

**AFFIDAVIT FOR EXTENSION FOR THE LODGEMENT OF THE ACCOUNT**

I, the undersigned,

**HARRY KAPLAN**

in my capacity as Liquidator in the Liquidation of:

**SAXUM INSURANCE LIMITED**  
**MASTER'S REFERENCE: G1076/2016**

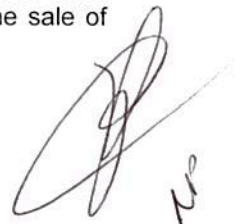
do hereby make oath and say that:

1. **THAT** the First Liquidation and Distribution Account was due to be lodged on the 31<sup>st</sup> of March 2019.
2. **THAT** the Liquidators proceeded with an Extension to lodge the Account up until the 30<sup>th</sup> of September 2019.
3. **THAT** I confirm that the Master of the High Court declined the Extension and requested the liquidators to lodge the Account on/before the 3<sup>rd</sup> of May 2019.
4. **THAT** On receipt of the notice from the Master, the liquidators decided to prepare a further Affidavit for Extension for lodgement of the Account which would include further facts in motivation of the applied extension which would be for the benefit of the creditors of the estate. I confirm that the current affidavit is the affidavit that I am referring to.
5. I hereby confirm **that** I am unable to lodge the Account due to the following reasons:
  - a) The Liquidators are no longer proceeding with the negotiations with the possible purchaser. In this regard, we attach hereto a copy of Circular 26, which was uploaded on the website [www.saxuminsurance.com](http://www.saxuminsurance.com) and which contain full details herein. The Liquidators are therefore proceeding with the liquidation in the normal course and a compromise is no longer an option.
  - b) The Liquidators are obliged to commence litigation proceedings against various entities. A full report regarding this, will be submitted in due course as well as a proposal from Messrs. Hogan Lovells regarding the cost of litigation going forward. I advise that we are in the process of negotiating favourable terms in this regard, which would be to the benefit of the Creditors going forward. We refer you further to what is set out herein below, regarding the litigation.
  - c) Further liquidation claims were received, which will be proved at a Special Meeting of Creditors. Creditors can submit claims until such time as a Final Liquidation and Distribution Account has been drafted and confirmed.
  - d) I now proceed to set out further facts in support of this application.
    1. I refer to the contents of our letter dated 29 January 2019, as well as the contents of Circular 26 dated 12 March 2019 (both the letter and the Circular are attached hereto for ease of reference);
    2. I refer you specifically to paragraphs 5 – 8 and 9.3 of Circular 26 –
      - 2.1 As you will note, the Prudential Authority (hereinafter the "PA"), was placed on terms and required to respond and provide instructions to the Liquidators by 19 February 2019;
      - 2.2 No response was received and the Liquidators confirmed in a letter dated 24 February 2019 that they would proceed to bring about a final liquidation of Saxum;I confirm that the Liquidators finally received a response from the PA by way of a letter addressed to our Attorneys, Hogan Lovells SA Inc, on 9



March 2019, wherein they confirmed that they had no objection to the Liquidators proceeding to bring about a final liquidation of Saxum without the Compromise Offer. We attach hereto a copy of the said letter for your records. We confirm that this late response from the PA is a repeat of the events of the last year, being that they either neglected to respond to our requests for instructions, or responded very late. The letter of 9 March 2019 is in fact the first formal response received from them;

