

Box 671

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

Case no.: **15844/2012**

In the matter between:

**EXECUTIVE OFFICER OF THE FINANCIAL  
SERVICES BOARD**

Applicant

(now the **FINANCIAL SECTOR CONDUCT AUTHORITY**)

in re the collective investment scheme and financial services business of

**ROCKLAND ASSET MANAGEMENT AND  
CONSULTING (PTY) LTD**

First Respondent

(Registration Number: 2002/0176720/07)

**ROCKLAND TARGETED DEVELOPMENT  
INVESTMENT FUND**

Second Respondent

(Registration Number: IT4321/2004)

and

**BLUE NIGHTINGALE TRADING 169 (PTY) LTD**

Intervening Party

and

**ROCKLAND PROPERTY INVESTMENT FUND**

(REGISTRATION NUMBER: IT4320/2004)

Fourth Respondent



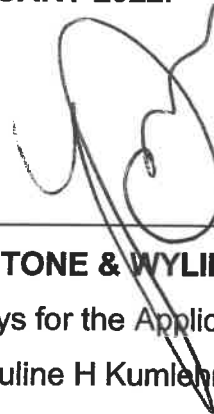
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**FILING NOTICE**

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**KINDLY TAKE NOTICE** that the curator's twelfth progress report dated 20 January 2022 is filed herewith.

**DATED at CAPE TOWN** this 07<sup>th</sup> day of **FEBRUARY 2022**.



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Ref: PHK/FINA7493.50

**AND TO: THE REGISTRAR OF THE HONOURABLE COURT**  
Western Cape High Court  
CAPE TOWN

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

**Case No.: 15844/2012**

In the ex parte application of:

**EXECUTIVE OFFICER OF THE FINANCIAL SERVICES BOARD  
(now the Financial Sector Conduct Authority) Applicant**

in re the collective investment scheme and financial services business of

**ROCKLAND ASSET MANAGEMENT AND CONSULTING (PTY) LTD**  
(Registration No. 2002/017672/07) and

**ROCKLAND TARGETED DEVELOPMENT INVESTMENT FUND**  
(Registration No. IT4321/2004)

and the business of

**ROCKLAND PROPERTY INVESTMENT FUND**  
(Registration No. IT4320/2004)

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**TWELFTH PROGRESS REPORT - JANUARY 2022**

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**Introduction and overview**

1. This Progress Report is part of a series of Reports prepared by me pursuant to my appointment as Curator of the businesses of the entities (the Rockland entities) referred to in the heading of this Report. This

introduction is a concise overview as required in terms of paragraph 5.7 of the Order of 20 August 2014.

2. I was appointed as a Curator of the businesses of the first two entities in 2012 and of the business of the third entity in 2013. The appointments were made following applications by the Executive Officer of the Financial Services Board ("FSB") (as it then was) in terms of the provisions of section 5 of the Financial Institutions (Protection of Funds) Act, 28 of 2001. The first application by the FSB was based on the findings contained in a formal FSB inspection report that revealed that the Rockland entities *inter alia* conducted an unlawful (unregistered) collective investment scheme business. The second application was made to enable me to institute action on behalf of Rockland Property Investment Fund which held assets for the Rockland Targeted Development Investment Fund. The FSB has since been replaced by the Financial Sector Conduct Authority but for convenience and clarity I continue to refer to it as the FSB.
3. I filed an initial Report dated 2 October 2012, a Supplementary Report dated 28 November 2012 and eleven Progress Reports (three in 2013 and one in January of every subsequent year).
4. From these Reports I submit it should be clear that a full assessment of the affairs of the businesses was initially compiled and that much progress has been made to date to dispose of and deal with the assets and other issues arising therefrom, including the institution of litigation. However my task is not yet complete.

5. The present nature of the business of the Rockland entities may be summarised as follows:
  - 5.1 Rockland Targeted Development Investment Fund is a bewind trust and its business holds assets on behalf of five investors that are all registered pension funds. The main remaining investment is in Rockland Property Investment Fund;
  - 5.2 Rockland Property Investment Fund is also a bewind trust and its business holds 80% (claiming 100%) of the shares of Oakland City Development Company (Pty) Ltd which owns a large property on the Cape Flats; and
  - 5.3 Rockland Asset Management and Consulting (Pty) Ltd is a financial institution whose business used to administer (but no longer does) the other two businesses. Having the business of RAM under curatorship remains essential as, *inter alia*, it has a claim worth more than R32 million referred to in 25 below.
6. In terms of the Order of Court dated 6 December 2012 an Investors' Committee was established, of which I am a member and on which is represented all the pension funds whose monies are invested in Rockland Targeted Development Investment Fund and, through it, partially in Rockland Property Investment Fund. I have, throughout the duration of the curatorship been working in close conjunction with the investors' committee.

7. The basic arrangement or structure of the various entities administered in the curatorship has changed as a result of assets being distributed and the judgment of the court referred to in 22 to 24 hereunder. A property and most of the financial and disposable share investments have been realised and substantial part repayment of their investments made to the investors.
  
