He started to find support/investors and dealt with client service in Stellenbosch from February 2020. He and his friends also invested from Oct/Nov 2019. He was computer illiterate. R. Samuels took over from him later. He explained the "5 tier" clearance.

After the June/July management system was created, he left in August. Cheri Marks allegedly was of the view that clients should receive all the information; not even he could. He too invested in MTI. With MTI one could transfer coin to it, not cash. One then had no control over the MTI wallet. From that wallet the coin went to the trading pool. He created more than 3 user names. His family was also involved using his e-mail address which was one of the essentials for registration. Bonuses were allocated to his account in terms of the binary system. He didn't know the details. MTI owed him .5 coin but his family between 13-15. He gave brief details of 2 trusts but specifics need to be investigated further. He had created user names for family members.

20. **R. Samuels**

20.1 He was the head of member support. He was in the Stellenbosch office until December. After the Stratcon in July 2020 in Johannesburg he was then employed. His salary was paid partly in cash and partly in coin, as from May until July. He invested in MTI from April by way of a transfer from his own wallet to the MTI pool. He reported to Charles Ward and had a lot of contact with Steynberg and Marks. If there were complaints he had access to the names in the back-office. A username and password was also required. If a withdrawal was requested only J. Steynberg could do this. He gave brief details of board meetings: details thereof are in the relevant Minutes. The last contact he had with Steynberg was in December via a Zoom meeting that I have already referred to. He had 3 user names for his investments: 1 for himself, 1 for his business (sound engineer apparently), and 1 for his family. His only withdrawal was on 1 account to his personal wallet. He was referred to the meeting of 6 October which is important: It is titled "Terms and Conditions with tier 3 Meeting Minutes". Leonard Gray noted that "the original

T+C's had important clauses "hidden such as multiple accounts and rolling deposits." Further, "new T+C's to be rolled out with the KYC process ("Know Your Client"). "All members would have to accept the new T+C's". It was also mentioned that referral bonus pay-outs would be extended to 30 days instead of 7 days. The question is why? To pay this bonus from new investor deposits? Most probably.

20.2 He was referred to the Minutes of the Management Meeting of 12 November 2020. It appears that because of the lack of a certain security factor in the back-office (2FA = 2nd factor authenticated) unauthorised withdrawals had been made. Steynberg advised that there were not enough bitcoin to pay all the withdrawals (I may interpose at this stage to say that Kruger's view- see hereunder – was that the leaked data list could never be accurate as it did not reflect the withdrawals). Steynberg also admitted that the hacker had deleted all deposit addresses and all deposit history (3 hours worth of data). He added that the missing deposits were in an unknown account. He also referred to 1300 deposit tickets on Zendesk. Samuels testified that these referred to pending deposits not yet reflected. With reference to the 15 December Zoom meeting chaired by Cheri Marks he said that he had never met Mrs. Nerina Steynberg. He gave some explanations regarding the hacking details but it seems most of those are speculative and subject to doubts about what actually transpired and what was genuine. Again, it would seem that in the absence of Steynberg, and Mrs. Nerina's pleaded ignorance, the server in India would be the only entity able to provide essential accurate information about deposits and withdrawals.

20.3 Samuels could not say how many deposits had been affected by hacking. It could be 2000 in 24 hours. He had not communicated with Trade300. After FXChoice, nobody knew the identity of the new trader.

21. **Laassen**

21.1 He has been in multi-marketing since 2015, involving crypto. In October 2019 he met Steynberg. He was told that the marketing platform was FXChoice. Trading was done in forex and he paid in bitcoin. In December 2019 they changed from forex. He was never employed but was simply and investor. He moved into the Somerset-West office which was for the purpose of independent members. He conducted presentations with slides and also through Zoom calls. He received 10% of profit as a referral bonus in respect of new members. He was told that it would take 6 weeks to "recover" that bonus. If that was insufficient time the 10% would be paid over a period of time. Regarding the division of profits he saw a report every Saturday in the back-office. He understood that Steynberg had written the Bot, trade with it and make a profit. The owner of the "software" would get 25%. His identity was never revealed. He heard of Trade300 on 22/12/2020. He was told that the database was in India. Cheri Marks had said that Trade300 did not exist. He still believed in the integrity of J. Steynberg who had the key to 22,000 coins. (Compare this to the Minutes of the Board Meeting of 15 December 2020 at page 14 thereof, and the comment of FSCA at par. 163 of their report that some 3524 plus coins were channelled from MTI bitcoin wallets to a bitcoin wallet belonging to Cloudbet, an online platform for sports betting. As on 18 December 2020 this was to the value almost R1.2 billion). No evidence regarding this transaction was presented to me.

21.2 He had no proof of any trading after July 2020. There was a Zoom call with Steynberg on 7 December. He was in Brazil. His wife had dropped him off at the airport. I have already mentioned that there will be evidence that a friend in fact dropped him there. He had sent a list of questions to Cheri Marks by way of WhatsApp, but he deleted this. Cheri should have those in his opinion. He had seen evidence of trading by way of 5 minute videos displayed in the back-office when trading closed. A crypto analyser also reported on these trades.

21.3 Anyone could recruit new members – he had recruited 13. The "team" under him grew to 30,000 members. He does not believe that no Bot existed unless Steynberg confirmed that himself.

21.4 He understood that Badenhorst had wanted to sell the Bot for 25% of the profits. I put to him what he would say that there was no Bot – he replied that he had seen 15 pages on 1 day of trading. Regarding his contributions and withdrawals he said that this was a difficult question. He had used 600 different wallets. He still has 21 bitcoin in MTI including profits. He had used MTI as a "piggy bank". He did not know if his wife was a member.

22. A picture is emerging at this stage which supports the conclusions of the FSCA regarding the role of Steynberg and the Marks', the doubtful existence of a Bot, the imaginary Trade300, and the numerous fake representations as well as the theft of the remaining coin by Steynberg. The saga will get worse however.

23. **Mrs. Cheri Marks**

She gave evidence on 24 February 2021 over a period of some 5 hours. She was the Head of Communications and Marketing and my general impression was that she could

sell sand to desert inhabitants, and all of her statements over time require critical examination.

23.1 The FSCA report dealt with her role in par. 72, 80, 81, 135, 136, 141, 146, 147, 148, 155 and 161. Its conclusions were:

23.1.1 MTI, J. Steynberg and Cheri Marks had claimed that Bot trading generated exceptional returns;

23.1.2 Trading records provided were fake;

23.1.3 Financial services were conducted with reference to a CFD in forex pairs (April 2019 – October 2020) and later with reference to crypto currency CFD's. These were criminal offences to the extent that derivative trading did take place. It seemed however that the majority of clients assets were never traded, just misappropriated;

23.1.4 Claims made on social media were mainly false;

23.1.5 The version, under oath, to FSCA, was mainly false;

23.1.6 It is highly likely that she (with J. Steynberg and Clynton Marks) misappropriated substantial bitcoin assets of their clients.

24. Her comments, advices and statements are also reflected in various Minutes of Meetings i.e.:

28/8/2020 par 9;

22/9/2020 par 11;

12/10/2020 in total;

22/10/2020 par 9;

15/11/2020 pages 13-16;

17/11/2020 pages 12-14;

13/12/2020 (wrongly marked as being 4/12/2020 pages 2-3;

9/12/2020 in total;

15/12/2020 par 3;

She also made an affidavit on 23 December 2020.

25. I previously suggested, as I did so herein as well, that Mrs. Marks be subpoenaed to give further evidence relating to various contradictory and obviously false statements made to the media an on YouTube. Her statements should be transcribed and made available to the legal teams to consider. They seem to me to be of material value. Details can be found, as I said during the evidence of Mr. Kruger on "www.mybroadband.co.za", after "Anonymous ZA" revealed certain information on 20 September 2020. There was such further release on 17 January 2021. The exact role of UPROBUZZ Pty Ltd has yet to be established after an examination of the bank statements of the company and its director Mr. Nkomo, who has not given evidence before me. The transactions relating to the two properties and also the 2 vehicles already referred to, seem highly suspicious, convenient and contrived. Section 29(1) of the Insolvency Act seems to apply.

26. For purposes of her re-call by way of a virtual hearing, I suggest that I be provided with the transcribed record of her evidence. (As at present no record of any evidence has been provided to me, and for the sake of accuracy, such record of her evidence is important. After such further hearing, which may also include the evidence of another private investigator, and a Mr. Worth, an additional report will be provided by me.

27. In the interim, and for purposes of another hearing, I will deal with certain details of her evidence before me. I do not intend to simply repeat all of such.

28. The documents relating to the properties in Natal were signed by Mr. Nkomo. She intended to keep her "finance" separate from her business. She did not know how these properties were paid for and suggested that Mr. Nkomo and her husband be asked this question. (I interpose to say that the latter, Clynton, merely stated that he had made millions from previous multi-marketing ventures, without providing any details). She and Clynton had separate portfolios in MTI. Most of her dealings were on her laptop, and not done from the office. The property in Umhloti was similarly provided by Clynton and Mr. Nkomo. Her mother and grandmother reside there. Payments made for those properties had no connection to MTI. The Jeep referred to was registered in Clynton's name. No of her assets were ever owned by MTI. (This conflicts with what she said to the media as per "mybroadband".
29. She was not an expert on crypto before she became involved with MTI. It is a difficult concept and it's always a risk. (Her "Referral Program Success Guide" states that "the high liquidity associated with bitcoin makes it a great investment vessel...").
30. From April to August 2019 there were physical trades with a Bot trader from Polokwane, Badenhorst. (He denied any involvement with MTI). Steynberg told the FSCA that Badenhorst had developed the Bot. He reported this to them in writing. I put to her that such Bot never existed. She replied that she saw written communication in which he said that he had developed a Bot and sold it. I am not aware of such alleged communication. She also saw a Bot trade, live, in the presence of the FSCA which confirmed the balance. The FSCA said that they cannot confirm that a genuine live trade was shown to them. I dealt with this aspect in par. 26.6 of my first report. In her opinion it was not possible that it was a demo trade. It was very elaborate. Steynberg would have to falsify trade statements every day and upload them, and also fool the

"Crypto Analyser", as well as his right-hand man, Kruger who later also gave evidence. It was therefore impossible that he could facilitate such an elaborate scam. It must be remembered that there was very little trade at FXChoice and such as there was, it was often done manually. In the interview with Mr. Steynberg on 20 July 2020 he said to the FSCA that the Bot used for FXChoice did between 300-500 trades every day. (See page 45 of the transcript). In par. 96 of the FSCA report it was said that statements from FXChoice reflected that MTI's live account had a total of only 74 buy/sell trades for the period 31 January 2020 to 3 June 2020. On Steynberg's version there should have been at least 37,200.

31. She continued to say that MTI could be divided into 3 eras. From April to August 2019 there were 3 physical traders, the Bell brothers, Kruger and Roelofse. Clynton was the recruiter and connected people to Steynberg. For the 2nd era, August 2019 to July 2020, Steynberg proposed the use of a Bot. MTI was run informally. J. Steynberg with the Bot developed the back-office and ran MTI on his own. She gave details of the binary structure. This is also described in her mentioned "Referral Program" where the income streams are set out. There is a further page titled "Plan your Binary". It sets out the purpose and requirements and makes suggestions as to how the binary should be planned. She got involved at a later stage during the 2nd era. All bitcoin information was in the back-office structure. This structure and back-office was independent from the broker.

32. During April to August 2019 everyone had an account with FXChoice. She did not agree that there were losses. She did not agree that Steynberg had referred to such losses. There was only 1 negative day of trade. In fact, Steynberg had said that there were no losses. Contrast this evidence to what Steynberg told the FSCA on 20 July 2020 during

the first interview: (in translation) "We suffered regular losses and were hurt in the process" (transcript pages 30 to top of 31). The FSCA report refers to these losses (up to 80%) at par. 57 and 58 of their report.

33. She also saw 4 transactions transferring 16,000 bitcoin to Trade300. This was more than required to honour investors' contributions. Attorney Ulrich Roux on behalf of Steynberg wrote to FSCA saying that all member bitcoin were moved from FXChoice to Trade300 in 4 instalments on 21 July, 22 July and 24 July. This was prior to MTI losing access to the FX platform. Steynberg said the last day of trading on Trade300 was 21 July. By 7 October 2020 the balance in the Trade300 account was said to be 18,779.17 bitcoin. The FSCA report deals with this aspect in some detail in par. 122 to 129 of their report. FXChoice stated that there were no withdrawals in July 2020. The last withdrawal was in August 2019. Steynberg's version and that of Cheri Marks cannot be reconciled with the facts provided by FXChoice by way of the mentioned affidavit.
34. She only gave evidence relating to Steynberg's inter-action with Camilla on behalf of Trade300. The FSCA report deals with this in paragraphs 117 to 119 of their report and conclude that Steynberg created these mails to give the Trade300 a sense of authority. I may add at this stage that not a single witness had ever met this "Camilla".
35. Cheri Marks in my view also manufactured a reason why FXChoice closed the MTI account. It is clear that this version (i.e. not being happy with losing MTI, the pooling system and the criticism of the Texas Regulatory Authority) was a version put to her by Steynberg. Again this does not accord with the facts. Steynberg allegedly also added that he wanted an unregulated broker. He did not inform the members. She checked that Trade300 had confirmed receipt of 16,000 bitcoin by checking the ID codes on the block-chain.

36. In August 2020 the company structure was formalised into marketing. This was done by social referral. Then there were losses but Steynberg said he could trade them out of this with the new Bot, but would need capitol. He had shown the Bot to a number of people. A "Founder" position was created and 50 Founder members re-invested USD 10,000. They received a higher percentage of the profits. It is clear that this was not disclosed to investors, assuming it is true. This was in the 2nd era and the names of these "Founders" could be found in the back-office.
37. As far as live trading was concerned she saw J. Steynberg open his iPad in the presence of FSCA officials, Topham and Van Deventer. There were 2 live accounts. They allegedly said that this was trading CFD's, and that a licence was required. Later in August, at a second meeting they were shown a "live balance" of about 14,000 bitcoin. I can add at this stage that the FSCA cannot confirm that any live trading was shown to them. She added that trades were on a block-chain and those cannot be faked. This is not the view of FXChoice. Proof of trade was "overwhelming" from August until the last day.
38. Once all the relevant evidence is put to her at her second appearance, I can deal with this aspect in more detail. At this stage it appears that she was either ill-informed, misled or colluded with Steynberg. She confirmed that she sat next to him when he showed the FSCA a live trade, which was not questioned by them. The FSCA explanation does not accord with that version even assuming that an A1 Bot existed.
39. There is allegedly a recording of the 14,000 bitcoin which was seen by the FSCA officials, Casper Badenhorst, Ulrich Roux, Vanessa da Silva. (Have these persons being contacted?).

40. In terms of section 418(2) of the Insolvency Act I therefore direct that Mrs. Cheri Marks be subpoenaed to give further evidence and be cross-examined on the topics that I have raised. Numerous material aspects have not been put to her for comment, nor could they have been in some instances given the nature of the proceedings where new evidence emerged almost every day. This directive will not apply if sufficient information is obtained from the server in India, which would make further evidence irrelevant.
41. Her view of the Texas report was rather dismissive. That authority had no jurisdiction and was produced just to defame MTI. Why this was so, was not explained.
42. She then gave her view about the Bot. She apparently saw a document to the effect that Badenhorst had developed it and with whom he contracted with. I have not seen such a document. Badenhorst himself of course gave a different version to the FSCA and before me. In her view Steynberg had also "tweaked" the Bot and could in fact be the Bot developer. No details were given. It was therefore not possible that there was no Bot and no trade. The Minute of a Board Meeting on 22 September in par. 10.3 it is stated that "CJS informs the Board that he will be testing a new Bot next week. The Board Meeting Minute of 28 August 2020 reflects the following in par. 5.4: "CJS is developing a second Bot to serve as a back-up, which he will start testing separately and independently of MTI in the near future. Further, "CJS is also working on a crypto-specific Bot... the current Bot is not a crypto trading Bot". It appears strange that no-one present thought if fit to ask for further details.
43. The rest of her evidence mainly dealt with her role and comments reflected in the various Minutes of Meetings. FICA requirements were never completed. As regards the testing of a new Bot Steynberg never reported back. According to the report of her

private investigator S. v.d. Merwe, who has not given evidence before me, Steynberg never left South Africa and added mysteriously "An Attorney in this room was told were Johann is". According to her he remained at the City Lodge between 12-29 December (has this been checked by anyone?), and was then moved by his mother and wife to a safe home in Polokwane and thereafter to a farm which he owned. She had given both addresses to Attorney P. du Toit.

44. There were death threats and in her view the private investigator who had not seen Steynberg during all his surveillance efforts, may himself be afraid.

45. She was referred to the Minute of the Board Meeting of 15 November 2020. Regarding the question of withdrawals mentioned in par. 3, J. Steynberg did such on Sunday. He has a list and his wife Nerina helped him. I must mention that she denied having any knowledge of the workings of the back-office but Nerina physically checked every payment. She had the last withdrawal list and had requested this from the server. (Was this list on her laptop shown to Attorney du Toit?). There were ± 16,000 withdrawal requests to the value of 2600 coin. This was the first time she actually saw the conclusive number. In her opinion Nerina was definitely part of the technical department (which Nerina denied later). Referring to page 4 of the same minute which deals with some results of the hacking that had occurred, she said that every department had a "living Gmail-document" which had to be completed on a daily basis. The tab created indicated what had to be done. Nerina printed this as she was involved in the department and "wore the pants". The 15% referral bonus mentioned on page 6 of the Minute was the idea of Steynberg. He wanted to increase the 10% bonus that resulted from daily trading. She repeated that initially they traded in forex and thereafter the Bot did crypto trading which was not regulated. Bitcoin were bought

and sold and the account was consolidated on a daily basis. In her view one did not own a bitcoin. No-one owns it but has the right to use it. As a member she gave MTI the right to trade in coin according to the contract. 40% of profits went to members. Her opinion of what exactly bitcoin is, is reflected in her mentioned "Referral Program" at the top of page 5. If Steynberg or his wife (or both) used bitcoin in breach of the contract, it would be fraudulent conduct, as he makes a misrepresentation to members by not trading as requested. This would be to their prejudice. She added that the transfer of coin from FXChoice to Trade300 would be recorded on the block-chain. She again confirmed that she saw numerous live trades with account number shown and coin balance. J. Kruger could confirm this. A number of videos also showed live trades and these were seen by various traders. These videos were removed from YouTube and she had given 1 to her Counsel.

46. The opinion of FXChoice that a demo account was shown was put to her. Her view was that FXChoice was deliberately misleading. They looked at a pool account statement where MTI just reflected a member's portion. With reference to the Management Meeting Minute of 9 December 2020 which states under par. 4 that "It is recorded that Nerina Steynberg knows how everything works and she is currently assisting RS with the allocation of pending deposits" she said that Johann had told them that Nerina knows everything and should therefore be the said "21C". (Steynberg attended this meeting online – would this not indicate to an expert where he was?). Nerina was also upset that her husband suggested that Andrew Caw should be added to the WhatsApp group with the India team, but Nerina did not attend this meeting. I repeat again that the Minute of 13 December reflects that "info for database, passwords, broker, bitcoin etc." would be made available to Nerina, Clynton Marks and Andrew Caw. A question

is: how would Nerina be able to check deposits and withdrawals without passwords to both accounts?

47. She gave details of her communications with Camilla after Steynberg disappeared. She held annexed these to her affidavit of 23 December 2020. During her evidence she said that she did not agree that there were losses at FXChoice. In par. 27 of her affidavit she states the opposite. Paragraph 55 refers to the role of Nerina and screenshots of the messages to some team leaders, which she annexed as "C2". Nerina is clearly lying about her knowledge of MTI affairs and the back-office. See also par. 76 regarding Nerina's role between 3 and 14 December. According to par. 85 Nerina also played a role when withdrawals were made. There were allegedly in the thousands but no number or amounts involved are mentioned. This can therefore not be regarded as proof that the alleged number of coin transferred from FXChoice did indeed reach Trade300. She is convinced that Nerina knows where Steynberg is, that she has control over the funds and that she can run MTI. She therefore suggested that the SAPS attach all of her devices which could assist in obtaining the necessary access codes. I have no information on that topic. I have suggested that the server of her cell phone and/or her cell phone records be subpoenaed which could possibly indicate whether she made to or received calls from her husband.

48. The last time she "saw", she had 140 coin in MTI. Clynton had over 600, excluding the 400 he allegedly gave to Steynberg. It is clear that Cheri Marks has given various conflicting versions under oath.

49. **Leonard Gray**

He is a non-practising Attorney. He was married to Cheri Marks and had 2 daughters. He became involved in May 2020 when the FSCA phoned MTI for compliance, as he put

it. The FSCA report fully deals with their complaints and I will therefore not repeat Gray's view thereon. His view of the whole scenario was in essence that the trade in bitcoin was not regulated. He did not give advice to MTI but Ulrich Roux did.

50. **Clynton Marks**

He was a 50% shareholder in the company. He has wide network marketing experience. On his version, and without presenting any factual material, he made "millions" through networking. He also did marketing for BTC Global, which had also provided exorbitant returns, and which had subsequently collapsed as well.

50.1 His involvement too appears from the Minutes of various Board Meetings. He attended the meeting on 28/8/2020, 11/9/2020, 22/9/2020, 12/10/2020, 22/10/2020, 12/11/2020, 15/11/2020, 17/11/2020, 13/11/2020 (wrongly dated) 4/12/2020, 9/12/2020 and 15/12/2020. He was thus very well aware of all of the activities of the company as well as the various role-players.

50.2 His main interest, the "Referral Program" is described in par. 12 of the Minute of 22/9/2020. His stated aim was to grow MTI membership by 10,000 per day from the present 1500. He selects leaders and mentors them, about 10 per day. The problem of multiple accounts was also raised that day. He also spoke about his "passion", the Referral Program on 22 October 2020 (par.10). Again the vision of 10,000 new members a day was mentioned.

50.3 He stated that the multi-level trading was funded by people transferring their coin and then receiving profits of daily trades. They had 5 traders but he never met them. In the beginning there were separate accounts for members linked to the FXChoice account. He said however that he could not answer any technical questions. All detail was in the back-office. He could log into his account with a

password. There was however no back-office in the 1st period nor terms and conditions.

50.4 He invested about USD 10,000. During August 2019 Steynberg spoke about a Bot and showed him live trades of a demo account. He also spoke about losses. The division of profits was mentioned to him and there were details in the terms and conditions. (It is not clear when the 1st set of such terms and conditions were drawn, but repeated reference is made in the Minutes to the unilateral amendments thereto).

50.5 The Bot did not do as well as the traders in the first four months. About 1%, whilst some did 30% per month.

50.6 In the second period all funds were pooled. He could not remember why. It's an important question in my view. He was not told who the trader was or how the Bot worked. A couple of people told him "it looks real". He never communicated with FXChoice but got their statements in the back-office. Then there was forex trading. There was also a document from FXChoice reflecting the balance.

50.7 The 2nd period was markedly different. Attorney Ulrich Roux became involved regarding compliance with legislation. He only found out about the FSCA later. That's when crypto trading commenced. He was 100% satisfied that there were no applicable regulations.

50.8 Nerina Steynberg was in fact the 21C and had access to everything (which she denied). She had helped with payments, had access to the back-office. She used spread sheets. She had access to the Indian office and whatever Johann could do, she could do. (If this is true she is intentionally not returning the investors coin, despite the 1000's of requests of withdrawals).

50.9 He complained about being "pushed" by the Advocate when asked about details concerning trade, payment to members, wallets etc. He was not a technical person. He felt assured by their Attorney's view that crypto trading was unregulated. The Attorneys were on a monthly retainer to advise about new applicable laws. The terms and conditions were changed several times.

50.10 He knew that Trade300 had confirmed the exact amount of 23,000 bitcoin. He phoned a professional trader, saw a video giving actual trades and was of view that one could not fake 108 trades a day for years.

50.11 When FXChoice froze funds Johann mentioned Trade300. He Googled it but could not find it. He was given no information. He speculated as to why Steynberg had disappeared: an anonymous group had emailed that he had better leave South Africa as his life was in danger. He thought that Nerina was behind this!

50.12 Steynberg promised to revert to him regarding his request for information about Trade300 but never did. He did think at a stage that Steynberg "owned" it, and then he would have held all the coin.

50.13 He was asked about FXChoice traders – he saw live ones, the conversion to crypto, but he just relied on what Steynberg said about the new Bot. He had no other detail.

50.14 He was then asked about the various Minutes of Meetings that I have referred to. There is no point in repeating certain of his comments thereon. They speak for themselves. He agreed that if there was no trading since August 2019, no Trade300, that the profits shown in the back-office were fictitious. That is obviously so, and the probabilities point in that direction in my view.

50.15 He spoke to Steynberg on 15/12/2020 by WhatsApp at 1.50 am. When he left he sent a photo of a plane ticket.

50.16 Regarding his contributions and withdrawals he gave estimated figures: he probably withdrew 100 coin but 1400 remained and thus MTI owed him millions. The homes in Natal were paid with his own money. I have mentioned that the arrangement with Mr. Nkomo should be fully investigated. In my view, with the present facts it seems to be a convenient ploy. His evidence as a whole is rather vague, perhaps also conveniently so.

51. **Nerina Steynberg**

51.1 Nerina gave long and tearful evidence, the crux of which I will discuss. There remain serious question marks about her credibility. They live in Polokwane. The home is registered in her name and she pays the bond. There is an erven next door which her husband bought. She and her husband are directors of Dulospan. It appears from a search that they own 5 properties registered in the name of the company. (Relevant details are in Bundle 3, p. 1-21). There were no financial statements or bank accounts. She and her husband were also directors of JNX Online. Her husband "fixed" computers and created websites. She did not know who the shareholders were. She was not involved. Her husband had bought 2 Jaguars (they cost over R1 million each) in 2020. She worked for Pick & Pay in Polokwane. (There was evidence at a later stage that she or they had an interest in that business, but details are not clear).

51.2 Her husband Johann was a programmer and dealt with crypto. MTI had an account at Standard Bank and Nedbank but she had no signing rights. When Monica Coetzee had to pay something an OTP was send to her.

51.3 She knew little of the affairs of MTI. She enjoyed her employment at Pick & Pay for the last 15 years. In the beginning she did help to send out proof of payment i.e. that the biotin was transferred to a wallet. That was all.

51.4 She was a member of MTI. Her husband had opened the account. She thought she had 2 bitcoin in a wallet. The platform was in Exodus. She knew about Altcoin Trader Pty Ltd. The company provided a list of deposits done, details of trading and of withdrawals. Most of the deposits and withdrawals were done during the period April 2019 to date, thus within the timeframe during which MTI operated. It is important to trace the source of these funds as it appears from the evidence as a whole that withdrawals were made from MTI, re-deposited and split between various members (and family members and children) accounts in order to exploit the 10% referral commission (The Altcoin Trader statement appears in File 4, p. 167-177). Certain particular deposit detail were put to her and she replied that they could have been done by her or her husband. This was done with MTI funds so as to do separate trading! She admitted that she had access to the deposits made. She and her husband also bought other crypto. This source was from the trading at MTI, from her and her husband's wallet. When she had her own wallet she did not always discuss withdrawals with her husband. The FNB and Capitec accounts shown at p.175 were hers. Records of her transferral would be reflected in the block-chain as proof of payment. She also gave rather vague evidence of deposits into "Exodus". Any withdrawals from Exodus were made by her husband only. (She also referred to a friend's wallet Ms. S. Tilburg into which she deposited 2 bitcoin). I am told that a preservation order is presently being sought.

51.5 She knew about silver having been bought by her husband but could give no details.

51.6 She was not at all involved with the technical development, the server in India, the usernames or passcodes. She knew there was talk about her having all the relevant knowledge if her husband was absent, but she regarded the evidence of the Marks's as lies.

51.7 With reference to the meeting of 9 December 2020 (bundle 4 p. 163) she did on one occasion help Samuels with allocation. She did not have any other details or knowledge and Mrs. Cheri Marks was simply lying about this aspect. (It must be remembered that her husband was online during this meeting and did not contradict it or comment when it was said "Nerina Steynberg knows how everything works"). Monica had drawn the Minute. I asked her why would all conspire to record this if it was not true? She replied that the idea was to make her husband the "fall-guy" and that 80% of the version of Cheri Marks were lies. Similarly, with reference to the Minute of 13 December (wrongly dated 4 December, at p. 158) where it was recorded that "CJS has programmed a fail-safe for the instance where CJS does not access his accounts in 12 hours, Nerina gets access to everything", she said this was not correct. It was easy to change a Minute, but someone just forgot to change the date! This is a new version. I therefore asked her again whether she thought that everyone would have conspired against her. Her view was that this was indeed so, as they were all one family. The intention was to put the blame on her.

51.8 She added that even if she received all the necessary information she would not know what to do with it. She had never known how MTI actually functioned.

This may well be true, to some extent as Steynberg had not shared his knowledge or details of the functioning (assuming it did), with anyone. She did not know who "Camilla" was. She had sent 1 e-mail to her but received no reply. When Cheri Marks did so, she did receive a reply as noted above.

51.9 She was not aware of the existence of Trade300 but knew of the Indian server but not what they did. She knew Johan Kruger as having been a broker of MTI. She knew what a Bot was. Her husband had one and programmed it himself. No one else did. Badenhorst was not involved at MTI. (He confirmed that fact). She was also not aware of a "leader team" in MTI but knew of the Minute of 15 December.

51.10 Contrary to the opinion of Mrs. Marks, she did file a missing person report and gave details how this was done. She actually gave Marks the case number. She lied about this topic as well. (She gave the hearing the case number plus the cell phone number of Warrant Officer Mangkene).

51.11 With reference again to the 13 December Minutes she added that she could not believe that her husband had actually said that she had access to everything. According to her that was false. Aspects of the affidavit of Cheri Marks were put to her (Vol. 3 p.200). She denied as per par.11 that Steynberg would contact people. This is what Clynton did. (I do agree that this was the evidence of all on this topic). She said that par. 31 was also not true. She was never at the address in Randburg and also did not know how MTI actually worked. As far as par. 65 was concerned she did not give any coin nor was this ever discussed with her. Regarding par. 70, this was out of context. Her child did not have a passport and apparently not even the full birth certificate required for such. She never had any intention to leave South Africa.

51.12 She had read the anonymous threatening e-mail referred to in par. 68. That was why her husband left South Africa.

51.13 She did not support that idea. He would have returned on 23 December and the relevant reservations had so been made with Qatar Air. (Can this be confirmed?). He went to Brazil because it did not require a Covid-19 test.

51.14 She did say, as mentioned, that if everyone was re-paid MTI could be closed down.

51.15 She was asked about the context of par. 72 which deals with her allegedly dropping her husband off at the airport together with his friend B. McDonald. (Has he ever been contacted?). She agreed she was on the way but could not fly because he had no accommodation reservation. He flew the next day. A photo of the air-ticket and boarding pass had been sent to Clynton. (There is a version that a Mr. Worth had accompanied them and I have asked whether he had been contacted). She also insisted, in the context of par. 71, but the Marks's had encouraged him to leave. Regarding par. 73 she does not believe that her husband would have said that she could continue to run MTI. Paragraph 74 was also not true. Clynton had been sent a photo of the boarding pass. She thought that the Marks's knew more Johann would simply not leave her and their child.

51.16 Par. 79 regarding her knowledge of the running of MTI was again denied. Similarly par. 81 was also not true. Regarding par. 85 Samuels had helped with a spread sheet to check the withdrawals. She denied that she was calm as suggested in par. 94. She was in fact hysterical when she received the e-mail referred to in par. 93. I must note that throughout her evidence on 23/3/2021 Mrs. Steynberg was very tearful and had consulted with a psychologist and a psychiatrist about her

emotional state. The latter had indeed prescribed certain medication. It was noteworthy that Mrs. Marks was very dismissive of Nerina's emotional state.

51.17 She also denied that par. 109 had any merit. It was a lie. She never had access to the Nedbank account of MTI. The account was blocked. She was simply asked to unblock it. To this end Monica Coetzee had even asked her for her marriage certificate.

51.18 It was put to her that her husband had never left South Africa. She referred to photos from Brazil and that he had phoned through "Signal". (Surely, with modern technology this call could be traceable?).

51.19 Tom Fraser was a trusted advisor to Johann but was removed by the Marks'. She had never met Clynton Marks.

51.20 She undertook not to dispose of any coin in Exodus and Altcoin. She was not aware of the Stoffel van der Merwe report. She found some conclusions laughable. She did drive in a Hyundai bus with 6 children and four of his friend who played golf to Sun City. Nothing mysterious about that. She denied that either she or Johann's mother had taken him to a "safe-house" in Polokwane.

52. It is, by any standard of proof difficult to simply reject her evidence. The investigations into the Altcoin transaction may produce more factual results. There are clear indications in the Cheri Marks affidavit that she wished to involve Nerina in the MTI affairs, much more than the Minutes of various Meetings justify. She explained her minor role in the back-office and I cannot find, in the absence of Steynberg, the facts from the Indian server, the question about an actual Bot and subsequent trading, the apparent absence of Trade300 and the doubts expressed by FXChoice about the number of coin transferred, that she had indeed all the knowledge at her disposal to

continue with the activities of MTI. There is an obvious enmity between Cheri Marks and her, whose own conduct in these proceedings, from a credibility point of view, really concerned me. One could probably say more about Mrs. Steynberg's role after investigations into bank accounts and further evidence as requested.

53. **Keith Badenhorst**

He was interviewed by the FSCA on 26/10/20 and that is transcribed. I dealt with that evidence in par.17 and 18 of my first report. He confirmed that he never developed an A1 Bot with Steynberg. It was rule-based. To "code" an A1 would take many years to complete and one needed to be an expert. It was also not a "1 person job". The rule-based Bot was not intended for trading purposes at all. One would require 100 of thousands of man-hours to get that working. He did that for his own purpose, "dabbled" during 2012-2014 and left it at that. He could not comment on Steynberg's expertise except that he was a capable programmer. He did invest 3.5 bitcoin but had no insight into what they did. He made a withdrawal on 16/11/20. His programme was intended for forex trading but could be manipulated to be used for crypto currency as well. He had never been paid for any Bot by Steynberg, contrary to what Steynberg told his team about payment and a confidentiality agreement. In the "Referral Program Success Guide" drawn by Cheri Marks the following is said at page 4:

"Forex Trading Bot"

Aug '19 – Aug '20

Crypto Trading Bot

Aug '20 to date", and under the heading "What do we do?", the following appears:

"MTI trades on behalf of members on the crypto markets with an unregulated broker using MTI software with an artificial intelligence Bot exclusively contracted to MTI".

This representation is false in material respects. There is no evidence of an A1 Bot, nor any contract.

54. **R. Kritzinger**

She has been a book-keeper since the 1980's, and has done accounting for the last 20 years. She was a MTI member and introduced 2 others. She does not understand how the block-chain system works. Clynton Marks introduced her to MTI. She had met Cheri previously. She was appointed book-keeper / accountant in August 2020. That was the first month for a current account but she did catch up since April 2019. Accounts were non-existent but management understood that a system had to be in place regarding all payments and expenses. She was also supplied with a bank statement from JNX Online which identified MTI expenses, including Steynberg's personal ones. There was no revenue as such but there was an MTI bank account since the middle of 2020. From August funds were shown so that salaries, rentals and over-heads could be paid. No revenue was indicated between April 2019 – August 2020, only JNX Online existed. She did not know what business this entity did. After 2020 revenue only came from bitcoin. She liaised monthly with Monica Coetzee. She discussed with Charles Ward how revenue should be recorded. He was "pushing" for 10% but asked where the "Founders Bonus" came from. She withdrew some coin value from January 2020 at R1000 p.w and then in November it was R4000 p.w. Her investment had grown to USD 4000 by December. She was employed as an independent contractor at R10,000 p.m, from a Standard Bank account in Rand. Others were paid in coin. This was recorded in the system of MTI in Rand. After 2020 no income was recorded in the books. There was a loan account entry from a coin wallet to cover expenses. There were 2 loan accounts: on from JNX Online in the amount of

R7 million and one from the MTI bitcoin wallet. It was said that Steynberg and Clynton had placed these funds into the company from their own wallets for payment of expenses. The "Coin Buyers Club" facilitated the sale of coin into Rand, and did this for MTI. Our management and staff were on the pay-roll. There were no tax returns nor any legislation for VAT. She suggested that this be done. She never looked at monthly trading statements from MTI to members on the back-office. It is clear that the company failed to implement and maintain a proper corporate governance, and transgressed provisions in the Tax Administration Act relating to tax returns and VAT. In my view this aspect should be referred to SARS.

55. **G. van Zyl**

He invested USD 200 from end of November 2019. Ignatius Bell had sent him information. He spoke to Pieter Muller who had done the due diligence examination. In the back-office one could see how many coin were in pool and one could see details of the binary system. He had used 3 or 4 wallets to pay MTI with a username and ID Wallets were coupled to a bank account, in his case at Capitec. He could not say how many coin he had transferred as these were withdrawals too. There was also an account for his wife. He and his wife could also transfer coin internally. If there was a re-investment a 10% bonus was paid. "The Trader" told them that this 10% would not be paid until it was "recovered". This could take weeks. He signed-up 9 "down-lines" in the referral system. Later he had 30 people and this grew to 25,000. He gave evidence about a video which is not clear to me. He did however see a "pro-life account" with trade reflecting "MTI from FXChoice". This was on 30/6/20. (Contra the affidavit of FXChoice regarding this date). After too many people phoned FXChoice and made enquiries, Steynberg looked for other brokers and moved to them. He had never

heard of Trade300. He was told by Steynberg that the trader had written the Bot. He only saw short snips at back-office but could gather information to look at a live trade. He was referred to his "Update Profile" (bundle 5, p.277). He had 3 wallet addresses but could not say what/which he used. He believed all income/profits/bonuses came from trades even if there were no new investors. He said that in August there were 5822 re-payments with a balance of ± 23,000 in trade. (I cannot say how he arrived at these figures).

56. **K. P. de Jager**

He started investing in October 2019. He transferred his bitcoin to MTI via the Luna platform. A username, ID and cell number was required. He had an account at ABSA. He could not say how many coin were transferred to MTI. He used different platforms. The back-office would have to provide that information. He invited 12 new investors and sponsored most of them. This resulted in a binary system advantage. His book-keeper was busy with his tax affairs and he would then have more information.

57. **G. Denham**

Apart from details relating to his own investments, he attended a conference in January 2020 and trades were shown. Steynberg had said that he had written his own algorithms, which he knew. (Contra the opinion of Badenhorst). The USA crypto analyser also gave him peace of mind. Live trade was seen at Zoom meetings. He always re-invested his bonus. He transferred about 25-27 coin to MTI via Luna. He withdrew 4. At the end of November, with the binary structure system, he had 36 coin. At a Zoom meeting Steynberg said he would get a 21C should he be involved in a car accident but did not say who. This seems to be an uncritical investor.

58. **H. Meyer**

He started investing in October 2019. He had a Luna account, plus a few other connected to a FNB and Capitec connection. His evidence is of little relevance.

59. **Marinus Bell**

He was an investor only, introduced by his brother Ignatius in October 2019. He transferred his own coin using various platforms including Altcoin Trader, Luna and Exodus. He could not say what he had invested or re-invested. He recruited some 30 persons. There was no control what management did with coin. He only heard that MTI had moved to an unregulated trader in December 2020. It was unthinkable that Steynberg would leave his wife and child. The remainder of his evidence is of a hear-say nature and opinions.

60. **J. Usher Bell**

He invested in October 2019. He was persuaded by his brother. He is an entrepreneur but saw the concept without any system. During a Zoom conference on 14 May Steynberg announced that he would be the COO. He discussed the regulatory requirements with the Attorney. He had nothing to do with the operational system. He was never informed of how the back-office worked. He had no access except as an investor. The Bot was not discussed with him, nor any trader. Cheri Marks was clearly the main voice, (both literally and figuratively) and he could not work with her. He resigned during June 2020 also for health reasons. He recruited 50 people and sponsored 30. He did not know what was withdrawn during the last months of operation in October/November. He gave no evidence of why he stored some ± R2 million worth of silver on behalf of Steynberg. This emerged later.

61. **Thomas Fraser**

61.1 He has a long history of corporate advisor. His role was explained in the FSCA report at par. 44-45. He attended the first interview with Steynberg. The FSCA was of the view that "it was astonishing how uninformed about the true state of affairs Fraser was, or acted". He attended the first Managerial Board Meeting on 28 August 2020 as Chairman. It is clear that corporate governance was discussed in some detail. According to the Minute of 11 September (Vol. 4 p. 16 par. 6.2) it is clear that he drafted the MTI Office Policy. He was also present at the 22/9/20 meeting where key issues were discussed at length. The next meeting he attended was on 7/11/2020 where discussions were held regarding income being reflected. The book-keeper Kritzinger was also present. He again attended a meeting on 12 October 2020 where the KYC Implementation Policy was discussed in great detail.

61.2 It is clear that he advised Steynberg on a number of important corporate issues, the risks of absolute control and issues regarding the Bot. He was assured by Steynberg that a Bot existed. Mr. Steynberg had given him a Power of Attorney. Mrs. Steynberg later requested this to gain access to the MTI bank account at Nedbank. Steynberg also informed him that he has a second passport, apparently from an Eastern Baltic State, and that he had bought a plantation in Panama. He had never seen the "Governance" document contained in bundle 5. Although the security of bitcoin was discussed and the necessity of a 21C nothing had happened, and no-one had access to confirm either the existence of the coin held or the existence of a Bot. He was of the view though that rewards were paid from trading profits and not from the contributions of new members. I am not convinced that this can be accepted in light of all the evidence of FXChoice, the non-access by

anyone to the back-office, and the fact that no-one had seen the Bot at any stage. Add to that the evidence of Badenhorst and a different picture emerges on the probabilities: the scheme was a pyramid scheme.

61.3 When asked about the Bot, Steynberg vaguely mentioned the existence of a non-disclosure agreement, which Badenhorst said did not exist.

61.4 He never met Nerina Steynberg.

61.5 One comment made by Cheri Marks was unfortunately not explored further: she stated that she earned R4 million per week. One would like to know the source of such amounts and where they are presently held and in what form.

61.6 He had a claim against the estate and had lodged that with the liquidators. This was based on what his fee would have been.

61.7 If not familiar with the details appearing on a screen one could not discern whether a live or a demo account trade was shown. If a demo was shown, it said so on the screen but there was evidence that this too could be manipulated.

61.8 In retrospection he did not believe that any trading took place after August 2019. He should have recognised that earlier, he said.

61.9 Nerina was in "cahoots" with Steynberg and controlled him like a puppet.

61.10 He resigned on 25 November 2020 as access to Steynberg was repeatedly obstructed. He made a 13 page statement about all his activities and proposals on 22 January 2021 (bundle 5 p. 306). A further lengthy analysis of the relationship between him and the company commences at p. 324 and is dated 15 November 2020. It is clear that his inputs were largely ignored. Again Cheri Marks seems to be the main figure in that context.

62. **Charles Ward**

62.1 Cheri Ward is his sister. He became a member in 2019. During July/August he attended a strategy conference in Johannesburg. He was a non-executive director and was the Head of Strategy Implementation. Fraser was a consultant and had explained the duties and roles of both directors and non-executive directors. In September he became the COO and supervised management who were accountable to the CEO. The COO was more in a support role. He actually had no say. He was paid a salary and 1 bitcoin in Sept/Oct 2020. He created and/or assisted in establishing a revenue stream in the books of MTI which would be 1% from the 10% the share-holders received. He had no access to the back-office, though this was discussed at length with Steynberg. An audit of the back-office was a priority to him especially after Steynberg said that he was not a crypto expert. Steynberg was solely in charge of the technical side of the business and protected "his field". He told him that his wife Nerina knew the back-office inside out. She could run the business. He had pushed for that his family was in the hands of 1 man. A 21C was necessary.

62.2 He attended the meeting on 28 August 2020 (Bundle 4). This confirms his concerns (see par. 7) (Paragraph 4 of the Minute deals with Steynberg's comments about the Bot. One should take note of Steynberg's comment which has perhaps not been considered fully in this saga: "the terminal in South Africa has no data on it". I would suggest by the way of a written communication at least, J. Kruger be asked to comment on it. Does this imply that no trade could be seen and that it is the reason why no-one was given access, or is it an innocuous comment? He also noted that the "current Bot was not a crypto trading Bot". No-one present took up

this topic, nor was it sufficiently dealt with during the hearing. (It does however seem to support Fraser's ex post facto view that no trading to place as from August).

62.3 Nerina had helped in the back-office from time to time and Steynberg also told him that she could make payments. He had no reason not to believe him. He trusted his wife and added that she got 50% of the share profit on a weekly basis. If this is so, does this not amount to misappropriation of the share of others? To my knowledge it was certainly not disclosed to anyone nor discussed at any meeting.

62.4 He invested USD 1000 in FXChoice, lost it and also lost interest then. Regarding Trade300 Steynberg said that Nerina would have all the details. Because a 21C was his main concern he "harped" on it and spoke about it at length. Steynberg made it clear that she had all the necessary knowledge. One wonders therefore why Nerina was so insistent that she did not know anything about the back-office or the functioning of MTI. I have through-out the hearing felt that there is more to this (topic) than meets the eye.

62.5 Nerina and he had numerous telephonic discussions and she confided in him. Nerina also got involved in support work when there were bottle necks. (I presume relating to withdrawals). She had also helped allocating deposits and had the necessary understanding.

62.6 He added that it was improbable that one would receive large amounts of money every week but ask no questions. There was a massive life-style change, and they also had a stake in the Pick & Pay business and owned 16 properties. (Has this been sufficiently investigated?).

62.7 At Zoom meetings Steynberg said that there was a protocol in place for a pay-out. She was the only person he could have referred to. He would not say that in public for security reasons.

62.8 He emphasized that he had not enough knowledge of any Bot or how to "audit" it. After FXChoice it was mere speculation of where the balance of coin were and in which quantity.

62.9 The so-called "Coin Buyers Club" would pay expenses from a monthly budget drawn by Monica Coetzee after approval by Steynberg. He confirmed that R2 million of silver had been purchased and held by Usher Bell. Steynberg had shown him photos of boxes containing it. He asked Nerina about it who deflected the issue. He did not believe that Steynberg had left South Africa. A certain Brian Brotherton apparently looked after him. (Has he been approached for comment?). He also provided protection to Nerina.

62.10 An interesting further comment was allegedly made by Steynberg, which, if true could provide the answer to the main question: he said that not all the funds are held in MTI and that there is residual income. Stoffel van der Merwe told him that they owned 16 properties (his report does not mention this), Nerina drove an expensive Jaguar, chartered a plane to fly to Cape Town, and there was also talk of a property development in Cape Town.

62.11 A coin did not belong to MTI but to a member according to the Terms and Conditions. (Assuming that is so, there would be common-law remedies, but my view is that the contract is invalid in any event for reasons that I will discuss hereunder).

63. **Ignatius Bell**

He had two accounts which he managed. He made a total withdrawal from 1 account and invested it in the 2nd to obtain 10% commission which would be paid to him after 6 weeks from profits made from trading as he believed. He invested on being shown a live trade with Pieter Muller. During a Zoom call he and Muller were shown such and also a video footage. He had no doubt that trading had taken place. This was on the FXChoice platform. After that no-one knew which platform was used. He was told that Steynberg had transferred 16,000 coin in 5 transactions. On the new platform only bitcoin was traded from about August 2019, contrary to the view of FSCA report par. 135. He confirmed that Steynberg spoke about having bought silver. Two Jaguar vehicles were also bought. He was 100% certain that Nerina Steynberg could do the necessary transactions. His accounts were in the name of his 2 minor children. He had received e-mails from MTI when requesting a withdrawal and he would provide such. According to Steynberg a Bot had been developed in Potchefstroom. The developer wanted 14 million USD but would have received 25% of profits as a developer. He had returned 95% of crypto currency withdrawn as the validation of trades had convinced him not to withdraw his investment. He confirmed mainly weekly withdrawals during November 2020 to early December 2020 but had then re-invested them in his 2nd account. (This is evidenced from the so-called "leaked accounts").

64. **P. Muller**

He was in investor and also did a "due diligence" text. He had experience in trading in forex. He tweeted Steynberg but needed to see a live trade. This was in January 2020. He recorded it and would provide the video. The history of the particular trade was opened and all cloud trades were seen. The trading platform was FXChoice. He had

no reason to believe that this was a demo account. In his view members should be repaid from the coin kept by FXChoice. He gave details of threats to himself and his family. The January 2020 occurrence does not correlate with the FXChoice statement or version that they closed the MTI from August 2019. He had heard rumours that Trade300 was not existent, but was of the view that another broker might have been used, with Trade300 merely being a "cover". He did not believe that Mrs. Nerina Steynberg played any role in the affairs of MTI. He was not involved in any corporate discussions. FXChoice could confirm what the balance was in August, but what was transferred could in his view only be verified by the data held in the MTI back-office. He could not confirm that the final withdrawals or transfers from FXChoice had been to another broker, obviously such as Trade300. The "leaked" record was not correct in that it did not show what was withdrawn. Only access to the back-office could confirm this. He would provide the Attorney for the liquidators with his FNB account statements from 19 April 2019 to date. He confirmed that he had not seen any live trades shown on the MTI back-office. He did not agree that FXChoice had closed the MTI account on 10/6/19 as he had statements up to 30 June which he would provide. If his evidence (from my own notes) is read carefully it would seem that he had only seen live trades on the FXChoice platform.

65. **Johan Kruger**

65.1 He was an experienced forex trader as well as in gold and silver for 6 years. He has known Steynberg since 2015 when he met him at a presentation held about crypto currency. He is an internet connectivity specialist. On 17 September 2019 after he was contacted he invested USD 100. He traded at FXChoice for a long time. The lone currency is bitcoin and bits. It is never converted to actual money. A

bitcoin is an asset but is never transferred. It is not a financial investment. A crypto currency transaction if purely of a buying and selling of assets nature.

65.2 Regarding the design of the Steynberg Bot – I got the usual hear-say version: Steynberg had an agreement and he could make small changes depending on volumes. He could therefore change the parameters. He showed him a couple of times when trading with FXChoice.

65.3 He knew the difference between a live account and a demo account, and gave reasons why. One could change the ID if one had the skill. In Feb/March 2020 he, Steynberg and Muller looked at the same trade on his account and on Steynberg's account. He also saw a video of 4 February 2020 and statements from 29 June 2020. There were 8 different trading accounts. Every account has between 875 and 1000 coins in them. If more, a new account would be opened. As far as MTI was concerned he could only comment about what he was told by Steynberg, (which is the usual refrain). There were 20 account at FXChoice. There were problems in that too many people had phoned the company about their investments. Steynberg then decided to move to another brokerage.

65.4 On 6 November 2020 his laptop was stolen which meant that he had lost most of the e-mails from FXChoice since January. There was an agreement on the back-office which everyone had to sign when joining MTI. This contained "Terms and Conditions", "Advice Disclaimer", general policies and a code of conduct. An investor would have to agree on the particular referral link and accept (by clicking on the link apparently) the Terms and Conditions.

65.5 The Bot of Steynberg was rule-based. It was not an A1 Bot (contra the representation made at p. 4 of the mentioned "Referral Program Success Guide"

which I have dealt with). One could write some algorithms by changing to a stop-loss for instance. The relevant software used was Meta Trader 4.

65.6 He read the Terms and Conditions and it was a copy and paste effort. They were not clear and he asked Steynberg to change them. He did not know who had compiled them.

65.7 MTI was not selling a product. It was merely an investor's choice where he wanted to trade. If one sent one's wallet to MTI they had full control over it. Once this was done one could inform others.

65.8 At FSCA Steynberg gave them proof of trade but they did not know what they were looking at (I have dealt with this hear-say evidence above).

65.9 From August the unregulated crypto trading took place. He gave evidence of the roll of Usher Bell and internal strife. Steynberg was the only person with access to the system which concerned him. When FXChoice was the broker a statement in the back-office could be seen and results verified on own account. Automated statements were sent from FXChoice.

65.10 The leaked list of coin was not accurate as it did not show withdrawals. After the FSCA attached his laptop there were daily attacks on the server. It must have fallen into the hands of someone who did the hacking from Steynberg's own laptop. The only accurate list would be the "My MTI Club" website itself. He had no idea what the Indian server could supply. I do not intend to deal with his version of what the hackers did, how and why. There is a conspiracy theory that is highly defamatory, and which I will not repeat for that reason.

65.11 A video was shown to me and explained. The "FXChoice Pro Live" was not a demo. This could be manipulated if the MTI software was re-written. He agreed

that only FXChoice could confirm the accuracy of what was shown. Trade was not confirmed with FXChoice. They wanted to audit the Bot but since the Marks' practically took over, nothing happened. The live trade shown purportedly related to FXChoice only. Later in August Cheri Marks cut off all communication with Steynberg.

65.12 Andrew Caw (not called as a witness) withdrew 60-66 coin from Trade300. Cheri Marks told him. Cheri also requested 2000.

65.13 What was actually missing was the recovery password where coin is lying.

65.14 Regarding her knowledge or involvement in the business he said that her daughter of 11 years could make payments from a wallet, so could she.

65.15 Regarding Steynberg's alleged departure he said that Marius Worth (a person not referred to by anyone else) had dropped him off at the airport and had waited there for the night. (I do not know whether Worth has been consulted). He added that Nerina had dropped him off, Marius had picked him up and had taken him somewhere and took him back the next day. One cannot reconcile this version. He also added that actually he did not know what Nerina did.

65.16 The account at FXChoice was in Steynberg's personal name. When we wanted to withdraw the company did not allow this and requested financial statements after he had changed the name to a Pty Ltd.

65.17 The most important part of his mainly hear-say or descriptive narrative how things work in general is his reply to the affidavit of FXChoice that I have referred to. It is hoped that the author will still give evidence in a virtual hearing. He admitted that if that version was true, and it was made by a reputable company,

then it is highly likely that Steynberg did not trade in the manner described to investors.

66. This concluded the fair summary of relevant evidence in my opinion. I have added comments when I deemed it appropriate. I have done this memorandum in the absence of a typed record and merely from my notes. The evidence of Kruger is by way of example much more detailed but not always to the point. In my view the crux lies in the affidavit of FXChoice and his view thereon.

67. The FSCA report has indicated contradictions of various financial Statutes and it is common cause that they have occurred. They constitute criminal offences.

68. It is also clear to me that Steynberg and the management team have made material misrepresentations to the public and material non-disclosures as indicated above. This is fraud. The non-access to the coin by investors in my view amounts to theft, whatever the definition of bitcoin may be.

69. I have no explanation why a warrant of arrest has not yet been issued in respect of Steynberg. That is wholly justifiable on the available evidence and the investigating and prosecuting authorities should be approached in this regard. This would also facilitate the intervention on Interpol, should he indeed have left South Africa.

**70. <u>The Contract or Terms and Conditions</u>**

70.1 The "Governance" Document is in Bundle 5. It contains an "Advice Disclaimer". It declares that it is an internet-based crypto-currency club: the benefit to members bitcoin growth through forex trading by a registered and regulated broker (FXChoice). This is unlawful and also a criminal offence. The FSCA dealt with this aspect and I referred to it in my first report. All 3 periods of "trading" are relevant and in contravention of s.7(1) of the FAIS Act and therefore amounted to

conducting illegal financial services. The overall conclusion by the FSCA in para 162 and 163 of its report is fully justified. (As said, I have no evidence relating to "Cloudbet".

70.2 MTI however stated that it did not portray itself as a registered or authorised financial services provider and all members had to agree that they had read and understood this (false) "Advice Disclaimer".

70.3 Section 2 contains "General Terms and Conditions". The evidence of J. Kruger was that all new investors/members had to agree to these Conditions when they first registered. It is an 11 page document and it is doubtful that anyone actually did read and understand these Conditions. It contains a "Disclaimer of Warranties" in par. 4 wherein MTI absolves itself from any possible liabilities. It also contains an "Indemnity" in par. 7. In effect this means that an investor has waived all possible rights and remedies against MTI. The same applies to par.8 which contains the "Limitation of Liability" closure neither party is liable to the other for any consequential or indirect loss. To add insult to injury it contains in par. 10 an "Amendments and variation to terms and conditions clause" – Par. 10.1 states that "MTI may amend these terms and conditions from time to time, if and when necessary without prior notice and at MTI's sole discretion". A member is also bound for a period of 36 months after cancellation of membership.

70.4 It is clear from the various Minutes of Meetings that Terms and Conditions were materially and unilaterally amended from time to time without any notice to members.

70.5 The Consumer Protection Act 108 of 2008 prohibits in s.48 unfair, unreasonable and unjust contracts and terms. Part A deals with Interpretations

and Definitions. Chapter 1, Part B deals with purpose, policy and application of the Act. Section 3(1)(a) protects a consumer from unconscionable, unfair and unjust trades practices. Part F (s.40-42 deal with fake, misleading and deceptive representations. On the present facts these were indeed made as indicated. Section 42 in particular deals with fraudulent schemes and offences. Section 43 prohibits a Pyramid or similar scheme. Section 43 (4) defines such, and in my view applies to the common cause facts.

70.6 In my view it could reasonably be argued that the agreement referred to is one that offers services if regard is had to clauses 2.1 – 2V1, and the evidence. "Service" is defined as including "financial services" and "intermediary services" that are subject to regulation in the terms of the Financial Advisory and Intermediary Services Act 37 of 2002, as also found by FSCA.

70.7 Thus, if the Act applies (I cannot deal with the question of the rise and fall in the price of bitcoin over various periods), the mentioned contract would likely be set aside as being the subject of a prohibited transaction, and also unfair and unjust, all against the background of false, misleading and deceptive representations. It also regulates a prohibited pyramid or similar related scheme (see sect. 43, and 43(4)).

71. Should the Act not apply the contract would in my opinion in any event be set aside on the basis that it offends against public policy to introduce, enforce and amend terms unilaterally to the clear prejudice of the other party. Public Policy considerations founded in the Constitution are also implicated i.e. a contract that detracts from all consideration of fairness and reasonableness, objectively seen, against the background of an unlawful scheme. Added to that is the fact that all provisions were drawn and

amended unilaterally which would severely "water-down" the usual principles relating to the enforcement of contracts voluntarily entered into, or the sanctity of contracts as discussed in Barkhuizen v Napier 2007(5) SA 323 (CC) at p. 58. This topic was also more recently dealt with in Mohameds Service Holdings Pty Ltd v Southern Sun Hotel Interests Pty Ltd [2017] ZA SCA 176 of 1/12/17. My conclusion is therefore that a court will not uphold an unjust, oppressive and unilateral contract drawn in the context of an illegal trading scheme.

72. There is another relevant consideration that I mentioned previously: no party has a right to benefit from an unlawful contract. See: All Pay Consolidated Investment Holdings Pty Ltd v CEO of SASSA, CCT48/13 at par 30 and 67, 2014(4) SA 179(CC).

73. Regarding the question of use or abuse of other companies such as JNX Online, UPROBUZZ Pty Ltd and Dulospan Pty Ltd the provisions of sections 20(a) and 22 of 2008 Act should be considered and/or s.424 of 1973 Act. In the last mentioned 2 cases the sole purpose would seem to be to protect the properties against execution by the creditors of Steynberg and MTI.

74. In conclusion I must repeat again that I have not had the benefit of the evidence of Mr. Nkomo in respect of UPROBUZZ nor the benefit of the re-calling of Mrs. Cheri Marks for the numerous reasons indicated in this report as well as the information provided by "mybroadband" relating to her numerous inconsistent statements over a lengthy period of time, of which I had no knowledge.

75. Whilst drafting this report I was informed by Attorney P. du Toit on behalf of the liquidators that various bank accounts are still being examined in the context of transactions done by Mrs. Nerina Steynberg, that Maxtra Technologies, who is the Indian service provider is likely to co-operate and to provide the MTI back-office data.

The computers seized by the FSCA still needs to be analysed once access is afforded. Other queries raised by me relating to the "leaked" list of investors will most likely be resolved once the database from Maxtra Technologies is obtained.

**COMMISSIONER**

**JUDGE (RETIRED) H J FABRICIUS**

Duly appointed as Commissioner by

the High Court of South Africa (Western

Cape Division) under the case number 935/2021

Signed and sent electronically to pierred@mbalaw.co.za

**Enquiry in terms of Sections 417/418 of the Companies Act 61 of 1973 read with item 9 of Schedule 5 of the Companies Act 71 of 2008.**

In the matter of:

**MIRROR TRADING INTERNATIONAL (PTY) LTD t/a MTI (IN PROVISIONAL LIQUIDATION)**

**Third Report of the Commissioner, Judge H. Fabricius (r.) dated 16 June 2021**

## 1. Introduction:

This report will briefly deal with the most relevant evidence of witnesses heard as from 1 June 2021. The liquidation application v MTI was heard on 15 June 2021 in the Western Cape High Court. There is also an Intervention Application by the provisional liquidators, who also seek an order that MTI's "business model" or rather "scheme" was unlawful for a number of reasons referred to in the report of the FSCA of 18 January 2021, as well as an Application declaring the contract between MTI and the investors to be a nullity and unlawful for reasons mentioned in par. 70 of my 2nd report dated 22 April 2021.

## 2. The evidence tendered between 1 and 4 June 2021:

### 2.1 J.G. van Deventer:

He was the co-author of the FSCA report of 18 January 2021. This report was subsequently up-dated for the benefit of the National Prosecuting Authority. He confirmed that the FSCA had not yet managed to hand over all documents and

evidence to the Attorneys acting for the provisional liquidators and explained the reason: they utilized external experts at times to do certain investigations. The evidence in possession of those instances / persons had not yet been handed to him. This consisted mostly of hard-drives and mirror-imaging which would have to be analysed. Documents would be in PDF form. The material was vast and a proper search tool would have to be found and utilized to determine the relevance of the particular material.

2.2 He explained that during "the second period" (August 2019 to October 2020) referred to in par. 65-105 of his report, MTI traded in forex pairs. This was common cause. In effect it is betting on the movement of 2 currencies vis-à-vis each other. This is a trade in derivatives which amounts to conducting unregulated financial services in contravention of s. 7(1) of the FAIS Act. It's a criminal offence. This type of trading is merely funded with crypto currency, which is not a financial product and thus not subject to their jurisdiction. I interpose to state that this has been repeatedly shown to be MTI's main refrain: Crypto-currency is not regulated and therefore their business is lawful. I will refer hereunder to instances where even their own Attorneys Ulrich Roux propounded (negligently in my view) this opinion, although they were quite aware of the fact that investors' coins had been pooled and that the Collective Investments Schemes Control Act 45 of 2002 was therefore applicable. It was a repeated misrepresentation to investors and the public that MTI's business was unregulated, and by implication therefore lawful.

2.3 Mr. van Deventer explained that during this period, nor the 3rd period, MTI was not buying or selling crypto currency. At all times trade was in derivatives and therefore subject to regulatory control. These particular derivatives were the so-

called "Contracts for Difference" or CFD's. A CFD is a contract between 2 parties betting on a future uncertain event. Hence the high risk, and, I may add, the impossibility to guarantee a monthly profit.

2.4 In CFD trading the reliability of the counter-part was of utmost importance and it is clear from the transcript of the interviews that Mr. van Deventer had with MTI that he repeatedly, but in vain, sought to establish from MTI who the "other side" was in such CFD trades. (If indeed they took place). It would be impossible to obtain, let alone promise, a consistent 10% monthly profit as a result of such trades.

2.5 They did contact FXChoice for details pertaining to the first period dealt with in par. 48-64 of the FSCA report. FXChoice presented a totally different version than what MTI held out to investors. Mr. D. Stephenson, in his capacity as administrative director made an affidavit on 28 October 2020. This affidavit contained answers to questions posed by the FSCA. Attorneys Coombe addressed a further request for information to FXChoice on 25 May 2021. The background and purpose of the present enquiry was explained to them and they were also requested to authorize a representative to testify under oath via an online platform. This still has to be arranged.

2.6 The replies that FSCA received from Mr. Stephenson clearly show that MTI made repeated false representations to investors and that they sustained substantial losses during that particular period. In Mr. van Deventer's opinion MTI had not expected that the FSCA would contact FXChoice, and obtain reliable information from a reputable source. Hence their move to Trade300, a platform which did not exist. The alleged number of coins transferred by Mr. Steynberg to Trade300 also did not take place, and the sad truth is that they were misappropriated which is

obviously another criminal offence. FSCA could not find details of the alleged transfers on the block-chain, which is public information, as alleged by Ulrich Roux Attorneys in a letter to the FSCA of 7 October 2020. (Par. 3.14 alleging that 16,444 coins were transferred between 21/7 and 24/7/2020). FXChoice also denied such transfers. There is certainly no evidence of any transfer of coins to Trade300.

2.7 Mr. van Deventer emphatically denied that he or Mr. Topham had been shown a live trade by Mr. Steynberg. What they had seen was not of such a nature that one could verify that it was live nor anything to compare it to. Normally, one sound explanation, in his 25 years' experience, solves their concerns, if the explanation is genuine. In this case, this was the second interview, and nothing had been explained. (The 1st interview was on 20 July and the second on 11 August 2020). It was also never disputed that they were trading in forex or CFD's. In response to a question by me he replied that the fraud was not only committed by Mr. Steynberg but also by Mrs. Cheri Marks who was the mouthpiece of MTI, and convinced the public repeatedly by way of social media that the business was lawful as it was unregulated. This is abundantly clear and many of her appearances were on YouTube and were also subsequently analysed by www.mybroadband.co.za. I will hereunder refer to an "interview" that she had with Attorney Ulrich Roux. The latter, upon questioning, confirmed that trading in crypto currency was unregulated and that MTI traded lawfully, whilst both knew, at the very least, that the Collective Schemes Control Act applied to MTI activities.

2.8 In his opinion, Mr. Roux was a well-known Attorney and his view gave comfort to investors. He saw the particular video and was surprised by Roux's statements. (The particular video was for the benefit of the team leaders who had voiced

concerns. It was published by Mrs. Liesel Smith on 23 December 2020 and well as on the said www.mybroadband.co.za website. Mr. Roux was clearly heard to say that in his opinion the FSCA could simply not "fathom the returns" and did not understand the MTI platform through lack of knowledge. The remainder of the 17 minute conversation concerns the likelihood of the FSCA "shutting down" MTI by way of a Court order. The view expressed was also that FSCA was trying to de-stabilize the crypto market. It was also said that the FSCA had been sent "extensive correspondence". Mr. van Deventer denied that they had been given sufficient information. The details given of the transfer of coin were false. No correct details of the alleged developer of the BOT were provided. Mr. K. Badenhorst was interviewed and denied any input into a recent A1 BOT, nor knowledge of payment for such. There was also no truth in Steynberg's allegation that a "team of traders" maintained it. One could indeed buy a BOT of the shelf but it would not be able to create major success. Trade300 could not be traced. The FSCA kept up-to-date with all new relevant developments and have a team of experts at their disposal to do so. They do belong to an international organisation that shares ideas and assist each other. Internationally the idea is to regulate the trading of crypto currencies. There is no unclear issue about it. It was true however that the mere buying and selling fall outside their jurisdiction. They only take active steps if there is a reasonable suspicion of a contravention of the applicable legislation. Derivative trading is regulated and it is common cause that MTI did trade in CFD. The FAIS legislation was applicable as well.

2.9 He agreed with my view that in the mentioned video interview Roux gave no facts except to state that crypto currency was not regulated. Nothing else of value was

said to investors. This case was in any event not about the crypto market: one could buy and sell and did not need a broker or a specialized platform. In his opinion there could have been no doubt in Roux's mind that the FSCA was only concerned with the question of unlawful trades in derivatives.

**2.10** I will refer to the "Roux Files" hereunder, which support Mr. van Deventer's opinion fully, but will not again refer to the particular video. When Mr. Roux gave evidence he admitted that with "hind-sight" he ought to have mentioned the Collective Schemes Control Act. The correspondence and internal emails will show that both Mr. Roux and MTI were fully aware of this fact. It was mentioned repeatedly. The questions posed after the 11 August interview were never answered. There appear by way of summary by Mr. van Deventer on p. 218 in bundle 2, being p. 71 of the actual transcript. In Mr. van Deventer's view there was no evidence of trading in the second period. He could not say to whom any coin (or funds) were transferred to after FXChoice locked the MTI account in June 2020. I must emphasize that <u>if</u> there was trading in second period, it was in CFD's.

## 3. <u>Mr. Ulrich Roux, Ms. Da Silva Faria and Mr. C. Badenhorst</u>

3.1 They testified on 2 June 2021. On that morning I received 2 arch lever files containing documents emanating from his firm after the necessary subpoenas had been issued to him, and his assistants Ms. Da Silva Faria and Mr. Casper Badenhorst. I studied them after the hearing. They contain emails to and from MTI, internal emails, draft opinions and an opinion from the firm regarding the legality of MTI's operations. As I have said, the bundles were referred to as Volume 1 and 2 but

being bundles 6 and 7 respectively. All 3 persons made affidavits in similar format confirming that all requested documents had been provided to the Attorneys.

3.2 Mr. Roux said the following in par. 5.13 of his affidavit of 19 May 2021, Ms. Faria par. 7.13 of her affidavit of 19 May 2021, and Mr. Casper Badenhorst in par. 5.13 of his affidavit also dated 19 May 2021: .... "neither I or URA had completed or furnished a final legal opinion relating to MTI. The opinion could never be finalised because pertinent questions asked to MTI on the advice of senior counsel and a forensic accountant remained unanswered. Neither I nor URA received the further information and / or documentation sought and as a result of same, neither URA, Counsel or any third-party adviser engaged by URA could furnish any legal opinion pertaining to MTI".

3.3 This statement is not accurate. Firstly, Mr. Roux confirmed that on the said video he had expressed the view that MTI was acting lawfully. Secondly I will refer to correspondence / emails that show without any doubt that Mr. Roux's firm was of the view that the Collective Schemes Control Act applied to the activities of MTI and had in fact told them so.

3.4 The affidavit is also not accurate in the sense that all documents had been supplied. There is reference to a "first opinion" of Adv. C. Badenhorst which is not contained in the files and the contents of which is nowhere disclosed, nor its date.

4. I will now deal with certain of the documents contained in the said Roux files which are objective evidence of what occurred internally in the firm and externally vis-à-vis MTI. The above witnesses were examined on a number of them and gave their comments.

Mr. Badenhorst for instance agreed that his or his firm's view would have been provided to MTI, especially through Mrs. Cheri Marks.

4.1 It is not in dispute that URA received a retainer of R10,000 p.m. to keep abreast of relevant legislation and to advice MTI of such. In addition they marked fees for certain specific work done in significant amounts. They had numerous consultations with MTI, either in person or virtually. In addition there are many emails that pertain to the central question: The jurisdiction of the FSCA and "the legality of MTI".

4.2 Some of the invoices issued are quite telling. The invoice of 8 April 2020 refers to a consultation with client on 14 January 2020, with Mr. Roux and Ms. Faria. The invoice then refers to "conducting vast amount of research and preparing a "first draft of memorandum". Another consultation with MTI was held on 17 February 2020. Their comments were considered relating to the memorandum and "terms and conditions of MTI" on 3 April 2020. The invoice then refers to 6 April 2020 and a fee is marked for "finalising memo in respect of Bitcoin".

4.3 In file 2 (Vol. 6) one then finds a written "memorandum in respect of the legality of MTI and its Trading Terms and Conditions". There was a previous such but in draft form dated 10 February 2020. The April memo deals with aspects such as – what is virtual currency, - what is Bitcoin, - and the question of what is Bitcoin in South Africa appears in par. 13. It is said that virtual currencies such as BTC are not defined as securities in terms of the Financial Markets Act 19 of 2012. They are therefore not subject to regulatory standards that apply to the trading of securities. The question of taxation is dealt with in par. 19. The terms and conditions are then dealt with, as well as the binary bonus and compensation plan.

4.4 Paragraph 57 refers to FXChoice, an online broker used by MTI which uses software which has a particular focus on forex markets. It was said that FXChoice is a "trusted" and registered online brokerage system. It is then stated that FXChoice specialises in forex and CFD. ("Contract for Difference"). CFD "is a method in a buyer of a commodity, such as BTC, will pay to the seller the difference between the current value of an asset and its value at contract time". In par. 58 it is said that MTI acts as an intermediary between an investor looking to invest in BTC and the online broker. MTI facilitates transaction and interacts with FXChoice in order to use the deposit for the optimal means in securing a return for the investor. FXChoice then takes the deposit and invest these monies into a foreign trading market. MTI serves the purpose of growing the investors BTC. This version must have emanated from MTI and makes it clear, whether it is correct or not, that the period with FXChoice was concerned with forex trading in the form of CFD's, and that these trades were subject to statutory regulation.

4.5 The conclusion of this memo to MTI (Mr. Clynton Marks in fact) is that "Trading in BTC must be viewed as a speculative investment into an emerging market with high risk and high return. As with any type of commodity trading it will fluctuate in value". This warning was not repeated by Mr. U. Roux nor Mrs. Cheri Marks during the mentioned video interview. Paragraph 64 concludes by saying that MTI is an entity which is operating in a legal manner in accordance with our South African laws. It however also explicitly states that returns are never guaranteed, contrary to what MTI before that date and thereafter falsely held out to investors. I need scarily add that the conclusion about legality is plainly wrong.

5. On 4 May 2020 another draft in similar form was sent to MTI for comment. This was referred to as the first version: (p. 201, File 2, Vol. 7). The 2nd version, not marked "draft" was emailed to MTI, including Mr. Steynberg. It now contains a topic titled "What is Mirror Trading International....". Par. 5 reads: "MTI is a trading and networking company that uses Bitcoin as its base currency and to pay members bonuses. It uses an automated system that performs forex trading on behalf of its members. It refers to Mr. J. Steynberg as the founder and CEO of MTI. Mr. Clynton Marks is referred to as a director. It states that MTI has 31,609 members in 146 countries and that there are 4,407.27 Bitcoin in trade daily. MTI was said to offer a "reasonable daily profit". Trading and other bonuses are dependent on daily trade results. This makes the company sustainable and able to grow as the member pool increases. (I underline).

6. The remainder of this memo is much in the same format as the previous ones. It concludes again that MTI is operating in a legal manner but that returns are never guaranteed. This is of course contrary to what MTI held out to investors. The schedules to this memo are however marked "draft". They refer to terms and conditions.

7. On 7 May another such memo was sent to MTI and "info@mymticlub.com". It is not marked "draft". It is a repetition of the above except that the schedules are not marked "draft". (File 2, Vol. 7, p. 275).

8. On 18 May 2020 a memo was emailed to Cheri Ward (Marks), concerning the legality of Multi-Level Marketing Structures in South Africa. It states that MTI refers to itself "as a company which trades Bitcoin as trading software against contract for difference ("CFD" Forex markets). The writer adds however that the memo will not consider the business structure of MTI "as we are not instructed with the workings of the business model". It deals with multi-level marketing structures. It mentions that there is a fine line between MLM structures and illegal pyramid schemes, with reference to a number of text-books. It states in par. 18 that multi-level marketing is regulated in South Africa. Reference is made to the Consumer Affairs Act in this context, especially 5.43 thereof. The conclusion is that the firm would have to understand the precise workings of the MTI referral bonus and binary structures in order to consider whether they would fall within the ambit of 5.43. MTI is warned that "it is exceptionally important to steer away from such structures and to ensure that they do not solely rely on remunerating members only on the basis of referrals to the company". A further consultation was proposed. This memo, with its wise but unheeded warning was written by Casper Badenhorst, to whom I will refer again when I revert to file 1 (Vol. 6) which contains relevant emails.

9. A further memo was sent to the same addresses as the above one, dated 10 June 2020 (file 2, Vol. 7 p. 328). This deals with the legality of MTI and its Trading Terms and Conditions. It states in par. 4 that URA were asked to deal with the legal questions that surround "the trading and investing of crypto currencies, such as Bitcoin ("BTC") and how to navigate the legal ambiguity that surrounds it". It confirms that the information was received from representatives of MTI. The company was described as: a trading

company with a binary database structure that uses Bitcoin as its base currency and pays members profit sharing bonuses. It uses an automated system that performs forex trading on behalf of its members. Trading and other bonuses are dependent on the daily trade results. It provides a platform for persons wishing to grow their Bitcoin on MTI's platform.

10. It will be noticed that (unlawful) forex trading is admitted as at June 2020, and if this is so, why was this simple explanation not tendered to the FSCA during the first interview on 20 July when neither J. Steynberg or Cheri Marks were able to give a coherent explanation of what MTI was doing. By then they obviously knew that forex trading was regulated.

11. In par. 12 reference is made to the requirement of setting up a digital wallet with a minimum of $100 in Bitcoin value. The MTI broker will credit this Bitcoin to the MTI trading account and trade by using the MTI "licenced BOT". The BOT trades on 28 different "Forex Currency pairs" and utilizes its algorithms to search for the best trade. In the event that currency weakens against another currency, the BOT will then trade that currency on the down or up.

12. It was said that BTC was not considered a form of legal tender and crypto currencies such as BTC are not defined as securities in terms of the Financial Markets Act 19 of 2012. They are therefore not subject to the regulatory standards that apply to the trading of securities. Reference is then made to future regulations and how these would affect MTI such as keeping proper records, FICA requirements and taxation.

13. In par. 44 it was emphasized that the firm was instructed that all the benefits are amassed from joining the optimal binary bonus scheme, are received from the profits accruing in a trading day. No funds are paid out from persons joining MTI. (An obvious reference to an illegal Ponzi scheme). The binary bonus scheme is then described, as well as the referral system.

14. The "Forex Broker" is the next topic (par. 48). It is said that this broker is the online broker used by MTI which uses software which has a particular focus on forex markets. It is stated that "the Forex Broker is a trusted and registered online brokerage system". This Forex Broker specialises in forex and CFD ("Contract for Difference"). "CFD is a method a buyer of a commodity, such as BTC, will pay to the seller the difference between the current value of an asset and its value at contract time. The Forex Broker is fully licenced and a regulated broker". None of this information, if indeed correct, was tendered to the FSCA a month later. The writer adds that MTI acts as an intermediary between an investor looking to invest in BTC and the online broker. The Forex Broker takes the mentioned deposits and invests these monies into a foreign trading market. The BTC is never exchanged for any other currency but rather remain in BTC.

15. The above mentioned description of MTI's activities (emanating from themselves) was unfortunately not put to anyone from MTI for reasons that I mentioned in par. 1 of my Second Report. It would be interesting to hear Mrs. Cheri Marks comment on this version and whether anyone from MTI could bona fide have thought that forex trading

was not subject to any regulatory system. The "Conclusion" stated in par. 53 is also interesting and it is certainly not contained in Cheri Marks' marketing material or elsewhere. It states that trading in BTC must be viewed as a speculative investment into an emerging market with high risk and high return. A wholly unjustified opinion in then tendered "in consideration of the above" that MTI is an entity which is operating in a legal manner in accordance with South African laws, though returns are never guaranteed. This is obviously contrary to the representations made by MTI to the investors. My copy of this memo is not signed.

16. Mr. Roux accepted "with hind-sight" that his video appearance with Mrs. Cheri Marks was intended to satisfy or appease members and new members. He denied however that his statements would have had the effect of enticing persons to join MTI in that the public had been so "bamboozled" by MTI that nothing would have deterred them, as not even the FSCA warnings had an effect. He admitted that he was quite aware of a number of contraventions by MTI but did not refer thereto. He also admitted that he should have referred to the impact of the Collective Schemes Control Act. In my view, his conduct during the said interview was not only highly irresponsible but also grossly negligent and unethical. This may well be a subject-matter for future civil litigation. If MTI members or the public had been properly and accurately informed at that stage, it is highly likely that the warnings would have been heeded, coming from a well-known Attorney who regularly appeared on public platforms. Individual losses would most probably have been substantially less.

17. It is clear from a number of invoices that consultations were held with Usher Bell, Clynton Marks and Zoom connections with "MTI". The persons representing MTI were not always identified in the invoices. Two Senior Council were consulted at a substantial cost. Insufficient information was given to Adv. C. Badenhorst SC for him to complete his second opinion. His first opinion is not in the URA files. It is also apparent from the invoice of 3 June 2020 that the FSCA warnings and notices had been considered. In fact, a telephonic discussion with the FSCA had been held on 27 July (a week after the joint interview with them as recorded). This makes Mr. Roux's said public opinion even more irresponsible.

18. The invoice of 28 September 2020 (file 1, Vol. 6, p. 34) makes reference to researching aspects of the Collective Schemes Control Act, a topic that was in fact mentioned in the memoranda that I dealt with before.

19. On 8 April 2020 Ms. Faria from URA sent an email to Clynton Marks, referring to a completed memorandum, and stating MTI "is operating in a legal manner". This phrase or view was repeated in all the above mentioned memoranda. (Wrongly and negligently in my view). On 23 June 2020 Casper Badenhorst emailed the questions posed by Adv. C. Badenhorst SC for purposes of his second opinion. As I have said, those were never answered by Usher Bell or anyone else. (File 1, Vol. 6, p. 122). The absence of answers should have alerted the firm that there were serious deficiencies, to put it mildly, in MTI's operations. Casper Badenhorst from URA in fact asked Adv. C. Badenhorst SC directly on 9 June 2020 (File 1, Vol. 6, p. 125) whether the CFD trade

that I have referred to in par. 14 above, would be tantamount to an illegal scheme. The Advocate obviously then required answers to the questions he subsequently posed.

20. It is also clear that a number of persons repeatedly posed questions to URA about the actual functions of MTI and its legality. These questions were simply avoided by merely stating that they were only acting as legal advisers to the Company, and that all such queries should be directed to MTI itself. The red flags that one would have expected were never raised by the firm. See for instance the questions posed by Gary Owen, file 1, Vol. 6, p. 155-159 of 26 June 2020.

21. These type of questions and those put by Adv. C. Badenhorst SC were never put to Mr. U. Bell or Cheri Marks for comment for the reason that already bothered me as appears from par. 1 of my second report of 22 April: Ulrich Roux stated in his affidavit of 19 May 2021 that he had provided all documents on 26 February and 29 April 2021. Usher Bell testified on 25 March 2021. I have mentioned before that in my view Mrs. Cheri Marks should be re-called in view of the many unanswered questions and facts discovered after testimony. Whether this will have any practical effect at this stage of the proceedings I leave to the Attorneys and the liquidators to decide.

22. Having regard to her role and her repeated appearances on various public platforms I deem it important to refer to a very sensible and incisive email sent by Mr. Casper Badenhorst from URA on 30 July 2020 to Cheri Ward (Marks), Clynton Marks and Mr. J. Steynberg. (See File 1, Vol. 6, p. 179). It referred to a discussion with Mr. van

Deventer of the FSCA and its immediate concerns (after the first interview on 20 July). It was stated explicitly that the FSCA required proof that trades were being made by their brokers and that the funds or assets were not being "pocketed". In addition it was said that what is of concern for the FSCA is that the trades being made with FXChoice were not in the name of the actual clients but rather in the name of MTI itself. This is what is known as a discretionary investment for which a licence is required. He continued: "As we have previously advised, the regulatory requirements of MTI come in from the Collective Schemes Act which deals, not so much with how the transaction are funded, but rather how the assets (including BTC) are invested by a provider. The issue here is not that you are trading in BTC, it is the fact that the assets are being pooled together, given to a forex broker and traded in the name of MTI". He requested urgent information to show that trades are being conducted with the brokers and that there is value in such trades. This email was copied to Ulrich Roux and Ms. Faria. It is my opinion that after 30 July 2021 no-one from URA or MTI could have been under the bona fide impression that MTI was trading lawfully, assuming that it did trade.