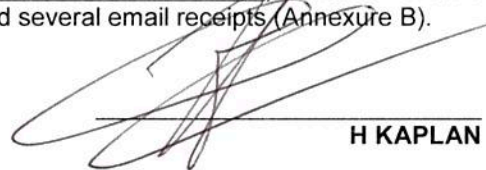
3. I further refer you specifically to paragraphs 4 – 6 of our letter dated 29 January 2019 (numbered by hand for ease of reference, as the paragraphs in the original letter were not numbered) –
  - 3.1 As you will note, I explained in short what the effects will be in the event that the PA did not provide the Liquidators with their blessing and instructions to proceed with the Compromise;
  - 3.2 I specifically again confirm that part of proceeding with the Liquidation of Saxum in the normal course, will be to recover funds from third parties, including international Reinsurance Companies in order to recover the reinsurance that is payable by them based on the claims that are payable by the Liquidators (an estimated R100 million) to insurance claimants;
  - 3.3 The Liquidators however anticipate that the Reinsurance Companies are likely to raise the defence of 'pay as paid', which would require that Saxum first pay the claimants before it would be entitled to claim under the reinsurance treaties. The estate does not have the funds to first pay all the claimants in order to unlock the Reinsurance payments;
  - 3.4 Our appointed attorneys, Hogan Lovells, researched the international law in this regard, as there are no precedents in the South African law and based on their research and advice, if the US and UK law is applied and accepted by our courts, the "pay-as-paid" principle will not be applicable and we will be able to recover the Reinsurance from the Reinsurance Companies without first having to pay all the insurance claimants. This will lead to a huge recovery and we will be able to distribute these funds to the creditors;
  - 3.5 The reason why the Liquidators were in favour of the Compromise, which would have meant that the litigation against the Reinsurers would not have proceeded, was because of the fact that any litigation carries risks and the Liquidators would be at the mercy of the Court's decision;
  - 3.6 I once again reiterate that Messrs Hogan Lovells are in the process of providing the liquidators with a favourable fee arrangement, which will be to the benefit of the creditors of the estate. As and when we receive this proposal, and same has been finalized, it will be uploaded to the website and circularised to the creditors..
4. Although the Liquidators would be very happy to receive a fee in terms of a confirmed Liquidation and Distribution Account (as they have worked diligently for more than 2 years on this matter without receiving a fee), it is our further submission that it would not be in favour and to the benefit of creditors to draft this Account, because -
  - 4.1 When the administration expenses, outstanding legal fees and Liquidators' fees are taken into account, there will be a contribution payable in terms of this First Account;
  - 4.2 Employees' claims were proved which are preferent claims;
  - 4.3 Metric Financial Services, on behalf of the Liquidators, are still in the process of investigating whether any funds are due and payable to SARS, also a preferent claim;
  - 4.4 Based on the fact that SARS's claim is still being investigated, no distribution can be made to concurrent creditors, even if there would be funds available for distribution.
- 4.5 I confirm with reference to Circular No. 26 and specifically paragraph 9, that as from the 30<sup>th</sup> of April 2019, the offices of Saxum Insurance Ltd have been closed down in the entirety and that the liquidators have evacuated the premises and will shortly be proceeding with the sale of

A handwritten signature in black ink, consisting of a large, stylized loop followed by a vertical stroke. Below the signature, the initials 'NR' are written in a smaller, simpler hand.

the movable assets by way of public auction.

The Liquidators take cognisance of the fact that creditors are impatient and do not understand why this process is such a lengthy process. Unfortunately, there were no precedents in the South African Insolvency Law that the Liquidators could rely on as this is the SECOND liquidation of its sort in South Africa. The Liquidators have acted in the best interest of creditors throughout the administration process and have done everything in their power to get the Compromise approved (which has unfortunately failed) and sanctioned and they will continue to work diligently in order to finalize the litigation process to enable them to be in a position to distribute funds to the creditors.

6. **THAT** I hereby request the Master of the High Court to extend the return date of the final reminder for a further SIX (6) months until the 30<sup>th</sup> of September 2019.
7. **THAT** we have an amount R3,643 488.46 on hand.
8. **THAT** no creditors will be prejudiced by the Master granting us the necessary extension.
9. **THAT** a copy of this Affidavit has been forwarded to all known creditors by registered post and/or email. A copy of this Affidavit has also been uploaded to the Saxum Insurance Limited (In Liquidation) Website ([www.saxuminsurance.com](http://www.saxuminsurance.com)). I attach hereto a copy of the registered post list (Annexure A) and several email receipts (Annexure B).

  
H KAPLAN

SWORN TO AND SIGNED BEFORE me at Sandton this 9th day of May 2019 by the abovementioned Deponent who has acknowledged that he knows and understands the contents of this Affidavit, has no objection to the taking of an oath which reads as follows: I SWEAR that the contents of this Affidavit are true so help me God. And FURTHER that he regards the said Oath as binding on his conscience, which Oath was duly administered by me as required by Law.

  
COMMISSIONER OF OATHS

NIRVANA PILLAY  
BLOCK A, 222 RIVIONIA ROAD  
MORNINGSIDE, RSA  
COMMISSIONER OF OATHS  
KOMMISSARIS VAN EDE  
PRACTISING ATTORNEY  
PRAKTISERENDE PROKUREUR