8. The business of Rockland Asset Management and Consulting (Pty) Ltd no longer manages the other businesses. As a result of the judgment against it (see 24 below) it is apparent that the business would be trading in insolvent circumstances if it continued providing such management services. Whatever management is necessary is done or managed by me in my capacity as curator, with the costs being met directly by the business of Rockland Targeted Development Investment Fund. However, the business of Rockland Asset Management and Consulting (Pty) Ltd holds a substantial claim of more than R32 million as asset (see 25) and has claims against it by the other businesses for more than R22 million (see 24), that I must still deal with.

**Court order of 1 June 2021**

9. Pursuant to paragraph 5 of the Order of the Court issued on 1 June 2021, I deal with the matters set out therein in the same sequence hereunder. However, as I have reported numerous times on completed dealings with

various assets and steps in the litigation, I shall do so in abbreviated form.

**The status of the Curatorship as at 31 December 2021 – paragraph 5.1**

10. Oakland City Development Company (Pty) Ltd which owns the Oakland City Development, of which the investors hold an 80% interest (claiming 100%) through Rockland Property Investment Fund, has its own board of one director appointed by me in my capacity as curator of Rockland Property Investment Fund. The Spatial Planning, Environment and Land Use Management Committee of the City Council of Cape Town approved the Oakland City development framework application to develop the property to unlock its value. Under case number 16779/17 in this division of the High Court, the Philippi Horticultural Area Food and Farming Campaign and Mr N A Sondag applied for the review of various rights granted in respect of the Oakland properties from 2011 to 2017. This application was opposed by Oakland City Development Company (Pty) Ltd and all of the numerous Respondents cited in the matter. Judgment was handed down in February 2020 granting applicants only relief requiring further investigation of matters relating to an aquiver under the property. This investigation resulted in the approval of a plan of study by the responsible minister which plan is currently being implemented.
11. The only other remaining investment is a share investment with its ultimate holding in Sasol. This is subject to a time linked restriction that will run out in 2028 and is capable of disposition only to BEE qualified

purchasers. Attempts to sell these shares to BEE qualified purchasers are being made.

12. I am engaged in litigation as set out below.
13. I am assisted by Mr Horton Griffiths CA (SA), whom I have appointed with the approval of the FSB. He oversees the book keeping, accounting and auditing of the accounts of the various entities and companies.
14. The Investors' Committee has established risk management procedures and an appropriate checklist has been agreed and prepared.

#### **Assets dealt with - paragraph 5.2**

15. An investment in LA Clothing was fully repaid in 2014. No distribution was made from such proceeds.
16. Nelco Furniture Manufacturers (Pty) Ltd is in liquidation pursuant to which no dividend is expected.
17. The fixed property of C-Max Investments 300 (Pty) Ltd was sold and during 2015 the sum of R51, 9 million was distributed to the investors.
18. The Aspen share investment was in 2015 realised in terms of a complicated disinvestment. The investment was transferred to the

investors as direct shareholdings in Aspen and a small portion in cash to the total value of R363 953 892.

19. During 2018 the SASOL investment (that had been time bound until 30 June 2018) was partially freed and partially further time bound until 2028 as set out in 11.
20. The distributions made to investors to date equal 80% of the total amounts invested by them in the Rockland entities (without provision for growth or interest thereon).

**Civil actions by or against the curator - paragraph 5.3**

21. I have instituted four actions and an application while one action and an application have been instituted against me – the details of which are more fully set out hereunder.
22. I instituted action under case number 15341/2013 for orders for the return of 20% of the shares in Oakland City Development Company (Pty) Ltd and Rapicorp 123 (Pty) Ltd on the basis that these shares were wrongfully obtained from Rockland Property Investment Fund by the Johnny Bravo Trust, a trust under the control of Wentzel Oaker (a member of former management).
23. I instituted action under case number 10984/2014 against previous management, institutions under control of previous management and

other parties for the recovery of amounts paid out by the Rockland Targeted Development Investment Fund and Rockland Property Investment Fund.

24. The abovementioned actions 15341/2013 and 10984/2014 were consolidated and after a long trial period final judgement was given on 18 November 2020. The outcome is very successful – including judgment against Rockland Asset Management and Consulting (Pty) Ltd for R22 244 903 and interest. Applications for leave to appeal were filed by Defendants based mainly on factual findings and I cross appealed mainly on the form of the orders arising from the factual findings. Leave to appeal to the Supreme Court of Appeal was granted in respect of these applications. The record has been prepared and dispatched for filing, whereafter a date for hearing will be applied for.
25. I instituted action under case number 5417/2014 against Rockland Group Holdings (Pty) Ltd for the recovery of an amount of R31 282 386 and interest thereon, which it is indebted to Rockland Asset Management and Consulting (Pty) Ltd. I also instituted action against Mr Wentzel Oaker, case number 0297/2016 in this Court for the same amount. He was the sole director of the two companies involved in this action. This matter has been extensively delayed as a result of a discovery issue and an application to join it and the case referred to in 26.