23. On 31 July Ulrich Roux sent a lengthy email to FSCA together with annexures. It gives details of how trade is done via Trade300, as if the above mentioned email did not exist. Reference is made to a BOT which conducts trade with the Metatrader 4 software. It refers to 2 active accounts on the Trade300 platform, the main account containing 12,645.67 Bitcoin and the secondary account containing 30.74 Bitcoin. It must be remembered that on 7 October 2020 Ulrich Roux wrote to the FSCA stating

that 16,444 Bitcoin had been transferred from FXChoice to Trade300. (See Annexure I to the FSCA report). This obvious discrepancy has not been explained by anyone.

24. Reference is also made to the BOT "which is proactively maintained by the developer". We know this is not true. It is also stated the members of MTI are not locked into any contract. This is also not true. It is further said that MTI does not require the funding of new members in order to remain in existence (see File 1, Vol. 6, p. 181-184, the letter of URA to FSCA of 31 July 2020).

25. The FSCA replied on 6 August 2020 (File 1, Vol. 6, p. 281). Amongst others it was suggested that proof of assets is required. The accounts should be opened in front of investigators to illustrate the balances in the accounts live. It was also suggested that MTI should illustrate live the Metatrader access, BOT trading and the back office function. The FSCA also needed to understand how MTI generated income whilst the clients were not charged any fees.

26. Prior to that, and on 28 July 2020, Mr. van Deventer had sent an email to Mr. Casper Badenhorst. He referred to a telephonic discussion. It was specifically pointed out that when assets are pooled and paid to a forex broker in MTI's own name, an illegal collective investment scheme is operated. Also, MTI is providing financial services to clients with reference to the trading in a foreign currency denominated instrument (i.e. a financial product). Both these activities require a licence. Urgent proof was also

required that MTI's forex assets matches what the clients have handed over in crypto. We now know that no such proof could be provided and I am in full agreement with FSCA's overall conclusion as per par. 161-162 of their report of 18 January 2021 namely that MTI, Steynberg, Cheri and Clynton Marks committed a number of criminal offences in terms of various Statutes and also that fraud on the public was committed. I still fail to understand why the NPA has not yet taken the appropriate steps.

27. On 11 August 2020 Ulrich Roux personally emailed Cheri Marks and Johann Steynberg, stating amongst others that non-compliance with the FAIS Act, as well as the CIS Act were both criminal offences. I must again repeat that it is inexplicable on which basis the subsequent interview for the benefit of team leaders could in all good conscience have been conducted. It is totally and utterly misleading and in fact false.

28. On 17 August 2020 Casper Badenhorst emailed Ulrich Roux and Ms. Faria, pointing out that MTI were acting in contravention of 3 Acts, namely the Collective Investment Schemes Control Act, the Financial Advisory and Intermediary Services Act and the Security Services Act. He suggested that MTI be informed accordingly.

29. On 17 August 2020 Ulrich Roux emailed Mr. van Deventer and Ms. Andrea Coetzer stating that he had been instructed by MTI that it would henceforth "redevelop" the manner which they operate. It would no longer be utilizing the derivative forex market but would conduct all trades within a "purely crypto currency based market" in order

to move away from regulated securities such as the forex market. A statement should be issued to all MTI's customers. It would also inform them of their right to withdraw their accounts from MTI. I am not aware that customers were indeed informed of such "redeveloped system". (See File 1, Vol. 6, p. 279).

30. The FSCA replied on 20 August 2020 (File 1, Vol. 6, p. 284). It re-iterated its view that MTI was conducting an unregistered business and had in fact admitted that during the last interview (on 11 August) it required information regarding all forex brokers since it moved its funds from FXChoice. It also wanted to know how MTI traded during the period 10 June 2020 and 7 August 2020 whilst the FXChoice account was frozen. It was also noted that Mrs. Cheri Marks had refused to provide a client list, which was a contravention of s. 139 read with s. 267(5) of the FSR Act.

31. On 21 December 2020 URA withdrew as Attorneys for MTI citing lack of instructions and Mr. Steynberg's absence.

32. During his evidence Mr. Badenhorst stated that Mr. Roux's Zoom meeting had not been discussed with him.

33. Ms. Faria confirmed that the answers to the questions posed by Adv. C. Badenhorst SC were never received. The remainder of her evidence was essentially in relation to the documents and emails that I discussed above.

34. In my view the above evidence clearly indicates that MTI knew that is was conducting unlawful trading and that it intentionally misled investors almost up to the last moment in late December 2020. Prosecutions should follow. There is enough evidence to justify such.

**35. Mr. Stoffel van der Merwe**

He is a registered private investigator who was briefed by MTI to establish the whereabouts of Mr. Steynberg who had allegedly left South Africa on 3 December 2020 and did not return by Christmas as had apparently been the idea. Allegations were that he had travelled to Brazil to "recuperate" after receiving threats concerning his safety. He drafted a written report dated 8 February 2020. It is apparent from such that he employed a "team" to do investigations in Polokwane where Mr. Steynberg had resided with his wife and daughter. Much of his report is speculative and based on hear-say evidence. He also undertook to provide further documentation contained in his investigation file. Having read his report and listened to his evidence I am unable to say whether or not Mr. Steynberg indeed left South Africa and where he is at present. There is no official statement from Home Affairs either. There is no point in discussing his report any further in the absence of evidence of his Polokwane "teams".

**36. L. Dryer**

36.1 He gave his evidence in Afrikaans. I will refer to the salient points of his evidence. We have heard a lot of evidence about the kindness and generosity of Steynberg. Dryer tells a different story: one of cruel greed and deception.

36.2 He had received R2.5 million from an insurance company after his bed and breakfast facility in Oudtshoorn had been burned down. He was also the owner of a similar facility in Bellville. On 23 November 2020 when the house of cards was already in a state of collapse when regard is had to the minutes of a meeting on 17 November 2020 (Vol. 4, p.145), and thousands of withdrawals were taking place, MTI's so-called "prime team" and various guests had a function at his premises. Steynberg was presented with a very expensive trophy, worth over R250,000, so it was said. (Nerina Steynberg denied this later).

36.3 During a conversation at the bar Steynberg had told him that he had bought a gold melting facility that morning. (This is normally used to melt down gold or other precious metals such as silver, and to give it a different shape or form so that its origin cannot be traced. It is apparently a well-known method for money laundering). During that talk Steynberg produced a silver coin and offered it to him. It was a silver Kruger Rand. He presented it at the hearing and it will be analysed.

36.4 On that day Steynberg briefly explained how MTI operated by "trading" with Bitcoin and that he guaranteed a profit of 10% p.a. but if the coin increased in value, the profit would be higher.

36.5 When they were about to leave the next morning Steynberg showed him between 6-8 boxes contained Kruger Rands. The size of these was about that of a CD holder (height of 10-15 cm). The weight of between 200-300 kg was mentioned.

36.6 After further explanations about the opening of "profiles" and further promises of the 10% p.a. profit by Beukes, he transferred his money between 10 and 11 December although he knew that Steynberg was in Brazil by that time. Kruger helped him establishing the required profile. He transferred R2.5 million

from Exodus and then to MTI. He had a guest-list plus a number of photos of the occasion which he would forward to the Attorneys. There were WhatsApp conversations with Kruger and Beukes.

36.7 He also mentioned that during that evening Botha had asked for access to his safe to deposit cash. He was told it was between R250 and R500,000. Steynberg also mentioned that they wanted to deposit R15 million in an ATM. He did not know who was in control thereof. This discussion was between Steynberg, Botha and Kruger.

**37. Nerina Steynberg**

37.1 She also gave her evidence in Afrikaans after having been warned by Attorney P. du Toit about the importance of the oath, especially the importance of the "whole truth" and the possibility of a charge of perjury. She gave her evidence sometimes tearfully and at other times with belligerence.

37.2 She was shown a letter from a pensioner who had invested and lost R700,000. She agreed that Steynberg had been admired by many because of his believed expertise to make huge profits. She herself was not materialistic.

37.3 She was not aware of the vast amounts of cash that were carried.

37.4 She was shown the silver Kruger Rand. She had also received one. Regarding her knowledge of the silver that had previously been mentioned during the enquiry (see par. 51.5, par. 60 regarding Usher Bell's role, par. 62.9 Charles Ward's explanation of R2 million worth of silver held by Usher Bell, par. 63 the evidence of Ignatius Bell, referred to in my second report of 22 April 2021) she suddenly provided a written document emanating from "Goldsave Primary Co-Operative"

wrongly dated 12 January 2020 which reflects that Usher Bell had handed to Johan Kruger the precious metals referred to in 3 attached addenda. These reflect hundreds of silver coins from various countries to the value of R750,000. She did not previously refer thereto because she was "not asked". Neither Usher Bell nor Kruger had referred to this either and one must wonder why not? The correct date would be 12 January 2021.

37.5 She also mentioned that her husband had shown her silver bars, about the size of a match-box, which was regarded merely as an investment.

37.6 She repeatedly said that her husband did not discuss his affairs with her. They had a happy marriage but she did not see much of him during 2020. She did not accompany him when he regularly played golf at the Polokwane Club. She did not know that he had donated R1.5 million to the Club. She did know however that he had supported 84 caddies during the lock-down period.

37.7 She knew nothing about a gold smelting facility or of any Cannabis farm in Stellenbosch.

37.8 She denied that she could take control of MTI if her husband disappeared. This topic was discussed during a Management meeting on 9 December 2020 (Vol. 4, p. 162), whilst Steynberg himself was online. She denied that her husband would have said so. She worked full-time at Pick 'n Pay and only occasionally helped when withdrawals were made with the aid of a spreadsheet.

37.9 She waived the right to any Bitcoin in her possession and to those that she had transferred to her friend L. Tillburn, who in her evidence also waived any such right to the coin.

37.10 She knew nothing about a farm in Panama though she did hear that he had purchased one. It was apparently only a plantation.

37.11 She could not explain why, if her husband had indeed been threatened, he had arranged to be back from Brazil for Christmas. She mentioned his friend Viljoen and McDonald who would have joined him there.

38. I will not repeat her version as to what occurred when she allegedly dropped her husband at OR Tambo airport, and why he only flew the next day. There are conflicting versions who had accompanied them. (See par. 51.15 of my second report at p. 35). The whole scenario does not make sense, and I am certainly not convinced that he flew to Brazil with Qatar Airlines via Doha. The airline itself, according to S. van der Merwe was very reluctant to provide information via a phone and requested a personal visit, which van der Merwe did not do. There is simply no reliable information where Mr. Steynberg is, but in my opinion his wife knows more than she is prepared to say. I have previously requested that Mr. Worth be contacted who allegedly can give evidence about his presence at the airport and what occurred there.

39. She did mention that she had a photo from Brazil which was sent via Signal to her and Brandon. She could not determine where this was taken. It was not on her present phone as she had swopped the sim card to a new phone. Experts can apparently determine where photos sent to Brandon were taken, and who had given or provided those to her.

40. She was also not aware of the fact that her husband had lent R5 million to a friend. She was aware of 2 loans, one to Hein Viljoen.

41. She also knew nothing of substance about Trade300 and "Camilla".

42. She gave some strange evidence about a device used by her mother, which apart from being able to determine blood pressure, could also by way of Johann's DNA determine that he was held in India and had suffered stab-wounds. I do not intend to say anything further about this nonsense, but it may well be an indication that her mother does not know where Steynberg is.

43. She also confirmed that she was a director of JNX Online, but did not know what her duties were as such, nor did she know who the shareholders were. She added that she had said so previously, which indicates that there is nothing wrong with her (selective) memory. This company pays her R50,000 p.m. for household expenses. She could give no evidence about transfers and transactions between JNX and Duppa. She just thought that Bitcoin had been sold. (See p. 115, the Standard Bank Statement of 15 July 2020, Vol. 8). She had no access to the Standard Bank account.

44. The remainder of her evidence basically consisted of denials of knowledge of persons and transactions reflected in bank statements contained in section 6 of Volume 8.

45. She also waived any right that she may have had to the Jaguar vehicle bought for her. She agreed that this vehicle be sold at fair market value.

46. Of interest is that her property is substantially bonded (over R2 million) despite the huge amounts of cash that the enquiry was told about. Her explanation was that it belonged to her and she wanted to pay off the bond herself. It is likely that this was done to protect this property from creditors, should the empire collapse one day. It would also indicate in my view that she had more knowledge of the unlawfulness of MTI's operations and the risks involved.

47. She confirmed that Club Swan still has to transfer over R300,000 to her Capitec account and she agreed that this would be kept in trust with her Attorney.

48. I was informed that there will be further evidence, especially by FXChoice and that suitable dates would be arranged. A further report would then be furnished.

**COMMISSIONER**

**JUDGE (RETIRED) H J FABRICIUS**

Duly appointed as Commissioner by

the High Court of South Africa (Western

Cape Division) under the case number 935/2021

Signed and sent electronically to pierred@mbalaw.co.za

**Enquiry in terms of Sections 417/418 of the Companies Act 61 of 1973 read with item 9 of Schedule 5 of the Companies Act 71 of 2008.**

In the matter of:
**MIRROR TRADING INTERNATIONAL (PTY) LTD t/a MTI (IN FINAL LIQUIDATION)**

**Fourth Report of the Commissioner, Judge H. Fabricius (r.) dated 11 April 2022**

## Introduction

1. This report, which deals with the most relevant evidence of witnesses heard from 23-25 March 2022 and on 1 April 2022, is best read in conjunction with my Interim Report dated 10 March 2021, my Second Report dated 22 April 2021 and my Third Report dated 16 June 2021. The scheduled resumption of the hearing on 29 March 2022 involving the last part of the evidence of Mr McDonald was postponed at his request to 11 May 2022. The next hearings will be held from 9-13 May 2022, and a further report will follow on the evidence that still remains relevant, taking into account the objects of this enquiry.

## Events subsequent to previous hearings and my reports

2. Since my last report I have not been informed of further development in the Cape High Court by the Cape Attorneys Mostert and Bosman, though I did on two occasions give my consent in terms of s. 417(7) of the said Companies Act that my mentioned reports be utilised in further litigation. One related to an urgent preservation application against Mr J Usher Bell and Mr N. van der Merwe, whilst the other related to an application and counter-application by the Marks'.

2.1. MTI was placed under final liquidation on 30 June 2021.

2.2. The Liquidators Pretoria Attorneys are now Strydom, Rabie, Heijstek & Faul Inc, under whose auspices I have, and will, conduct the hearings already referred to.

2.3. A number of applicants (N. Boshoff, J. Bell, M. Bell, I Bell, W. van der Merwe, G. Lassens) obtained an order in the Western Cape High Court (Case no.

20660/2021) that the s. 417 enquiry involving them, be stayed, pending amongst others, the determination of the main dispute, namely that MTI is not able to pay its debts.

2.4. This judgment was delivered on 18 January 2022. It is not for me to comment thereon except simply to point out that the s. 417/418 enquiry is not a public enquiry or "public event", but is in terms of section 417(7) "private and confidential".

2.5. I was also informed that the Marks' launched a similar application for the stay of a further examination of them, be stayed, pending a review of the decision by a Magistrate to issue a subpoena for their appearance and the supply of documents. This application, under case number 609/22 was brought on an urgent basis in January 2022. An "interim order" was apparently granted, but at 10 April 2022 the Court's reasons have not yet been furnished. Again, my comment is not required.

2.6. The answering affidavit to that application provides useful information as to how the events unfolded after FX Choice in Belize decided to close the MTI account. In particular, the affidavit of Mr C. Pederson, a certified cyber-crime and fraud examiner, provided significant information, and unless further investigations or information have overtaken his conclusion, he should be called as a witness.

2.7. An application is to be heard in the Western Cape High Court in late April, brought by the Liquidators more or less in line with my views relating to relevant common law and statutory provisions pertaining to the lawfulness or otherwise of the MTI scheme, as discussed from par. 70 of my said second report. Such judgment by whichever Court, which finally decides this issue, would in my view

be crucial as to the further duties of the Liquidators in regard to the distribution of "assets" obtained to bona fide investors.

2.8. It was reported that Mr J. Steynberg was arrested in Brazil on 6/7 January 2022 for using false identity documents. It is as yet not clear when or whether he will be returned to South Africa.

**The evidence tendered between 23-25 March 2022 and concluded on 11 May (McDonald)**

3. **Mr A.G. Caw:**

His role is first referred to in par. 46 of my said second report. Mr Johan Kruger also referred to him as per par. 65.12 of this report.

4. A bundle of documents of 300 pages was utilised for his efficient examination by Attorney S. Tintinger. It contains Exhibit CAW1. This is a written response to the subpoena/witness summons and is dated 3 March 2021. A second written response dated 28 May 2021 is Exhibit CAW2.

5. I will deal with the crux of those written responses and the additional comments of Mr Caw thereon, and will for present purposes ignore the legal arguments contained therein. That topic will have to be dealt with at his next hearing, as it is not for him to say which documents (or even evidence) are/is private.

**The Coin's Buyers Club ("CBC")**

6. This is a "Bitcoin Services" company. Mr Caw is the director and it is managed exclusively by him. As a brokerage, the company merely purchases and sells, and does not hold stock. He also provides consulting services.

**Mr Caw's Involvement with MTI: The reply of 2 March 2021**

7. Prior to August 2020 he had made personal investments in Bitcoin since about 2014. The brokerage commenced in the middle of 2016. During August 2020 Ms Cheri Marks, a long-time friend and business associate (from BTC Global, a failed cryptocurrency scam) contacted him to provide advice with the establishment of a proposed new "MTI Management Team" which MTI had discussed during the so-called "Stratcom" meeting held on 23/24 July 2020. (Ms Monica Coetzee had referred to a strategy conference held at the end of July 2020 – see par. 17 of my second report). Prior to the call CBC had no business relationship with MTI. He attended that meeting and Mr J. Steynberg "reluctantly" appointed a "Board and Management Team". He was never a member thereof. As is routinely his practice he did a limited external investigation and inquiries concerning MTI's business operations, including validating trade data published by MTI "in the back office of members, to determine if publicly published factual information was legitimate". He concluded that it was, based on his unconditional reliance on "Trade data" records reviewed by him from a random selection of days for the previous 12-month period, which unequivocally matched actual market data for those days. He had also established from other third parties that they had similarly validated "Trade data" that unequivocally matched live markets. I may interpose to report that, having regard to the affidavit of FX Choice and their evidence, as well as the evidence of the FSCA, no trade had taken place a year earlier, i.e. July 2019. In fact, Mr J. Steynberg had admitted during the FSCA interview, that MTI had dealt with CFD's (contracts for difference), i.e. the exchange rate of one currency versus another. Nevertheless, Mr Caw, had on that basis, like the others, been deceived (see par. 9 of my second report), if he is to be believed.

**MTI/CBC: Brokerage Services**

8. After the "Stratcom" meeting, MTI made limited use of some of the CBC services, particularly the Brokerage Services to sell Bitcoin for Rands, which funds were paid by CBC into the MTI Standard Bank Current Account and later the Nedbank Current Account. These transactions occurred between August and December 2020. Mr Caw annexed a complete breakdown of these transactions, as he said, though it is not clear from the bundle exactly which annexure he was referring to. In any event, these were routine business transactions.

**MTI/Bitcoin Bulk Payment Services**

9. MTI made limited use of the CBC services for batch Bitcoin payments for its staff/employees between August-December 2020, totalling 6. A breakdown of these transactions was annexed in the bundle Exhibit Caw2 pages 45-50.

**Other Involvement of CBC/Mr Caw**

10. Except for doing certain administrative works such as the CBC Strategy Document (Exh. CAW2, p. 116-120), a certain email on the instruction of mainly Ms Monica Coetzee (as per his evidence), his first reply states that neither he nor his company, had involvement with MTI's clients funds and/or MTI trading activities.

11. The following events are however relevant – these emanate from his first written reply:

11.1. On 12 June 2020 (p. 35 Exh. CAW2) he drew a buyer's guide for clients who wished to purchase coins and put it into MTI if they wished. It is noted that after purchase and transfer to MTI, the coin "will be in the hands of MTI where they will load it into your trading pool automatically";

11.2. He unequivocally established that factually, the entire technical and financial side of MTI's Bitcoin trading activities was completely under the exclusive ultimate control and supervision of Mr J. Steynberg;

11.3. None of the rest of the management team of MTI had access to the website "back-office team" (Maxtra) and/or the Broker and trading platform (Trade300) and/or the Bot developer (He had never met or heard of Mr K. Badenhorst);

11.4. Mr J. Steynberg was the only person handling Bitcoin transactions, as he exclusively controlled access to the Bitcoin Trading Pool of all the MTI Club Members directly or via the Broker;

11.5. He raised this potential risk with Mr J. Steynberg who assured him that his wife Nerina Steynberg, "had full access to everything should he be unavailable". I have addressed this point in par. 20 of my first report and par. 46 of my second report. As appears from par. 50.8 of this report Mr. L. Gray confirmed that the said Nerina was in fact the so-called 2IC, although she herself denied it during her evidence;

11.6. In addition to this "safety protocol" an e-mail was set-up to transmit all the required access and contact details for the back-office and broker, to both Mr Clynton Marks and Ms N. Steynberg should Mr J. Steynberg factually not log into the MTI back-office for a period of 12 consecutive hours. Reference to this email has been made previously: It was dealt with in my first report at paras 20-21, in my second report at par. 15.2 via the evidence of Mrs Lombard and Ms N. Steynberg at par. 51.7. It appears from the CAW file (Exh. CAW2, p. 178-179) that Ms Cheri Marks had emailed persons on 16/12/20 at Maxtra in India, confirming that this email had been received and requesting that Mr A. Caw be given the required access. Mr Caw during his evidence stated that the

password contained in this email (see p. 178, Exh. CAW2) had been changed by Maxtra, probably because they required that monies due to them be paid first. It appears that later $45,000 was paid and access to the database given, but there is also repeated evidence that this could never be accurate for a number of reasons, including the alleged fact that it had been "hacked" during December 2020;

11.7. In his first report Mr Caw added that after a long delay a "withdrawal report" from Maxtra had been received but that it was self-evident that the "broker" was not making any further payment of any coin to MTI, to enable it to make payment of Bitcoin to particular MTI Club members who had expressly instructed such withdrawal request.

12. It is not disputed that CBC and MTI entered into a Service Level Agreement dated 21 August 2020 (not signed by MTI, Exh. CAW2, p. 37-43). This dealt with the scope of the work to be provided by CBC and other aspects of no particular relevance. As far as remuneration was concerned, CBC would receive 1% of the total amount of Bitcoin transferred. Apart from having performed the administrative tasks that I have mentioned (sending and receiving emails in the main – see Exh. CAW2, p. 272-276). Mr Caw denied that he had ever been employed by MTI or had served on the management team. The database emanating from Maxtra on 22 December 2020 was not 50GB as mentioned previously (according to his reply – Exh. CAW2, p. 272) but only 3GB.

**Mr Caw's Second Response of 28 May 2021**

13. The following emanated from his response:

13.1. He confirmed that the only communication he had with Trade300 were emails with Camilac@trade300.com. I may add that no-one who had testified had ever

met her and I have previously mentioned that this so-called trading platform did not exist but was merely an alter ego of Mr J. Steynberg (see my first report p. 8 which refers to the opinions of the FSCA in this regard).

13.2. Mr Caw also stated that the MTI back-office is no longer accessible to access statements. They did however reconstruct deposits and withdrawals history from email confirmations. He attached all the deposit and withdrawal emails for A. Caw and CBC along with a statement showing all transactions. These details were not dealt with during his evidence and the forensic team will no doubt have done any necessary examination thereof.

13.3. He did not have a record of commissions or referral bonusses earned from MTI.

14. Other relevant evidence:

14.1. This will be dealt with in summary form only rather than in the form of a more detailed discussion such as one would find in my second report. The reason for that is that as expert forensic investigator had prepared a written report after having obtained access to the back-office from Maxtra. He also gave evidence with reference to exhibit bundles and certain screen-shots. This occurred after Mr Caw had given evidence. Given time constraints, and the complex nature of the evidence that had to be collated and prepared, it was not available to be put to Mr Caw for comment, who would in any event have to be re-called given: firstly his written replies to the two subpoenas referred to, and secondly his comments as Mr Victor's evidence which I will deal with, with the benefit of a typed record of his evidence. At this stage I can simply saw that all indications are that Mr Caw was heavily involved in the affairs of MTI (together with the Marks') and that his evidence to the contrary cannot be true. A final conclusion on this topic can however only be given after Mr Caw has been given a proper

opportunity to study Mr Victor's evidence and to comment thereon. Given the nature of the expert evidence, much of which is quite astounding in the light of my previous 3 reports which were prepared without any knowledge of the back-office, it is essential that Mr Caw be re-called by way of a very carefully and precisely drawn subpoena.

14.2. With reference to his SLA, his remuneration referred to therein and the "bulk Bitcoin payments rendered on behalf of the customer" (Exh. CAW2, p. 40) he explained that process: if a company needs to pay multiple beneficiaries in Bitcoin, he would process that as a single payment. The client would send one Bitcoin payment to them which would then be split up for payment in a bitcoin-to-bitcoin payment i.e. the supplier pays them in Bitcoin and they pay their clients in Bitcoin. The splitting of the Bitcoin was done by a software system capable of doing 16,000 transactions in half an hour. The payments would go the wallets of the recipients. A private key must be used to create a wallet, and the wallet will generate an address which would be provided to MTI normally. Before he does the said transfers he would require a list of the wallet addresses.

14.3. His relationship with MTI also entailed a buy-and-sell component which was a standard service offered to anyone.

14.4. With reference made to 6 such payments made on behalf of MTI (Exh. CAW2, p. 45-50) he stated that these were not paid in fact. The Rand value was simply indicated for MTI's benefit. It also indicated his 1% transaction fee. MTI could do this themselves (i.e. pay "support salaries" and make other payments) but as one scales up, it would be very time consuming to make many small payments. Mistakes could easily be made whereas their automated system was very efficient. For instance, they had a client who was paying 16,000

people a week. They could do that in half an hour whilst the client would require 2 full days doing pay-outs every week.

14.5. He (or CBC) had no way to determine whose coin was sent by the supplier. It was simply transferred to the address that he provided. He would simply assume that but could not prove it. In the context of MTI those coins could in fact have emanated from any wallet of MTI, Mr Marks or M.J. Steynberg. He could not verify that.

14.6. He did business with Mr Marks for many years including "during this time", i.e. the MTI years.

14.7. He did not keep a record of the originating coin as there was no reason to do so. In any event it was difficult to link a wallet address to an individual or an entity. He also never kept no record of any wallet addresses. With handling other people's Bitcoin, he always used a brand-new wallet with no history and destroyed it afterwards so that the transactions is as secure as possible. This does not have to be so as a supplier's coin could simply be used to pay a third party, but he preferred to keep each transaction as a new wallet that he knew to be secure.

14.8. Destroying that wallet simply removed his access to it. It does not destroy the actual wallet or the transactions in the blockchain. The blockchain cannot be changed or destroyed and the transaction chain is always visible on the network.

14.9. It would be very difficult to say that coin belonged to a particular person because there are no names. The only manner in which this could be done would be if a particular person would say that a particular address belonged to him or if it

was somehow linked to a KYC platform where they acknowledge ownership of it. This would be dependant on that person's say-so.

14.10. He explained that ownership was a very tricky thing in Bitcoin, one did not really have ownership, one had control. A private key meant control as this was linked to a wallet address. In Bitcoin control is ownership. (There is a debate in legal circles on that topic which I do not intend to enter herein). Control of the private key was everything in his opinion.

14.11. A private key is basically a very large number and that number is used to cryptographically generate wallets and wallet addresses. In effect it would be like a private key to unlock a bank vault.

15. It is impossible to guess a private key. If the key is lost the coin is lost.

16. CBC also provided a brokerage service which converted BTC in fiat. That was its main business. They also provided such services to MTI. It would be given a deposit address, coins would be sent to it, these would be sold and Rand would be paid into the MTI account, as an example. They did not quote an exchange rate upfront. Once a coin is received they would source or trade at the best rate possible. CBC did not hold stock but filled orders as they came in. The originating party was not required to disclose the identity of a coin. There was also no way to verify whether the sender of a coin was the "owner". A Bitcoin trade could also not be reversed.

17. In some ways transactions are easier to trace because they are public, but in other ways it is harder because there are no named accounts, just wallet addresses.

18. He was asked about his impression as to who had control over coin at MTI. His reply was quite significant: it seemed that all the "technical stuff" was run by Mr Steynberg.

His understanding was that the Bitcoin was either controlled by him or by the broker. This was merely his impression and he could not remember the specifics. I may say at this stage that the evidence of Mr Victor painted a completely different picture.

19. As Minutes of Board meetings would show (I have discussed these in previous reports) there were discussions about the topic of control, and Mr Steynberg's role or responsibilities. The idea was that he would be second-in-charge (the so-called "2IC"). This was about October/November 2020. He could not recall whether before that, he spoke to either of the Marks' about the control of coin topic.

20. He did not receive any response to his written proposals or recommendations. They did bulk payments and brokerage transactions for a while. Then at some point Trade300 came up and he was asked by Ms Marks for a proposal on how to verify bitcoin balances. Trade300 was the (alleged) new broker after FXChoice, according to Ms Marks. He had never heard of it, thought that he did a few emails with Camilla, but that was the only contact he had with it.

21. Ms Marks said to him that she had the transaction ID's of the payments between FXChoice and Trade300, and he did not query it. These ID's proved that Bitcoin moved from one wallet to another, but it would be very had to prove that the source wallet was FXChoice or that the destination wallet was Trade300. He had a "look" at transactions but could only see movement of coin: there were valid transactions but one could not verify where they came from or went to. He told Ms Marks that one could not determine what actually went to Trade300 unless one knew its deposit address.

22. He knew of no evidence to indicate that there was an actual transfer from FXChoice to Trade300.

23. He was referred to an email from Ms Marks to Camilla dated 2 October 2020 (Exh. CAW2, p. 54). Mr A. Caw was referred to as "our contracted crypto expert". Mr Caw know of no such contract, he said. Mr Steynberg was copied per a gmail address. On 5 October 2020 Mr Caw sent an email to Camilla. He wrote: "We want to be able to cryptographically prove that MTI has control of the Bitcoin balance they have with Trade300", and for other facts relating to wallets and a private key. Ms C. Ward (Marks) was copied as well as Mr J. Steynberg. On 6 October Ms Marks asked Camilla for feedback and again on 12 October 2020. Camilla purportedly replied on 13 October (Exh. CAW2, p. 55) as follows: "The BTC held by us is stored amongst a vast spread of addresses. To protect the privacy of our customers, our technical team regularly hide the origin of the BTC held by us by exchanging to privacy coins and back to BTC..." Mr Caw commented that this would be "stupid" as it would incur network and exchange fees. She continued: "We do not have a specific address for a specific customer. Customer B1C are confirmed, exchanged and mixed regularly to fulfil our privacy needs. Therefore it is not possible for us to sign a message on a specific MTI wallet.... I can confirm that the total MTI BTC held by us is 19,672.6285". Mr Caw commented that it was not practical to mix some 19,000 coin and to incur costs.

24. Mr Caw commented further that she was in fact saying that a completely private platform, Monero, or similar, was used to sell and buy back Bitcoin, which would incur a fee of between 1% to 3%, which would be 190 BTC per one occasion, which was "insane". The answer did not make sense and was an avoidance of his questions.

25. When he logged into the back-office he saw almost the exact number of coin mentioned. He could log in because he was a member and the "landing page" did show the stock in trade. He however had grown to believe that Camilla did not exist, so he could not trust her email.

26. On 13 October 2020 (Exh. CAW2, p. 56) Ms Marks (Ward) asked Camilla for suggestions on how they could prove their BTC balance irrefutably to their members without compromising privacy or security. According to Mr Caw there was no reply to this.

27. He also noted that on 5 February 2021 he emailed himself a note on the BTC in the pool and the BTC in trade. There was an extra 338.4825 in trade compared to the number given by Camilla.

28. Mr Caw agreed that it seemed that there weren't coins anywhere else that at Trade300.

29. He never paid Camilla a salary.

30. He was referred to his last inter-action with Camilla by way of an email dated 26 October 2020 (Exh. CAW2, p. 57). This was after the FSCA had raided the houses of Steynberg and the Marks'. Ms Marks phoned him to ask Camilla to freeze the trade account because they were worried about Mr Steynberg's laptop being taken. In theory, he added, the trade account was controlled from Mr Steynberg's laptop. There was no response. He did not know how they would then later re-establish access.

31. After 26 October 2020 he did not know how investors would be paid.

32. On 29 October 2020 he still had to make a bulk payment for salaries. It was R253,000 plus BTC 6.5 plus $2000 all paid in Bitcoin but with those base values converted to Bitcoin. Mr Steynberg arranged the payment to him. He did not check where these coin originated from despite the events of the previous days. He had, on behalf of MTI, given instructions to Camilla that access be stopped. Mr Caw however regarded this request as a "favour" to Ms Marks. In addition he denied that Ms Marks played any role in CBC. He also knew about the FXChoice warning to investors. Similarly he knew

about the "cease and desist" order of the Texas regulating authority. He then received coin and fiat in excess of about R1.6 million (Exh. CAW2, p. 47), but despite all that he insisted that he had no proof that anything wrong was going on, as he put it. His client was MTI and not Ms Marks. He admitted though that when all these red lights were seen accumulatively, it sounded "bad" (p. 93 of the typed transcript). Added to that was his involvement (allegedly only as an investor) in BTC Global.

33. Leaving aside the evidence of Mr Victor for the moment (but that will be in addition to the above considerations, or "red flags"), the question can even now be asked whether or not section 4-6 of the Prevention of Organised Crime Act 121 of 1998 as amended, will apply. The same question must be asked in the context of relevant provisions of the Prevention and Combating of Corrupt Activities Act 12 of 2004. Does s. 424 of the Companies Act of 1973 apply? These will be dealt with in more detail at a later stage but the main question in the given context remains: what would the reasonable person in Mr Caw's position, with his knowledge and experience, have done? Ask questions or remain supine? Section 7 of the first mentioned Act places a duty on a person to report a reasonable suspicion of unlawful activities.

34. Mr Caw then emphasized that the did not, on behalf of any other person, invest or transfer coin to MTI so as to allow it to pay its BTC investors. Neither was he aware of other persons or entities doing such. He also had no evidence of any loan to MTI, except that Mr C. Marks "apparently" lent Bitcoin to MTI but he did not have any details of such loan. He just "heard about it". He could not recall who told him about it. According to Mr Marks's claim (Exh. CAW7, p. 1) a loan of 400 BTC was made to MTI between 31 October and 12 November 2020. This was a few days after a FSCA raid. He had forgotten about it, but he was asked to do an analysis report (Exh. CAW7). He was told by Mr Marks of the transactions emanating from him. He could not say that the Binance exchange wallet address was proof of any control by Mr Marks.

35. A debate ensued between the examiner and the witness on the meaning of the whole of the analysis and its evidential value. It is not necessary to report such for present purposes. The point really made was that Mr Marks would have to prove that he owned the Binance account from which the first two transactions described in his analysis, were paid. The 3rd, 4th and 5th transactions did not provide any proof of any loan at all. The purpose of his report, as per Mr Marks's request, was to show that the funds he paid over were used to pay out members, but he used the analysis to provide proof of his claim, which it did not. Mr Marks provided his information by email and Mr Caw undertook to look for it, as he would for any record that showed that Ms Marks gave him the TXID of an alleged transfer of Bitcoin to Trade300.

36. Mr Caw added that he did not obtain anything from Maxtra except for the withdrawal list. They did not send the database, which to him, was in any event a hacked copy. Mr Victor testified to the contrary I may add at this stage.

37. Regarding the alleged loan by Mr J. Steynberg he said that one needed a transaction ID or a wallet address to start with, and they did not have that.

38. During all relevant times he only did one sale for Mr Steynberg but could not remember the exact date.

39. With reference to a Board Resolution of 29 August 2020 (Exh. CAW2, p. 95) he stated that, contrary to its recordal, he was never appointed to the Management Team as "Bitcoin Expert Advisor". He was also given no such responsibilities. Apart from the mentioned SLA he was never employed by MTI in any official capacity. His mentioned role relating to the sending of certain emails was simply on an ad-hoc basis. In December 2020, after Mr Steynberg's disappearance, he advised Mr Marks and Ms Cheri Marks on how to obtain access to the systems and how to process withdrawals, for purpose of assisting MTI. The withdrawal report that he eventually obtained

reflected that 16,000 members were waiting for payment. He did not know what the total Bitcoin was.

40. Mr Caw was referred to what he described as a trade log (Exh. CAW2, p. 96). It purports to reflect trading on 15 December 2020. Although it emanated from his own documents, he did not recognise it. It was part of his second statement (AQ3003), and must have been sent by Trade300 to Ms Marks who then sent it to the Maxtra team and copied it to him. The relevant email from Cheri Ward (Ms Marks) is dated 18 December to "Tushar" of Maxtra. It was copied also to Monica Coetzee and Ulrich Roux. Maxtra was the Indian team that was running the back-office website. He did not ask Ms Marks where she obtained these statements from. He assumed the broker who had conducted the trades in Mr Steynberg's absence. (For the proper context, relevant emails appear at Exh. CAW2, p. 101).

41. Maxtra had demanded $45,000 before providing back-up of the MTI system including the database. This was then purportedly sent to him as per email dated 22 December 2020 (Exh. CAW2, p. 272). A link to a "MTI Zip" was given. That was only the structure of the MTI back-office website without the database which was apparently 50GB but they only sent 3GB. He followed this up with Maxtra but they did not fulfil their promise to send it.

42. Mr Caw was then referred to his own annexure (AQ640) in Exh. CAW2, p. 733. This was an email from the said "Tushar" to him with a login to the entire back-office.

43. On 16 December 2020 Ms Marks sent an email to the said Tushar, described Mr Steynberg's departure and the "emergency email" already referred to which contained login information for the server. It also referred to Mr Caw as being the "designated person" and point of contact for the Maxtra team (Exh. CAW2, p. 182). Mr Caw attempted that login but could not as the password had been changed. It was noted by

the examiner that written questions would be put to Mr Caw at a later stage. The point being to determine whether at that time there was access to the full MTI database and whether it had been compromised. Mr Caw must be re-called but prior written questions may indeed be advantageous.

44. Mr Caw did not know that one could access the MTI back-office at that time, being 25 March 2022. He was asked about his investments in MTI. He had done a recalculation based on what information he had. He was referred to a number of accounts on a screen. Most persons shown were related to him. It was pointed out to him that he could access the back office with his username. This would show the full history of BTC deposited and withdrawn, and he could check it for accuracy and report back.

45. Mr Caw was then excused on the basis that further questions would be sent to him in writing and that he replies within 14 days. If it was necessary he would be re-called on a date to be arranged.

**Mrs Kritzinger**

46. She gave evidence again on 23 March 2022, having previously dealt with her evidence discussed in my second report of 22 April 2021 (par. 54).

47. She confirmed that she did work for Mr Marks prior to her joining MTI as book-keeper in August 2020. She did book-keeping for him as well as certain administrative tasks. She was still doing work for him in that capacity.

48. She gave brief and rather vague details of "MDC" (My Daily Choice) when she met Ms Marks. It was a failed Multi-Marketing Scheme, and "CWE" which "traded" in either crypto or forex or both. She was not sure. Mr Marks was involved in that. She made

a small investment in it, in Bitcoin. Her Luno account was empty and she had no other account for bitcoin with any other exchange.

49. Ms Kritzinger was then shown exhibits in a Dropbox folder on a screen. I was handed an exhibit bundle.

50. Exhibit RK13 is the back-office trading history of her account with MTI. The trades are shown in reverse order. Her account "RobynKritz11" started with a trading bonus on 12 August 2019. On 19 August a deposit of .018 BTC was made. She had no idea why she earned a trading bonus before there were any coin in her wallet. Mr C. Marks had explained to her how a trading bonus would work. She could not really remember what he said. (I must note that Ms Kritzinger had previously testified that she had memory problems).

51. Similarly, and for that reason, she only gave vague details of FXChoice. Her understanding was though that she had to open a new account at MTI because previously all funds were held in Mr Steynberg's name at FXChoice. A new profile then had to be created. She did not deposit coin in August 2019. That must have come from FXChoice. She was not asked for consent – it just happened. Mr C. Marks had made the first deposit for her. She had no records reflecting her investments. She could not recall whether she could access any website.

52. Mr Marks had said that he would create an account in her name for payment of her groceries. This was done out of goodwill.

53. He would benefit though, because it created a binary tier beneath him. He asked her to recruit other persons, but she did not.

54. She was then asked to explain the business of MTI/Mr Steynberg/Mr C. Marks. Her explanation is of no value. It was not explained to her how the business model would work in those initial months. Mr Steynberg kept the records of MTI before August 2020. She was not involved and Mr Marks only recruited.

55. She was also not informed what the issues were with FXChoice, again alleged issues of memory I may add.

56. She was shown exhibit RK10, an Excel spreadsheet titled "MTI all members-list Clynton email 7 August 2019". She recognised that, but did not know where she got the information from. She also did not know what the purpose was. She did it for Mr Marks. The data was sent by Mr Steynberg to Mr Marks, she then added. He in turn would have sent it to her by email. She was asked to search for it. She only did this exercise once.

57. The reference to "account" would be the account that Mr Steynberg gave to each member, with a unique account number. This would have been in the old system. There was also reference (in Column E) to a "FXChoice account number". She did not know what it meant if a person did not have such a number. "Migrated to pool" probably meant that the account was transferred from the old system to the new system.

58. The BTC shown as 14,13384147 should be attributed to Mr Marks' downline. Other vague information was provided which has little value but after a "flashback" Ms Kritzinger remembered that the purpose of the exercise was for Mr Marks to prove how much recruiting he had done. The same applied to investors under Mr Steynberg. Exhibit RK10 was actually not the full database of all investors. She was totally unaware of other sponsors.

59. It then appeared that she had also recruited others but Mr Marks too had signed up people in her name. She only recruited Mr Mc Creath.

60. Exhibit RK11, an Excel spreadsheet was then shown to her on the screen, the title being "MTI binary August 2019 Clynton/Johann team totals". This reflected only Clynton sign-ups she said. (She was then asked to trace all emails emanating from or concerning MTI for the period April to August 2019).

61. These were then provided and recorded as Exh. RK19. She agreed that this seemed to be a full list of members excluding only the newest members and free members, i.e. persons that did not have funds with FXChoice. Having regard to an email dated 8 July 2019 from Mr Steynberg to Mr Marks it appeared that the list with consecutive account numbers seemed to be a full list of all investors as at 8 July 2019.

62. She disagreed with the proposition put to her that she was actually very much involved in the administration of MTI. It was actually a once-off exercise for Mr Marks' benefit.

63. She agreed that those mentioned investors seemed to be the same as those in BTC Global. Mr Marks had people recruiting for his business, and if one "opportunity" was not working, they would be offered another one. She overheard phone calls in her office but denied any knowledge of BTC Global.

64. On 7 August 2019 emails were sent from Mr Marks to her, after Mr Steynberg to the former. The subject matter was again "MTI all-members list". Numbers 1 and 2 now appeared being Mr Steynberg and Mr Marks. The account numbers again ran consecutively. The total was 679. She agreed that this seemed to be the entire database at the time, and accurate. The same spreadsheet of 7 August 2019 indicated a total of BTC 18,1479 being the balance of the Bitcoin taken over into the MTI back-office. The examiner noted that this was very important as it was the first primary

evidence on what was taken over from FXChoice to the MTI platform. (See however the affidavits of Mr C. Pederson dated 14 January 2022 and 20 August 2021 filed in the Western Cape High Court in the Marks application Case no 609/2022.

65. She was then referred to her email with attachments dated 8 August 2019 to Mr Steynberg. The total of BTC 0.318 was in her profile. Her method as shown as the attachments was simply to tie up the names that she could link to each other. She obviously could not say who had introduced who, but relied on the data obtained from Mr Steynberg.

66. She agreed that seemingly this was the first record of binaries that were complied. Again she denied that this was in fact another example of her doing administrative work for MTI. It was done at Mr Marks's request.

67. A further email from her to "Don" dated 12 August 2019 was pointed out to her. This was Don Nkomo, used by Mr Marks "for any computer-related stuff". He would help people to sign up as members on the new MTI platform. She sent this to him on her own initiative as Mr Marks did not open his emails. She denied that this was sent for Mr Nkomo to be able to enter this data into the new MTI back-office. It was sent as a back-up for Mr Marks. This supposedly confidential list of members was sent to Mr Nkomo while he was clearly also a promotor of MTI, with many members beneath him on the spreadsheet. She agreed that it was then possible for him to see who his competitors were, and who their members in the tiers were.

68. With reference to Exh. RK13A, p. 23, line 579, she agreed that the back office was open with effect from 12 August 2019. The credits were then introduced on 19 August.

69. She thought that Mr Steynberg and his team would have processed all of this data in the back-office. She had no idea who was in this so-called team.

70. Her own investment is reflected in Exh. RK12. She had invested BTC 0,1875767 but her total credit was BTC 1,322. Exh. RK13 reflected a withdrawal of BTC 1,32. She was asked on which basis she had earned the trading bonus. She understood it to be her proportional profit of the daily trading done.

71. Ms Monica Coetzee drew the sketch titled "MTI percentage pie drawing – Monica" (Exh. RK7). It reflected that a daily trading bonus accrued and how it would be divided. It reflected amongst others that MTI earned 10% of all trading profit as its own income. Ms Coetzee drew this for her to understand the system and how to bring fiat currency into the books. She thought that this was just a proposal as to how daily profits would be divided but did not know whether it was accepted. This was around September/October 2020.

72. For the rest of the year she kept Mr Marks' Rand bank accounts.

73. In August she heard through social media that the Texas regulator had issued a "cease and desist" order. She did not discuss it with Mr Marks at the time. She was paid a monthly retainer by Mr Marks of about R6000 p.m. After the "fall" of MTI she was paid R10,000 p.m. from a Standard Bank account.

74. When she commenced her duties as a book-keeper in August 2019 she told Ms Coetzee that she had to bring assets into the books. There is no point in repeating this part of her evidence. It is dealt with in par. 54 of my second report. She was never supplied with the BTC asset value. Ms Coetzee also told her that she did not have facts either. She voiced her concerns that only Mr Steynberg knew the answer. The landing page at the back-office did however reflect the BTC in trade. This could not be the total however as "they only traded some of that" as far as she knew. She did ignore the back-office as a point of reference to determine the stock. She also had no idea where (in which wallets) the BTC was being held. Despite having known Mr Marks for years,

she did not ask him, as her channel was through Ms Coetzee. She never ultimately received a stock figure.

75. Her further evidence relating to the income shown is confusing and contradictory having regard to her evidence as dealt with in my second report (par. 54).

76. In November she became aware of MTI's inability to pay BTC to investors as she did not receive the usual pay-out. There was a vague reference to "hackers into the back-office". In December she heard that the Standard Bank account was blocked. Mr Steynberg could not be contacted either.

77. She knew nothing of an alleged loan of 400 BTC to MTI. Mr Marks's claim of a 400 BTC is Exh. RK16. This was news to her she said. It was never disclosed to her as book-keeper. In fact, as a conclusion, all she did in that capacity was to compile a list of expenses and forced an income against that.

78. Mrs Marks had contended in her evidence that the books were restricted to only what happened in Rand and the BTC was excluded from the books of account. She agreed.

79. She was also never informed of the existence of a separate MTI club.

80. Ms Kritzinger was the author of the Excel spreadsheet Exh. KK3. It is titled "JNX statement 19 February to 16 August 2020 Johann coded". It seemed to her that she imported the detail from the bank statements of JNX Online. She sent it to Mr Steynberg for comment so that she could pick up MTI expenses or income. This account served as a bank account for MTI. The items marked "P" were Mr Steynberg's personal transactions. She could see income but no trading activity on those bank statements. She could not explain certain major expenses i.e. R2 and R2.5 million. Ms Kritzinger was given time to consider Exhibits RK4 and RK17.

81. She was referred then to Exh. RK18, a proposal by M. Coetzee and herself dated 22 September 2020. The document speaks for itself. It dealt with the MTI BTC income and expense amounts and how these should be brought to account weekly to accurately reflect the percentages shown in the drawing (a "pie" division). The weekly chart reflected on page 2 thereof was merely a "guesstimate" and reflected an example only. She never received any figures to accurately reflect any income, be it simply a basis of meeting the liability historically or on the actual income.

82. Minutes of a Board meeting held on 22 September 2020, Exh. RK19 were shown to her. She could not recall attending this meeting but she must have then as it was so reflected in per par. 7. Her previous recommendation that income needed to be reflected historically, was not followed. It is debatable whether Ms Kritzinger was just a book-keeper. She still needs to provide her opinion on exhibits RRK4 and RK17, and should again be asked to do so.

**Mr B. McDonald**

83. He and Mr Steynberg were best friends, he said. They last spoke on 12 December 2020 per video call on Signal. He was in Brazil at that time. He, Mr McDonald, probably would have phoned him. This call was not recorded. On 15 December he sent him a message on WhatsApp asking him to call his wife. He received no response and called him without success. This was a Signal call. Since then there was no further communication with him.

84. Nerina, his wife, was at his home three/four hours a day trying to get MTI staff paid.

85. On 15 December he attempted to obtain his passport from Home Affairs without success. Nerina phoned him to say that she had received the fail-safe email that has been mentioned a number of times.

86. When Steynberg left South Africa he stopped using WhatsApp and asked him to get onto Signal, which has better privacy settings.

87. He did send him messages on Signal, copies of which he would provide, apparently 40 of them.

88. The idea initially had been that he would join him in Sao Paulo. His communications on Signal commenced on 6 December but apparently Mr Steynberg left South Africa on 2 December. He did not accompany him to the airport. He told him that he was worried about his safety and that he should leave the country for a couple of weeks. He told him that in November in Stellenbosch after the FSCA "trouble" and the "enormous hacking at MTI". He said also that he was afraid of being arrested and showed him an anonymous email stating that his life was in danger and that he should leave the country. He did not disclose his destination which he only discovered later. Nerina told him that he was in Sao Paulo probably around 4 or 5 December, probably while at his home. She also told him that he had flown with Qatar airlines to Sao Paulo via Dubai or Abu Dhabi and that a return flight had been booked for 23/24 December. She was not concerned about that but about his safety.

89. Screenshots were taken from his Signal messages with Mr. Steynberg (Exh. BM9). These were debated in some detail. Nerina knew that he had intended to join him in Sao Paulo, from around 21 December. She was however aware that he was attempting to renew his passport.

90. Nerina told him that she had communicated with her husband by Signal up to 15 December. Then the fail-safe message was received by her.

91. Screenshots of messages with Mr Steynberg were then discussed on the basis that there would be no interest in personal matters. Mr McDonald was then given time to

look at these shots and to make the distinction between private matters and those relating to Mr Steynberg. The latter were then received via "AirDrop" consisting of some 120 pages. The relevant ones were collated into a bundle, Exh. BM10 (pages 1-173). These screenshots only commenced on 23 December 2020. Before that it would have been via WhatsApp or a normal call. That was deleted as Nerina had changed her number and because she wanted the security of Signal. Mr McDonald however then "found" some chats that had to be read by the examiner, and Mr McDonald was then (on 24 March 2022) excused until 29 March.

92. It was also noted that he had extensive communications with Mr Johan Kruger, a previous witness (par. 65 of my second report). These needed to be read as well and Mr McDonald had "no problem" in providing those as well (typed record, 24 March 2022, Vol. 14, p.58). On that basis his evidence stood down until 29 March. On that day however he appeared with a legal representative who requested time to consult with him regarding possible privacy issues apparently in terms of the Protection of Personal Information Act 4 of 2013. His evidence was therefore postponed to 11 May 2022. Other evidence will be heard during the week 9-13 May, and this will be dealt with in a further report.

**Mr N. G. du Plessis**

93. Early in 2018 he started trading Bitcoin on peer-to-peer websites, such as Local Bitcoin.com. On those sites he advertised to both buy and sell such. He would also use other sites such as Luno and VALR. He would take advantage of the difference in prices between the various platforms.

94. At that time he met Mr J. Steynberg virtually on that platform. They had a trading relationship until they took trading off the platform and communicated trades on

WhatsApp. He would sell or buy Bitcoin on an agreed price. He was then not a broker but traded directly. He did not hold anyone's coin.

95. In 2019 he started a company "Duppa+Duppa", so that he could move trading into a business as apposed to doing it in his personal capacity.

96. Around August 2019 Mr Steynberg told him about his new venture called "MTI" and sent him an introductory video. He viewed it and the returns "seemed promising", but he did not like the multi-level marketing aspect of it. The industry was also not regulated. He was uncomfortable with the idea that his coin would be in a trading pool under someone else's control. He had found over time that that type of activity which promised amazing returns were all scams. At that time he had no reason to believe that MTI was a scam, it was only a year later that he thought so.

97. He had heard of BTC Global but did not know who was behind it.

98. He was a software engineer and could write programs. In theory one could trace and follow a Bitcoin route but this was a specialist field and difficult. Addresses and wallets don't necessarily have names associate with them.

99. Documents provided by him were then dealt with, Exh. DUP2 was a summary that the witness provided by email on 24 February 2021 concerning his involvement with MTI. Annexed to that summary were a number of messages between him and Mr Steynberg. His communications with Mr Steynberg were almost exclusively by WhatsApp.

100. He never invested in MTI, not in his name of anyone else's. The benefit of his WhatsApp communications was that later he could, if required, reconcile every transaction.

101. He was referred to Exhibit DUP3, an Excel sheet prepared by himself with the title "Johann Steynberg trade history". He prepared that for purposes of this enquiry. It

speaks largely for itself and I will deal only with the important aspects emanating from it:

101.1. Regarding the purchase and sale of Bitcoin, he was not a financial services provider, and he was not regulated in any financial advisory environment;

101.2. All his transactions were done as EFT's, there was no cash involved and the KYC was being done by the banks anyway;

101.3. In any transaction he required the person's ID together with a "selfie", and needed certainty that the payment he received was from that person to avoid third party involvement;

101.4. Despite these precautions there were still people lying about the involvement of third parties, which was far too risky. He ceased selling peer-to-peer as a result in about March 2021;

101.5. Since then he would make private purchases and sell those on Luno or VALR, and the difference in price would represent his profit;

101.6. When he transacted with Mr Steynberg on 2 July the ID, "selfie" and KYC did not exist, the reason being he would have conducted the KYC the first time that Johann bought from him on Local Bitcoins, who wipe the chats after about a year;

101.7. He did not have a system verify that the Bitcoin sent to him was from the actual "owner" or someone else's. He could not verify the origin of the coin;

101.8. He did not ask any seller to warrant that he was the owner;

101.9. He would only send a coin once the bank has cleared the funds;

101.10. When a new client wanted to buy Bitcoin he would ask them a series of standard questions to avoid any scam;

101.11. When buyers raised an intention to invest in MTI he raised his mentioned concerns and later the information about it in the public domain.

102. A typical transaction with Mr Steynberg was reflected in Exhibit DUP4. It was noticeable that prices vary almost minute by minute.

103. Usually they did business on the Local Bitcoins exchange, the peer-to-peer website. On 8 July 2020 he was told to pay JNX Online. There was no system to establish why he would have to pay someone else.

104. It did not trouble him when Mr Steynberg said that he is selling BTC for a friend to a Capitec account whilst the BTC was in his LBC account.

105. With reference to Exhibit DUP4, p. 11, Mr Steynberg wanted to sell BTC for a friend on 8 August 2019. He gave him a quote and received an account number of a certain "Odendaal". He did not ask whose BTC it was.

106. In the early days he would not have asked Mr Steynberg the mentioned cautionary questions, as he was not even aware "of all those scams". He formulated those questions possibly late 2018 or sometime during 2019 by which time he had a trading relationship with Johann.

107. He did not ask those questions after August 2019 when he knew about MTI. Only very later on in the relationship did it arise in his mind that Mr Steynberg may be selling coin

belonging to someone else or MTI. This would have been after his discussion with the FSCA.

108. In respect of the said Odendaal transaction he asked him whether he was sending the coin from LBC. The reply was: "from my Blockchain wallet". The point was that if he was sending it from Local Bitcoins he would give him his Local Bitcoins account. If he was sending it from elsewhere he would give him his Coindirect (CYR) account. There were many different wallet providers, one being Blockchain.com, but he could be sending it from any wallet. There was no way for him to verify whose name that account was in.

109. Similarly, when he was given the account number of a certain "Gouws", Steynberg did not say who the Bitcoin belonged to or even if it was Gouws's Bitcoin. It could have been MTI BTC, Mr du Plessis conceded. It was not unusual to receive an instruction of Bitcoin traders to pay a third party, although traceability could become an issue. Both MTI and Steynberg would fall out of traceability. This was however the norm according to the witness. He had no reason to be suspicious that Mr Steynberg was trying to scam him.

110. With reference to the said summary of trades (Exh. DUP3), the total turn-over of BTC sold and bought was R26 million. During that period Mr Steynberg sold R22,511,748.15 coin to him. The period was July 2019 to December 2020. From October 2019 until the end of December 2020 he only sold BTC to him, and never bought. He did not know where the coin came from. People were trading on different platforms all the time. It could well have been, as he himself has been doing, that Mr Steynberg had built up a good trading stock (I note that R22 million seems like a huge amount but the number of coin may well be few, depending on the price).

111. There was also a "strange" payment to the Polokwane Golf Club. I do not intend to repeat details of other payments. The witness would obviously not know the reason for any particular payment, and usually this would be a question for argument if these proceedings were like a civil trial.

112. Mr du Plessis conceded that he followed the MTI "story" on social media. He would have obtained a lot of news from a website called Bitcoin.com. He did not think that MTI was declared to be a Ponzi scheme at the time.

113. He also became aware of the FSCA raid. That was about the time he spoke to Mr B. Topham. It was also the time that the ended his trading relationship with him (See Exh. DUP2, p. 4). This refers to contact with Ms Andrea Coetzer of the FSCA in November 2020. He had been aware of their earlier cautionary note. It did not affect his business with Mr Steynberg and he agreed, in retrospect, that this looked "very bad". (One must consider though that in general, in criminal law, proof of intention is required, and that entails proof of awareness of unlawfulness. I will however briefly deal with applicable legislation hereunder).

114. It was put to him that with his knowledge of BTC, his knowledge of the abuses of Bitcoin, his knowledge of multi-level marketing should have led him to have reasonably known that what was occurring could very well be the theft by Steynberg of coin belonging to MTI. The witness replied frankly: "In retrospect, yes definitely". At that time however he had no reason to suspect that Mr Steynberg was selling MTI coin to him. He never had the feeling that Mr Steynberg was trying to scam him in any way. It never occurred to him. In all their transactions he was always the first one to send any payment of Bitcoin. However, seeing events as they transpired afterwards, it seemed "pretty obvious" that he should have exercised more caution.

115. He himself had no knowledge of how to trace coins from a Cloud Bots site (which he did not even know of) back to MTI.

116. It never occurred to him to have asked Mr Steynberg, when he requested to sell, who do the coin belong to? I might add, what would any convincible reply of Mr Steynberg have meant to him? He could have been told a litany of lies, with nothing at his disposal to verify a version.

117. It was put to the witness that in the light of his evidence and ex part facto concessions even, I would be requested to consider certain applicable sections of the Prevention of Organised Crime Act No. 121 of 1998.

118. Exhibit DUP7, correspondence between the witness and Ms A Coetzer of the FSCA was handed in, nothing of significance needs to be reported.

119. I have considered the applicability of sections 1-7 of the said Act. For present purposes the most important and relevant provision is the Definition and Interpretation part. Section 1(2) and 1(3) is the decisive one. Mr du Plessis denied any knowledge or even suspicion of unlawful conduct by Mr Steynberg or that he had the knowledge or means to verify any representation made to him, despite his own knowledge of the trading in Bitcoin. I believe that this should be accepted on the facts such as they were at the time of his dealings with Mr Steynberg. He ceased to trade with him after the FSCA raid and made the effort to have discussions with Mr Topham of the FSCA. Most importantly it was only fairly recently that the back-office became available to the liquidators and it took months for experts to unravel the affairs of MTI. Mr du Plessis last spoke to Mr Steynberg in early November 2020. One cannot ascribe the knowledge that one now has, after months of investigations and the calling of dozens of witnesses, to Mr du Plessis during the period that he dealt with Mr Steynberg. In addition, as I have said, even if he had asked Mr Steynberg relevant questions, as perhaps he ought

to have in retrospect, what would he have made of any plausible reply or explanation? He probably would have been misled like dozens of other persons in his particular field of expertise. There were also no means at his disposal, financial or otherwise, to have made any independent enquiry of MTI affairs. Even at this stage experts in the field have had difficulties in putting together a plausible reliable mosaic.

120. My opinion therefore is that a prosecution under this Act would not succeed against Mr du Plessis. I have grave doubts in fact whether a coherent charge sheet could even be drawn in this context. I do not think that Mr du Plessis ought reasonably to have suspected that he was part of or was made part of unlawful activities by Mr Steynberg. It can also not be said, with the available and known facts at that time, that he assisted him to benefit from proceeds of unlawful activities. He did not know anyone else at MTI to consult, and even if he had done so, the outcome would almost definitely again have been a litany of lies, impossible to verify any version.

121. I therefore do not recommend that a charge or charges be laid against Mr du Plessis in terms of the said Act.

**Mr Vaughn Victor**

122. Mr Victor gave expert evidence on a number of separate but inter-related topics with which I will deal with as such. He holds an LL.B degree and is an admitted Advocate of the High Court of South Africa. He is a registered insolvency practitioner. He is an associated member of Certified Fraud Examiners, International Chapter, a certified Bitcoin professional. He is also a certified crypto currency and blockchain investigator, the certification being done by an international Blockchain Council, which is a private-public co-operation group that has been established by the IRS, like SARS, the FBI and Homeland Security. He is also a crypto auditor, one of only two in Africa, one of 50

world-wide. He assists a number of Government agencies as well as the United Nations Drug and Crimes Office as well as the European Union Cyber Group.

122.1. During January 2021 he was approached by the liquidators regarding the investigation into the trade, dealings and affairs of MTI. Most of the information that was received or was available was an open-source-intelligence basis such as information from correspondence, emails, bank statements, service providers and employees of MTI. He and Mr Craig Pederson from TCG (The Computer Group) started actively with the investigations in March 2021.

122.2. Mr Pederson made an affidavit dated 20 April 2021 as I have said dealing with the aspects of the MTI database that ultimately became available and which dealt with the purported trades at FXChoice and Trade300, which was in his opinion only an alter ego of Mr Steynberg and in which no trades occurred, contrary to the witnesses dealt with in my second report. It is my recommendation that he be called as a witness to confirm his affidavit.

123. He was part of about 99% of all enquiries to date and also assisted with the sequestration application of Mr Steynberg. They were also provided with the information available to the FSCA which included electronic devices which the FSCA seized from the Marks', and other electronic data obtained from devices. There were also communications such as discovered from WhatsApp.

124. The Marks' had also been involved with BTC Global. There were objective identifiable similarities between BTC Global and MTI. The latter commenced after about a 14 month "cooling off" period after the collapse of the former. A number of persons were active in both entities especially the Marks', Mr A. Caw, Liz Malton and Mr Willie Breedt. The scheme was much the same: the CEO of BTC Global, allegedly Mr Mark Twain was seldom seen, no-one had access to him and no telephonic conversations with him

took place. The "exit" plan was also the same as in MTI: the leading figure disappeared. Mr Twain was never seen again, if he existed at all. The new scheme then required a new face, a physical person whom people could trust and believe in. I will deal with this aspect hereunder when the actual life and role of Mr Steynberg acquires a more concrete picture.

125. Mr Victor gave details of the persons involved in BTC Global. The database of MTI obtained from Maxtra was compared. Apart from some same persons involved in both schemes, certainly not co-incidentally, the same wallet appeared in both schemes, i.e. same users that were in BTC Global moved to MTI.

126. A system was built around the back-office called MARS (see the annexed affidavit of Mr Victor dealing with this in some detail). It was like an investigative tool giving all relevant details of members joining, Bitcoin received and paid out, clustering of emails and telephones. One could see when individuals joined MTI, most post March 2020. They suspected that the Marks' still had the controlling email list and cell phone numbers of the previous scheme and with that they built a database and commenced sending out correspondence to individuals to join MTI. One could pick up that certain investors featured in every scheme. Main recruiters and leaders in BTC Global also actively participated in MTI to recruit members. Some examples were a Mr C. Venter and Mr Willie Breedt.

127. Mr Victor gave details emanating from the MARS system that the social media were manipulated but for present purposes these are not relevant.

**Mr C. Marks' Wallet**

128. The position of Mr Marks and the flow of funds emanating from MTI and him was then presented with reference to Annexure 4 of "Victor bundle 3". The flow of funds is

imperative in ascertaining the source of funds. As evidenced by the Maxtra database and the back-office, wallet "..... ZIM" belongs to him. Under the heading "Search Results" the number "7176010" appears. This is Mr C. Marks' primary account with MTI. His username is "Daydream". A screenshot from the MTI back-office shows the wallet address associated with him (Figure 3 in Annexure 4). Payments 2 and 5 appear there. There are outward payments, out of the system, so when Mr Marks requested a withdrawal out of MTI, he would then elect a certain wallet which would receive his funds. Since the time of BTC Global, the "....ZIM" wallet was identified as one of his primary wallets.

129. To continue with detail it is best to refer to what is contained in Annexure 4 with reference to Figures 1-10. The Marks' "..... ZIM" wallet first received Bitcoin on 9 March 2018 and first sent Bitcoin on 19 September 2018. Until the date that it was no longer used, 11 December 2020, it had transacted a total of 957 Bitcoin. At least 917 of those originated from MTI during that period. Figure 4 taken from the Qlue Software shows the starting transaction dates and the turnover in Bitcoin on his wallet.

130. Figure 5 shows all deposits to Marks' "ZIM" wallet for the period 1 January 2020 to 19 December 2020. The bulk of payments originated from MTI. The wallet received about 400 BTC during this period.

131. Table 1 of Annexure 4 shows the deposit transaction block reference, the date and the BTC amount for inbound transactions to Mr Marks' wallet originating from MTI wallets. The total was BTC 473,876. In the context of accuracy: the Blockchain is an open block which cannot be manipulated: it is like the verification statement from a Bank.

132. Table 2 indicates "Indirect MTI deposits to wallet ending ZIM". Indirect payments are funds that did not follow directly from a MTI wallet to the ZIM wallet: there was always an intermediary wallet like a mixer or an exchange, a Binance exchange wallet. All the

indirect deposits into his wallet originated from MTI. Most of them were payments directly from members' Bitcoin, i.e. members deposited Bitcoin into MTI, these were pooled in a wallet and from that wallet certain individuals were paid. On the software one could see that new members' Bitcoin was used to pay old members. The total of indirect payments is BTC 444,516.

133. Wallet ".....CabF" was first used on 13 February 2018 and last transacted on 8 February 2022. During this time it transacted 851 BTC. (Inputs into this wallet appear in Figure 9). It is the same wallet address used to affect the payments by Mr C. Marks to Mr A. Caw. (Details will appear hereunder). Figure 10 of the said Annexure shows all the movement of all the funds from Marks' "CabF" wallet to the Binance "INDY" wallet which later effects payments to Mr Caw as evidenced in certain WhatsApp conversations and further evidenced by references on the Blockchain.

134. Annexure 4.1 – "Caw/Marks transactional wallet" refers to a WhatsApp dialogue wherein Mr Caw makes mention that he has set up a wallet specifically for his transactions with Mr Marks: he provided the wallet address ".....Wdk". (Figure 1 is a screenshot of the relevant conversation). This wallet was seen first receiving on 13 August 2020 and last seen receiving on 23 October 2020. Figure 2 depicts the deposits to this wallet. Payments by Mr Marks to Mr Caw appear from the "Transaction Block" indicating the BTC amount of 88.266. All the deposits to this wallet were traced to originate from two wallets i.e. the Marks' MTI "ZIM" wallet and ".....bu1s", the Binance exchange wallet. The wallet deposits thus concur with the statement made by Mr Caw that he had set up this wallet specifically for Mr Marks to effect payments to the "hacking" of the back-office.

135. It will be remembered from my previous reports and certain Minutes of Board meetings, that repeated references had been made that the back-office had been hacked. This

was put to Mr Victor for comment. In his opinion there was never any hacking. Witnesses who did "pen-testing" in MTI would so testify. Pen-testing was used to see whether there were any vulnerabilities in the back-office relating to hacking and ransomware. The so-called "leaked" MTI database was a topic on social media. What did in fact occur was that unknown persons "scraped the system". For that they only needed one user ID in MTI. The entire system was of such poor quality so if that ID was changed, access would automatically follow without a password. The persons created a false profile, accessed the back-office and wrote a script to keep on changing that user ID and the domain name. They extracted the data from the back-office, put it together and that was then referred to as the hacked version. Hacking means altering data, and neither he nor the said Mr Pederson could not find any evidence of that.

**The Marks' Property Transactions**

136. Mr Victor was requested to investigate and analyse the said flow of funds from MTI to Ms Cheri Marks, Mr Clynton Marks, Mr A. Caw and the mentioned Coin Buyers Club ("CBC"). He was placed in possession of various documentation and information relating to MTI specifically.

136.1.1. He was granted access to the back-office system of MTI;

136.1.2. He was provided with an extract of WhatsApp conversations between Mr Marks and Mr A Caw of Coin Buyers club;

136.1.3. He was provided with reports on the investigations conducted by the FSCA;

136.1.4. He was provided with the relevant bank statements of Coin Buyers Club (Pty) Ltd and the relevant "KYC" documentation of different cryptocurrency exchanges.

137. In order to conduct investigations, he used a program called Qlue software, an investigative software application used by law enforcement and investigative agencies. The toolset allows for the graphical interrogation of the Blockchain via a user interface, the creation of case and investigative files and the graphical depiction of Blockchain transaction data.

He was specifically requested to provide an analysis of the origins of the funds deposited by interrogating the Blockchain in order to establish the source of the funds deposited.

The source of the funds should be traced back until it reached either a point of origin in wallets belonging to Mirror Trading International or from Mr. Marks MTI wallets.

**Flow of Funds from MTI to Mr Marks**

138. As stated, he used the program known as Qlue software to investigate the flow of funds from MTI to Mr Marks.

The flow of funds is imperative in ascertaining the source of funds which was investigated by using information from the Maxtra Database and the Backoffice.

The back-office of MTI uses an email and other features which is unique to a specific bitcoin wallet.

Mr Clynton Marks has a bitcoin wallet with identity: 1Bm2zgFHqgZDnuLqpwbpTc7iVwjFYT7Zim. Clynton Marks used the email of xftonfire@gmail.com.

It was established that Mr Clynton Marks' "ZIM" wallet received bitcoin for the first time on the 9th of March 2018 and sent the first bitcoin on the 19th of September 2018. On the 11th of December 2022, Clynton Marks transacted a total of 957 Bitcoin.

It was established that at least 917 Bitcoins originated from MTI during the 9th of March 2018 and 11th of December 2022.

139. Screen shots can show the Clynton Marks profile demonstrating the wallet addresses associated with him. A screen shot of the Qlue software demonstrates the starting transaction dates and the turn-over on his wallet.

140. It will be noticed that:

140.1. 419 transactions were received;

140.2. 246 transactions were sent;

140.3. 957.321511 BTC were received; and

140.4. 957.321511 BTC were sent.

141. An available image demonstrates all deposits to Mr Marks 'ZIM' wallet for the period 1st of January 2020 to the 19th of December 2020. The bulk of payments i.e 400 BTC originate from MTI.

Direct and indirect deposits were made from MTI to Mr Clynton Marks. These have been referred to above.

Direct payments are payments made from the MTI wallets to members whereas indirect payments are payments effected with Bitcoin belonging to MTI but are or have not been paid directly nor recorded in the Maxtra database.

From an analysis of the Coin Buyers Club (Pty) Ltd's bank statements, it is evident that 90% of the amounts received originated from the Marks and/or their clients.

**Correspondence: Mr C. Marks and Mr A. Caw**

142. Mr Victor was placed in possession of the WhatsApp communication between Mr Clynton Marks and Mr Andrew Caw which communication which was extracted by FSCA.

Mr Clynton Marks and Mr Andrew Marks discussed the purchase of properties with bitcoins. Mr Andrew Marks indicated that different exchanges are used. The purpose of such exchanges is to remove Mr Clynton Marks from the transactions, as if Mr Clynton Marks never made any payments in respect of his assets, through his personal account.

The immovable properties registered in Uprobuzz (Pty) Ltd as an example of their modus operandi and seem to fall within the ambit of money laundering as set out in the Prevention of Organised Crime Act, 121 of 1998. Sections 4-7 seems to be particularly relevant, but as I have said it would be proper and fair that Mr Caw can comment when he is re-called as this is new evidence.

143. The WhatsApp conversations revealed that Mr. Marks and Mr. Caw had come to a commercial agreement where Mr. Marks would transfer Bitcoin to Mr. Caw to effect payments on his behalf for which he received payments for his services.

143.1. Two properties were purchased being:

(a) R11,500,000.00 home in Durban, and

(b) R8,000,000.00 Beach House.

The payment of transfer duties by Mr Caw on behalf of Mr Marks amounting to a few million Rands.

143.2. Additionally, there were purchases of two vehicles, a Jeep and a Honda, a high-end computer system and a Trezor digital hardware wallet.

143.3. These assets were purchased by Mr Clynton Marks who transferred bitcoin to Mr Andrew Caw though the services of Coin Buyers Club (Pty) Ltd (*"CBC"*) into a Standard Bank account.

143.4. For each transaction, Mr Clynton Marks transferred bitcoin to CBC, whereafter Mr Andrew Caw then proceeded to sell the Bitcoin, in his personal name or through the CBC business.

143.5. From this Standard Bank account, Mr Andrew Caw made various payments on behalf of Mr Clynton Marks, effectively acting as a financial intermediary and offering a payment service for Mr Clynton Marks' private expenses. He was not registered as such and the Financial Advisory and Intermediary Services Act 37 of 2002 may well apply, especially the definition section read with s. 7(1) and 36, which creates the relevance statutory offence.

143.6. The said communication is available for inspection and verification.

144. It will be noted that the Durban property owned by Uprobuzz (Pty) Ltd was sourced whereafter Mr Andrew Caw was asked to get R11 million. It was agreed that Ms Cheri Marks would provide the address to send the Bitcoin to.

144.1. Andrew confirmed on the 20th of June 2020 that he would:

*"process sale thought multiple exchanges or over the counter trades. Once all trades are thought I'll transfer rands to where it's needed".*

144.2. Andrew furthermore confirmed that the process safe and

*"We're very careful always."*

144.3. After Bitcoin was transferred, Mr Marks indicated that he would send Mr Andrew Caw more business:

*"Thanks bro. I did not know you offered this service. Will send alot more business your way"*

144.4. On the 22nd of June 2020, Mr Caw further advised Mr Marks that:

*"if you'd converted $180k USD to ZAR direct you'd have R250k less - so not a bad rate"*

144.5. On the 22nd of June 2020, a deposit was made of 0.0196 BTC. It was further communicated between the parties:

*Marks: Ok is it safe to do balance now? Caw: yes*

144.6. On the 22nd of June 2020, Mr Caw indicated that the total paid out was:

*"48.47374286 waitying (sic) for Bitcoin confirmations"*

144.7. On the 24th of June 2020, Mr Caw indicated that Ms Cheri Marks indicated that the Marks are "taking that house" whereafter Mr Clynton Marks confirmed such purchase.

144.8. Clynton Marks thereafter asked:

*When are you doing payments? I think we can split it over 3 or 4 payments. As long as it's done by Friday or so. What do you suggest?*

144.9. On which Mr Caw replied:

*"That works. Just need bank details, can do first R3mil immediately"*

144.10. The communication between the parties clearly demonstrates how Bitcoin was transferred to purchase the property for R11,5 million.

145. The payments were confirmed by Mr Caw on the 24th of June 2020:

*Caw: First R3.2mil paid*

*Caw: Will do 1 more payment this afternoon &then the balance tomorrow*

*Marks: Hey Andrew. Are you still doing that second payment today?*

*Caw: Yes. Did another R3.8*

*Total of R7 mil paid today.*

*I'll send you theb2nd proof of payment a little later. Just putting kids to bed.*

*Marks: Awesome man*

*Caw: 2020-06-24 - Clynton Payment 2 - R3,800,000.00.pdf*

*Caw: 2020-06-24 - Clynton Payment 2 - R3,800,000.00.pdf*

*Caw: payment 2*

*Marks: Ok thanks. Do you want the R21 630 in cash or Bitcoin*

*Caw: Whatever is easiest for you*

*Marks: Will do tomorrow around 10am*

*Caw: Sorry I was checking on my phone earlier & doing a quick calc in my head*

*Your total for sales was R.11,428,370*

*So you need an extra *R71,630* not 21,630*

146. On the 25th of June 2020:

146.1. Mr Clynton Marks indicated that he will do the R71, 630 Bitcoin to Mr Andrew Caw.

146.2. Also on the 25th of June 2020, Mr Andrew Caw sent a proof of payment of R4,500,000.00.

147. Purchase 1:

147.1. Mr Marks informing Mr Caw that he would be purchasing a property known as No 25 Monteith Place, Durban North for the price of R 11 500 000.00.

147.2. Mr Marks proposed transferring the equivalent amount in Bitcoin to Mr Caw in order to effect the purchase of the property.

147.3. The following wallet is provided by Mr Caw into which Mr Marks is to deposit the funds to effect the purchase of this immovable property: 3NWhm67oT2YdsobHnEEAc1RH8m1fFVCGLe

147.4. This wallet and the corresponding transaction date were queried on the Blockchain in order to verify the payment transaction from Mr Marks to Mr Caw.

147.5. In the WhatsApp conversation the following is disclosed:

147.5.1. Mr Marks will transfer $200 as a test;

147.5.2. Mr Marks will transfer 19,689 Bitcoin;

147.5.3. Mr Marks will transfer 0,196 Bitcoin;

147.5.4. Mr Marks will transfer the balance Bitcoin;

147.5.5. Mr Caw received 48,4737 Bitcoin as the transfer from Mr Marks for the balance.

147.5.6. Mr Caw additionally paid over R1 400 000.00 in transfer fees on behalf of Mr Marks.

148. The following transaction are confirmed to the wallet provided by Mr Caw.

148.1. The evidence from the Transaction Block indicates the following:

| TX No | Transaction block | Date | BTC Amount | USD Amount |
|---|---|---|---|---|
| 1 | 729af9dec8c9dac489064f55e83434daf41342abf 420ef052d4c6 b27c0132b5e | 21-Jun-20 | 19,6894 | 185840,83 |
| 2 | 4a20d0b61275240c9609ec29aeb0b347900aa67 e0bea8e4d21 4d2f0f429bd88c | 21-Jun-20 | 0,0213 | 201,90 |
| 3 | 13e41202df370fd5e4941b2e38b678ec949fd690 a9529e479060 b7d8a2742aa3 | 22-Jun-20 | 48,4737 | 457522,94 |
| 4 | 97f5a2a753a4577121566cbfb40940409ddd6194 c52e2cbb0d1 967042a122dcc | 25-Jun-20 | 0,4629 | 4369,97 |
| 5 | cbef4238edd779f790eff5e7c478bd08d9297e338 ed363fb08a23 c583b6d6acd | 22-Jun-20 | 0,0196 | 185,00 |
| | | | **68,6669** | **648120,64** |

148.2. The transactions correlate with the amounts, source wallet and destination wallet contained in the WhatsApp conversations. There are no other transactions to the wallet, these are the only inward payments to this wallet.

148.3. The source of the funds emanates from Marks MTI wallet, ending ZIM. A graph depicting such transaction is available for verification.

149. Purchase 2:

149.1. Mr Marks further informed Mr Caw that he would be purchasing a 6 monitor, high end computer system.

149.2. Mr Marks proposed transferring the equivalent amount in Bitcoin to Mr Caw in order to effect the purchase based upon a quotation submitted by Mr Caw to Mr Marks who then approved the purchase.

149.3. The following wallet is provided by Mr Caw into which Mr Marks is to deposit the funds to effect the purchase of the computer system: 3Nixfvq7A6TgunXw26NGyeYWR1BpJwiSDm

150. In the WhatsApp conversation the following is agreed to:

150.1. Mr Marks will transfer Bitcoin to the value of R75,000 to Mr Caw.

150.2. The balance was due on delivery.

150.3. Mr Caw received 0,3610 Bitcoin as the transfer from Mr Marks, an amount of $4 332, 37- the blockchain reference was provided to evidence the payment by Mr Marks.

The transaction correlate to the amounts, source wallet and destination wallet contained in the WhatsApp conversations.

151. Purchase 3:

151.1. Mr Marks informed Mr Caw that he would be purchasing a Jeep motor vehicle for R1 700 000.00 and a property for R8 000 000.00 in Umdloti.

151.2. Mr Marks proposed transferring the equivalent amount in Bitcoin to Mr Caw in order to effect the purchase. The following wallet is provided by Mr Caw into which Mr Clynton Marks is to deposit the funds to effect the purchase: 32NiHBrNPG3NcryJLhhyZ3FgA2DwJPpwDK

151.3. In the WhatsApp conversation the following is agreed to:

151.3.1. Mr Marks is purchasing a Motor vehicle from Honda.

151.3.2. Mr Caw received 0,09474 Bitcoin as the transfer from Mr Marks confirming receipt thereof in the WhatsApp conversations.

151.3.3. Mr Marks paid over 53 Bitcoin to Mr Caw to effect payment on the house and car, Mr Caw responded affirming he received the 53 Bitcoin on the 29th of September 2020.

152. The transaction block reflects the following:

| Transaction | Transaction block | Date | BTC Amount | USD Amount |
|---|---|---|---|---|
| 1 | 6a6e24b4d66f905f39ec376c2f9a739c4a403e2c8127de3e1ec8c52d680ab510 | 27-Sep-20 | 0,000469 | 4,99 |
| 2 | fafd9738780e1ecd94234cd6698253be0196c2f47c738c774f06614a 4c3d58d4 | 27-Sep-20 | 53,1765 | 565789,73 |
| | | | **0,000469** | **565794,72** |

152.1. The transactions correlate with the amounts, source wallet and destination wallet contained in the WhatsApp conversations.

153. Purchase 4:

153.1. Mr Marks informed Mr Caw that he would be purchasing a motor vehicle and instructed Mr Caw to effect the payment.

153.2. Mr Marks proposed transferring the equivalent amount in Bitcoin to Mr Caw in order to effect the purchase, which was duly accepted by Mr Caw.

153.3. In the WhatsApp conversation the following is agreed to:

153.3.1. Mr Marks is purchasing a motor vehicle from Honda.

153.3.2. Mr Caw is currently still holding funds belonging to Mr Marks from the previous transaction.

153.3.3. Mr Marks instructs Mr Caw to effect payment for R875,000 for the vehicle.

153.3.4. Mr Caw effects the payment.

154. Purchase 5:

154.1. Mr Marks informed Mr Caw that he would be purchasing a Trezor digital wallet to be couriered to him via Postnet. Mr Marks proposed transferring the equivalent amount in Bitcoin to Mr Caw in order to affect the purchase, which was duly accepted by Mr Caw.