26. Born Free Investments 247 (Pty) Ltd, a subsidiary of Rockland Group Holdings (Pty) Ltd, instituted action under case number 9069/2014 against me in my capacity as curator of the business of Rockland Asset Management and Consulting (Pty) Ltd in respect of alleged rental claimed. The summons was issued and served despite the prohibition in paragraph 6.2 of the Court Order in the curatorship matter granted on 20 August 2012. This led to various pleadings and applications. Ultimately the Supreme Court of Appeal upheld my special plea that, in terms of the orders by which I was appointed as curator, Born Free Investments 247 (Proprietary) Limited required the leave of the Court to proceed against Rockland Asset Management and Consulting (Pty) Ltd. An application for leave to proceed was subsequently been made by Born Free Investments 247 (Proprietary) Limited and heard as part of the procedure described in 27.
27. I applied for consolidation of the two pending actions referred to in 25 and 26, on the grounds *inter alia* that Rockland Asset Management and Consulting (Pty) Ltd will only have funds with which potentially to pay the rental claim of Born Free Investments 247 (Pty) Ltd, should that claim succeed, if Rockland Asset Management and Consulting (Pty) Ltd succeeds with its loan claim against Rockland Group Holdings (Pty) Ltd. This application and the application for leave to proceed referred to in 26 were heard together. The court held that leave to proceed to trial was not granted to Born Free Investments 247 (Pty) Ltd and further conduct of its action remains subject to suspension in terms of the provisional order of 20 August 2012 (in terms of which I was provisionally appointed). The

application to consolidate the actions was refused. In the result I shall now proceed with the litigation of the loan claim against Rockland Group Holdings (Pty) Ltd.

28. Rockland Group Holdings (Pty) Ltd made an application under section 5(9) of the Financial Institutions (Protection of Funds) Act 28 of 2001 for the cancellation of my appointment as curator. The application and subsequently an application for leave to appeal were dismissed by the High Court. Applicant then applied to the Supreme Court of Appeal for leave to appeal and was granted leave to appeal to a full bench of this Court. The matter was heard on 19 January 2022 when judgment was reserved.

#### **Costs of the Curatorship - paragraph 5.4**

29. The paid costs of the curatorship over the period 1 January 2021 to 31 December 2021 are as follows:

29.1	Curator's fees and disbursements	R485 850
29.2	cost of travel for Mr H Griffiths and curator to Investors' Committee meetings and boardroom rental	RNIL
29.3	legal fees and disbursements in respect of the claims	R1 098 061
29.4	accounting and administrative assistance	R272 526
29.5	the cost of hiring offices and incidental services	R59 485
29.6	tax, actuarial and other consultants	RNIL

29.7 audit fees for Rockland Asset Management and Consulting (Pty) Ltd and for the two Trusts

R172 500

**Total**

**R2 088 422**

30. Details of the amounts expended have been provided to Ms. Kedibone Dikokwe, the Divisional Executive: Conduct of Business Supervision of the FSB.
31. The costs of the curatorship from inception to 31 December 2021 amounts to R41,7 million. The Investors have made contributions to finance the curatorship (including in respect of the property companies) of R14 million in 2017, R10 million in 2019, R10 million in 2020 and R10 million in 2022.
32. In addition to the costs of administering the curatorship and the property companies referred to in paragraph 31, I disbursed funds of the investors for audits of and for management and maintenance of the companies that are held as investments and for their assets. These costs were mainly in respect of the rates and taxes, maintenance and development of the Oakland City properties. Such costs were not incurred as direct part of the curatorship but making payment thereof does fall within the scope of the management functions. This was done in conjunction with the Investors' Committee, which is provided with cost and cash flow information applicable to the investment of the Investors on a monthly basis. In 2021 such costs amounted to R5m.

### **My recommendations – paragraph 5.5**

33. I have no recommendations to change the present arrangements. This will allow the litigation to obtain rights to develop the Oakland property to continue and for the recovery litigation to proceed to finality.

### **Conclusion**

34. The position of the Curatorship remains that, although the responsibilities for the Oakland City development lies with the Board of Directors of Oakland City Development Company (Pty) Ltd, I remain ultimately responsible as curator of Rockland Property Investment Fund which holds the majority shares in this company. The Oakland City development is a huge development requiring funding from the Rockland entities from funds provided by the investors.
35. I am dealing with the claims and litigation dealt with above where I am a party *nomine officio*. I am a member, in my official capacity, of the Investors' Committee. The Investors' Committee meets regularly and is functioning effectively.
36. The other functions and actions performed and undertaken by me are mainly managerial relating to:
- 36.1 payments;
- 36.2 accounting;


36.3 dealing with the remaining assets and matters incidental thereto;

and

36.4 dealing with the auditors to ensure that audits of the Curatorship functions of the businesses of the Rockland entities under Curatorship be completed.

37 I therefore submit with respect that the curatorships should continue.

P D Kriel



20 January 2022