154.2. In the WhatsApp conversation the following is agreed to:

154.2.1. Mr Marks is purchasing a Trezor digital wallet.

154.2.2. Mr Caw procures the digital wallet on behalf of Mr Marks and couriers it via Postnet.

154.2.3. Mr Marks receives the Trezor digital wallet.

154.2.4. Mr Caw instructs Mr Marks on where to make payment to in the amount of R1,800.00

155. BTC Global:

155.1. BTC Global imploded at the start of 2018 and traded in the same manner as MTI. BTC Global was also used a multilevel marketing scheme.

155.2. Like MTI, BTC Global promised high and unrealistic returns to investors (14% bonuses).

155.3. What is of the utmost importance is that a number of key people that were part of both BTC Global and MTI being:

155.3.1. Clynton Marks,

155.3.2. Cheri Marks,

155.3.3. Russel Jerrard,

155.3.4. Andrew Caw,

155.3.5. Liz Malton,

155.3.6. Johan van Wyk,

155.3.7. Willie Breedt, and

155.3.8. Johann Steynberg.

155.4. During the enquiry, Ms Cheri Marks testified on the 24th of February 2021 that she and Mr Clynton Marks was involved in BTC Global (Bitcoin related business) since 2017. According to Cheri's testimony, a friend, Madeleine Roos asked Mr Clynton Marks to invest in BTC Global with Mr Steven Twain. A 14% investment per week was promised to the investors.

155.5. Ms Cheri Marks further testified that she was involved in the administration of BTC Global. (From page 573, line 13). Ms Cheri Marks further testify that:

*"On the 5t h February – and I don't forget these dates because I literally remember where I was when it happened, my daughter was doing Gauteng Athletics – and I got the phone call that nobody had been paid that Monday. And immediately I was messaging him on messenger going "what's going on?" And the two weeks preceding that the Anonymous ZA guys – I'm assuming you guys have all seen on Carte Blanche and Vivian Budge and this group of propagandas army had created such a social media frenzy that my personal belief is that it put Steven Twain into a very difficult position and he ran. Now the Bitcoin wallets have remained untouched until today and you can see that the Bitcoin are all lying in wallets with Coinbase but nobody has touched them, which suggests that he was spooked and ran away but not that he stole the Bitcoin. The point is no-one can get access to it."*

155.6. Clearly the involvement in BTC Global is more than what the Marks' attempt to portray.

**The MARS System**

156. This was developed by the forensic teams. They took the Maxtra data and expanded it back to the old MTI back-office. The following relevant facts emerged (transcript: Vol. 17, 1 April, p. 33 and further).

156.1. Total number of users: 304,000;

156.2. Total number of Bitcoin deposited: 39.193;

156.3. Total amount of Bitcoin paid out: 32.285;

156.4. Total number of debtors: 58,117:

156.5. Total number of creditors: 204,001;

156.6. Discrepancy between coin paid in and out: 7000, apparently the number that Mr Steynberg fled with;

156.7. Creditors to be paid: 15,975.

157. It has already been established that there were no accounting records before August 2019. The total number of transactions was 479,119 resulting in the said 39.193 coin deposited. An example of a back-office user statement relating to Mr Marks, is Exhibit VIC-J.

**Ms C. Marks Access to the MTI Wallet in December 2020 and back-office details discovered**

158. Mr Victor was referred to Exhibit CAW2, p. 60. On 16 December, and after Mr Steynberg's departure, she purportedly emailed Camila, copying a number of leading

members of MTI, and referring to the "hardware wallet for MTI's so we can pay our clients". A hardware wallet is a cold stage device like a Tresor. All the evidence was that only Mr Steynberg could affect payments to clients, the question then being: how did Ms C. Marks have access to the hardware wallet of MTI? The software system used indicated that the actual hardware wallet from Ms Marks made payment four days after Mr Steynberg disappeared. One of the wallet addresses discovered reflected a payment to Ms Belinda van Zyl, a close associate of Ms Marks. Payments were even made after the date of provisional liquidation on 29 December 2020. Mr Steynberg himself could not have accessed the hardware wallet from Brazil.

159. It appeared to the forensic investigators that Mr Steynberg used 19 wallets to receive deposits from investors, the total being BTC 9.683. Mr Steynberg used a wallet that had a previous identification number which was identified with BTC Global. The last transaction on this wallet was on 17 February 2021. Only 2 persons could say who emptied the remaining wallets according to Mr Victor: Ms C. Marks and Mr A. Caw. This is another important reason why these 2 persons should be re-called.

160. With reference to the movement of BTC between certain wallets, details of which will appear in an additional affidavit that I annex hereto, Mr Victor came to the conclusion that it would physically have been impossible for Mr Steynberg to have been involved in every transaction. No evidence of many transactions moved to certain wallets were found on his electronic devices or in any written notes. The iPhone that was seized from him indicated that he spent about ¾ of his time on the golf course. His opinion was that Mr A. Caw facilitated the many payments (see Vol. 17, pages 78-80). It would have been impossible for Mr Steynberg to have facilitated between 19,000-20,000 payments monthly. Not one employee was part of the finance team and just one wallet indicated 100 transactions. On his computer that were seized there was no evidence of any software, any programming or any website that he could use to affect these types

of payments on a continuous basis. It was impossible to facilitate, by himself, 765,000 transactions in a 14-month period.

161. Mr Victor also referred to an email (still to be presented to me) from FXChoice that stated that Mr Caw, Mr C. Marks, Ms C. Marks and Mr Steynberg had access to the FXChoice Multi-asset management account. Mr Caw would need to explain his involvement relating to payments regarding wallets that were created already in 2017. These were the ALEXXA wallets.

**Direct and Indirect Payments**

162. Mr Victor gave further evidence in regard to direct and indirect payments that have to a large extent been dealt with above in the context of properties and assets acquired by the Marks' through Mr Caw and his CBC company. With reference to a screenshot he pointed out, as an example, that 333 new investors deposited funds into MTI but these were then directly pooled into Mr Marks's ZIM wallet (see Annexure 4, Table 1), the starting amount of BTC 32.635 on 5 October 2020. There was no trading, an intermediary service. These funds were so moved either by Mr Steynberg or someone else who had access to those deposit wallets. The first indirect deposit was made on 19 October 2020 with BTC 45.533.

163. With reference to graph overview and a pay cycle indicated the flow of funds could be shown into MTI, to an intermediary wallet to obscure the flow, and out of the specific payment cycle, Mr Marks received BTC 45 (equal to $537,000).

164. That what was received from Mr Caw, Mr Marks's bank account at Capitec Bank reflected that the only money received was from Mr Caw or CBC. No other source of income was reflected. The forensic team had focussed primarily on the ZIM wallet, and

suspected that he had withdrawn out of MTI between BTC 1,4000-2000 to the value of about R1.2 billion.

165. Mr Steynberg's spending pattern, compared to other Ponzi schemes was almost negligible. He bought 2 cars, a home and a golf club. He never went on holiday. In contrast the Marks' advertised their shopping sprees on social media extensively. Mr Vince Ward also spent millions and he should be called to testify. There was also new evidence relating to Ms Monica Coetzee, who should be re-called to explain that.

166. Mr Steynberg's name does not even feature in the list of the top 10 people who took Bitcoin out of MTI. He regarded him as the face of the company only who then became "the fall guy". Social media reports relating to his alleged purchases in Brazil, like his own aeroplane, and a ring worth $50,000 were all untrue. These rumours were being spread by an independent journalist, Mr Sean Newman. The said Capitec Bank statements reflects regular payments to him by the Marks'. Why?

167. Mr McDonald apparently confirmed in a message to Mrs Steynberg (not seen) that electronic devices and computers had been hidden by the latter's house keeper, Ms Phumulani. Has she been approached?

168. Mr Caw, when re-called, and in the context of his report to Mr Marks, must be asked where he obtained all the information from. His report does not refer to user ID's, with persons names. How did he connect a wallet to an individual's name without having access to the back-office?

169. Ms Strydom had mentioned to Mr Victor that Mr Caw had stated that he had audited the balance of crypto at Trade300. No evidence of that was provided. He needed to provide the physical wallets that he received from whoever to confirm those balances. Also, if Mr Steynberg disappeared on 15 December, how did Ms Cheri Marks receive the

trading results to be forwarded to Tushar at Maxtra to upload them at the back-office? Who provided the trading statements to her? The Marks' also never used the MTI Club domain to send emails.

170. Mr Caw needed to provide all documents relating to the CBC Club. He needed to explain also the hundreds of thousands of Rand paid to Mr Ray Schooms, per month, from the Standard Bank account. That name was not picked up in South Africa and could be an alias. The forensic team would do a full analysis on KYC that is provided by the exchange as well as the Standard Bank account. At this stage they were of the opinion that about 70% of all CBC and Mr Caw's personal business were related to MTI directly or indirectly.

171. It is clear that Mr Victor must give further evidence after his written explanation on what I was shown on the screen, and after the further analysis referred to.

172. After the further evidence in May I will briefly deal with the requirements needed for a conviction in terms of the Prevention of Organised Crime Act, especially section 4. See for instance: S v Tiry 2021(1) SACR 349 (SCA).

COMMISSIONER JUDGE H J FABRICIUS (r)

Duly appointed as Commissioner by the High Court of South Africa (Western Cape Division) under the case number 935/2021

Signed and sent electronically to karike@srhfinc.co.za

**Kruger van Dyk**

**From:** Hans Fabricius <hansfabricius46@gmail.com>
**Sent:** Sunday, 14 May 2023 09:29
**To:** Kruger van Dyk
**Subject:** Re: H BESTER N.O & 7 OTHERS / THE MASTER OF THE HIGH COURT & ANOTHER

Sent from my iPhone Good day and thank you for your e-mail with annexures,which I have read.I hereby give the consent sought for the purpose as requested.Signed and sent electronically.Judge H Fabricius(ret),

On 13 May 2023, at 14:32, Kruger van Dyk <krugervd@mbalaw.co.za> wrote:

<RSImage.jpeg>

Dear Judge Fabricius

We refer to the abovementioned matter, as well as the telephonic conversation between yourself and writer here earlier today.

As you are aware, SARS previously proved claims against the MTI estate, whereafter these claims were disputed by the joint liquidators of MTI.

We confirm that the matter has now been settled between the parties, subject to the endorsement of the High Court in terms of section 387(3) of the Companies Act, 61 of 1973.

Kindly find annexed hereto, for your attention and consideration, the following draft documents relating to the anticipated declaratory relief:

1. the notice of motion; and
2. the founding affidavit.

We understand you are currently travelling abroad. Kindly peruse the aforesaid draft documents and, should you b satisfied, grant our clients the necessary consent, in writing by way of return e-mail, to utilize your previous report in the anticipated application.

Should you require any further information, kindly contact writer hereof.

We trust you find the above in order and we thank you in anticipation.

Kind regards

KRUGER VAN DYK
Associate: Litigation

<RSImage.png>

t +27 (0) 21 914 3322 | f +27 (0) 21 914 3330
m 082 411 0140 | e krugervd@mbalaw.co.za
4th floor, Madison Square, Cnr of Carl Cronje &
Tygerfalls Boulevard, Tygerfalls, Bellville, South Africa | view map
PO Box 3355, Tyger Valley, 7536 | Docex 152, Cape Town

A level 1 contributor to B-BBEE

BEE Procurement recognition level 135%

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***Criminal syndicates may attempt to induce you to make payments due to Mostert & Bosman into bank accounts that do not belong to Mostert & Bosman. Fraud of this nature may be perpetrated using emails, letters or other forms of correspondence that may appear to have emanated from Mostert & Bosman. Before making any payments to Mostert & Bosman, please note the payment procedure set out hereunder.***

***The ABSA and FNB trust bank account of Mostert & Bosman is registered as a PUBLIC RECIPIENT with ABSA, Capitec, FNB, Investec, Nedbank and Standard Bank. All payments to these accounts are to be made via the PUBLIC RECIPIENT platform of your particular bank. Account details of these trust accounts have been pre-loaded and pre-approved by the aforesaid banking institutions. Kindly ensure the file reference reflected on this statement/invoice is used as payment reference. Should you not use any of the aforesaid banking institutions or should you have any difficulty to access the PUBLIC RECIPIENT platform, you are required to directly contact the attorney dealing with your particular matter to advise on an alternative procedure to obtain correct bank account details via a secured communication platform. Mostert & Bosman will not assume any liability should any payment be made to any account other than the registered Mostert & Bosman PUBLIC RECIPIENT accounts or to an account of which the details were not confirmed personally, or through an alternative secure platform as aforesaid.***

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**FINANCIAL SECTOR CONDUCT AUTHORITY**

**Investigation Report:**

# Mirror Trading International (Pty) Ltd & Cornelius Johannes Steynberg

**This is a draft investigation report issued by the Enforcement Division of the Financial Sector Conduct Authority and contains confidential information. No unauthorised person may read, duplicate, retain or distribute the contents of this report in any manner.**

Report by: Gerhard Van Deventer
Andrea Coetzer

FSCA

18 January 2021

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## EXECUTIVE SUMMARY

The report addresses the unlawful activities of Mirror trading International (Pty) Ltd ("MTI") and its senior management from April 2019 to August 2019 ("the first period"), from August 2019 to October 2020 ("the second period") and from October 2020 to December 2020 ("the third period").

### The First Period

MTI first started trading in April 2019. Members of the public were invited to move their Bitcoin from their Bitcoin wallets to MTI Bitcoin wallets. Steynberg was in full control of these MTI Bitcoin wallets. From the MTI Bitcoin wallet, the Bitcoin were transferred to FXChoice Ltd ("FXChoice"), a forex platform broker.

Steynberg testified under oath, that from April 2019 to July 2019, member trading accounts were linked to a professional trader appointed by MTI through a multi account manager arrangement linked to Meta Trader 4. Trading was conducted in derivative instruments based on forex pairs.

However, according to Steynberg MTI experienced substantial losses (of up to 80%), and as a result, MTI requested its members to delink their respective FXChoice accounts from the multi account manager account and move their bitcoin to a pooled account.

### The Second Period

From August 2019 Steynberg claimed that MTI employed a bot (high frequency artificial intelligence trading) together with a head trader and trading team to make all its trading decisions, with great success.

### What evidence we obtained with reference to the First and Second Period

The FSCA obtained evidence from FXChoice, a Belize registered on-line trading platform, that is in complete contradiction with the claims of Steynberg and Marks. According to FXChoice MTI's clients provided them with "trading statements" that were based on demo trading accounts and not actual trades. As a result, FXChoice froze the balance of the crypto assets linked to MTI on the FXChoice platform.

However, the total frozen crypto assets on FXChoice is a negligible amount, taking into account the total assets that MTI claimed it invested on behalf of its clients. In addition the little trading that was done resulted in a capital loss of approximately 30%.

This is in stark contrast to the repeated claims of MTI that they average trading profits of 10% per month. In addition, the trading volumes and amount of Bitcoin on the platform as provided by FXChoice falls far short from the volumes claimed by MTI.it is clear that the public claims by MTI senior management are false.

**The Third Period**

During October 2020, MTI claimed that it changed its trading activities to trade in derivative instruments based on Bitcoin, so that it no longer required an FSP licence (financial services provider licence). It is not correct as the submissions received from Steynberg revealed that the crypto assets were alleged to be traded in the form of a derivative product, which means MTI still required a licence from the FSCA.

MTI, Steynberg, and Cheri Marks claim that the trading activities of MTI were transferred from FXChoice to Trade300, transferring all the clients' crypto assets from FXChoice to Trade300.

According to Steynberg, Trade300 is another on-line trading platform. At Trade300 MTI experienced the same extraordinary profits utilising the bot – but at this stage trading in crypto derivatives.

Steynberg stated under oath and repeatedly in the press that the bot trading averaged a return of 10% per month, and that MTI has never had a negative profit trading day, but for one exception. Marks also repeatedly confirmed the trading successes on social media.

**What evidence we obtained with reference to the Third Period**

The FSCA followed all possible links on the internet to establish whether Trade300 existed. It could only find one reference to Trade300; i.e. the website of Trade300. However, the website was and still is "under maintenance", and the only reference linked to the website is the name of "Joe Steyn", a known alias of Steynberg.

The FSCA obtained search and seizure warrants and executed them at the homes of Steynberg and Marks, and the offices of MTI. On the desktop computer of Steynberg the investigation team found evidence of Steynberg having created the website of Trade300.

The evidence that MTI, Steynberg and Marks provided to the FSCA about the transfer of clients' assets from FXChoice to Trade300, is false.

We have found no evidence of any significant store of Crypto assets on any trading platform and that most crypto balances appear in the name and under control of Steynberg. The amount of such balances is well below the advertised balance on the MTI trading platform as being due to investors of MTI.

**Contravention of section 7(1) of the FAIS Act**

Section 7(1) of the FAIS Act prohibits any person from conducting financial services unless authorised to do so by the FSCA. MTI was conducting financial services with reference to a financial product (during the first and second periods, a derivative linked to forex pairs, and during the third period with reference to a derivative relating to Bitcoin). MTI required a category II licence (discretionary asset management).

MTI, through the activities of Steynberg and Cheri Marks, and with the assistance of others, conducted illegal financial services in contravention of section 7(1) of the FAIS Act for a period of at least 2 years.

This is a criminal offence.

Steynberg and Marks attempted to argue that MTI only receives Bitcoin from clients, and as Bitcoin is not a financial product yet, MTI are not conducting financial services as defined. (Financial services can only be conducted with reference to a financial product.)

This argument is not sound in law. During the first period MTI conducted financial services with reference to derivatives in forex pairs (a financial product). The method of payment is not relevant to the licence requirements. During the second period MTI conducted financial services with reference to CFDs in Bitcoin (a financial product). As before, the method of payment is not relevant to the licence requirements.

**What did MTI and Steynberg do with the clients assets**

Clients' assets were pooled into one FXChoice account alleged to be in the name MTI. However, the account at FXChoice was in fact in the name of Steynberg. More importantly, an immaterial amount of Bitcoin remained on the platform, and the trading history by no stretch of the imagination reflects their claims of extensive trading and extraordinary profits. In fact, the little actual trading that was conducted on the platform produced substantial capital losses.

According to MTI/Steynberg, these assets were moved to Trade300. This is a misrepresentation. No material amount of Bitcoin was moved out of FXChoice.

With reference to Trade300 it seems highly likely that it is a fabrication of Steynberg, and there is no evidence that the FSCA could find, or that MTI provided, of it being the source of any trading or any profits.

In summary, the evidence shows that very little of the clients' Bitcoin reached any forex or other trading platforms.

**THE LAYOUT OF THIS REPORT AND THE INVESTIGATION PERIODS**

1. We investigated the activities of MTI and its senior management from April 2019, when MTI commenced with its activities that we believe was unlawful, until December 2020. In broad terms the report addresses the unlawful activities from April 2019 to August 2019 ("the first period"), from August 2019 to October 2020 ("the second period") and from October 2020 to December 2020 ("the third period").

**INTRODUCTION**

2. On 1 July 2020 the Financial Sector Conduct Authority ("the Authority") received an anonymous complaint against MTI. In summary the complaint reflected that members of the public had been approached by some people that encouraged them to buy into a Crypto Currency multi-level marketing scheme ("an MLM") called Mirror Trading International (Pty) Ltd. Upon further investigation, the complainant noticed that MTI is not registered with the Authority. At the same time Brandon Topham was invited to a WhatsApp group discussing MTI, and realised it was unregistered. On 7 July 2020, the FSCA became aware that the Texas State Securities Board ("Texas SSB") issued

an Emergency Cease and Desist Order against MTI[1], Steynberg and 3 other individuals domiciled in the United States of America for offering securities for sale in Texas without being registered; fraud in connection with the offer for sale of securities; making statements that are materially misleading or otherwise likely to deceive the public; and their conduct, acts and practices threaten immediate and irreparable harm.

3. As a result, and on 13 July 2020, an investigation was instructed to investigate possible contraventions of financial sector laws by Mirror Trading International (Pty) Ltd ("MTI") and Mr Cornelius Johannes Steynberg ("Mr Steynberg"), identity number 830713 5016 088.

4. The persons mentioned in **Appendix "1"** were instructed (in terms of section 135(1)(a) of the Financial Sector Regulation Act, 9 of 2017, ("the FSR Act") to conduct the investigation.

5. This report reflects the material findings of the investigation.

## THE FINANCIAL SECTOR CONDUCT AUTHORITY AND ITS MANDATE

6. The FSCA came into existence on 1 April 2018 with the advent of the so-called "Twin Peaks" model of regulation introduced by the FSR Act during 2017. The Authority, which is one of the "peaks", the other being the Prudential Authority contained in the South African Reserve Bank, took over the functions of regulating and supervising the conduct of financial institutions previously performed by the Financial Services Board ("FSB").

7. The main objectives of the FSCA include enhancing and supporting the efficiency and integrity of financial markets, protecting financial customers by promoting their fair treatment by financial institutions and assisting in maintaining financial stability.

8. The FSCA is also tasked with ensuring that persons do not conduct the business of a financial institution or a financial services provider without being authorised (licenced) to do so. Unregistered financial services business is prohibited and criminalised by the different sectoral Acts.

[1] Attached as Annexure A a copy of the Cease and Desist Order.

9. As part of the supervision effort, the Enforcement Division of the FSCA has a statutory mandate to conduct investigations into possible contraventions of financial sector laws. Such investigations are conducted in terms of section 135 of the FSR Act. If the FSCA has reason to suspect that a financial sector law has been contravened, it may instruct an investigation.

**APPLICABLE LEGISLATION AND CONTRAVENTIONS**

10. Of particular relevance to this matter, is section 7(1) of the FAIS Act that prohibits a person from rendering financial services without a licence issued by the FSCA. Conducting such business without being licensed is a criminal offence.

11. The FSCA, acting as gatekeeper, determines who may be licensed and continue to be licensed to render financial services. It does so with reference to the advisory and intermediary services rendered by providers mainly with reference to predetermined categories of financial products defined in the FAIS Act.

12. The licensing of FSPs is designed to promote competence and high standards of conduct and build investor confidence in the financial services industry.

13. FSPs who wish to conduct a financial services business are required to satisfied prescribed fit and proper requirements. Currently those requirements are set out in board notice 194 of 2017 and encompass personal character qualities of honesty and integrity, competence, continuous professional development, operational ability and financial soundness.

14. All authorised FSPs and representatives are subject to a General Code of Conduct published in Board Notice 80 of 2003 ("the General Code"). The General Code is a comprehensive standard setting code prescribing the minimum requirements that FSPs and representatives must comply with when rendering financial services.

15. It contains provisions relating to disclosures that must be made, information to be obtained, and avoidance of conflicts of interests and the undertaking of an analysis of information to provide clients with advice.

16. The General Code, in Section 2, imposes a duty on all FSPs to always render financial services honestly, fairly, with due care and diligence and in the interests of clients and the integrity of the financial services industry.

17. The FAIS Act is therefore aimed at ensuring that financial services are rendered by persons who:

17.1. are honest and have integrity;

17.2. are competent;

17.3. have adequate resources; and

17.4. have adequate risk management processes including those related to protecting clients against fraud.

18. Also of relevance to this matter is Section 2 of the Regulations to the Financial Markets Act 2012, which states that a person may not act as an Over-The-Counter ("OTC") derivative provider; or advertise or hold itself out as an OTC derivative provider unless authorised by the Authority in terms of section 6(8) of the Act.

19. In terms of the Financial Markets Act 2012, "OTC derivative provider" means a person who as a regular feature of its business and transacting as principal, originates, issues or sells OTC derivatives; or makes a market in OTC derivatives.

20. Finally, Section 111 of the Financial Sector Regulation Act 9 of 2017 is applicable in this matter. Section 111 states that a person may not provide, as a business or part of a business, a financial product, financial service or market infrastructure except in accordance with a licence in terms of a specific financial sector law, the National Credit Act or the National Payment System Act; or if no specific financial sector law provides for such a licence, in accordance with a licence in terms of this Act.

21. A contravention of section 111 is a criminal offence.

22. We will explain later in the report how the investigated parties contravened section 7(1) of the FAIS Act; Section 2 of the Financial Markets Act and Section 111 of the Financial Sector Regulation Act during every phase of their operations.

## THE INVESTIGATED PARTIES

### Mirror Trading International (Pty) Ltd

23. MTI is a private company incorporated and registered in accordance with the company laws of the Republic of South Africa with registration number 2019/205570/07.

24. The records of the Companies and Intellectual Properties Commission ("the CIPC") reflects that the sole director is Mr Cornelius Johannes Steynberg ("Steynberg"), identity number 830713 5016 088. Mr Frederik Coenraad Rademan, identity number 791005 5051 083, was previously registered as a director of MTI; however, he resigned on 16 May 2020.

25. A shareholder agreement, with commencement date reflected as 1 January 2020, was entered into between Cornelius Johannes Steynberg and Clynton Hugh Marks on 28 August 2020. In terms of the agreement, MTI has an issued share capital of 1000 shares of which 500 shares were issued to each of the two shareholders. It was further agreed that the MTI bank account will be funded on a 50% / 50% basis by the two shareholders and that the shareholders will also appoint a board of directors to be responsible for the day-to-day management of MTI. (**Annexure B**)

26. The registered address on the CIPC records is 43 Plein Street, Unit 1, Ground Floor, Stellenbosch, Western Cape, 7600. The website of MTI lists a further address, being 341 Beyers Naudé Dr, Northcliff, Randburg, Gauteng, 2115. MTI has an additional "satellite" office at 196 Main Road, Strand, Western Cape, operated by Gerald Lassen and his wife Liz Lassen.

27. According to Steynberg the Stellenbosch office is the administration and support office.

28. MTI has the following contact details:

    28.1. Website: www.mirrortradinginternational.co.za and www.mymticlub.com

    28.2. Email: mtisouthafrica@gmail.com

    28.3. Telephone: 073 986 4466

29. It is extraordinary that MTI seems to have no bank accounts, but for a Standard Bank account that was closed by the bank on 16 November 2020. This bank account's record reflects only limited volume and low value transactions.

**The Board of MTI**

30. On MTI's website a report on the "MTI Strategic Conference 2020" was made available. This report references the following as the "Board of Directors" of MTI:

    Johann Steynberg

    Clynton Marks

    Charles Ward (Non-Exec)

    Monica Coetzee (Non-Exec)

31. In the same report, the Management was stated to be the following, with roles as indicated below:

| | |
|---|---|
| Johann Steynberg | Head of Technical & Research and Development Department |
| Clynton Marks | Head of Referral Program and Members |
| Charles Ward | Head of Strategy Implementation |
| Monica Coetzee | Head of Corporate Services |
| Romano Samuels | Head of Member Support |
| Cheri Marks | Head of Communications and Marketing |
| Vincent Ward | Head of International Expansion |
| Leonard Gray | Head of Legal Department |

32. On 28 September 2020 it was announced by Steynberg that non-executive director Charles (Charlie) Ward had been appointed as the new COO of MTI as he had been a key role player in the implementation of strategies in MTI at management level.

33. We conducted two interviews with Steynberg on 20 July 2020 ("the July interview") and on 11 August 2020 ("the August interview"). Both interview transcripts are attached as **Annexure "C"** and **"D"**. During the July interview with Steynberg and his consultant Mr Tom Fraser ("Fraser"), Steynberg provided details on the management and Board of MTI, which had been appointed approximately 2 weeks before the interview. [2]

34. When probed regarding the background and qualifications of each of the abovementioned directors, Steynberg confirmed that Clynton and Cheri Marks are network marketers; Charles Ward (who was apparently only added a week prior) had worked as a brand manager for Dischem for 15 years; and Monica Coetzee (whose first name Steynberg struggled to remember off-hand) had administrative experience. Mr Usher Bell ("Bell") was the previous COO. Steynberg stated that Bell resigned due to personal health reasons.

35. Steynberg himself has no experience in providing financial services or trading in Forex derivatives, except for his own account.

36. It was of some concern to the FSCA that there was a complete lack of appropriate and relevant qualifications and experience with reference to the Board. Given the very recent appointments to the board, it seemed as if the Board was established to assist MTI to appear more legitimate.

37. None of the directors have any cryptocurrency, financial or forex experience, other than Steynberg and even so, his experience is solely on a level of personal trading. Steynberg and Fraser did state that they had not yet filled the position of Chairman of the Board and that this position would be filled by someone with the correct knowledge and experience, however, as there is no proof to this effect these statements cannot be relied on.

**Cornelius Johannes Steynberg**

38. Steynberg stated that he was the CEO and in control of MTI.

39. Steynberg has experience in IT; Software; Computer Programming and Network Marketing. He completed a Microsoft Certified Solutions Developer and certification in

[2] See Annexure C page 12 line 28 to page 18 line 6

C Sharp ("C#") in 2001. Steynberg has no forex trading experience other than conducting forex trading for himself.

40. Throughout the report we will show how Steynberg provided false information to the investigators on many occasions.

41. Mr Steynberg is married to Nerina Steynberg, who is also a member of MTI.

**Mrs Cheri Marks**

42. Mrs Marks is married to Clynton Hugh Marks and they currently reside in KwaZulu-Natal. Steynberg confirmed during the second interview that he requested Mrs Marks to also attend the interview to assist him to answer questions by the Authority in respect of MTI[3].

43. The main role of both Marks' was focused on the multilevel marketing.

**The Role of Fraser**

44. Mr Tom Fraser attended the first interview with Steynberg. His role at the interview was clearly to convince the FSCA that Steynberg is beyond reproach and that he is running a lawful, and financially viable operation. It was astonishing how uninformed about the true state of affairs Fraser was, or acted. He was by his own admission uninformed about any of the many compliance issues in the industry.

45. During the search and seizure, the FSCA also discovered a partnership agreement signed on 24 June 2019 between Mr Steynberg, Mr Fraser and Mr Dylan Wentzel to leverage and exploit the combined experience and skill set of the partners to effectively and successfully trade forex and related instruments on the world markets[4]. In terms of this agreement, Mr Fraser was responsible for strategy, governance and business development.

**Mr Clynton Marks**

46. Mr Clynton Marks ("Mr Marks") is the husband of Mrs Marks. Prior to them relocating to KwaZulu Natal he managed and was in control of the Johannesburg Office of MTI.

[3] See Annexure D page 13 lines 4 to 7
[4] Attached as Annexure E

**Mr Charles Ward**

47. Mr Charles Ward is the brother of Mrs Marks. He managed and was in control of the MTI office in Stellenbosch, the so-called head office of MTI.

**THE BUSINESS OF MTI: – APRIL 2019 TO JULY 2019 ("THE FIRST PERIOD")**

**Alleged trading on the FXChoice platform**

48. During the first interview with Steynberg, he confirmed that MTI first started trading in April 2019. Steynberg explained that members register on the MTI website, and move their Bitcoin from their Bitcoin wallet[5] to MTI Bitcoin wallets opened by MTI. Steynberg was in full control of these MTI Bitcoin wallets.

49. From the MTI Bitcoin wallet, the Bitcoin were transferred to MTI's forex platform "broker of choice" by the name of FXChoice Ltd ("FXChoice")[6]. At FXChoice the Bitcoin were deposit into an account in the name of Steynberg (not in the clients' names) and placed into "cold storage" (an off-line storage to improve security).

50. The Dollar value of that Bitcoin is then made available for trading by a liquidity provider that enables MTI (effectively Steynberg) to trade to the same value on FXChoice.

51. We interpose to briefly explain the operation of the platform and CFDs.

52. In short, the platform operates (like most platforms) by providing a trading service that enables clients to enter into (forex) derivative contracts on the platform. The platform is operated utilising an off-the-shelf software product (Metatrader4) that records and tracks transactions of clients and provides a full back office function.

53. The actual financial product being traded is not foreign currency (forex), but rather a Contract for Difference ("CFD") in a forex pair. This means that traders are exposed to

[5] A Bitcoin wallet refers to a software programme in which Bitcoins are stored. For every person who has a balance in a Bitcoin wallet, there is a private key or secret number corresponding to the Bitcoin "address" of the wallet. It enables the owner to "unlock the Bitcoin".

[6] FXChoice is a Belize registered International Business Company that provides a trading platform for its clients.

a currency moving in a specific direction, with reference to another currency, e.g. the Euro strengthening against the Dollar.

54. In simple terms the client is "betting" that the currency will strengthen or weaken. No real currency trading is taking place, hence the term "derivative". This is a well-established financial product and trading model and is accepted world-wide. It is however a high-risk trading/investment option. Whilst good returns could be made, massive losses are also common.

55. We now return to the explanation of Steynberg. According to Steynberg, when MTI was established in April 2019 MTI entered into a profit share agreement with one "Quinton", who is apparently a professional trader. Steynberg claimed that Quinton conducted all the trading on behalf of all members, utilising an FX Choice multi account manager ("MAM") account linked to Meta Trader 4.

56. A MAM account is a reference to a multiple account manager. In short it is a function in terms whereof the trading account of one trader is linked to numerous other accounts. This has the effect that the trading done on the main account are copied or mirrored on the secondary accounts, either directly or in a specified ratio (also referred to as copy trading or mirror trading).

57. This meant that the trades conducted by Quinton were replicated on all linked MTI member accounts. According to Steynberg, this proved to be unsuccessful and resulted in MTI and its members incurring losses of up to 80%.[7]

58. During mid-July 2019, MTI informed their members that there were issues with the traders which resulted in losses. To recover members' funds, members willing to continue with MTI were requested to delink their respective FXChoice accounts from the MAM account and move their bitcoin to a pooled account.

59. It is therefore expected that there would have been a MAM account structure in place at FXChoice for MTI with numerous client accounts linked to the traders' accounts. We contacted FX Choice who provided information on all the trading on its platform linked to MTI.

[7] See Annexure C page 30 line 31 to page 31 line 5

60. FXChoice confirmed that Steynberg did operate a MAM account in 2019, with Cheri Marks and Clynton Marks, among others, having sub accounts connected to this MAM. The MAM account meant that Steynberg did not have access to his clients' funds; they were under the control of the sub account holders and could be withdrawn, at any time, directly back to the client without any input from the manager. Steynberg's performance on the MAM account was poor, losing significantly. The sum of 50.95 bitcoin was deposited to that MAM and MTI lost 22 bitcoin. His clients, who are the owners of the sub accounts, consequently, withdrew the remaining funds. That was the last time Mr Steynberg traded with the MAM account.
61. It is therefore clear that the clients' assets were not traded or lodged with FXChoice, and neither is it possible that the FXChoice trading can explain the extraordinary returns claimed by MTI (discussed later in the report).

**Possible trading through IFX Brokers**

62. On 2 July 2019, Steynberg entered into discussions with Mr Pieter de Necker, CEO of IFX Brokers, to engage their trader and Expert Advisor (Bot) to recover some of the losses. We found some evidence of Steynberg having engaged IFX Brokers on the forensic image obtained of Steynberg's personal iPhone, during the execution of a search warrant at the home of Steynberg.

63. Although Steynberg transferred some funds to IFX Brokers, the trading relationship with IFX Brokers ran its course by end of August 2019. (**Annexure F**). We obtained evidence from IFX Brokers; in short Steynberg was an IFX Brokers client since 5 April 2019. Steynberg has only 1 active account 21065346, which has a low balance. All other accounts have been archived. This aspect did not warrant further investigation.

64. It seems to be common course that trading through IFX Brokers cannot explain the extraordinary returns claimed by MTI (discussed later in the report) and that the clients' assets were not traded or lodged with FXChoice.

**THE BUSINESS OF MTI:– AUGUST 2019 TO OCTOBER 2020 ("THE SECOND PERIOD")**

**MTI trading conducted on the FXChoice platform**

65. From August 2019 the arrangement changed. According to MTI there was no longer a "professional trader" trading on behalf of the members. Instead MTI had an "expert

advisor", being a bot (artificial intelligence) that executed all transactions. Trading still took place on the FXChoice platform.

66. According to Steynberg the bot was referred to as "MTI v2" and was programmed (created) by Mr Keith Badenhorst ("Badenhorst"), a friend of Steynberg whom he knew from the Polokwane Golf Club.

67. In addition to the bot there was allegedly a team of traders working for MTI to maintain the bot regularly and attend to support queries. These traders get paid 25% of MTI's profits.[8]

68. When questioned[9] regarding the names of the traders Steynberg informed the FSCA investigators that there is a Head Trader and a team of traders' underneath him. Steynberg stated that Badenhorst is the Head Trader. Steynberg further stated that only Badenhorst has access to the trading statements, and that on the date of the second interview where MTI showed the FSCA their trades, this was specifically arranged in advance, as Steynberg has no access to these trading statements.

69. Steynberg stated that Badenhorst had programmed (amended) the bot as early as a couple of months before the search and seizure date.

70. The FSCA interviewed Mr Badenhorst on two occasions (**Annexure G**). His version is completely at odds with the evidence provided under oath by Steynberg. According to Badenhorst he is a friend of Steynberg from the Polokwane Golf Club. He also confirmed he is the creator (programmer) of the bot and that he sold it to Steynberg.

71. However, that is where the similarities in the evidence ends. Badenhorst stated that he amended the programme once or twice but that it was a long time ago. He is not involved in MTI in any manner and specifically not as its Head Trader.

72. MTI, Steynberg and Cheri Marks have repeatedly claimed that the bot trading generates exceptional returns; according to them the bot averages a return of 10% per month on its trading. They also stated that MTI have never closed out a trading day in a loss position, except for one trading day.

[8] See Annexure C page 25 lines 26-28
[9] During the search and seizure at his premises on 26 October 2020

73. FX Choice also stated that in 2019 a total of 50.95 Bitcoin was deposited to the MAM account of MTI and that MTI lost 22 of the Bitcoin. MTI's clients withdrew what was left of their funds, bringing activity on that account to a close. No funds remained before MTI opened a new live account in 2020.

74. FX Choice painted a completely different picture of the MTI trading on its platform. According to FX Choice, the account of MTI suffered material capital losses for the time that MTI traded on the platform. MTI put in 1846.72 Bitcoin from 29 January 2020 until 3 June 2020 in account number 174850 and made a loss of 566.68 Bitcoin, an approximate capital loss of 30%. We attach the affidavit from FXChoice as annexure **"H"**

75. To be specific, the remaining balance of live account #174850 is 1,280.045 Bitcoin.

76. This is a total contradiction of the unrealistic returns presented by MTI to the public and the FSCA of an average return of 10% per month and no losses on any trading day.

77. On MTI's website, www.mymticlub.com, on its "overview" page, MTI specifically states: *"At this point the trading is realising a profit of about *10% a month, but this is a conservative quote and in reality, the profits may be higher. We like to understate rather than promise the moon!"*

78. During the second interview, Steynberg once again confirmed under oath his claim of a constant 10% per month profits and the single negative trading day.

79. This is a clear and material misrepresentation to the public, the clients of MTI and the FSCA.

**Evidence of significant profits by MTI**

80. During the August 2020 interview, Steynberg and Cheri logged onto the MTI platform and showed the FSCA positive returns and high number of transactions executed on the platform. This was to convince the team that MTI indeed utilised the funds for forex trading, and that the unrealistic returns of 10% per month referred to above existed.

81. We presented the trading records received from Steynberg and Cheri Marks to FX Choice. FX Choice made it clear that those records were not correct. In fact, they pointed out that it is impossible for such trading to have occurred on their platform. They also illustrate the very high likelihood that MTI used demo trading records to falsify the evidence. We deal with their evidence below.

**False statements provided to MTI clients**

82. On 8th June 2020 some of the MTI clients provided FXChoice with account statements that they have received from MTI. They were raising unrelated queries with FXChoice. The trades shown in the MTI accounts did not correlate with the live trades made on the live account of MTI (174850). In addition, FXChoice noticed that MTI placed several manual trades from a mobile device on the Live account, meaning MTI were not only using artificial intelligence to trade.

83. FXChoice explained that MTI were manipulating the results of a Demo account and presenting the data as the results of live trading to their clients.

84. Demo accounts (demonstration accounts) are offered by nearly all platform brokers, including FX Choice. They work in precisely the same way as a live account, except that the trading is not real. If a client loses all the funds in a demo account, they simply top it up by entering a new balance.

85. Demo accounts are essentially created for new traders to learn the ropes in forex derivative trading, and advance traders use them to develop strategies. The demo trading environment mimics live trading as closely as possible for traders to see the same prices as they would in the live account.

86. The belief of FXChoice that MTI was utilising demo account transactions to falsify client statements, is based on *inter alia* the following:

    86.1. the trades on MTI's statements correlated with their demo trades (as explained more fully below); and

    86.2. the MetaTrader4 trading platform could not use a lot size to 5 decimal places, as appeared on the client statements.

87. According to FXChoice MTI was presenting profitable demo trades whilst deleting some of the loss-making trades and presented the results as actual transactions. In addition, MTI had to adjust the 'lot size' in accordance with a client's account balance. For this reason, the client statements showed lot sizes of 0.00019 and 0.00018, that is not possible on the platform operated by FXChoice.

88. FXChoice requested MTI for clarification on the appearance of demo trades on the account statements of the clients of MTI. In response MTI claimed that only 15-20% of the funds were in FXChoice at that time. MTI further claimed that the remaining balance was with other brokers, so those trades (from MTI client statements) were placed on another platform.

89. This seems like a recent fabrication by MTI to reply to an uncomfortable question from FXChoice. We say this because it is contrary to the version MTI placed before the FSCA (**Annexure I**)[10]. MTI informed the FSCA that it transferred the full 16 444 Bitcoin from FXChoice to Trade300 in 4 instalments on 21 July 2020; 22 July 2020 and 24 July 2020 respectively.[11]

90. It also does not explain why demo transactions appeared on the account statements of clients.

91. It seems therefore that MTI provided falsified statements to its clients.

**Further evidence of misrepresentation of the FXChoice account statements of clients (& misrepresentations of trading volumes)**

92. A client account was featured on a YouTube video recorded by the user "Crypto Analyzer" which was discovered by FX Choice. MTI's Demo account number is 260302. On the video, FX Choice noticed the order number 57662695 in the chart area, which allowed them to locate the Demo account quickly in their records. The account statement showed tens of thousands of orders from 2 September 2019 to 7 August 2020. Crypto Analyzer's video clearly shows a Demo trade being executed on

[10] See Annexure I, being the response from MTI's attorneys Ulrich Roux dated 7 October 2020, at paragraphs 3.5 and 3.6

[11] See I at paragraphs 3.9 – 3.11

a Live account – those two pieces of information are mutually exclusive, so the account statement was certainly tampered with.

93. FX Choice found that if you subtract 11110000 from the MTI order number, you will get the FXChoice Demo order number. MTI tried to redact the pertinent identifying details of the account, but they forgot to redact the information on the chart area. MTI were manipulating the order numbers, so they were not easily verifiable.

94. As for the lot sizes, FX Choice discovered that the profit (loss) number was 174908 times lower than on the client statement. So, FXChoice divided the lot size (31.35) by that same number and came out with 0.00018 lots, which is clearly visible on the MTI statement. That's how MTI are calculating the extraordinary lot sizes.

95. The same pattern is borne out if the trading volumes of MTI are considered. MTI claims to have executed, on average, between 300 and 500 different trades daily on its live account at FXChoice[12].

96. Statements from FXChoice reflected, however, that MTI's live account had a total of only 74 buy/sell trades for the period 31 January 2020 to 3 June 2020. On the version of Steynberg, the number of trades, as an absolute minimum, should have been at least 37,200.

97. MTI's demo account, however, reflected tens of thousands of trades over the same period.

98. This further supports the evidence that MTI has repeatedly misrepresented the true state of its trading to its clients and the FSCA.

99. On 10 June 2020, at 21:00 server time (GMT + 3) as MTI's last trade was closed, FXChoice blocked the trading on their Live account (174850). On 7 August 2020 FXChoice marked the account as 'fraud', which means that they could no longer access any of their Live or Demo accounts, or even their Backoffice profile.

[12] See Annexure C page 45, lines 32-33.

**The FIBO Group Trading Platform**

100. During the first interview with Mr Steynberg on 20 July 2020, he stated: *"Well we are actually using two brokers now. The one is FX Choice the other is Fibo Group … the one I think is in the UK, Fibo Group …"*[13]. (Our underlining)

101. During the second interview, we asked Mr Steynberg about trading with FIBO. He confirmed that MTI conducted some trading with FIBO: - *"Op FIBO het ons so bietjie getrade, ek dink in Juniemaand dalk begin daar, maar daar was nooit groot bedrae nie."* ("We traded a bit on Fibo, I think we started in June, but it was never big amounts.")[14].

*102.* However, in a letter from MTI's attorneys on 7 October 2020[15], we were informed that "*…the reference made to FIBO Group was not made in error and was provided to the FSCA in full disclosure of all brokers MTI considered using. Although MTI considered using the FIBO Group, they were never formally mandated to hold any bitcoin on behalf of MTI".*

103. This constitutes a clear contradiction between what Steynberg testified under oath, and what Ulrich Roux Attorneys communicated shortly thereafter.

104. We established from FIBO that Steynberg had in fact registered two live trading accounts on 12 June 2020 in his personal name. The two trading accounts have the following balances (as at 13 October 2020):

Account No. 5028385: 0.17121 Btc

Account No. 5028047: 6.12258 Btc

105. According to FIBO it was only ever Steynberg's broker and not the broker of MTI at any stage.

[13] See Annexure C page 24 lines 11 – 19
[14] See Annexure D page 32 lines 2 – 4
[15] Annexure I

**THE BUSINESS OF MTI: – OCTOBER 2020 TO DECEMBER 2020 ("THE THIRD PERIOD")**

106. During the second interview with Steynberg on 11 August 2020, he stated that MTI has two trading accounts with Trade300, which is registered in Nevis, St Kitts. He stated that MTI now only uses Trade300.

107. We received a letter from the attorneys of MTI and Steynberg, Ulrich Roux and Associates ("Ulrich Roux"), dated 7 October 2020 (Attached as **Annexure "I"**).

108. The letter recorded that *"MTI only use one broker for their member trading, namely Trade300. Since August 2020, MTI utilised the services of FX Choice and Trade300 for purposes of trading member bitcoin. During August 2020, MTI moved all member bitcoin to Trade300 and continues to utilise this account. MTI no longer makes use of FIBO Group as a broker and is only using Trade300"*[16]. (our underlining)

109. It therefore stands to reason that the entire client asset base of at least 22 600 Bitcoin[17] should be on record with Trade300. We therefore made every effort to contact Trade300 to confirm the version of MTI/Steynberg, and specifically that the clients' assets are indeed committed to the platform.

110. During the interview under oath Steynberg was vague about Trade300. According to him, MTI moved to Trade300 *"... a couple of weeks back ..."* but could not recall the date. When asked why MTI decided on Trade300, Steynberg stated that someone referred him to them; and that they prefer to use a broker that is unregulated so that there is no risk to clients of their funds being frozen, as in the case of FX Choice.

**Does Trade300 exist as an independent derivative trading platform**

111. Because of Steynberg's insistence that the clients' assets are lodged and traded with Trade300, the investigation team attempted to track down Trade300. There is no reference or search results of any value on the internet, and we were unable to find and contact details for Trade300 either.

[16] See annexure I at paragraphs 3.5 and 3.6

[17] As quoted by MTI in their November 2020 Bit Bulletin on page 2

112. We conducted a Google search on and followed a link to a website that appears to be that of Trade300. Once opened, it simply reflects *"Trade300 is currently under maintenance"*. On the website there is a reference to "Joe Steyn" being the identity of the creator of the website.

113. Steynberg admitted that he sometimes uses the name "Joe Steyn" as an "alias".

114. On 2 December 2020, the investigation team uncovered email evidence on the forensic image obtained from the desktop computer in Steynberg's home office utilised as a server. The evidence is summarised as follows **(Annexure J)**:

114.1. An email trail between info@perspectivity.com and johann@jnxonline.co.za (an e-mail address of Steynberg) in which Steynberg is requesting the registration of the domain Trade300[18]. The email trail commenced on 12 July 2020 when Steynberg sent his name and email address and made an offer of USD 6,500.00. The email trail ends on 15 July 2020 where info@perspectivity.com requests Steynberg to send USD 1,500.00 for Trade300.com on PayPal at orha007@gmail.com. For brevity purposes the screenshot of the last part of the conversation is reflected immediately below:

**Sent:** Wed, 15 Jul 2020 12:39:12 +0000
**From:** info@perspectivity.com
**To:** Johann Steynberg <johann@jnxonline.co.za>
**Subject:** Re: New Domain Request

Its impossible to change. We can just delete it.

We can start with paypal, but I have limit overthere.

ok send me 1500 usd for Trade300.com on paypal at orha007@gmail.com
after that w will continue with second name and then third.

Thanks

On 2020-07-15 05:25, Johann Steynberg wrote:

[18] JNX Online is a business owned by Steynberg and Nerina Steynberg.

114.2. On 19 July 2020, an email sent from donotreply@godaddy.com to Steynberg (johann@jnxonline.co.za) informing him that the domain ownership had been updated. The contents of the email are reflected immediately below.

**Sent:** Sun, 19 Jul 2020 12:55:06 -0700
**From:** GoDaddy <donotreply@godaddy.com>
**To:** johann@jnxonline.co.za
**Subject:** We've updated the domain ownership info.

24/7 Support. +1 (480) 505-8877
CJ Steynberg — Customer Number 77796183

**The domain ownership update is complete.**

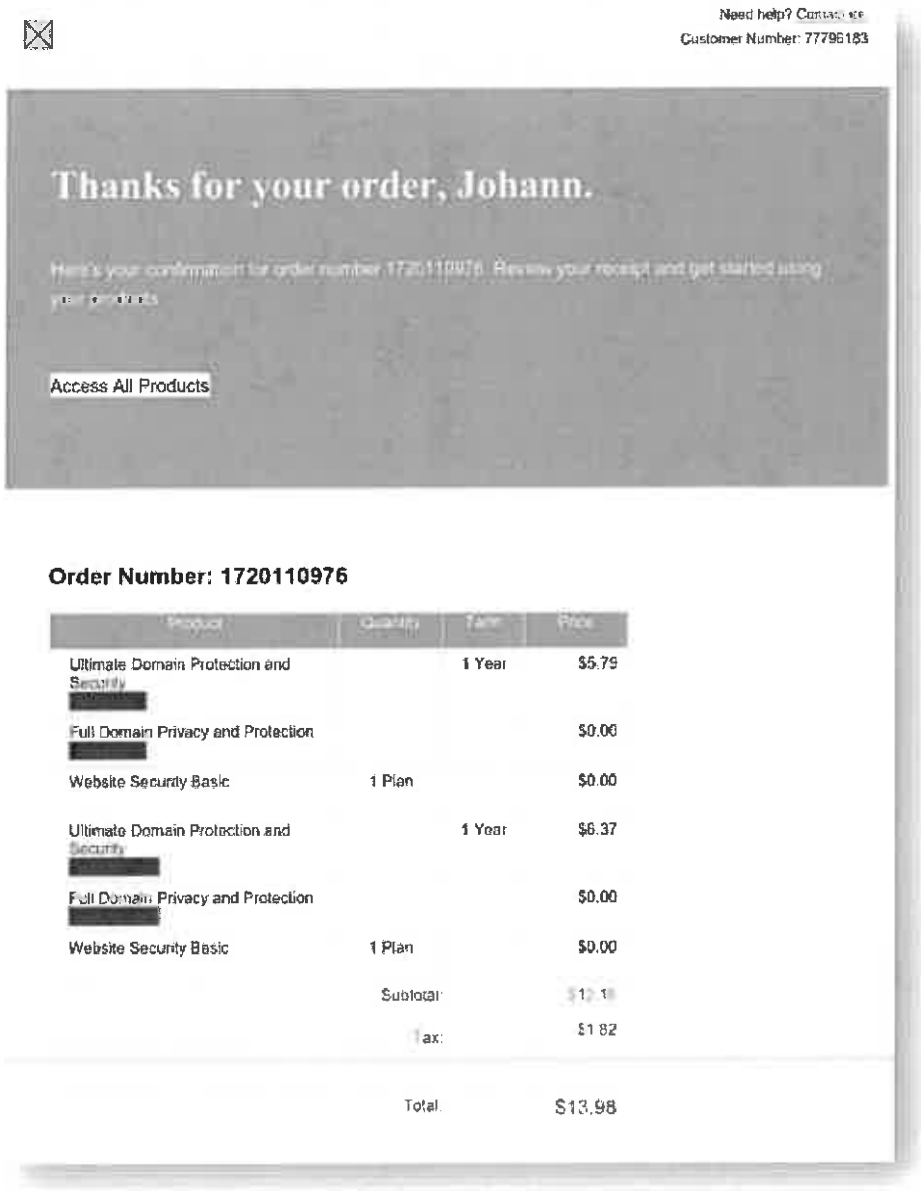
This applies to the following domain(s):

**trade300.com**

**Important:** The previous owner opted out of the 60-day inter-registrar transfer lock so you can move the domain(s) any time.

114.3. The email evidence above reflects that Steynberg is the domain owner of trade300.com.

114.4. Another email sent from donotreply@godaddy.com to Steynberg (johann@jnxonline.co.za) thanking him for the order. Although the email is undated, it states at the bottom that prices are current as of 27 July 2020. The contents of the email are reflected below:



Need help? Contact us
Customer Number: 77796183

Thanks for your order, Johann.

Here's your confirmation for order number 1720110976. Review your receipt and get started using your products.

Access All Products

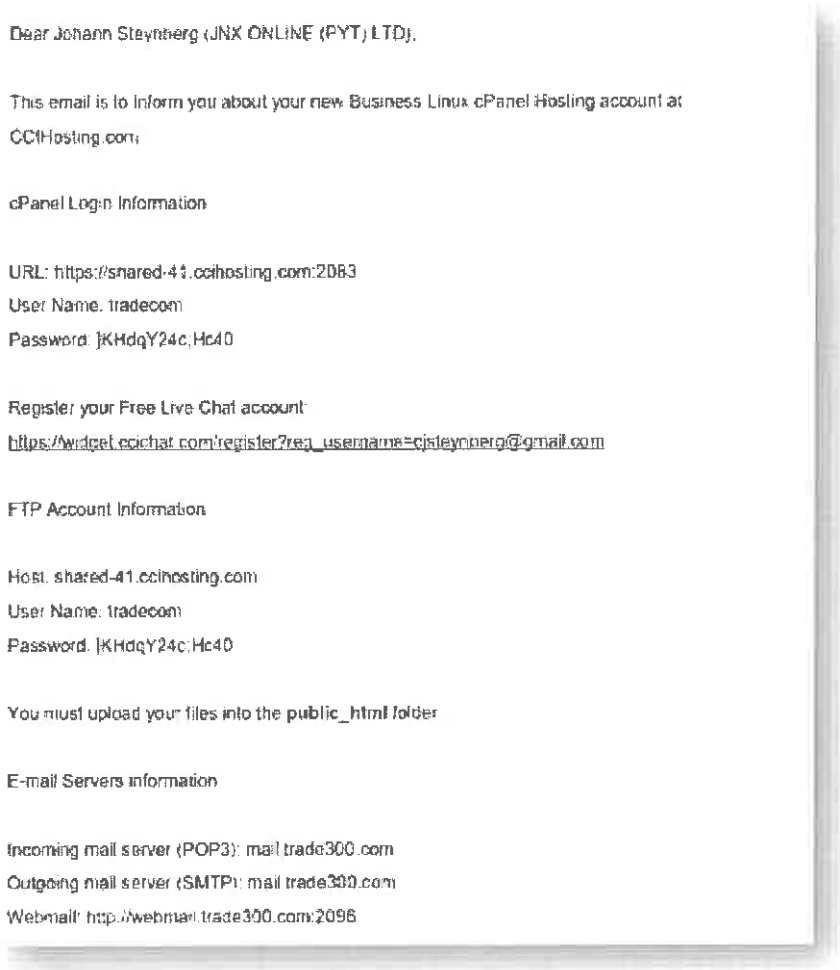
**Order Number: 1720110976**

| Product | Quantity | Term | Price |
|---|---|---|---|
| Ultimate Domain Protection and Security [redacted] | | 1 Year | $5.79 |
| Full Domain Privacy and Protection [redacted] | | | $0.00 |
| Website Security Basic | 1 Plan | | $0.00 |
| Ultimate Domain Protection and Security [redacted] | | 1 Year | $6.37 |
| Full Domain Privacy and Protection [redacted] | | | $0.00 |
| Website Security Basic | 1 Plan | | $0.00 |
| | Subtotal: | | $12.16 |
| | Tax: | | $1.82 |
| | Total: | | $13.98 |

114.5. The email above shows a payment that was made for domains fxvista.com and trade300.com by Steynberg.

114.6. A further (undated) email sent from support@ccihosting.com to cjsteynberg@gmail.com with subject "**Your new Business Linux cPanel Hosting account at CCIHosting.com is ready (Order: 37687)**" was also found on the desktop computer in Steynberg's home office utilised as a server. The email was addressed to *"... Johann Steynberg (JNX ONLINE (PTY) LTD)"*. The contents of the email include login information to the CCIHosting control panel, amongst other things it also contained the email server information.

114.7. This means that any email address registered on the Trade300.com domain has to be added to that domain by Steynberg. The content of the email is shown in the screenshot below:



Dear Johann Steynberg (JNX ONLINE (PYT) LTD),

This email is to inform you about your new Business Linux cPanel Hosting account at CCIHosting.com:

cPanel Login Information

URL: https://shared-41.ccihosting.com:2083
User Name: tradecom
Password: }KHdqY24c;Hc40

Register your Free Live Chat account:
https://widget.ccichat.com/register?reg_username=cjsteynberg@gmail.com

FTP Account Information

Host: shared-41.ccihosting.com
User Name: tradecom
Password: }KHdqY24c;Hc40

You must upload your files into the public_html folder

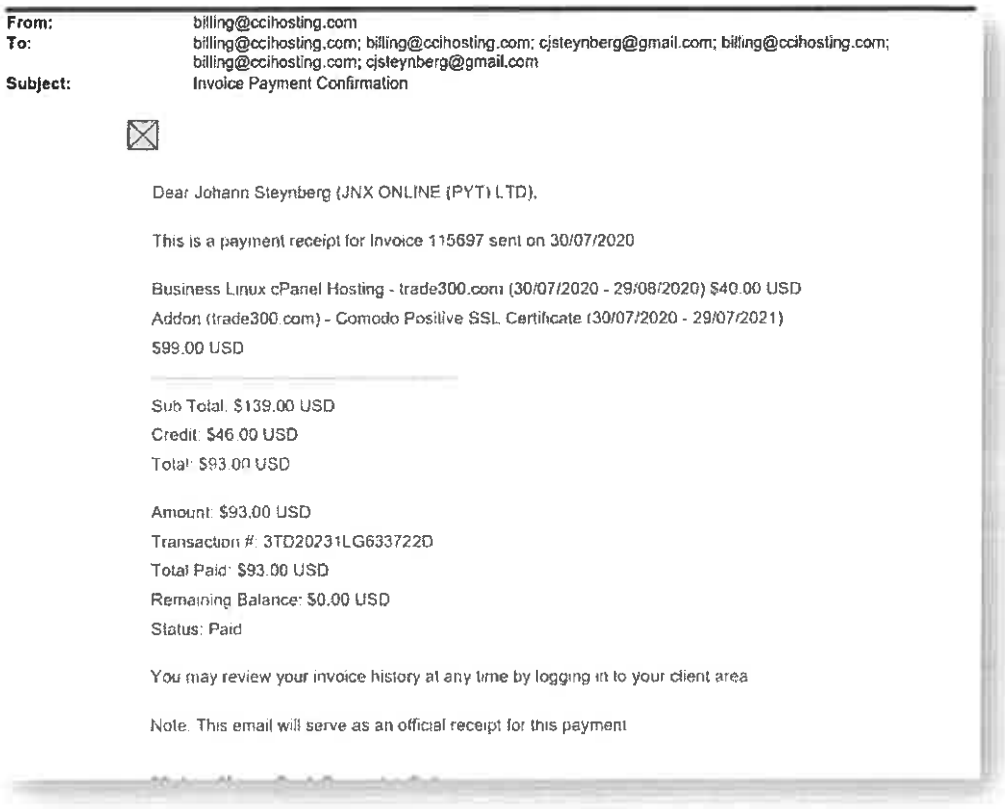
E-mail Servers information

Incoming mail server (POP3): mail.trade300.com
Outgoing mail server (SMTP): mail.trade300.com
Webmail: http://webmail.trade300.com:2096

114.8. The investigation team also conducted an Open-Source Intelligence ('OSINT') investigation to determine the identity of CCI Hosting. It was found that they are a cloud hosting service provider based in Panama and their key selling point is as per the screenshot below:


114.9. This would have been attractive for a person attempting to conceal his identity and association with the Trade300 domain.

114.10. An undated email sent from billing@ccihosting.com to cjsteynberg@gmail.com with subject "**Invoice Payment Confirmation**". The email was also addressed to *"… Johann Steynberg (JNX ONLINE (PTY) LTD)"* and the email content is as per the screenshot below:



114.11. Although the email is undated, the mail reflects that the charges were for hosting from 30 July 2020 to 29 August 2020.

114.12. Steynberg registered the Trade300 domain and was provided with the associated email addresses. In addition, Steynberg received the CCIHosting control panel logins, making him the administrator of the Trade300 domain and platform.

114.13. Therefore, any email address registered on the Trade300.com domain, must have been registered by Steynberg himself.

115. **We are of the view that the Trade300 website, the e-mail addresses and the e-mail communications were fabricated by Steynberg to create the impression of a lawful operation. There is no evidence to suggest that Trade300 is an independent, bona fide online trading platform**

116. It seems as if MTI/Steynberg went to some trouble to create the Trade300 illusion. An undated email that we recovered from both Steynberg's iMac and his laptop sent from statements@trade300.com to cjsteynberg@gmail.com contained statements of MTI dated 30 July 2020. These statements purport to be trading statements of MTI, on the Trade300 platform. These statements were forwarded to Cheri Marks by Steynberg on 31 July 2020.

117. We also recovered an email trail between Steynberg and camilac@trade300.com. The email conversation commenced on 12 August 2020, when Steynberg requested Camila for proof of funds that MTI holds with Trade300, and the source of funds, as shown by the screenshot below:

On 2020-08-12 07:31, Johann Steynberg wrote:
> Dear Camila
>
> I trust you are well.
>
> I would like to ask you a favor.
>
> Regulators in South Africa requires information surrounding our
> account with Trade300.
>
> Would it be possible for Trade300 to provide me with the following
> information.
>
> * Proof of funds that Mirror Trading International holds with
> Trade300.
> * Source of funds into our account.
>
> Kindly send through the information at your earliest convenience.
>
> Thank you in advance.
>
> Kind regards,
>

> Johann Steynberg
>
> Mirror Trading International (PTY) Ltd
>
> +27 83 278 1331
Dear Mr. Steynberg,

118. Camila, who is supposed to be a Senior Account Manager at Trade300 responded to the email as follows:

| | |
|---|---|
| **From:** | camilac@trade300.com |
| **To:** | camilac@trade300.com; cjsteynberg@gmail.com; camilac@trade300.com; cjsteynberg@gmail.com |
| **Subject:** | Re: Information Needed: Regulatory requirementsDear Mr. Steynberg, |

We thank you for reaching out to Trade300 in this regard.
Please note that Trade300 is not regulated by South African regulators and that the privacy of our clients are of great importance to us.

Per your request, we can confirm the following:
1. at the time of this writing, Mirror Trading International (PTY) ltd. has in excess of 14200 (fourteen thousand two hundred) Bitcoin in the trading account.
2. Your Mirror Trading International (PTY) ltd account was initially funded through the following Bitcoin addresses belonging to Trade300.

127TydVNVS4WhVXyvGjZEe9NbL2vXsSe3j
ad79d14b72c2b5fbb4242df76620197bfa6f07c192f1979767c82d35024cd660

1BKdZNvxW6Ud2yo45qG5S21XXQuwEwMxV
c3cf292a769260c801a1540f43740f1421d6391832ab915eb52aaa492ec1d3c5

1FFRE14fxKigfqf3GNTgGlYtRYRQgtGTG
ed6b4305fd18a6a9b806ebb756e0a2825d67d0b83c3936e4f8c0cd24555d07a0

15b1rQgJZPU2DzDQnAoUfveRDfo9XKp54R
19146071dbd30665da36088ee2d3dfea96734b934347af333db609487eec3070

The transactions above is the largest of all the transactions into the account. For privacy reasons we supplied only the initial 4 transactions into the account. We can confirm that there are at least 30 other transactions into the account over the last 4 weeks.

Furthermore we confirm we have received a request from a regulator in South Africa by the name of FSCA.
We hereby notify, Mirror Trading International, that Trade300 will not and have not disclosed any information of account to the FSCA or any other regulators, nor shall we do so in the future.

Sincerely,
Camila
Trade300
Senior Account Manager

119. The only logical conclusion is that Steynberg must have created these mails to give the Trade300 construction a sense of authenticity.

## TRANSFER OF BITCOIN FROM FX CHOICE TO TRADE300

120. Before we confirmed that Trade300 was a fabrication, and in a further effort to confirm that clients' assets (Bitcoin) were deposited at Trade300, we investigated the transfer of Bitcoin from FX Choice to Trade300. If proof of the transfer of sufficient Bitcoin to Trade300 could be obtained, it would assist with corroborating the version of MTI/ Steynberg.

121. We issued another Notice to Steynberg, providing him with the opportunity to submit proof of the Bitcoin assets.

122. Ulrich Roux, on behalf of Steynberg responded that that MTI moved all member bitcoin from FX Choice to Trade300 in 4 instalments on 21 July 2020; 22 July 2020 and 24 July 2020 respectively. This was prior to MTI losing access to the FX Choice platform.

123. Steynberg specified that the last date of trading on FX Choice was 20 July 2020 and the first day of trading on Trade300 was 21 July 2020. At the response date of 7 October 2020, the balance on the Trade300 account, was claimed to be 18779,71 Bitcoin[19].

124. Four screenshots were provided by Steynberg via Ulrich Roux as evidence in support of MTI's alleged moving *of "all member bitcoin from FX Choice to Trade300"* from 21-24 July 2020. I attach them as **annexures "K" to "N".** These screenshots contain details of transfer transactions including Bitcoin wallet numbers, bitcoin values and partial blockchain deterministic references ("hash" details) for transactions during the period 21 to 24 July 2020. Each of the screenshots was introduced by an introductory statement to confirm the transfer.

125. Steynberg alleges the transfer of Bitcoin from a Bitcoin wallet/wallets on the left of each screenshot to a Bitcoin wallet/wallets on the right of each screenshot. This implies that bitcoin in these transactions were transferred from eight bitcoin wallet addresses. These eight bitcoin wallet addresses are referred to as the "sending wallets" of the alleged transfer to Trade300. The Bitcoin was transferred to seven receiving bitcoin wallet addresses, allegedly of Trade300.

126. In August 2020, FX Choice provided the FSCA with a list of 91 deposits and withdrawals by MTI at FX Choice[20]. These transactions took place during the period from April 2019 to June 2020, together with the bitcoin wallet addresses of wallets used by MTI in these transactions. FX Choice stated that this list represented all MTI's deposits and withdrawals from the beginning of 2019.

127. An analysis revealed that 86 bitcoin wallets were used in the 91 deposits and withdrawals by MTI at FX Choice during the period April 2019 to June 2020. A comparison of the 86 bitcoin wallets used in the MTI transactions with FX Choice between April 2019 to June 2020 to the sending wallets of the alleged transfer to Trade300 revealed no corresponding bitcoin wallet addresses.

[19] See annexure xx being the response from MTI's attorneys Ulrich Roux dated 7 October 2020 at paragraphs 4.2 and 4.3
[20] See Annexure O

128. It was also noted that no withdrawal of bitcoin by MTI from FXChoice occurred in July 2020. The last withdrawal of bitcoin by MTI from FXChoice was conducted in August 2019.

129. FX Choice was subsequently also requested to confirm whether any of the eight sending wallets alleged in the response from Steynberg via his attorneys as used to transfer to bitcoin Trade300 are linked to any FX Choice account/s. In response to this request, FX Choice on 6 November 2020 confirmed that none of the eight sending wallets are related to FX Choice and that FX Choice had neither received deposits from or sent any payments to any of the eight bitcoin wallets.

130. In summary, nearly the entire contents of the Ulrich Roux letter are false.

**CONTRAVENTION OF SECTION 7(1) OF THE FAIS ACT**

131. Section 7(1) of the FAIS Act reads as follows:

> *"With effect from a date determined by the Minister by notice in the Gazette, a person may not act or offer to act as a –*
>
> *(a) financial services provider, unless such person has been issued with a licence under section 8; or*
>
> *(b) a representative, unless such person has been appointed as a representative of an authorised financial services provider under section 13."*

132. Financial services provider is defined with reference to two types of financial services which the FAIS Act recognised (advice and intermediary services), and *"intermediary services"* is defined as follows:

> *"'Intermediary services' means… any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier –*
>
> *(a) the result of which is that a client may enter into, offers to enter into or enters into a transaction in respect of a financial product with a product supplier; or*
>
> *(b) with a view to –*
>
> *(i) buying, selling or otherwise dealing, whether on a discretionary or non-discretionary basis, managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier or in which the client has invested;*

*(ii) collecting or accounting for premiums or other monies payable by the client to the product supplier in respect of a financial product; or*

*(iii) receiving, submitting or processing the claims of a client against the product supplier."*

133. The definition of a financial product includes securities, which in turn includes CFDs.

134. MTI and Steynberg actively engages with clients and perform financial services that includes most of the description in the definition above. Cheri Marks have been actively promoting and marketing these services to clients *inter alia* on social media.

135. MTI, Steynberg conducted financial services, assisted actively by Cheri Marks, with reference to a CFD in forex pairs (during the period April 2019 to October 2020), and with reference to crypto currency CFDs (during the period October 2020 to date). We are therefore of the opinion that they have contravened section 7(1) of the FAIS Act in a material manner. This is only to the extend that derivative trading did take place. It seems like the majority of client assets was never traded, just misappropriated.

136. The contravention, which is a criminal offence, is aggravated by the fact that they took full control of the clients' assets and made the investment or trading decisions themselves. This in effect means that they were conducting discretionary financial services on behalf of the clients. This activity requires a category II licence (discretionary asset management), which requires higher qualifications, skills, experience and higher financial soundness and operational ability, and is more difficult licence to obtain.

**THE DEFENCE THAT MTI WAS TRADING IN CRYPTO CURRENCY AND IS THEREFORE NOT SUBJECT TO FSCA JURISDICTION**

137. Steynberg explained that MTI received clients' assets in the form of Bitcoin from its clients for investment purposes. He made the point that MTI does not receive cash/funds from clients, and as such it does not fall within the jurisdiction of the FSCA, and it does not require an FSP licence. In other words, MTI only receives Bitcoin from clients, and as Bitcoin is not a financial product, MTI are not conducting financial services as defined. (Financial services can only be conducted with reference to a financial product.)

138. This argument is not sound in law. During the first period MTI conducted financial services with reference to derivatives in forex pairs (a financial product). The method of payment is not relevant to the licence requirements.

139. During the second period MTI conducted financial services with reference to CFDs in Bitcoin (a financial product). As before, the method of payment is not relevant to the licence requirements.

140. MTI required an FSP licence to conduct financial services in CFDs in both instances.

141. MTI, through the activities of Steynberg and Cheri Marks, and with the assistance of others, conducted illegal financial services in contravention of section 7(1) of the FAIS Act for a period of at least 2 years.

**WHAT DID MTI AND STEYNBERG DO WITH THE CLIENTS ASSETS**

142. A substantial aggravating factor in the case is that MTI/Steynberg did not actually utilise the clients' crypto currency (Bitcoin) to execute transactions in the name of the clients. They transferred the assets of the clients into Bitcoin accounts at FXChoice. Each client had their own account. However, clients were told to disconnect from the MAM account in mid July 2019. **(Annexure P)**

143. Thereafter all the clients' assets were pooled into one FXChoice account alleged to be in the name MTI. However, this account was in fact in the name of Steynberg at FXChoice.

144. According to the Ulrich Roux letter these clients' assets were moved to Trade300. This is a misrepresentation. Not only was it never moved to Trade300, but it was not at FXChoice in the first place.

145. The evidence shows that very little of the clients' Bitcoin reached any forex or trading platforms. Our efforts to trace these assets were met with MTI and Steynberg repeatedly providing false information to the FSCA.

146. It seems as if the clients' assets were misappropriated before it even reached any platform. Steynberg and Cheri Marks have claimed numerous times in the media and on social media that they have provided the FSCA with all the information it required. However, we attempted to corroborate each claim by MTI, Steynberg and Cheri Marks

about the location of the clients' assets, and trading records that would prove the veracity of their claims.

147. It would have been a simple task for MTI, Steynberg and Cheri Marks to provide the FSCA with correct information about the whereabouts of the clients' assets and a trading history that would conclusively gainsay the allegations of fraud.

148. Instead they provided the FSCA with a version (most of it under oath) that was clearly false.

149. With reference to FXChoice, some of the Bitcoin remained on the platform, and the trading history by no stretch of the imagination reflects their claims of extensive trading and extraordinary profits. In fact, the little actual trading that was conducted on the platform produced substantial capital losses.

150. With reference to FIBO no trading of MTI ever took place, and no real profits were made from the few transactions in the name of Steynberg. In any event, the Ulrich Roux letter confirms that FIBO was not the source of extensive trading and great profits.

151. It is common cause that IFX Brokers is not relevant for the current matter.

152. With reference to Trade300 it seems highly likely that it is a fabrication of Steynberg, and there is no evidence that the FSCA could find, or that MTI provided, of it being the source of any trading or any profits.

153. MTI Steynberg also claimed that the assets were transferred from FX Choice to Trade300, where the trading continued. Our evidence suggests that Trade300 is most likely a creation of Steynberg, and not a licenced, bona fide derivative trading platform.

154. In addition, Steynberg's claim of Badenhorst being MTI's "head trader" and of him and a team maintaining the bot is denied by Badenhorst.

155. It seems highly likely that Steynberg and Cheri Marks and Clynton Marks utilised MTI to misappropriated substantial Bitcoin assets of their clients.

156. We also believe this was done intentionally. A WhatsApp conversation between Steynberg and Mr Marks on 14 August 2020 leaves no doubt about their state of

mind. The evidence was recovered from the iPhone of Steynberg, that was seized during the execution of a search warrant at the premises of Steynberg.

***Clynton Marks:*** *Looks like this is our options... 1. Fight the FSCA. We might have to face criminal charges. The problem is even if we get someone with Cat 2 licence our broker is still unregulated. …. The only solution would be that you move overseas. Would you be prepared to do that? That way MTI could still run. Untouched*

***Steynberg:*** *Will have to give it some thought and chat to Nerina [*the wife of Steynberg]. *Another option maybe would be to "sell" MTI to a Nevis company where the directors and shareholders are completely private, maybe then I don't have to move.*

***Clynton Marks:*** *Lol that's an excellent idea. On paper it will say its sold but we just offer them say 10 000 000 rand for a piece of paper but they would have to sign another to say it's really yours. What are your thoughts?*

***Steynberg****: Jip. Something like that could work*

**OTHER MISREPRESENTATIONS BY MTI**

**Number of Clients**

157. A list of MTI clients was obtained during the search and seizure. This list appears to have last been updated on 17 October 2020. A total of 203,055 users appear on the database. Based on the registration date recorded, these users were registered from 14 May 2019 to 17 October 2020.

158. It was noted that although 203,055 users were created on the database, only 169,227 different email addresses are contained on the database. From this it was evident that some users have the same email address. Six users without any email address also appear on the database.

159. A total of 13,951 email addresses were replicated more than once. Three email addresses were noted that were replicated more than 100 times in the database. A total of 21 email addresses were identified which were used for more than 50 users each.

160. It is therefore evident that MTI has publicly grossly overstated the number of users (or members) MTI has.

## OVERALL CONCLUSION

161. We are of the opinion that MTI, Steynberg, Cheri Marks and Clynton Marks conducted unregistered financial services business in contravention of section 7(1) of the FAIS Act. This is a criminal offence.

162. We also believe that the same persons made material misrepresentations to their clients over an extensive period of time; and that clients were misled in the process.

163. Lastly, despite our best efforts we have been unable to conclusively trace the whereabouts of clients funds, however, it is concerning that during the period 3524.94978834 Bitcoin was channeled from MTI bitcoin wallets to a bitcoin wallet confirmed to belong to Cloudbet (an online platform for sports betting and Casino games, with transactions in Bitcoin). At the Bitcoin exchange value on 18 December 2020 it amounts to approximately R 1 188 889 325.29 (One Billion One Hundred and Eighty-Eight Million Eight Hundred and Eighty-Nine Thousand Three Hundred and Twenty Five Rand and Twenty Nine Cents).

## ACTIONS BY OTHER REGULATORS

164. On 7 July 2020 the Texas State Securities Board ("Texas SSB") issued an Emergency Cease and Desist Order against MTI, Steynberg and 3 other individuals domiciled in the United States of America for offering securities for sale in Texas without being registered; fraud in connection with the offer for sale of securities; making statements that are materially misleading or otherwise likely to deceive the public; and their conduct, acts and practices threaten immediate and irreparable harm. Copy of order attached as annexure "**A**".

165. I point out that the USA definition of securities includes the CFDs that MTI is trading in, and the Texas SSB order relates to the same business under investigation by the FSCA.

166. The Autorité des Marchés Financiers in Quebec, Canada ("AMF") also placed MTI's name on their warning list of websites and companies that solicit investors illegally.

167. On 18 September 2020 the Financial Services Commission – Mauritius also issued an investor alert to the public regarding Mirror Trading International (Pty) Ltd. Copy of warning attached as annexure "**Q**"

**APPENDIX "1"**

| INVESTIGATOR | DATE OF INSTRUCTION |
|---|---|
| Johannes Gerhardus van Deventer | 13 July 2020 |
| Andrea Jacqueline Coetzer | 13 July 2020 |
| Elizabeth Sophia Agnes Coetzee | 13 July 2020 |
| Jacobus Gideon Louw van Wyk | 13 July 2020 |
| Julia Helen van Wyk | 13 July 2020 |
| Carolina Susanna Lombaard | 13 July 2020 |
| Adrian Stuart Goddard | 13 July 2020 |
| Rhoda Helen York | 13 July 2020 |
| Esther Mokoneng Mothle | 13 July 2020 |
| Nomagcina Sipokazi Zentathu Mtshontshi | 13 July 2020 |
| Jason Jordaan | 13 July 2020 |
| Elsabe Parratt | 15 September 2020 |
| Jacques Bruwer | 15 September 2020 |
| Amos Sizakele Mtshali | 7 October 2020 |
| Antonio EL Pooe | 7 October 2020 |
| Katleho Precious Motaung | 7 October 2020 |
| Thanyani Norman Mabuda | 7 October 2020 |
| Whitney Ayanda Mashinini | 7 October 2020 |
| Wilhelm Riaan Bellingan | 7 October 2020 |
| Sooraj Panday | 7 October 2020 |
| Charlotte Breytenbach | 7 October 2020 |
| Sivuyile Maweni | 7 October 2020 |
| Johan Oberholzer | 7 October 2020 |

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.: 15426/2021

Read with case no: 19201/2020

In the matter between:

| | |
|---|---|
| **HERMAN BESTER NO** | First Applicant |
| **ADRIAAN WILLEM VAN ROOYEN NO** | Second Applicant |
| **CHRISTOPHER JAMES ROOS NO** | Third Applicant |
| **JACOLIEN FRIEDA BARNARD NO** | Fourth Applicant |
| **DEIDRE BASSON N.O.** | Fifth Applicant |
| **CHAVONNES BADENHORST ST CLAIR COOPER N.O.** | Sixth Applicant |

In their capacities as the duly appointed joint liquidators of Mirror Trading International (Pty) Ltd (in liquidation)

and

| | |
|---|---|
| **MIRROR TRADING INTERNATIONAL (PTY) LTD (in liquidation) t/a MTI** | First Respondent |
| **CLYNTON HUGH MARKS** | Second Respondent |
| **HENRI ROBERT HONIBALL** | Third Respondent |
| **CECIL JOHN JACOB ROWE** | Fourth Respondent |

**ALL MEMBERS/INVESTORS OF MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)** Fifth Respondent

**FINANCIAL SECTOR CONDUCT AUTHORITY (FSCA)** Sixth Respondent

Coram: De Wet, AJ

Date of Judgment: This judgment was handed down electronically by circulation to the parties' legal representatives by email on 26 April 2023.

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**JUDGMENT**

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DE WET, AJ:

> *"People all over the world, and South Africans are no exception, are bewitched and fascinated by any idea or scheme promising, in most cases, instant wealth, new homes, new cars, holidays abroad and all material possessions that can be acquired with an abundance of money. A further attraction of these schemes is the perception that the money will keep rolling in with little or no effort by the participants, the hardest part being to count one's money.*
>
> *A consumer who participates in these 'easy money making' schemes apparently believes that money, and lots of it, is there for the taking, without considering where this money comes from. Many consumers are handsomely rewarded by participating in these schemes. Unfortunately, there are many more consumers who lose their money. The total amount gained by the promoters and other participants of these 'easy money making' schemes is usually equal to the amount lost by the other participants. Participants come from all walks of life"*[1]

[1] The first to sixth applicants, in their capacities as joint final liquidators of Mirror Trading International (Pty) Ltd ("MTI"), seek the following declaratory relief [by way of

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[1] Government Gazette, 9 June 1999, No. 20169, Business Practices Committee, Report in terms of Section 10 (1) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), Report 76, page 1.

application] in terms of s 21(a)(c) of the Superior Courts Act, 10 of 2013 ("the main application")[2]:

"1.1 an order declaring that the business model of MTI is an illegal and/or unlawful scheme and/or that MTI at all relevant times operated an illegal and/or unlawful business;

1.2 an order declaring all agreements purportedly concluded between [MTI] and its investors in respect of the trading/management/investment of bitcoin for the purported benefit of the investors, to be unlawful and *void ab initio*;

1.3 an order declaring that MTI has been factually insolvent (in that the value of its liabilities exceeded the value of its assets) since 18 August 2019 until the date of its winding-up on 29 December 2020;

1.4 an order declaring that any and all dispositions, whether by means of payment in fiat currency or by means of transfer of bitcoin (or any other crypto currency) made by or on behalf of MTI to any of its investors or other third party, as payment or part payment of purported profits, referral commissions or any other remuneration in respect of and pursuant to the unlawful investment scheme perpetrated by MTI, to be dispositions without value, as defined in section 2, read with section 26(1) of the Insolvency Act, 24 of 1936 (as amended) ("the Insolvency Act");

1.5 an order declaring any and all dispositions, whether by means of a payment in fiat currency or by means of a transfer of bitcoin (or any other crypto currency), made by or on behalf of MTI to any of its investors or any third party

[2] "A Division .... has the power - ..... (c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination."

as payment or part payment of any purported claim or entitlement pursuant to the unlawful investment scheme, within 6 months before the *concursus creditorium* i.e., all dispositions since 23 June 2020, to be dispositions which had the effect of preferring one or more of MTI's creditors above others, as defined in section 2, read with section 29(1) of the Insolvency Act and that such dispositions were not made in the ordinary course of business as provided for in section 29(1) of the Insolvency Act[3];

1.6 that leave be granted to the liquidators of MTI to approach this Court on the same papers, duly amplified where necessary, for orders setting aside specific dispositions as described in 1.4 and 1.5 above, in terms of sections 26 and/or 29 of the Insolvency Act and for orders declaring that the liquidators of MTI are entitled to recover the aforesaid dispositions, alternatively the value thereof at the date of each disposition or the value thereof at the date on which the respective dispositions are set aside, whichever is the higher, as provided for in section 32(3) of the Insolvency Act;

1.7 the costs of this application shall be paid by any party/parties opposing this application, jointly and severally, the one paying the other to be absolved;

1.8 save as aforesaid, the costs of this application are costs in the liquidation of the First Respondent".

[2] In terms of an order granted by De Villiers AJ on 22 January 2021, the powers of the liquidators were extended to include the power to institute legal proceedings. Apart from this order, the parties hereto, by agreement, converted the relief initially

[3] At the hearing, the insertion of the following words at the end of the relief claimed in paragraph 1.5 of the notice of motion above was sought: "*unless members can show the contrary (i.e. that the specific disposition was made in the normal course of business) in the proceedings contemplated in paragraph 3.6 below*". It was submitted that this would afford members the opportunity to raise defences contemplated in Griffiths v Janse van Rensburg NO and another [2016] 1 All SA 643 (SCA).

claimed in the liquidation proceedings, to which I will revert below, into a separate application under case number 15426/2021. The respondents do not dispute the authority of the applicants to launch this application.

[3] During the proceeding various interlocutory applications, ranging from postponement applications, intervention applications, applications to strike out and applications for the stay of the declaratory proceedings pending other proceedings were launched by various parties. At the time of the final hearing of the matter the record consisted of more than 7000 pages. Most applications were either settled or withdrawn.[4] The applications for condonation for the late filing of affidavits and the filing of further affidavits were not opposed and were granted. What ultimately remained for determination was the relief claimed by the applicants in the main application, the counter-application filed by second respondent ("Marks") and the application by third respondent ("Honiball"), supported by Marks, that certain disputes of fact be referred to oral evidence. At the final hearing of the applications, the respondents requested that the main application be referred to trial should it not be dismissed.

*Relevant general background:*

[4] A creditor and investor of MTI, Mr Lee (he subsequently joined in this application as an opposing party even though part of the fifth respondent), launched

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[4] During February 2022, 15 000 of the so-called Kriel investors, brought an application to stay the proceedings pending an application for the removal of the applicants. This application was settled in March 2022, the relevant terms of the Kriel agreement were:

"1.3 The claims of loser investors against MTI will be calculated using the following formula:
[Actual amount invested) excluding peer to peer and internal MTI account transfers), calculated on the highest value of bitcoin on the date of the investment]
Less
[Actual payments made to an investor, based on the value of bitcoin on the date of the payment]

1.4 The value of bitcoin as per the abovementioned formula, will be based on the value, in South African Rand, as published by Luno (South Africa) on the specific day."

2. The abovementioned agreement is conditional on the High Court finding that the business of MTI was conducted illegally. Pending the fulfilment of this condition, the parties shall act in accordance with the terms thereof, except for the finalisation of a first liquidation and distribution account.

3. It is recorded that the terms of the abovementioned agreement, will be applicable to all net loser investors of MTI, irrespective of whether they are represented by GetaQuid."

an urgent application for the liquidation of MTI during December 2020 and a provisional winding-up order was granted on 29 December 2020 by Rogers J in the fast lane under case number 19201/2020. Pursuant to the provisional order the applicants (save for the sixth applicant) were appointed as the provisional liquidators of MTI.

[5] On 26 February 2021 Selzar Law, ostensibly on behalf of MTI, filed a notice of intention to oppose. Mr Lee, not surprisingly, filed a notice in terms of rule 7(1) of the Uniform Rules of Court, calling upon Selzar Law to provide copies of the power of attorney and resolutions adopted by MTI authorising them to oppose the application on behalf of MTI. In response to this notice, a resolution and a power of attorney dated 26 February 2021 were filed wherefrom it appeared that Marks, claiming to be a 50% shareholder of MTI, had called a meeting of shareholders, which only he attended, as Mr Steynberg ("Steynberg"), the other shareholder of MTI, had disappeared and could not be located. I will return to Steynberg later. At this meeting Marks resolved to appoint himself to act as a director of MTI to *inter alia* oppose the liquidation application.

[6] On 8 March 2021, Marks filed a preliminary answering affidavit in the liquidation application and on 5 May 2021, the then provisional liquidators filed a further affidavit which they described "as a fulfilment of their duty as provisional liquidators to place before the court information relating to events that occurred since their appointment as provisional liquidators and that would be relevant in the process of determining whether a final winding-up order should be granted".

[7] This affidavit, which included an extensive draft investigation report dated 18 January 2021 by the Financial Sector Conduct Authority ("FSCA")[5], was also filed in support of an application for leave to intervene and to claim declaratory relief which was essentially in the same terms as that which forms the subject-matter of the main application. The liquidation application and interlocutory applications were by agreement between the parties postponed for hearing to 8 September 2021 in terms of an agreed timeframe for the exchange of further affidavits and submissions.

[8] On 14 June 2021, Marks, in his capacity as a prospective creditor or shareholder, filed a notice in terms of Rule 6(12)(c) requesting a reconsideration of the provisional order granted on 29 December 2020 by Rogers J. He further filed an application for leave to intervene and a conditional application in terms of s 413 read with s 353(2) of the Companies Act, 61 of 1973 ("the 1973 Act").

[9] Despite the various further applications which were filed days before the hearing, the matter proceeded as it was agreed between the parties that Marks be granted leave to intervene as the third respondent under case number 19201/2020 and that he was entitled to proceed with the application for reconsideration. Marks abandoned his conditional application.

[10] In the matter of *ISDN Solutions (Pty) Ltd v CSDN Solutions CC and Others* 1996 (4) SA 484 (W) at 486I-487B the court held in regard to Rule 6(12)(c) that:

> "... the dominant purpose of the Rule seems relatively plain. It affords an aggrieved party a mechanism designed to redress imbalances in, and injustices and oppression flowing from, an order granted as a matter of urgency in his absence. In the

[5] The FSCA came into existence on 1 April 2018 as part of a model of regulation introduced by the Financial Services Board ("FSB") known as the "Twin Peaks" model. The FSCA took over the functions of regulating and supervising the conduct of financial institutions previously performed by the FSB.

circumstances of urgency where an affected party is not present, factors which might conceivably impact on the content and form of an order may not be known to either the applicant for urgent relief or the Judge required to determine it. The order in question may be either interim or final in its operation. Reconsideration may involve a deletion of the order, either in whole or in part, or the engraftment of additions thereto.

The framers of the rule have not sought to delineate the factors which might legitimately be taken into reckoning in determining whether any particular order falls to be reconsidered. What is plain is that a wide discretion is intended."

[11] As to what information may be taken into account by the court upon a reconsideration, it was held in the matter of *The Reclamation Group (Pty) Ltd v Smit and Others* 2004 (1) SA 215 (SECLD), that as a full set of affidavits had been filed at the date of the hearing, it resulted in a new set of circumstances and both sides' story was now before Court[6].

[12] In this matter, the issue of whether he had any authority to file opposing papers aside, Marks placed a provisional opposing affidavit consisting of more than 600 pages before the court on 26 April 2021. The applicants and the FSCA filed replies thereto and Marks filed a further provisional opposing affidavit on 11 June 2021 to the application launched by the provisional liquidators to intervene in order to claim the interdictory relief which is the subject-matter of the main application. Marks then brought a further application to intervene and a further conditional application requesting the court to stay the winding-up process as aforesaid, which applications were supported by voluminous affidavits.

[6] See also Oosthuizen v Mijs 2009 (6) SA 266 (W) at 2691; Industrial Development Corporation of South Africa v Sooliman 2013(5) 603 (GJ) at para [9] and Faraday Taxi Association v Director Registration and monitoring: MEC for Roads and Transport and Others (58879/2021) [2022 ZAGPJHC 213 (5 April 2022)

[13] I consequently had the benefit, not only of argument on behalf of the party allegedly absent during the granting of the original order, but also the benefit of the information contained in the many affidavits filed at that stage.

[14] The mechanism provided for in terms of Rule 6(12)(c), is to redress imbalances, injustices and/or oppression which may flow from an order granted in an urgent matter in a party's absence. It therefore, in my view, follows that all available information, properly before court at the time of reconsideration, should be considered.

[15] In the matter of Phillips and Others v National Director of Public Prosecutions 2003 (6) SA 447 (SCA) Howie JA held at para [29] that:

> "It is trite that an ex parte applicant must disclose all material facts that might influence the Court in deciding the application. If the applicant fails in this regard and the application is nevertheless granted in provisional form, the Court hearing the matter on the return day has a discretion, when given the full facts, to set aside the provisional order or confirm it. In exercising that discretion, the later Court will have regard to the extent of the non-disclosure; the question whether the first Court might have been influenced by proper disclosure; the reasons for non-disclosure and the consequences of setting the provisional order aside."

[16] Marks did not allege that non-disclosures were made by the applicant prior to the provisional order being granted and I could not find that any material non-disclosures were made. The case made out *ex parte* had not been dislodged by the facts which were placed before court in the reconsideration. The reconsideration was according dismissed.

[17] The applicant had established that he had a claim against MTI which it was unable to pay and it was further common cause that MTI was unable to trade as the only person who allegedly had access to the cryptocurrency codes, Steynberg, had disappeared. Based on all the facts before court, it was in my view just and equitable to finally wind-up MTI. On 30 June 2021 a final liquidation order was granted and a further order, which pertained to the various further applications before me, was granted by agreement between the parties[7].

[18] Prior to the hearing of the applications, and in September 2021, the applicants were appointed as the final liquidators of MTI and several further interlocutory applications were launched by other investors/members of MTI. The parties then agreed that the declaratory relief sought by the applicants and the further interlocutory applications be postponed in terms of an agreed order[8]. This order made provision for service on members/investors on the following basis:

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[7] "By agreement between Third Respondent and First to Fifth Proposed Intervening Parties ("the Proposed Intervening Parties");
**IT IS ORDERED THAT:**
1. The application, launched by the Proposed Intervening Parties, is postponed to the semi-urgent roll for hearing, on Wednesday 8 September 2021.
2. By no later than 7 July 2021 Third Respondent, shall publish this order on the telegram social media platform used by First Respondent and shall file by no later than 12 July 2021 an affidavit confirming such publication and annexing proof thereof:
3. Any party who wishes to oppose any of the relief sought by the Proposed Intervening Parties, shall file their answering affidavits, dealing with all the relief sought by the Proposed Intervening Parties, on or before 30 July 2021.
4. The Proposed Intervening Parties shall file their replying affidavits, if any, on/or before13 August 2021.
5. The Proposed Intervening Parties shall file their heads of argument on/or before 24 August 2021.
6. Any party who opposes the intervention application shall file heads of argument on/or before 31 August 2021.
7. All questions of costs shall stand over for later determination."

[8] "By agreement between the First to Fifth Applicants and the First to Fourth Respondents and the Sixth Respondent, the following order is made:
1. This matter, in which the flowing relief will be sought by the above Applicants, is postponed for hearing before the Honourable Acting Justice De Wet on 2 March 2022:
   1.1 [See the prayers as set out in para 1 of this judgement]
2. All affidavits, notice and documents filed, up to and including 8 September 2021, in the matter in this Court under case number 19201/2020 shall be deemed to have been filed in this application and all parties are entitled to rely thereon in support of or opposition to this application.
3. The applicants are granted until 30 September 20221 to supplement their affidavits in support of the relief that they seek.
4. The Sixth Respondent is granted until 30 September 2021 to file a further affidavit, should it choose to do so.
5. Any party, forming part of the Fifth Respondent, and wishing to oppose or support the relief sought by the Applicants, be required to comply with Rule 6(5)(d) by notifying the Applicants' attorneys by e-mail at mtiadmin@mbalaw.co.za , in writing, on or before 20 September 2021 that he or she intends to oppose or support the application, and in such notice appoint an address within 15 kilometers of the office of the registrar, at which such person will accept notice and service of all documents and notices, as well as such person's postal, facsimile or electronic mail addresses where available.
6. Any party, forming part of the Fifth Respondent, wishing to support the Applicants' application be granted until 30 September 2021 to file and affidavit in support thereof.

18.1 By posting the order on the *Telegram* platform of MTI, whereon members communicate;

18.2 By notification to all known members/investors of MTI by way of a letter which had to include a hyperlink allowing interested parties access to the order and all papers filed of record in the matter (including the finalised winding-up application), sent by way of email to the known email addresses of members/investors; and

18.3 By publication of the order in the *Rapport* and *Sunday Times* newspapers.

[19] It was undisputed that service was indeed effected in accordance with the agreed order.

7. Rule 35(14) is to be applicable to the current Application as between the First to Fifth Applicants and the First to Fifth Respondents.
8. All parties, including the parties included in the group of the Fifth Respondent, are granted up to 13 October 2021 to file a notice in terms of 35(14).
9. Any party to whom a notice in terms of Rule 35(14) was directed, it to file a response to such notice and/or comply with the request contained in the notice, within 10(ten) days of receipt of such notice.
10. Any further affidavit intended to be filed in opposition (to the relief sought by the First to Fifth Applicants), by any party, shall be filed by no later than 10 January 2022.
11. The First to Fifth Applicants' replying affidavit shall be filed by no later than 31 January 2022.
12. Any interlocutory applications shall be adjudicated, expediently, on a date or dates to be determined by Acting Justice De Wet.
13. Heads of Argument will be filed by all interested parties in accordance with the rules and practice directives of this Honourable Court.
14. Substituted service of this order and application shall be effected in the following manner:

14.1 the Second Respondent shall post this order on the *Telegram* Platform by no later than 15 September 2021, and file an affidavit with confirmation of compliance with this provision by no later than 21 September 2021;

14.2 the First to the Fifth Applicants shall notify all known members/investors of the First Respondent of this order by way of a letter which letter is to include a hyperlink allowing interested parties access to this order and all papers filed of record in this matter (including the finalised winding-up application), by way of email to the known email address of the members/investors, which service is to be effected by 15 September 2021, and compliance herewith is to be confirmed by affidavit (by the liquidators or the liquidators' attorney), to be filed by 21 September 2021.

14.3 by 19 September 2021, the First to Fifth Applicants shall publish the order in the *Rapport* and *Sunday Times* newspapers, and compliance herewith is to be confirmed by affidavit (by the liquidators or the liquidators' attorney), to be filed by 21 September 2021.

15. All questions of costs stand over for later determination"

[20] In Fourie NO and Others v Edeling NO and others [2005] 4 All SA 393 (SCA) at para [21], the Supreme Court of Appeal criticised the service which took place on the basis that the court order provided for publication describing the role of a particular party as the "investors' representative", when that was factually incorrect. In those circumstances the court found that "*service fell gravely short of what would have been required to ensure that the investors receive a fair trial*". The SCA, however upheld the relief granted *a quo,* which is comparable to the relief sought by the applicants, and found, with reference to the relief sought by the applicants (leave to approach this Court on the same papers for setting aside specific dispositions) that:

> "Any investor against whom such recovery proceedings are brought would be free to maintain that he or she is, for lack of notification or by reason of having been misled by the terms of the publication, not bound by the order of Hartzenberg J. It may be that fresh setting aside proceedings against such an investor would then have to be combined with the recovery proceedings."

[21] For purposes of this application, I am satisfied that sufficient service was effected in order to proceed with the main application.

*Non-joinder:*

[22] It was contended by Marks that there was an obligation on the applicants to join all members/investors of MTI to these proceedings and that the application should be dismissed as a result of such non-joinder. Whilst the general principle is that parties with a direct and substantial interest should be joined as parties in court

proceedings, it may be departed from in exceptional circumstances. In this regard and in the matter of Economic Freedom Fighters and others v Speaker of the National Assembly and others [2016] 1 All SA 520 (WCC), the court considered earlier authorities and explained, in summary, that when considering the necessity of joinder, it must be done within the context of the case and more particularly with reference to what the nature and effect of the relief sought or that may be granted, is.[9]

[23] The rationale for joinder is that all substantially and directly interested parties may be heard before the order is given, which is a matter of fairness[10]

[24] Flexibility based on pragmatic grounds was remarked upon as follows in the matter of Wholesale Provision Supplies CC v Exim International CC and Another 1995 (1) SA 150 (T)[11]:

> *"the rule which seeks to avoid orders which might affect third parties in proceedings between other parties is not simply a mechanical or technical rule which must ritualistically be applied, regardless of the circumstances of the case."*

[25] The court further held that where the interests of a very large and effectively indeterminable number of persons may be affected by the order sought, it would be impracticable to require that they should all be joined. A pragmatic approach has to be adopted in such cases in identifying who needs to be joined as a necessary party[12].

[26] In this matter the relief claimed, particularly in prayers 1.1 and 1.2 of the application, amounts to a consideration of whether the business operated by MTI, objectively and not with reference to the subjective views of members/investors, was

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[9] para [27]
[10] para [30]
[11] para [37]
[12] Para [47]; Also see Road Accident Fund v Legal Practice Council and others (Pretoria Attorneys Association and another as *amici curiae*) [2021]2 All SA 886 (GP) paras [9]-[10]

unlawful and if so what the consequences of such unlawfulness are on the contracts concluded between MTI and its members/investors[13].

[27] Members/investors were further given an opportunity to be heard on various occasions during the course of the litigation, many members/investors intervened and some members/investors filed opposing affidavits and counter - applications. What is abundantly clear from all the affidavits filed to date, is that none of the members/investors had any personal knowledge or insight into the business of MTI. Further, given the magnitude of members[14] in South Africa and abroad[15], over whom this court does not have jurisdiction, the alleged inaccuracy of the back-office data and the conflicting statements of the management of MTI, it would simply not have been pragmatic to join all known members/investors of MTI. In the circumstances I am of the view that the applicants should not be non-suited as a result of non-joinder.

*MTI and the FSCA:*

[28] MTI was founded by its sole registered director and chief executive officer, Steynberg, during April 2019. Initially the nature of its business was described as "*an internet based crypto-currency[16] club which performs its business through the website www.mymticlub.com and its official offices in Stellenbosch, Western Cape, South Africa. The benefit to members is in the form of the crypto-currency bitcoin where members' bitcoin grows through forex trading by a registered and regulated broker*". This description appeared in an electronic document uploaded on the official

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[13] Para [47]

[14] According to the statements made by Steynberg to the FSCA the members/investors were approximately 300 000 whilst Pederson estimates members/investors to be in the region of 200 000 of which about 166 000 are South Africans.

[15] Pedersen's report indicates that countries such as the United States of America, Namibia, Canada, India, the United Kingdom and Nigeria, all had more than 5 000 investors.

[16] The Oxford dictionary defines cryptocurrency is a digital currency in which transactions are verified and records maintained by a decentralized system using cryptography, rather than by centralized authority.

MTI website, which document purportedly served to regulate the contractual relationship between MTI and its investors during the second period of the operations of MTI to which I will return later.

[29] Investors in MTI were referred to as members of the MTI investors club ("My MTI Club"), (I will refer to these members as investors in line with Fourie NO *supra)* and the following were the most important and relevant terms and conditions of their agreement with MTI:

29.1 Upon accessing and registering on the MTI website and/or by using any MTI services, a member agreed that he/she has read, understood and agreed to and undertook to abide by the terms of the MTI agreement.

29.2 The marketing of MTI's business was based on a multi-level marketing strategy. In addition to receiving a share of trading profits, members also received a variety of incentive-based remunerations, based on the referral of new members who also joined MTI and made an investment.

29.3 The proceeds derived from trading profits to which members were entitled, were regulated by the MTI compensation plan, which consisted of five income streams described as:

29.3.1 40% members daily trading bonus;

29.3.2 10% direct once-off referral bonus;

29.3.3 20% weekly profit-sharing bonus;

29.3.4 2.5% P1 leadership bonus;

29.3.5 2.5% P2 leadership bonus.

29.4 All of the above income streams would be paid from the daily profits made by MTI through its trading activities and not from any of the bitcoin invested by the investors.

[30] The business model of MTI was summarised in an online presentation, and used to attract new investors.

[31] During 2020 the FSCA, due to an anonymous disclosure, started investigation the business of MTI and conducted interviews with *inter alia* Steynberg, Cheri Marks and Keith Badenhorst. Their interviews are on record and are not set out herein.

[32] After the aforesaid interviews [Steynberg was interviewed on 29 July 2020], Steynberg and the main promotor of MTI, Ward, represented to the FSCA, and to all of MTI's investors, by way of circulars, website notices, YouTube clips and on public social media forums, *inter alia* and in summary, that:

32.1 Due to concerns expressed by the FSCA concerning the lawfulness of the activities of MTI, MTI had moved the entire bitcoin trading pool of MTI from the trader where it was allegedly held (FXChoice[17]) to a new trading platform known as Trade 300, in anticipation of a fear expressed by Steynberg that FXChoice may freeze all the bitcoin held by it pursuant

[17] FXChoice is a Belize registered on-line trading platforem and a reputable and regulated broker.

to a cease-and-desist notice MTI had received from the Texas State Security Board[18];

32.2 the new broker, Trade 300, was not a licenced forex trader and having been registered in Nevis, it did not require forex trading licenses;

32.3 the bitcoin frozen at that stage in the FXChoice account, amounting to approximately 1282 bitcoin, was not part of MTI investors' bitcoin, but belonged to MTI and Steynberg; and

32.4 MTI had moved the bitcoin held by it in the trading pool at FXChoice to Trade 300, in four transfers over a period from 21 July 2020 to 24 July 2020, with the number of bitcoin transferred to Trade 300 being 16 444 bitcoin.

[33] MTI was provisionally liquidated on 29 December 2020 and the FSCA's investigations concluded with a report being issued by it on 18 January 2021 ("the FSCA report"), wherein it was concluded that MTI's business was unlawful in a number of respects. Various affidavits were filed by representatives of the FSCA in support of the FSCA report, and later in order to deal with certain disputes raised by the respondents, to which I will return. In summary it was the findings of the FSCA that MTI:

33.1 operated a massive fraudulent and unlawful investment scheme, in flagrant disregard of various financial sector laws;

[18] On 7 January 2021, the FSCA became aware that The Texas State Security Board had issued an emergency cease and desist order against MTI, Steynberg and three other individuals for offering securities for sale in Texas without being registered; fraud in connection with the offer for sale of securities; making statements that are materially misleading or otherwise likely to deceive the public and due to their conduct, acts and practices threatening immediate and irreparable harm according to the report.

33.2 conducted an illegal, unregistered financial services business in contravention of (at least) s 7 of the Financial Advisory and Intermediary Services Act, 37 of 2002 ("the FAIS Act");

33.3 that there can be no other conclusion but that the investments made by investors into MTI and the scheme conducted by it, were misappropriated.

[34] From the information gathered by the FSCA, it was further concluded that the representations made by MTI, Steynberg and the management and marketing team of MTI to the investors of MTI [and the FSCA], were false in one or more of the following respects:

34.1 MTI did not move bitcoin from FXChoice during 2020, as MTI's account with FXChoice had been frozen on 10 June 2020 and the bitcoin could not be moved;

34.2 Trade 300 did not exit and was a fictious platform created by Steynberg[19];

34.3 The bitcoin frozen by FXChoice was not the property of Steynberg, but belonged to MTI and formed part of the so-called trading pool;

34.4 The bitcoin of the MTI investors, as pooled in MTI, were not transferred immediately to any FXChoice trader account, but, instead, diverted to accounts under the control of Steynberg and the management and marketing team;

34.5 Only a limited number of bitcoin were traded with by MTI at FXChoice and losses were incurred in the following approximate respects:

[19] The only reference linked to the website was the name of "Joe Steyn" which is a known alias of Steynberg.

34.5.1 50,95 bitcoin were deposited into specified MAM accounts, of which 22 bitcoin were lost. This appears to have been during the first period of operation during 2019;

34.5.2 for a subsequent period, from approximately January 2020 to 3 June 2020, a limited number of bitcoin were deposited with FXChoice in a total number of 1846,72, of which MTI made a loss in trading of 566,68 bitcoin, resulting in an approximate capital loss of 30%.

34.6 No profits were found on any other trading platform;

34.7 All daily published reports of daily trading profits were false and reports that MTI investors' bitcoin grew every day, as a result of trading profits, by way of trading bonuses, were false.

34.8 All reports that MTI had continuously traded profitably (in the so-called second period), were false;

34.9 All reports that the trading of MTI's bitcoin was effected by a bot with artificial intelligence, were false;

34.10 Reports that the bot traded in real time were false;

34.11 The report that the bitcoin of MTI, held at FXChoice, were transferred to a new broker, Trade 300, were false.

34.12 In summary, and contrary to what was represented to MTI investors, and the public at large:

34.12.1 MTI never achieved any growth in bitcoin as a result of trading activities;

34.12.2 MTI could therefore never have reflected such growth in bitcoin to MTI investors, as it daily did;

34.12.3 MTI could never, from any *bona fide* trading activities, pay investors who withdraw their bitcoin, and

34.12.4 MTI used bitcoin received from later investors to pay earlier investors.

[35] According to the FSCA report, the lifespan of the business of MTI can be divided into three periods.

[36] The first was during April 2019 to July 2019, when clients of MTI had linked sub-accounts on the FXChoice platform, trading in foreign currency ("forex"), in respect of which a human trader's trades were mirrored onto each investors sub-account (the "*MAM accounts*"). Hence the name: Mirror Trading. The first period preceded the launch of MTI's website and the implementation of the MTI agreement.

[37] The second period was from August 2019 to October 2020. This was when MTI launched its website and implemented the MTI agreement. During this period and from 2019, Marks assisted Steynberg in recruiting investors and his spouse, Cheri Marks, assisted from February/March 2020 with the marketing of MTI. From July/August 2020, the *de facto* directors of MTI were Steynberg, Marks, Ward and one Monica Coetzee. The first board meeting was held on 28 August 2020. The bitcoin invested by investors were said to have been utilised for forex trading in the

name of MTI via the regulated FXChoice platform under the exclusive supervision of Steynberg. The product which MTI traded during this period was so-called "CFD's" (contract for a difference) based on foreign currency pairs. Steynberg alleged that the trading was done profitably by utilising an artificial intelligence bot, developed by Keith Badenhorst, and that MTI only had one negative day of trading during this period.

[38] The third period was from October 2020 to December 2020. Steynberg alleged that during this period, he transferred all the bitcoin in the MTI pool of members' bitcoin from FXChoice to the unregulated broker, Trade 300. In this period, MTI allegedly no longer traded in CFD's based on forex pairs, but in CFD's based on cryptocurrency pairs, also using the artificial intelligence bot.

[39] Steynberg went missing on about 14 December 2020 while he was still busy processing withdrawal requests from investors. There were approximately 16,000 withdrawal requests, totalling approximately 2,600 bitcoin. These payments were never effected. According to media publications in January 2020 Steynberg was arrested and incarcerated during January 2020 in Brazil. His estate was finally sequestrated in April 2021.

*Grounds of opposition to the relief claimed by the applicants:*

[40] It appears from the affidavits filed on behalf of the respondents, that they have no personal information regarding the operation and management of MTI. They, given their precarious position, and I will merely summarise, therefore based their opposition to the relief claimed by the applicants, on the following:

40.1 They were not investors in MTI and never transferred ownership of their bitcoin to MTI;

40.2 All payments to MTI were by way of transfer of cryptocurrency, more particularly bitcoin, and as bitcoin is not regulated by South African law it does not amount to movable property in terms of the Insolvency Act;

40.3 They contractually agreed to pool their bitcoin with other members in the so-called My MTI Club and the trading transactions with bitcoin was not meant to be regulated by South African law due to it being bitcoin[20];

40.4 There are disputes of facts which cannot be determined on application. These pertain to whether MTI was an illegal/unlawful and fraudulent scheme, whether the evidence procured from FXChoice could be accepted as the existence of Mr Stephenson, who deposed to various affidavits in these proceedings, is queried; whether trading took place (some investors attest to seeing "live trading" during 2020); whether the statements provided to members were falsified; whether there was indeed an artificial intelligence bot and whether MTI was insolvent for purposes of recovery proceedings in terms of the Insolvency Act;

40.5 The applicants have failed to establish the necessary facts which entitle them to the declaratory relief claimed.

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[20] The relevant terms of the agreement are: "Clause 2: MTI is an internet based cryptocurrency online trading platform which performs its business through the website known as www.mymticlub.com. MTI operates as club where interested parties acquire membership to the club for the primary purpose to trade the cryptocurrency known as Bitcon on MTI's online trading platform, whereby MTI utilizes members' Bitcoin to trade on the global cryptocurrency market via various cryptocurrency brokers and brokerage firms.
Clause 3: All members, prospective members and proxy members, through their action of depositing Bitcoin into the MTI online trading platform, unequivocally consent and agree to MTI holding their Bitcoin on their behalf in a Bitcoin trading pool account, which contains all other members' Bitcoin funds, for the purposes of trading on the cryptocurrency market where various cryptocurrency denominations are bought and sold on behalf of members, in order to earn gains from such trading activities for the benefit of such members."

*Does bitcoin (cryptocurrency) fall within the definition of property in the context of the Insolvency Act and does this court have jurisdiction in respect of cryptocurrency:*

[41] The definition of "property" in s 2 of the Insolvency Act is:

> "'property' means movable or immovable property wherever situate within the Republic, and includes contingent interests in property other than the contingent interests of a fidei commissary heir or legatee."

[42] It is trite that "the meaning of 'property' in relation to the provisions of the Insolvency Act, in the light of the definition thereof in s 2, is much wider than under the common law."[21]

[43] Money falls within the definition of movable property and is included in a debtor's insolvent estate.[22]

[44] From the available information it appears that, in general, cryptocurrency possesses the following characteristics: it is a thing, incorporeal,[23] intangible, fungible, divisible and movable.

[45] I was referred to the matter of David Ian Rusco and Melcolm Russel Moore v Cryptopia Limited (in liquidation),[24] where the High Court of New Zealand held that cryptocurrencies are a type of intangible property and that various cryptocurrencies are "property" within the relevant definition of the New Zealand Companies Act (of 1993). The court referred to cryptocurrency as "digital assets".

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[22] Meskin, Insolvency Law, para. 5-1 and Van Zyl and Others NNO V Turner and Another NNO 1998 (2) SA 236 (C) para [21]. Meskin continues to state: "By 'movable property', in this context, is meant 'every kind of property and every right or interest which is not 'immovable property'..."

[22] Land – en Landboubank van Suid Afrika v Joubert NO 1982 (3) SA 643 (C) at para 653.

[23] In MV Snow Delta – Serva Ship Limited v Discount Tonnage Limited 2000 (2) SA 746 (SCA), Harms JA remarked that rights in relation to a contractual performance of another have, since time immemorial being classified as incorporeal. The obligation is property but the right (often refered to as an action) of the creditor is property.

[24] CIV-2019-409-00544 [2020] NZHC728.

[46] The South African Revenue Service has demanded that gains and losses on cryptocurrency be declared and classifies cryptocurrency as intangible assets, which is subject to taxation.[25]

[47] I was also referred to the matter of Robertson v Person Unknown[26] where Justice Moulder in the United Kingdom granted an asset preservation order in respect of cryptocurrency on an exchange, Coinbase UK Limited, holding that bitcoin is to be treated as "property". In AA v Persons Unknown[27], Justice Bryan held that crypto assets were "property" for the granting of proprietary relief.

[48] I agree with the applicants that even on the strictest interpretation of the meaning of property, cryptocurrency, like money, is movable property for the purpose of the definition of "property" in s 2 of the Insolvency Act.

[49] The respondents' contention that cryptocurrency is not movable property is illogical and will lead to the absurd result that an insolvent with cryptocurrency will be untouchable under the Insolvency Act. In this regard the applicants, correctly so in my view, relied on the "*always speaking*" doctrine of interpretation as explained in the matter of Malcolm v Premier, Western Cape Government 2014 (3) SA 177 (SCA) at para [11][28], where it was remarked that:

> "*There is obvious sense in this approach when a court is confronted with a novel situation that could not have been in the contemplation of the legislature at the time the legislation was enacted. Courts can then, in the light of the broad purpose of the*

[25] https://www.sars.gov.za/wp-content/uploads/IFWG-CAR-WG-Position-paper-on-crypto-ssets.pdf. See, in general, Tonelaria Nacional RSA Pty Ltd v CSARS 2021 (2) SA 297 (WCC) – fn6.
[26] CL – 2019 – 000444.
[27] [2019] EWHC 3556 (Comm).
[28] See Toneleria Nacional RSA (Pty) Ltd v Commissioner, South African Revenue Service 2021 (2) SA 297 (WCC) para [25]

*legislation, current social conditions and technological development, determine whether the new situation can properly, as a matter of interpretation, be encompassed by the language"*

[50] The development of technology and internet enabled devices, the use of which transcends physical boundaries, has resulted in new concepts and areas of law developing[29]. Based on the accepted principles of interpretation (which I deal with below), bitcoin is movable property for purposes of the Insolvency Act and the transfer or disposition thereof should be dealt with in terms of the Insolvency Act.

[51] On the issue of whether the bitcoin was "owned" by the investors, it is true that ownership of bitcoin depends on the facts of each case. In *casu*, investors transferred their movable assets (bitcoin), from their own wallets to a wallet controlled by Steynberg on behalf of MTI (and probably held in the name of Steynberg), the so-called pooled account. MTI then, in its name, transferred the bitcoin to brokers who held it in an account in the name of MTI. According to Steynberg's evidence at the FSCA, the brokers did not know about the "members", and he further explained that "members" would share in profits and losses of MTI. In other words: if MTI suffered losses, the reduction in the total amount of bitcoin would result in an investor being unable to claim entitlement to the number of bitcoin that he/she invested. These facts clearly demonstrate that investors lost "ownership" of their bitcoin whilst acquiring personal rights against MTI.

[52] The operation of MTI's business in cyberspace, is irrelevant. MTI is domiciled in South Africa and its movable property, wherever situated, is therefore considered to be present at its domicile[30]

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[29] See Cybercrime: Key issues and debates: Alisdair A Gillepsie regarding cybercrime, particularly pertains to issues of jurisdiction.

[30] See Viljoen v Venter NO 1981 (2) SA 152 WLD) 154D-155E and, particularly, 155D where Re Estate Morris 1907 TS 657 at 666 was quoted with approval: "*By a fiction of law the insolvent's movable property is all considered to be present at his domicile*"

*Marks's opposition and counter-application:*

[53] In order to establish *locus standi* for purposes of his opposition to the main application and for purposes of the counter-application, Marks firstly submitted that he is a director and shareholder of MTI and secondly, that he acted as a representative of the so-called My MTI Club.

[54] From the investigations by the FSCA and information obtained in the s 417/418 enquiries, it appears that Steynberg was the only director of MTI registered with CIPC. The minutes of MTI's board meetings reflect that from August to December 2020, Steynberg, Marks, Ward and Monica Coetzee collectively acted as the *de facto* directors. This was confirmed by Marks in his first provisional affidavit. At the last recorded meeting of these directors on 15 December 2020, it was recorded that when Steynberg "*disappeared on or about 12 December 2020 the de facto board members declined to function in any managerial role within MTI and the management structure effectively came to a grinding halt*".

[55] On Marks's own version, he was no longer a director of MTI as from 12 December 2020 and on the issue of whether he is a shareholder of MTI, it is noted that it now appears to that the applicants acknowledge that Marks was a shareholder of MTI.[31] Whether or not Marks was a shareholder of MTI is of no relevance for purposes of determining the relief claimed herein and as aforesaid, he was joined by agreement between the parties as a respondent in these proceedings. It is however difficult to understand how Marks, in the absence of Steynberg, could have appointed himself as the only director of MTI and how he, on his own version, has any authority to represent MTI or any of the investors in these proceedings. If Marks was indeed a

[31] In a further application under case number 13721/22 by the applicants in this court, they state Marks was a shareholder of MTI. In terms of s 1 of the Companies Act, a "shareholder", subject to s 57(1), means the holder of a share issued by a company and who is entered as such in the certificated or uncertificated sureties register, as the case may be.

director of MTI, he had dismally failed to fulfil his duties as a director and there is further a conflict of interest between him and other investors, similar to what the SCA had found in Fourie NO (*supra*).

[56] Whether Marks is a creditor of MTI is also debatable. On the available information, Marks had held at least two accounts in his name, being account numbers 7176010 and 2306852. Based on the rand value of bitcoin on the respective dates when the relevant bitcoin was deposited and withdrawn, Marks profited from this investment with MTI in an amount of at least R34,334,133.09. I however accept that there exists a dispute of fact in respect of the accuracy of the back-office data to which I will return.

[57] Whatever his status, Marks, on his version, has no first-hand knowledge (or any knowledge) of material information relating to MTI, such as the alleged trading conducted on behalf of MTI, whether the artificial intelligence bot existed and was used for trading as alleged, the wallets in which bitcoin received from members were held, the transfer of bitcoin by MTI to traders or brokers, the existence of Trade 300 and, crucially, the whereabouts or total of the balance of bitcoin received from investors. He further has no expertise in trading and artificial intelligent bots. From a perusal of MTI's terms and conditions, it is apparent that the My MTI Club is not an entity separate from MTI as MTI had reserved the prerogative to amend the terms and conditions unilaterally and to even reject a "sponsor" application without stating reasons.

[58] It was further alleged, and not disputed that the My MTI Club has not been registered or formed in terms of another law as required by section 8(3) of the 2008 Companies Act and, as a result, it cannot exist as a separate legal entity[32].

[32] Section 8(3) reads as follows in this regard:

[59] For the aforesaid reasons, I find that Marks has no *locus standi* to act on behalf of the My MTI Club. The merits of his counter-application, which was limited to prayers 1.1 and 1.9[33], is dealt with later herein.

[60] Marks's voluminous affidavits were of no assistance to this court in determining the correctness of the factual information placed before court by the applicants and the FSCA.

*The opposition by Rowe:*

[61] The opposition by the Rowe investors were limited to the relief claimed by the applicants in prayers 1.4 to 1.6 of the notice of motion and further, in the event of the court granting such relief, that certain safeguards be put in place. The Rowe investors case is that they "parted with their property" in the *bona fide* belief that MTI operated a legitimate business. These members could not contribute any relevant information pertaining to the operations of or the solvency of MTI at any particular time.

*The opposition by Lee:*

[62] Lee bases his opposition to the relief sought on the same grounds relied on by Marks and Honiball.

*The opposition by Honiball:*

[63] Honiball's opposition is in essence a denial that MTI's business amounted to statutory contraventions which rendered the business of MTI illegal or unlawful, that the applicants had failed to establish that the business of MTI amounted to a common

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*"No association of persons formed after 31 December 1939 for the purpose of carrying on any business that has for its object the acquisition of gain by the association or its individual members is or may be a company or other form of body corporate unless it—*
*(a) is registered as a company under this Act;*
*(b) is formed pursuant to another law; or*
*(c) was formed pursuant to Letters Patent or Royal Charter before 31 May 1962."*

[33] Marks claims an order declaring that: "the MTI TERMS AND CONDITIONS AGREEMENT as concluded with each member of the MY MTI CLUB, is a valid and binding Agreement exclusively regulating the contractual relationship between MTI and each MYMTI CLUB Member." and costs.

law ponzi-scheme and finally that there are disputes of facts that cannot be resolved by way of application.

*The admissibility of evidence:*

[64] Marks contends that the information obtained by the applicants during the course of the s 417/418 enquiries and subsequent reports by retired Justice Fabricius, which were placed before court with his consent, amount to hearsay and should be disregarded, alternatively it was submitted that diminished weight should be attached thereto. He however did not persist with his striking out application.

[65] From the record it appears that the applicants and the FSCA, within the constraints of the situation (Steynberg for example disappearing and then being arrested and incarcerated in Brazil and Marks, who has admitted in these proceedings that there was no proper oversight or control or even financial records in respect of MTI's operations), has secured all the available evidence which has been placed before this court. Witnesses at the enquiries such as Badenhorst and Van Deventer, also deposed to affidavits in these proceedings. Marks is a party to these proceedings and other witnesses such as Kruger, form part of the fifth respondent before court. Marks was fully informed of his rights during the enquiries and legally represented and has raised no prejudice that would be suffered should such evidence be admitted.

[66] Having regard to the considerations enunciated in s3(1)(c) of the Law of Evidence Amendment Act, 45 of 1988, I believe it is in the interests of justice to admit the evidence obtained through the enquiries[34].

[34] See Van Zyl NNO v Kaye NO 2014 (4) SA 452 (WCC) para [44]

*Dispute of fact:*

[67] Declaratory relief can only be granted if the facts as stated by the respondents, together with the facts alleged by the applicants that are admitted by the respondents, justify such an order.[35]

[68] It was argued that the application should be referred to trial, if not dismissed, as there are factual disputes which cannot be determined on the papers.

[69] In a nutshell, the opposing respondents allege that there are disputes of fact pertaining to the following issues: the existence of Mr Daniel Stephenson (Stephenson), a representative of FXChoice, who assisted the applicants and the FSCA in their investigations; whether investors were provided with false trading statements by MTI (or Steynberg) whilst MTI utilised FXChoice's trading platform; whether an artificial intelligence bot was utilised by MTI (or Steynberg) for trading purposes; whether the available back office data of MTI is accurate; whether there was in fact successful trading by MTI (it does appear that there was some trading by MTI, albeit on the available information unsuccessful) and whether MTI is/was insolvent and from when.

[70] The court in the well-known matter of Plascon-Evans (Pty) Ltd v Van Riebeeck Paints (Pty) Ltd 1984(3) SA 623 (A) at 634, explained the principles relating to the resolution of disputes of fact as follows:

70.1 a final interdict can only be granted in motion proceedings if the facts, as stated by the respondent, together with the admitted facts in the applicant's affidavits, justify an order. Where facts, though not formally admitted, cannot be denied, they must be regarded as admitted[36];

[35] See Stellenbosch Farmers Winery Ltd v Stellenvale Winery (Pty) Ltd 1957 (4) SA 234 (C) at 235.
[36] 634E-G

70.2 A court, in motion proceedings, is not confined to only the above-mentioned consideration and in certain circumstances the denial by the respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or *bona fide* dispute of fact[37];

70.3 Where the allegations or denials of the respondent are so far-fetched, or clearly untenable, the court is justified in rejecting such facts merely on the papers.

[71] A real and *bona fide* dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has, in his or her affidavit, seriously and unambiguously addressed the fact said to be disputed[38] . The dispute must also be relevant to issues to be determined.

[72] In Soffiantini v Mould[39], Price JP stated that:

> *'If by a mere denial in general terms a respondent can defeat or delay an applicant who comes to Court on motion, then motion proceedings are worthless, for a respondent can always defeat or delay a petitioner by such a device. 'It is necessary to make a robust, common-sense approach to a dispute on motion as otherwise the effective functioning of the Court can be hamstrung and circumvented by the most simple and blatant stratagem. The Court must not hesitate to decide an issue of fact on affidavit merely because it may be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over-fastidious approach to a dispute raised in affidavits."*

[73] A respondent, in addition, cannot merely allege conclusions as facts. A respondent must produce admissible evidence in support of such facts. In motion proceedings the affidavits constitute not only the evidence, but also the pleadings. A

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[37] 634H

[38] Wightman v Headfour (Pty) Ltd & another 2008 (3) 371 (SCA), and as applied in Minister of Environmental Affairs v Recycling and Economic Development Initiative of South Africa NPC 2018 (3) SA 604 (WCC)

[39] 1956 (4) SA 150 (E) at 154 F - H

party, in motion proceedings, is consequently expected to allege the required facts and, in addition, to support such facts by adducing admissible evidence.[40]

[74] Although the so-called robust common-sense approach usually relates to a situation where the respondent makes bald, vague and hollow denials of factual matter, it has been held to be applicable in accessing a detailed version, which is wholly fanciful and untenable.[41]

[75] In Transnet v Rubenstein (*supra)* the Supreme Court of Appeal held that a respondent is required to make necessary allegations to set up a defence (or grounds for opposition) and support such allegations by evidence[42].

[76] Another principle that is apposite in this matter, flows from the limited access that the liquidators have to facts in the context of the mismanagement of MTI. '*Generally, the quantum of evidence a party can be expected to adduce depends upon the amount of evidence at his disposal'.*[43]

[77] I shall deal with the question of whether MTI was an illegal/unlawful and fraudulent scheme and the question of whether MTI was factually insolvent from 18 August 2019 (the beginning of the second period) with reference to the dispute regarding the reliability of the MTI back office date, separately from the disputes of fact raised in respect of the evidence obtained by the FSCA from FXChoice, the existence of Trade 300 and the existence and utilisation of the artificial intelligence bot.

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[40] Transnet v Rubenstein 2006 (1) SA 591 (SCA) paras [28] and [29]

[41] Trust Verification Centre v PSE Truth Detection CC & others 1998 (2) 689 (W); Buffalo Freight Systems (Pty) Ltd v Crestleigh Trading (Pty) Ltd & another 2011 (1) SA 8 (SCA)

[42] Paras [28] to [30]

[43] Schmidt, Law of Evidence, 3-28 to 3-28(1)

*The existence of Stephenson:*

[78] It appears to be common cause that the FSCA and consequently the applicants, rely heavily on the information obtained from FXChoice by way of Stephenson, who deposed to affidavits on 28 October 2022 and again on 30 November 2021 in these proceedings.

[79] Stephenson deposed to an affidavit in which he confirmed that he is a citizen of the United Kingdom, with passport number 562083892, in his capacity as the Administrative Director of FXChoice, a Belize International Business Company, with company number 105,968.

[80] The second and third respondents placed the existence of Stephenson in dispute on the basis that his signatures on the affidavits before court, in their opinion, differ and because an investigative journalist, who is interested in writing a book about MTI, could find no evidence of his existence. What the court should make of this is unclear.

[81] What is however undisputed is the fact that Stephenson signed two affidavits in these proceedings, before a notary public, Mr O'Conner, who exists and practices in London, England.[44]

[82] It further appears that Stephenson replied to an email of the journalist and confirmed that it was his signature on the two affidavits before court during February 2022.[45]

[44] According to the journalist Mr O'Conner even had a copy of one of the affidavits, without the annexures, and provided him with a copy of the affidavit.
[45] Despite this email, the journalist still doubts whether it was indeed Mr Stephenson who replied to his email.

[83] The respondents have failed to place any facts before court to substantiate doubt to the existence of Stephenson or for the court to disregard the facts reported by him.

*The existence of Trade 300 and the artificial intelligence bot:*

[84] The evidence show that Trade 300 and the email address used by it, was created by Steynberg and that no trace could be found that it is indeed an operating broker. None of the respondents were able to place any evidence before court to show that it exists or that any funds were transferred by Steynberg or MTI to such entity or any other entity for that matter. The inevitable conclusion is: the representations made to investors by Steynberg and the management of MTI to investors in this regard, were false.

[85] Insofar as the bot is concerned, Steynberg told the FSCA during 2020 that MTI had been trading by using an artificial intelligence bot since July 2019, which bot was developed by Keith Badenhorst, who was still maintaining and "tweaking" the bot in order to ensure its performance and in order to "adjust to market conditions". According to him Badenhorst was paid 30% (later 25%) of MTI's profits and a human could not effect such trades.

[86] Keith Badenhorst testified under oath before the FSCA on 26 October 2020, at the enquiry and he deposed to an affidavit in this application. He explained that he and Steynberg "dabbled" in the development of a rule-based bot until about 2015, at which stage he walked away from the project. He had not been involved in the upgrading of the bot in any material way and he was not aware that Steynberg was using the bot for trading purposes. He, quite interestingly, stated that:

*"The first time I was made aware of myself being involved in this whole situation, was last year when the FSCA contacted me."*

[87] He denied ever being involved in MTI, the business of MTI or the trading activities of MTI and was not paid for any services allegedly rendered.

[88] Mr Bell, the Chief Operations Officer of MTI, stated in his letter of resignation dated 26 June 2020, in this regard as follows:

> *"The BOT, which is at the heart of everything, remains a dark and closed cloud and is a major issue for me and for many other members. I have repeatedly asked you many times for information including this week, which you have promised repeatedly to give to me, with every time you have so promised to provide information, you have done nothing.*
>
> *More and more people are questioning the Bot and accounting records and as of today, with me paralysed by your non-response, with myself and the team unable to respond properly to inquirers, I have come to a point at which I cannot deal with this anymore."*

[89] The evidence of Badenhorst and Mr Bell was not disputed by the respondents.

[90] There are consequently no *bona fide* dispute of fact and on the evidence, I find that Steynberg did not use an artificial intelligence bot to achieve the alleged incredible trading results and that he did not transfer bitcoin deposited by investors held in a pooled account at FXChoice to an unregulated broker named Trade 300. It follows that the representations made by Steynberg and the management of MTI in this regard were false.

[91] The false representations pertaining to Trade 300 and the artificial intelligence bot, in my view, on a balance of probabilities, show that the business of MTI was fraudulent. I agree with the applicants that the fraud perpetrated by Steynberg and MTI were not isolated incidences but rather fundamental aspects of the structure of the business and as such tainted the business operations of MTI as a whole.

*Was the business of MTI illegal and unlawful?:*

[92] It is the applicants' case, with reliance on the report filed by the FSCA and the reports and evidence obtained by way of the s 417/418 enquiries, that the business of MTI contravened certain statutory provisions and was therefore an illegal and or unlawful as it:

92.1 rendered financial services without the necessary licence being issued by the FSCA, as provided for in s 7 read with s 8 of the FAIS Act;

92.2 acted as a so-called Over-The-Counter Derivative Provider, as defined by Regulation 2 of the Financial Markets Act, 19 of 2012 ("the FMA"), read with s 6(8) of the FMA;

92.3 provided, as a business or part of a business, a financial product, a financial service or market infra structure in contravention of the provisions of Section 111 of the Financial Sector Regulation Act, 9 of 2017;

92.4 conducted a collective investment scheme as defined in s 1 of the Collective Investment Schemes Control Act, 45 of 2002 ("the CISC Act"), without being registered as a manager or being an authorised agent or being exempted from the provisions of the CISC Act, as provided for in s 5 of the CISC Act;

92.5 directly or indirectly promoted, knowingly joined or entered into or participated in a fraudulent financial transaction, as described in s 42(4) of the Consumer Protection Act, 68 of 2008 ("the CPA");

92.6 directly or indirectly promoted and conducted a pyramid scheme, as described in s 43(2)(b) read with s 43(4) of the CPA.

[93] Applicants further contended that the business of MTI amounted to common law fraud by having an underlying business model which was designed and implemented to perpetrate a fraud on members of the public by enticing them to invest in an illegal ponzi-type investment scheme with the fraudulent intent to convince members of the public to transfer their right, title and interest, alternatively the effective control over their right, title and interest in their assets (specifically bitcoin) to MTI and, ultimately enabling its directing mind(s), being its director(s) and/or shareholders and/or senior management to misappropriate these assets for his/their personal gain.

[94] It is so that it does not follow that a business conducted in breach of statutory provisions amounts to an illegal or unlawful scheme. A breach of statutory provisions also does not necessarily render the underlying agreements invalid.

[95] Whether or not the business of MTI was in breach of all the statutory provisions relied on by the applicants need in my view not to be decided, if it is shown, on a balance of probabilities, that MTI's business was a common law ponzi-type scheme or conducted in breach of the CPA.

[96] I am nonetheless of the view that MTI, as found by the FSCA, breached several statutory provisions, such as s 7 of the FAIS Act in that it rendered financial services without a licence. In this regard and insofar as it was argued that crypto assets do not fall under the auspices of the FAIS Act, the evidence of Steynberg to the FSCA, was that MTI traded in forex initially and later in CFD's, which are both regulated and required a licence. The evidence was that MTI acted as an intermediary between the investors looking to invest in bitcoin and the online broker. The investors would deposit their bitcoin into a wallet controlled by MTI, who would then invest the funds into a foreign trading market. The bitcoin was never exchanged for any other currency.

[97] Furthermore, and at the first interviews with the management of MTI during July 2020 by the FSCA, it was explicitly stated by the FSCA to Steynberg and MTI's management, that it required proof that trades were being made by MTI's brokers and that the funds or assets were not being "pocketed". It was further expressly stated by the FSCA that it had concerns about the fact that trades through FXChoice were not in the name of the actual clients but rather in the name of MTI itself and that this was known as a discretionary investment for which a licence is required. It was also pointed out that the issue was not that MTI was trading in bitcoin but rather that assets were pooled together, given to a forex broker and then traded in the name of MTI and that was a contravention of the CISC Act.

[98] The concerns raised by the FSCA are substantiated by MTI's management public report to investors, after these interviews, that it was trading in derivative instruments based on forex pairs and that considerable profits were made.[46]

[46] It was published that MTI made a monthly profit of approximately 10 % during this period and that this represented a monthly growth of members' pooled bitcoin of 10 %. These profits were allegedly high and consistent.

[99] In light of the aforesaid evidence the argument that bitcoin is not a "financial product" for purposes of the FAIS Act and the CPA Act, is contrived.

[100] Even if I am wrong in this regard, and the manner in which MTI operated its business was not subject to the oversight of the FSCA, I am of the view that on the evidence before court, the applicants have shown that MTI's business amounted to an unlawful and fraudulent scheme as a result of the various false representations made to investors.[47]

[101] On the conspectus of the evidence, it cannot seriously be argued, that MTI did not conduct a pyramid scheme in contravention of ss 42 and 43 of the CPA if one considers the evidence of Steynberg himself, the binary structure explained by Ward during the enquiries and in the public domain, Marks's explanations at board meetings regarding the growth of membership numbers through teams and leaders, and the evidence of Ignatius Bell who, save for an investment of R7,000.00 on his behalf by Steynberg, made no further investment but recruited investors and had approximately 190 000 investors in his "downline" in the MTI binary system. Based on the MTI compensation plan, dependent on the investors recruited by Bell, he was enabled to earn an income of R6 million per month.

*Declaring all agreements between MTI and its investors to be unlawful and void ab initio:*

[102] The applicants seeks an order declaring that all agreements between MTI and investors formed part of the unlawful business of MTI and are therefore void *ab initio* with the result that investors have no contractual right to share in any profits of MTI with reliance on the matter of Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and

[47] See paras 32 and 34 of this judgment.

Others 2014 (4) SA 179 (CC) at para [67] and the order that was granted in Fourie NO (*supra*).

[103] It was submitted that a declaratory order to this effect would determine the extent of claims that investors may have against MTI in liquidation and the converse being the extent to which the applicants may have claims against investors who have shared in MTI's alleged profits.[48]

[104] The order in Fourie NO (*supra*) was granted prior to the enactment of the CPA and at the time, the CPA's predecessor, the Consumer Affairs (Unfair Business Practices) Act, 71 of 1988, ("the 1988 Act"), was in effect. The question is thus whether the CPA has had any effect on the finding in Fourie NO (*supra*) and further whether the CPA renders a pyramid or ponzi-type scheme illegal.

[105] It was said in Schierhout v Minister of Justice 1926 AD 99 at [109], that: "*It is a fundamental principle of our law that a thing done contrary to the direct prohibition of the law is void and of no effect*". It was however pointed out in Lupacchini NO v Minister of Safety and Security 2010 (6) SA 457 (SCA) at para [8] that:

> *"... [T]hat will not always be the case. Later cases have made it clear that whether that is so will depend upon the proper construction of the particular legislation. What has emerged from those cases was articulated by Corbett AJA in Swart v Smuts 1971 (1) SA 819 (A) at 829C-G:*

[48] How this should be dealt with is subject to another application in this court under case no 13721/22.

*'Die regsbeginsels wat van toepassing is by beoordeling van die geldigheid of nietigheid van 'n transaksie wat aangegaan is, of 'n handeling wat verrig is, in strydmet 'n statutêre bepaling of met verontagsaming van 'n statutêre vereiste, is welbekend en is alreeds dikwels deur hierdie Hof gekonstateer (sien ...). Dit blyk uit hierdie en ander tersaaklike gewysdes dat wanneer die onderhawige wetsbepaling self nie uitdruklik verklaar dat sodanige transaksie of handeling van nul en gener waarde is nie, die geldigheid daarvan uiteindelik van die bedoeling van die Wetgewer afhang. In die algemeen word 'n handeling wat in stryd met 'n statutêre bepaling verrig is as 'n nietigheid beskou, maar hierdie is nie 'n vaste of onbuigsame reël nie. Deeglike oorweging van die bewoording van die statuut en van sy doel en strekking kan tot die gevolgtrekking lei dat die Wetgewer geen nietigheidsbedoeling gehad het nie."* (my emphasis)

[106] In searching for the intention of the legislature, general principles of interpretation apply. Those principles were formulated as follows in Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) para [18]:

> *"...The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is*

*possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. ... The inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."*

(my emphasis)

[107] In regard to the application of the CPA, it was argued that a sensible interpretation of the words "*(a) person must not directly or indirectly promote ... a pyramid scheme*", inevitably leads to the conclusion that a pyramid scheme is illegal. I was referred to Van Eeden, *Consumer Protection Law in South Africa*, 2nd ed, para 2.3 where it is stated that the CPA prohibits pyramid schemes and to para 7.5 where it is stated in respect of such schemes: *"Such schemes are not regulated, in the sense that they may be conducted subject to compliance with certain requirements; they are prohibited outright."*

[108] In accordance with the aforesaid principles and on the question of whether the CPA brought about any change in the law relating to pyramid schemes, the point of departure is the language of the provisions, read in context and having regard to the purpose of the provisions, bearing in mind that a sensible meaning is preferred to one that leads to insensible or unbusinesslike result or undermines the apparent purpose of the CPA.

[109] Section 43 of the CPA reads, *inter alia*, as follows:

> "*43 Pyramid and related schemes*
> *(1) …*
> *(2) A person must not directly or indirectly promote, or knowingly join, enter or participate in—*
> *(a) …*
> *(b) a pyramid scheme, as described in subsection (4);*
> *(c) …*
> *(d) …,*
> *or cause any other person to do so.*
> *(3) …*
> *(4) An arrangement, agreement, practice or scheme is a pyramid scheme if—*
> *(a) participants in the scheme receive compensation derived primarily from their respective recruitment of other persons as participants, rather than from the sale of any goods or services; or*
> *(b) the emphasis in the promotion of the scheme indicates an arrangement or practice contemplated in paragraph (a)."*

[110] Section 43(2) in my view, given the language and the purpose of the Act, makes it illegal to operate a pyramid scheme. In terms of the 1988 Act, there was no distinction between parties who joined knowingly and those who joined unknowingly, which raises the question of whether persons who unknowingly join, enter or participate in a pyramid scheme, will be entitled to enforce an agreement between themselves and the illegal scheme. This cannot be and I agree with Mr van Rooyen (SC) that the distinction in the CPA simply excludes the unknowing participants from being liable in terms of s 112 to pay administrative fines.

[111] As pointed out previously in this judgment, the business conducted by MTI contravened provisions of several statutes other than the CPA and it appears on the facts which cannot be denied by the respondents that the underlying business model of MTI was designed and implemented to perpetrate a fraud on members of the public which ultimately enabled its directing mind(s), being its director(s) and/or shareholders and/or senior management, to misappropriate investors assets for their personal gain.

[112] Section 2(1) of the CPA provides that: *"This Act must be interpreted in a manner that gives effect to the purposes set out in section 3."*[49]

[113] In respect of "consumer interest", Van Eeden at para 1.2 states:

> "'Consumer interest' is not immutable and should not be a doctrinaire concept; it must be context and time sensitive, and must be realised in balance with other legitimate societal interests in respect whereof it does not assert priority or superiority. Consumer interest must also be seen as distinct from the individual's interest as a citizen; and comprising the public interest in conjunction with other group and individual interests."

[114] If an "*unknowing*" investor is permitted to enforce an agreement with MTI, it will give effect to a business that is prohibited by the CPA and it will give effect to a fraudulent scheme which would not be in accordance with the purpose and policy of the CPA set out in s 3.

[115] Further to this, s 51 of the CPA reads, *inter alia*, as follows:

> "51. Prohibited transactions, agreements, terms or conditions
>
> (1) A supplier must not make a transaction or agreement subject to any term or condition if—
> (a) its general purpose or effect is to –
> (i) defeat the purposes and policy of this Act;
> (ii) mislead or deceive the consumer; or
> (iii) subject the consumer to fraudulent conduct;
> (b) it directly or indirectly purports to –
> (i) waive or deprive a consumer of a right in terms of this Act;
> (ii) avoid a supplier's obligation or duty in terms of this Act;
> (iii) set aside or override the effect of any provision of this Act; or
> (iv) authorise the supplier to—
> (aa) do anything that is unlawful in terms of this Act; or

[49] Section 3 reads *inter alia* as follows:
"3 Purpose and policy of Act
(a) The purposes of this Act are to promote and advance the social and economic welfare of consumers in South Africa by—
(d) protecting consumers from –
(i) unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and
(ii) deceptive, misleading, unfair or fraudulent conduct;
(e) improving consumer awareness and information and encouraging responsible and informed consumer choice and behaviour;
(f) promoting consumer confidence, empowerment, and the development of a culture of consumer responsibility, through individual and group education, vigilance, advocacy and activism; …"

(bb) fail to do anything that is required in terms of this Act;

...

(3) A purported transaction or agreement, provision, term or condition of a transaction or agreement, or notice to which a transaction or agreement is purported to be subject, is void to the extent that it contravenes this section.

..."

[116] It appears from the context of s 51, and in particular s 51(3), which provides *inter alia* that a "*purported transaction or agreement ... is void to the extent that it contravenes this section*", that it is not limited to "*a list of unfair terms*".

[117] The terms of the agreements between MTI and investors are in conflict with the provisions of s 51(1), particularly the sections already highlighted previously herein and are therefore void pursuant to s 51(3).

[118] Voidness of agreements, in the course of illegal transactions, does not only depend on the question as to whether a ponzi-scheme was conducted. In Fourie NO (*supra*) each of the following bases for illegality was considered to trigger voidness of agreements:

118.1 A contravention of section 11 of the Banks Act[50], due to the peremptory language of the provision that a contravention constitutes a criminal offence and that such prohibited transactions are void *ab initio;*

118.2 a pyramid scheme;

118.3 and a fraudulent scheme in terms of the common law.

[50] *'(1) ... no person shall conduct the business of a bank unless such a person is a public company and is registered as a bank in terms of this Act.*
*(2) Any person who contravenes a provision of ss1 shall be guilty of an offence."*

[119] It follows that if the agreements, on the facts of this application, are not declared void *ab initio*, it will condone a scheme that is fraudulent and in conflict with several statutes. Such result will be contrary to public policy considerations.

[120] I further agree that the peremptory terms of s 7 of the FAIS Act and s 111 of FSRA Act ("*may not*") and the fact that a contravention of the Act constitutes a criminal offence, renders the business operations of MTI illegal and unlawful over and above the fact that a pyramid scheme is prohibited in terms of s 43 of the CPA.

*Declaring that MTI is factually insolvent and that dispositions as contemplated in sections 26 and 29 of the Insolvency Act were made:*

[121] Applicants contend that the factual insolvency of MTI is demonstrated, *inter alia*, by the fact that investors requested the withdrawal of 2 600 bitcoin in December 2020 but those withdrawals were not effected by MTI. Only 1280 bitcoin could be found by the liquidators and further that MTI's back office database reflects the extent of MTI's insolvency. In this regard the applicants rely on the evidence of Stephenson and the investigation by Mr Pedersen, with reference to the Maxtra back office data.

[122] According to Stephenson, MTI, during the first period, had a so-called MAM account with FXChoice and a total of 50.95 bitcoin was deposited into that account. MTI lost 22 bitcoin and clients withdrew what was left of their funds, bringing the activity on that account to a close. In 2020 MTI restarted with a new live count, account 174850 and MTI advised that it was its funds that would be traded (this is in line with what Steynberg advised the FSCA, but contrary to what Marks stated under oath in his provisional opposing affidavit to the liquidation application).

[123] Contrary to what was stated by MTI to investors, Stephenson states that MTI did not trade as alleged by Steynberg and that during the second period, the limited trading that MTI did, was massively unsuccessful. FXChoice blocked trading on MTI's live account as they came into possession of trade accounts provided by MTI to investors which were false statements as it did not correlate with the live trades on the account of MTI. According FXChoice, the investors were provided with manipulated winning demo trade statements. After blocking MTI's account, it was granted an opportunity to provide further documentation confirming the source of MTI's funds and to explain the discrepancy between the live trades and the statements provided to MTI's investors. MTI failed to do so.

[124] On 13 July 2020, after the account was blocked, FXChoice received a withdrawal request of 280 bitcoin which was refused. MTI was again asked for audited financial statements which it failed to provide previously. On 7 August 2020 the account was marked as "fraud".

[125] According to the records of FXChoice, MTI did not withdraw any funds in 2020 but deposited a total of 1,845,978,020.00 bit and lost 566,676,745.3 bit through trading. The remaining balance of 1,280,045.63 bit was frozen and later converted by the applicants in the liquidation proceedings. FXChoice was not involved in the third period on the available evidence.

[126] *Prima facie*, the aforesaid evidence shows that:

126.1 Contrary to the remarkable profits claimed by MTI, it traded at a loss whilst making use of FXChoice as a broker and the nature of MTI's business was CFD derivative trading;

126.2 Only a very limited amount of bitcoin was deposited in 2020 at FXChoice and nothing was withdrawn;

126.3 No bitcoin was transferred from the only live account in the name of MTI, or the individual accounts held in the name of Steynberg, to a broker called Trade 300 during 2020 from FXChoice.

[127] Mr Pedersen, a forensic cybercrime investigator, instructed by the applicants, states that in his expert opinion, as set out in his report of July 2020 (the "Tokyo report"), and based on the back-office data, it appears that MTI had approximately 200 000 investors (ignoring the duplicate and dormant accounts), but that it is difficult to determine the correct number with accuracy as the database does not reflect any particulars of wallets wherein bitcoin deposited by investors were held. He further states that as July 2020, MTI should have had a balance of 10 866.87 bitcoin (this equates to R 2.1 billion at that time), which cannot be found.

[128] Mr Pederson however qualified his findings by stating that: "The database is most likely incomplete in terms of full and comprehensive investment and withdrawal data. The first withdrawal data is notes as 2019-08-20 while the first deposit is on 2020/02/24. This would indicate a legacy system where perhaps date base been caried in from another database and older data is available. The database shows no indication of active trading in BTC via the database. It is common cause that withdrawals by members were a manual process performed off of the "MTI back-office" and that consequently there is no direct buy/se; data available to verify transactions. It is common cause that the database is a legacy system which has been worked on by a number of different parties at different period of time."

[129] Mr Gooden, another expert employed by the applicants, states that he was asked to investigate whether it is possible to manipulate FXChoice and MetaTrader 4 ("MT4") software in order for a pro-demo account to appear as if it was a pro-live account. He found that it can easily be manipulated and that daily trade statements can easily be fabricated.

[130] Marks, on the other hand, filed an expert report by Mr Liam Timm, a cyber security consultant, who states that in his expert opinion, the back office data was obfuscated and the database of MTI was incomplete. It is according to him therefore impossible to validate the integrity of trade data. He further states that he was placed in possession of selected videos of demo trades shown to investors, Muller and Haasbroek, and was of the view that there was live trading, contrary to what is stated by FXChoice.

[131] Marks also filed an affidavit by a Mr Stone, who scrutinised on day's trading history of MTI, 29 June 2020, on an account history report, and concluded therefrom, that in his opinion MTI traded and that the statements in respect of that day were not fictious nor fabricated. Contrary to this Steynberg's evidence, which was confirmed by Stephenson, was that since 10 June 2020, he did not trade on the MTI account at FXChoice.

[132] The findings in the FSCA report confirms that trading did take place in the first period and that limited trading took place during the second period.

[133] It appears that the implementation of the referral fee entitlement during April 2020, as part of the investors benefits, which entitled founding members and certain investors to qualify for 10 % referral bonus, together with the unsustainable business of MTI, sunk the boat.

[134] Unlike the factual situation in Fourie NO (*supra*), it is disputed, for purposes of this application for declaratory relief, that MTI was all at material times, or from a specific date, insolvent in that its liabilities exceeded its assets. Rather, it is alleged that trading in fact occurred, that profits were made and that the volume thereof cannot be determined as the available data is incomplete. Further to this, and again unlike the situation in Fourie NO (*supra)*, MTI may, depending on the claim(s) that each and every investor may have had at a specific time, have had sufficient underlying assets or investments at times, given the initial exponential growth in the value of bitcoin and its volatile nature.

[135] A further distinguishing fact is that in Fourie NO (*supra)* all the investors were innocent and unaware of the fact that the scheme was illegal. In the present matter it appears that some investors conducted their own illegal schemes within the MTI scheme. Investors who knew that the MTI scheme was illegal would not have claims based upon enrichment against MTI, which would have a material effect on the nature and extent of the liabilities of MTI.

[136] Whilst in my view there can be no material dispute as to whether the business of MTI was illegal, unlawful and fraudulent and that upon such finding it follows that that the agreements between investors and the scheme must be void *ab initio*, I am not persuaded to grant declaratory relief, by way of application, that MTI was factually insolvent on a particular date or that dispositions were made as contemplated in ss 26 and 29 of the Insolvency Act.

*Conclusion:*

[137] MTI's business clearly amounted to an unlawful ponzi-scheme, i.e. a fraudulent investing scam promising high rates of return to investors and generating returns for earlier investors with investments taken from later investors.

[138] It would appear that there is no pool of members bitcoin, Trade 300 does not exist, the artificial intelligence bot never existed or traded and the remarkable trading results presented to investors were *prima facie* false.

[139] I am satisfied after due consideration of all the relevant principles applicable to disputes of fact, the granting of declaratory relief and the relevant sections of the Insolvency Act, that the applicants have shown, on a balance of probabilities, that they are entitled to the relief claimed in paras 1.1 and 1.2 of the notice of motion.

*Costs:*

[140] By reason of the exceptional facts, the complexity of the matter, the voluminous documents filed and the difficulty, complexity, voluminous documentation, multiplicity of issues and, to an extent, the novel issues raised, it will be fair in my view, for the purpose of doing justice between the parties, to find that it was reasonable to employ two counsel and to allow the fees of those counsel[51].

[141] In the circumstances the following order is made:

1. The business model of Mirror Trading International (Pty) Ltd (in liquidation) ("MTI") is declared to be an illegal and unlawful scheme.

[51] See Cilliers, *Law of Costs*, 3rd ed at 13-38(6) para 13.24 and the authorities referred to therein.

2. All agreements concluded between MTI and its investors in respect of the trading/management/investment of bitcoin for the purported benefit of the investors, are declared unlawful and *void ab initio*;
3. The remainder of the relief claimed by the applicants is refused.
4. The counter-application by second respondent is dismissed with costs, such costs to include the costs of two counsel where so employed.
5. The application for referral to oral evidence by third respondent is dismissed with costs, such costs to include the costs of two counsel where so employed.
6. The costs of the main application, on an unopposed basis, including the costs of two counsel where so employed, are costs in the liquidation.
7. The costs occasioned by the opposition to the main application, including the costs of two counsel where so employed, are to be paid by the second and third respondents, jointly and severally.

**A De Wet**
**Acting Judge of the High Court**

| | |
|---|---|
| On behalf of the applicants: | Advocates Rudi van Rooyen SC and<br>Rinier Raubenheimer instructed by<br>MOSTERT & BOSMAN (Ref: Mr Pierre du Toit)<br>Email: Pierred@mbalaw.co.za |
| On behalf of the second respondent: | Adv Sydney Alberts<br>Selzer Law (Ref: Mr Henry Selzer)<br>Email: henry@selzerlaw.co.za |
| On behalf of the third respondent: | Hanri Loots, Pieter-Schalk Bothma and Mary-Anne McChesney<br>Duvenhage de Villiers (Ref: Mr Duvenhage)<br>Email: bd@duvdevill.co.za / monique@dudevill.co.za |

| | |
|---|---|
| On behalf of the fourth respondent: | Henry Cowley<br>EDJ Attorneys (Ref: Mr E de Jager)<br>Email: litigation@edjinc.co.za |
| On behalf of Anton Lee (member of fifth respondent): | Allis Attorneys (Ref: Mr Allis)<br>Email: allisattorneys@gmail.com |
| On behalf of Adele Bodenstein (member of fifth respondent): | Attorneys unknown. Her former attorneys' particulars are Lombard & Kriek Inc (Ref: JC Kriek Email: jc@lomattorneys.co.za |

HC97

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 3721/22

The application between:

| | |
|---|---|
| **H BESTER N.O.** | First applicant |
| **AW VAN ROOYEN N.O.** | Second applicant |
| **CJ ROOS N.O.** | Third applicant |
| **JF BARNARD N.O.** | Fourth applicant |
| **D BASSON N.O.** | Fifth applicant |
| **CBS COOPER N.O.** | Sixth applicant |

(Cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | Respondent |

OFFICE OF THE CHIEF JUSTICE PRIVATE BAG X9020 CAPE TOWN 8000 2022 -08- 17 GENERAL OFFICE CAPE HIGH COURT WESTERN CAPE

## NOTICE OF MOTION

**BE PLEASED TO TAKE NOTICE** that the abovenamed applicants will make application to this Honourable Court on **31 AUGUST 2022** at **10H00** or so soon thereafter as counsel may be heard, for an order in the following terms:

1. That the applicants' non-compliance with the rules of court concerning forms, service and time periods otherwise applicable be condoned, that such rules be dispensed with and that this application be heard and adjudicated upon as an urgent application in terms of uniform rule 6(12).

MOSTERT & BOSMAN ATTORNEYS
PER: PIERRE DU TOIT
TELNR: 021-914-3322
E-MAIL: antoinettee@mbalaw.co.za

2. That the applicants be permitted to prosecute this application on an *ex parte* basis.

3. That a rule nisi (**"the provisional order"**) in the following terms be granted:

3.1 The liquidators should treat Bitcoin (**"BTC"**) in the estate of Mirror Trading International (Pty) Ltd (**"the Company"**) as intangible assets that constitute "property" as defined in section 2 of the Insolvency Act, 24 of 1936 (**"the Insolvency Act"**);

3.2 The liquidators, in dealing with claims by and against those who deposited BTC with the Company, are required to take specific cognisance of the following classes of Investors in the so-called Investment Scheme operated by the Company (**"the Scheme"**):

3.2.1 The first class of investors are those individuals who invested in the Scheme, but who did not receive anything – i.e. zero – in return (**"Class 1 Investors"**);

3.2.2 The second class of investors are those individuals who invested in the Scheme and who, although having received a return on their investment, received less than what they invested in the Scheme (**"Return"** and **"Class 2 Investors"**). These investors, although having received a Return, did not profit from the Scheme; and

3.2.3 The third class of investors are those individuals who invested in the Scheme and who received returns that exceed the amount of

capital invested in the Scheme, thereby profiting from being participant in the scheme ("**Profit**" and "**Class 3 Investors**");

3.3 Those individuals who deposited BTC with the Company and who intend to submit claims in the winding up of the Company and prove same as contemplated by section 44 of the Insolvency Act, are required to submit their claims with the Company in Rand value;

3.4 In the event that the investment agreements concluded by and between the Company and Investors are void *ab initio* as a consequence of the alleged illegality of the Company's business ("**the first scenario**"), then:

3.4.1 In relation to Class 1 Investors:

3.4.1.1 Class 1 Investors should be permitted to submit a claim against the estate in an amount equal to their investment in the Scheme;

3.4.1.2 the value of a Class 1 Investor's investment in the Scheme should be calculated in Rand value, as at the date upon which the relevant Investor(s) made the relevant investment in the Scheme;

3.4.1.3 insofar as their claims are properly proved in compliance with section 44 of the Insolvency Act, their claims should be accepted by the Liquidators;

3.4.2 In relation to Class 2 Investors:

3.4.2.1 they will have to account towards the estate for any Return(s) on their so-called investment(s) in the Scheme;

3.4.2.2 the Liquidators must ensure that the Returns are taken into account and subtracted from the investments made by the Class 2 Investors into the Scheme, so that those Returns may ultimately be applied in reduction of their claims against MTI;

3.4.2.3 Class 2 Investors should be permitted to submit a claim against the estate in an amount equal to their impoverishment or the Company's enrichment, whichever is the lesser, which is in turn to be quantified by subtracting the properly quantified Return(s) from the properly quantified investment(s) of the relevant Investor(s), the result of which will represent either one or both of the Investors' impoverishment or the Company's enrichment;

3.4.2.4 the value of a Class 2 Investor's investment in the Scheme should be calculated in Rand value, as at the date upon which the relevant investor(s) made the relevant investment in the Scheme;

3.4.2.5 the value of a Class 2 Investor's Return should be calculated in Rand value, as at the date upon which the

relevant Return or portion thereof was paid by the Company to the relevant investor;

3.4.2.6 to the extent that a Class 2 Investor submits a claim in the estate that complies with section 44 of the Insolvency Act, that represents the Rand value of the lesser of that Investor's impoverishment or the Company's enrichment, in a manner that corresponds with the Liquidators' independent assessment, such claims should be accepted by the Liquidators;

3.4.2.7 the Liquidators will remain vested with claims against the Class 2 Investors for repayment of the Returns, in terms of section 29 and 30 of the Insolvency Act, despite the fact that a Class 2 Investor's claim may have been reduced to account for the same Return when that Investor proved a claim in the estate, provided that the jurisdictional requirements of those sections can be satisfied;

3.4.2.8 the Liquidators may then pursue the Class 2 Investors in respect of the Returns, in terms of either section 29 or 30 of the Insolvency Act;

3.4.2.9 when a Return paid to a Class 2 Creditor is set aside by a Court in terms of section 29 or 30 of the Insolvency Act, that Return [in whatever form contemplated by section 32(3) of the Insolvency Act] will be

repaid/returned to the estate, to form part of the assets available for ultimate distribution to the creditors in the form of a dividend;

3.4.2.10 in such event, the Class 2 Investor concerned should be afforded an opportunity of proving an additional claim against the estate, in relation to the Return in question;

3.4.3 In relation to Class 3 Investors:

3.4.3.1 Class 3 Investors will initially not have a claim against the Company;

3.4.3.2 The Liquidators will be vested with claims against Class 3 Investors premised:

3.4.3.2.1. On section 26 of the Insolvency Act, in terms of which the Liquidators can reclaim the Profit(s) transferred by the Company to Class 3 Investors, provided that the jurisdictional requirements of those sections can be satisfied;

3.4.3.2.2. On sections 29 or 30 of the Insolvency Act, on the very same basis that they have claims against the Class 2 Investors under these sections, provided that the jurisdictional requirements of those sections can be satisfied;

3.4.3.2.3. On section 31 of the Insolvency Act in the case of those individuals who colluded to dispose of the property belonging to MTI in a manner which had the effect of prejudicing its creditors or of preferring one of its creditors above another.

3.4.3.3 The value of a Class 3 Investor's investment in the Scheme should be calculated in Rand value, as at the date upon which the relevant investor(s) made their investments in the Scheme;

3.4.3.4 The value of a Class 3 Investor's reimbursement in respect of their initial investment and/or the Profit should be calculated in Rand value, as at the date upon which the relevant creditor(s) received same from the Company;

3.4.3.5 Claims submitted by Class 3 Investors, prior to the finalisation of the Liquidators' claims that are to be instituted in terms of sections 26 and 29 or 30 and/or 31 of the Insolvency Act, should be rejected;

3.4.3.6 The Liquidators may pursue the Class 3 Investors in respect of all transfers made to these Investors by the Company, including in respect of the Profit(s), in terms of section 26 and 29 or 30 and/or 31 of the Insolvency

Act, provided that the jurisdictional requirements of those sections can be satisfied;

3.4.3.7 The Liquidators, once successful in procuring the return of the subject disposition(s), should thereafter allow the affected Class 3 Investors a further opportunity to prove a claim in the estate, arising from the Company being revested with their initial investment into the Scheme, but not the Profit;

3.4.3.8 The Liquidators should not permit any claim in terms of which Profit is claimed from the estate – such a claim will in the circumstances be statutorily excluded in terms of section 26(2) of the Insolvency Act.

3.5 In the event that the investment agreements concluded by and between the Company and Investors are not void *ab initio* (**"the second scenario"**), then:

3.5.1 Investors will in the Second Scenario acquire the status of a creditor of the Company on a contractual basis and the Liquidators are vested with claims against Investors in the Second Scenario based on section 29 or section 30 of the Insolvency Act, provided that the jurisdictional requirements of those sections can be satisfied;

3.5.2 claims submitted by Investors should be admitted insofar as they comply with section 44 of the Insolvency Act, provided that such claims are properly formulated and proven;

3.5.3 claims submitted by Investors should be calculated in Rand value as at the date of liquidation, and such claims are to represent the available balance of the relevant investor's investment(s) in question after taking into account "Bitcoin in and Bitcoin out";

3.5.4 the Liquidators may then pursue the Class 2 Investors in respect of the Returns, and the Class 3 Investors in respect of their initial investments and the Profits, transferred to them by the Company, in terms of either section 29 or 30 of the Insolvency Act, provided that the jurisdictional requirements of those sections can be satisfied;

3.5.5 the Liquidators, once successful in procuring the return of the subject disposition(s), should permit such Investors to prove a further claim in the estate, arising from the Company being revested with such dispositions concerned;

3.6 In relation to individuals that defrauded MTI itself, they will not have any claims against the Company emanating from such conduct and that the Liquidators are vested with a cause of action against these individuals premised on section 26 and likely also section 31 of the Insolvency Act, to reclaim dispositions to these individuals by the Company, when and where the circumstances so permit.

4. That the provisional order shall be of no effect, until and unless confirmed by this Honourable Court, in whole, part or in an amended form, on the return date.

5. That any person with an interest in this application and/or the provisional order, be called upon to show cause on a date to be determined by this Hounable Court, as to why the provisional order, or any part thereof, should not be made final.

6. That the provisional order, together with a copy of this application:

   6.1 shall be published on the website of Investrust, who attends to the lodgement of claims in respect of MTI being https://investrust-mticlaims.co.za:

   6.2 shall be distributed to all known interested and affected persons of the Company by e-mail, to the extent that their e-mail addresses are known to the applicants; and

   6.3 shall be distributed to all known interested and affected persons of the Company by Whatsapp on, to the extent that their particulars are known to the applicants, and published on the Whatsapp Groups employed by the applicants to communicate with such individuals;

7. That the provisional order be published in two nationally circulated newspapers;

8. That notice and service of the application and the provisional order in the aforesaid manner shall be effected no less than 30 court days in advance of the return date;

9. That the costs of this application form part of the costs in the winding up of the Company, save in the event of it being opposed, in which event the applicants will pursue an order that any opposing party pay the costs of this application on

the scale as between attorney and client, including the costs consequent upon the employment of two counsel where so employed.

10. Such further and / or alternative relief as may be required.

**TAKE NOTICE FURTHER THAT** the affidavits of **HERMAN BESTER N.O.** and the annexures thereto as well as **CRAIG LIONEL PEDERSEN, ADRIAAN WILLEM VAN ROOYEN, CHRISTOPHER JAMES ROOS, JACOLIEN FRIEDA BARNARD, DEIDRE BASSON AND CHAVONNES BADENHORST ST CLAIR COOPER** will be used in support of this application.

**TAKE NOTICE FURTHER THAT** the applicants have appointed SRH Inc Attorneys, with its address as appears hereunder, as their attorneys of record and will receive service of all papers related to this action at the address of their attorneys set out hereunder.

**KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.**

DATED AT BELLVILLE ON THIS _____ DAY OF AUGUST 2022.

**STRYDOM RABIE & HEIJSTEK INC**
**(SRH INC ATTORNEYS)**
**ATTORNEYS FOR THE APPLICANTS**
DELMONDO OFFICE PARK
SORRENTO BUILDING, BLOCK A
169 GARSFONTEIN ROAD
ASHLEA GARDENS
**PRETORIA**
TEL: (012) 786 0954

EMAIL: susan@srhinc.co.za/karlien@srhinc.co.za

**REF: MTI1/0003**

**c/o MOSTERT & BOSMAN ATTORNEYS**

4th Floor, Madison Square

c/o Carl Cronje & Tygerfalls Boulevard

Tyger Valley

**BELLVILLE**

(Ref: Pierre Du Toit)

**Service Address:**

**MACROBERT INCORPORATED**

The Wembley

3rd Floor, Solan Road

**CAPE TOWN**

(Ref: G. van der Merwe)

**TO:** **THE REGISTRAR OF THE HIGH COURT**
**CAPE TOWN**

AND TO: **THE MASTER**
**HIGH COURT**
**CAPE TOWN**

# SETTLEMENT AGREEMENT

## IN TERMS OF PART F OF CHAPTER 9 OF THE

## TAX ADMINISTRATION ACT NO. 28 OF 2011

Entered into between:

**THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

and

**MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)**

## TABLE OF CONTENTS

1. **PARTIES**

This Agreement is concluded between:

1.1. **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

of

Khanyisa

271 Bronkhorst Street

New Muckleneuk

Pretoria

0181

herein represented by ~~Franz Lionel Tomasek~~ Godfrey Baloyi in his/her duly authorised capacity as a senior SARS official

("SARS")

and

1.2. **MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)**

Registration Number: 2015/159128/07

Master's Reference Number: C000906/2020

Income Tax Number: 9060362267

care of

Mostert & Bosman Attorneys

4th Floor, Madison Square

Cnr of Carl Cronje & Tygerfalls Boulevard,

Tygerfalls, Tyger Waterfront

Bellville, Western Cape

herein represented by **Herman Bester** in his capacity as one of the duly appointed joint-liquidators, duly authorised thereto by his co-liquidators.

("MTI")

## 2. INTRODUCTION

2.1. MTI was placed under a provisional winding-up order by the Western Cape Division of the High Court on 29 December 2020 and under a final winding-up order on 30 June 2021. MTI's winding-up was deemed to have commenced on 23 December 2020.

2.2. SARS is a proved creditor of MTI, its claims having been proved at a special meeting of creditors before the Master of the High Court on 22 July 2022.

2.3. This Agreement is concluded pursuant to MTI's initiation of settlement procedures as envisaged in terms of section 144(1) of the Tax Administration Act No. 28 of 2011 ("the Tax Administration Act").

2.4. It is recorded that the Parties recognise the strictness and rigidity of the basic principle in tax law, namely SARS' duty to assess and collect tax according to the laws enacted by Parliament and not to forego a tax which

is properly chargeable and payable, and this settlement Agreement is intended to ameliorate the strict consequences of these tax laws.

2.5. The Parties to this Agreement have reached a settlement of the disputes between them as contemplated in Part F of Chapter 9 of the Tax Administration Act.

2.6. SARS records that the settlement proposal is acceptable and the Parties enter into this written Agreement of settlement as envisaged in terms of section 147(3) of the Tax Administration Act.

## 3. DEFINITIONS AND INTERPRETATION

3.1. Unless the context indicates otherwise or unless words are specifically defined in this Agreement, the terms used in this Agreement will have the meaning assigned to them in the Tax Administration Act.

3.2. Unless a contrary intention clearly appears, words signifying the singular includes the plural; any one gender includes the other gender; natural persons include created entities (corporate or unincorporated) and vice versa.

3.3. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.

3.4. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question

that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this interpretation clause.

3.5. If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the day shall be the next succeeding business day.

3.6. The terms of this Agreement having been negotiated, the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the Agreement shall not apply.

3.7. The termination of this Agreement shall not affect those provisions which expressly provide that they will continue after such termination or expiry or those provisions which of necessity must continue to have effect after such termination or expiry, even where those clauses do not expressly provide therefore.

3.8. The following expressions shall bear the meanings assigned to them below:

3.8.1. **"Agreement"** means this settlement Agreement;

3.8.2. **"Dispute(s)"** means the disputes that have arisen between the Parties in respect of the estimated assessments, issued by SARS on or about 11 July 2022, pertaining to MTI's 2020 and 2021 tax years of assessment ("tax years"), which dispute falls within the

ambit of the definition of "dispute" in section 142 of the Tax Administration Act and in respect whereof –

3.8.2.1. MTI submitted income tax returns in respect of each of the 2020 and 2021 tax years, in terms of section 95(6) of the Tax Administration Act, on or about 28 October 2022;

3.8.2.2. SARS, on or about 22 December 2022, confirmed that it decided not to reduce the estimated assessments it issued to MTI and that, in accordance with section 95(8) of the Tax Administration Act, the original estimated assessments issued by it will stand;

3.8.2.3. MTI, on or about 27 January 2023, requested reasons for the assessments from SARS, pursuant to Rule 6 of the Tax Court Rules, to enable it to formulate its objection to the assessments;

3.8.2.4. SARS, on or about 10 March 2023, furnished its reasons for the assessments to MTI;

3.8.2.5. MTI disagrees with SARS' interpretation of the facts and/or the law applicable to the assessments raised by SARS, as communicated to MTI by SARS in the letter of finalisation of audit issued on 11 July 2022 and the reasons furnished by SARS on 10 March 2023; and

3.8.2.6. At all relevant times after receiving SARS' reasons for the assessments, MTI intended and had resolved to

formally dispute SARS' assessments by lodging an objection within the time period permitted by the Rules of the Tax Court, which period, as at the time of conclusion of this Agreement, has not expired.

3.8.3. **"Fulfilment Date"** means the date upon which the conditions set out in clause 6 has been fulfilled;

3.8.4. **"Parties"** means the parties to this Agreement and **"party"** shall mean any one of them;

3.8.5. **"Settlement amount"** means an amount of **R283,428,110.70** (Two hundred and eighty three million four hundred and twenty eight thousand one hundred and ten Rand and seventy cents) for the amount of the income tax owing;

3.8.6. **"Signature Date"** means the date of signature of this Agreement by the party last in time to sign.

## 4. SETTLEMENT

4.1. By entering into this Agreement, SARS maintains fairness and equity between the Parties having regard to the fact that:

4.1.1. the interests of good management of the tax system, overall fairness and the best use of SARS' resources are served;

4.1.2. further protracted litigation and adjudication of complex factual and legal issues and disputes, the outcome of which remain uncertain, will be avoided;

4.1.3. further incurrence of substantial legal costs and the utilisation of valuable manpower by SARS will be avoided; and

4.1.4. the disputes will be resolved in a cost-effective way.

4.2. The Dispute, subject to what is contained in clause 6, between SARS and MTI is fully and finally settled on the basis that MTI will make payment of the Settlement amount in full and final settlement of MTI's obligations to SARS in respect of the 2020 and 2021 income tax years of assessment.

4.3. The Parties agree that this settlement is fair and equitable to all the Parties to this Agreement.

How each particular issue is settled (section 147(3)(a))

4.4. SARS, in its letter of assessment dated 11 July 2022, set out its basis for the taxation of MTI's gross income.

4.5. MTI, in its letter containing its settlement proposal dated 21 March 2023, set out the basis of its disputes in respect of the assessments.

4.6. The disputes between MTI and SARS can be summarised as follows, without in any way limiting the bases upon which MTI and/or SARS' may dispute the position adopted by the other party:

4.6.1. Whether expenditure and losses claimed should be allowed as deductible expenses in the production of income as defined in section 11(a) read with section 23(g) of the Income Tax Act, 58 of 1962;

4.6.2. Whether SARS is correct to impose understatement penalties, administrative penalties and interest; and

4.6.3. The quantum of the assessments.

4.7 The settlement is reached in terms of this Agreement without any of the Parties accepting the other Parties' interpretation of the facts or the law applicable to the facts and the law, in these circumstances and will be a full and final settlement in respect of the Disputes.

Undertakings by the Parties (section 147(3)(b))

4.8. In concluding this Agreement, the parties rely on the following warranties and undertakings:

4.8.1. The terms of this Agreement and any relevant facts and information pertaining to the discussion phase of settling the dispute in terms hereof must remain confidential and the Parties agree to keep such information confidential and not to disclose same to any entities or

persons who are not party to this Agreement, save for the purpose of MTI disclosing such information as may reasonably be necessary to enable it to make application to the High Court as set out in clause 6 or otherwise, as either of the Parties may, in law, be required to do.

4.8.2. MTI undertakes not to file an objection relating to the Dispute or any altered assessments SARS may issue pursuant to this Agreement, as MTI intended to do.

4.9. SARS' undertaking:

4.9.1. SARS undertakes, within 30 (thirty) business days of the Fulfilment Date:

4.9.1.1 to issue the necessary revised assessments for the relevant income tax periods to reduce the capital amount, reverse the Understatement Penalties ("USP"), and to reduce the interest raised in the additional assessments, to limit the total amount payable by MTI in terms of the said assessments to the Settlement amount;

4.9.1.2. not to proceed with its investigation and audit regarding the other tax periods and tax types in respect of MTI.

4.9.2. Pursuant to what is contained in clause 6, SARS undertakes, should the condition in clause 6 not be fulfilled or in the event that this settlement is otherwise set aside through any legal process, to unconditionally and immediately repay the Settlement amount,

together with any other amounts paid by MTI to SARS in terms of this Agreement on or after the Signature Date which pertained to the disputed assessments made by SARS, to MTI.

Treatment of the issue in future years (section 147(3)(c))

4.10. MTI's tax affairs after the commencement of its winding-up will be dealt with in the ordinary course in terms of the relevant tax-and insolvency laws.

Withdrawal of objections and appeals (section 147(3)(d))

4.11. MTI agrees to not file any objection and/or appeal in respect of the Dispute.

5. **ARRANGEMENTS FOR PAYMENT: SECTION 147(3)(e)**

5.1. SARS will alter the assessments in accordance with section 150 of the Tax Administration Act to give effect to the settlement in terms of this Agreement within 30 business days from the Fulfilment Date.

5.2. MTI will, upon being issued with the altered assessments as provided for in 5.1 above, apply to the Master of the High Court in terms of section 45(3) of the Insolvency Act 24 of 1936, to have the claims of SARS as proved against the estate of MTI in accordance with the estimated assessments issued by SARS, as referred to in 3.8.2 above, reduced in accordance with the Settlement amount.

5.3. Notwithstanding that altered assessments may only be issued at a later date, the Settlement amount will be paid by MTI to SARS within three (3) business days from the Signature Date.

5.4. The Settlement amount shall be reflected as a preferent claim by SARS against MTI in its liquidation and distribution account framed by MTI's liquidators and duly confirmed in accordance with the relevant insolvency and company laws.

5.5. The payment of the Settlement amount by MTI to SARS shall be deemed to be the payment of an advanced preferent dividend, prior to the confirmation of MTI's liquidation and distribution account.

5.6. All payments to be made in terms of this Agreement by MTI shall be made by way of electronic transfer utilising the payment reference number provided by SARS, and in the event that SARS becomes liable to repay any amount to MTI in terms of this Agreement, SARS shall make such payment by way of electronic funds transfer into the account designated by MTI.

5.7 The altered assessment or decision in terms of this Agreement is not subject to objection and appeal.

6. **CONDITION: ATTAINMENT OF ORDER FROM HIGH COURT IN TERMS OF SECTION 387(3) OF THE COMPANIES ACT, NO 61 OF 1973**

6.1. Notwithstanding the terms contained in this Agreement and any obligations of the Parties which may have been performed, whether in full or in part, upon or after the conclusion of this Agreement, this Agreement, and the

finality of the settlement between the Parties, are conditional upon MTI obtaining an order from the High Court in terms of section 387(3) of the Companies Act, No 61 of 1973, which sanctions the conclusion of the settlement with SARS contained in this Agreement, together with such ancillary relief as may reasonably be necessary.

6.2. Within 30 business days after the Signature Date, or such longer period as the Parties may agree to in writing, MTI shall make application to the High Court for directions to be issued to it in terms of section 387(3) of the Companies Act, No 61 of 1973, that the conclusion of the settlement with SARS contained in this Agreement, be sanctioned by order of the High Court.

6.3. SARS shall be cited as a respondent in the application to the High Court referred to in clause 6.2.

6.4. In the event that such an order is refused by the High Court, any payment already made by MTI pursuant to this Agreement shall become immediately repayable by SARS to MTI.

6.5. This condition shall have been fulfilled, or deemed to have been fulfilled, in the following circumstances:

6.5.1 if the High Court issues an order sanctioning the conclusion of the settlement and the entering into of this Agreement and the time-period provided for in the Rules of Court within which any party to such application, or any interested party, may seek to have the

decision of the Court taken on appeal has expired or, alternatively, any such appeal has been finally dismissed; or

6.5.2 if MTI expressly waives fulfilment of this condition in writing.

6.6 Until such time as the condition contained in this clause is fulfilled, the Parties acknowledge that the settlement between them remains conditional and consequently, that the time periods provided for in the Rules of the Tax Court within which MTI may seek to dispute the assessments made by SARS are suspended. Should this Agreement be avoided or terminated for any reason whatsoever, the period afforded to MTI to file its objection to the assessments shall commence to run anew from the date of such dissolution or termination of the Agreement.

## 7 CONFIDENTIALITY

7.1. The Parties agree and record that this Agreement will remain confidential and hereby undertake to adhere to the secrecy provisions with regard to the information contained in this Agreement, it being agreed that the terms of this Agreement will not be disclosed to third parties unless authorised, or if either party is required to do so, by law.

7.2. The Parties expressly agree that MTI may disclose this Agreement and any relevant information pertaining thereto for the purposes of making application to the High Court, as contemplated in clause 6, to the extent which it will be reasonably necessary for MTI to do so.

8. **BREACH**

8.1. In accordance with section 148(2) of the Tax Administration Act, SARS will adhere to the terms of this Agreement, unless it emerges that all material facts were not disclosed to SARS as required by section 147(1) of the Tax Administration Act or that there was fraud or misrepresentation of the facts. If it should appear to a senior SARS official, at any stage during or after the settlement of this dispute, that material facts were not disclosed to him/her or that there was fraud or misrepresentation of the facts or that the taxpayer failed to adhere to any term of the Agreement, the official may decide to either –

8.1.1. regard the Agreement and any assessment giving effect thereto as void and immediately recover the full amount of tax initially determined in accordance with the assessments, in which case any payments already made to the taxpayer in terms of this Agreement will be set-off against the amount of tax, interest and penalties initially determined in accordance with the assessment issued; or

8.1.2. collect the full Settlement amount in terms of the collection provisions of the Tax Administration Act in full and final settlement of the dispute, subject to the provisions of the relevant insolvency laws.

9. **GENERAL**

9.1. This Agreement, read with the provisions of Part F of Chapter 9 of the Tax Administration Act and any other provisions of the Act referred to herein, contains all the express provisions agreed on by the Parties with regard to

the subject matter of the Agreement and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

9.2. No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

9.3. The grant of any indulgence by a party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

9.4. Except as provided for elsewhere in this Agreement, a party may not cede any or all of that party's rights or delegate any or all of that party's obligations under this Agreement.

9.5. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same Agreement.

9.6. Each of the Parties hereby respectively agrees and acknowledges that:

9.6.1. it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

9.6.2. each provision of this Agreement is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

9.7 The Parties shall at all times act in good faith towards each other and shall not bring any of the other Parties into disrepute.

BROOKLYN (PRETORIA)

9.8. Each party shall pay its own costs pursuant to the drafting, negotiation and implementation of this Agreement.

10. **DOMICILIUM AND NOTICES**

10.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court processes, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

10.1.1. **SARS**

10.1.1.1. Physical Address:

Khanyisa, 271 Bronkhorst Street

New Muckleneuk

Pretoria

0181

10.1.1.2. Email address:

10.1.2. **MTI**

10.1.2.1. Physical Address:

c/o Mostert & Bosman Attorneys

4th Floor, Madison Square

Cnr of Carl Cronje & Tygerfalls Boulevard

Tygerfalls, Tyger Waterfront

Bellville, Western Cape

Ref: Pierre du Toit

10.1.2.2. Email address:

Pierred@mbalaw.co.za and antoinettee@mbalaw.co.za.

10.2. A party may change its *domicilium citandi et executandi* on 7 days' written notice to the other party.

10.3. Every notice, consent or other communication required or permitted hereunder from either party shall be in writing. It shall be sufficiently given or transmitted if and on the date and time when:

10.3.1. Hand-delivered to the other party at its *domicilium citandi et executandi*, or at such other address as the party may have designated in writing;

10.3.2. Transmitted by means of email to the addressee's email address and in respect of which email an acknowledgement has been received.

**THUS DATED AND SIGNED AT** BROOKLYN (PRETORIA) **ON**

**THIS THE** 25th **DAY OF** APRIL **2023**

**AS WITNESSES:**

SARS

Godfrey Baloyi

(Herein represented by **Mr ~~Franz Lionel Tomasek~~** in his/her duly authorised capacity as a senior SARS official)

1. _____

2. _____

**THUS DATED AND SIGNED AT** Cape Town **ON**

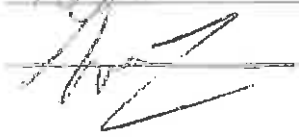
**THIS THE** 25th **DAY OF** APRIL **2023**

**AS WITNESSES:**

MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)

(Herein represented by **Herman Bester** in his capacity as one of the duly appointed joint-liquidators, duly authorised thereto by his co-liquidators)

1. 

2. 

# MTI TERMS & CONDITIONS

**SECTION: 1**

**MIRROR TRADING INTERNATIONAL (PTY) LTD**

**ADVICE DISCLAIMER**

## 1. Introduction

i. Mirror Trading International (Pty) Ltd, (hereinafter referred to as MTI), hereby declares that MTI is not a financial services provider and that MTI is not a provider of securities services.

ii. All members including proxy members who represent entities on MTI, hereby agree that by accessing and registering on the MTI website and/or by the act of using any MTI services that they have read, understand and agree to and will abide by the terms of this Advice Disclaimer.

## 2. Nature of MTI Business

i. MTI is an internet based crypto-currency club which performs its business through the website mymticlub.com and its official offices in Stellenbosch, Western Cape, South Africa. The benefit to members is in the form of the cryptocurrency Bitcoin where member's bitcoin grows through forex trading by various registered and regulated brokers.

## 3. Advice Disclaimer

i. MTI is not and does not portray or attempt to portray itself as a registered or authorised financial services provider or render financial services in respect of financial products as defined in the Financial Advisory and Intermediary Services Act 2002 ("the FAIS Act ") and, MTI does not portray or attempt to portray itself as registered or authorised to render security services as those terms are defined in the Securities Services Act, 2004 ("the SS Act ").

## 4. Financial Advice

i. Neither MTI nor its members or management purports to be financial advisors nor should any member require any financial advice the applicable member should consult his/her own financial advisor.

ii. MTI does not provide any financial advice and does not get involved in any financial planning pertaining to any MTI member in any manner whatsoever.

## 5. Performance

i. Per the MTI Terms and Conditions and per the MTI General Policies and per the MTI Advice Disclaimer, MTI does not guarantee or warrant any returns or specific growth, rates or outcomes.

ii. MTI members and proxy members utilise the services of MTI and any related services entirely at their own risk, without any liability to MTI.

**SECTION: 2**

**MIRROR TRADING INTERNATIONAL (PTY) LTD**

**GENERAL TERMS AND CONDITIONS**

1. **Introduction**

i. This document covers the full set of Mirror Trading International (Pty) Ltd, (hereinafter referred to as MTI) Terms and Conditions which any member or proxy of any entity agrees to and agrees to abide by through their action of registering on the MTI website and/or makes use of any MTI services. All such members are required to make themselves familiar with these Terms and Conditions.

2. **Terms and Conditions**

Your access to and use of this website (and any and all related software utilized to support this website) shall be governed by the following terms and conditions of Mirror Trading International (Pty) Limited (hereinafter referred to as "MTI").

By yourself accessing and using the MTI website and/or yourself making use of any services offered by MTI, or yourself making use of any services offered through using a proxy, you agree to comply with and be irrevocably bound by the terms and conditions herein below, in order to utilize this website and engage in the services of MTI and or its service providers.

This website provides all necessary information with regards to operating the Member Account Dashboard, as well as details of the MTI Bonus Plan for the additional Referrals Option.

To make use of MTI services, you will need to register and open your account on this website ("account").

You will be required to fund your account with a recommended amount $100 (one hundred USD) value in bitcoin within seven (7) days from the date and time of your registration. Failure to do so will result in your account being deleted. You will be permitted to re-register again at a later stage but will then be allocated a different position.

By opening an account on this website, you confirm that you irrevocably agree to and are bound by the terms and conditions of MTI as set out herein below.

3. **Account Eligibility**

You must:

i. As an individual, be at least 18 (EIGHTEEN) years of age and capable of entering a legally binding contract and, you must have a valid email address.

If you are a minor:

a. You may not be a member of MTI unless you have reached the legal age your country prescribes in order to enter into a legal contract and act without the assistance of your legal guardian. In South Africa that age is 18 and may differ from country to country. Your legal registration with MTI will be governed by the laws of your applicable country under which authority you reside.
b. If you are under the age of 18 (EIGHTEEN) your legal guardian my open an account in your personal name and as your legal guardian manage your account on your behalf. Your legal guardian will be liable for and bound by the terms and conditions of MTI in their representing capacity as legal guardian.
c. The legal guardian must ensure that the minor do not access the account without the presence and assistance of the legal guardian who will have full account control and access rights until the minor becomes of age.
d. When the minor become of age, he/she may apply to MTI in order to provide him/her with full access to his/her account by submitting the necessary proof as required by MTI. The newly qualified member will then be bound by the terms and conditions in his/her personal capacity.

ii. If using a proxy, your proxy must be at least 18 (EIGHTEEN) years of age and capable of entering a legally binding contract and have a duly signed proxy not older than 3 months.
iii. Agree that if you are a registered company, trust, partnership or any other legal entity which is duly registered under the applicable laws of the country in which the aforesaid entity conducts business, and/or is domiciled, and the person opening the account on behalf of the legal entity confirms their proxy by written declaration/resolution/letter of authority from the entity, that he/she is the duly authorised representative for and on behalf of the legal entity. Through registering on the MTI website, accessing and making use of services offered, that person or proxy will legally bind the represented entity to the MTI terms and conditions as set out herein. Any dispute regarding such authority to represent, shall have no effect on the legality or existence of the contractual relationship between MTI and the entity. MTI reserves the right to request the relevant resolution or Letter of Authority at any time. If the required documentation cannot be presented on request within a reasonable time, MTI reserves the right to suspend the members account until the required documents is presented.
iv. Be sponsored by an existing MTI member ("sponsor").
v. Be responsible for your own taxes on any proceeds and the declaration thereof with your relevant tax authority. MTI does not deduct or withhold any taxes on your behalf, nor will any reporting tax related responsibilities vest in MTI.
vi. Have a valid identity document and/or certificate of incorporation/registration if you are a registered legal entity, to be eligible for a MTI member's account.
vii. Take responsibility for maintaining and protecting the confidentiality and safekeeping of your login details, which consist of your email address and password. MTI takes no responsibility for any unauthorized access to or use of your account. In the event of a security breach on MTI's end, MTI shall notify

you as soon as practically possible, in line with the provisions of the GDPR as well as the Protection of Personal Information (POPI) Act, 4 of 2013, Republic of South Africa.

## 4. Disclaimer of Warranties

You understand and acknowledge that:

i. Neither MTI nor its business partners is responsible for any loss or damage of whatever nature and cannot be held liable for the website being temporarily unavailable due to technical issues and or maintenance beyond MTI's reasonable control.
ii. MTI cannot provide any guarantees as to the performance, accuracy, timeliness, completeness or suitability of the information (which may contain outdated information, inaccuracies or errors) and services found or offered on this website for any particular purpose, and MTI expressly excludes any liability for such to the fullest extent permissible by law.
iii. Information provided by MTI, including but not limited to statements, trade results and advertisements, are purely for informational purposes and by no means intended to serve as financial or investment advice, or forecasts of future performance.
iv. Your use of any information or services on this website is entirely at your own risk, for which MTI or its business partners cannot be held liable in any manner.
v. You are responsible for ensuring that any product, services or information available through this website meet your specific needs and requirements.
vi. This website may include links to other third-party websites which are not controlled by MTI, which are provided for your convenience and further information, and which you access the same at your own risk.
vii. Any and all conversations, video's, links, documents and other information obtained directly or indirectly through the use of the MTI web site, including but not limited to any of its affiliate pages, social media links or other electronic communications, are purely for informational purposes, and shall by no means be construed as constituting financial or investment advice.
viii. MTI and its officers cannot be held liable in any manner for any consequential damages that you may occur as a member or that may be incurred by the the entity that you represent as a proxy.

## 5. Copyright

You acknowledge and agree that the MTI website contains confidential information that is protected by COPYRIGHT © and a range of intellectual property laws in South Africa and world-wide. MTI reserves all copyright rights worldwide.

## 6. MTI's Exclusive Rights

i. You are permitted to use the MTI website provided that you do not (and do not allow any third party to):

a. Copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, meta-data, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in this website in any manner or form;
b. Use modified versions of this website, including (without limitation) for the purpose of obtaining unauthorized access to the website; or
c. Access the website by any means, other than through the interface that is provided by MTI for use in accessing the website.

ii. You authorize MTI to use your name, photograph, personal story and/or likeness in advertising or promotional materials and waive all claims for remuneration for such use. Should you wish to opt-out of marketing-specific communications, you will be provided with a link to exercise such option in the relevant communications.

iii. You permit MTI to contact you via email or text messaging for reasons including, but not limited to, MTI announcements, bonus programs and promotions, changes in policy, etc.

iv. MTI reserves the right to manage the referral bonus of any account with a balance of less than $100 (one hundred USD) worth of bitcoin in value.

v. MTI reserves the right, for security reasons and for the protection of the website and its members, to block withdrawals from a members account for a period of seven (7) calendar days should any password, email address, 2FA or Bitcoin Withdrawal Address be changed.

vi. MTI reserves the right to withhold, deduct or collect from any portion of your or any accomplices bitcoins any amounts received or qualified for through the misuse or abuse of the Bonus Plan by means of schemes or unethical behaviour conducted by yourself or with the assistance or collusion of other parties.

vii. If the Balance in a member's trading account falls below $100 (one hundred USD) worth of Bitcoin the allocation of the 10% referral bonus they receive after the normal (7) seven calendar day waiting period, will be as follows:

a. 50% will be automatically allocated to the trading pool, and
b. 50% will be allocated to the available income wallet.
c. This automatic allocation will continue until the members trading pool balance is equal or above $100 (one hundred USD) worth of Bitcoin.

The moment your account balance reach $100 (one hundred USD) worth of Bitcoin, the normal allocation rules will be applied.

viii. Member and customer lists and names are owned by MTI and may never be used for any commercial or business purpose without the prior written consent of MTI, its directors and officers.

7. **Indemnity**

i. You indemnify and release MTI from and against all claims, suits, demands, actions, liabilities, costs and expenses (including reasonable legal costs and expenses awarded by any competent court or tribunal) resulting from your access to and/or use of this website, or breach of any terms and conditions you agree to; prior to accessing this website, in the proportion that represents the

extent to which the claim, suit, demand, action, liability, cost or expense is caused by your negligent or wrongful acts or omissions.

ii. You understand that failure to comply with the above MTI terms and conditions and policies and procedures herein may result in the termination of the agreement, which could result in MTI suspending your member status.

iii. You understand that any payments due to you may be delayed until final resolution has been achieved.

iv. You acknowledge that in the event of your violation of this agreement and/or MTI's terms and conditions and/or policies and procedures, your member rights may be terminated without further bonuses or payments of any kind, which will be forfeited to MTI.

v. You agree that you indemnify and hold MTI, its directors, officers or employees harmless from any and all claims, damages or expenses (including legal fees) that may arise from your actions or conduct in violation or contravention of this agreement.

vi. You acknowledge MTI's Bonus Program is based on current products and is subject to change without prior notice, especially given fluctuating markets and trades beyond the control of MTI.

8. **Regulatory and Policy**

i. MTI requires of all members that they will act in a manner that is in line with and abides by all regulatory, policy and legal requirements.

ii. Should any member become aware of or receive any form of regulatory or policy or legal communication in any communication medium, the information should be forwarded directly to the CEO of MTI care of MTI support and clearly marked for the personal attention of the CEO.

iii. Should clause 8.2 above occur, no member should circulate or send such information or communications in their possesion to any other members other than to the MTI CEO, as required by clause 8.2.

iv. Transgression of this term and condition of MTI membership can result in MTI cancelling a members membership, after which MTI would zero the members MTI account and send the members Bitcoin to the member.

v. Should clause 8.4 occur and a members membership be terminated, that person will not be able to join MTI again.

9. **Limitation of liability**

Neither party is liable to the other for any consequential or indirect loss including, but not limited to, loss of profit, loss of data, lost opportunity cost, loss of enjoyment.

10. **Transferring your Account**

No account shall be ceded or assigned to any third party, due to the risk of cybercrimes. Despite any other terms and conditions contained herein, MTI reserves the right, in exceptional circumstances, to change the account holder detail.

11. **Amendments and variations to terms and conditions**

i. MTI may amend these terms and conditions from time to time, if and when necessary without prior notice and at MTI's sole discretion.

ii. Updated terms will appear on this website and it is your responsibility to ensure that you remain abreast of any amended terms or conditions, as applicable.
iii. Your continued use of the web site shall be construed as an unequivocal acceptance of the terms and conditions, as amended.
iv. If you do not agree to comply and be bound by the terms and conditions, as amended from time to time, you must immediately cease using this website, withdraw your bitcoin and proceeds and notify both MTI support and your referrer.
v. You will remain bound by these terms and conditions for a period of 36 months after cancellation of your membership and will refrain from any conduct that will, may or could cause MTI any reputational damage.

12. **Jurisdiction**

This agreement and the relationship between the member and MTI shall be governed by the laws of the Republic South Africa and the member agrees to the jurisdiction of the High Court of South Africa (any division) in terms of any legal actions actioned by either the member or MTI.

13. **Waiver and Severability of Terms**

i. Any failure on the part of MTI to exercise or enforce any rights or provisions of this agreement shall not constitute a waiver of such rights or provisions.
ii. MTI reserves the right to exercise such rights or provisions within 3 years from date of the contravention of the terms and conditions or the time MTI becomes aware of same, whichever occurred last in time.
iii. If any provision of this agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in the provision, alternatively such provision shall be severed from the remainder of this agreement and the remaining provisions of this agreement shall remain in full force and effect and binding on the parties.

14. **Survivorship**

i. All rights in and to your account or information within your account terminate upon your death or winding-up of your estate.
ii. MTI will upon receipt of a request from your executor/liquidator/trustee supported by a formal letter of authority and a copy of a death certificate or notice of winding up, freeze your account and provide your executor/liquidator/trustee with a statement of account. MTI will act on the instructions of your executor/liquidator/trustee and either liquidate your funds and pay same over to your executor/liquidator/trustee or replace you with your nominated beneficiary after receiving his/her directions.
iii. A position can only be transferred to one beneficiary being a natural person or a duly registered legal entity and MTI will not split the position amongst multiple beneficiaries.

15. **Declaration**

i. By accepting herein below, I confirm that I have carefully read, understood, and I agree to comply with MTI's Terms and Conditions and Policies and Procedures.
ii. I further agree to and understand that MTI's Policies and Procedures are binding on myself or myself and the entity that I represent if I am a proxy and form part of this agreement.
iii. I understand that I must be in good standing and must not be in violation of any of the terms of the general policies and terms and conditions of MTI in order for myself or the entity that I represent as proxy to be eligible and to receive to any bonuses or payments from MTI.
iv. The continuation of my MTI membership, use of the MTI website services and my acceptance of bonuses or payments shall constitute my acceptance of the general policies and procedures and terms and conditions and any and all amendments pertaining to both of the aforesaid.
v. It is required of you as a member of MTI to understand and to wholly abide by the laws of your country in relation to whichever of your country's laws may have an effect on your membership and use of MTI.

**SECTION: 3**

**MIRROR TRADING INTERNATIONAL (PTY) LTD**

**GENERAL POLICIES**

1. **Introduction**

i. This section covers a range of Mirror Trading International (Pty) Ltd (Hereinafter referred to as MTI) General Policies which any member or proxy of any entity agrees to and agrees to abide by through their action of registering on the MTI website and/or makes use of any MTI services. All such members are required to make themselves familiar with these General Policies.

2. **Policies and Procedures, The Bonus Plan, and the Terms and Conditions are incorporated into the Referral Agreement**

i. All policies and procedures, as presented herein, and as amended from time to time at the sole discretion of MTI, are incorporated into, and form an integral part of the MTI Referral Agreement, Bonus Plan and Terms and Conditions.
ii. Throughout these policies and procedures, when the term "agreement" is used, it collectively refers to the MTI Referral Application, the MTI Policies and Procedures, the MTI Bonuses, together with the terms and conditions in part A hereof.
iii. Notwithstanding anything stated in the aforementioned, it remains the responsibility of each member to read, understand, adhere to, and ensure that he or she is aware of, and operates under the most current version of these policies and procedures. It also remains the sole responsibility of the member to ensure that all their downline referrals are aware of any amendments.

iv. When enrolling a new Member, it is the responsibility of the sponsor to provide the most current version of these policies and procedures, the MTI's terms and conditions and the Referral and Bonus Plan to the applicant, prior to his or her execution of the Referral Agreement.

## 3. Ethics

i. MTI conducts business in an ethical and credible manner based on MTI's core value of Integrity, which requires that every member deal ethically with their customers, with each other and with MTI.
ii. MTI permits no unethical or illegal activity, nor shall it be held liable for set actions or behaviour.
iii. MTI will intercede when such behaviour is brought to the attention of MTI, as such MTI reserves the right exercise its best judgment in deciding whether certain member activities are unethical. The decision of MTI is final.
iv. Furthermore, MTI may use its own discretion in determining the appropriate course of action, unless the transgression requires legal action.
v. If MTI determines that unethical activities may exist, it reserves the right to suspend or terminate member status, including but not limited to, all bonuses and payments of any kind.
vi. Under no circumstances is a member, whose membership is terminated for unethical or illegal activity, entitled to sell or transfer their position.
vii. Examples of unethical behaviour include, but are not limited to, the following:

a. making any false or misleading remarks, statements, innuendos or spreading rumours that may disparage MTI, its products or services, its bonus plan, its employees, its founders or other MTI Members or business partners.
b. making any claim regarding MTI's products that are not found on MTI's current websites or official referral material.
c. making unapproved income claims or revealing the amount of income you are or have received through MTI without prior consent from the MTI Governing Body.
d. using any of the information in your back office or activity report in a manner to influence another MTI member to alter their relationship with MTI in any manner whatsoever.
e. using the information in your back office or activity report to compete with MTI in any manner whatsoever, either directly or indirectly, personally or through an agent or third party.
f. providing, selling or revealing any customer lists and/or their contact information that appears in your activity report or downline report to a third party. This includes the customer lists and/or their contact information that belongs to MTI or appears in any other member's activity report or downline report.
g. directly or indirectly disclosing the password or other access code to your back office or activity report.
h. forging any signature, including electronic signatures on any document.
i. making any unauthorized use of the MTI 's name, logos, photos, videos, trademarks or copyrighted material in any way or fashion OR deviating from the content thereof in any form or manner.

j. violation of any government laws or regulations.
k. competing with the MTI's products or services directly or indirectly through association with another business or through your own personal efforts which includes efforts to try and recruit MTI members to other platforms in competition with MTI, whether directly or indirectly.
l. behaving aggressively or using abusive language, mistreatment, or any other inappropriate behaviour toward any MTI employee, founder or another MTI member.
m. publishing of any confidential information, including personal account statements, growth margins or profit guarantees on any social media platform or any other public platform.
n. engaging, promote or encourage any activity, behaviour, scheme, abuse or conduct in order to obtain an undue financial benefit through the compensation plan or the bonus plan.

4. **Key Words, Phrases, Expressions and Acronyms not permitted by MTI**

i. Members may under no circumstances use any of the following or similar words Key Words, Phrases, Expressions and Acronyms when communicating in any manner, on any topic, through any communication medium including verbal with any other person about MTI:

a. Print Money
b. Printing Money
c. Pyramid
d. Pyramid-Scheme
e. Get Rich making system
f. Get Rich Quickly
g. Fast Money
h. Money Machine

ii. Use of such Key Words, Phrases, Expressions and Acronyms Members is seen in a serious light by MTI and can result in a member being suspended and the member's account being closed.

5. **Recruiting**

i. Crossline recruiting is not permitted. Crossline Recruiting definition: *the "recruiting/approaching of a "MTI" member who is not your own "MTI" personal direct" into/for another opportunity.*
ii. A member may not solicit an individual or entity that has previously been sponsored by another MTI member (or who is considering joining MTI and being sponsored by another member) to join their MTI business in such member's bonus line.
iii. A member may not register and fund a potential new member without their consent/authorisation in an attempt to lock them in their organization.

## 6. Territorial Rights/Conducting business across International Borders

i. Members may refer and sponsor new members in any country where MTI conducts business, without exclusivity.
ii. Members conducting business in foreign countries must adhere to the MTI terms and conditions and policies and procedures governing activities in such countries.
iii. Members are responsible for knowing and adhering to all laws and accepted business practices within the countries in which they choose to refer. This includes, but is not limited to, customs and immigration laws and accepted marketing practices and competition laws.

## 7. Qualification Requirements for Payment

i. MTI offers a variety of different options which enable the member to earn income through its Bonus Plan.
ii. Some of these payment plans require that the Member must be qualified.
iii. Qualification requirements are defined in the Bonus Plan.
iv. it is the responsibility of the member to continually check and to ensure that they are qualified for each individual bonus plan which may require qualifications.
v. MTI will not be obligated, nor held liable, to pay for any bonus plan where a member may fall out of qualification.
vi. Referral commission payments are paid to referrers within seven (7) days from a referee depositing his/her bitcoin in MTI and the payment has been confirmed.
vii. MTI reserves the right to void and recover the referral bonus in full or part thereof should any irregularities occur within an eight (8) week period; this measure is implemented to protect the integrity of the Compensation Plan, The Bonus Plan and the administration of MTI.

## 8. General Rules

i. Always introduce and refer to yourself as an MTI member.
ii. You should never give the impression that you represent MTI in any way as an employee or an official agent.
iii. The use of MTI's logos, trademarks, trade names or service marks are strictly prohibited without prior, written approval from the MTI Governing body.
iv. Make sure that when you design any marketing or communication material, that it clearly shows that it is coming from you as a member and is not produced by MTI in any way, shape or form.
v. You may use MTI's written information that is commonly found in current referral materials; you may not do so word for word ("ad verbatim"), without prior, written approval from the MTI Governing body, noting that MTI's materials are protected by copyright laws and trademarks.
vi. You may never make any promises of income, or forecasts of any nature of set growth percentages.
vii. MTI will not and cannot be held liable for any losses of whatsoever nature due to unfulfilled promises to prospective members or third parties by any other existing members.

9. **Trademarks and Copyrights**

i. MTI will not allow the use of its trade names, trademarks, designs, photos, videos, audio recordings or symbols by any person, including any MTI member, without its prior, written permission of the MTI Governing Body.
ii. Members may not produce, for sale or distribution, any recorded MTI events and speeches without written permission from the MTI Governing Body, nor may members reproduce, for sale or for personal use, any recording of MTI-produced audio or videotape presentations.

10. **Events**

i. MTI supports the practice of Regional and Local Training Events, "Personal Business Opportunity Meetings" and Private Business Receptions, as they are valuable educational platforms when conducted properly with both professionalism and integrity.

11. **Remuneration of Fees for Action taken by MTI**

i. MTI reserves the right to pursue the remuneration of any legal or operational fees or the recovery for any damages as a result of any policy violation by any MTI member.
ii. MTI further reserves the right to recoup such costs from future bonuses or other payments of such defaulting member.

12. **Privacy of Personal Information**

i. MTI has a strong commitment to protecting the privacy of its customers and members and their personal information.
ii. Unauthorized disclosure or access of personal information by any member or proxy, including but not limited to, account information or personal identification number, is a violation of MTI's privacy policy, and is strictly prohibited.

13. **Further Limitations**

i. MTI reserves the right to limit or disallow any marketing activities that cast negative aspersions on the integrity, truthfulness, and/or reputation of MTI or its members.
ii. Members will adhere to the advertising and representative guideline set forth by the MTI Governing Body.
iii. Members may not interfere with the trading activities or decisions of MTI under any circumstances and will direct any query relating to trading, to the MTI Support Team.
iv. If any query is related to a financial or accounting nature, the MTI Member will be able to communicate and interact with the Tier2 and Tier3 Support in respect thereof.
v. Members may not place any trading orders nor instruct MTI or the Governing Body in respect of the trading activities or otherwise interfere with the trading pool activities.

### 14. Conclusion

i. The rules and regulations outlined in this document are intended to protect the MTI opportunity for and the interests of all involved which includes the owners, directors, officers and employees and every member of MTI and members are implored to adhere to the terms and conditions, as well as the policies and procedures, as set forth herein to ensure that you are in compliance.
ii. Please note that any infraction of these rules and regulations may result in suspension or immediate deactivation/termination of your membership.

### 15. Declaration

i. By accepting herein below, I confirm that I have carefully read, understood, and I agree to comply with MTI's Terms and Conditions and Policies and Procedures.
ii. I further agree and understand that MTI's Policies and Procedures are binding and form part of this agreement.
iii. I understand that I must be in good standing and not in violation of any of the terms of this agreement in order to be eligible to receive any bonuses or payments from MTI.
iv. The continuation of my MTI membership or my acceptance of bonuses or payments shall constitute my acceptance of the terms and conditions, the policies and procedures and any and all amendments pertaining to both of the aforesaid.

## SECTION: 4

## MIRROR TRADING INTERNATIONAL (PTY) LTD

## CORE VALUES (ALSO KNOWN AS BRAND VALUES)

### 1. Introduction

i. MTI takes great pride in its Core / Brand Values and expects its leadership, staff and members to abide by these values in their dealings with one another and others not part of the MTI family.

### 2. MTI Core / Brand Values

- ***Family*** *– "The love of family and the admiration of friends is much more important than wealth and privilege." ~ Charles Kuralt*
- ***Passion*** *– we take pride in everything we do.*
- ***Fairness*** *– we are objective and impartial in all our dealings.*
- ***Caring*** *– we communicate honestly and respectfully.*

- ***Integrity*** *-- we are honest, transparent and committed to doing what is best for our members and our company.*
- ***Excellence*** *– we strive to be the best in all we do.*
- ***Partnership and Collaboration*** *– we rely on each other to learn and grow.*
- ***Compassion*** *– "Compassion is the greatest form of love humans have to offer." ~ Rachael Joy Scott*

**SECTION: 5**

**MIRROR TRADING INTERNATIONAL (PTY) LTD**

**CODE OF CONDUCT**

1. **Your Conduct - What you cannot do:**

You agree not to:

i. Use the MTI website or cause it to be used for any unlawful purposes.
ii. Use any information obtained from this website to transmit or authorize the transmission of junk mail, chain letters, or unsolicited emails or social media publications.
iii. Interfere with, disrupt, or create an undue burden on MTI's operation of its website or administration in general.
iv. Use any robot, spider, or other device or process to retrieve, index, or in any other way reproduce, modify or circumvent the navigational structure, security or presentation of this website, or cause it to happen.
v. Make any false, misleading or disparaging statements about MTI, its employees or Founders, the MTI Bonus Plan, or any registered members, previous and/or current or their positions or the MTI mission and vision.
vi. Display of any trading results or bonuses without prior consent from the MTI governing body and affected member/s,
vii. The making of income projections and use of income testimonials to the public, which is strictly prohibited.

2. **Your Conduct – What you can and are encouraged to do**

i. You will conduct yourself as a member in a courteous, fair and ethical manner. In the case of juristic, legal or entities other than individuals, these terms and conditions shall apply *mutatis mutandis* to all persons involved in and representative of such entities.
ii. You are responsible for supervising and supporting the members you refer to MTI and in your commissionable downline; this responsibility lies with you to ensure that the referred members have acquainted themselves with the terms and conditions of MTI. You acknowledge that you are not a Financial Advisor (if not registered as one by the competent authority) and that you are not

entitled, qualified or allowed to provide financial or investment advice to any person or entity.

iii. You agree and undertake to maintain monthly communication and support to these members in your commissionable downline by way of any of the following or combination thereof: Personal contact, telephone communication, written communication and attendance at member meetings.

iv. You will not promote, take part or assist any other person/s in any activity to destabilize the binary system or Bonus Plan or to obtain any undue financial gain through activities such as rolling deposits and/or other similar types of unethical financial behaviour.

v. You undertake to keep any and all MTI statements private and confidential. You agree that you will not publish any statements, profits and the like on social media or any other platform, web site or search engine which is subject to public consumption. You further agree that you shall not produce, or cause to be produced, any form of other media for public consumption, relating to statements, MTI returns or profits, be it print or digital.

3. **Non Compliance – Consequence**

i. You understand that if you fail to comply with the terms of this agreement or policies and procedures of MTI, or any part of this agreement, MTI, at its discretion, may terminate your membership or impose upon you other disciplinary action, including, but not limited to the forfeiture of bonuses, loss of all or part of your downline referral organization, irrespective of the pending or allocated status of such bonuses.

ii. If you are in breach, default or violation of the agreement at termination, you will not be entitled to receive any further bonuses.

iii. If this agreement is terminated for any reason, you will forever lose your rights as a member, including rights to your downline referral organization, and rights to Bonus pursuant to MTI's Bonus Plan.

**SECTION: 6**

**MIRROR TRADING INTERNATIONAL (PTY) LTD**

**THE COMPENSATION PLAN**

Understanding the Mirror Trading International Compensation plan

1. **The MTI Compensation Plan consists of 5 income streams namely:**

i. 40% Members Daily Trading Bonus
ii. 10% Direct Once-Off Referral Bonus
iii. 20% Weekly Profit-Sharing Bonus
iv. 2.5% P1 Leadership Bonus
v. 2.5% P2 Leadership Bonus

2. **The Daily Compensation plan results will be displayed on the MTI Official Telegram Group as follows:**


3. **The 40% Daily Trading Bonus explained:**

i. A member qualifies for the daily trading bonus once the member successfully deposits bitcoin into their MTI account which will be added to their trading pool automatically.
ii. The bitcoin will be transferred to the forex broker as soon as the deposit is verified by MTI.
iii. Trading with the member's bitcoin will commence on the following 24hour trading day.
iv. The member will receive a 40% share of the daily trading result in relation to his bitcoin balance in the trading pool. (Sharing both in profits and losses)
v. Trading only occurs on forex trading days which is Monday to Friday excluding banking Holidays and weekends.
vi. Member's daily trading statements are posted in the members back office within the "Trading Bonus" section under "See detailed report" by going to the "View" tab - Tuesday to Saturday.

3.1. **Hereunder an extract from the Trading Bonus reports on the MTI back office:**

TRADING BONUS REPORT

**Open Trades:**

| Ticket | Open Time | Type | Lots | Item | Price | S/L | T/P | Price | Commission | MID Swap | Trade P/L |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 65926345 | 2020-05-06 04:05:05 | buy | 0.00597 | eurchf | 1.05411 | 0.00 | 0.00 | 1.05225 | -2.17 | 0.00 | -123.17 |
| 65943078 | 2020-05-06 12:45:00 | sell | 0.00596 | chfjpy | 106.942 | 0.00 | 0.00 | 106.933 | -2.02 | 0.00 | 5.46 |
| 65946577 | 2020-05-06 14:15:00 | buy | 0.00594 | usdjpy | 106.197 | 0.00 | 0.00 | 106.072 | -1.93 | 0.00 | -75.69 |
| 65951104 | 2020-05-06 16:45:01 | buy | 0.00592 | eurgbp | 0.87521 | 0.00 | 0.00 | 0.87386 | -2.07 | 0.00 | -108.58 |
| 65961684 | 2020-05-06 18:55:00 | buy | 0.00593 | audchf | 0.62532 | 0.00 | 0.00 | 0.62373 | -1.23 | 0.00 | -104.51 |
| 65962828 | 2020-05-06 19:10:00 | buy | 0.00593 | eurusd | 1.08114 | 0.00 | 0.00 | 1.07929 | -2.07 | 0.00 | -118.61 |
| 65963511 | 2020-05-06 19:20:00 | buy | 0.00592 | eurjpy | 114.682 | 0.00 | 0.00 | 114.523 | -2.07 | 0.00 | -95.82 |
| 65967983 | 2020-05-06 21:55:00 | buy | 0.00591 | cadjpy | 75.182 | 0.00 | 0.00 | 74.994 | -1.36 | 0.00 | -119.26 |
| 65969534 | 2020-05-06 22:45:00 | buy | 0.00591 | eurcad | 1.52672 | 0.00 | 0.00 | 1.52616 | -2.06 | 0.00 | -25.27 |
| 65969536 | 2020-05-06 22:45:00 | sell | 0.00591 | gbpusd | 1.23410 | 0.00 | 0.00 | 1.23594 | -2.36 | 0.00 | -117.41 |
| 65969613 | 2020-05-06 22:50:00 | buy | 0.00591 | usdcad | 1.41458 | 0.00 | 0.00 | 1.41411 | -1.92 | 0.00 | -21.23 |
| 65969616 | 2020-05-06 22:50:00 | sell | 0.00591 | audcad | 0.90497 | 0.00 | 0.00 | 0.90659 | -1.23 | 0.00 | -73.12 |
| 65969619 | 2020-05-06 22:50:00 | sell | 0.00591 | nzdusd | 0.69941 | 0.00 | 0.00 | 0.69175 | -1.15 | 0.00 | -85.58 |
| | | | | | | | | | -23.63 | 0.00 | -1,060.83 |
| | | | | | | | | Floating P/L: | | | -1,084.46 |

**A/C Summary:**

| | | | |
|---|---|---|---|
| Previous Ledger Balance | 2,024,948.41 | Current Draw Down %: | -0.0535 |
| Closed Trade P/L: | 3,264.98 | Floating P/L: | -1,084.46 |
| Pending Deposit: | 0.00 | Equity: | 2,027,128.93 |
| Balance: | 2,028,213.39 | **Balance (BTC)** | **2.02821339** |
| Gross Profit %: | 0.4031% | **Balance (USD)** | **$ 16,760.97** |
| Net Profit %: | 0.1612% | **BTC Price (USD)** | **$ 8,260.00** |
| Profit Share %: | 40% | | |

4. In addition to the Daily Trade bonus MTI also offers members an opportunity to earn an **OPTIONAL** and additional income. The undermentioned income streams are subject to the qualification requirements as set out herein and must be read together with the Terms and Conditions published on the MTI Website.

5. **IMPORTANT NOTICE:** The payment of bonuses are at the sole discretion of MTI and governed by the Bonus Plan terms and conditions and may be refused/withheld or deducted due to any misconduct or abuse on the part of the sponsor determined and confirmed by the MTI Governing Body. The Sponsors right to any bonus is subject to their adherence to the Bonus Plan's terms and conditions.

6. **The 10% Direct Once-Off Referral Bonus**

i. You will earn a once-off 10% direct referral bonus for every member you successfully refer as your direct referral to MTI, and also for any amounts they add over and above their high-water mark shown on their dashboard. For a full explanation of the high-water mark please refer to the official video in the MTI YOUTUBE channel.

ii. You will need at least $100 USD worth of Bitcoin in your trading account to qualify to earn the 10% Direct Referral bonus.
iii. MTI will in the instance of any deposit of less than $100 (one hundred USD) worth of Bitcoin allocate the 10% referral bonus as follows:

a. 50% will be automatically allocated to the trading pool, and
b. 50% will be allocated to the available income wallet.

iv. This automatic allocation will continue until the members trading pool balance is equal or above the required minimum $100 (one hundred USD) worth of Bitcoin.
v. Referral bonuses are subject to a 7-day waiting period.

7. **20% Weekly Profit-Sharing Bonus**

i. 20% of the Daily Trading profit derived from the trading activities is allocated to the Weekly Binary Profit-Sharing Pool.
ii. The Binary structure allows the sponsor to refer new members into your Left Team and/or Right Team.
iii. To qualify for binary profit-sharing bonuses you need a minimum of $200 USD worth of Bitcoin as your Balance in Trade and you need to have personally referred two new members, one in your left Team and one in your Right Team, each with a minimum of $100 USD worth of Bitcoin as their Balance in Trade.
iv. The third member you personally refer will become a spill over for one of the members you introduced, as you can only place on the outside of your left Team or right Team. Spill over will also occur when your sponsor or team members above you introduce new members. Spill over is not guaranteed.
v. Members are not bound by their personal performance and are not limited to the number of direct referrals they can introduce to MTI.
vi. 20% of the weekly gross profit derived from trading will be shared among all Binary qualified members, according to the Bitcoin value of the qualified levels in your weaker team.
vii. When you are Binary qualified your $200 to $999 worth of Bitcoin Balance in Trade qualifies you to earn on up to 10 levels in the Binary structure.
viii. Your Weaker Team BTC Total in Trade does not flush, and as your team grows you have the option to increase your Balance in trade, thereby unlocking additional binary earning levels.
ix. With $1000 - $4999 worth of Bitcoin Balance in Trade you qualify to receive binary bonuses up to 20 levels deep.
x. With $5000 - $9999 worth of Bitcoin Balance in Trade you qualify to receive binary bonuses up to 30 levels deep.
xi. With $10000 + worth of Bitcoin Balance in Trade you qualify to receive binary bonuses on Infinite levels of the binary structure in your weakest team.
xii. Binary Bonuses are paid every Saturday according to the Bitcoin value of the qualified levels deep of your weaker team, creating a weekly residual income.
xiii. Your maximum binary pay-out will be capped at $75000 USD worth of Bitcoin per week.
xiv. Binary bonuses are subject to a 7-day waiting period.

7.1 **Hereunder an extract Binary Income reports on the MTI back office**

**BINARY INCOME REPORT**

| # | Transaction No | Weaker Leg Volume (BTC) | Binary Bonus (BTC) | Income Type | Date | Calculation |
|---|---|---|---|---|---|---|
| 1 | 4403684237 | 61.54251767 | 0.19465861 | Binary Income | 2020-05 16 | View |
| 2 | 5551922315 | 53.85239598 | 0.18747109 | Binary Income | 2020-05 09 | View |
| 3 | 4550927850 | 56.50160964 | 0.22827764 | Binary Income | 2020-05 01 | View |

FORMULA
( [Weaker Leg Volume] / [Total Weaker Leg Volume of Binary Qualified Members] ) X [20% of Weekly Trading Profit] = [Binary Bonus]

CALCULATION:
( [56.50160964] / [11,517.10853593] ) X [46.53138908] = 0.22827764 BTC

TOTAL BTC IN TRADING POOL AT TIME OF CALCULATION: 4,261.61429493 BTC

## 8. The Leadership Bonus

i. Part 1 Leadership Bonus (P1LB) is a sharing bonus where you and all the other qualified members earn for 8 weeks.
ii. Part 2 Leadership Bonus (P2LB) is another residual bonus which is earned for helping your team members become binary qualified.
iii. **Qualifying for P1LB & P2LB Bonuses**

a. There are 3 requirements to earn a Part 1 Leadership Bonus Share.
b. You must have a minimum of $200 USD worth of Bitcoin Balance in Trade.
c. Your two personally referred members, one left and one right, must be active, each with a $200 USD worth of Bitcoin Balance in Trade.
d. For every direct referral you have, that is leadership binary qualified with a $200 USD worth of Bitcoin Balance in Trade, you earn one share in the P1LB pool.
e. There is only 1 requirement to earn a Part 2 Leadership Bonus Share.
f. As soon as one of your personally referred members earns a share in the P1LB, then you automatically qualify for the P2LB.
g. For every personally referred member who qualifies for P1LB shares, you earn additional shares in the P2LB pool.

**8.3.1 Hereunder an extract of the P1 LEADERSHIP BONUS REPORT on the MTI back office:**

**P1 LEADERSHIP BONUS REPORT**

| # | Transaction No | Shares | P1LB (BTC) | Income Type | Date | Calculation |
|---|---|---|---|---|---|---|
| 1 | 5021283138 | 1 out of 3904 | 0.00142769 | P1 Leadership Bonus | 2020-05-16 | View |
| 2 | 6602925235 | 1 out of 3461 | 0.00157096 | P1 Leadership Bonus | 2020-05-09 | View |
| 3 | 4272022515 | 1 out of 2683 | 0.00202271 | P1 Leadership Bonus | 2020-05-01 | View |

FORMULA
[Shares In Pool] / [Total Shares In Pool] X [2.5% of Weekly Trading Profit] = [P1 Leadership Bonus]

CALCULATION:
[ 1 ] / [ 2683 ] X [ 5.42693152 ] = 0.00202271 BTC

## 8.3.2 Hereunder an extract of the P2 LEADERSHIP BONUS REPORT on the MTI back office:

**P2 LEADERSHIP BONUS REPORT**

| # | Transaction No | Shares Bonus | Legs Bonus | Total P2LB Bonus | Income Type | Date | Calculation |
|---|---|---|---|---|---|---|---|
| 1 | 4954120290 | 0.00575401 | 0.01778121 | 0.02353523 | P2 Leadership Bonus | 2020-05-16 | View |
| 2 | 1495544063 | 0.00642175 | 0.01726917 | 0.02369091 | P2 Leadership Bonus | 2020-05-09 | View |
| 3 | 8889512263 | 0.00780105 | 0.01981259 | 0.02761364 | P2 Leadership Bonus | 2020-05-01 | View |

SHARES FORMULA.
[Shares In P2 Pool] / [Total P2 Pool Shares] X [1.25% of Weekly Trading Profit] = [P2 Shares Bonus]
[6] / [2087] X [2.71346576] = 0.00780105 BTC

LEGS FORMULA
[Weaker Leg Volume of Direct P2LB Qualified Members] / [Weaker Leg Total of All P2LB Qualified Members] X [1.25% of Weekly Trading Profit] = [P2 Legs Bonus]
[71.46886586] / [9,788.13812832] X [2.71346576] = 0.01981259 BTC

FORMULA.
[ P2 Shares Bonus ] + [ P2 Legs Bonus ] = TOTAL P2LB BONUS

CALCULATION:
[0.00780105] + [0.01981259] = 0.02761364 BTC

## SECTION: 7

## MIRROR TRADING INTERNATIONAL (PTY) LTD

## SPONSOR

## TERMS AND CONDITIONS FOR THE OPTIONAL REFERRAL BONUS, BINARY BONUS PLAN AND THE P1/P2 LEADERSHIP BONUS PLANS

## A. GENERAL TERMS AND CONDITIONS FOR SPONSORS

### 1. APPLICATION OF THE GENERAL TERMS AND CONDITIONS

i. The following general terms and conditions qualify as an Agreement concluded between Mirror Trading International (Pty) Ltd (Hereinafter referred to as "MTI") represented by: Johann Steynberg CEO, and the members of MTI who refer new members for purposes of obtaining compensation form MTI for their efforts (hereinafter referred to as: "Sponsor").

ii. In order to qualify for the Referral Bonus, the Binary Bonus Plan and the P1 and P2 Leadership Bonuses must a sponsor member adhere to and comply with terms and conditions of this agreement.

iii. The General Terms and Conditions of MTI, the Compensation Plans and this Agreement form inseparable parts of General Terms and Conditions for Sponsors. These three documents together are the unified terms and conditions for Sponsoring members who refer new members to MTI in order to qualify for the 10% Referral Bonus, the Optional Binary Bonus Plan and the P1 and P2 Leadership Bonuses.

iv. MTI only enters into the Sponsor relationship with the referring member after the member accepted and agreed to all the above documents referred to in paragraph iii.

v. The acceptance of the above three documents is compulsory to the current referring members already in a referring relationship with MTI in case they intend to continue this contractual relationship with MTI.

### 2. SUBJECT AND CONCLUSION OF THE REFERRAL AGREEMENT

i. MTI is a club where new members can only be invited to the club by existing members.

ii. Only active Sponsor members may refer a new member to the MTI club by means of either a referral link, personal enrolment in the back office.

iii. The new member is provided with a 7 (SEVEN) day cooling down period in which the new member can conduct a further due diligence on MTI before funding their account.

iv. The new member may fund their account any time before the lapse of the 7 day period should the new member wish to do so.

v. It is the responsibility of the Sponsor member to assist the new member in understanding all the terms and conditions, features, security features of the MTI back office, the Investor Plan, and the Optional Referral Plan.

vi. The prospective members account will be deleted if not funded within 7 (SEVEN) calendar days of registering on the website.

vii. The Sponsoring member receives a once of 10% bitcoin referral bonus on the amount of bitcoins the new member brought into the club. This 10% bitcoin bonus is paid by MTI to the Sponsor member and is not deducted from the new members deposited bitcoin value.

viii. The Sponsoring member may qualify for the Binary Bonus Plan and the P1 and P2 Leadership bonuses when the Sponsor member meets all the qualification criteria as set out in the MTI Compensation Plan for those respective bonus plans.

ix. Any club member can become a Sponsoring member on the condition that:

a. The member accepted the Terms and Conditions as set out in this agreement, the qualification criteria for the 10% Referral Bonus Plan, The Optional Binary Bonus Plan and The P1 and P2 Leadership Bonus Plan.
b. In case the Sponsor member do not click the acceptance of the terms and conditions in the back office, the member will not be able to send referral links or invite new members to MTI. This member will then only be qualified to partake in the daily trading activities of MTI.
c. The sponsoring must be active and compliant member in order retain Sponsor status and qualify for all the bonus plans.
d. Should a member be investigated due to any misconduct will MTI suspend/disable the sponsoring member's access to the back office and will the sponsoring member not be able to refer any new members until finalization of the investigation by MTI.

## 3. THE GENERAL PRECONDITIONS OF THE AGREEMENT

i. Only registered, qualifying active compliant members may be a party to this agreement.
ii. A member (either a natural person or a legal person) can only conclude one referral agreement with MTI that means: they cannot possess more than one referral position in the binary system. This condition will be effective from date of release of this agreement.
iii. MTI reserves the right, to reject a Sponsor application without stating reasons.
iv. In case of breach of the obligations listed in the General Terms and Conditions or this Agreement shall MTI be entitled to terminate the Sponsor Agreement without prior notification and with immediate effect.
v. Furthermore, in case of immediate termination, MTI expressly reserves the right to claim compensation from the default member my means of legal action or by setting off any loss MTI may have suffered by:

a. Deducting the amount from any bonus due and pending to the member, or;
b. Should the debt not be satisfied in full through the implementation of paragraph 3 (V) a. then MTI reserves the right to seize and freeze the member's capital amount pending legal action.

## 4. STATUS OF THE SPONSOR MEMBER AS AN ENTREPRENEUR AND OBLIGATIONS OF THE SPONSOR MEMBER

i. The sponsor member acts independent from MTI.
ii. The sponsor member is not an employee, commercial representative or agent of MTI.
iii. The sponsor member bears all risks connected to their business activity, including bearing all business costs in relation to their referral activities and has now claim against MTI for any such costs.
iv. During its activity the sponsor member may not harm third parties' rights, may not bother third parties and may not violate effective laws applicable in its country.
v. In case of sending electronic marketing materials, no unwanted electronic advertisements may be sent, marketing faxes, text messages or marketing phone calls can be made (even using automated call centres).

vi. No irregular or illegal activity may be performed, e.g. unauthorized or incorrect marketing activity. Especially, the sponsor member may not communicate false or deceiving data with regard to MTI and its services.

vii. Sponsor members is not entitled to sell the products and services of other companies to other members of MTI by using the MTI members list as a source of prospecting.

viii. The sponsor member is obliged to keep the business secrets and structure of MTI confidential.

ix. MTI provides marketing and sale-documentation controlled from all aspects for all countries that are located in the website of the MTI back office. It is forbidden to use, produce and market own brochures, own product brochures or other individually created press and marketing materials, without the prior written approval of MTI. This approval may be withdrawn at any time. The services of MTI through the Internet may only be marketed with the use of the marketing devices and marketing communication material provided. The sponsor member may not publish data regarding this. In case the sponsor member advertises the services of MTI on other Internet media, e.g. community websites (e.g. Facebook), online blogs or chat rooms, then he may only use the official marketing communication provided by MTI and may not publish data regarding his earnings or projected income possibility at MTI.

x. The sponsor member may not sell or otherwise propagate their own marketing and/or written documentation or multimedia productions to other MTI members, furthermore they may not publish those in any way.

xi. During its business activity the sponsor member may not convey an impression that he is acting as an agent or representative of MTI and may not convey an impression, that he depends on MTI and follows its orders.

xii. The sponsor member may not take money representing MTI, furthermore is not entitled to make any declaration or undertake any obligations as if representing MTI.

xiii. During the marketing activity, the sponsor member has to abstain from fraudulent commercial practices. The sponsor member is expressly obliged to introduce himself as an independent and individual commercial member of MTI.

xiv. The Internet sites, letter-papers, business cards, furthermore advertisements, marketing material and such shall indicate the sponsor member as individually liable, and these materials have to contain the "individual business member of MTI" text.

xv. The sponsor member is not allowed to take up a loan, pay costs, undertake obligations, open a bank account, conclude other contracts or make a declaration containing obligations using the name of MTI.

xvi. During its business activity the sponsor member may not mention negatively, detractingly or otherwise illegally the brand names of the competition, may not evaluate other companies negatively or detractingly, furthermore may not apply negative, despising or other illegal evaluation in order to recruit members of other companies.

xvii. All presentations, marketing, educational and film material provided in the back office (including photos) is under the intellectual property protection of MTI. These materials may not be either partly or totally multiplied, spread or published without the express written consent of MTI.

xviii. The use of the name, trade name, titles and business names (hereinafter referred to as: 'distinguishing marks') is also only allowed with the prior

written approval of MTI. The same is applicable to the registration of such domain names and e-mail addresses that contain a characteristic of MTI in any form. MTI may request, that those Internet domain names or e-mail addresses, that contain some kind of MTI characteristic, and the use of which were not approved by MTI in writing, should be deleted, furthermore in case of Internet domain these should be transferred to MTI. In case of transfer, MTI undertakes to compensate the costs of the transfer of the Internet domain.

xix. Bonus manipulations are forbidden including but not limited to rolling deposits. It is forbidden among others to sponsor new members, who actually does not perform business activity connected to MTI (so-called strawman), furthermore either open or hidden multiplied registrations. It is forbidden to use the name of spouses, relatives, business names, legal entities and third parties, in order to evade this provision.

xx. Any sponsor member who wishes to continue their sponsor member activity on another sponsor line can request the deletion of their position in MTI in writing. This request must clearly state the reason why you want to move to another line, confirmation that your sponsor is aware of the request and reasons for the request. MTI will then consider the request and provide the member with the outcome.

xxi. The sponsor member cannot answer questions of the press in connection with MTI, its services, the Compensation Plan of MTI or other services offered by MTI. The sponsor member is obliged to forward all questions from the press immediately to MTI.

xxii. The sponsor member shall be obliged to support and train its downline members. For example the sponsor is obliged – including but not limited to – provide training to its personally sponsored and spill-over members regarding the terms and conditions, the compensation plan, security of their passwords and emails, 2FA registration, and the use of back office. The sponsor receives no compensation for this activity, since they receive bonuses on the volume of their down line.

xxiii. In the course of their activities, the sponsor member cannot communicate via any means, may not propagate in any way any content regarding their own or others' gender, racial identity, colour, nationality, belonging to a national or ethnic minority, mother tongue, disability, health status, religious or world views, political or other opinion, family status, sexual preferences, gender identity, age, social origin, economic status, belonging to any trade associations, this includes audio and video recordings, images, texts, computer files and codes, websites, social media sites, hidden implications etc.

xxiv. The sponsor member must conduct business in an ethical and credible manner and requires its downline members to deal ethically with their customers, with each other and with MTI.

xxv. If MTI determines that unethical activities may exist on the part of the referring/sponsor member, it reserves the right to warn, suspend or terminate the member status, including but not limited to, all bonuses and payments of any kind.

xxvi. Under no circumstances is a sponsor member, whose membership is terminated for unethical or illegal activity, entitled to sell or transfer their position.

xxvii. Not take part in the planning, executing, forming, or creating a group of self-owned causally linked positions for the purpose of gaining additional profits, commonly known as "Stacking". This formation is strictly prohibited.

xxviii. Examples of unethical behaviour include, but are not limited to, the following:

a. Making unapproved income claims or revealing the amount of income you are or have received through MTI without prior consent from the MTI Governing Body.
b. Use any of the information in your back office or activity report in a manner to influence another MTI member to alter their relationship with MTI in any manner whatsoever.
c. Use the information in your back office or activity report to compete with MTI in any manner whatsoever, either directly or indirectly, personally or through an agent or third party.
d. Providing, selling or revealing any customer lists and/or their contact information that appears in your activity report or downline report to a third party. This includes the customer lists and/or their contact information that belongs to MTI or appears in any other member's activity report or downline report.
e. Directly or indirectly disclose the password or other access code to your or your referrals back office or activity reports.
f. Forging any signature, including electronic signatures on any document.
g. Competing with the MTI's services directly or indirectly through association with another business or through your own personal efforts.
h. Aggressive or abusive language, behaviour or treatment or any inappropriate behaviour toward any MTI employee, founder or another MTI member.
i. Engage, promote or encourage any activity, behaviour, scheme, abuse or conduct in order to obtain an undue financial benefit through the compensation plan or the bonus plan.
j. Sponsor members will in the course of recruiting not make themselves guilty of:

I. Crossline recruiting is not permitted. Crossline Recruiting is the recruiting/approaching of any current MTI member/s who is already referred and signed up in the MTI structure.
II. A member may not solicit an individual or entity that has previously been sponsored by another MTI member (or who is considering joining MTI and being sponsored by another member) to join their MTI business in such member's bonus line.
III. A member may not register and fund a potential new member without their consent/authorisation in an attempt to lock them in their organization.

## 5. PROTECTION OF THE SPONSOR, EXCLUSION OF TERRITORIAL PROTECTION, SPECIAL RIGHTS

i. A newly referred member will be linked to the organization of the sponsor who referred that person for the first time to MTI (sponsor protection). The funding of the account BY the new member shall be the indicating factor of determining the sponsor. In case two sponsor member, intend to indicate the

same new member as sponsored, then MTI will only take the sponsor indicated at the first account deposit.

ii. The observance of the sponsor lines is the basic principle of MTI that is necessary for the protection of all sponsor members.

iii. In case a member tries to register himself several times through a strawman, spouse, other relative/s, trade name, or legal entity at MTI in order to change binary legs, or by giving false data create such a new sponsor member relationship, it may cause the immediate termination of the member status without warning.

iv. MTI is entitled to delete the name and addresses of the sponsor member from the system, in case mails are sent back with the following signs: 'invalid e mail address', or similar and the member does not correct the false data within a 7 working days period.

v. Members may refer and sponsor new members in any country where MTI conducts business, without exclusivity.

vi. Members conducting business in foreign countries must adhere to the MTI terms and conditions and policies and procedures governing activities in such countries.

vii. Members and sponsors are responsible for knowing and adhering to all laws and accepted business practices within the countries in which they choose to refer. This includes marketing practices and competition laws.

## 6. PAYMENT CONDITIONS, PAYMENT METHODS OF THE BONUSSES, TRANSFER PROHIBITION

i. MTI offers a variety of different options which allows the member to earn income through its Bonus Plan.

ii. Some of these payment plans require the member and sponsor to be qualified. Qualification requirements are defined in the Bonus Plan. It is the responsibility of the member and sponsor to continually check and to ensure that they are qualified for each individual bonus plan which may require qualifications. MTI will not be obligated compensate a member who may fall out of qualification.

iii. Referral bonus payments are paid to referrers within seven (7) calendar days from a referee depositing his/her bitcoin in MTI and the payment was confirmed. MTI reserves the right to void and recover the referral bonus in full or part thereof should any irregularities occur within an eight (8) week period. This measure protects the integrity of the Compensation Plan, The Bonus Plan and the administration of MTI.

iv. The payment of bonuses of the sponsor member shall take place in the back office.

v. The possibilities and qualifications for receiving bonuses are published in the Compensation plan.

vi. The sponsor member may not assign or offer as security its rights resulting from the Compensation Plan.

vii. The Agreement may not be encumbered with the rights of third parties.

viii. If a members referrer withdraws his or her bitcoin deposit within 7(SEVEN) days from the date of deposit the sponsor will forfeit the 10% referral bonus.

## 7. DISABLING/SUSPENSION OF SPONSOR MEMBER

i. Irrespective of the reasons for disabling/suspending mentioned in the General Terms and Conditions and this Agreement MTI reserves the right to disable/suspend the sponsor member due to serious reasons.
ii. MTI expressly reserves the right to disable/suspend the online access of the sponsor member to the system without deadline, in case the sponsor member breaches the obligations mentioned in the terms and conditions and this agreement or breaches other legal provisions or there is other serious reason, and the sponsor member fails to terminate the breach at the notification of MTI within the deadline determined by MTI.

## 8. TERMINATION OF THE AGREEMENT, CONSEQUENCES OF TERMINATION, DEATH OF THE SPONSOR MEMBER

i. This Sponsor member Agreement terminates due to the following:

a. Upon the death, liquidation or sequestration of the sponsor member, or
b. When the sponsor member is removed from the system due to misconduct of any nature, or:
c. If the member registration is terminated by either the member or MTI.

ii. The agreement may be inherited by observing the legal conditions in the General Terms and Conditions under Survivorship.
iii. Following the termination of the Agreement is it forbidden to use such Internet domain or e-mail addresses that contain the MTI name, or any MTI brand name, trade name or title.
iv. In the case of Internet domains the sponsor member has to hand these over to MTI, and MTI pay the transfer costs should MTI have provided the sponsor with prior permission to use same. If prior permission were not granted then the sponsor will be liable for the transfer cost.
v. Following the termination of the agreement by the sponsor member other than for misconduct, the sponsor may only re-register with MTI after the 1 month have passed.
vi. The sponsor member may send a request to the e-mail address support@mymticlub.com to ask for permission re-register within one month after termination with the indication of his future sponsor. MTI will inform the sponsor member via a message sent to the sponsor member registered e-mail address about the acceptance or denial of the request.
vii. The sponsor member may conclude a new registration without special written consent 6 months after the termination of the first agreement.
viii. Following the termination of the agreement the sponsor member shall not be entitled to receive bonuses from its downline structure and forfeits any right thereto due to the cancellation of the agreement for any reason.

## 9. TRANSFER OF THE SPONSORED STRUCTURE TO THIRD PARTIES

i. No account shall be ceded or assigned to any third party, due to the risk of cybercrimes. Despite any other terms and conditions contained herein, MTI reserves the right, in exceptional circumstances, to change the account holder detail.

10. **HANDLING OF WRITTEN QUERIES**

i. The lead time of the investigation providing the basis for the assessment of questions, requests or occurring complaints received by MTI in writing is 7 days.
ii. The support section of MTI will deal with all queries related to the back office and queries submitted to support@mymticlub.com. This email address will also be the only forum wherein queries and requests will be entertained.
iii. Social media requests to management of MTI is not allowed or permitted.

11. **CLOSING PROVISIONS, ESCAPE CLAUSE**

i. MTI shall be entitled to modify this General Terms and Conditions for sponsor members from time to time. The modifications are published by MTI in the official MTI website www.mymticlub.com and/or www.mirrortradinginternational.com.
ii. The modifications and amendments of this Agreement are valid exclusively in writing.
iii. In case any provision of this Agreement for sponsors becomes invalid or is incomplete, it does not result in the invalidity of the whole Agreement, but the invalid or incomplete provision shall be substituted with a provision that is closest to the invalid or incomplete provision from an economic point of view. The same applies to the termination of shortcomings demanding valid regulation.

**SECTION: 8**

**MIRROR TRADING INTERNATIONAL (PTY) LTD**

**PROTECTION OF PERSONAL INFORMATION (POPI) ACT NO 4 OF 2013, REPUBLIC OF SOUTH AFRICA**

1. Mirror Trading International (Pty ) Ltd, (hereinafter referred to as "MTI") complies with the **Protection of Personal Information (Popi) Act no 4 of 2013, of the Republic of South Africa,** (hereinafter referred to as "the Act"" or "Popi").

i. Section 14 of the Constitution of the Republic of South Africa, 1996, provides that everyone has the right to privacy; the right to privacy includes a right to protection against the unlawful collection, retention, dissemination and use of personal information.
ii. POPI further states that no individual or entity may possess or hold the personal details of any other individual or entity any format including writing, electronic or other, without the express and authorised (by signature) permission of the disclosing party provided to the receiving party.
iii. This document to be read in conjunction with the MTI Standard Terms and Conditions and the MTI Code of Ethics.

iv. **"Disclosing Party"** shall means the individual or entity disclosing his/her or its personal information to any other person or entity that requires to hold such information for whatever purpose.

v. **"Receiving Party"** shall means the individual or entity receiving the personal information of any disclosing party.

2. **MTI and POPI**

i. MTI requires a range of personal information elements from MTI directors, officers, employees and registered members when a person is appointed to MTI, or registers on the MTI website to make use of MTI services.

ii. MTI directors, officers and employees grant MTI permission to hold the range of personal information elements required BY MTI of every director, officer and employee safely and securely and, MTI undertakes not to disclose such information to any other party, unless instructed to do so by the disclosing director, officer or employee.

iii. MTI members grant MTI permission through the act and processing of their membership registration on the MTI website, to hold the required range of personal information elements required by MTI of every registered member safely securely and, MTI undertakes not to disclose such information to any other party, unless instructed to do so by the disclosing member.

3. **Termination of Employment or membership of MTI or both**

i. Should the relationship between a director, officer or employee, or a registered and active member of MTI terminate for whatever reason, MTI will hold such individual's personal information that is on record at MTI, in the records of MTI as may be required by law (usually 5 years).

a. **"Registered Active Member"** shall mean any registered member or entity that funded his/her/its MTI BTC wallet within 7 working days of registering on MTI.

ii. The personal information of "Cancelled Members" is deleted in full from the MTI system and records per the MTI Standard Terms and Conditions, if any person or entity that has registered on MTI has not funded his/her/its BTC wallet within 7 (Seven) days of registration.

a. **"Cancelled Member"** shall mean any person or entity that has registered on the MTI website, but has not funded his/her/its BTC wallet within 7 (Seven) days of registration.

# MIRROR TRADING

## PRESENTATION

"FA 9"395

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Forex Trading with Bitcoin as account base currency

BITCOIN

grow your

MIRROR TRADING INTERNATIONAL

The investment opportunity that all
Bitcoin & Forex Investors
have been looking for!

# Company Overview

# MIRROR TRADING
## INTERNATIONAL

www.mirrortradinginternational.com

# Mirror Trading International (Pty) Ltd

Reg Number: 2019/205570/07

A Registered Company in the
Republic of South Africa

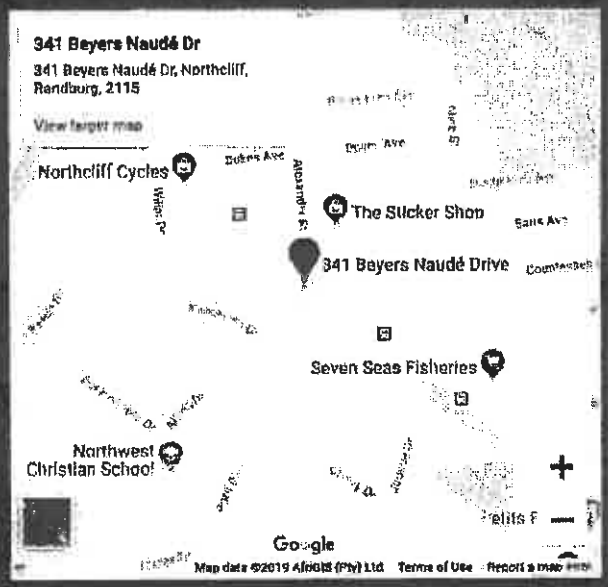
Founded in April 2019

MIRROR TRADING
INTERNATIONAL

www.mirrortradinginternational.com

# Registered Office

341 Beyers Naude Drive
Northcliff, Randburg
Johannesburg
Gauteng
South Africa
2115

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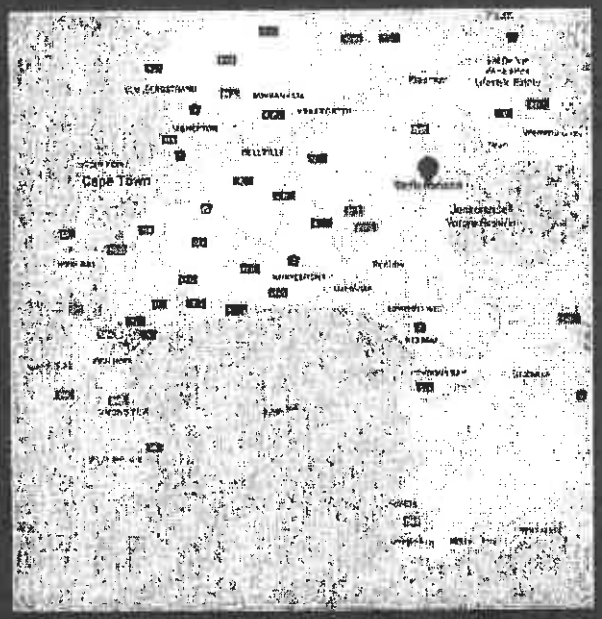
MIRROR TRADING
INTERNATIONAL

# Support Office

Stellenbosch
Western Cape
South Africa

By appointment only

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Cresta, Randburg Johannesburg

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Bitcoin
Your balance in trade is always in Bitcoin, you earn BTC daily. When the price of Bitcoin rises, the value of your trading account increases.
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INTERNATIONAL

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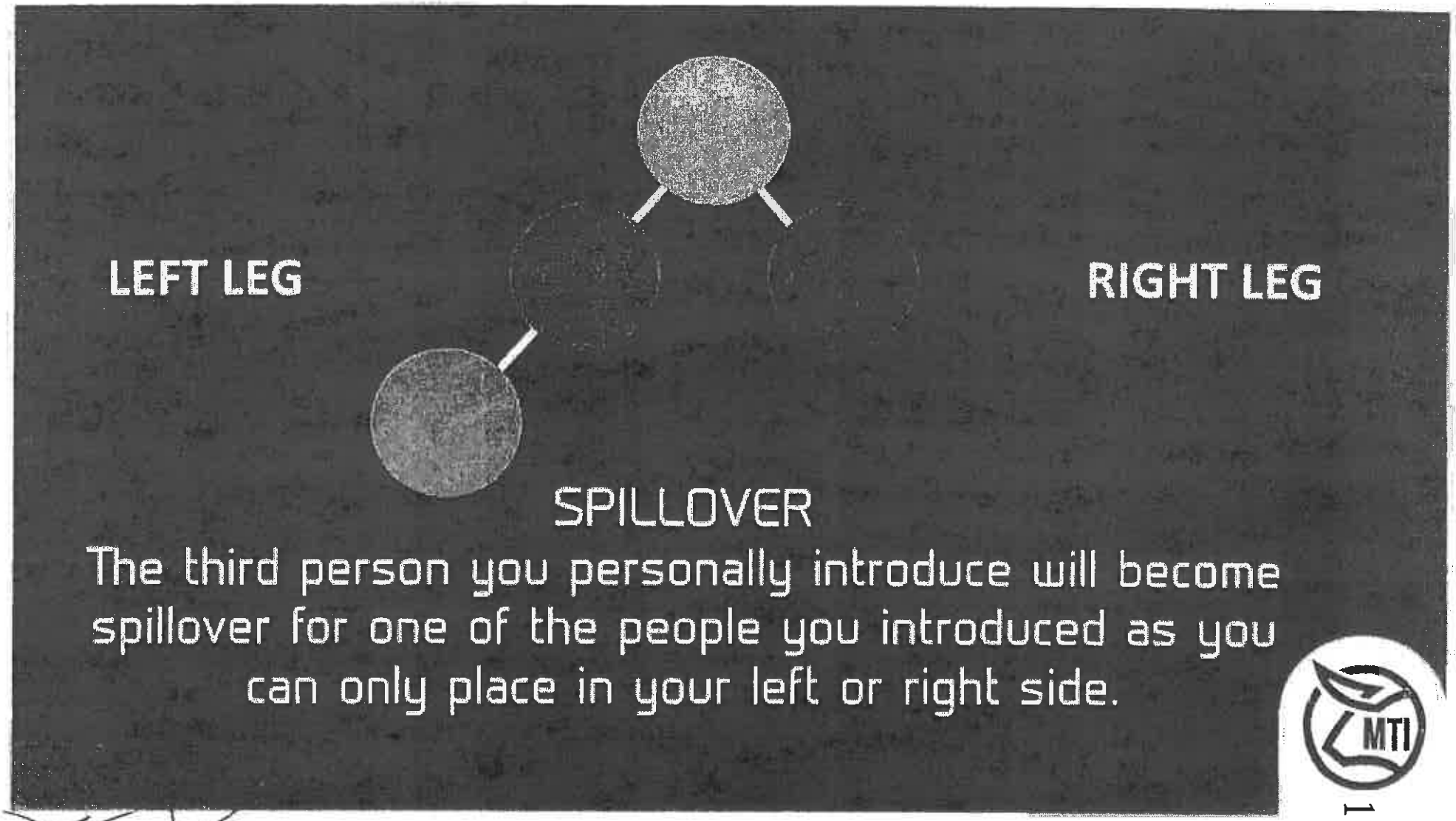
# BINARY QUALIFICATION*

*Minimum of one personally introduced member on the left and on the right

| Membership Level | Maximum Levels Earned In Binary |
|---|---|
| $200 - $999 | 10 Levels |
| $1000 - $4999 | 20 Levels |
| $5000 - $9999 | 30 Levels |
| $10000+ | Infinite Levels |


LEFT LEG
RIGHT LEG
SPILLOVER
The third person you personally introduce will become spillover for one of the people you introduced as you can only place in your left or right side.
MTI

# Binary Profit Sharing Bonuses

20% of the bonuses from the week's trading will be shared according to the value of your smallest binary team.

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MIRROR TRADING
INTERNATIONAL

Binary Point Shares Bonuses

Are paid weekly and
create a real reoccurring
passive income.

192

MIRROR TRADING
INTERNATIONAL

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 13721/22

The application between:

| | |
|---|---|
| **H BESTER N.O.** | First applicant |
| **AW VAN ROOYEN N.O.** | Second applicant |
| **CJ ROOS N.O.** | Third applicant |
| **JF BARNARD N.O.** | Fourth applicant |
| **D BASSON N.O.** | Fifth applicant |
| **CBS COOPER N.O.** | Sixth applicant |

(Cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | Respondent |

**SUPPORTING AFFIDAVIT**

I, the undersigned,

**CRAIG LIONEL PEDERSEN**

do hereby make an oath and say that:

1. I am:

1.1. a senior forensic investigator, certified Fraud Examiner and Certified Cybercrime Investigator, registered Forensic Practitioner;

OFFICE OF THE REGISTRAR
PRIVATE BAG X9020
2022 -08- 13
GENERAL OFFICE
WESTERN CAPE HIGH COURT

1.2. appropriately registered with and a member of the Association of Certified Fraud Examiners, the International Association of Financial Crime Investigators and the Institute of Commercial Forensic Practitioners; and

1.3. employed by TCG Digital Forensics of 32 Woodbridge Business Park, Koeberg Road, Milnerton, Cape Town, Western Cape ("**TCG**").

2. The facts deposed to herein are within my personal knowledge and belief, save where the context indicates otherwise.

3. A copy of my curriculum vitae is attached hereto as annexure P1 and I confirm the truth, authenticity and correctness thereof and of the facts stated therein.

**INTRODUCTION:**

4. The liquidators of Mirror Trading International (Pty) Ltd [in liquidation] ("**MTI**") instructed me to conduct a forensic investigation into certain aspects concerning the business of MTI and, to that end, to analyse the available relevant data underlying its operations.

5. This affidavit:

5.1. deals with the outcome of my forensic investigation in only very confined respects and only to the extent of it being relevant to the application brought by the liquidators for the relief set out in their notice of motion;

5.2. for purposes of consistency consequently employs the references, nomenclature and abbreviations employed in the founding affidavit;

5.3. should be read with the liquidators' founding affidavit to this application, the FSCA report and the Fabricius reports.

6. I confirm the truth, authenticity and correctness of the allegations made by the liquidators in their founding affidavit insofar as that affidavit relates to TCG and our investigations into the affairs of MTI.

**MY FINDINGS GERMANE TO THE RELIEF SOUGHT BY THE LIQUIDATORS IN TERMS OF THIS APPLICATION:**

7. I have the experience, required skill and expertise to execute the instruction of the liquidators and managed a team of experts (consultants and programmers) employed by TCG in the process of extracting information from MTI's records.

8. In pursuance of our (TCG and my) mandate, we have been investigating and analysing the data on MTI's SQL[1] database known as the "Maxtra" database ("**the MTI database**") since 2021.

9. The MTI database was stored on a server under the control of Maxtra Technologies, a web-hosting company based in India, that provides server space to its clients for the hosting of websites, databases and similar

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1 SQL is a domain-specific language used in programming and designed for managing data held in a relational database management system, or for stream processing in a relational data stream management system.

services. Access to the MTI database was procured by using the MTI specific access and login credentials [consisting of access granting password and username combinations], a secure file transfer protocol was downloaded and ultimately a full download of the MTI database was performed. To that end, the MTI database was extracted to a secured server under our control, so that the data could be appropriately processed and eventually analysed, in a secured separate and enclosed server environment.

10. By nature, the MTI database is a Customer Relationship Management ("**CRM**") tool. To this end, it is a database designed to track interaction between users and not a sophisticated, self-automated financial record-keeping and audit system.

11. As far as I am aware, the Maxtra database was designed in an "off the shelf" form by Maxtra Technologies India and was acquired by Mr Johannes Cornelius Steynberg ("**Steynberg**"), who then altered the "vanilla" version thereof by writing custom pieces of code and/ or making adjustments to the database so that it would fit the needs of the MTI scheme.

12. Steynberg is regarded in our investigation as being the Administrator of the MTI database and all indications have pointed to this being a reliable conclusion.

13. Against this prelude, I turn to the variables involved in calculating the flow of funds, liquidity and debtors/ creditors of MTI.

14. To analyse the data available on the MTI database, to interpret same and ultimately arrive at reliable calculations for the purpose of identifying transactions between MTI and investors, to reliably identify debtors/creditors of MTI, which is an extremely complex process.

15. This process begins with a comprehensive extraction of the data stored on the MTI database and analysing same to first understand which tables contain which data and how the different sets of data relate to one another and how they were created and maintained. This requires not only an inspection of the SQL data but also of the front end pages serving the data to match the origin of each field and ensure that the data is refined in terms of accuracy.

16. Initially, more importantly perhaps – without the assistance of Steynberg as the Systems Administrator in our investigations, key assumptions necessarily had to be made and these were tested and refined through the ensuing enquiry into the trade, dealing and affairs of MTI as contemplated by sections 417 and 418 of the Companies Act, 61 of 1973 ("**the Enquiry**"). It was through the Enquiry process that our factual premise for key assumptions could be tested, verified and sanitised with the assistance of the testimony and evidence tendered thereat, so that our analysis of the MTI database and forensic investigation could be commensurately refined.

17. The progress made pursuant to our initial analysis of MTI's records and data, during early 2021, is dealt with in annexure FA11 to the founding affidavit . At this time our calculations were an accurate reflection of the debtors/creditors and value of unaccounted bitcoin according to our

investigation at that point in time, on which I elaborate somewhat hereunder. That being said, it was clear at that time already that certain adjustments would have to be made as our investigation progressed, with no radical changes in the data and resultant calculations being anticipated.

18. During the middle of 2021, our ongoing investigations identified a number of deleted investor accounts. These accounts were inspected and found to have been the accounts of actual users who had closed their accounts as well as users that were removed from the system by Steynberg and/ or users with zero activity. While these accounts had been deleted, as an investigative process it was still noted that those users had actively participated in the scheme, despite their accounts apparently having been deleted. Their interactions with the scheme, through these purportedly "deleted" accounts were in the circumstances of consequence and this data had to be included. These accounts were then cross referenced and added back to the calculations so that provision could be made for what had been transacted on these accounts.

19. An independent data analysis system, called the "MTI Administration and Reporting System" ("**MARS**") was then created, which is a software system that enables one to parameterize and view MTI's investor-specific data, make calculations as required premised on such data and then generate reports premised on such data on an ad-hoc basis, for the liquidators as and when required.

20. The MARS system was built as a data extraction and reporting tool and was transposed onto a copy of the original copy of the MTI database extracted

from Maxtra as aforesaid. The MARS system has proven highly valuable in subsequent 417 enquiries where witnesses (debtors/ creditors) have had the opportunity to compare the data to their own records and confirm same. The degree of accuracy and confirmation of transactions has remained exceptionally high.

21. In the analysis of the data stored on the MTI database, as obtained from Maxtra, it was noted that there was no real attention paid, in IT systems terms, to verifying the identity of individuals participating in the scheme.

22. It soon became evident that a common practice prevailed in the MTI scheme, pursuant to which individuals created subsidiary accounts in other names [thus false identities / alias] to benefit from referral bonuses. In doing so, they would in truth and in fact open "investment accounts" for themselves, but under another name, only so that they could falsely represent to MTI that they had referred another investor to the scheme, only so that they would thereby "earn" a referral bonus in the scheme.

23. This practice brought with it a particular complexity in so far as the MTI system did not feature any form of a reliable Know Your Customer (KYC) verification process. The direct consequence of this cavalier approach to dealing with account holder information is that users were able to claim a 10% referral bonus through creating accounts in the names of children, pets or even fictitious names to claim generous bonuses from referring themselves. This is referred to as the "rolling of accounts".

24. The rolling of accounts for the benefit of referral bonuses necessitated an investigative process of creating individual-specific clusters. A cluster is

defined as a group of accounts in which sufficient commonality is noted (use of the same e-mail/ cellular number/ password etc.) is identified. This is physically inspected by a member of the investigative team and the oldest account traceable in the cluster identified as the most likely Master Account. Once the investigative process is complete, a Master/Slave relationships is recorded between the accounts and the gross value of the collective accounts was calculated.

25. The clustering process is important and central to successfully arriving at final debtors/creditors values as one individual, as master, could hold control over 10 or more slave accounts. This would reflect for example as 6 creditors and 4 debtors and the cumulative cluster would then be either a debtor or creditor. Needless to say, this process was intricate, involved and complex.

26. Through the process of cross-checking, referencing, and calculating the data over the past year, separate legal actions have called for figures at different stages. At each stage the most accurate available values at the time were provided. One must bear in mind that any stated ZAR values are of course directly related to the Bitcoin price either at the date of disposition or at the date on which the figures are required. The price of Bitcoin alone changes with exceptional frequency throughout any trading day or period and by its very nature, alone, directly impacts upon the numbers in question.

27. Ultimately, with the use and benefit of the aforesaid mechanisms, the mountain of MTI data extracted from Maxtra could be processed, analysed and interpreted to come to calculation of the total amount of Bitcoin

deposited into MTI and the total amount of Bitcoin withdrawn from MTI, during its operations.

28. That being said, as at the date of its liquidation and because of the fraud perpetrated by MTI and the theft and loss of Bitcoin, MTI had a shortfall of bitcoin of at least 6,900 Bitcoin, which does not include the 1,281 Bitcoin that the liquidators have recovered to date. The difference between Bitcoin deposited in and withdrawn out of MTI, was at that stage estimated to at least amount to 6,900 Bitcoin. Furthermore, if MTI traded legitimately and the Scheme was not a Ponzi-type scheme, and if all the illegalities and mechanism employed to defraud investors are to be ignored, an amount of 22,222,548 Bitcoin ought to have been held in MTI in December 2020, when MTI imploded and was placed in liquidation. The "pool" figure of 22,222,548 Bitcoin is what the Maxtra backoffice reported as the balance of members funds available at termination in December 2020.

29. At the time of deposing to annexure FA11 to the liquidators' founding affidavit, it was established that a total amount of 39,139.29 Bitcoin were deposited with MTI, of which an amount of 28,272.42 Bitcoin was subsequently withdrawn. Accordingly, a total of 10,866.87 Bitcoin was known not to have been withdrawn.

30. I subsequently established that there were more withdrawals of Bitcoin and the total amount of Bitcoin withdrawn from the scheme is now known to amount 32,285 Bitcoin. As with any data analysis, the collection of complex data, that requires in-depth and extensive consideration, the analysis of which is an evolving process, prolongs finality.

31. As presently advised, we have now established that at least 6,908.21 Bitcoin is unaccounted for within MTI.

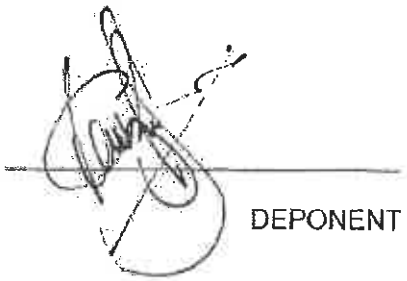
32. To this end, the calculations as currently reflected by the MARS system indicate that the MTI database extracted from Maxtra reflects:

32.1. 304,044 User/Investor Accounts;

32.2. That 39,193.29 Bitcoin were deposited into the scheme;

32.3. That 32,285.08 Bitcoin were paid out of the scheme;

32.4. The balance of funds that should be available in MTI as at 23 December 2022 is noted as the differential between deposits and withdrawals, being 6,908.21 Bitcoin.



DEPONENT

I hereby certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn before me at MIDRAND on this the 17TH day of AUGUST 2022, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

.....7023120-6
COMMISSIONER OF OATHS
MW Gabier

MOGAMAT WALEED GABIER
118 HOEBERG ROAD
MILNERTON
7441

SUID-AFRIKAANSE POLISIEDIENS
D3447
17 AUG 2022
FLASH
MILNERTON
SOUTH AFRICAN POLICE SERVICE

2003

**HC 97**

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 19201/2020

In the matter between:

| | |
|---|---|
| **ANTON FRED MELCHIOR LEE** | Applicant |
| and | |
| **MIRROR TRADING INTERNATIONAL (PTY) LTD** | First Respondent |
| **T/A MTI** | |
| **(REGISTRATION NUMBER: 2019/205570/07)** | |
| Registered office at: 43 Plein Street, Unit 1, First Floor, Stellenbosch, Western Cape | |
| **FINANCIAL SECTOR CONDUCT AUTHORITY (FSCA)** | Second Respondent |
| **CLYNTON HUGH MARKS** | Third Respondent |
| And | |
| **ADRIAAN WILLEM VAN ROOYEN N.O.** | First Intervening Party |
| **HERMAN BESTER N.O.** | Second Intervening Party |
| **CHRISTOPHER JAMES ROOS N.O.** | Third Intervening Party |
| **JACOLIEN FRIEDA BARNARD N.O.** | Fourth Intervening Party |
| **DEIDRE BASSON N.O.** | Fifth Intervening Party |
| [In their capacities as the duly appointed joint provisional liquidators of Mirror Trading International (Pty) Ltd (in liquidation)] | |

**SUPPORTING AFFIDAVIT: CRAIG PEDERSEN**

2004

I, the undersigned,

**CRAIG PEDERSEN**

do hereby make oath and state that:

1. I am an adult male forensic investigator practising as such at 32 Woodbridge Business Park, 452 Koeberg Road, Milnerton, Western Cape, as the sole member of TCG Digital Forensics CC ("TCG").

2. The facts deposed to herein fall within my personal knowledge and belief, save where the context indicates the contrary, and are furthermore true and correct.

3. I have read the affidavit of Clynton Marks ("Marks") which serves as his founding affidavit in his counter-application and his answering affidavit in the application of the provisional liquidators ("the liquidators") of the First Respondent ("MTI"). I have also read the affidavits deposed to by the First Intervening Party in response to Marks's aforesaid affidavit (**"Van Rooyen's main replying affidavit and Van Rooyen's separate affidavit"** respectively).

4. I am a certified fraud examiner and a certified cyber crime investigator. A copy of my curriculum vitae is annexed hereto, marked **"CP1"**. I have experience in extracting data from electronic databases.

5. TCG accepted the instruction of the liquidators to extract data from the database of MTI ("the MTI database") stored on a server under the control

of Maxtra, a web-hosting company based in India that provides server space to its clients for the hosting of websites, databases and similar services. I have the experience and required skill to execute the instruction of the liquidators and managed a team of experts (consultants and programmers) employed by TCG in the process of extracting information from the MTI database. In summary, the following process was followed: (a) Using password and username combinations provided to us, access was acquired to the data via secured File Transfer Protocol download; (b) A full download was performed; (c) The database was extracted to a secured server so that the data could be inflated and analysed. A temporary server was inflated for this purpose in a secured server environment.

6. I am cognisant of the statutory duty, particularly in terms of the Protection of Personal Information Act, 4 of 2013, to protect personal information of the parties who are reflected as members of MTI in the database. I therefore do not divulge the personal information of members which can be abused, particularly in a multi-networking environment.

7. In what follows, I will set out general relevant information retrieved from the database.

**Members**

8. According to the database MTI has thousands of members, probably more than 200 000. By virtue of the following facts and circumstances it is not possible to determine the number with accuracy and to establish the identity and contact particulars of all the members:

2006

8.1. There are 304 040 users and, therefore, an equal number of accounts (see paragraph 26.7 of Van Rooyen's main replying affidavit).

8.2. However, the number of members is less because there is a substantial number of potential duplicate accounts where the same individual may be controlling multiple accounts. There are 58 607 such potentially duplicate accounts (see paragraph 26.7 of Van Rooyen's main replying affidavit).

8.3. There are 275 544 users with no address data (see paragraph 28 of Van Rooyen's main replying affidavit).

8.4. There are 3 806 users with no phone number provided (see paragraph 28 of Van Rooyen's main replying affidavit).

8.5. There are 54 695 users with "dormant" accounts (no deposits and no withdrawals).

9. The members are from all over the world. Thirty-nine countries have 500 or more members and the following countries each has more than 5000 members (see paragraph 27 of Van Rooyen's Main Replying Affidavit:

9.1. South Africa: 166 318.

9.2. United States of America: 23 691.

9.3. Namibia: 10 563.

9.4. Canada: 10 028.

2007

9.5. India: 7 704.

9.6. United Kingdom: 6 760.

9.7. Nigeria: 5 971.

**Notification of liquidators' application to all MTI members (see paragraph 11 of Van Rooyen's main replying affidavit)**

10. On the instructions of the liquidators, a formal letter prepared by the liquidators' attorneys, was sent to all e-mail addresses of members of MTI as found on the MTI database. A copy of this letter is annexed hereto marked "**CP2**". Ignoring duplicate e-mail addresses, 250,665 unique e-mail addresses were identified, to which the annexed letter was duly sent on the 11th of August 2021 at 18:12.

11. As appears from "**CP2**", a link was also created, by which a recipient could obtain access to a complete set of court papers in respect of the liquidation application of MTI, as well as the court papers filed up and until that date, in respect of the liquidators' application.

12. In respect of the total number of e-mails sent, 230,161 were successfully delivered to the inboxes of the addressees. This represents 91.82% of the number of e-mails originally sent. Due to the different configurations and settings by different service providers, it is not possible to accurately determine how many of the recipients actually opened and viewed the e-mail. However, I can confirm that at least 26,700 (11.60% of the total e-

mails sent) were definitely opened, as actual confirmation was received from these recipients. The actual number will be a lot higher, but cannot be confirmed for the reasons as explained earlier.

13. From those recipients who received the e-mail, 2,204 recipients accessed the link to the court documents.

**Input/output of bitcoin to Marks (see paragraph 35.3 of Van Rooyen's affidavit)**

14. According to the database, Marks held at least two accounts which appear to be in his name. These have member numbers 7176010 and 2306852. Based on the rand value of bitcoin on the respective dates when the relevant bitcoin was deposited and withdrawn, Marks profited from his investment with MTI in an amount of at least R34, 334 133.09. I annex hereto copies of these two accounts as referred in the database reflecting total deposits and total withdrawals, marked **"CP3"** and **"CP4"**.

**400 bitcoin transferred by Marks (see paragraph 35.4 and 94 of Van Rooyen's main replying affidavit)**

15. I have been requested by the liquidators to comment on Marks's allegations in paragraphs 47 to 55 of his opposing affidavit, specifically with regard to the question whether there exists any proof that Marks actually transferred the 400 bitcoin to Steynberg/MTI.

16. I confirm that the MTI database does not reflect any record of such a transaction.

17. As for the so-called crypto graphic proof on the block chain, this information, without additional proof of the identity of the beneficial owner of the receiving and sending wallets, does not prove Marks's allegation.

18. As Marks himself explained in paragraph 521 of his affidavit, this information only serves as proof that the indicated number of bitcoin was transferred from one wallet to another, without any indication of the identity of the sender or the recipient.

**Input/output of bitcoin (see paragraph 60 to 62 of Van Rooyen's affidavit)**

19. According to the database the flow of bitcoin was as follows:

    19.1. Total bitcoin deposited: 39 139.29

    19.2. Total bitcoin withdrawn: 28 272.42.

20. It follows that, according to the database, a total of 10 866.87 bitcoin were not withdrawn.

21. The database does not reflect the whereabouts of the 10 866.87 bitcoin that were not withdrawn. In fact, the database does not reflect any particulars of wallets where bitcoin deposited by members were held.

22. Having regard to the value of bitcoin as at the date of each transaction, the Rand value of the bitcoin deposited and withdrawn is as follows:

2010

22.1. Total Rand value deposited: R6 830 908 978

22.2. Total Rand value withdrawn: R5 791 630 720

**Members who deposited and withdrew**

23. Members from different countries who deposited bitcoin but have not withdrawn more than they deposited:

23.1. Number: 196 522

23.2. Value: R3 107 470 319

24. Members from different countries who deposited bitcoin and have withdrawn more than they deposited:

24.1. Number: 52 801

24.2. Value: R2 068 192 061

**Balance of bitcoin in members' trading pool (see paragraph 62.3 of Van Rooyen's main replying affidavit)**

25. According to the database, MTI should have 22,222.54 bitcoin in its members' trading pool account. This represents the total number of bitcoin that should theoretically have been available, if the scheme were lawful and the trading results as represented to members, were actually achieved, i.e. the number of bitcoin reflected as the credit available to all members.

**Duplication of members' accounts**

26. As explained above, there are approximately 58 607 potentially duplicated accounts. What is meant with duplicated accounts, is accounts which appear to be controlled by the same individual. Although this practice was against the members' rules, the MTI back-office system had no mechanism to prevent members from opening multiple accounts. This enabled them to benefit from the 10% referral commission and the binary bonus structure, without actually having to introduce any new investors.

27. From the back-office data, it appears that Steynberg and Marks also contravened this rule. Steynberg is linked to at least 10 accounts and Marks to at least 2 (see paragraph 110 of Van Rooyen's main replying affidavit).

**Top 200 Members (see paragraphs 191 and 218 of Van Rooyen's main replying affidavit**

28. According to the database, the top 200 members in MTI, withdrew an amount of approximately R 642 133 667.09 more than what they have invested/deposited in MTI. This is not to be confused with the (fictitious) members' trading pool credit of 22,222.54 bitcoin, which is the balance "due" to members after the profit withdrawals have already been accounted for in the database (see paragraph 62.3 of Van Rooyen's affidavit).

2012

CRAIG PEDERSEN

Sworn to and signed in my presence at Tygervalley on this 20th day of August 2021 by the deponent who declared that he:

(a) knows and understands the contents of this affidavit;

(b) has no objection to the taking of the prescribed oath;

(c) considers the oath to be binding on his conscience;

and uttered the words: *"I swear that the contents of this affidavit are true, so help me God."*

COMMISSIONER OF OATHS

Ex Officio COMMISSIONER OF OATHS (RSA)
CHARL THOMAS HAMBRIDGE
(Member) Chartered Management Accountant
Business Consultant
CTH Consulting
25 Dolfyn Street, Yzerfontein
Western Cape, 7351

"CP1"

# CRAIG L. PEDERSEN

Certified Fraud Examiner
Digital Forensics Examiner

**Date of Birth**
20-09-1970

**CFE Registration**
41413642

**CCCi Registration**
14-070

**ASIS Registration**
188253383

**SAAFS Registration**
SAAFS039

KEY SKILLS

CONTACT

+27 79 691 0138
craig@tcgforensics.co.za
www.tcgforensics.co.za

## CURRENT POSITION

I am the owner and director of Peddy Tech cc Trading as TCG Cape and TCG Digital Forensics. In this capacity I am responsible for the management of our Forensics Division including in-house training and functional tasks in the area of Digital Forensics, Data Acquisition, Data Analysis, Image Enhancement, Report writing and court testimony.

2013

I oversee a staff capacity of 20 team members in total including administrative, technical and lab staff as well as Forensic Investigators (CFE). I actively participate in investigations and case management within the company.

## COURSES & QUALIFICATIONS

1995 PEC Systems Admin.(Int. Shell Oil)
1996 Relational Databasing(Int. Shell Oil)
1997 Systems Administration (Int. Shell Oil)
2001 MySql/ Joomla/ Wordpress
2002 E-Safe Anti-Virus & malware specialist
2004 Anti-Virus training United Kingdom
2006 PSIRA - Security Management
2006 Endpoint Security (Dublin, Ireland)
2010 REID Interrogation (Dana Rodden)
2014 IT Management (UCT)
2015 Nexan Fibre Optic Installation
2015 Nexan Fiber Optic Supervisor
2016 Court Aligned Mediator (UCT)
2018 CFE Prep course
2018 Social Media Intelligence / Osint –
2018 MCISA Member
2018 Cognitive Interview Technique
2019 OsInt Analyst (IntelTechniques, USA)
2019 Interpol illicit tobacco course
2019 ISS Osint - Law Enforcement (Malaysia)
2019 Interpol Brand Counterfeiting & prevention course
2019 Certified Fraud Examiner (CFE)
2019 Certified Cyber Crime Investigator
2019 DS Certified Mobile Operator

## COURSES PRESENTED

Chain of Custody (1 day program)
Forensics: Acquisition Phase (1 day program)
OsInt Introduction workshop (1 day program)
Due Diligence Investigations using OsInt
Osint Level 1 (5 day program)
Osint Level 2 (5 day program)
Practical Cyber Crime Investigation for Law Enforcement (5 day program)

## PUBLICATIONS & SPEAKING ENGAGEMENTS

Guest Speaker – ASIS Chapter 203 (2011/2013)
Guest Speaker – 2019 ACFE All Africa Conference
Guest Speaker – 2020 ACFE Lesotho
Guest Speaker – 2020 ACFE Regional
Guest Speaker – 2019 ACFE Fraud Week
Guest Speaker – 2020 IDU Africa Conference
Guest Speaker – IAFCI 2019
Guest Speaker – 2020 ASIS Chapter
Guest Speaker – 2019 Law Society SA
Articles: Servamus (June 2020)
Guest Speaker: United Nations Office on Drugs and Crimes (UNDOC) SA.
Guest Speaker – ACFE Africa 2020
Guest Speaker CyberSummit
Guest Speaker SABIC
Guest Speaker UNDOC SA (Investigating and prosecuting cybercrime)
Guest Speaker LSSA – Digital Forensics Trends for 2020
Position: Part Time Lecturer - University of Pretoria (Forensics)

## COMMENDATIONS & AWARDS

2004 Area Commissioners Certificate, Diligence as SAPS Instructor
2006 SAPS Milnerton Commendation, Arrest - most wanted CIT suspect
2007 SAPS commendation for service in intelligence led operations
2008 Reservist of the year Award, SAPS Prestige Awards (2nd Place)
2011 Awarded SAPS FIFA 2010 Medal
2012 Awarded SAPS 20 year Service Medal
2016 Commendation, Arrest of suspect known as the "UCT Serial Rapist"
2018 SAPS Prestige Awards Winner –Best Group, Serial & Electronic Crimes
2018 Minister of Police' commendation - Serial & Electronic Crimes
2019 Nomination - CFE of the year (South Africa)

"CP2"

1893 EST. 2014

# MOSTERT & BOSMAN

ATTORNEYS | TRUSTED ADVICE BY COMMITTED PEOPLE

Date: 11 August 2021

Our Ref: P DU TOIT/Antoinette/WI7098

Email: antoinettee@mbalaw.co.za

Your Ref:

**TO ALL KNOWN MEMBERS / INVESTORS OF MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)**

**BY E-MAIL**

Dear Sir / Madam

**NOTICE OF HIGH COURT APPLICATION TO HAVE BUSINESS MODEL OF MTI DECLARED UNLAWFUL / ILLEGAL AND RELATED RELIEF**

1. We refer to the above and confirm that we act herein on behalf of the joint provisional liquidators of Mirror Trading International (Pty) Ltd (in liquidation) ("**MTI**").

2. In as far as your contact details, as the recipient of this e-mail, appear in the members' data base maintained by MTI, you may be an interested party in the outcome of a High Court application instituted by our clients in the High Court of South Africa, Western Cape Division, Cape Town under case number 19201/2020, in terms of which our clients seek the following order from the High Court:

   2.1 That the provisional liquidators be granted leave to intervene in the application for MTI to be placed in final liquidation. Alternatively, that the provisional liquidators are granted leave to seek the relief dealt with below, as substantial relief under the abovementioned case number and to rely on the affidavits filed under the aforesaid case number;

1893 EST.

4th floor, Madison Square, Cnr of Carl Cronje & Tygerfalls Boulevard, Tygerfalls, Tyger Waterfront, Bellville, South Africa
PO Box 3355, Tyger Valley, 7536 | Docex 152, Cape Town | info@mbalaw.co.za | www.mbalaw.co.za
t +27(0)21 914 3322 | f +27(0)21 914 3330

Partners: Herman Botes | Riaan Kunz | Pierre du Toit | Cloete Marais | Richard Dixon | Lee-Anne Ely
Associates: Morné Strydom | Melissa Colyn | Callie Lloyd | Johann Steyn | Michelle Birkenstock
Jacky Wilkinson | Elizabeth Martin | Corné Botha | Kruger van Dyk
Office Manager: Charl Hambridge

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2.2 Declaring the business model of MTI as an illegal/and/or unlawful scheme and/or that MTI at all relevant times operated an illegal and/or unlawful business;

2.3 Declaring all agreements purportedly concluded between MTI and its investors in respect of the trading/management/investment of Bitcoin for the purported benefit of the investors, to be unlawful and *void ab initio*;

2.4 Declaring that MTI is factually insolvent in that the value of its liabilities exceeded the value of its assets since 18 August 2019 until the date of its winding-up on 29 December 2020;

2.5 Declaring any and all dispositions, whether by means of a payment in fiat currency or by means of a transfer of Bitcoin (or any other crypto currency) made by or on behalf of MTI to any of its investors or other third party, as payment or part payment of purported profits, referral commissions or any other remuneration in respect of and pursuant to the unlawful investment scheme perpetrated by MTI, to be dispositions without value, as defined in section 2, read with section 26(1) of the Insolvency Act 24 of 1936 (as amended) (**"the Insolvency Act"**);

2.6 Declaring any and all dispositions, whether by means of a payment in fiat currency or by means of a transfer of Bitcoin (or any other crypto currency), made by or on behalf of MTI to any of its investors or any third party as payment or part payment of any purported claim or entitlement pursuant to the unlawful investment scheme, within 6 (six) months before the *concursus creditorium* i.e., all dispositions since 23 June 2020, to be dispositions which had the effect of preferring one or more of MTI's creditors above others, as defined in section 2, read with section 29(1) of the Insolvency Act and that such dispositions were not made in the ordinary course of business as provided for in section 29(1) of the Insolvency Act;

2.7 Granting leave to the liquidators of MTI to approach this court on the same papers, duly amplified where necessary, for orders setting aside specific dispositions as described in 2.5 and 2.6 above, in terms of sections 26 and/or 29 of the Insolvency Act and for orders declaring that the liquidators of MTI are entitled to recover the aforesaid dispositions, alternatively the value thereof at the date of each disposition or the value thereof at the date on which the respective dispositions are set aside, whichever is the higher, as provided for in section 32(3) of the Insolvency Act;

2.8 That, in the event of this application being opposed, the costs of this application be paid by the party/parties who oppose(s) the application;

2.9 That further and/or alternative relief be granted.

(hereinafter referred to as **"the provisional liquidators' application"**).

3. Mr Clynton Hugh Marks opposed the provisional liquidators' application, pursuant to which a High Court order was granted by agreement between the parties on 30 June 2021, which provided that:

3.1 The application, launched by the Proposed Intervening Parties (the provisional liquidators), is postponed to the semi-urgent roll for hearing, on Wednesday 8 September 2021;

3.2 By no later than 7 July 2021 Third Respondent (Mr Marks), shall publish this order on the *telegram* social media platform used by First Respondent (MTI) and shall file by no later than 12 July 2021 an affidavit confirming such publication and annexing proof thereof;

3.3 Any party who wishes to oppose any of the relief sought by the Proposed Intervening Parties (the provisional liquidators), shall file their answering affidavits, dealing with all the relief sought by the Proposed Intervening Parties, on or before 30 July 2021;

3.4 The Proposed Intervening Parties shall file their replying affidavits, if any, on/or before 13 August 2021;

3.5 The Proposed Intervening Parties shall file their heads of argument on/or before 24 August 2021;

3.6 Any party who opposes the intervention application (the provisional liquidators' application) shall file heads of argument on/or before 31 August 2021;

3.7 All questions of costs shall stand over for later determination.

4. On 5 July 2021 and in compliance with paragraph 2 (recorded as 3.2 above) of the abovementioned court order, Mr Marks arranged for the publication of the aforesaid court order via the social media platform *Telegram* to the members of MTI, where, according to him, approximately 30 000 MTI members participate.

4
2017

5. Notwithstanding the aforesaid publication by Mr Marks via *Telegram,* no MTI member has to date indicated his/her/its intention to oppose the provisional liquidators' application.

6. In order to ensure that as many of MTI's members as possible receive notice of the provisional liquidators' application, this letter is hereby transmitted to all the recipients whose contact details are kept on the aforesaid database.

7. Please also be advised that a complete electronic set of the court papers in the application for the liquidation of MTI and in the provisional liquidators' application filed to date, can be obtained at https://drive.google.com/drive/folders/1JSSGxi-Rb9NybuSvh_bxYoTBwq7cZMpp.

8. If you wish to oppose the provisional liquidators' application, you are advised to seek urgent legal advice, in order to participate in the court proceedings referred to herein. This should be seen in light of the fact that an order granted in the mentioned proceedings will be applicable to all members of MTI, and may influence a possible claim against you if you unduly benefitted from the illegal business carried on by MTI.

9. Please note that it is not possible to respond/reply to this e-mail via its sending address.

Yours faithfully

**MOSTERT & BOSMAN**

Per: **PIERRE DU TOIT**

1893 EST.

"CP3"

# MTI User Statement

MTI Backoffice Sourcedata 2021-08-19

2306852
Bitcoindream
Clynton Marks
xftonfire+1@gmail.com
0

22 Malachite Kloonfendal
Johannesburg
Gau
South Africa

## Deposits Recieved

| PaymentDate | InwardReference | BTCAmountINward |
|---|---|---|
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 1.04859284 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 1.01204741 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.9996 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.63409128 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.5894921 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.45551965 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.3981716 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.35337111 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.33756414 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.3176 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.27627248 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.27211587 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.26589097 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.26583867 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.25830374 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.24810233 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.23348339 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.20480409 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.18389134 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.14918327 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.13780179 |
| 2020-03-31 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.13220283 |
| 2020-04-20 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 0.99638802 |
| 2020-05-11 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 10.90585484 |
| 2020-05-25 | 39ki7e8coXRNtw8qXiT8sdGjhhSavYS7W4 | 1.3087188 |

# MTI User Statement

MTI Backoffice Source data as at: 1-09-19

| | |
|---|---|
| Total Deposits | 21.98490256 |

## Withdrawals Processed

| posted_date | transaction_no. | description | Pmt Amount |
|---|---|---|---|
| 2019-08-26 | 113238 | | 0.25572225 |
| 2019-08-30 | 100781 | 1Kh27QJ5PUngYEPsxN8PR | 0.05220000 |
| 2019-09-02 | 496438 | 1KNhasVQ7XNMFJN29VJx | 0.1536 |
| 2019-09-03 | 642689 | 1Bm2zgFHqgZDnuLqpwbp | 0.1925 |
| 2019-09-14 | 84313 | 1Bm2zgFHqgZDnuLqpwbp | 0.28399655 |
| 2019-09-21 | 173978 | 1Bm2zgFHqgZDnuLqpwbp | 0.36297415 |
| 2019-09-28 | 447694 | 1Bm2zgFHqgZDnuLqpwbp | 0.41720296 |
| 2019-10-05 | 824024 | 1Bm2zgFHqgZDnuLqpwbp | 0.25584826 |
| 2019-10-12 | 736386 | 1Bm2zgFHqgZDnuLqpwbp | 0.34221441 |
| 2019-10-20 | 212252 | 1Bm2zgFHqgZDnuLqpwbp | 0.39 |
| 2019-10-26 | 396995 | 1Bm2zgFHqgZDnuLqpwbp | 0.49271096 |
| 2019-11-02 | 455948 | 1Bm2zgFHqgZDnuLqpwbp | 0.59967964 |
| 2019-11-04 | 690167 | 1Bm2zgFHqgZDnuLqpwbp | 0.03800390 |
| 2019-11-09 | 812259 | 1Bm2zgFHqgZDnuLqpwbp | 0.54455296 |
| 2019-11-16 | 812855 | 1Bm2zgFHqgZDnuLqpwbp | 0.61624169 |
| 2019-11-23 | 905595 | 1Bm2zgFHqgZDnuLqpwbp | 0.64561191 |
| 2019-11-30 | 336074 | 1Bm2zgFHqgZDnuLqpwbp | 0.70648099 |
| 2019-12-08 | 107537 | 1Bm2zgFHqgZDnuLqpwbp | 0.81906124 |
| 2019-12-14 | 885142 | 1Bm2zgFHqgZDnuLqpwbp | 0.94696595 |
| 2019-12-21 | 67603 | 1Bm2zgFHqgZDnuLqpwbp | 0.87703484 |
| 2019-12-28 | 651430 | 1Bm2zgFHqgZDnuLqpwbp | 1.15238694 |
| 2020-04-19 | 529606 | 1Bm2zgFHqgZDnuLqpwbp | 2.70817359 |
| 2020-04-27 | 443638 | 1Bm2zgFHqgZDnuLqpwbp | 3.37976473 |
| 2020-05-03 | 544586 | 1Bm2zgFHqgZDnuLqpwbp | 4.02545627 |
| 2020-06-28 | 842737 | 1Bm2zgFHqgZDnuLqpwbp | 6.22578113 |
| 2020-07-05 | 272380 | 1Bm2zgFHqgZDnuLqpwbp | 5.67461624 |
| 2020-07-12 | 229634 | 1Bm2zgFHqgZDnuLqpwbp | 5.72429749 |
| 2020-07-19 | 1601 | 1Bm2zgFHqgZDnuLqpwbp | 7.20000000 |
| 2020-07-26 | 586840 | 1Bm2zgFHqgZDnuLqpwbp | 7.28419871 |

# MTI User Statement

| | | | |
|---|---|---|---|
| 2020-08-02 | 598522 | 1Bm2zgFHqgZDnuLqpwbp | 8.09887010 |
| 2020-08-09 | 948851 | 1Bm2zgFHqgZDnuLqpwbp | 6.85115318 |
| 2020-08-16 | 979941 | 1Bm2zgFHqgZDnuLqpwbp | 6.73646471 |
| 2020-08-23 | 110416 | 1Bm2zgFHqgZDnuLqpwbp | 6.66272468 |
| 2020-08-30 | 792767 | 1Bm2zgFHqgZDnuLqpwbp | 6.81160971 |
| 2020-09-06 | 865987 | 1Bm2zgFHqgZDnuLqpwbp | 6.72313685 |
| 2020-09-13 | 365815 | 1Bm2zgFHqgZDnuLqpwbp | 7.59416927 |
| 2020-09-20 | 769841 | 1Bm2zgFHqgZDnuLqpwbp | 7.50801848 |
| 2020-09-27 | 535866 | 1Bm2zgFHqgZDnuLqpwbp | 7.21573353 |
| 2020-10-04 | 780902 | 1Bm2zgFHqgZDnuLqpwbp | 7.36918001 |
| 2020-10-11 | 316705 | 1LyuTwBjw6Ps29JFJty5kpi | 7.43174617 |
| 2020-10-18 | 139930 | 1Bm2zgFHqgZDnuLqpwbp | 6.98989482 |
| 2020-10-22 | 478272 | 1Bm2zgFHqgZDnuLqpwbp | 10.00000000 |
| 2020-11-23 | 751057 | 1Bm2zgFHqgZDnuLqpwbp | 5.00000000 |
| 2020-11-26 | 494774 | 1Bm2zgFHqgZDnuLqpwbp | 8.00000000 |
| 2020-12-08 | 811611 | 1Bm2zgFHqgZDnuLqpwbp | 30.00000000 |
| | | Total Withdrawal | 191.35997927 |

"CP4"

# MTI User Statement

MTI Backoffice Sourcedata 2021-08-19

| | |
|---|---|
| 7176010 | 22 Malachite Kloonfendal Roa |
| Daydream | |
| Clynton Marks | Gau |
| xftonfire@gmail.com | South Africa |
| 0 | |

## Deposits Recieved

| PaymentDate | InwardReference | BTCAmountINward |
|---|---|---|
| 2020-03-31 | 3NvwzHR4SN44oEVXssV48iz7zizsf1jeUk | 0.6182978 |
| 2020-03-31 | 3NvwzHR4SN44oEVXssV48iz7zizsf1jeUk | 0.589492096 |
| 2020-03-31 | 3NvwzHR4SN44oEVXssV48iz7zizsf1jeUk | 0.4842 |
| 2020-03-31 | 3NvwzHR4SN44oEVXssV48iz7zizsf1jeUk | 0.42367547 |
| 2020-03-31 | 3NvwzHR4SN44oEVXssV48iz7zizsf1jeUk | 0.34793702 |
| 2020-03-31 | 3NvwzHR4SN44oEVXssV48iz7zizsf1jeUk | 0.24037063 |
| 2020-03-31 | 3NvwzHR4SN44oEVXssV48iz7zizsf1jeUk | 0.12453125 |
| 2020-03-31 | 3NvwzHR4SN44oEVXssV48iz7zizsf1jeUk | 0.11867422 |
| 2020-03-31 | 3NvwzHR4SN44oEVXssV48iz7zizsf1jeUk | 0.00034788 |
| 2020-10-29 | 3NvwzHR4SN44oEVXssV48iz7zizsf1jeUk | 45.5418179 |
| 2020-11-02 | 3NvwzHR4SN44oEVXssV48iz7zizsf1jeUk | 23.6362959 |
| | Total Deposits | 72.125640166 |

## Withdrawals Processed

| posted_date | transaction_no. | description | Pmt Amount |
|---|---|---|---|
| 2019-08-26 | 223608 | | 0.42435558 |
| 2019-08-30 | 882005 | 1Kh27QJ5PUngYEPsxN8PR | 0.05220000 |
| 2019-09-02 | 285471 | 1KNhasVQ7XNMFJN29VJx | 0.1536 |
| 2019-09-03 | 476984 | 1Bm2zgFHqgZDnuLqpwbp | 0.1925 |
| 2019-09-14 | 113263 | 1Bm2zgFHqgZDnuLqpwbp | 0.13107030 |
| 2019-09-21 | 147793 | 1Bm2zgFHqgZDnuLqpwbp | 0.10392413 |
| 2019-09-28 | 957513 | 1Bm2zgFHqgZDnuLqpwbp | 0.05680418 |
| 2019-10-05 | 332350 | 1Bm2zgFHqgZDnuLqpwbp | 0.10963607 |
| 2019-10-12 | 427616 | 1Bm2zgFHqgZDnuLqpwbp | 0.11851100 |
| 2019-10-20 | 11590 | 1Bm2zgFHqgZDnuLqpwbp | 0.13781856 |

# MTI User Statement

MTI BackOffice Sourced at 2021-08-19

| | | | |
|---|---|---|---|
| 2019-10-26 | 89304 | 1Bm2zgFHqgZDnuLqpwbp | 0.13781855 |
| 2019-11-02 | 260578 | 1Bm2zgFHqgZDnuLqpwbp | 0.13615502 |
| 2019-11-04 | 691593 | 1Bm2zgFHqgZDnuLqpwbp | 0.06826209 |
| 2019-11-09 | 210108 | 1Bm2zgFHqgZDnuLqpwbp | 0.12903653 |
| 2019-11-16 | 98268 | 1Bm2zgFHqgZDnuLqpwbp | 0.13572662 |
| 2019-11-23 | 937566 | 1Bm2zgFHqgZDnuLqpwbp | 0.13538214 |
| 2019-11-30 | 490534 | 1Bm2zgFHqgZDnuLqpwbp | 0.13752057 |
| 2019-12-08 | 132350 | 1Bm2zgFHqgZDnuLqpwbp | 0.15846550 |
| 2019-12-14 | 794812 | 1Bm2zgFHqgZDnuLqpwbp | 0.17911790 |
| 2019-12-21 | 52009 | 1Bm2zgFHqgZDnuLqpwbp | 0.16843070 |
| 2019-12-28 | 349827 | 1Bm2zgFHqgZDnuLqpwbp | 0.22506180 |
| 2020-04-19 | 153610 | 1Bm2zgFHqgZDnuLqpwbp | 0.48315666 |
| 2020-04-27 | 70900 | 1Bm2zgFHqgZDnuLqpwbp | 0.71465236 |
| 2020-05-03 | 519890 | 1Bm2zgFHqgZDnuLqpwbp | 1.50700911 |
| 2020-06-28 | 379922 | 1Bm2zgFHqgZDnuLqpwbp | 1.09308096 |
| 2020-07-05 | 882171 | 1Bm2zgFHqgZDnuLqpwbp | 0.99062872 |
| 2020-08-17 | 341853 | 1Bm2zgFHqgZDnuLqpwbp | 0.98000000 |
| 2020-10-06 | 396681 | 1Bm2zgFHqgZDnuLqpwbp | 0.57211019 |
| 2020-10-11 | 911434 | 1Bm2zgFHqgZDnuLqpwbp | 5.00000000 |
| 2020-10-18 | 118105 | 1LyuTwBjw6Ps29JFJty5kpi | 5.00000000 |
| 2020-10-25 | 454982 | 1Bm2zgFHqgZDnuLqpwbp | 10.00000000 |
| 2020-11-04 | 940966 | bc1q29stqd8e47hw0t5klfv | 10.00000000 |
| 2020-11-23 | 919787 | 1LyuTwBjw6Ps29JFJty5kpi | 2.00000000 |
| 2020-12-01 | 176003 | 1Bm2zgFHqgZDnuLqpwbp | 20.00000000 |
| | | Total Withdrawal | 61.43203524 |

**Syndicated Tax and Customs Crimes Division – Illicit Economy Unit**

**Office**
Cape Town

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T Mahlangu

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**Reference**
9060362267

**Date**
11/07/2022

South African Revenue Service

13th Floor, Project 166 Building
22 Hans Strijdom Avenue
Cape Town
8000
(No postal deliveries to this address)

Private Bag X9168, Cape Town, 8000

Website:www.sars.gov.za

**The liquidators: Mirror Trading International (Pty) Ltd (in Liquidation)**
**C/O Tygerberg Trustees**
**First Floor, Cascade Terrances,**
**Waterfront Road, Tyger Waterfront**
**Bellville**

**Per e-mail:** herman@tygerbergtrustees.co.za
riaan@investrust.co.za

**Attention:** Herman Bester, Adriaan van Rooyen, Jacolien Barnard, Deidre Basson, Christoper Roos and Chavonnes Cooper.

Dear Sir/Madam

| | |
|---|---|
| **TAXPAYER:** | **Mirror Trading International (Pty) Ltd (In Liquidation)** |
| **INCOME TAX REFERENCE NO. :** | **9060362267** |
| **TAX PERIODS UNDER AUDIT:** | **2020 – 2021** |

**INCOME TAX FINALISATION OF AUDIT LETTER**

## A. INTRODUCTION

1. The writers hereof are SARS officials as envisaged in section (1) of the Tax Administration Act No. 28 of 2011 ("Tax Administration Act") and are duly authorised in terms of section 6(5) of the Tax Administration Act to address this letter to you.

2. We refer to our previous correspondence, in particular the request for the relevant material letter dated 22 July 2021 in terms of section 46 of the Tax Administration Act whereby the liquidators were requested to provide relevant material. We further refer to our audit notification letter dated 14 June 2022.

3. This letter is addressed to you in your capacity as the duly appointed co-liquidators of Mirror Trading International (Pty) Ltd (In liquidation), hereinafter interchangeably referred to as "the taxpayer" or "MTI". MIT has as the Master of the High Court's reference number C000906/2020 and company registration number 2015/159128/07. This appointment was duly made is in terms of section 386(1) of the Companies Act 61 of 1973 ("the old Companies Act") read together with item 9 of Schedule 5 of the Companies Act 71 of 2008 ("the new Companies Act"), which *inter alia* requires the liquidators to assume all the responsibilities of a public officer as envisaged under section 248 of the Tax Administration Act.

4. As representative taxpayer, the liquidators assumed the responsibility of submitting the tax returns on behalf of MTI in the manner and form as prescribed in section 25 of the Tax Administration Act. To date, the liquidators have not filed MTI's tax returns for the relevant years.

5. The liquidators, by not submitting the relevant income tax returns, have failed to carry out their duties as the deemed public officers of MTI. The adjustments to MTI's taxable income will be done in accordance with the provisions of section 91 and section 95 of the Tax Administration Act read with the provisions of the Income Tax Act, Act 58 of 1962 ("IT Act"), as more fully set out below.

6. The liquidators provided SARS with the raw data obtained from the MTI systems and the figures received from the liquidators' forensic auditors. SARS relied on this information and figures to finalise its audit and adjust MTI's taxable income. Please note that SARS reserves

the right to revise the assessments should the below-mentioned figures change as a result of additional information regarding bitcoins and/or the valuation thereof being discovered.

## B. SECTION 42 (5) ISSUING ASSESSMENT WITHOUT ISSUING A FINDING

7. Section 42(1) of the Tax Administration Act states that a SARS official involved in or responsible for an audit under Chapter 5 Part A of the Tax Administration Act must, in the form and the manner as may be prescribed by the Commissioner by public notice, provide the taxpayer with a report indicating the stage of completion of the audit.

8. In terms of section 42(2) of the Tax Administration Act, once the audit or criminal investigation has been concluded and it was inconclusive, SARS must inform the taxpayer of this within 21 business days. Alternatively, if the audit identified potential adjustments of a material nature, SARS must within 21 business days or longer depending on the complexities of the audit, provide the taxpayer with a document containing the outcome of the audit, including the grounds for the proposed assessment or decision referred to in s104(2) of the Tax Administration Act.

9. Section 42(3) states that once the taxpayer has received a document indicating the outcome of the audit and the grounds for the proposed assessment, he must respond within 21 business days of delivery of the document. The period of 21 business days may be extended upon request by the taxpayer and SARS may allow this based on the complexities of the audit.

10. Section 42(4) gives the taxpayer the right to waive receipt of the letter of audit findings. SARS requested the liquidators to agree to waive their right to receive a letter of audit findings however, the liquidators refused to waive that right.

11. In terms of sections 42(5) and 42(6) of the Tax Administration Act,1 there is a variation of the above-mentioned requirements which provides "if a senior SARS official has a reasonable belief that compliance with those subsections would impede or prejudice the purpose, progress or outcome of the audit". In these circumstances, "the grounds of the assessment or decision must be provided to the taxpayer within 21 business days of the assessment or the decision."

12. The senior SARS official has a reasonable belief that compliance with sections 42(1) and (2) will impede or prejudice the purpose, progress, or outcome of the audit based, inter alia, on the following reasons:

12.1 The liquidators have indicated their intention of paying an interim dividend to the creditors who have proved their claim. According to the information available to SARS, it is only concurrent creditors who have, to date, proved their claims.

12.2 Ordinarily, SARS is a preferent creditor and is entitled to be paid the dividend in the liquidated estate before concurrent creditors are paid. SARS has not yet proven its claim and as such, payment of the said dividend will exclude SARS if it does not prove its claim at the special meeting of creditors which is scheduled to take place on 15 July 2022.

12.3 In the circumstance, issuing a letter of audit findings and affording the liquidators 21 business days to respond will impede or prejudice the purpose, progress, or outcome of the audit. SARS will not be able to prove its claim at the creditors' meeting scheduled for

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1 Section 42(5) and (6):
*(5) Subsections (1) and (2) (b) do not apply if a senior SARS official has a reasonable belief that compliance with those subsections would impede or prejudice the purpose, progress or outcome of the audit.*

*(6) SARS may under the circumstances described in subsection (5) issue the assessment or make the decision referred to in section 104(2) resulting from the audit and the grounds of the assessment or decision must be provided to the taxpayer within 21 business days of the assessment or the decision, or the further period that may be required based on the complexities of the audit or the decision.*

15 July 2022 should it issue a letter of audit findings and afford the liquidators 21 days to respond to audit findings.

12.4 The payment of an interim dividend, while SARS has not proved a claim will negatively affect SARS' rights as a preferent creditor as the amount available to preferent creditors after a dividend is paid, will substantially be diminished.

12.5 Without a proven claim, SARS does not have any *locus standi* to give instructions to the liquidators or object to any decision taken or to be taken by the liquidators and the concurrent creditors.

12.6 The prejudice that SARS stands to suffer far outweighs the prejudice that the liquidators will suffer if it does not prove its claim. Even if the liquidators were to be granted an extension to prove claims, SARS will continue to suffer prejudice because it will not be allowed to participate in creditors' meetings and take decisions about the liquidated estate. Some of the decisions might adversely affect the fiscus and compromise SARS' position as a preferent creditor.

12.7 The Tax Administration Act provides the liquidators with a remedy to object to the assessment if they are aggrieved by it. The dispute resolution process will safeguard the liquidator's rights to procedural fairness because it will provide them with an opportunity to be heard. We deal with the dispute resolution procedure below in this letter and provide the procedures to be followed by the liquidators if they are aggrieved by the assessment.

13. In terms of section 169(1) of the Tax Administration Act, an amount of tax due or payable in terms of a tax Act is a tax debt due to SARS for the benefit of the National Revenue Fund. Your attention is further drawn to the provisions of section 169(3) which provides that SARS is regarded as a creditor of MTI for any recovery proceedings related to the tax debt.

## C. BACKGROUND

14. Although the history of the matter relating to MTI is familiar to the liquidators, we deem it prudent to repeat the main issues below.

15. MTI was incorporated in April 2019 with its shareholders being Mr. Cornelius Johannes Steynberg ("Stynberg"), identity number 830713 5016 088, and Mr. Clynton Hugh Marks ("Marks"), identity number 700213 5185 089.

16. Mr. Frederick Coenraad Rademan, identity number 791005 5051 083, was previously registered as a director, however, he resigned on 16 May 2020, leaving Mr. Steynberg as the sole director.

17. According to the MTI Referral Program Success Guide ("the Guide")[2] and Mr Steynberg's several business presentations, MTI traded on behalf of members on the crypto and forex markets and made about 10% trading profit every month which was allocated as follows: 40% to members, 25% to traders, 10% to MTI, 20% to binary, and 5% to leaders.

18. MTI, through social media, www.mirrortradinginterational.com and www.mymticlub.com (referred to as the "back office" and/or "MTI Trading Pool Account") solicited bitcoins from members of the public (referred to as "members" by MTI). The members transferred their bitcoins from their virtual bitcoin wallets into the MTI's virtual bitcoin wallets through the MTI's back office website.

[2] Attached as Annexure MTI01 as copy of the MTI Referral Program Success Guide.

19. Based on the back office data obtained from the liquidators, 35 504.6976[3] bitcoins valued at about R6,852,454,358.60[3] were transferred by the members into MTI bitcoin wallet(s) between August 2019 and December 2020. Mr. Steynberg, in his representative capacity as a director of MTI was placed in full control of these bitcoins.

20. From the MTI bitcoin wallets, 1,846.72 bitcoins were transferred to a foreign-registered broker in Belize, FXChoice Ltd (company registration number 105,966), for trading purposes, and a loss of 566,68 bitcoins was suffered through trading.

21. MTI is alleged to have transferred other bitcoins for trading purposes to IFX Brokers Holdings (Pty) Ltd (Registration number 2017/027249/07), FIBO Group, and Trade 300, however, the evidence obtained by the Financial Sector Conduct Authority ("FSCA") during its investigation could not support that.

22. The amount and number of bitcoin(s) retained by MTI and/or senior management is unknown, but it is believed to be substantial, while the majority of the members received either nothing back, or less than the bitcoins that they have transferred to MTI.

23. As part of a disclaimer liability, MTI required that the members should agree to the following provisions[4] before investing in bitcoins:

*23.1 "Neither MTI nor its business partners is responsible for any loss or damage of whatever nature"; and*

[3] See Annexure MTI03.
[4] Stated on MTI website

23.2 *"MTI will not and cannot be held liable for any losses of whatsoever nature due to unfulfilled promises to prospective members or third parties by any other existing members."*

**Illegal scheme**

24. On or about January 2021, the Financial Sector Conduct Authority ("FSCA") investigated the financial affairs of MTI. The findings of the investigations revealed that MTI and its senior staff contravened the provisions of the Financial Advisory Intelligence Services Act ("FAIS Act") in that they conducted an international illegal financial service scheme tied to investments in cryptocurrency and forex trading pool.[5]

25. During July 2020, the Securities Commissioner of the State of Texas in the United States of America (USA) issued an emergency cease and desist order against MTI and Mr Steynberg from, *amongst others*, engaging in any fraud in connection with the offer for sales of any security in Texas[6].

26. Thirdly, the Autorité des Marchés Financiers, the organisation responsible for financial regulation in the Canadian province of Quebec, and the Financial Services Commission in Mauritius issued statements on their website in 2020 warning the public in their respective states that MTI is illegally soliciting members to invest in bitcoins.

27. Fourthly, FXChoice Ltd blocked and marked the MTI trading account as "fraud" by or on 10 June 2021, stating that it was after FX Choice realised that MTI is a multi-level marketing pool that claims high returns from trading Forex for their members using an artificial intelligence software.

5 FSCA, Investigation Report: Mirror Trading International (Pty) Ltd & Cornelius Johannes Steynberg, January 2021
6 Attached as Annexure MTI02 a copy of the order.

28. Lastly, MTI was finally wound up on 30 June 2021 and six joint liquidators were duly appointed by the Master who issued an application to the High Court requesting that the scheme be declared an unlawful and/or illegal scheme. This judgment has been reserved.

29. SARS' preliminary investigations revealed that MTI conducted a fraudulent and unlawful scheme from the start which was designed to profit from ill-gotten members' bitcoins and the assessment is based on SARS' investigation notwithstanding the possible outcome of the court proceedings.

**MTI's Tax compliance**

30. MTI is registered and became liable in April 2019 for Corporate Income Tax ("income tax") with a February year-end. To date, the income tax (ITR14) and provisional tax (IRP6) returns for 2020 and 2021 remain outstanding.

31. In this regard, your attention is further drawn to the provisions of section 234(2)(d) of the Tax Administration Act which provides that it is an offence for a taxpayer to wilfully or negligently fail to submit a return when required to do so. Such an offence is, upon conviction, subject to a fine or imprisonment for a period not exceeding two years.

32. In terms of section 248(1) read with sections 151(b), 153(1)(a) and 154 of the Tax Administration Act, the liquidators, in their capacity as representative taxpayers, are responsible for the tax affairs of MTI, which includes the submission of tax returns and disclosing MTI's income for the relevant years. To date, the liquidators have not filed any tax return on behalf of MTI.

33. The liquidators, by not submitting the relevant income tax returns since their appointment, have failed to carry out their duties as deemed public officers of MTI, in accordance with

section 248 of the Tax Administration Act and are committing a tax offence as set out in section 234(2)(d) of the Tax Administration Act.

## D. SUMMARY OF ADJUSTMENTS MADE TO THE TAXPAYER'S TAXABLE INCOME FOR THE 2020 TO 2021 TAX PERIOD

| Tax Period | Provisions of the IT Act and the Tax Administration Act | Brief description of adjustment made | Adjustment amount |
|---|---|---|---|
| 2020 | IT Act:<br>Section 1 - definitions of "gross income", "financial instrument" and "spot rate"- and section 25D | Non-declaration of gross income. | R182,540,399.24 |
| | Section 11(a) read with 23(g) and section 25D | Expenses allowed. | (R67,553,922.34) |
| | The Tax Administration Act:<br>Sections 91, 95, 102, and 42(5) | | |
| IT Act:<br>Section 5(1)(d) and Section 1 - definition of 'taxable income' | | Taxable income adjustment | R 114,986,476.90 |

| | | | |
|---|---|---|---|
| 2021 | IT Act:<br>Section 1 - definitions of "gross income", "financial instrument" and "spot rate"- and section 25D | Non-declaration of gross income. | R6,669,913,959.36 |
| | Section 11(a) read with 23(g) and section 25D<br><br>The Tax Administration Act<br>Sections 91, 95, 102, and 42(5) | Expenses allowed. | (R5,536,102,125.16) |
| IT Act:<br>Section 5(1)(d) and Section 1 - definition of 'taxable income" | | Taxable income adjustment | R 1,133,811,634.19 |
| **TOTAL** | | | **R 1,248,798,311.09** |

## E. SUMMARY OF THE NORMAL TAX, PENALTIES AND INTEREST FOR THE 2020 - 2021 TAX PERIODS

| Tax Period | Capital Amount @25% Section 92 | Understatement Penalty - Section 222 read with 223 | Penalty Par 20 of the Fourth Schedule | Interest Section 89quint (2) | TOTAL |
|---|---|---|---|---|---|
| 2020 | R32,198,213.56 | R48,294,329.00 | R5,151,394.13 | R1,016,997.99 | R86,658,934.68 |
| 2021 | R317,467,314.52 | R476,200,970.00 | R50,794,770.15 | 0 | R844,463,054.67 |
| TOTAL | R349,665,528.08 | R524,495,299.00 | R55,946,164.28 | R1,016,997.99 | R931,121,989.35 |

## F. BASIS OF ASSESSMENT

34. In arriving at its estimated assessments set out below, SARS has considered all of the available information at its disposal, including documents in the public domain referred to in the background, relevant information obtained from the liquidators, specifically the back-office data and other relevant material, referred to below.

### The Facts

35. In light of the fact that the 2020 and 2021 returns are outstanding and the taxpayer has not made any declaration of its income, SARS considered the available information in arriving at an estimate of income.

36. On 22 July 2021, SARS through section 46 of the Tax Administration Act, requested the taxpayer's back-office data from the liquidators as received by them from MAXTRA in its raw form.

37. SARS only received the requested information from the liquidators on 12 November 2021.

38. SARS was unable to process or analyse the raw data received, as a result, a meeting was held with the liquidators on 14 February 2022 where it was agreed upon to make their already deciphered data available.

39. The liquidators subsequently provided the requested data on 04 March 2022 to SARS.

**Non-declaration of gross income**

40. After further analysis of the data received from the liquidators, SARS determined that MTI received the amount below as defined in the definition of gross income, however, it failed to declare the amount for income tax purposes:

40.1 R182,540,399.24 in the 2020 year of assessment (Annexure "MTI03"); and

40.2 R6,669,913,959.36 in the 2021 year of assessment (Annexure "MTI03").

**Expenses allowed**

41. SARS has considered the back office data received from the liquidators and the analysis of that information, it identified the following expenses which were subsequently allowed as deductible expenses:

41.1 Estimated deductible expenditure in relation to payments made to the members are as follows:

41.1.1 R67,533,922.34 in the 2020 year of assessment (Annexure "MTI03"); and

41.1.2 R5,536,102,125.16 in the 2021 year of assessment (Annexure "MTI03").

**Expenses not allowed**

42. SARS has considered the expenses of the taxpayer based on the back office data received from the liquidators. Estimated non-deductible expenditure in relation to bitcoins embezzled by senior management are as follows:

42.1 R3,367,763.12 in the 2020 year of assessment (Annexure "MTI03"); and

42.2 R132,502,972.71 in the 2021 year of assessment (Annexure "MTI03").

## G. THE LAW

### The Income Tax Act

43. **Section 1:** definition of "gross income"

*"In relation to any year or period of assessment, means—*

*(i) in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident; or*

*(ii) ...,during such year or period of assessment, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder..."*

44. **Section 1:** definition of "financial instrument" includes -

...

*(f) Any crypto asset*

45. **Section 1:** "spot rate" *means the appropriate quoted exchange rate at a specific time by any authorised dealer in foreign exchange for the delivery of currency.*

46. **Section 1:** Definition of "taxable income", *means the aggregate of—*

*(a) the amount remaining after deducting from the income of any person all the amounts allowed under Part I of Chapter II to be deducted from or set off against such income; and*

*(b) all amounts to be included or deemed to be included in the taxable income of any person in terms of this Act;*

47 **Section 5(1)(d):** Levy of normal tax and rates thereof. —

*"Subject to the provisions of the Fourth Schedule there shall be paid annually for the benefit of the National Revenue Fund, an income tax (in this Act referred to as the normal tax) in respect of the taxable income received by or accrued to or in favour of-*

*(d) any company during every financial year of such company."*

48. **Section 11:** General deductions allowed in the determination of taxable income

*"For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall be allowed as deductions from the income of such person so derived-*

*(a) expenditure and losses actually incurred in the production of the income, provided such expenditure and losses are not of a capital nature."*

49. **Section 23:** Deductions not allowed in the determination of taxable income. —

*"No deductions shall in any case be made in respect of the following matters, namely—*

*(g) any moneys, claimed as a deduction from income derived from trade to the extent to which such moneys were not laid out or expended for the purposes of trade;"*

50. **Section 25D.** Determination of taxable income in foreign currency. —

*(1) Subject to subsections (2), (3) and (4), any amount received by or accrued to, or expenditure or loss incurred by, a person during any year of assessment in any currency other than the currency of the Republic must be translated to the currency of the Republic by applying the spot rate on the date on which that amount was so received or accrued or expenditure or loss was so incurred.*

**The Tax Administration Act**

51. **Section 29:** Duty to keep records. —

*"(1) A person must keep the records, books of account or documents that—*

*(a) enable the person to observe the requirements of a tax Act;*

*(b) are specifically required under a tax Act; and*

*(c) enable SARS to be satisfied that the person has observed these requirements.*

*(2) The requirements of this Act to keep records for a tax period apply to a person who—*

*(a) has submitted a return for the tax period;*

*(b) is required to submit a return for the tax period and has not submitted a return for the tax period; or*

*(c) ...*

*(3) Records need not be retained by the person described in—*

*(a) subsection (2)(a), after a period of five years from the date of the submission of the return; and*

*(b) subsection (2)(c), after a period of five years from the end of the relevant tax period."*

52. **Section 91:** Original assessments. —

*"(1) If a tax Act requires a taxpayer to submit a return which does not incorporate a determination of the amount of a tax liability, SARS must make an original assessment based on the return submitted by the taxpayer or other information available or obtained in respect of the taxpayer.*

53. **Section 95: Estimation of assessments. —**

*(1) SARS may make an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate if the taxpayer:*

*(a) does not submit a return;*

*(b) submits a return or relevant material that is incorrect or inadequate; or*

*(c) does not submit a response to a request for relevant material under section 46, in relation to the taxpayer, after delivery of more than one request for such material.*

*(2) SARS must make the estimate based on information readily available to it.*

*(3) If the taxpayer is unable to submit an accurate return, a senior SARS official may agree in writing with the taxpayer as to the amount of tax chargeable and issue an assessment accordingly, which assessment is not subject to objection or appeal."*

*(4) The making of an assessment under subsection (1) does not detract from the obligation to submit a return or the relevant material.*

*(5) An assessment under subsection (1) is not subject to objection or appeal, unless the taxpayer:*

*(a) submits the return referred to in subsection (1) (a); or*

*(b) submits the response to the request referred to in subsection (1) (c),*

*and SARS does not issue a reduced or additional assessment.*

*(6) The taxpayer in relation to whom the assessment under subsection (1) has been issued may, within 40 business days from the date of assessment, request SARS to issue a reduced assessment or additional assessment by submitting a true and full return or the relevant material.*

*(7) A senior SARS official may extend the period referred to in subsection (6) within which the return or relevant material must be submitted.*

*(8) If SARS decides not to make a reduced or additional assessment under subsection (6), the date of the assessment made under subsection (1)(a) or (c), for the purposes of chapter 9, is regarded as the date of the notice of the decision.*

54. **Section 100:** Finality of assessment or decision. —

*(1) An assessment or a decision referred to in section 104 (2) is final if, in relation to the assessment or decision—*

*(a) it is an assessment described—*

*(i) in section 95 (1) (a) or (c), and no return or response described in section 95 (6) has been received by SARS; or…*

55. **Section 102:** Burden of proof. —

*"(1) A taxpayer bears the burden of proving—*

*(a) that an amount, transaction, event or item is exempt or otherwise not taxable; …"*

*"(2) The burden of proving whether an estimate under section 95 is reasonable or the facts on which SARS based the imposition of an understatement penalty under Chapter 16, is upon SARS"*

56. **Section 162(3):** Determination of time and manner of payment of tax. -

*"Despite section 96(1)(f) and 167, a senior SARS official may, if there are reasonable grounds to believe that -*

*(a) a taxpayer will not pay the full amount of tax;*

*(b) a taxpayer will dissipate the taxpayer's assets; or*

(c) *that recovery may become difficult in the future,*

*require the taxpayer to-*

*(i) pay the full amount immediately upon receipt of the notice of assessment or a notice described in section 167(6) or within the period as the official deems appropriate under the circumstances; or*

*(ii) provide such security as the official deems necessary."*

## H. APPLICATION OF THE LAW

### Gross income - "received by"

57. The basis for the adjustments made are outlined in the preceding paragraphs and below.

58. Bitcoin is a cryptocurrency that is designed to act as virtual currency, thus removing the need for third-party involvement in financial transactions[7]. However, for income tax purposes, cryptocurrency is defined as a "financial instrument"[8] in the IT Act, as opposed to currency.

59. In addition, the basics of cryptocurrency taxation were first outlined by SARS in a 2018 media statement[9] which clarified that cryptocurrency is an asset that is subject to normal income tax rules and existing principles laid down by case law.

60. The point of departure, therefore, pursuant to the normal tax rules and case law, is to determine if the bitcoins transferred from the members' virtual bitcoin wallets to the taxpayer's virtual bitcoin wallets constitute "gross income" which, to the extent relevant provides:

*"...in the case of any resident, the total amount, in cash or otherwise, received by or accrued*

7 Investopedia.com, Bitcoin (BTC) Definition (Investopedia.com) (Access May 2022)
8 Definition of "financial instrument" in Section 1 of the IT Act
9 SARS Media Statement, 8 April 2018 - SARS's stance on the tax treatment of cryptocurrencies | South African Revenue Service (Access May 2022)

*to or in favour of such resident... during such year or period of assessment, excluding receipts or accruals of a capital nature*"[10].

60.1 Firstly, it is noteworthy from the definition that no need exists to prove that the taxpayer carried on a trade, either legal or illegal[11], for an amount to constitute gross income.

60.2 Secondly, it is clear from the background that the bitcoins were either virtually (or physically) transferred by the members into MTI's wallet, therefore it is not necessary to consider the part of the definition relating to "accrual".

61. From the gross income definition, therefore, the basis on which bitcoins flowing from illegal activities can be included under gross income, is on the so-called "receipt basis". This principle was established by the Supreme Court of Appeal ("SCA") in *MP Finance Group (In Liquidation) v SARS*[12].

62. Briefly, the facts in *MP Finance Group (In Liquidation)* were that Ms Marietjie Prinsloo, through various entities, operated an illegal and fraudulent scheme in terms of which she borrowed money from the public and promised them irresistible (but unsustainable) returns, payable monthly. All the corporations became insolvent and many so-called "investors" received less or nothing of the promised returns. SARS successfully argued the scheme should be taxed on the "receipt basis".

63. On the other hand, the liquidators of the scheme unsuccessfully argued that the amounts were received under an illegal scheme, and an unconditional obligation existed on the part of the scheme to repay the amount to the investors. As a result, the amounts received by the

10 Definition of "gross income" in Section 1 of the IT Act
11 As an example, for case law which support the view that income which is received is subject to tax notwithstanding the fact that it is received in relation of carrying on illegal activities, see CIR v Delagoa Bay Cigarette Co Ltd 1918 TPD 361 at 394.
12 MP Finance Group CC (In Liquidation) v Commissioner, South African Revenue Service 69 SATC 141 (SCA)

scheme is not for its behalf and its benefit, and therefore it could not form part of gross income.

64. The SCA confirmed the decision of the Tax Court and held that:

> *"Even if, … the scheme was legally obliged to repay an investor immediately on receipt, that was because of the legal principles applicable to the parties to an illegal contract, as between themselves. An illegal contract is not without all legal consequences; it can, indeed, have fiscal consequences. The sole question as between scheme and fiscus is whether the amounts paid to the scheme in the tax years in issue came within the literal meaning of the Act. Unquestionably they did. They were accepted by the operators of the scheme with the intention of retaining them for their own benefit. Notwithstanding that in law they were immediately repayable, they constituted receipts within the meaning of the Act. In other words, it does not matter for present purposes that the scheme was not entitled, as against the investors, to retain their money. What matters is that what they took in was income received and duly taxable. The assessments were correctly raised."*

65. In Geldenhuys v CIR it was held that the words "received by" as used in the gross income definition[13] –

> *"Must mean received by the taxpayer on his own behalf for his own benefit."*

66. Therefore, the bitcoins transferred by the members constitutes "received", in light of the fact that:

[13] Geldenhuys v CIR 1947 14 SATC 419 at 430

66.1 The taxpayer is disclaiming any and all liabilities associated with the bitcoins once the bitcoins are transferred into its virtual bitcoin wallets, therefore, in law not obliged to repay the members;

66.2 Evidence, based on the FSCA investigation report, revealed that significant members' bitcoins were transferred into any trading platform for alleged trading purposes, and the bitcoins recovered from FXChoice appear in the name and under the control of Mr. Steynberg;

66.3 The taxpayer and or senior management's intention, when soliciting bitcoins from members, was not to contract with the members but accepted the members' bitcoins with the intention of retaining those bitcoins for their own benefit.

**Gross Income - "of revenue nature"**

67 The onus in terms of the Tax Administration Act[14] is on the taxpayer to prove, if true, that the bitcoins received are not revenue in nature. Nonetheless, there is ample evidence that the taxpayer's business was a well-planned illegal business operation allegedly trading in cryptocurrency and forex markets and making a 10% trading profit every day. Furthermore, the guide makes it clear that "profit in MTI is generated through trade only"[15] and there is evidence of trading on the trading account opened with FXChoice, however minimal it might be or the results thereof.

68. SARS is further of the view that it has proved that the estimated assessment is reasonable based on the information above.

14 Section 102 of the Tax Administration Act
15 Attached as Annexure MTI01 as copy of the MTI Referral Program Success Guide

**Expenses allowed – sections 11(a) and 23(g)**

69. The expenditure incurred by the taxpayer in carrying on a trade is deductible in terms of section 11(a) read with section 23(g) of the IT Act. As a result, pursuant to the taxpayer's trade, the bitcoins transferred by MTI back to the members' wallets are, based on the back-office data, allowed as a deduction in determining taxable income.

**Expenses not allowed - sections 11(a) and 23(g)**

70. The expenditure and losses incurred as a result of embezzlement, fraud, or theft of the bitcoins by senior management as discussed in paragraph 29 including the shareholders, are not deductible because:

70.1 Firstly, it is not an inherent business risk attached to the taxpayer's trade;

70.1.1 In support of this view, in ITC 952[16] the appellant sought to claim a deduction in relation to stolen funds under section 11(a) of the IT Act and that appeal was disallowed on the basis the embezzlement, fraud, or theft was committed by senior managers. The court held:

*"Applying the law to the facts of the appellant's case I do not think that it can be said that the defalcations of a partner in an attorney's firm can be said to be the kind of casualty, mischance or misfortune which is a natural and recognised incident of the business. If a distinction is to be drawn between ordinary servants, and managers or managing directors, for which there appears to be authority, it seems to me that, a fortiori, a partner is in quite a*

[16] ITC 952 SATC 552

*different position to an ordinary servant. For this reason alone, it seems to me that the appeal in this case cannot be allowed."*

70.2 Secondly, it is not in the production of income[17] as the stealing of the bitcoins can only occur after the bitcoins are earned, i.e. after the members have transferred their bitcoins into the taxpayer's wallets.

**Valuation of bitcoins:**

71. Pursuant to section 25D of the IT Act, the bitcoins received by, or expenditure or loss incurred by the taxpayer during the relevant year of assessment, and which are quoted in United States Dollars were translated to South African Rand by applying the appropriate spot rate on the date the bitcoins were received or, expenditure or loss was so incurred by the taxpayer.

**Conclusion**

72. In summary, pursuant to the normal income tax rules and existing principles laid down by case law as discussed above, it is SARS's view that all the bitcoins transferred from the members' virtual bitcoin wallets to the taxpayer's virtual bitcoin wallets constitute gross income as defined in the IT Act. Furthermore, the bitcoins withdrawals are allowed as a deduction to the extent that the withdrawals were not as a result of embezzlement, fraud, or theft committed by senior managers.

[17] See, for example, Port Elizabeth Tramway Co. v CIR 1936 CPD 241, 8 SATC 13

## I. UNDERSTATEMENT PENALTY

73. In terms of section 222 (1) of the Tax Administration Act, in the event of an 'understatement' by a taxpayer, the taxpayer must pay, in addition to the tax payable for the relevant tax period, the understatement penalty determined under subsection (2) unless the understatement is as a result of an inadvertent *bona fide* error.

74. In terms of section 222(2) of the Tax Administration Act, in the event of an understatement by a taxpayer for the applicable tax period, an understatement penalty will be levied in accordance with the table set out in section 223.

75. In terms of Chapter 16, Part A of the Tax Administration Act, SARS was satisfied that there was an understatement of the taxpayer's taxable income and therefore imposed an understatement penalty in respect of the assessments raised.

76. With regards to "behaviour", the taxpayer is considered to fall within the "Intentional tax evasion" category. Taking into account the provisions of section 222 read with section 223 of the Tax Administration Act, SARS has considered *inter alia* the following regarding the percentage to be applied:

76.1 The taxpayer failed to submit its 2020 and 2021 income tax returns, resulting in a material loss to the fiscus due to income received from the members not being declared and assessed by SARS, despite having the relevant documents, such as back-office data within its custody;

76.2 The taxpayer failed to remedy its non-compliance;

76.3 The liquidators, by not submitting the relevant income tax returns, have also failed to carry out their duties as the deemed public officers of MTI, in accordance with section 248(1) of the Tax Administration Act;

76.4 The non-declaration would not have been uncovered had it not been for the audit conducted by SARS.

77. SARS has determined that the conduct displayed by the taxpayer is that of a "standard case".

78. Based on the facts above and regarding the taxpayer's approach to the tax responsibilities, SARS, in levying the assessments, applied row (vi) and column 3 of the table contained in section 223 of the Tax Administration Act. SARS has imposed an understatement penalty of 150% for the 2020 and 2021 years of assessment.

## J. INTEREST ON LATE PAYMENT PENALTY

79. In terms of section 89*quat* (2), interest is payable on the underpayment of provisional tax that arises as a result of the above adjustments.

80. In terms of section 89*quat* (3), the Commissioner may direct that the interest payable in terms of section 89quat (2), "*interest shall not be paid in whole or in part by the taxpayer*". In order to do so, the Commissioner, in taking that decision shall take into consideration the circumstances of the case and circumstances beyond the control of the taxpayer.

81. Under the circumstances, there is no indication and any evidence before the Commissioner proving circumstances beyond the control of the taxpayer, and interest is levied on the relevant tax periods.

## K. OBJECTIONS

82. Should the taxpayer wish to lodge an objection against the assessments the objection must comply with all the requirements of section 104 of the Tax Administration Act. For the objection to be valid, detailed grounds based on facts and law should be submitted, accompanied by supporting documentation.

83. The notice of objection (DISP01) must be in writing and be accompanied by a duly completed DISP01 form completed via SARS e-filing within 30 business days of this letter.

84. Kindly note that an assessment made by SARS in terms of section 95(1)(a) of the Tax Administration Act is not subject to an objection or appeal unless the taxpayer submits a return within 40 days from the date of the assessment and SARS does not issue a reduced or additional assessment.

## L. LATE OBJECTIONS

85. In terms of section 104(4) of the Tax Administration Act, a senior SARS official may only extend the period of 30 business days in which an objection must be lodged if he is satisfied that reasonable grounds exist for the delay in lodging the objection.

86. If the objection is late, the taxpayer will have to also submit in writing the reasonable grounds for the delay, failing which the objection will be invalid.

87. In *terms* of section 104(5)(a) of the Tax Administration Act, the senior SARS official may not extend the period within which a taxpayer must submit an objection by a period exceeding

30 business days unless he is satisfied that exceptional circumstances exist which gave rise to the delay in lodging the objection.

88. If the taxpayer's objection is lodged more than 30 business days late, the taxpayer will have to also submit full details of the exceptional circumstances in writing that existed that occasioned such a delay, failing which the objection will be invalid.

## M. DUE AND PAYABLE

89. Kindly note that in terms of section 162(3) of the Tax Administration Act, despite the provisions of sections 96(1)(f) and 167 of the Tax Administration Act, a senior SARS official may require the taxpayer to pay the full amount of tax due immediately upon receipt of the notice of assessment if there are reasonable grounds to believe that the taxpayer will not pay the full amount of tax or will dissipate the assets or that the recovery may be difficult in the future.

90. Taking into account that the taxpayer has been finally liquidated and that the liquidators are in the process of finalizing the administration of the estate including the payment of interim dividends to proven creditors, there are reasonable grounds to believe that the taxpayer will not pay the full amount of tax and that the recovery of the tax may become difficult in future.

91. Kindly, therefore, take note that the taxpayer is required to pay the full assessed amount immediately upon the date of receipt of this Letter of Assessment as envisaged in section 162(3)(c)(i), notwithstanding the normal payment dates as reflected on the respective IT34 notices of assessments (which are system-generated).

92. Further note that the collectability of the assessed amounts is not suspended by objection and appeal and interest continues to be charged from the due date of the assessments being immediately upon receipt of the notice of assessment.

## N. CORRESPONDENCE AND QUERIES

93. You are requested to address all correspondence and to provide all documentation, representations and/or information to SARS' attorney, Mr Madimpe Magashoa from Messrs Diale Magashoa Inc, with e-mail address madimpe@dm-inc.co.za and contact number (012) 346 5436.

94. Kindly refrain from submitting any documentation to any other person and/or SARS office, as such will be deemed not to have been received.

95. In the event that any documents are uploaded onto SARS' electronic eFiling platform, kindly provide writer with copies thereof via the offices of Diale Magashoa as set out above.

Yours faithfully

**Otladisa Patrick Leshomo**
**Specialist**

**Tidimalo Mahlangu**
**Manager**

**ISSUED ON BEHALF OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

"FA 12.2 15

SARS
South African Revenue Service

**INCOME TAX** **ITA34C**

**Notice of Assessment** ("Annexure 4")

**Enquiries should be addressed to SARS:**

**Contact Centre**

ALBERTON

1528

Tel: 0800007277 Website: www.sars.gov.za

MIRROR TRADING INTERNATIONAL
341 BEYERS NAUDE STREET
WINDSOR PARK
JOHANNESBURG
2194

**Details**

| | |
|---|---|
| Reference number: | **9060362267** |
| Document number: | **1** |
| Date of assessment: | **2022-07-08** |
| Year of assessment: | **2020** |
| Type of assessment: | **Original Estimate Assessment** |
| Period (days): | **366** |
| Payment due date: | **2022-07-08** |
| Interest Free period/ Grace period until: | **2022-07-08** |

Always quote this reference number when contacting SARS

**Balance of Account after this Assessment**

| Description | Amount |
|---|---|
| **Amount payable to SARS (net debit)** | **86658934.68** |

**Compliance Information**

| | | | |
|---|---|---|---|
| Unprocessed payments | 0.00 | Provisional taxpayer | Y |
| Selected for audit or verification | N | | |
| Outstanding returns | 2020 | | |

**Assessment Summary**

| Description and detail | Previous Assessment | Current Assessment | Account Adjustments |
|---|---|---|---|
| Taxable Income | | 114986477.00 | |
| Tax Calculated (including Foreign Tax Credits discharged/refunded & additional tax/ penalties) | | 85641936.69 | |
| Less: | | | |
| Foreign Tax Credits | | 0.00 | |
| PAYE | | 0.00 | |
| **Assessment result** | 0.00 | 85641936.69 | |
| **Net debit amount under this assessment** | | | 85641936.69 |
| Add: | | | |
| Section 89*qual(2)* interest on underpayment of provisional tax | | | 1016997.99 |
| **Net debit amount** | | | 86658934.68 |

Dear MIRROR TRADING INTERNATIONAL

**Your assessment for the 2020 tax year has been concluded and the assessment summary as well as the current balance on your account are reflected above. Please note that in the case of a debit balance on your account further interest may accrue.**

If the payment is not received by 2022-07-08 interest will be charged on this assessment from the payment due date of 2022-07-08 as indicated on this notice of assessment.

A detailed statement of account (including all amounts payable or refundable under any previous assessment, refunds, payments, and interest), may be requested from SARS through the following channels:
- Electronically via eFiling
- Call the SARS Contact Centre
- At your nearest SARS branch by appointment. To book an appointment visit the SARS website.

The reference to additional tax/understatement penalty in this notice of assessment depends upon the circumstances.
(i) If additional tax was imposed before the commencement date of the Tax Administration Act (TAA) then adjustment to that additional tax may be made by an assessment issued in terms of the TAA after the commencement date of the TAA
(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA

(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

The amounts of income included and deductions allowed in calculating this assessment is reflected below. It is very important that you verify these to ensure that:
1. The amounts are correct
2. All your taxable income and allowable deductions for the year are reflected

This assessment does not relieve you from the obligation to submit a complete and correct return within 40 business days from the date of this assessment, and any administrative non-compliance penalties will continue until such time as the return is received. Your obligation to pay any amount due is not suspended by submitting a return.

Sincerely
**ISSUED ON BEHALF OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

SARS
South African Revenue Service

# INCOME TAX ITA34C

## Notice of Assessment

Reference number: **9060362267**
Document number: **1**
Year of assessment: **2020**

## Income

| Source Code | Description and detail | Previous assessment | Computations and adjustments | Amount assessed |
|---|---|---|---|---|
| **Income Statement** | | | | |
| | Gross Profit/Loss | | | |
| | Gross Sales (excl. credit notes) - Foreign: Connected | | 0 | |
| | Gross Sales (excl. credit notes) - Other than foreign connected | | 182540399 | |
| | Less: Opening stock | | 0 | |
| | Less: Credit notes on sales | | 0 | |
| | Less: Purchases - Foreign: Connected (excl. rebates) | | 0 | |
| | Less: Purchases - Other than foreign connected (excl. rebates) | | 0 | |
| | Add: Rebates | | 0 | |
| | Add: Closing stock (Gross excl. adjustments) | | 0 | |
| | Add: Inventory adjustments (Previous year stock provision reversed) | | 0 | |
| | Less: Inventory adj. (Current year stock provision (obsolete / slow-moving stock)) | | 0 | |
| | Gross profit - Subtotal | | 182540399 | |
| | **Income Items** (Only credit amounts) | | | |
| | Accounting profit on disposal of fixed assets and / or other assets | | 0 | |
| | Admin., management, secretarial, rentals, guarantee fees and other services - Connected (Local) | | 0 | |
| | Admin., management, secretarial, rentals, guarantee fees and other services - Connected (Foreign) | | 0 | |
| | Admin., management, secretarial, rentals, guarantee fees and other services - Non-connected | | 0 | |
| | Amounts deemed to be dividend *in specie* in terms of (s8F or s8FA) | | 0 | |
| | Bad and doubtful debts recovered | | 0 | |
| | Dividends (local and foreign) deemed to be income (s8E and s8EA) | | 0 | |
| | Dividends - local | | 0 | |
| | Dividends - foreign | | 0 | |
| | Tainted Dividends (local and foreign) deemed to be income (s22B) | | 0 | |
| | Fruitless and wasteful expenditure recovered during this year of assessment | | 0 | |
| | Foreign exchange gain | | 0 | |
| | Government grants (national, provincial and local) | | 0 | |
| | Gross royalties and license fees | | 0 | |
| | Indemnity payments received | | 0 | |
| | Insurance proceeds received | | 0 | |
| | Interest - Financial institutions | | 0 | |
| | Interest - Connected | | 0 | |
| | Interest - Non-connected (excluding SARS interest (s7E)) | | 0 | |
| | SARS interest (s7E) | | 0 | |
| | Levy income | | 0 | |
| | REIT distributions received | | 0 | |
| | Reversal of impairment loss recognised in profit or loss | | 0 | |
| | Other income | | 0 | |
| | Control Total | | 0 | |
| | **Expense Items** (Only debit amounts) | | | |
| | Accommodation and travel expenses: Local | | 0 | |
| | Accommodation and travel expenses: Foreign | | 0 | |
| | Accounting loss on disposal of fixed assets / other assets | | 0 | |
| | Admin., secretarial, rentals, guarantee fees and other services - Connected (Local) | | 0 | |
| | Admin., secretarial, rentals, guarantee fees and other services - Connected (Foreign) | | 0 | |
| | Admin., secretarial, rentals, guarantee fees and other services - Non-connected | | 0 | |
| | Alterations and improvements (excluding repairs and maintenance) | | 0 | |
| | Bad debts written off | | 0 | |
| | Capital improvements - farming operations (par 12 of the First Schedule) | | 0 | |
| | Commission paid | | 0 | |
| | Compensation for loss of office | | 0 | |
| | Consulting, legal and professional fees | | 0 | |

SARS
South African Revenue Service

**INCOME TAX** **ITA34C**

## Notice of Assessment

Reference number: **9060362267**
Document number: **1**
Year of assessment: **2020**

## Income

| Source Code | Description and detail | Previous assessment | Computations and adjustments | Amount assessed |
|---|---|---|---|---|
| | Depreciation | | 0 | |
| | Directors' / members' remuneration | | 0 | |
| | Donations (s18A) | | 0 | |
| | Donations - other | | 0 | |
| | Employee expenses: Wages and salaries (excluding medical, provident and pension) | | 0 | |
| | Employee expenses: Group life insurance | | 0 | |
| | Employee expenses: UIF contributions and SDL | | 0 | |
| | Employee expenses: Pension and Provident Fund contributions | | 0 | |
| | Employee expenses: Medical scheme contributions | | 0 | |
| | Employee expenses: Membership of a professional body | | 0 | |
| | Employee expenses: Training | | 0 | |
| | Expenditure incurred by a lessor of land let for farming purposes in respect of soil erosion (s17A) | | 0 | |
| | Expenditure incurred directly or indirectly in effecting BEE and / or BBEEE compliance | | 0 | |
| | Expenditure incurred in respect of company restructuring | | 0 | |
| | Foreign exchange loss | | 0 | |
| | Impairment loss recognised in profit or loss | | 0 | |
| | Insurance (excluding s37A payments) | | 0 | |
| | Insurance premium in respect of rehabilitation obligations (s37A) | | 0 | |
| | Interest - financial institutions | | 0 | |
| | Interest - Connected (Local) | | 0 | |
| | Interest - Connected (Foreign) | | 0 | |
| | Interest - Non-connected | | 0 | |
| | Interest and penalties paid to SARS (excluding SARS Interest repaid that was previously taxed i.t.o. s7E) | | 0 | |
| | Key man insurance (s11(w)) | | 0 | |
| | Lease payments other than operating leases | | 0 | |
| | Management fees - Connected | | 0 | |
| | Management fees - Non-connected | | 0 | |
| | Operating lease payments - Connected | | 0 | |
| | Operating lease payments - Non-connected | | 0 | |
| | Partnership / Joint venture loss - Foreign | | 0 | |
| | Partnership / Joint venture loss - Local | | 0 | |
| | Provision for doubtful debts | | 0 | |
| | Repairs and maintenance | | 0 | |
| | Research and development costs (s11D) | | 0 | |
| | Restraint of trade | | 0 | |
| | Royalties and license fees (excluding payments in terms of mineral and petroleum resources royalties) - Local | | 0 | |
| | Royalties and license fees (excluding payments in terms of mineral and petroleum resources royalties) - Foreign | | 0 | |
| | Mineral and Petroleum Resources royalty | | 0 | |
| | Small items and loose tools | | 0 | |
| | Other Expenses (excluding expenses listed above) | | 67553922 | |
| | Control Total | | 67553922 | |
| | **Net Profit/Loss** | | | |
| | Net profit - Subtotal | | 114986477 | |

**Tax Computation**

| | | | | |
|---|---|---|---|---|
| | **Debit Adjustments** (decrease net profit / increase net loss - Non-Taxable Amounts Credited to the Income Statement ) | | | |
| | Exemption in terms of s10(1)(yA) | | | |
| | Fruitless and wasteful expenditure recovered (s10(1)(zL)) | | 0 | |
| | Control Total | | 0 | |
| | **Debit Adjustments** (Decrease net profit / increase net loss - Special Allowances Not Claimed in the Income Statement) | | | |
| | Wear and tear allowance (s11(e)) | | | |
| | Allowance for future expenditure (s24C) | | 0 | |

SARS
South African Revenue Service

# INCOME TAX ITA34C

## Notice of Assessment

Reference number: **9060362267**
Document number: **1**
Year of assessment: **2020**

## Income

| Source Code | Description and detail | Previous assessment | Computations and adjustments | Amount assessed |
|---|---|---|---|---|
| | Control Total | | 0 | |
| | **Credit Adjustments** (increase net profit / decrease net loss - Non-Deductible Amounts Debited to the Income Statement) | | | |
| | Expenditure incurred on or after 21 July 2019 in exchange for the issue of Venture Capital Company shares (s12J) exceeding R5 million | | | |
| | Donations (s18A) | | 0 | |
| | Donations - other | | 0 | |
| | Control Total | | 0 | |
| | **Allowances / Deductions Granted in Previous Years of Assessment and now Reversed** | | | |
| | Control Total | | 0 | |
| | **Amounts not Credited to the Income Statement** | | | |
| | Control Total | | 0 | |
| | **Recoupment of Allowances / Expenses Previously Granted** | | | |
| | Control Total | | 0 | |
| **Amounts to be Included in the Determination of Taxable Income before s18A Donations (Excluding assessed losses brought forward and capital gains / losses)** | | | | |
| 0102 | Calculated Profit excluding net income from CFC | | 114986477 | |
| 4276 | Imputed net income from CFC | | 0 | |
| 4276 | Imputed Net Income from Controlled Foreign Companies(CFC) | 0.00 | 0.00 | |
| | | 0.00 | 0.00 | 0.00 |
| 0102 | Pig farming | 0.00 | 114986477.00 | |
| | | 0.00 | 114986477.00 | 114986477.00 |
| **Income** | | | | 114986477.00 |

## Taxable income

| Source Code | Description and detail | Amount assessed |
|---|---|---|
| | Taxable income – subject to normal tax | 114986477.00 |

## Tax calculation

| Source Code | Description and detail | Previous assessment | Computations and adjustments | Amount assessed |
|---|---|---|---|---|
| | Normal tax | | 32196213.56 | 32196213.56 |
| | Additional Tax / Understatement Penalty | | | 48294329.00 |
| | Incorrect Statement | 0.00 | 48294329.00 | |
| | Penalty | | | 5151394.13 |
| | Under estimation - Provisional tax | 0.00 | 5151394.13 | |
| **Subtotal** | | | | 85641936.69 |
| | Previous assessment result | | | 0.00 |
| **Current assessment - before provisional tax credits and Section 89*quat* interest *** | | | | 85641936.69 |
| | Provisional tax credits * | | | 0.00 |
| | Section 89*quat*(2) interest on underpayment of provisional tax * | | | 1016997.99 |
| **Net debit amount** | | | | 86658934.68 |

*This amount is separately reflected on your Statement of Account.

## Grounds for the assessment

REFER TO LETTER

| Declaration Section | Adjustment Reason |
|---|---|
| REFER TO LETTER | REFER TO LETTER |

## Notes

| | Amount assessed |
|---|---|

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South African Revenue Service

**INCOME TAX** **ITA34C**

## Notice of Assessment

Reference number: **9060362267**
Document number: **1**
Year of assessment: **2020**

| Notes | | |
|---|---|---|
| | | Amount assessed |
| | **Reconciliation of balances carried forward** | |
| | Forfeiture due to dormancy / not trading | 0.00 |

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South African Revenue Service

**INCOME TAX** **ITA34C**

**Notice of Assessment** ("Annexure 5")

**Enquiries should be addressed to SARS:**

**Contact Centre**

ALBERTON

1528

Tel: 0800007277 Website: www.sars.gov.za

MIRROR TRADING INTERNATIONAL
341 BEYERS NAUDE STREET
WINDSOR PARK
JOHANNESBURG
2194

**Details**

| | |
|---|---|
| Reference number: | **9060362267** |
| Document number: | **4** |
| Date of assessment: | **2022-07-08** |
| Year of assessment: | **2021** |
| Type of assessment: | **Additional Assessment** |
| Period (days): | **304** |
| Payment due date: | **2022-07-08** |
| Interest Free period/ Grace period until: | **2022-07-08** |

Always quote this reference number when contacting SARS

**Balance of Account after this Assessment**

| Description | Amount |
|---|---|
| **Amount payable to SARS (net debit)** | 931121989.35 |

**Compliance Information**

| | | | |
|---|---|---|---|
| Unprocessed payments | 0.00 | Provisional taxpayer | Y |
| Selected for audit or verification | N | | |
| Outstanding returns | 2020 | | |

**Assessment Summary**

| Description and debit | Previous Assessment | Current Assessment | Account Adjustments |
|---|---|---|---|
| Taxable Income | 1133811834.00 | 1133811834.00 | |
| Tax Calculated (Including Foreign Tax Credits discharged/refunded & additional tax/ penalties) | 844463053.67 | 844463054.67 | |
| Less: | | | |
| Foreign Tax Credits | 0.00 | 0.00 | |
| PAYE | 0.00 | 0.00 | |
| **Assessment result** | 844463053.67 | 844463054.67 | |
| **Net debit amount under this assessment** | | | 1.00 |
| **Net debit amount** | | | 1.00 |

Dear MIRROR TRADING INTERNATIONAL

**Your assessment for the 2021 tax year has been concluded and the assessment summary as well as the current balance on your account are reflected above. Please note that in the case of a debit balance on your account further interest may accrue.**

If the payment is not received by 2022-07-08 interest will be charged on this assessment from the payment due date of 2022-07-08 as indicated on this notice of assessment.

A detailed statement of account (including all amounts payable or refundable under any previous assessment, refunds, payments, and interest), may be requested from SARS through the following channels:
- Electronically via eFiling
- Call the SARS Contact Centre
- At your nearest SARS branch by appointment. To book an appointment visit the SARS website.

The reference to additional tax/understatement penalty in this notice of assessment depends upon the circumstances.
(i) If additional tax was imposed before the commencement date of the Tax Administration Act (TAA) then adjustment to that additional tax may be made by an assessment issued in terms of the TAA after the commencement date of the TAA
(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

The amounts of income included and deductions allowed in calculating this assessment is reflected below. It is very important that you verify these to ensure that:
1. The amounts are correct
2. All your taxable income and allowable deductions for the year are reflected

If you are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may within 30 days of this assessment, submit a Request for Reasons, using the SARS prescribed form available on eFiling or at your nearest branch.

If you are aggrieved by this assessment, you may submit a Notice of Objection by using the SARS prescribed form available on eFiling or at your nearest branch. This must be done on or before 2022-08-22. If a Request for Reasons was submitted, the notice of objection must be submitted within 30 days after the delivery of the outcome notification.

NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment as provided for in the Tax Administration Act, for instances where an amount due is, or will be, subject to objection or appeal.

Sincerely
**ISSUED ON BEHALF OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

SARS
South African Revenue Service

**INCOME TAX** **ITA34C**

## Notice of Assessment

Reference number: **9060362267**
Document number: **4**
Year of assessment: **2021**

## Income

| Source Code | Description and detail | Previous assessment | Computations and adjustments | Amount assessed |
|---|---|---|---|---|
| **Income Statement** | | | | |
| | **Gross Profit/Loss** | | | |
| | Gross Sales (excl. credit notes) - Foreign: Connected | 0 | 0 | |
| | Gross Sales (excl. credit notes) - Other than foreign connected | 6669913959 | 6669913959 | |
| | Less: Opening stock | 0 | 0 | |
| | Less: Credit notes on sales | 0 | 0 | |
| | Less: Purchases - Foreign: Connected (excl. rebates) | 0 | 0 | |
| | Less: Purchases - Other than foreign connected (excl. rebates) | 0 | 0 | |
| | Add: Rebates | 0 | 0 | |
| | Add: Closing stock (Gross excl. adjustments) | | 0 | |
| | Add: Inventory adjustments (Previous year stock provision reversed) | 0 | 0 | |
| | Less: Inventory adj. (Current year stock provision (obsolete / slow-moving stock)) | 0 | 0 | |
| | Gross profit - Subtotal | 6669913959 | 6669913959 | |
| | **Income Items** (Only credit amounts) | | | |
| | Accounting profit on disposal of fixed assets and / or other assets | 0 | 0 | |
| | Admin., management, secretarial, rentals, guarantee fees and other services - Connected (Local) | 0 | 0 | |
| | Admin., management, secretarial, rentals, guarantee fees and other services - Connected (Foreign) | 0 | 0 | |
| | Admin., management, secretarial, rentals, guarantee fees and other services - Non-connected | 0 | 0 | |
| | Amounts deemed to be dividend *in specie* in terms of (s8F or s8FA) | 0 | 0 | |
| | Bad and doubtful debts recovered | 0 | 0 | |
| | Dividends (local and foreign) deemed to be income (s8E and s8EA) | 0 | 0 | |
| | Dividends - local | 0 | 0 | |
| | Dividends - foreign | 0 | 0 | |
| | Tainted Dividends (local and foreign) deemed to be income (s22B) | 0 | 0 | |
| | Fruitless and wasteful expenditure recovered during this year of assessment | 0 | 0 | |
| | Foreign exchange gain | 0 | 0 | |
| | Government grants (national, provincial and local) | 0 | 0 | |
| | Gross royalties and license fees | 0 | 0 | |
| | Indemnity payments received | 0 | 0 | |
| | Insurance proceeds received | 0 | 0 | |
| | Interest - Financial institutions | 0 | 0 | |
| | Interest - Connected | 0 | 0 | |
| | Interest - Non-connected (excluding SARS Interest (s7E)) | 0 | 0 | |
| | SARS Interest (s7E) | 0 | 0 | |
| | Levy Income | 0 | 0 | |
| | REIT distributions received | 0 | 0 | |
| | Reversal of impairment loss recognised in profit or loss | 0 | 0 | |
| | Other income | 0 | 0 | |
| | Control Total | 0 | 0 | |
| | **Expense Items** (Only debit amounts) | | | |
| | Accommodation and travel expenses: Local | 0 | 0 | |
| | Accommodation and travel expenses: Foreign | 0 | 0 | |
| | Accounting loss on disposal of fixed assets / other assets | 0 | 0 | |
| | Admin., secretarial, rentals, guarantee fees and other services - Connected (Local) | 0 | 0 | |
| | Admin., secretarial, rentals, guarantee fees and other services - Connected (Foreign) | 0 | 0 | |
| | Admin., secretarial, rentals, guarantee fees and other services - Non-connected | 0 | 0 | |
| | Alterations and improvements (excluding repairs and maintenance) | 0 | 0 | |
| | Bad debts written off | 0 | 0 | |
| | Capital improvements - farming operations (par 12 of the First Schedule) | 0 | 0 | |
| | Commission paid | 0 | 0 | |
| | Compensation for loss of office | 0 | 0 | |
| | Consulting, legal and professional fees | 0 | 0 | |

SARS
South African Revenue Service

**INCOME TAX** **ITA34C**

## Notice of Assessment

Reference number: **9060362267**
Document number: **4**
Year of assessment: **2021**

## Income

| Source Code | Description and detail | Previous assessment | Computations and adjustments | Amount assessed |
|---|---|---|---|---|
| | Depreciation | 0 | 0 | |
| | Directors' / members' remuneration | 0 | 0 | |
| | Donations (s18A) | 0 | 0 | |
| | Donations - other | 0 | 0 | |
| | Employee expenses: Wages and salaries (excluding medical, provident and pension) | 0 | 0 | |
| | Employee expenses: Group life insurance | 0 | 0 | |
| | Employee expenses: UIF contributions and SDL | 0 | 0 | |
| | Employee expenses: Pension and Provident Fund contributions | 0 | 0 | |
| | Employee expenses: Medical scheme contributions | 0 | 0 | |
| | Employee expenses: Membership of a professional body | 0 | 0 | |
| | Employee expenses: Training | 0 | 0 | |
| | Expenditure incurred by a lessor of land let for farming purposes in respect of soil erosion (s17A) | 0 | 0 | |
| | Expenditure incurred directly or indirectly in effecting BEE and / or BBEEE compliance | 0 | 0 | |
| | Expenditure incurred in respect of company restructuring | 0 | 0 | |
| | Foreign exchange loss | 0 | 0 | |
| | Impairment loss recognised in profit or loss | 0 | 0 | |
| | Insurance (excluding s37A payments) | 0 | 0 | |
| | Insurance premium in respect of rehabilitation obligations (s37A) | 0 | 0 | |
| | Interest - financial institutions | 0 | 0 | |
| | Interest - Connected (Local) | 0 | 0 | |
| | Interest - Connected (Foreign) | 0 | 0 | |
| | Interest - Non-connected | 0 | 0 | |
| | Interest and penalties paid to SARS (excluding SARS Interest repaid that was previously taxed i.t.o. s7E) | 0 | 0 | |
| | Key man insurance (s11(w)) | 0 | 0 | |
| | Lease payments other than operating leases | 0 | 0 | |
| | Management fees - Connected | 0 | 0 | |
| | Management fees - Non-connected | 0 | 0 | |
| | Operating lease payments - Connected | 0 | 0 | |
| | Operating lease payments - Non-connected | 0 | 0 | |
| | Partnership / Joint venture loss - Foreign | 0 | 0 | |
| | Partnership / Joint venture loss - Local | 0 | 0 | |
| | Provision for doubtful debts | 0 | 0 | |
| | Repairs and maintenance | 0 | 0 | |
| | Research and development costs (s11D) | 0 | 0 | |
| | Restraint of trade | 0 | 0 | |
| | Royalties and license fees (excluding payments in terms of mineral and petroleum resources royalties) - Local | 0 | 0 | |
| | Royalties and license fees (excluding payments in terms of mineral and petroleum resources royalties) - Foreign | 0 | 0 | |
| | Mineral and Petroleum Resources royalty | 0 | 0 | |
| | Small items and loose tools | 0 | 0 | |
| | Other Expenses (excluding expenses listed above) | 5536102125 | 5536102125 | |
| | Control Total | 5536102125 | 5536102125 | |
| | **Net Profit/Loss** | | | |
| | Net profit - Subtotal | 1133811834 | 1133811834 | |
| **Tax Computation** | | | | |
| | **Debit Adjustments** (decrease net profit / increase net loss - Non-Taxable Amounts Credited to the Income Statement ) | | | |
| | Exemption in terms of s10(1)(yA) | | | |
| | Fruitless and wasteful expenditure recovered (s10(1)(zL)) | 0 | 0 | |
| | Control Total | 0 | 0 | |
| | **Debit Adjustments** (Decrease net profit / increase net loss - Special Allowances Not Claimed in the Income Statement) | | | |
| | Wear and tear allowance (s11(e)) | | | |
| | Allowance for future expenditure (s24C) | 0 | 0 | |

SARS
South African Revenue Service

# INCOME TAX ITA34C

## Notice of Assessment

Reference number: **9060362267**
Document number: **4**
Year of assessment: **2021**

## Income

| Source Code | Description and detail | Previous assessment | Computations and adjustments | Amount assessed |
|---|---|---|---|---|
| | Control Total | 0 | 0 | |
| | **Credit Adjustments** (increase net profit / decrease net loss - Non-Deductible Amounts Debited to the Income Statement) | | | |
| | Expenditure incurred on or after 21 July 2019 in exchange for the issue of Venture Capital Company shares (s12J) exceeding R5 million | 0 | 0 | |
| | Donations (s18A) | 0 | 0 | |
| | Donations - other | 0 | 0 | |
| | Control Total | 0 | 0 | |
| | **Allowances / Deductions Granted in Previous Years of Assessment and now Reversed** | | | |
| | Control Total | 0 | 0 | |
| | **Amounts not Credited to the Income Statement** | | | |
| | Control Total | 0 | 0 | |
| | **Recoupment of Allowances / Expenses Previously Granted** | | | |
| | Control Total | 0 | 0 | |
| **Amounts to be Included in the Determination of Taxable Income before s18A Donations (Excluding assessed losses brought forward and capital gains / losses)** | | | | |
| 0102 | Calculated Profit excluding net income from CFC | 1133811834 | 1133811834 | |
| 4276 | Imputed net income from CFC | 0 | 0 | |
| 4276 | Imputed Net Income from Controlled Foreign Companies(CFC) | 0.00 | 0.00 | |
| | | 0.00 | 0.00 | 0.00 |
| 0102 | Pig farming | 1133811834.00 | 1133811834.00 | |
| | | 1133811834.00 | 1133811834.00 | 1133811834.00 |
| **Income** | | | | 1133811834.00 |

## Taxable income

| Source Code | Description and detail | Amount assessed |
|---|---|---|
| | Taxable income – subject to normal tax | 1133811834.00 |

## Tax calculation

| Source Code | Description and detail | Previous assessment | Computations and adjustments | Amount assessed |
|---|---|---|---|---|
| | Normal tax | 317467313.52 | 317467313.52 | 317467313.52 |
| | Additional Tax / Understatement Penalty | | | 476200971.00 |
| | Incorrect Statement | 476200970.00 | 476200971.00 | |
| | Penalty | | | 50794770.15 |
| | Under estimation - Provisional tax | 50794770.15 | 50794770.15 | |
| **Subtotal** | | | | 844463054.67 |
| | Previous assessment result | | | -844463053.67 |
| **Net debit amount** | | | | 1.00 |

*This amount is separately reflected on your Statement of Account.

| Declaration Section | Adjustment Reason |
|---|---|
| REFER TO LETTER | REFER TO LETTER |

## Notes

| | | Amount assessed |
|---|---|---|
| | **Reconciliation of balances carried forward** | |
| | Forfeiture due to dormancy / not trading | 0.00 |

"FA B.1" 1

South African Revenue Service

**SARS CLAIM 1 – INCOME TAX - CAPITAL**

**ASSESSED INCOME TAX ON COMPANIES, PENALTY, AND INTEREST IN TERMS OF SECTION 1 AND 89*quat* (2) THE INCOME TAX ACT, ACT 58 of 1962 READ WITH THE TAX ADMINISTRATION ACT, ACT 28 OF 2011 FOR THE FOLLOWING TAX PERIOD: 2020 and 2021**

**AFFIDAVIT FOR THE PROOF OF A CLAIM OTHER THAN A CLAIM BASED ON A PROMISSORY NOTE OR OTHER BILL OF EXCHANGE**

| | |
|---|---|
| **IN THE INSOLVENT ESTATE OF** | **MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)** |
| **REGISTRATION NUMBER** | **2019/205570/07** |
| **MASTER'S OFFICE** | **MASTER OF THE HIGH COURT OF SOUTH AFRICA, WESTERN CAPE DIVISION, CAPE TOWN** |
| **MASTER'S REFERENCE NUMBER:** | **C906/2020** |
| **DATE OF LIQUIDATION:** | **23 DECEMBER 2020** |
| **NAME OF CREDITOR:** | **COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** ("*the Commissioner*" or "*SARS*") |
| **CREDITOR'S ADDRESS IN FULL:** | Lehae La SARS, 299 Bronkhorst Street, Nieuw Muckleneuk, Brooklyn, Pretoria |
| **INCOME TAX REGISTRATION NUMBER:** | **9060362267** |
| **CLAIM 1:** | **INCOME TAX (CAPITAL)** |
| **TAX PERIODS / YEARS OF ASSESSMENT:** | **2020 AND 2021** |
| **TOTAL AMOUNT OF CLAIM:** | **R349,663,528.08** (Three hundred forty-nine million six hundred and sixty-three thousand five hundred and twenty-eight rands and eight cents). |

CLAIM No 3126 EXHIBITED AND GETOON EN
EIS No.
PROVED AT Adj. Special
BEWYS OP
MEETING HELD BEFORE THE MASTER ON
VERGADERING VOOR DIE MEESTER GEHOU OP
22/07/2022

I, the undersigned,

**JOHAN HENDRIK MATTHEWS**

do hereby make oath and state that: -

1. I am employed by the Commissioner for the South African Revenue Service ("*the Commissioner*" or "*SARS*") as as a Forensic Debt Member, in SARS' Syndicated Tax and Customs Crime Division (STC): Illicit Economy Unit, Lehae La SARS, 299 Bronkhorst Street, Nieuw Muckleneuk, Brooklyn Pretoria.

2. I am a SARS official as defined in paragraph (b) of the definition of *"SARS official"* contained in section 1 of the Tax Administration Act, Act 28 of 2011 (*"the Tax Administration Act"*).

3. The Commissioner is as defined in section 1 of the Tax Administration Act, appointed as such with the responsibility to ensure performance by SARS of its functions in terms of section 6, read with section 9, of the South African Revenue Service Act, Act 34 of 1997 (*"the SARS Act"*). In terms of section 3 of the Tax Administration Act, SARS is responsible for the administration of the Tax Administration Act under the control and direction of the Commissioner.

4. I act herein on behalf of the Commissioner under and by virtue of the authority vested in him by the provisions of the Tax Administration Act read with the Income Tax Act, Act 58 of 1962 ("*the Income Tax Act*"), the Value-Added Tax Act, Act 89 of 1991 ("*the VAT Act*") and the SARS Act. Where applicable these Acts will collectively be referred to herein as *"the Acts"*.

5. I am duly authorised as envisaged in section 6(5) of the Tax Administration Act to depose to this affidavit and to lodge this claim on behalf of SARS.

6. I exercise my powers and duties under the control, direction or supervision of the Commissioner as contemplated in sections 3 and 6 of the Tax Administration Act, section 3(1) of the Income Tax Act, and section 5(1) of the VAT Act.

7. The proving of SARS' claims in the winding up of companies form part of my duties as a SARS official.

8. I have been involved in the investigation into the tax affairs of **MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)** (hereinafter "MTI") since approximately February 2022.

9. The facts contained herein therefore fall within my personal knowledge, save where otherwise indicated or the contrary appears from the context, and are to the best of my knowledge and belief true and correct. I have access to all

SARS' records pertaining to MTI on SARS' electronic systems and in preparation of this claim, I considered these records, as well as the records provided to SARS by the liquidators, as is set out in more detail hereinbelow.

10. A final winding-up order was granted on 30 June 2021, by the High Court of South Africa, Western Cape Division, Cape Town, under case number 19201/2020 by application of one of its creditors, being AFM Lee.

11. I confirm that MTI was at all relevant stages registered as a taxpayer for income tax purposes.

12. MTI is indebted to SARS in the total amount of **R931,121,989.35** for the 2020 and 2021 years of assessment in respect of normal income tax, understatement penalties and section 89(2) interest as assessed in accordance with the provisions of the Tax Administration Act, read with the provisions of the Income Tax Act. This amount comprises the Commissioner's income tax claims 1 - 3 against MTI.

13. **"Annexure 1"** is a copy of the **SARS Income Tax statement of account** pertaining to MTI's Income Tax obtained from the electronic records of SARS, and I confirm the correctness thereof.

14. Separate claims are being lodged for the outstanding amounts pertaining to normal tax or capital (claim 1), understatement penalties (claim 2) and section

89(2) interest (claim 3). An annexure setting out the breakdown of these figures is attached as **"Annexure 2"** and can be summarised as follows:

| | Claim 1 | Claim 2 | Claim 3 | |
|---|---|---|---|---|
| **Year of Assessment** | **Capital Amount @28% Sec. 92** | **Understatement Penalty - Sec. 222 read with 223** | **Interest Sec. 89quat (2)** | **TOTAL** |
| 2020 | R32,196,213.56 | R53,445,723.13 | R1,016,997.99 | R86,658,934.68 |
| 2021 | R317,467,314.52 | R526,995,740.15 | R0.00 | R844,463,054.67 |
| **TOTAL** | **R349,663,528.08** | **R580,441,463.28** | **R1,016,997.99** | **R931,121,989.35** |
| | | | | |

15. The total amount due is made up of the following which comprise SARS' three separate claims as part of MTI's winding up:

15.1. Claim 1 – Normal income tax: **R349,663,528.08;**

15.2. Claim 2 – Understatement Penalties: **R580,441,463.28** and;

15.3. Claim 3 – Interest: **R1,016,997.99**

16. With regards to SARS' **claim 1** - the Capital amount due is **R349,663,528.08** (Three hundred forty-nine million six hundred and sixty-three thousand five hundred and twenty-eight rands and eight cents).

17. The abovementioned debt arose in the manner and at the time set forth hereunder:

**THE 2020 AND 2021 YEARS OF ASSESSMENT**

18. A duly delegated Senior SARS official approved the decision to not issue the Income Tax Audit Findings letter as provided for in section 42(5) of the Tax Administration Act but rather to issue the assessments in terms of the provisions of section 42(6) of the Tax Administration Act.

19. On 14 June 2022 SARS issued its notification of audit letter, attached hereto as **"Annexure 3"**.

20. On 8 July 2022, SARS issued its Notice of Assessment (*"Notice of Assessment"*) in respect of the 2020 to 2021 years of assessment, attached hereto as **"Annexure 4** and **"Annexure 5"** respectively.

21. On 8 July 2022, SARS raised additional assessments for the 2020 and 2021 years of assessment as a result of the under-declaration of taxable income. SARS also raised additional assessments for the 2020 and 2021 tax periods for non-declaration of taxable income.

22. On 11 July 2022, SARS issued a letter of finalisation of audit to the liquidators, attached as **"Annexure 6"**, setting out the background and basis of the assessments for the 2020 and 2021 tax periods.

23. As is evident from the extracts of the assessments ("Annexure 2"), SARS levied interest on the outstanding income tax indebtedness from time to time, up and until 23 December 2020 in terms of section 89(2) of the Income Tax Act (which interest continues to accrue).

24. In terms of section 170 of the Tax Administration Act the production of a document issued by SARS purporting to be a copy of or an extract from an assessment is conclusive evidence of the making of the assessment; and except in the case of proceedings on appeal instituted under chapter 9 of the Tax Administration Act against the assessment, that all the particulars of the assessment are correct. In terms of section 105 of the Tax Administration Act a taxpayer may only dispute an assessment in proceedings under Chapter 9 of the Tax Administration Act unless a High Court otherwise directs.

25. To the knowledge of the deponent and in inspection of SARS electronic records, at the time of deposing to this affidavit, MTI has not submitted a Notice of Objection against the assessments or submitted a request for the suspension of payment of the tax debt in terms of section 164 of the Tax Administration Act, therefore the tax debt remains due and payable.

26. In terms of section 169 of the Tax Administration Act, SARS is regarded as a creditor of MTI for the purposes of any recovery proceedings related to a tax debt.

27. No payment in respect of the indebtedness relating to the outstanding amounts referred to above for the years of assessment in question has been received.

28. No other person is liable to the Commissioner for the said debt or any part thereof.

29. The Commissioner has not, nor has any other person, to my knowledge, on his behalf, received security as envisaged in the Insolvency Act, Act 24 of 1936, ("*the Insolvency Act*") for the said debt or any part thereof.

30. The claim should receive preference, as provided in section 99 and section 101 of the Insolvency Act, and the Commissioner relies on such preference.

**JOHAN HENDRIK MATTHEWS**

I certify that the Deponent acknowledged that he knows and understands the contents of this affidavit, that he has no objection to the making of the prescribed oath and that he considers this oath to be binding on her conscience. I also certify that this affidavit was signed in my presence at PRETORIA on this 11th day of July 2022 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, have been complied with.

**COMMISSIONER OF OATHS**

Full name:

Business address:

LUCINDA HORN
COMMISSIONER OF OATHS
DYASON INCORPORATED
WALKER CREEK, SECOND FLOOR
90 FLORENCE RIBEIRO
NIEUW MUCKLENEUK, PRETORIA
PRACTISING ATTORNEY REPUBLIC OF SOUTH AFRICA

AT: Pretoria DATE: 11 | 01 | 2022

SARS

South African Revenue Service

**SARS CLAIM 2 – INCOME TAX - UNDERSTATEMENT PENALTY**

**ASSESSED INCOME TAX ON COMPANIES, PENALTY, AND INTEREST IN TERMS OF SECTION 1 AND 89*quat* (2) THE INCOME TAX ACT, ACT 58 of 1962 READ WITH THE TAX ADMINISTRATION ACT, ACT 28 OF 2011 FOR THE FOLLOWING TAX PERIOD: 2020 and 2021**

**AFFIDAVIT FOR THE PROOF OF A CLAIM OTHER THAN A CLAIM BASED ON A PROMISSORY NOTE OR OTHER BILL OF EXCHANGE**

| | |
|---|---|
| **IN THE INSOLVENT ESTATE OF** | **MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)** |
| **REGISTRATION NUMBER** | **2019/205570/07** |
| **MASTER'S OFFICE** | **MASTER OF THE HIGH COURT OF SOUTH AFRICA, WESTERN CAPE DIVISION, CAPE TOWN** |
| **MASTER'S REFERENCE NUMBER:** | **C906/2020** |
| **DATE OF LIQUIDATION:** | **23 DECEMBER 2020** |
| **NAME OF CREDITOR:** | **COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** ("*the Commissioner*" or "*SARS*") |
| **CREDITOR'S ADDRESS IN FULL:** | Lehae La SARS, 299 Bronkhorst Street, Nieuw Muckleneuk, Brooklyn, Pretoria |
| **INCOME TAX REGISTRATION NUMBER:** | **9060362267** |
| **CLAIM 2:** | **INCOME TAX (UNDERSTATEMENT PENALTY)** |
| **TAX PERIODS / YEARS OF ASSESSMENT:** | **2020 AND 2021** |
| **TOTAL AMOUNT OF CLAIM:** | **R580,441,463.28** (Five hundred and eighty million, four hundred and forty-one thousand, four hundred and sixty-three Rands and twenty-eight cents). |

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VERGADERING VOOR DIE MEESTER GEHOU OP
22/07/2022

South African Revenue Service

**SARS CLAIM 3 – INCOME TAX – INTEREST**

**ASSESSED INCOME TAX ON COMPANIES, PENALTY, AND INTEREST IN TERMS OF SECTION 1 AND 89*quat* (2) THE INCOME TAX ACT, ACT 58 of 1962 READ WITH THE TAX ADMINISTRATION ACT, ACT 28 OF 2011 FOR THE FOLLOWING TAX PERIOD: 2020 and 2021**

**AFFIDAVIT FOR THE PROOF OF A CLAIM OTHER THAN A CLAIM BASED ON A PROMISSORY NOTE OR OTHER BILL OF EXCHANGE**

| | |
|---|---|
| **IN THE INSOLVENT ESTATE OF** | **MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)** |
| **REGISTRATION NUMBER** | **2019/205570/07** |
| **MASTER'S OFFICE** | **MASTER OF THE HIGH COURT OF SOUTH AFRICA, WESTERN CAPE DIVISION, CAPE TOWN** |
| **MASTER'S REFERENCE NUMBER:** | **C906/2020** |
| **DATE OF LIQUIDATION:** | **23 DECEMBER 2020** |
| **NAME OF CREDITOR:** | **COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** ("*the Commissioner*" or "*SARS*") |
| **CREDITOR'S ADDRESS IN FULL:** | Lehae La SARS, 299 Bronkhorst Street, Nieuw Muckleneuk, Brooklyn, Pretoria |
| **INCOME TAX REGISTRATION NUMBER:** | **9060362267** |
| **CLAIM 3:** | **INCOME TAX (INTEREST)** |
| **TAX PERIODS / YEARS OF ASSESSMENT:** | **2020 AND 2021** |
| **TOTAL AMOUNT OF CLAIM:** | **R1,016,997.99** (One million and sixteen thousand, nine hundred and ninety-seven Rands and ninety-nine cents). |

CLAIM No 3128 EXHIBITED AND
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VERGADERING VOOR DIE MEESTER GEHOU OP
22/07/2022

SARS
South African Revenue Service

# INFORMATION TO CREATE YOUR PERSONAL COMPANY INCOME TAX RETURN

## Company / Close Corporation Information

### Registered Details

Have the banking, public officer and contact details of the company been verified and confirmed as correct? (Refer to guide) — Y [X] N [ ]

### Dormant

Is the company dormant? — Y [ ] N [X]

### Company Type

Is the company a body corporate established in terms of the Sectional Titles Act or a share block company defined in the Share Blocks Control Act as referred to in s10(1)(e)? — Y [ ] N [X]

Specify the gross income (sales / turnover plus other income) in respect of the year of assessment

R 0

Specify the total assets (current and non-current) of the company in respect of the year of assessment

R 116336283

Return Type: **Medium to Large Company**

### Capital Gain / Loss Transactions

Did the company have any transactions or events which resulted in a locally sourced capital gain or loss (including crypto asset(s))? — Y [ ] N [X]

Did the company have any transactions or events which resulted in a foreign sourced capital gain or loss (including crypto asset(s))? — Y [ ] N [X]

Has any debt been reduced for no consideration which has the effect of reducing the company's assessed capital loss under paragraph 12A(4) of the Eighth Schedule? — Y [ ] N [X]

### Voluntary Disclosure Programme

Does any declaration in this return relate to an application made under the SARS Voluntary Disclosure Programme? — Y [ ] N [X]

### Special Economic Zones

Is the company a qualifying company as defined in s12R? — Y [ ] N [X]

### Venture Capital Company Investments

Did the company invest in SARS approved Venture Capital Companies in exchange for the issue of shares during this year of assessment? — Y [ ] N [X]

### Deduction (s7F) in respect of SARS Interest Repaid

Does the company want to claim a deduction i.t.o s7F i.r.o. SARS interest repaid that was previously taxed i.t.o. s7E? — Y [ ] N [X]

### Donations

Does the company want to claim donations made to an approved organisation in terms of s18A? — Y [ ] N [X]

### Tax Credits

Will the company be claiming any PAYE credits reflected on an IRP5 tax certificate? — Y [ ] N [X]

Will the company be claiming any Foreign Tax credits not relating to Capital Gain transactions in terms of s6quat(1A) and/or a treaty? — Y [ ] N [X]

Were any foreign tax credits refunded / discharged during the year of assessment for which a rebate was allowed during a previous year of assessment? — Y [ ] N [X]

Will the company be claiming a deduction on SA sourced trading income i.t.o. s6*quat* (1C) ? — Y [ ] N [X]

### Company Information

Is the company a partner in a partnership/joint venture? — Y [ ] N [X]

Is the company a Personal Service Provider as defined in the Fourth Schedule? — Y [ ] N [X]

Is the company resident in South Africa for income tax purposes? — Y [X] N [ ]

How many different classes of shares have been issued by the company? 1

Did the company have any transactions (including mining activities) relating to crypto asset(s) (excluding CGT)? — Y [X] N [ ]

Did the company qualify for a Urban Development Zone deduction (s13*quat*) ? — Y [ ] N [X]

Did the company enter into any reportable arrangement in terms of s34 - 39 of the Tax Administration Act or s80M-s80T of the Income Tax Act? — Y [ ] N [X]

Were any dividends declared during the year of assessment? — Y [ ] N [X]

Is the company part of a group of companies that prepares consolidated financial statements? — Y [ ] N [X]

Is the company a member of a Multinational Entity (MNE) group as defined in the Country-by-Country (CbC) Regulations? — Y [ ] N [X]

Does the company elect to be a headquarter company in terms of s9I for this year of assessment? — Y [ ] N [X]

Did the company receive / accrue any foreign income or incur any foreign expenditure or pay any royalties, interest, dividends or consulting fees to a non-resident? — Y [ ] N [X]

### Customs Information

Is the company registered/licensed for Customs purposes? — Y [ ] N [X]

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SARS
South African Revenue Service

# Income Tax Return for Companies

**(Income Tax Act, No. 58 of 1962, as amended)**

Taxpayer Reference Number: 9060362267

Year of Assessment: 2020

## Company / Close Corporation Particulars

Registered Name: MIRROR TRADING INTERNATIONAL

Trading Name: MIRROR TRADING INTERNATIONAL

Company / CC Reg No.: 2019/205570/07

Financial Year End (CCYYMMDD): 2020-02-29

Is this return in respect of a branch / permanent establishment / agency of a foreign company? Y [ ] N [X]

**Please indicate where the majority of the company's taxable income / loss is derived from (mark only one box)**

Eastern Cape [ ] Free State [ ] Gauteng [ ] Kwazulu Natal [ ] Limpopo [ ] Mpumalanga [ ] North West [ ] Northern Cape [ ] Western Cape [ ] International [X]

Select the Standard Industry Code (SIC) applicable to the main activity of the Company: 64990

State the profit code of your main source of income.: 3498

If the profit code is "other not specified", please provide a description

FRAUDULENT BITCOIN BASED SCHEME

## Tax Practitioner Details (if applicable)

Registration No.: PR0016499

Tel No.: 0218185201

Mark here with an "X" if you declare that you do not have an email address [ ]

Tax Practitioner Email address: MIKE.TEUCHERT@MAZARS.CO.ZA

## Declaration

I declare that:
- I am the duly appointed Public Officer / Representative of the company
- The information furnished in this return is to the best of my knowledge both true and correct
- I have disclosed the gross amounts of all income received and / or accrued to this company during the period covered by this return
- I have the necessary financial records and supporting schedules to support all declarations on this return which I will retain for audit purposes.

XXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXX

Please ensure you sign over the 2 lines of "X"s above

Date (CCYYMMDD): 2022-10-28

For enquiries go to www.sars.gov.za or call 0800 00 7277

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## Non-Residency

Is the company resident outside South Africa due to:

Foreign incorporation (and not being effectively managed in SA)? Y ☐ N ☐

By virtue of a treaty to avoid double taxation? Y ☐ N ☐

## Additional Assessment Information

Do you give consent that SARS can provide the attached financial statements to the Companies and Intellectual Property Commission (CIPC)? Y ☐ N ☒

Have the financial statements been audited? Y ☐ N ☒

Have the financial statements been reviewed? Y ☐ N ☒

If Yes, does this have any tax effects? Y ☐ N ☐

Did the company generate a capital gain / loss or revenue gain / loss in respect of the early termination of a foreign instrument? Y ☐ N ☒

Did the company prematurely terminate / unwind a hedge position where the tax value differs in relation to the economic value? Y ☐ N ☒

Did the company enter into any sale and leaseback agreement? Y ☐ N ☒

Is the company a beneficiary of a trust? Y ☐ N ☒

### Crypto Asset Transactions (Local / Foreign)(excluding CGT)

Were any transactions relating to crypto assets included in the income statement? Y ☐ N ☒

Gross crypto asset amount included in income statement

R

Did the transaction(s) relating to crypto asset(s) result in a profit? Y ☐ N ☒

**Loss** relating to crypto asset trading

R 1199751

Amount of crypto asset(s) included as assets in the Balance Sheet

R 116336283

## Contributed Tax Capital

Description of class of shares

EQUITY

Amount of contributed tax capital:

(a) Immediately before 1 January 2011; or

R 0

(b) Where the company became a resident since 1 January 2011

R 0

**Add:** Consideration received or accrued for the issue of shares by the company

R 0

**Deduct:** Amounts transferred to holders of shares

R 0

**Deduct:** Adjustments in terms of s8G

R 0

**Deduct:** Reduction as a result of the application of s42

R 0

**Deduct:** Reduction as a result of the application of s44

R 0

**Deduct:** Reduction as a result of the application of s46

R 0

Balance of contributed tax capital at the end of the year of assessment

R 0

## Shares

Was there any change in shareholder's interest during the year of assessment (excluding listed companies)? Y ☐ N ☒

## Balance Sheet

### Non-current Assets

Fixed property

R 0

Fixed assets - other

R 0

Plant and equipment

R 0

Vehicles

R 0

Goodwill and intellectual property

R 0

Investments in subsidiaries

R 0

Long-term loans - interest free: Connected (Local)

R 0

Long-term loans - interest free: Non-Connected (Local)

R 0

Long-term loans – interest free: Connected (Foreign)

R 0

Long-term loans - interest free: Non-Connected (Foreign)

R 0

Long-term loans - interest bearing: Connected (Local)

R 0

Long-term loans - interest bearing: Non-Connected (Local)

R 0

Long-term loans - interest bearing: Connected (Foreign)

R 0

Long-term loans - interest bearing: Non-Connected (Foreign)

R 0

Deferred tax assets

R 0

Other non-current assets

R 116336283

Please provide descriptions relating to other non-current assets listed above

BITCOIN

**Total non-current assets**

R 116336283

## Current Assets

Gross inventory (incl. spare parts and consumables and work in progress)

R 0

Less: Provisions for inventory write off

R 0

Gross trade and other receivables (excl. debtors)

R 0

Less: Provisions for trade and other receivables (excl. debtors)

R 0

Gross debtors (excl. trade debtors)

R 0

Less: Provisions for debtors (excl. trade debtors)

R 0

Prepayments

R 0

Group companies current accounts

R 0

Short-term investments

R 0

SA Revenue Service

R 0

Cash and cash equivalents

R 0

Other current assets

R 0

Please provide descriptions relating to other current assets listed above

**Total current assets**

R 0

## Capital and Reserves

Credit Balances

Share capital

R 0

Share premium

R 0

Non-distributable reserves for credit balances

R 0

Distributable reserves (excl. retained profit / accumulated loss)

R 0

Retained profit

R 0

Other capital and reserves

R 0

Please provide descriptions relating to other capital and reserves (credit balances) listed above

**Debit Balances**

Accumulated loss

R 1199751

Other capital and reserves for debit balances

R 0

Please provide descriptions relating to other capital and reserves (debit balances) listed above

**Total Capital and Reserves**

R -1199751

## Non-Current Liabilities

Long-term loans - interest free: Connected (Local)

R 1199751

Long-term loans - interest free: Non-Connected (Local)

R 0

Long-term loans – interest free: Connected (Foreign)

R 0

Long-term loans - interest free: Non-Connected (Foreign)

R 0

Long-term loans - interest bearing: Connected (Local)

R 0

Long-term loans - interest bearing: Non-Connected (Local)

R 0

Long-term loans - interest bearing: Connected (Foreign)

R 0

Long-term loans - interest bearing: Non-Connected (Foreign)

R 0

Deferred tax assets

R 0

Other non-current liabilities

R 116336283

Please provide descriptions relating to other non-current liabilities listed above

INVESTOR CLAIMS

**Total Non-Current liabilities**

R 117536034

## Current Liabilities

Gross trade and other payables (Not older than 3 years)

R 0

Gross trade and other payables (Older than 3 years)

R 0

Provisions – excluding inventory and trade receivables

R 0

Deposits and funds received in advance (excl. contract progress payments)

R 0

Group companies current accounts

R 0

Contract progress payments received in advance

R 0

Current portion of interest bearing borrowings

R 0

Current portion of interest free borrowings

R 0

Overdraft and interest bearing short-term borrowings

R 0

SA Revenue Service

R 0

Shareholders for dividend / proposed dividend

R 0

Other current liabilities

R 0

Please provide descriptions relating to other current liabilities listed above

**Total Current liabilities**

R 0

## Income Statement

### Gross Profit / Loss

Gross Sales (excl. credit notes) - Foreign: Connected

R 0

Gross Sales (excl. credit notes) - Other than foreign connected

R 0

Less: Opening stock

R 0

Less: Credit notes on sales

R 0

Less: Purchases - Foreign: Connected (excl. rebates)

R 0

Less: Purchases - Other than foreign connected (excl. rebates)

R 0

Add: Rebates

R 0

Add: Closing stock (Gross excl. adjustments)

R 0

Add: Inventory adjustments (Previous year stock provision reversed)

R 0

Less: Inventory adj. (Current year stock provision (obsolete / slow-moving stock))

R 0

**Gross profit – subtotal**

R 0

**Gross loss - subtotal**

R

### Income Items (Only credit amounts)

Accounting profit on disposal of fixed assets and / or other assets

R 0

Admin., management, secretarial, rentals, guarantee fees and other services - Connected (Local)

R 0

Admin., management, secretarial, rentals, guarantee fees and other services – Connected (Foreign)

R 0

Admin., management, secretarial, rentals, guarantee fees and other services – Non-connected

R 0

Amounts deemed to be dividends *in specie* (s8F and s8FA)

R 0

Bad and doubtful debts recovered

R 0

Dividends - local

R 0

Dividends - foreign

R 0

Dividends (local and foreign) deemed to be income (s8E and s8EA)

R 0

Tainted Dividends (local and foreign) deemed to be income (s22B)

R 0

Fruitless and wasteful expenditure recovered during this year of assessment

R 0

Foreign exchange gain

R 0

Government grants (national, provincial and local)

R 0

Gross royalties and license fees

R 0

Indemnity payments received

R 0

Insurance proceeds received

R 0

Interest - Financial institutions

R 0

Interest – Connected

R 0

Interest (excluding SARS interest (s7E))

R 0

SARS Interest (s7E)

R 0

Levy income

R 0

REIT distributions received

R 0

Reversal of impairment loss recognised in profit or loss

R 0

Other income

R 0

Please provide descriptions relating to other income listed above

**Control Total**

R 0

**Expense Items (Only debit amounts)**

Accommodation and travel expenses: Local

R 142527

Accommodation and travel expenses: Foreign

R 0

Accounting loss on disposal of fixed assets / other assets

R 0

Admin., secretarial, rentals, guarantee fees and other services - Connected (Local)

R 0

Admin., secretarial, rentals, guarantee fees and other services - Connected (Foreign)

R 0

Admin., secretarial, rentals, guarantee fees and other services – Non-connected

R 0

Alterations and improvements (excluding repairs and maintenance)

R 0

Bad debts written off

R 0

Capital improvements – farming operations (par 12 of the First Schedule)

R 0

Commission paid

R 0

Compensation for loss of office

R 0

Consulting, legal and professional fees

R 140000

Depreciation

R 0

Directors' / members' remuneration

R 0

Donations (s18A)

R 0

Donations – other

R 0

Employee expenses: Wages and salaries (excluding medical, provident and pension)

R 0

Employee expenses: Group life insurance

R 0

Employee expenses: UIF contributions and SDL

R 0

Employee expenses: Pension and Provident fund contributions

R 0

Employee expenses: Medical scheme contributions

R 0

Employee expenses: Membership of a professional body

R 0

Employee expenses: Training

R 0

Expenditure incurred by a lessor of land let for farming purposes in respect of soil erosion (s17A)

R 0

Expenditure incurred directly or indirectly in effecting BEE and / or BBEEE compliance

R 0

Expenditure incurred in respect of company restructuring

R 0

Foreign exchange loss

R 0

Impairment loss recognised in profit or loss

R 0

Insurance (excluding s37A payments)

R 0

Insurance premium in respect of rehabilitation obligations (s37A)

R 0

Interest – financial institutions

R 0

Interest – Connected (Local)

R 0

Interest – Connected (Foreign)

R 0

Interest - Non-connected

R 0

Interest and penalties paid to SARS (excluding SARS interest repaid that was previously taxed i.t.o. s7E)

R 0

Key man insurance (s11(w))

R 0

Lease payments other than operating leases

R 0

Management fees - Connected

R 0

Management fees - Non-connected

R 0

Operating lease payments - Connected

R 0

Operating lease payments - Non-connected

R 0

Partnership / Joint venture loss - Foreign

R 0

Partnership / Joint venture loss - Local

R 0

Provision for doubtful debts

R 0

Repairs and maintenance

R 0

Research and development costs (s11D)

R 0

Restraint of trade

R 0

Royalties and license fees (excluding payments in terms of mineral and petroleum resources royalties) - Local

R 0

Royalties and license fees (excluding payments in terms of mineral and petroleum resources royalties) – Foreign

R 0

Mineral and Petroleum Resources royalty

R 0

Small items and loose tools

R 0

Other expenses (excluding items listed above)

R 917224

Please provide descriptions relating to other expenses listed above

ACCOUNTING, BANK CHARGES, COMPUTER EXPENSES, ETC

Control Total

R 1199751

**Net Profit / Loss**

Net Profit - Subtotal

R

Net Loss - Subtotal

R 1199751

## Tax Computation

**Debit Adjustments (decrease net profit / increase net loss)**

**Non-Taxable Amounts Credited to the Income Statement**

Fruitless and wasteful expenditure recovered (s10(1)(zL))

R 0

Control Total

R 0

**Special Allowances Not Claimed in the Income Statement**

Allowance for future expenditure (s24C)

R 0

Other (excluding items listed above)

R 190845563

Please provide descriptions relating to other listed above

BITCOIN DEDUCTED IN TERMS OF FOURIE NO / EDELING ; ITC 1545 & FX CHOICE LOSSES

Control Total

R 190845563

**Credit Adjustments (increase net profit / decrease net loss)**

**Non-Deductible Amounts Debited to the Income Statement**

Donations (s18A)

R 0

Donations – other

R 0

Control Total

R 0

**Allowances / Deductions Granted in Previous Years of Assessment and now Reversed**

Control Total

R 0

**Amounts not Credited to the Income Statement**

Other (excluding items listed above)

R 190727609

Please provide descriptions relating to other listed above

BITCOIN ADDED IN TERMS OF MP FINANCE PRINCIPLE

Control Total

R 190727609

**Recoupment of Allowances / Expenses Previously Granted**

Control Total

R 0

**Amounts to be included in the Determination of Taxable Income before s18A Donations and s6*quat* (1C) foreign tax credit (Excluding assessed losses brought forward and capital gains / losses)**

**Note:** The information relating to s18A Donations and s6*quat* (1C) Foreign Tax Credit must be declared else where in the return. The related deductions / carry over will be calculated by SARS

Calculated Profit excluding net income from CFC

R

Source Code

Calculated Loss

R 1317705

Source Code 3499

Imputed net income from CFC

R 0 4276

## Tax Allowances / Limitations

**Note:**
Schedules must be prepared in all cases where the questions below are answered in the affirmative. The schedules must be retained for a period of 5 years after submission of this return.

Did the company submit the information as required by s12H(8) to the registered SETA? Y ☐ N ☐

Did the company obtain a certificate issued by the SANEDI in respect of energy efficiency savings for the purposes of claiming a s12L deduction? Y ☐ N ☐

Does the company confirm that the allowance claimed in respect of s12L is not related to any amount received or accrued already exempt in terms of s12K? Y ☐ N ☐

Does the company carry on any business as a hotel keeper (s13bis)? Y ☐ N ☐

| | | |
|---|---|---|
| Was the allowance claimed in respect of s13ter for the erection of at least 5 residential units? | Y ☐ | N ☐ |
| Does the company use a building in the production of income in respect of trade other than the provision of residential accommodation (s13quin)? | Y ☐ | N ☐ |
| Did the company incur any insurance premiums on the lives of employees or directors? | Y ☐ | N ☒ |

If Yes, state the total amount of insurance premiums incurred during the year of assessment:

R

| | | |
|---|---|---|
| Did the company enter into an instalment sale agreement as referred to in s12DA to use the rolling stock as an asset to generate income? | Y ☐ | N ☐ |
| Was the industrial policy project for which an allowance was claimed approved by the Minister of Trade and Industry (s12I)? | Y ☐ | N ☐ |
| Was the allowance claimed in terms of s24C in relation to contract(s)? | Y ☐ | N ☒ |
| Was an allowance claimed in respect of an industrial policy project in any previous years of assessment (s12I)? | Y ☐ | N ☒ |
| Is the company the owner of the film as contemplated in s12O? | Y ☐ | N ☐ |
| Is the building for which an allowance is claimed used in the process of manufacturing (s13)? | Y ☐ | N ☐ |
| Is the company the owner of the film as contemplated in s24F? | Y ☐ | N ☐ |
| Does the company confirm that no other building allowances were claimed in respect of the same building for which the s12S allowance was claimed? | Y ☐ | N ☐ |
| Did the company incur any interest in respect of debt(s) owed to person(s) not subject to tax as contemplated in s23M? | Y ☐ | N ☐ |
| Is the company a "covered person" as envisaged in s24JB? | Y ☐ | N ☐ |
| Was a certificate obtained by the company in terms of the Conservation of Agricultural Resources Act, 1983 (s17A)? | Y ☐ | N ☒ |

## Corporate Rules

Was the company a party to any of the following transactions during the year of assessment:

| | | |
|---|---|---|
| Asset-for-share transaction as defined in s42? | Y ☐ | N ☒ |
| Substitutive share-for-share transactions as defined in s43? | Y ☐ | N ☒ |
| Amalgamation transaction as defined in s44? | Y ☐ | N ☒ |
| Intra-group transaction as defined in s45? | Y ☐ | N ☒ |
| Unbundling transaction as defined in s46? | Y ☐ | N ☒ |
| Liquidation, winding-up or deregistration distribution as defined in s47? | Y ☐ | N ☒ |

SARS
South African Revenue Service

# INFORMATION TO CREATE YOUR PERSONAL COMPANY INCOME TAX RETURN

## Company / Close Corporation Information

### Registered Details

Have the banking, public officer and contact details of the company been verified and confirmed as correct? (Refer to guide) — Y [X] N [ ]

### Dormant

Is the company dormant? — Y [ ] N [X]

### Company Type

Is the company a body corporate established in terms of the Sectional Titles Act or a share block company defined in the Share Blocks Control Act as referred to in s10(1)(e)? — Y [ ] N [X]

Specify the gross income (sales / turnover plus other income) in respect of the year of assessment

R 0

Specify the total assets (current and non-current) of the company in respect of the year of assessment

R 1074942065

Return Type: **Medium to Large Company**

### Capital Gain / Loss Transactions

Did the company have any transactions or events which resulted in a locally sourced capital gain or loss (including crypto asset(s))? — Y [ ] N [X]

Did the company have any transactions or events which resulted in a foreign sourced capital gain or loss (including crypto asset(s))? — Y [ ] N [X]

Has any debt been reduced for no consideration which has the effect of reducing the company's assessed capital loss under paragraph 12A(4) of the Eighth Schedule? — Y [ ] N [X]

### Voluntary Disclosure Programme

Does any declaration in this return relate to an application made under the SARS Voluntary Disclosure Programme? — Y [ ] N [X]

### Special Economic Zones

Is the company a qualifying company as defined in s12R? — Y [ ] N [X]

### Venture Capital Company Investments

Did the company invest in SARS approved Venture Capital Companies in exchange for the issue of shares during this year of assessment? — Y [ ] N [X]

### Deduction (s7F) in respect of SARS Interest Repaid

Does the company want to claim a deduction i.t.o s7F i.r.o. SARS interest repaid that was previously taxed i.t.o. s7E? — Y [ ] N [X]

### Donations

Does the company want to claim donations made to an approved organisation in terms of s18A? — Y [ ] N [X]

### Tax Credits

Will the company be claiming any PAYE credits reflected on an IRP5 tax certificate? — Y [ ] N [X]

Will the company be claiming any Foreign Tax credits not relating to Capital Gain transactions in terms of s6quat(1A) and/or a treaty? — Y [ ] N [X]

Were any foreign tax credits refunded / discharged during the year of assessment for which a rebate was allowed during a previous year of assessment? — Y [ ] N [X]

Will the company be claiming a deduction on SA sourced trading income i.t.o. s6*quat* (1C) ? — Y [ ] N [X]

### Company Information

Is the company a partner in a partnership/joint venture? — Y [ ] N [X]

Is the company a Personal Service Provider as defined in the Fourth Schedule? — Y [ ] N [X]

Is the company resident in South Africa for income tax purposes? — Y [X] N [ ]

How many different classes of shares have been issued by the company? 1

Did the company have any transactions (including mining activities) relating to crypto asset(s) (excluding CGT)? — Y [X] N [ ]

Did the company qualify for a Urban Development Zone deduction (s13*quat*) ? — Y [ ] N [X]

Did the company enter into any reportable arrangement in terms of s34 - 39 of the Tax Administration Act or s80M-s80T of the Income Tax Act? — Y [ ] N [X]

Were any dividends declared during the year of assessment? — Y [ ] N [X]

Is the company part of a group of companies that prepares consolidated financial statements? — Y [ ] N [X]

Is the company a member of a Multinational Entity (MNE) group as defined in the Country-by-Country (CbC) Regulations? — Y [ ] N [X]

Does the company elect to be a headquarter company in terms of s9I for this year of assessment? — Y [ ] N [X]

Did the company receive / accrue any foreign income or incur any foreign expenditure or pay any royalties, interest, dividends or consulting fees to a non-resident? — Y [ ] N [X]

### Customs Information

Is the company registered/licensed for Customs purposes? — Y [ ] N [X]

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Y 2021
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SARS
South African Revenue Service

# Income Tax Return for Companies

(Income Tax Act, No. 58 of 1962, as amended)

Taxpayer Reference Number: 9060362267

Year of Assessment: 2021

## Company / Close Corporation Particulars

Registered Name: MIRROR TRADING INTERNATIONAL

Trading Name: MIRROR TRADING INTERNATIONAL

Company / CC Reg No.: 2019/205570/07

Financial Year End (CCYYMMDD): 2021-02-28

Is this return in respect of a branch / permanent establishment / agency of a foreign company? Y [ ] N [X]

**Please indicate where the majority of the company's taxable income / loss is derived from (mark only one box)**

Eastern Cape [ ] Free State [ ] Gauteng [ ] Kwazulu Natal [ ] Limpopo [ ] Mpumalanga [ ] North West [ ] Northern Cape [ ] Western Cape [ ] International [X]

Select the Standard Industry Code (SIC) applicable to the main activity of the Company: 64990

State the profit code of your main source of income.: 3498

If the profit code is "other not specified", please provide a description

FRAUDULENT BITCOIN BASED SCHEME

## Tax Practitioner Details (if applicable)

Registration No.: PR0016499

Tel No.: 0218185201

Mark here with an "X" if you declare that you do not have an email address [ ]

Tax Practitioner Email address: MIKE.TEUCHERT@MAZARS.CO.ZA

## Declaration

I declare that:
- I am the duly appointed Public Officer / Representative of the company
- The information furnished in this return is to the best of my knowledge both true and correct
- I have disclosed the gross amounts of all income received and / or accrued to this company during the period covered by this return
- I have the necessary financial records and supporting schedules to support all declarations on this return which I will retain for audit purposes.

XXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXX

Please ensure you sign over the 2 lines of "X"s above

Date (CCYYMMDD): 2022-10-28

For enquiries go to www.sars.gov.za or call 0800 00 7277

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502

## Non-Residency

Is the company resident outside South Africa due to:

Foreign incorporation (and not being effectively managed in SA)? Y [ ] N [ ]

By virtue of a treaty to avoid double taxation? Y [ ] N [ ]

## Additional Assessment Information

Do you give consent that SARS can provide the attached financial statements to the Companies and Intellectual Property Commission (CIPC)? Y [ ] N [X]

Have the financial statements been audited? Y [ ] N [X]

Have the financial statements been reviewed? Y [ ] N [X]

If Yes, does this have any tax effects? Y [ ] N [ ]

Did the company generate a capital gain / loss or revenue gain / loss in respect of the early termination of a foreign instrument? Y [ ] N [X]

Did the company prematurely terminate / unwind a hedge position where the tax value differs in relation to the economic value? Y [ ] N [X]

Did the company enter into any sale and leaseback agreement? Y [ ] N [X]

Is the company a beneficiary of a trust? Y [ ] N [X]

## Crypto Asset Transactions (Local / Foreign)(excluding CGT)

Were any transactions relating to crypto assets included in the income statement? Y [ ] N [X]

Gross crypto asset amount included in income statement

R

Did the transaction(s) relating to crypto asset(s) result in a profit? Y [ ] N [X]

**Loss** relating to crypto asset trading

R 15125660

Amount of crypto asset(s) included as assets in the Balance Sheet

R 1074942065

## Contributed Tax Capital

Description of class of shares

EQUITY

Amount of contributed tax capital:

(a) Immediately before 1 January 2011; or

R 0

(b) Where the company became a resident since 1 January 2011

R 0

**Add**: Consideration received or accrued for the issue of shares by the company

R 0

**Deduct**: Amounts transferred to holders of shares

R 0

**Deduct**: Adjustments in terms of s8G

R 0

**Deduct**: Reduction as a result of the application of s42

R 0

**Deduct**: Reduction as a result of the application of s44

R 0

**Deduct**: Reduction as a result of the application of s46

R 0

Balance of contributed tax capital at the end of the year of assessment

R 0

## Shares

Was there any change in shareholder's interest during the year of assessment (excluding listed companies)? Y [ ] N [X]

## Balance Sheet

## Non-current Assets

Fixed property

R 0

Fixed assets - other

R 0

Plant and equipment

R 0

Vehicles

R 0

Goodwill and intellectual property

R 0

Investments in subsidiaries

R 0

Long-term loans - interest free: Connected (Local)

R 0

Long-term loans - interest free: Non-Connected (Local)

R 0

Long-term loans – interest free: Connected (Foreign)

R 0

Long-term loans - interest free: Non-Connected (Foreign)

R 0

Long-term loans - interest bearing: Connected (Local)

R 0

Long-term loans - interest bearing: Non-Connected (Local)

R 0

Long-term loans - interest bearing: Connected (Foreign)

R 0

Long-term loans - interest bearing: Non-Connected (Foreign)

R 0

Deferred tax assets

R 0

Other non-current assets

R 1074942065

Please provide descriptions relating to other non-current assets listed above

BITCOIN

**Total non-current assets**

R 1074942065

## Current Assets

Gross inventory (incl. spare parts and consumables and work in progress)

R 0

Less: Provisions for inventory write off

R 0

Gross trade and other receivables (excl. debtors)

R 0

Less: Provisions for trade and other receivables (excl. debtors)

R 0

Gross debtors (excl. trade debtors)

R 0

Less: Provisions for debtors (excl. trade debtors)

R 0

Prepayments

R 0

Group companies current accounts

R 0

Short-term investments

R 0

SA Revenue Service

R 0

Cash and cash equivalents

R 941192

Other current assets

R 0

Please provide descriptions relating to other current assets listed above

**Total current assets**

R 941192

## Capital and Reserves

Credit Balances

Share capital

R 0

Share premium

R 0

Non-distributable reserves for credit balances

R 0

Distributable reserves (excl. retained profit / accumulated loss)

R 0

Retained profit

R 0

Other capital and reserves

R 0

Please provide descriptions relating to other capital and reserves (credit balances) listed above

**Debit Balances**

Accumulated loss

R 5049987

Other capital and reserves for debit balances

R 1199751

Please provide descriptions relating to other capital and reserves (debit balances) listed above

PRIOR YEAR ACCUMULATED LOSS

**Total Capital and Reserves**

R -6249738

## Non-Current Liabilities

Long-term loans - interest free: Connected (Local)

R 7190930

Long-term loans - interest free: Non-Connected (Local)

R 0

Long-term loans – interest free: Connected (Foreign)

R 0

Long-term loans - interest free: Non-Connected (Foreign)

R 0

Long-term loans - interest bearing: Connected (Local)

R 0

Long-term loans - interest bearing: Non-Connected (Local)

R 0

Long-term loans - interest bearing: Connected (Foreign)

R 0

Long-term loans - interest bearing: Non-Connected (Foreign)

R 0

Deferred tax assets

R 0

Other non-current liabilities

R 1074942065

Please provide descriptions relating to other non-current liabilities listed above

INVESTOR CLAIMS

**Total Non-Current liabilities**

R 1082132995

## Current Liabilities

Gross trade and other payables (Not older than 3 years)

R 0

Gross trade and other payables (Older than 3 years)

R 0

Provisions – excluding inventory and trade receivables

R 0

Deposits and funds received in advance (excl. contract progress payments)

R 0

Group companies current accounts

R 0

Contract progress payments received in advance

R 0

Current portion of interest bearing borrowings

R 0

Current portion of interest free borrowings

R 0

Overdraft and interest bearing short-term borrowings

R 0

SA Revenue Service

R 0

Shareholders for dividend / proposed dividend

R 0

Other current liabilities

R 0

Please provide descriptions relating to other current liabilities listed above

**Total Current liabilities**

R 0

## Income Statement

### Gross Profit / Loss

Gross Sales (excl. credit notes) - Foreign: Connected

R 0

Gross Sales (excl. credit notes) - Other than foreign connected

R 0

Less: Opening stock

R 0

Less: Credit notes on sales

R 0

Less: Purchases - Foreign: Connected (excl. rebates)

R 0

Less: Purchases - Other than foreign connected (excl. rebates)

R 0

Add: Rebates

R 0

Add: Closing stock (Gross excl. adjustments)

R 0

Add: Inventory adjustments (Previous year stock provision reversed)

R 0

Less: Inventory adj. (Current year stock provision (obsolete / slow-moving stock))

R 0

**Gross profit – subtotal**

R 0

**Gross loss - subtotal**

R

### Income Items (Only credit amounts)

Accounting profit on disposal of fixed assets and / or other assets

R 0

Admin., management, secretarial, rentals, guarantee fees and other services - Connected (Local)

R 0

Admin., management, secretarial, rentals, guarantee fees and other services – Connected (Foreign)

R 0

Admin., management, secretarial, rentals, guarantee fees and other services – Non-connected

R 0

Amounts deemed to be dividends *in specie* (s8F and s8FA)

R 0

Bad and doubtful debts recovered

R 0

Dividends - local

R 0

Dividends - foreign

R 0

Dividends (local and foreign) deemed to be income (s8E and s8EA)

R 0

Tainted Dividends (local and foreign) deemed to be income (s22B)

R 0

Fruitless and wasteful expenditure recovered during this year of assessment

R 0

Foreign exchange gain

R 0

Government grants (national, provincial and local)

R 0

Gross royalties and license fees

R 0

Indemnity payments received

R 0

Insurance proceeds received

R 0

Interest - Financial institutions

R 0

Interest – Connected

R 0

Interest (excluding SARS interest (s7E))

R 0

SARS Interest (s7E)

R 0

Levy income

R 0

REIT distributions received

R 0

Reversal of impairment loss recognised in profit or loss

R 0

Other income

R 0

Please provide descriptions relating to other income listed above

**Control Total**

R 0

**Expense Items (Only debit amounts)**

Accommodation and travel expenses: Local

R 225574

Accommodation and travel expenses: Foreign

R 0

Accounting loss on disposal of fixed assets / other assets

R 0

Admin., secretarial, rentals, guarantee fees and other services - Connected (Local)

R 0

Admin., secretarial, rentals, guarantee fees and other services - Connected (Foreign)

R 0

Admin., secretarial, rentals, guarantee fees and other services – Non-connected

R 85819

Alterations and improvements (excluding repairs and maintenance)

R 0

Bad debts written off

R 0

Capital improvements – farming operations (par 12 of the First Schedule)

R 0

Commission paid

R 0

Compensation for loss of office

R 0

Consulting, legal and professional fees

R 1650763

Depreciation

R 0

Directors' / members' remuneration

R 0

Donations (s18A)

R 0

Donations – other

R 0

Employee expenses: Wages and salaries (excluding medical, provident and pension)

R 5679081

Employee expenses: Group life insurance

R 0

Employee expenses: UIF contributions and SDL

R 0

Employee expenses: Pension and Provident fund contributions

R 0

Employee expenses: Medical scheme contributions

R 0

Employee expenses: Membership of a professional body

R 0

Employee expenses: Training

R 0

Expenditure incurred by a lessor of land let for farming purposes in respect of soil erosion (s17A)

R 0

Expenditure incurred directly or indirectly in effecting BEE and / or BBEEE compliance

R 0

Expenditure incurred in respect of company restructuring

R 0

Foreign exchange loss

R 0

Impairment loss recognised in profit or loss

R 0

Insurance (excluding s37A payments)

R 0

Insurance premium in respect of rehabilitation obligations (s37A)

R 0

Interest – financial institutions

R 0

Interest – Connected (Local)

R 0

Interest – Connected (Foreign)

R 0

Interest - Non-connected

R 0

Interest and penalties paid to SARS (excluding SARS interest repaid that was previously taxed i.t.o. s7E)

R 0

Key man insurance (s11(w))

R 0

Lease payments other than operating leases

R 0

Management fees - Connected

R 0

Management fees - Non-connected

R 0

Operating lease payments - Connected

R 0

Operating lease payments - Non-connected

R 0

Partnership / Joint venture loss - Foreign

R 0

Partnership / Joint venture loss - Local

R 0

Provision for doubtful debts

R 0

Repairs and maintenance

R 1800

Research and development costs (s11D)

R 0

Restraint of trade

R 0

Royalties and license fees (excluding payments in terms of mineral and petroleum resources royalties) - Local

R 0

Royalties and license fees (excluding payments in terms of mineral and petroleum resources royalties) – Foreign

R 0

Mineral and Petroleum Resources royalty

R 0

Small items and loose tools

R 0

Other expenses (excluding items listed above)

R 7482623

Please provide descriptions relating to other expenses listed above

ACCOUNTING, BANK CHARGES, COMPUTER EXPENSES, ETC

Control Total

R 15125660

**Net Profit / Loss**

Net Profit - Subtotal

R

Net Loss - Subtotal

R 15125660

## Tax Computation

**Debit Adjustments (decrease net profit / increase net loss)**

**Non-Taxable Amounts Credited to the Income Statement**

Fruitless and wasteful expenditure recovered (s10(1)(zL))

R 0

Control Total

R 0

**Special Allowances Not Claimed in the Income Statement**

Allowance for future expenditure (s24C)

R 0

Other (excluding items listed above)

R 7375073570

Please provide descriptions relating to other listed above

BITCOIN DEDUCTED IN TERMS OF FOURIE NO / EDELING ; ITC 1545 & FX CHOICE LOSSES

Control Total

R 7375073570

**Credit Adjustments (increase net profit / decrease net loss)**

**Non-Deductible Amounts Debited to the Income Statement**

Donations (s18A)

R 0

Donations -- other

R 0

Control Total

R 0

**Allowances / Deductions Granted in Previous Years of Assessment and now Reversed**

Control Total

R 0

**Amounts not Credited to the Income Statement**

Other (excluding items listed above)

R 7281166927

Please provide descriptions relating to other listed above

BITCOIN ADDED IN TERMS OF MP FINANCE PRINCIPLE

Control Total

R 7281166927

**Recoupment of Allowances / Expenses Previously Granted**

Control Total

R 0

**Amounts to be included in the Determination of Taxable Income before s18A Donations and s6*quat* (1C) foreign tax credit (Excluding assessed losses brought forward and capital gains / losses)**

**Note:** The information relating to s18A Donations and s6*quat* (1C) Foreign Tax Credit must be declared else where in the return. The related deductions / carry over will be calculated by SARS

Calculated Profit excluding net income from CFC

R

Source Code

Calculated Loss

R 109032303

Source Code 3499

Imputed net income from CFC

R 0 4276

## Tax Allowances / Limitations

**Note:**
Schedules must be prepared in all cases where the questions below are answered in the affirmative. The schedules must be retained for a period of 5 years after submission of this return.

In terms of which sub-paragraph of s10(1)(t) was the exemption claimed?

| | | | |
|---|---|---|---|
| Sub-paragraph (i) | | Sub-paragraph (vii) | |
| Sub-paragraph (ii) | | Sub-paragraph (ix) | |
| Sub-paragraph (iii) | | Sub-paragraph (x) | |
| Sub-paragraph (v) | | Sub-paragraph (xvi) | |
| Sub-paragraph (vi) | | Sub-paragraph (xvii) | |

| | | |
|---|---|---|
| Did the company submit the information as required by s12H(8) to the registered SETA? | Y ☐ | N ☐ |
| Did the company obtain a certificate issued by the SANEDI in respect of energy efficiency savings for the purposes of claiming a s12L deduction? | Y ☐ | N ☐ |
| Does the company carry on any business as a hotel keeper (s13bis)? | Y ☐ | N ☐ |
| Was the allowance claimed in respect of s13ter for the erection of at least 5 residential units? | Y ☐ | N ☐ |
| Does the company use a building in the production of income in respect of trade other than the provision of residential accommodation (s13quin)? | Y ☐ | N ☐ |
| Did the company incur any insurance premiums on the lives of employees or directors? | Y ☐ | N ☒ |

If Yes, state the total amount of insurance premiums incurred during the year of assessment:

R

| | | |
|---|---|---|
| Did the company enter into an instalment sale agreement as referred to in s12DA to use the rolling stock as an asset to generate income? | Y ☐ | N ☐ |
| Was the industrial policy project for which an allowance was claimed approved by the Minister of Trade and Industry (s12I)? | Y ☐ | N ☐ |
| Was the allowance claimed in terms of s24C in relation to contract(s)? | Y ☐ | N ☒ |
| Was an allowance claimed in respect of an industrial policy project in any previous years of assessment (s12I)? | Y ☐ | N ☒ |
| Is the company the owner of the film as contemplated in s12O? | Y ☐ | N ☐ |
| Is the building for which an allowance is claimed used in the process of manufacturing (s13)? | Y ☐ | N ☐ |
| Is the company the owner of the film as contemplated in s24F? | Y ☐ | N ☐ |
| Does the company confirm that no other building allowances were claimed in respect of the same building for which the s12S allowance was claimed? | Y ☐ | N ☐ |
| Did the company incur any interest in respect of debt(s) owed to person(s) not subject to tax as contemplated in s23M? | Y ☐ | N ☐ |
| Is the company a "covered person" as envisaged in s24JB? | Y ☐ | N ☐ |
| Was a certificate obtained by the company in terms of the Conservation of Agricultural Resources Act, 1983 (s17A)? | Y ☐ | N ☒ |

## Corporate Rules

Was the company a party to any of the following transactions during the year of assessment:

| | | |
|---|---|---|
| Asset-for-share transaction as defined in s42? | Y ☐ | N ☒ |
| Substitutive share-for-share transactions as defined in s43? | Y ☐ | N ☒ |
| Amalgamation transaction as defined in s44? | Y ☐ | N ☒ |
| Intra-group transaction as defined in s45? | Y ☐ | N ☒ |
| Unbundling transaction as defined in s46? | Y ☐ | N ☒ |
| Liquidation, winding-up or deregistration distribution as defined in s47? | Y ☐ | N ☒ |

**Syndicated Tax and Customs Crimes Division: Illicit Economic Activity ("IEA") (Tax) Unit**

**Office**
Cape Town

**Enquiries**
O Leshomo
T Mahlangu

**Telephone**
021 413 5467

**E-mail**
oleshomo@sars.gov.za
tmahlangu1@sars.gov.za

**Reference**
9060362267

**Date**
22/12/2022

South African Revenue Service

**The liquidators: Mirror Trading International (Pty) Ltd (In Liquidation)**
**C/O Tygerberg Trustees**
**First Floor, Cascade Terrances,**
**Waterfront Road, Tyger Waterfront**
**Bellville**

13th Floor, Project 166 Building
22 Hans Strijdom Avenue
Cape Town
8000
(No postal deliveries to this address)

Private Bag X9188, Cape Town, 8000

Website:www.sars.gov.za

**Per e-mail**: herman@tygerbergtrustees.co.za
riaan@investrust.co.za

**Attention:** Herman Bester, Adriaan van Rooyen, Jacolien Barnard, Deidre Basson, Christoper Roos and Chavonnes Cooper.

Dear Sir/Madam

**TAXPAYER : Mirror Trading International (Pty) Ltd (In Liquidation)**

**INCOME TAX REFERENCE NO.: 9060362267**

**TAX PERIODS : 2020 – 2021**

**IN RE: REINSTATEMENT OF ASSESSMENTS**

## A. INTRODUCTION

1. The writers hereof are SARS officials as envisaged in section (1) of the Tax Administration Act No. 28 of 2011 ("TA Act") and are duly authorised in terms of section 6(5) of the TA Act to address this letter to you.

2. This letter is addressed to you in your capacity as duly appointed liquidators of Mirror Trading International (Pty) Ltd (in liquidation) (interchangeably referred to as "the taxpayer" or "MTI"), with the Master of the High Court's reference number C000906/2020 and company registration number 2019/205570/07, Such appointment is in terms of section 386(1) of the Companies Act 61 of 1973 ("the old Companies Act") read together with item 9 of Schedule 5 of the Companies Act 71 of 2008 ("the new Companies Act"), which *inter alia* requires the liquidators to assume all the responsibilities of a public officer as envisaged under section 248 of the TA Act.

3. We refer to the various letters exchanged between SARS and the taxpayer regarding the assessments raised for the 2020 and 2021 tax periods.

4. As representative taxpayer, the liquidators assumed the responsibility of submitting the tax returns on behalf of MTI in the manner and form as prescribed in section 25 of the TA Act. As a result of MTI's non-compliance in respect of outstanding tax returns for the 2020 and 2021 years of assessment, SARS raised estimated assessments on 08 July 2022 in accordance with the provisions of section 91 and section 95 of the TA Act read with the provisions of the Income Tax Act, Act 58 of 1962 ("IT Act"). A summary of the result is depicted below:

| Tax Period | Capital Amount @28% Section 91 read with 95 of the TA Act | Understatement Penalty - Section 222 read with 223 of the TA Act | Penalty Par 20 of the Fourth Schedule of the IT Act | Interest Section 89quat (2) of the IT Act | TOTAL |
|---|---|---|---|---|---|
| 2020 | R32,196,213.56 | R48,294,329.00 | R5,151,394.13 | R1,016,997.99 | R86,658,934.68 |
| 2021 | R317,467,314.52 | R476,200,970.00 | R50,794,770.15 | 0 | R844,463,054.67 |
| **TOTAL** | **R349,663,528.08** | **R524,495,290.00** | **R55,946,164.28** | **R1,016,997.99** | **R931,121,989.35** |

5. On 28 October 2022, in terms of section 95(6) of the TA Act, the liquidators submitted MTI's outstanding tax returns for the 2020 and 2021 tax years, which resulted in a reduction of the liability raised by SARS through the estimated assessments.

**Reinstatement of Estimated Assessments**

6. SARS acknowledges and accepts the 2020 and 2021 original tax returns submitted by the taxpayer as a fulfilment of the taxpayer's obligation in terms of section 91 read with section 95(6) of the TA Act.

7. Upon submission of the outstanding tax returns, SARS selected the returns for verification. The taxpayer submitted the requested documents to SARS. We further confirm that SARS, through their attorneys of record, has advised the taxpayer representatives that all documentation and information exchanged between the offices of the taxpayer's attorneys and the attorneys for SARS insofar as tax returns and related information are concerned are considered as acceptable and for the taxpayer's attorneys to continue communication with the duly appointed attorneys representing SARS.

8. SARS has decided not to reduce the assessments for the 2020 and 2021 in terms of the request by the taxpayer as represented by the return submitted on 28 October 2022. As a result, the original estimated assessments will stand.

9. SARS, through its e-filing system, incorrectly adjusted the assessments for the 2021 by reducing the original estimated assessment raised in terms of section 91 read with 95(1)(a). SARS will be reinstating the 2021 assessment that was reduced to nil, to reflect the assessment as per the letter of assessment dated 08 July 2022.

10. In terms of section 95(8) of the TA Act, the date of the assessment is considered to be the date that SARS informs the taxpayer of the decision not to reduce the assessment, being the date of this letter.

11. Chapter 9 of the TA Act provides appropriate remedies to the taxpayer should it wish to invoke its right to do so.

## B. OBJECTIONS

12. Should the taxpayer wish to lodge an objection against the assessments, the objection must comply with all the requirements of section 104 of the TA Act. For the objection to be valid, detailed grounds based on facts and law should be submitted, accompanied by supporting documentation.

13. The notice of objection (DISP01) must be in writing and be accompanied by a duly completed DISP01 form, within 30 business days of this letter.

## C. CORRESPONDENCE AND QUERIES

14. You are requested to address all correspondence and to provide all documentation, representations and/or information to SARS' attorneys of record by way of Ms Mari Wilsnach from Diale Mogashoa Inc., **with e-mail address mari@dm-inc.coza and contact cell phone number: 083 643 5440**.

15. Kindly refrain from submitting any documentation to any other person and/or SARS office, as such will be deemed not to have been received.

Yours faithfully

**Otladisa Patrick Leshomo**
**Specialist (IEA) (Tax)**

**Tidimalo Mahlangu**
**Manager (IEA) (Tax)**

**ISSUED ON BEHALF OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

1893 EST.

# MOSTERT & BOSMAN

ATTORNEYS | TRUSTED ADVICE BY COMMITTED PEOPLE

**MESSRS DIALE MOGASHOA ATTORNEYS**

**BY E-MAIL: noluthando@dm-inc.co.za; mari@dm-inc.co.za; sebushi@dm-inc.co.za; Madimpe Mogashoa <madimpe@dm-inc.co.za>; Ncebakazi Mbebe <ncebakazi@dm-inc.co.za>; Micaela Cloete <Micaela@dm-inc.co.za>; Devin Wykerd <Devin@dm-inc.co.za>; Idah Maake idah@dm-inc.co.za**

Date: 27 January 2023

Our Ref: P DU TOIT/Antoinette/WJ2301

Email: antoinettee@mbalaw.co.za

Your Ref: MTI/MW/NM/SARS/M14821

Dear Sir/Madam

**RE: MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION):**

**REQUEST FOR REASONS FOR ASSESSMENTS IN TERMS OF RULE 6 OF RULES PROMULGATED UNDER SECTION 103 OF THE TAX ADMINISTRATION ACT, 28 OF 2011 ("THE RULES")**

1. We refer to the above matter and to previous correspondence exchanged in regard thereto. In particular, we also refer to the following documents:

   1.1. SARS' Finalisation of Audit Letter dated 11 July 2022 ("**the letter of audit**");

1893 EST.

4th floor, Madison Square, Cnr of Carl Cronje & Tygerfalls Boulevard, Tygerfalls, Tyger Waterfront, Bellville, South Africa
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Associates: Morné Strydom | Melissa Colyn | Callie Lloyd | Johann Steyn | Michelle Birkenstock
Jacky Labuschaigne | Elizabeth Martin | Kruger van Dyk
Office Manager: Charl Hambridge

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1.2. The assessments issued by SARS for the 2020 and 2021 years of assessment of Mirror Trading International (Pty) Ltd (in liquidation) (**"MTI"**) in terms of section 95(1) of the Tax Administration Act, 28 of 2011 (**"the TAA"**) (**"the estimated assessments"**);

1.3. The income tax returns submitted on behalf of MTI on 28 October 2022 in terms of section 95(6) of the TAA in respect of its 2020 and 2021 years of assessment (**"the relevant returns"**);

1.4. The reduced assessment issued by SARS for MTI's 2021 year of assessment (**"the 2021 reduced assessment"**); and

1.5. SARS' letter on 22 December 2022 in which its decision not to make reduced or additional assessments in respect of each of the 2020 and 2021 years of assessment of MTI, as contemplated in section 95(8) of the TAA, was conveyed to us.

2. We further record that:

2.1. On 8 November 2022, you informed us, after we had submitted the relevant returns, that if the MTI liquidators do not agree with the estimated assessments issued by SARS, they should proceed to file an objection against the said assessments;

2.2. On 9 November 2022, we advised that we regard your aforesaid advices as notice of SARS' decision not to make any reduced assessments, as contemplated in section 95(8) of the TAA, and that we therefore regard the date of assessment in respect of each of the estimated assessments as 8 November 2022. In so doing, the MTI liquidators also accepted that SARS

stands by what was set out in the letter of audit. Despite having requested you to confirm that our understanding is correct, you did not, before 22 December 2022, respond to our aforesaid letter; and

2.3. Despite, further, what you had conveyed to us in your letter on 8 November 2022, SARS issued the 2021 reduced assessment on MTI's e-Filing page. The 2021 reduced assessment and the 2021 estimated assessment obviously differ from one another and we requested you to clarify, in our letter of 15 November 2022, which of the aforesaid assessments stand as SARS' assessment for the 2021 tax year; and

2.4. SARS letter of 22 December 2022 have since superseded the aforesaid correspondence and clarified the uncertainties which existed as follows:

2.4.1. It is understood and accepted by the MTI liquidators that the 2021 reduced assessment was issued in error, and that the assessment for the 2021 tax year on which SARS relies and which stands remains the 2021 estimated assessment issued by SARS on 8 July 2022;

2.4.2. In the same vein, the assessment for the 2020 tax year remains the 2020 estimated assessment issued by SARS on 8 July 2022; and

2.4.3. The date of assessment in respect of each of the 2020- and 2021 estimated assessments is 22 December 2022, being the date of SARS above referenced letter to us, as contemplated in section 95(8) of the TAA.

2.5. Should SARS disagree with the aforesaid recordals, we request that you urgently indicate so and specify in which respect SARS differs with that which is set out above.

3. We are instructed by the liquidators to request SARS to furnish us with the reasons for the estimated assessments for the 2020 and 2021 years of assessment to enable them to formulate their objection thereto, as contemplated in terms of Rule 6 of the Rules. **This letter therefore constitutes and should be regarded as such a request in terms of Rule 6.**

4. Whilst this request for reasons is made pursuant to the provisions of Rule 6, the election of the MTI liquidators to do so instead of requesting reasons in terms of section 5 of the Promotion of Administrative Justice Act, 3 of 2000 ("**PAJA**") should not be construed as the MTI liquidators abandoning any rights which they may have under PAJA. For all intents and purposes, the reasons for the assessments by SARS requested herein and which stand to be furnished by SARS in response hereto will be regarded by the MTI liquidators to also constitute SARS' reasons for its administrative actions in terms of section 5 of PAJA. Should SARS contend that the reasons they furnish under Rule 6 and those under section 5 of PAJA somehow differ from one another, we request that this be clearly pointed out by you in your response hereto.

5. The reasons to be provided by SARS under rule 6 must be sufficiently detailed to enable a taxpayer to formulate a comprehensive objection. Therefore, without derogating from the generality of the request for reasons for the estimated assessments and the 2021 reduced assessment, SARS is required to clarify the following and to furnish its reasons for the said assessments in respect of the following specific issues:

5.1. In the letter of audit by which SARS stands, deduction of estimated expenses in each of the 2020 and 2021 tax years are permitted in respect of payments made by MTI to members (at paragraph 41 of the letter of audit). In the returns submitted on behalf of MTI, expenses amounting to R1,199,751 was claimed in the 2020 tax year (pertaining to, *inter* alia, accommodation and travel expenses, consulting and legal fees, accounting charges, banking charges and computer expenses) and in the 2021 tax year, R15,125,660 (pertaining to, *inter alia*, accommodation and travel expenses, administrative service fees, consulting and legal fees, employee expenses, accounting charges, banking charges and computer expenses) were claimed. SARS' reasons for not allowing any of these expenses (i.e., the expenses other than those claimed in the returns under the section "*special allowances not claimed in the income statement*") for both the 2020 and 2021 tax years are requested.

5.2. For what reason has SARS refused to permit the deduction of the trading loss of 566.66 bitcoin suffered by MTI (as a result of its trading through FX Choice Ltd in Belize, which is common cause having regard to paragraph 20 of the letter of audit) in terms of section 11(a) and section 23(g) of the Income Tax Act, 58 of 1962 ("**the IT Act**")?

5.3. Considering the principle pronounced by the SCA in **Fourie NO v Edeling,** [2006] 4 All SA 393 (SCA) (at par 13) that an investor has an immediate claim for repayment of his/her/its investment against an unlawful scheme in which he/she/it invested (and in terms whereof the relevant scheme incurs an immediate liability or obligation to repay such investment) and also considering the allowance by SARS as deductions under Section 11(a) read with Section 23(g) of the IT Act, those transfers by MTI back to its members' wallets, what are SARS' reasons for refusing to allow all claims which came

into existence in favour of the bitcoin investors in MTI as deductions under section 11(a), read with section 23(g), of the IT Act, as claimed in each of the returns under the heading *"special allowances not claimed in the income statement"*?

5.4. In as far as SARS had allowed payments/transfers of bitcoin actually made to MTI's members before its liquidation, but did not allow claims by members which were due and payable, but not yet paid as at the date of MTI's liquidation, SARS is requested to provide its reasons for not also allowing the due and payable, but unpaid claims of investors as deductions under Section 11(a), read with Section 23(g) of the IT Act?

5.5. Since it is common cause that MTI, from its inception, *"...conducted a fraudulent and unlawful scheme...designed to profit from ill-gotten members' bitcoin..."* (as set out in the letter of audit at paragraph 29), what are SARS' reasons for contending that the embezzlement of bitcoin by MTI's senior management is not sufficiently causally connected to the illegal income earning activities of MTI so that the losses sustained as a result of such embezzlement are not deductible in terms of section 11(a) read with section 23(g) of the IT Act?

5.6. What are SARS' reasons for not regarding the receipt of bitcoin deposited by the members of MTI as being capital in nature and therefore, that such deposits be excluded from the definition of "gross income" in section 1 of the IT Act?

5.7 SARS contended, in its letter of audit, that it estimated MTI's income since returns had not been submitted (at paragraph 35 thereof) at the time. Despite the relevant returns having been submitted in which MTI's income is

reflected in an amount different to that which SARS estimated for both the 2020 and 2021 tax years, SARS persisted with its estimated amounts of income. SARS is requested to furnish reasons for its decision to not accept the amount of income declared by MTI in the relevant returns.

6. For the sake of completeness and to ensure full compliance with the provisions of Rule 6:

6.1. This letter will be uploaded on MTI's e-Filing page in support of its request for reasons for the estimated assessments in addition to being transmitted to you by e-mail; and

6.2. The address elected by the MTI liquidators whereat they wish to receive the requested reasons, are hereby confirmed as care of our offices, the details of which appear on page 1 of this letter.

7. We look forward to receipt of SARS' reasons as requested herein.

Yours faithfully

**MOSTERT & BOSMAN**

Per: **PIERRE DU TOIT**

**MIRROR TRADING INTERNATIONAL (PTY) LTD - (IN LIQUIDATION)**
**MASTER'S REFERENCE NUMBER: C906/2020**

**RESOLUTIONS SUBMITTED AT THE SECOND MEETING OF CREDITORS AND MEMBERS, IN TERMS OF SECTION 402 OF THE COMPANIES ACT, ACT 71 OF 1973, AS AMENDED, TO BE HELD BEFORE THE MASTER OF THE HIGH COURT CAPE TOWN, ON FRIDAY, THE 10TH OF DECEMBER 2021 AT 09H00.**

---

**RESOLVED:**

1. That all actions of whatsoever nature heretofore taken by the liquidators and also as set out in the report, to which these Resolutions are attached, be and are hereby confirmed, ratified and approved of.
2. That the liquidators be and are hereby granted the authority and shall be vested with all the powers mentioned in the Companies Act 61 of 1973, as amended.
3. That the liquidators be and are hereby authorized to engage the services of Attorneys, Accountants and/or Counsel and/or Recording Agents, as they may deem necessary the purpose of:
   a. taking any legal opinion that may be considered necessary in the interest of the estate;
   b. instituting or defending on behalf of the Company any action or other legal proceedings of a civil nature, and subject to the provisions of any law relating to criminal procedure, any criminal proceedings;
   c. holding enquiries and examinations in terms of Sections 415, 416, 417 and 418 of the Companies Act, 61 of 1973, as amended, or as read in conjunction with the Insolvency Act nr. 24 of 1936, as amended and to appoint attorneys and counsel and also accountants and any other advisers, to act on their behalf in regard to such enquiries and at the cost of the Company to assist them in regard to such enquiries, and particularly to hold an enquiry as envisaged in the report to creditors, to which these resolutions are attached;
   d. to draw any contracts and sign any documents as may be necessary;
   e. for any purpose, in doing searches at the Deeds Offices, Registrar of Companies and other registry, as they in his/their sole and absolute discretion may deem necessary, all costs so incurred to be costs in the liquidation;
   f. for any other purpose whatsoever, as they, in their sole discretion, may deem fit;
   g. that the liquidators be duly authorized to agree any tariff and/or scale of rates to be used in determination of any legal or other fees, and in their sole discretion to agree the quantum of such fees, which legal fees shall be on an attorney and own client basis;
   h. all costs incurred to be treated as administration costs of the estate;
4. That the liquidators be and are hereby authorized and empowered to investigate any apparent voidable and/or undue preference and/or any disposition of property, and to take any steps which they in their absolute discretion may deem necessary, including the institution of legal actions 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 actions or abandon the same at any time as they in their sole discretion may deem fit, all costs so incurred to be costs in the liquidation. The costs referred to herein being subject to the same conditions and/or he same scales as are set out above.

5. That the liquidators be and are hereby authorized to collect any outstanding debts due to the Company in liquidation, and for the purpose thereof, to sell or compound any of these debts for such sum, and on such terms and conditions, as they in their sole discretion may deem fit, or to abandon any claims which they in their sole discretion may deem to be irrecoverable, and to appoint debt collectors in their sole discretion to assist them in the recovery of outstanding debts, and to take all necessary steps on the terms and provisions as they in their sole discretion as liquidators may deem fit, to ensure the maximum debt collections, or to institute Legal Action and/or employ attorneys and/or counsel in connection with the recovery of the debts, and to proceed to the final end or determination of any such legal action instituted or to abandon the same at any time as they in their sole discretion may deem fit, all costs to incurred to be costs in the liquidation. The costs referred to herein being subject to the same conditions and on the same scales as are set out above.

6. That the liquidators be and are hereby authorized to sequestrate the estate of any person or liquidate any Company in order to recover any monies due to the Company where they consider/s it necessary and that the costs in relation thereto be costs in the liquidation. The costs referred to herein being subject to the same conditions and on the same scale as are set out above.

7. That the liquidators be and are hereby authorized to engage the services of bookkeepers, accountants and auditors, consultants, document managers, IT consultants and any other advisers to investigate and write up the books of the Company as may be required, and if necessary, to produce an audited balance sheet as at the date of liquidation, either for the purpose of investigating the affairs of the Company, establishing the claims of creditors, or any other purpose as they in their sole discretion may deem fit, all costs incurred in relation thereto to be costs in the liquidation. The liquidators, in their sole discretion, may agree the costs with the relevant service providers and advisers on behalf of the Company. The Liquidators be and are hereby authorized and instructed to pay the costs for and relating to preparing creditor claims and representing creditors, and preparing for same, at meetings and assisting in regard to the payment of their dividends, as a cost of administration from the assets of the estate. All costs incurred in connection with any such services and service providers to be treated as costs of the administration of the estate. The costs referred to herein being subject to the same conditions and on the same scale as are set out in 3.g above.

8. That the liquidators be and are hereby authorized to sell or in any other way dispose of any immovable or movable assets of the Company, whether as going concerns, or otherwise, or whether separately or jointly with any other person or corporate entity, and on such terms and conditions as the liquidators in their sole discretion may decide on and particularly in their sole discretion, should they decide to sell or otherwise dispose of any such asset, jointly with any other person or corporate entity, on the method and quantum of division, of the total consideration, by public auction, tender or private treaty and on such terms and conditions as the liquidators in their sole discretion may deem fit and any other costs thereof which they, in their sole discretion may deem fit and any other costs thereof which they, in their sole discretion cannot pass over, to be costs of liquidation.

9. That the Liquidators be and is/are hereby authorized to sell any immovable property as per the instructions given by the secured creditor at any given time. This includes the proceeding to public auction by the auctioneers nominated by the secured creditor. In such an event the secured creditor will have the opportunity to assess the offer and decide to buy the property in or instruct the liquidator to further market the property and / or proceed with a second auction at a later stage.

10. That the liquidators, in the case of the sale of any immovable property by the estate, and where the liquidators contract that they as sellers shall be entitled to nominate the conveyancers to do the conveyancing of the property to be purchaser, shall be entitled to instruct attorneys, to effect such registration of transfer on condition that the purchaser pays all cost or transfer and that the seller estate has no liability for such costs of transfer or any part thereof.

11. That the liquidators are furthermore authorized in their sole discretion to abandon any asset for which they can find no purchaser, or which is not practical to sell, the costs of which are the costs of the liquidation.

12. That in the event of any asset which is subject of a mortgage bond, pledge or any other form of security not realizing sufficient to pay the claim of the secured creditors, plus the pro rata share of the costs of administration in full, that the liquidators be and are hereby authorized in their discretion to sell such asset to the creditor concerned at an agreed valuation, subject to the payment by such creditor of pro rata of the costs of administration in terms of Section 89 of the Insolvency Act, as amended.

13. That the said liquidators be and are hereby authorized and empowered in their sole discretion to compromise or admit any claim against the Company, whether liquidated or unliquidated arising from any guarantee, damages claim or any other cause whatsoever, as a liquidated claim in terms of Section 78 (3) of the Insolvency Act, as amended, at such amount as may be agreed upon by both the creditor concerned and the liquidators, and to accept payment of any claims, due to the Company by way of delivery or issue of shares and to appoint any directors to any subsidiary companies, as the liquidators may deem necessary and to sell any subsidiaries on such terms and conditions as they in their sole discretion, on behalf of the Company, deem fit. In view of the large number of MTI members and the fact that back-office data is available, the liquidators be and are herby authorized and empowered to use the following procedure for proof of claims against the estate, instead of any other method or in addition thereto as they may decide namely:

    a) Appoint a suitable data service provider with knowledge of insolvency claims to be provided with a copy the back-office database and to use that data for further analysis of what the claim of every MTI member should be, and which person received dispositions that may be set aside, with instructions to prepare for every MTI member a statement of transactions in a format that is easy to follow.

    b) The data service provider to compare all existing claims to the result of the said statement of transactions and to provide a report with recommendations of which claims may be admitted at which amounts.

    c) If the MTI member has already submitted a claim for an amount that agrees with the amount so recommended the liquidators may admit such claim at that amount.

    d) If the MTI member has already submitted a claim for an amount that does not agree with the amount recommended, the liquidators must advise the MTI member accordingly and provide a copy of the aforesaid statement of transactions and invite the member to provide further information and debate the correct amount of the claim according to such suitable procedure as may be determined by the liquidators on a case-by-case basis. Such advice should also be digital only without paper, to be produced by the data service provider in such format as directed by the liquidators.

    e) For those members that have not yet submitted claims, the liquidators must send to each such member a copy for the aforesaid statement of transactions and invite the member to indicate whether the member agrees with the statement and whether the member wishes his or her claim to be admitted against the estate.

    f) Such statements or claims will be kept in digital format only and need not be printed. They must however all be saved in an archive PDF format and retained as part of the records of the estate.

14. That the liquidators are authorized to take all such other steps and to do such other acts as they in their sole discretion on behalf of the Company, may deem fit, and at the cost of the Company.

15. That the Liquidators be and are hereby authorized to make application for the destruction of the books and records of the Company, six months after confirmation of the Final Account;

16. That any excess in premiums and stamp duty on Security Bonds or Asset Insurance, which is more than that provided for in Rule 31, laid down by the Master of the High Court, be and are hereby authorized as an administration expense of the estate.

17. That the actions of the liquidators in employing nightwatchmen/security guards to protect the premises and assets of the Company, be and are hereby approved and ratified, all costs relating thereto, to be the costs in the liquidation.

18. That the actions of the Liquidator in advertising, calling for tenders for the purchase of the business and/or assets of the Company, be and are hereby approved and ratified, all costs so incurred to be costs in the liquidation.

19. That the actions of the provisional liquidators and/or liquidators in having disposed of assets, shares and loan accounts, prior to the date of this meeting, be and are hereby approved and ratified, all costs incurred in relation thereto to be costs of the liquidation.

20. That the actions of the provisional liquidators and/or liquidators in continuing the business of the Company and retaining staff be and are hereby approved and ratified, all costs so incurred to be the costs of liquidation.

21. That the actions of the provisional liquidators and/or liquidators in employing salesmen and administration personnel and generally to protect the interests of creditors be and are hereby approved and ratified and the fees of such personnel to be costs in the liquidation.

22. That the liquidators be and are hereby authorized and empowered to continue such the business of the Company from the date of liquidation until such time as creditors instruct them to the contrary or until such time as the assets are realized and to do all things which they in their sole discretion may deem necessary for the successful continuation of the business (all costs incurred to be costs in the liquidation) and without restricting the generalities of their powers, he/they are hereby specifically authorized;

22.1 To discharge and engage employees and to fix their remuneration;

22.2 To continue the lease of the Company's premises until such time as it is decided to determine the lease.

22.3 The employ persons to undertake the physical count and valuation of stock in trade at the beginning and end of any trading period subsequent to the date of liquidation of the Company.

22.4 To employ persons to prepare an inventory or inventories of all movable assets of the Company.

22.5 Generally, to do all things which they in their discretion may deem necessary to determine the lease.

23. That the liquidators and/or liquidators are hereby indemnified against any losses and/or claims for damages resulting from the continuation of the Company's business, all such losses and damages to be costs in the liquidation.

24. That the liquidator/s are hereby authorized to submit for determination and/or arbitration any dispute concerning the estate or any claim or demand by or upon the estate and that any costs so incurred to be costs of administration and paid for by the estate.

25. That the further administration of the affairs of the Company be left entirely in the hands and at the discretion of the liquidators.

26. That the liquidators are hereby authorized to appoint a representative on behalf of creditors to attend creditors meetings and tender the cost.

27. It is resolved that the Liquidators "out of pocket" expenses be regarded as items of expenditure and may be charged as administration costs that would include: -

The costs of agents to obtain: -

27.1 ITC searches and documents

27.2 Credit Inform searches

27.3 Cipro searches

27.4 Deeds Office searches

27.5 Natis document searches

28. The costs of the use of couriers for the delivering and acceptance of any document or parcel on behalf Estate when the local postal service is not used;

29. Travelling expenses which include time, fuel, kilometers, toll fees, airfares and accommodation.

30. Interest be charged on all funds and monies advanced by any person or company at prime rate till payment thereof.

The liquidator's Resolutions for adoption by creditors were presented and approved of.

ADOPTED ON BEHALF OF CREDITORS;

For liquidators, present at 2nd meeting, not voting
A.O Smit Unger

ADOPTED ON BEHALF OF MEMBERS:

PRESIDING OFFICER:

MASTER OF THE WESTERN CAPE HIGH COURT
CAPE TOWN
2022 -02- 04
A.M: INSOLVENT ESTATES 3
MEESTER VAN DIE WES KAAP HOË HOF

HC97

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 7689/2023

The application between:

| | |
|---|---|
| **H BESTER N.O.** | First applicant |
| **AW VAN ROOYEN N.O.** | Second applicant |
| **CJ ROOS N.O.** | Third applicant |
| **JF BARNARD N.O.** | Fourth applicant |
| **D BASSON N.O.** | Fifth applicant |
| **CBS COOPER N.O.** | Sixth applicant |
| **K TITUS N.O.** | Seventh applicant |
| **DS NDLOVU N.O.** | Eighth applicant |

(cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | First respondent |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | Second respondent |

## FILING NOTICE

**BE PLEASED TO TAKE NOTICE** that the following Confirmatory Affidavits are hereby presented for filing:

MOSTERT & BOSMAN
PER: PIERRE DU TOIT
TEL: 021-914-3322
E-MAIL: antoinettee@mbalaw.co.za

1. Adriaan Willem van Rooyen;

2. Christopher James Roos;

3. Chavonnes Badenhorst St Clair Cooper;

4. Deidre Basson;

5. Jacolien Frieda Barnard;

6. Daniel Sandile Ndlovu; and

7. Kevin Titus.

8. Reece Luke Lechet

DATED AT BELLVILLE ON THIS 17TH DAY OF MAY 2023.

**MOSTERT & BOSMAN**
***ATTORNEYS FOR APPLICANTS***
PER: PIERRE DU TOIT
FOURTH FLOOR, MADISON SQUARE
CNR CARL CRONJE & TYGERFALLS BOULEVARD
TYGERVALLEY, **BELLVILLE**
(REF: PIERRE DU TOIT / AE / WJ2301)
E-MAIL: antoinettee@mbalaw.co.za
**C/O MACROBERT INC.**
THE WEMBLEY
3RD FLOOR, SOLAN ROAD
**CAPE TOWN**
(REF: G. VAN DER MERWE)

**TO:** **THE REGISTRAR**
**HIGH COURT**
**CAPE TOWN**

**AND TO:** **THE MASTER OF THE HIGH COURT**
*FIRST RESPONDENT*
DULLAH OMAR BUILDING
45 CASTLE STREET
**CAPE TOWN**
**MASTER'S REF: C906/2020** **BY E-MAIL**

**AND TO:** **THE COMMISSIONER FOR THE**
**SOUTH AFRICAN REVENUE SERVICE**
*SECOND RESPONDENT*
KHANYSIA BUILDING
271 BRONKHORST STREET
NIEUW MUCKLENEUK
PRETORIA
**C/O DIALE MOGASHOA ATTORNEYS**
*SECOND RESPONDENT'S ATTORNEYS*
8TH FLOOR, CONVENTION TOWER
CNR HEERENGRACHT & WALTER SISULU AVE
**CAPE TOWN**
**REF: MM / MW / M14821** **BY E-MAIL**

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: _____

The application between:

| | |
|---|---|
| **H BESTER N.O.** | First Applicant |
| **AW VAN ROOYEN N.O.** | Second Applicant |
| **CJ ROOS N.O.** | Third Applicant |
| **JF BARNARD N.O.** | Fourth Applicant |
| **D BASSON N.O.** | Fifth Applicant |
| **CBS COOPER N.O.** | Sixth Applicant |
| **K TITUS N.O.** | Sevent Applicant |
| **DS NDLOVU N.O.** | Eighth Applicant |

(cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | First Respondent |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | Second Respondent |

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

**ADRIAAN WILLEM VAN ROOYEN**

do hereby make oath and say that:

1. I am an adult male insolvency practitioner, practising as such at Investrust, 64 Stella Street, Brooklyn, Pretoria, Gauteng.

2. I depose to this affidavit in my capacity as duly authorized joint liquidator of Mirror Trading International (Pty) Ltd (in liquidation).

3. The content of this affidavit falls within my personal knowledge, save where the context indicates otherwise, and is to the best of my knowledge and belief true and correct.

4. I have read the Founding Affidavit of Herman Bester and confirm the correctness thereof insofar as it relates or refer to me.

**ADRIAAN WILLEM VAN ROOYEN**

I certify that the above signature is the true signature of **ADRIAAN WILLEM VAN ROOYEN** and that he acknowledged to me:

1. that he knows and understands the contents of this affidavit.
2. that he has no objection to taking the prescribed oath.
3. that he considers the prescribed oath to be binding to his/her conscience.

The deponent thereafter uttered the words: "I swear that the contents of this affidavit are true, so help me God". The deponent signed this affidavit in my presence at Pretoria on this 16 day of **MAY 2023.**

COMMISSIONER OF OATHS
16/05/2023

COMMISSIONER OF OATHS
CHRISTEL HUISAMEN
135 JACK HINDON STREET
PRETORIA NORTH
RO-23/09/2022

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: _____

The application between:

| | |
|---|---|
| **H BESTER N.O.** | First Applicant |
| **AW VAN ROOYEN N.O.** | Second Applicant |
| **CJ ROOS N.O.** | Third Applicant |
| **JF BARNARD N.O.** | Fourth Applicant |
| **D BASSON N.O.** | Fifth Applicant |
| **CBS COOPER N.O.** | Sixth Applicant |
| **K TITUS N.O.** | Sevent Applicant |
| **DS NDLOVU N.O.** | Eighth Applicant |

(cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | First Respondent |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | Second Respondent |

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

**CHRISTOPHER JAMES ROOS**

do hereby make oath and say that:

IN.S

1 I am an adult male insolvency practitioner, practising as such at Sebenza Trust, Unit 2A, 43 Estcourt Avenue, Wierda Park, Centurion, Gauteng.

2. I depose to this affidavit in my capacity as duly authorized joint liquidator of Mirror Trading International (Pty) Ltd (in liquidation).

3. The content of this affidavit falls within my personal knowledge, save where the context indicates otherwise, and is to the best of my knowledge and belief true and correct.

4. I have read the Founding Affidavit of Herman Bester and confirm the correctness thereof insofar as it relates or refer to me.

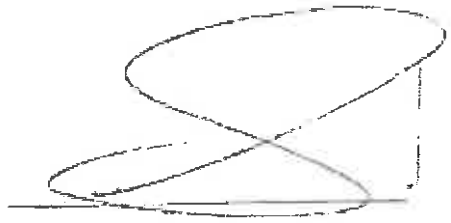
**CHRISTOPHER JAMES ROOS**

I certify that the above signature is the true signature of **CHRISTOPHER JAMES ROOS** and that he acknowledged to me:

1. that he knows and understands the contents of this affidavit.
2. that he has no objection to taking the prescribed oath.
3. that he considers the prescribed oath to be binding to his/her conscience.

The deponent thereafter uttered the words: "I swear that the contents of this affidavit are true, so help me God". The deponent signed this affidavit in my presence at Pretoria on this 12th day of **MAY 2023**.

3



COMMISSIONER OF OATHS

NICOLAAS STIGLINGH SWAN
COMMISSIONER OF OATHS
KOMMISSARIS VAN EDE
Prac. Attorney / Prak. Prokureur RSA
20 Melan Street / Melanstraat 20
Riviera, PRETORIA

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: _____

The application between:

| | |
|---|---|
| **H BESTER N.O.** | First Applicant |
| **AW VAN ROOYEN N.O.** | Second Applicant |
| **CJ ROOS N.O.** | Third Applicant |
| **JF BARNARD N.O.** | Fourth Applicant |
| **D BASSON N.O.** | Fifth Applicant |
| **CBS COOPER N.O.** | Sixth Applicant |
| **K TITUS N.O.** | Sevent Applicant |
| **DS NDLOVU N.O.** | Eighth Applicant |

(cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | First Respondent |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | Second Respondent |

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

**CHAVONNES BADENHORST ST CLAIR COOPER**

do hereby make oath and say that:

1 I am an adult male insolvency practitioner, practising as such at CK Trust (Pty) Ltd, 120 Edward Street, Tygervalley, Bellville, Western Cape.

2. I depose to this affidavit in my capacity as duly authorized joint liquidator of Mirror Trading International (Pty) Ltd (in liquidation).

3. The content of this affidavit falls within my personal knowledge, save where the context indicates otherwise, and is to the best of my knowledge and belief true and correct.

4. I have read the Founding Affidavit of Herman Bester and confirm the correctness thereof insofar as it relates or refer to me.

**CHAVONNES BADENHORST ST CLAIR COOPER**

I certify that the above signature is the true signature of **CHAVONNES BADENHORST ST CLAIR COOPER** and that he acknowledged to me:

1 that he knows and understands the contents of this affidavit.

2. that he has no objection to taking the prescribed oath.

3. that he considers the prescribed oath to be binding to his/her conscience.

The deponent thereafter uttered the words: "I swear that the contents of this affidavit are true, so help me God". The deponent signed this affidavit in my presence at Bloemfontein on this 15 day of **MAY 2023.**

**STACY SAFFY**
HONEY CHAMBERS BLOEMFONTEIN
KENNETH KAUNDA DRIVE
COMMISSIONER OF OATHS
KOMMISSARIS VAN EDE
PRACTISING ATTORNEY R.S.A.
PRAKTISERENDE PROKUREUR R.S.A

**COMMISSIONER OF OATHS**

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No:

The application between:

| | |
|---|---|
| **H BESTER N.O.** | First Applicant |
| **AW VAN ROOYEN N.O.** | Second Applicant |
| **CJ ROOS N.O.** | Third Applicant |
| **JF BARNARD N.O.** | Fourth Applicant |
| **D BASSON N.O.** | Fifth Applicant |
| **CBS COOPER N.O.** | Sixth Applicant |
| **K TITUS N.O.** | Sevent Applicant |
| **DS NDLOVU N.O.** | Eighth Applicant |

(cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | First Respondent |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | Second Respondent |

**CONFIRMATORY AFFIDAVIT**

I, the undersigned,

**DEIDRE BASSON**

do hereby make oath and say that:

1. I am an adult female insolvency practitioner, practising as such at Tswane Trust Co., 1207 Cobham Road, Queenswood, Pretoria, Gauteng.

2. I depose to this affidavit in my capacity as duly authorized joint liquidator of Mirror Trading International (Pty) Ltd (in liquidation).

3. The content of this affidavit falls within my personal knowledge, save where the context indicates otherwise, and is to the best of my knowledge and belief true and correct.

4. I have read the Founding Affidavit of Herman Bester and confirm the correctness thereof insofar as it relates or refer to me.

**DEIDRE BASSON**

I certify that the above signature is the true signature of **DEIDRE BASSON** and that she acknowledged to me:

1. that she knows and understands the contents of this affidavit.
2. that she has no objection to taking the prescribed oath.
3. that she considers the prescribed oath to be binding to his/her conscience.

The deponent thereafter uttered the words: "I swear that the contents of this affidavit are true, so help me God". The deponent signed this affidavit in my presence at Pretoria on this 15th day of **MAY 2023**.

3

COMMISSIONER OF OATHS

Commissioner of Oaths
LEAH HLARENG MAPHOSA
Ad - Hoc: Liquidator
(Ref 62/10/2016 Pretoria)
1207 Cobham Road
Queenswood, Pretoria
0186

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: _____

The application between:

| | |
|---|---|
| **H BESTER N.O.** | First Applicant |
| **AW VAN ROOYEN N.O.** | Second Applicant |
| **CJ ROOS N.O.** | Third Applicant |
| **JF BARNARD N.O.** | Fourth Applicant |
| **D BASSON N.O.** | Fifth Applicant |
| **CBS COOPER N.O.** | Sixth Applicant |
| **K TITUS N.O.** | Sevent Applicant |
| **DS NDLOVU N.O.** | Eighth Applicant |

(cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | First Respondent |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | Second Respondent |

**CONFIRMATORY AFFIDAVIT**

I, the undersigned,

**JACOLIEN FRIEDA BARNARD**

do hereby make oath and say that:

1. I am an adult female insolvency practitioner, practising as such at Barn Trustees,.310 Soutpansberg Road, Pretoria, Gauteng.

2. I depose to this affidavit in my capacity as duly authorized joint liquidator of Mirror Trading International (Pty) Ltd (in liquidation).

3. The content of this affidavit falls within my personal knowledge, save where the context indicates otherwise, and is to the best of my knowledge and belief true and correct.

4. I have read the Founding Affidavit of Herman Bester and confirm the correctness thereof insofar as it relates or refer to me.

JACOLIEN FRIEDA BARNARD

I certify that the above signature is the true signature of **JACOLIEN FRIEDA BARNARD** and that she acknowledged to me:

1. that she knows and understands the contents of this affidavit.
2. that she has no objection to taking the prescribed oath.
3. that she considers the prescribed oath to be binding to his/her conscience.

The deponent thereafter uttered the words: "I swear that the contents of this affidavit are true, so help me God". The deponent signed this affidavit in my presence at Pretoria on this 16th day of **MAY 2023.**

SALMAA MOOSA
COMMISSIONER OF OATHS EX OFFICIO
ATTORNEY OF THE HIGH COURT
147 MARAIS STREET
BROOKLYN
PRETORIA 0181

COMMISSIONER OF OATHS

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: _____

The application between:

| | |
|---|---|
| **H BESTER N.O.** | First Applicant |
| **AW VAN ROOYEN N.O.** | Second Applicant |
| **CJ ROOS N.O.** | Third Applicant |
| **JF BARNARD N.O.** | Fourth Applicant |
| **D BASSON N.O.** | Fifth Applicant |
| **CBS COOPER N.O.** | Sixth Applicant |
| **K TITUS N.O.** | Sevent Applicant |
| **DS NDLOVU N.O.** | Eighth Applicant |

(cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | First Respondent |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | Second Respondent |

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**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

**DANIEL SANDILE NDLOVU**

do hereby make oath and say that:

1. I am an adult male insolvency practitioner, practising as such at Siyakhula Administrators, 28 Wale Street, Cape Town, Western Cape.

2. I depose to this affidavit in my capacity as duly authorized joint liquidator of Mirror Trading International (Pty) Ltd (in liquidation).

3. The content of this affidavit falls within my personal knowledge, save where the context indicates otherwise, and is to the best of my knowledge and belief true and correct.

4. I have read the Founding Affidavit of Herman Bester and confirm the correctness thereof insofar as it relates or refer to me.

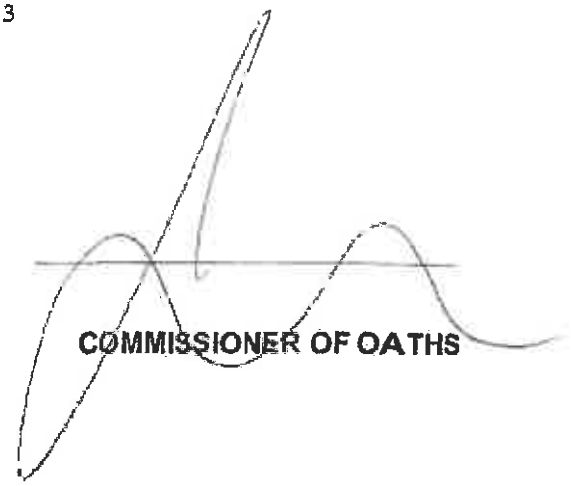
**DANIEL SANDILE NDLOVU**

I certify that the above signature is the true signature of **DANIEL SANDILE NDLOVU** and that he acknowledged to me:

1. that he knows and understands the contents of this affidavit.
2. that he has no objection to taking the prescribed oath.
3. that he considers the prescribed oath to be binding to his/her conscience.

The deponent thereafter uttered the words: "I swear that the contents of this affidavit are true, so help me God". The deponent signed this affidavit in my presence at Cape Town on this 15 day of **MAY 2023.**

3



COMMISSIONER OF OATHS

KOMMISSARIS VAN EDE / COMMISSIONER OF OATHS
Alicia Snyman
PRAKTISERENDE PROKUREUR
PRACTISING ATTORNEY
HEYNS & VENNOTE ING /HEYNS & PARTNERS INC.
WAALBURG BUILDING, 2nd FLOOR
28 WALE STREET, CAPE TOWN
Wes-Kaap / Western Cape
Republiek van Suid-Afrika / Republic of South Africa

I

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: _____

The application between:

| | |
|---|---|
| **H BESTER N.O.** | First Applicant |
| **AW VAN ROOYEN N.O.** | Second Applicant |
| **CJ ROOS N.O.** | Third Applicant |
| **JF BARNARD N.O.** | Fourth Applicant |
| **D BASSON N.O.** | Fifth Applicant |
| **CBS COOPER N.O.** | Sixth Applicant |
| **K TITUS N.O.** | Sevent Applicant |
| **DS NDLOVU N.O.** | Eighth Applicant |

(cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | First Respondent |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | Second Respondent |

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

**KEVIN TITUS**

do hereby make oath and say that:

1. I am an adult male insolvency practitioner, practising as such at Titus & Associates Attorneys, 2nd Floor, Waalburg Building, 28 Wale Street, Cape Town, Western Cape.

2. I depose to this affidavit in my capacity as duly authorized joint liquidator of Mirror Trading International (Pty) Ltd (in liquidation).

3. The content of this affidavit falls within my personal knowledge, save where the context indicates otherwise, and is to the best of my knowledge and belief true and correct.

4. I have read the Founding Affidavit of Herman Bester and confirm the correctness thereof insofar as it relates or refer to me.

**KEVIN TITUS**

I certify that the above signature is the true signature of **KEVIN TITUS** and that he acknowledged to me:

1. that he knows and understands the contents of this affidavit.
2. that he has no objection to taking the prescribed oath.
3. that he considers the prescribed oath to be binding to his/her conscience.

The deponent thereafter uttered the words: "I swear that the contents of this affidavit are true, so help me God". The deponent signed this affidavit in my presence at CAPE TOWN on this 17 day of **MAY 2023.**

**COMMISSIONER OF OATHS**

Sithandiwe Bobotyana
Commissioner of Oaths
Practising Attorney
2nd Floor, Waalburg Building
28 Wale Street
Cape Town 8001

HC97

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 7689/2023

The application between:

| | |
|---|---|
| **H BESTER N.O.** | First applicant |
| **AW VAN ROOYEN N.O.** | Second applicant |
| **CJ ROOS N.O.** | Third applicant |
| **JF BARNARD N.O.** | Fourth applicant |
| **D BASSON N.O.** | Fifth applicant |
| **CBS COOPER N.O.** | Sixth applicant |
| **K TITUS N.O.** | Seventh applicant |
| **DS NDLOVU N.O.** | Eighth applicant |

(cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | First respondent |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | Second respondent |

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

**REECE LUKE LECHET**

do hereby make oath and state that:

1. I am a male candidate attorney practising as such at Mostert & Bosman Attorneys situated at 4th Floor, Madison Square, cnr Carl Cronje Drive & Tyger Falls Boulevard, Tyger Valley, Western Cape, the Applicant's attorneys of record.

2. The facts contained herein are, except where otherwise stated, within my personal knowledge and to the best of my belief both true and correct.

3. I have read the affidavit **Herman Bester** and confirm the contents thereof in as far as it relates and/or refers to myself.

**REECE LUKE LECHET**

**SWORN** to and **SIGNED** before me at **BELLVILLE** on this the **17th** day of **MAY 2023** by the abovementioned deponent, who I certify, acknowledged that he knows and understands the contents of this Affidavit and that he has no objection to taking the prescribed oath which reads as follows: "I swear that the contents of this Affidavit are true, so help me God", and further that he acknowledges that he regards the prescribed oath as binding on his conscience, which oath was duly administered by me as required by law.

**COMMISSIONER OF OATHS**

Ex Officio COMMISSIONER OF OATHS (RSA)
**CHARL THOMAS HAMBRIDGE**
(Member) Chartered Management Accountant
Business Consultant
CTH Consulting
25 Dolfyn Street, Yzerfontein
Western Cape, 7351

HC97

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 7689/2023

The application between:

| | |
|---|---|
| **H BESTER N.O.** | First applicant |
| **AW VAN ROOYEN N.O.** | Second applicant |
| **CJ ROOS N.O.** | Third applicant |
| **JF BARNARD N.O.** | Fourth applicant |
| **D BASSON N.O.** | Fifth applicant |
| **CBS COOPER N.O.** | Sixth applicant |
| **K TITUS N.O.** | Seventh applicant |
| **DS NDLOVU N.O.** | Eighth applicant |

(cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | First respondent |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | Second respondent |

---

**SERVICE AFFIDAVIT**

---

I, the undersigned,

**REECE LUKE LECHET**

do hereby make oath and say that :

1 I am a male candidate attorney, currently employed as such at Mostert & Bosman Attorneys ("Mostert & Bosman") situated at 4th Floor, Madison Square, cnr Carl Cronje Drive & Tygervalley Boulevard, Tyger Falls, Bellville, Western Cape.

2. Mostert & Bosman act as attorneys of record for the Applicants and wherefore I am duly authorized to depose to this affidavit.

3. The facts contained herein are, except where otherwise stated, within my personal knowledge and to the best of my belief both true and correct.

4. On Tuesday **16 May 2023** an electronic copy of the duly issued Notice of Motion, founding affidavit and annexures thereto in the abovementioned matter (**"the Application Papers"**) were transmitted electronically via e-mail to Diale Mogashoa, being the Second Respondent's attorneys of record and to the First Respondent. A copy of the relevant e-mails, without annexures, are annexed hereto marked **"RL1"** and **RL2"** respectively and a copy of Diale Mogashoa's e-mail acknowledging receipt, is annexed hereto marked **"RL3"**.

5. On Tuesday **16 May 2023** I also served a hard copy of the Application Papers on Diale Mogashoa Attorneys, situated at the 8th Floor, Convention Tower, Cape Town. This is evident from their acknowledgement of receipt on page 5 of the record.

6. On Wednesday **17 May 2023** I also served a hard copy of the Application Papers on the Master of the High Court, Cape Town, who is the first respondent in this matter. This is evident from their acknowledgement of receipt on page 4 of the record.

7. I therefore humbly submit that the Respondents in this matter have been duly notified of the hearing of this urgent Applicaton.

**REECE LUKE LECHET**

**SWORN** to and **SIGNED** before me at **BELLVILLE** on this the **18th** day of **MAY 2023** by the abovementioned Deponent, who I certify, acknowledged that he knows and understands the contents of this Affidavit and that he has no objection to taking the prescribed oath which reads as follows: "I swear that the contents of this Affidavit are true, so help me God", and further that he acknowledges that he regards the prescribed oath as binding on his conscience, which oath was duly administered by me as required by law.

**COMMISSIONER OF OATHS**

Ex Officio COMMISSIONER OF OATHS (RSA)
**CHARL THOMAS HAMBRIDGE**
(Member) Chartered Management Accountant
Business Consultant
CTH Consulting
25 Dolfyn Street, Yzerfontein
Western Cape, 7351

"RL1"

**Pierre du Toit**

| | |
|---|---|
| **From:** | Pierre du Toit |
| **Sent:** | Tuesday, 16 May 2023 17:41 |
| **To:** | Mari Wilsnach; Madimpe Mogashoa; Ncebakazi Mbebe; Noluthando Xolilizwe; Micaela Cloete; Idah Maake; Sebushi Lelaka; Devin Wykerd; Mmabatho Mtileni |
| **Subject:** | H BESTER N.O. & 7 OTHERS / THE MASTER OF THE HIGH COURT & ANOTHER (CASE NO: 7689/2023) |
| **Attachments:** | H BESTER N.O. & 7 OTHERS v THE MASTER OF THE HIGH COURT & ANOTHER (Case no. 7689~23).pdf |
| **Importance:** | High |

Dear Sir / Madam

We refer to the abovementioned matter.

Kindly find annexed hereto an urgent application as issued in the High Court, Cape Town.

We confirm that we have served a hard copy of the application on your offices earlier today.

Kindly acknowledge receipt hereof.

Regards

"RL2"

**Pierre du Toit**

| | |
|---|---|
| **From:** | Pierre du Toit |
| **Sent:** | Tuesday, 16 May 2023 17:43 |
| **To:** | Zmabusela@justice.gov.za |
| **Subject:** | H BESTER N.O. & 7 OTHERS / THE MASTER OF THE HIGH COURT & ANOTHER (CASE NO: 7689/2023) |
| **Attachments:** | H BESTER N.O. & 7 OTHERS v THE MASTER OF THE HIGH COURT & ANOTHER (Case no. 7689~23).pdf |
| **Importance:** | High |

Dear Mr Mabusela

We refer to the abovementioned matter.

Kindly find annexed hereto an urgent application as issued in the High Court, Cape Town.

We confirm that we will serve a hard copy at the Master's Office during the course of tomorrow.

Kindly acknowledge receipt hereof.

Regards

"RL3"

**Antoinette Engelbrecht**

**From:** Mari Wilsnach <mari@dm-inc.co.za>
**Sent:** Wednesday, 17 May 2023 11:05
**To:** Pierre du Toit
**Cc:** DM-INC SARS PROJECT
**Subject:** RE: H BESTER N.O. & 7 OTHERS / THE MASTER OF THE HIGH COURT & ANOTHER (CASE NO: 7689/2023)

Good day Mr. du Toit,

We acknowledge receipt of the application, thank you.

**Mari Wilsnach** | Director
**Mobile:** 083 643 5440
**Email:** mari@dm-inc.co.za
**Web:** www.dm-inc.co.za

DIALE MOGASHOA ATTORNEYS

PRETORIA: Menlyn Corner | 1st and 2nd Floors | No.87 Frikkie de Beer Street | Menlyn | F
Postal: Postnet Suite 101 | Private Bag X15 | Menlo Park | 0102 | Docex 49 Brooklyn
Tel: (012) 346 5436/5939 | Fax: (012) 346 5962 / (086) 260 7135

CAPE TOWN: 8th Floor Convention Tower | Cor of Heerengracht & Walter Sisulu Avenue | F
Cape Town | 8000 Postal: Postnet Suite 027 | Private Bag X100 | Cape Town | 8000 | Do
Tel: (021) 100 3530 | Fax: (021) 100 3561 / (086) 260 7135

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**From:** Pierre du Toit <Pierred@mbalaw.co.za>
**Sent:** Tuesday, 16 May 2023 17:41
**To:** Mari Wilsnach <mari@dm-inc.co.za>; Madimpe Mogashoa <madimpe@dm-inc.co.za>; Ncebakazi Mbebe <ncebakazi@dm-inc.co.za>; Noluthando Xolilizwe <noluthando@dm-inc.co.za>; Micaela Cloete <Micaela@dm-inc.co.za>; Idah Maake <idah@dm-inc.co.za>; Sebushi Lelaka <Sebushi@dm-inc.co.za>; Devin Wykerd <Devin@dm-inc.co.za>; Mmabatho Mtileni <mmabatho@dm-inc.co.za>
**Subject:** H BESTER N.O. & 7 OTHERS / THE MASTER OF THE HIGH COURT & ANOTHER (CASE NO: 7689/2023)
**Importance:** High

HC97

**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 7689/2023

The application between:

| | |
|---|---|
| **H BESTER N.O.** | First applicant |
| **AW VAN ROOYEN N.O.** | Second applicant |
| **CJ ROOS N.O.** | Third applicant |
| **JF BARNARD N.O.** | Fourth applicant |
| **D BASSON N.O.** | Fifth applicant |
| **CBS COOPER N.O.** | Sixth applicant |
| **K TITUS N.O.** | Seventh applicant |
| **DS NDLOVU N.O.** | Eighth applicant |

(cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | First respondent |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | Second respondent |

---

**AFFIDAVIT**

---

I, the undersigned,

**PIERRE DU TOIT**

do hereby make oath and state that:

1. I am a male attorney practising as such at Mostert & Bosman Attorneys situated at 4th Floor, Madison Square, cnr Carl Cronje Drive & Tyger Falls Boulevard, Tyger Valley, Western Cape. I am the Applicants' attorney of record.

2. The facts contained herein are, except where otherwise stated, within my personal knowledge and to the best of my belief both true and correct.

3. On 17 May 2023, I transmitted a letter to the attorneys representing the second respondent, Diale Mogashoa Attorneys ("DM Attorneys"), in terms of which they were requested to indicate whether their client has any objection against the granting of the rule nisi, and if not, to confirm same in writing. A copy of this letter is annexed as "**PDT1**".

4. On 18 May 2023, I received a telephone call from Mr Mogashoa of DM Attorneys. He informed me that it was his client's instructions that it does not intend to participate in the proceedings set down on the urgent High Court roll for Tuesday 23 May 2023 and that it will consider its position whether to participate in this matter on the return date, if so indicated. His client was not prepared to instruct him to confirm in writing that it does not intend to oppose the granting of the rule nisi.

5. I followed the aforesaid telephone conversation up with a letter to DM Attorneys on 18 May 2023, a copy (without annexures) which is annexed hereto as "**PDT2**". As appears from paragraphs two to four of this letter, I informed DM Attorneys that we concluded from Mr

Mogashoa's aforesaid communication that his client will not oppose the granting of the rule nisi and that we intended, as a courtesy to the court, to convey the aforesaid to the court, should DM Attorneys not indicate to us in writing by 11:00 on Friday 19 May 2023 that they disputed the accuracy of our recordal of their client's position.

6. On 18 May 2023, DM Attorneys acknowledged receipt of annexure PDT2 in writing, but to date hereof have not responded to our abovementioned recordal. A copy of this acknowledgement of receipt is annexed hereto as "**PDT3**".

7. In the premises I respectfully submit that the second respondent is indeed not opposing the granting of the rule nisi as prayed for in the Notice of Motion filed of record.

8. I also annex hereto a copy of the first respondent's report as received on 22 May 2023, marked "**PDT4**".

9. Pursuant to the issuing of this application, an application for leave to appeal against the judgment of the Honourable De Wet AJ (referred to in paragraph 32 of the founding affidavit of Herman Bester and annexed as "**FA5**" thereto) was made by Marks on 18 May 2023. I annex hereto a copy of the application for leave to appeal, marked "**PDT5**". The parties are still awaiting a date to be allocated for the hearing of the application for leave to appeal.

**PIERRE DU TOIT**

**SWORN** to and **SIGNED** before me at **BELLVILLE** on this the **23rd** day of **MAY 2023** by the abovementioned deponent, who I certify, acknowledged that he knows and understands the contents of this Affidavit and that he has no objection to taking the prescribed oath which reads as follows: "I swear that the contents of this Affidavit are true, so help me God", and further that he acknowledges that he regards the prescribed oath as binding on his conscience, which oath was duly administered by me as required by law.

**COMMISSIONER OF OATHS**

Ex Officio COMMISSIONER OF OATHS (RSA)
**CHARL THOMAS HAMBRIDGE**
(Member) Chartered Management Accountant
Business Consultant
CTH Consulting
25 Dolfyn Street, Yzerfontein
Western Cape, 7351

**Pierre du Toit**

| | |
|---|---|
| **From:** | Pierre du Toit |
| **Sent:** | Wednesday, 17 May 2023 11:52 |
| **To:** | Mari Wilsnach; Noluthando Xolilizwe; Sebushi Lelaka; Madimpe Mogashoa; Ncebakazi Mbebe; Micaela Cloete; Devin Wykerd; Idah Maake; Mmabatho Mtileni |
| **Subject:** | MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION) - SARS - APPLICATION IN TERMS OF SECTION 387(3) |
| **Attachments:** | Scan_Itec18012311230.pdf |

Dear Madam / Sir

We refer to the abovementioned matter and annex hereto correspondence for your attention.

Yours faithfully

1893 EST.

# MOSTERT & BOSMAN

ATTORNEYS | TRUSTED ADVICE BY COMMITTED PEOPLE

**MESSRS DIALE MOGASHOA ATTORNEYS**

**BY E-MAIL: noluthando@dm-inc.co.za; mari@dm-inc.co.za; sebushi@dm-inc.co.za; Madimpe Mogashoa <madimpe@dm-inc.co.za>; Ncebakazi Mbebe <ncebakazi@dm-inc.co.za>; Micaela Cloete <Micaela@dm-inc.co.za>; Devin Wykerd <Devin@dm-inc.co.za>; Idah Maake idah@dm-inc.co.za**

Date: 17 May 2023

Our Ref: P DU TOIT/Antoinette/WJ2301

Email: antoinettee@mbalaw.co.za

Your Ref: MTI/MW/NM

Dear Sir/Madam

**RE: MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION) – SARS APPLICATION IN TERMS OF SECTION 387(3)**

1. With further reference to our letter of yesterday, to which our clients' urgent application in terms of Section 387(3) of the 1973 Companies Act was annexed, we confirm our instructions as follows:

1.1 In order to assist the Court and to expedite the finalization of this matter, your clients are requested to kindly confirm in writing that they have no objection against the granting of the rule nisi and, subject to the Court's discretion, that

1893 EST.

4th floor, Madison Square, Cnr of Carl Cronje & Tygerfalls Boulevard, Tygerfalls, Tyger Waterfront, Bellville, South Africa
PO Box 3355, Tyger Valley, 7536 | Docex 152, Cape Town | info@mbalaw.co.za | www.mbalaw.co.za
t +27(0)21 914 3322 | f +27(0)21 914 3330

Partners: Herman Botes | Riaan Kunz | Pierre du Toit | Cloete Marais | Richard Dixon | Lee-Anne Ely
Associates: Morné Strydom | Melissa Colyn | Callie Lloyd | Johann Steyn | Michelle Birkenstock
Jacky Labuschaigne | Elizabeth Martin | Kruger van Dyk
Office Manager: Charl Hambridge

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they consent to the granting of a rule nisi in accordance with the Notice of Motion.

1.2 We want to include your client's aforesaid confirmation in a practice note, which we want to file by close of business tomorrow.

2. In the premises, we look forward to your urgent advices and thank you in anticipation.

Yours faithfully

**MOSTERT & BOSMAN**

Per: **PIERRE DU TOIT**

"PDT 2"

**Pierre du Toit**

| | |
|---|---|
| **From:** | Pierre du Toit |
| **Sent:** | Thursday, 18 May 2023 16:36 |
| **To:** | Madimpe Mogashoa; Mari Wilsnach; Noluthando Xolilizwe; Sebushi Lelaka; Ncebakazi Mbebe; Micaela Cloete; Devin Wykerd; Idah Maake; Mmabatho Mtileni |
| **Subject:** | MTI - SARS - APPLICATION IN TERMS OF SECTION 387(3) |
| **Attachments:** | Scan_Itec18012416060.pdf |

Dear Sir / Madam

We refer to the abovementioned matter and annex hereto correspondence for your attention.

Yours faithfully

1893 EST.

# MOSTERT & BOSMAN

ATTORNEYS | TRUSTED ADVICE BY COMMITTED PEOPLE

**MESSRS DIALE MOGASHOA ATTORNEYS**

**FOR ATTENTION: MR MOGASHOA**

**BY E-MAIL: noluthando@dm-inc.co.za; mari@dm-inc.co.za; sebushi@dm-inc.co.za; Madimpe Mogashoa <madimpe@dm-inc.co.za>; Ncebakazi Mbebe <ncebakazi@dm-inc.co.za>; Micaela Cloete <Micaela@dm-inc.co.za>; Devin Wykerd <Devin@dm-inc.co.za>; Idah Maake idah@dm-inc.co.za**

Date: 18 May 2023

Our Ref: P DU TOIT/Antoinette/WJ2301

Email: antoinettee@mbalaw.co.za

Your Ref: MTI/MW/NM

Dear Sir/Madam

**RE: MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION) – SARS**

**APPLICATION IN TERMS OF SECTION 387(3)**

1. We refer to the above, as well as the telephone conversation between the writer hereof and your Mr Mogashoa of earlier today.

2. We confirm your advices that your client has informed you that they do not intend to participate in the proceedings set down on the urgent High Court roll for Tuesday, 23

1893 EST.

4th floor, Madison Square, Cnr of Carl Cronje & Tygerfalls Boulevard, Tygerfalls, Tyger Waterfront, Bellville, South Africa
PO Box 3355, Tyger Valley, 7536 | Docex 152, Cape Town | info@mbalaw.co.za | www.mbalaw.co.za
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Office Manager: Charl Hambridge

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May 2023 and that they will consider their position whether to participate in this matter on the return date, at a later stage, if so indicated.

3. We also confirm our advices that, whilst we respect the fact that your client decided not to instruct you to advise us in writing that they will not be opposing the granting of the rule nisi, we conclude from the aforesaid that they obviously will not be opposing the granting of the rule nisi and that we intend, as a courtesy to the Court, to convey to the Honourable Presiding Judge that, on the aforesaid basis, no opposition is expected from your client on Tuesday.

4. If you do not agree with our aforesaid recordal, kindly revert to us as a matter of urgency, as we intend to convey the abovementioned position to the relevant registrar of the urgent judge by **11:00 tomorrow**.

5. Please also find annexed hereto:

5.1 Our clients' Practice Note and draft Order;

5.2 Updated Index together with the service affidavit deposed to by our candidate attorney.

6. Kindly acknowledge safe receipt hereof.

EST. 1893

Yours faithfully

**MOSTERT & BOSMAN**

Per: **PIERRE DU TOIT**

"PDT 3"

**Pierre du Toit**

**From:** Mari Wilsnach <mari@dm-inc.co.za>
**Sent:** Thursday, 18 May 2023 16:40
**To:** Pierre du Toit
**Cc:** DM-INC SARS PROJECT
**Subject:** RE: MTI - SARS - APPLICATION IN TERMS OF SECTION 387(3)

Good day Mr. du Toit,

We acknowledge receipt of your even dated letter, practice note, draft order, index and other documents attached to your email below.

Thank you.

**Mari Wilsnach** | Director
**Mobile:** 083 643 5440
**Email:** mari@dm-inc.co.za
**Web:** www.dm-inc.co.za

DIALE MOGASHOA ATTORNEYS

PRETORIA: Menlyn Corner | 1st and 2nd Floors | No.87 Frikkie de Beer Street | Menlyn | F
Postal: Postnet Suite 101 | Private Bag X15 | Menlo Park | 0102 | Docex 49 Brooklyn
Tel: (012) 346 5436/5939 | Fax: (012) 346 5962 / (086) 260 7135

CAPE TOWN: 8th Floor Convention Tower | Cnr of Heerengracht & Walter Sisulu Avenue | F
Cape Town | 8000 Postal: Postnet Suite 027 | Private Bag X100 | Cape Town | 8000 | Do
Tel: (021) 100 3530 | Fax: (021) 100 3561 / (086) 260 7135

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**From:** Pierre du Toit <Pierred@mbalaw.co.za>
**Sent:** Thursday, 18 May 2023 16:36
**To:** Madimpe Mogashoa <madimpe@dm-inc.co.za>; Mari Wilsnach <mari@dm-inc.co.za>; Noluthando Xolilizwe <noluthando@dm-inc.co.za>; Sebushi Lelaka <Sebushi@dm-inc.co.za>; Ncebakazi Mbebe <ncebakazi@dm-inc.co.za>; Micaela Cloete <Micaela@dm-inc.co.za>; Devin Wykerd <Devin@dm-inc.co.za>; Idah Maake <idah@dm-inc.co.za>; Mmabatho Mtileni <mmabatho@dm-inc.co.za>
**Subject:** MTI - SARS - APPLICATION IN TERMS OF SECTION 387(3)

"PDT 4"

**IN THE HIGH COURT OF SOUTH AFRICA**
**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 7689/2023

The application between:

| | |
|---|---|
| **H BESTER N.O.** | First Applicant |
| **AW VAN ROOYEN N.O.** | Second Applicant |
| **CJ ROOS N.O.** | Third Applicant |
| **JF BARNARD N.O.** | Fourth Applicant |
| **D BASSON N.O.** | Fifth Applicant |
| **CBS COOPER N.O.** | Sixth Applicant |
| **K TITUS N.O.** | Seventh Applicant |
| **DS NDLOVU N.O.** | Eighth Applicant |

(cited in their capacities as the joint liquidators of
MIRROR TRADING INTERNATIONAL (PTY) LTD
(in liquidation)

and

| | |
|---|---|
| **THE MASTER OF THE HIGH COURT, CAPE TOWN** | First Respondent |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | Second Respondent |

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## MASTER'S REPORT

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1. A copy of the Notice of Motion, Founding Affidavit and annexure were served on me and I have read the settlement agreement set out therein.

2. The Master is not opposed to having the Liquidators and SARS settlement agreement be made an order of court.

MASTER OF THE WESTERN CAPE HIGH COURT
CAPE TOWN
2023 -05- 22
A.M: INSOLVENT ESTATES 1
MEESTER VAN DIE WES KAAP HOË HOF

Asst. Master of the Western Cape High Court, Cape Town
(Western Cape Division, Cape Town)

**IN THE HIGH COURT OF SOUTH AFRICA**
**WESTERN CAPE DIVISION, CAPE TOWN**

Case No. 15426/2021

In the matter between:

| | |
|---|---|
| **HERMAN BESTER N.O.** | First Applicant |
| **ADRIAAN WILLEM VAN ROOYEN N.O.** | Second Applicant |
| **CHRISTOPHER JAMES ROOS N.O.** | Third Applicant |
| **JACOLIEN FRIEDA BARNARD N.O.** | Fourth Applicant |
| **DEIDRE BASSON N.O.** | Fifth Applicant |
| **CHAVONNES BADENHORST ST CLAIR COOPER N.O.** | Sixth Applicant |

and

| | |
|---|---|
| **MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)** | First Respondent |
| **CLYNTON HUGH MARKS** | Second Respondent |
| **HENRY ROBERT HONIBALL** | Third Respondent |
| **CECIL JOHN JACOB ROWE** | Fourth Respondent |
| **ALL MEMBERS/INVESTORS OF MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)** | Fifth Respondent |
| **FINANCIAL SECTOR CONDUCT AUTHORITY (FSCA)** | Sixth Respondent |

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## APPLICATION FOR LEAVE TO APPEAL

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**KINDLY TAKE NOTICE** that judgment having been granted by Her Ladyship, the Honourable Mrs Acting Justice De Wet, in the abovementioned matter on 26 April 2023 and the said Honourable Judge having furnished reasons for her judgment, in writing, on 26 April 2023, the Applicant (Second Respondent in the principal

application) hereby gives formal notice of his intention to apply for leave to appeal in the Western Cape Division, Cape Town, High Court of South Africa, against the portions of the judgment as detailed below and the orders granted pursuant thereto, as found on questions of law and/or fact, in case number 15426/2021, on a date and time to be arranged by the Registrar of the above Honourable Court, and for orders in the following terms:-

1. The applicant (Second Respondent in the principal application) is hereby granted leave to appeal to the Supreme Court of Appeal or the Full Bench of the Western Cape Division, Cape Town, High Court of South Africa, against **orders 1, 2, 4, 5, 6 and 7** (*"the orders appealed"*) made by Her Ladyship, Ms. Acting Justice De Wet and will seek in such appeal, an order/judgment setting aside the said orders appealed against and substituting them with orders :

   1.1 referring the question of fact and/or law whether the business model of Mirror Trading International (MTI) is an unlawful and illegal scheme to trial or for oral evidence; and

   1.2 referring the question of fact and/or law whether all contracts between MTI and its members are unlawful and void *ab initio* to trial or for oral evidence; and

1.3 referring the counter-application of the Applicant (Second Respondent in the main application) to trial or for oral evidence;

1.4 the costs of this application shall be costs in the appeal.

**KINDLY TAKE NOTICE FURTHER** that the grounds on which this application for leave to appeal are found, are detailed below.

1. Her Ladyship misdirected herself in dealing with the factual and legal issues raised for determination which were decisive of the matter, and incorrectly found that the Applicants discharge the onus on a balance of probabilities when the Applicants did not show any lawful entitlement to the final relief claimed in the Notice of Motion because the matter was beset with material disputes of fact.

2. Her Ladyship misdirected herself when she held in paragraph 77 of the written judgment that a determination of the alleged unlawful/illegal scheme wil be made separately from the disputes of fact because :-

2.1 It is trite law that a final order can only be granted in motion proceedings if the facts stated by the respondent together with the admitted facts in the applicant's affidavits justify the order, and this applies irrespective of where the onus lies;

2.2 The robust approach adopted by her Ladyship is a misdirection given the numerous disputes of fact and uncertainties concerning the true state of affairs of MTI put up in the affidavits by the Respondents;

2.3 The Second and Third Respondents as well as Newman seriously and unambiguously addressed the disputes of fact with reference to :

2.3.1 the unreliability of the Back Office data;

2.3.2 whether MTI was in fact insolvent given the contractual terms agreed to by all MTI members and the unregulated status of Bitcoin;

2.3.3 the real dispute that Stephenson was a fiction and consequently the Financial Sector Conduct Authority (FSCA) and the Liquidators relied on false information to seek the requested relief;

2.3.4 the extent of the trading that took place in MTI;

2.3.5 the existence of the Artificial Intelligence Bot in the third phase of MTI;

2.3.6 the ownership of the FX Choice held Bitcoins;

2.3.7 the status of the MY MTI CLUB contractually agreed to by all MTI members;

2.3.8 the FX Choice statements for account 174850 were forged;

2.3.9 that MTI was potentially not an illegal and/or fraudulent

scheme as opposed to suffering a fraud committed by only Steynberg on or about 14 December 2020 when he absconded and stole the Bitcoins of the MY MTI CLUB.

3. On a conspectus of the disputes of fact raised the matter had to be referred to trial or for oral evidence.

4. On the factual allegations of both the Second Respondent and Honiball, her Ladyship was presented with real and genuine disputes of fact with reference to the perpetration of alleged fraud in connection with the FX Choice statements in that :

4.1 The FX Choice account 174850 appears to have been held in the name of Steynberg at FX Choice (Annexure HRH16);

4.2 The FX Choice statements put up by the Liquidators on 7 September 2021 reflected that FX Choice account 174850 was held in the name of Mirror Trading International (Annexure "A" to the Stephenson Affidavit marked HRH13);

4.3 Annexure HRH14 to the Honiball Affidavit disclosed that Steynberg traded in his own name on various other accounts at FX Choice i.e. that the MY MTI CLUB was operated by Steynberg as nominee for the MTI members as opposed to MTI as a company taking control of the Bitcoins deposited;

4.4 The layout of the FX Choice statement produced on 7 September 2021 differs materially from the known format of FX Choice statements;

4.5 The Stephenson Affidavits are fake as Stephenson does not exist i.e. the FSCA placed reliance in their Reports on forged Affidavits with the inference that the information the Affidavits conveyed, is likewise fabricated.

5. Her Ladyship misdirected herself in finding at **paragraph 16** that Second Respondent had not alleged non-disclosures were made in the Ex Parte Liquidation because Second Respondent brought to the attention of the Court, at the time, that :-

5.1 The Applicants filed an application to intervene to cure the defects in the original Ex Parte Liquidation application (paragraph 47 of Preliminary Answering Affidavit);

5.2 The Applicants and Anton Lee linked the business model of MTI with its marketing strategies when in truth MTI could function and continue to exist independently from its referral Programme (paragraph 61 of Preliminary Answering Affidavit);

5.3 MTI members did not possess sub-accounts under MTI during the first phase and each and every member had access to their own FX Choice account during phase 1 and 2 (paragraph 73 of Preliminary Answering Affidavit);

5.4 The base currency of MTI was Bitcoin and Bitcoin is not regulated in South African Law and disputes concerning bitcoin transactions are not within the jurisdiction of the Court (paragraph 99 of Preliminary Answering Affidavit);

5.5 MTI did not convert FIAT currency to bitcoins and the Applicants misled the Court by adducing incorrect facts (paragraph 109 of Preliminary Answering Affidavit);

5.6 The reliance on the FSCA Report was misguided as the FSCA had no jurisdiction (paragraph 176 of Preliminary Answering Affidavit);

5.7 The FSCA relied on MTI Back Office data after the MTI Back Office (Maxtra Technologies system) was hacked numerous times causing the data to be inaccurate (paragraph 211 of Preliminary Answering Affidavit);

5.8 Coetzer on behalf of the FSCA did not identify who at FX Choice she spoke to and/or which FX Choice designate assisted the FSCA in their investigations;

5.9 The FSCA Report disclosed at paragraphs 20 to 25 on page 386 of the record that the FSCA threatened Steynberg and advised him that *"the FSCA will find a way to close your business"*.

6. Her Ladyship misdirected herself in finding at **paragraphs 40** and **57** of the judgment that none of the Respondents had personal knowledge concerning the operation and management of the affairs of MTI when the Affidavits filed by Second Respondent disclosed that both he and Cheri Marks had extensive knowledge of the affairs of MTI save and except for the control of the MY MTI CLUB pooled Bitcoins which was managed by Steynberg.

7. Her Ladyship erred by making a finding in **paragraph 48** of the written judgment that "cryptocurrency, like money, is movable property for the purposes of section 2 of the Insolvency Act, 1936", and further misdirected herself because such finding is not echoed in the orders made.

8. Her Ladyship further misdirected herself to read into section 2 of the Insolvency Act that "crypto assets" or more correctly "digital rights" form part of the definition of "property" for the following reasons :-

8.1 The FSCA declared on 19 October 2022 by way of a publication in the Government Gazette that crypto assets should be deemed to be

assets comprising of a "digital representation of value" i.e. FSCA as the leading Authority with reference to the regulation and conduct of financial matters in the Republic of South Africa does not deem bitcoin to constitute property in a simplistic form such as that proposed by the Applicants in the main application.

8.2 Cryptocurrency is controlled via a digital identification sequence code. It can only represent a "digital right" to the sequence code or so-called TX ID as opposed to ownership in any conventional form known in South Africa.

9. Her Ladyship misdirected herself by accepting that jurisdiction is in existence for either the FSCA or the Honourable Court to interrogate transactions conducted through the use of crypto assets because :-

9.1 the analogous *Africypt* scheme manifested that the South African Authorities such as the FSCA cannot and will not exercise jurisdiction where participants dealt purely in Bitcoin.

9.2 Her Ladyship erred in relying on the registered head office of MTI as the basis for jurisdiction to grant declaratory relief because :-

9.2.1 the *lex situs* of a crypto asset is the place where the person or company who "owns" it is domiciled;

9.2.2 the domicile of MTI members spanned some 185 countries and it is wholly unrealistic for a South African Court to exercise jurisdiction over foreigners who owned the Bitcoins based on the registered head office of MTI;

9.2.3 not all MTI members (persons with a direct and substantial interest) had notice of the proceedings because service and notice by publication in local newspapers of the orders of the Court could not have reached foreign members of MTI so as to inform them of the proceedings;

9.3 Cryptocurrencies are operated in "cyberspace" with no clear identification where that is;

9.4 Bitcoins are therefore not "*situated within the Republic of South Africa*";

9.5 Bitcoin is not regulated in South African law so as to confer jurisdiction for the court and the FSCA over Bitcoin transactions.

9.6 The MTI TRADING POOL / MY MTI CLUB, at the time of *concursus creditorum*, was not situated within the Republic of South Africa and was in fact situated either :

9.6.1 in Belize controlled by FX Choice; or

9.6.2 in Russia, on the Newman allegations made; or

9.6.3 on the Blockchain in cyberspace, wherever that might be.

9.7 The Bitcoins therefore could not have constituted the property of MTI at *concursus creditorum* with the result that the Applicants did not comply with the express provisions of section 340(1) of the Companies Act no 61 of 1973.

10. Her Ladyship further misdirected herself in placing reliance on the MTI Terms and Conditions for her findings at **paragraph 57** of the judgment when she determined later on that the MTI contracts are void *ab initio*.

11. Her Ladyship misdirected herself in finding at **paragraph 82** of the judgment that Newman received an email from Stephenson confirming that it was his signature when in fact Newman alleged in his Affidavit that it was an email from a Russian server purporting to be from Stephenson whereas FX Choice is recorded as operating from Belize.

12. Her Ladyship misdirected herself in finding in **paragraph 119** of the judgment that the contractual relationship between MTI and its members must be regarded as illegal and void *ab initio.*

13. Her Ladyship failed to consider that :-

13.1 if no contractual relationship existed, the MTI members cannot acquire personal rights against MTI because Bitcoin is not regulated and is only a "*digital representation of value*" as opposed to recoverable "property" or "monies" under any known common law *condictio*;

13.2 agreements entered within an overarching fraudulent scheme are not necessarily void;

13.3 the only basis for the Court to exercise jurisdiction is if reliance was placed on the MTI contracts;

13.4 if the MTI contracts are declared void and of not force and effect, the Court would not have jurisdiction over foreign investors and possibly no jurisdiction whatsoever because the transactions sounded in Bitcoin which is not regulated in South African Law.

14. In the event of the Applicant electing to amplify the grounds of appeal, he shall provide such notice to the parties and reserves his rights in this regard.

**DATED AT DURBAN ON THE 18th DAY OF MAY 2023.**

**SELZER LAW**
Second Respondent's Attorneys
82 Highlands Road
Durban North
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Fax: 086 621 4848
Cell : 082 875 3443
Email: henry@selzerlaw.co.za
REF: H SELZER/MTI
**C/O DE KLERK & VAN GEND**
10th Floor, The Terraces
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CAPE TOWN
(Ref: Cecilia van Zyl)
**E-mail:** cvanzyl@dkvg.co.za

TO: **THE REGISTRAR OF THE HIGH COURT**
**CAPE TOWN**
fdavids@judiciary.org.za / stbsec@law.co.za

AND TO : **MOSTERT & BOSMAN**
**Attorneys for Intervening Parties**
**c/o MacRobert Inc.**
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Tel : 021 914 3322
Email : Pierred@mbalaw.co.za
Ref : Pierre du Toit/Antoinette/MTI

AND TO: **DUVENAGE DE VILLIERS**
Attorneys for the Third Respondent
107 Main Road
**WELLINGTON**
e-mail: bd@duvdevill.co.za / monique@duvdevill.co.za

AND TO: **EDJ ATTORNEYS INC.**
Attorneys for the Fourth Respondent
McHardey Avenue
Brandwag
**BLOEMFONTEIN**
Ref: E de Jager
e-mail: litigation@edjinc.co.za
***c/o* HEYNS ATTORNEYS**
3rd Floor, 6 On Pepper
Pepper Street
**CAPE TOWN**

AND TO: **ROBERT CHARLES ATTORNEYS**
Attorneys for the Sixth Respondent
3rd Floor
33 Church Street
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