

TRANSCRIPT OF THE

ITHUBA TRUST

TRUST DEED

(As amended)



THE ITHUBA TRUST DEED

Between

Gareth William Pyne-James
("the donor")

and

Christopher Louis Sunter
Christoffel Hendrik Wiese
Anton Kruger Roodt
Terry Rosenberg
Mashudu Elias Ramano
Lindiwe Myeza
Habakuk Shikwane

1 INTRODUCTION

- 1.1 The donor wishes to establish a Trust for developmental welfare purposes, to be known as ITHUBA TRUST.
- 1.2 Christopher Louis Sunter, Christoffel Hendrik Wiese, Anton Kruger Roodt, terry Rosenberg, Mashudu Elias Ramano, Lindiwe Myeza and Habakuk Shikwane have agreed to act as first trustees of the Trust.
- 1.3 The donor wishes to donate irrevocably the sum of R100,00 to the trustees in their capacity as such.
- 1.4 The parties wish to record the provisions of the Trust in writing.

2 NAME

The full name of the Trust is ITHUBA TRUST.

3 VESTING OF TRUST ASSETS AND LIABILITIES

All assets acquired and all liabilities incurred by the trustees in their capacity as the trustees of the Trust shall vest in the trustees in that capacity and shall be administered by them in a separate fund (“the Trust Fund”).

4 OBJECTS

The main object of the Trust is to establish a special fund in the Republic of South Africa for the main purpose of receiving donations anywhere in the world to be devoted towards funding or making awards to organisations or projects which will:

- 4.1 Provide opportunities to disadvantaged and disabled people in the Republic, in the form of education and practical skills training;
- 4.2 Provide relief from disadvantage and disability;
- 4.3 Generate investment income for distribution to one or more developmental welfare organisations in the Republic.

5 AWARDS TO BENEFICIARIES

The Trust shall, from time to time and as often as they think desirable, award to any organisation in the Republic as they may in their discretion decide, such amounts or such portions of the Trust Fund, whether by way of loan, grant or otherwise as the trustees may in their discretion decided in order to achieve the objects of the Trust: Provided that loans may be made only to beneficiaries of the Trust.

6 CAPITAL AND INCOME

- 6.1 The trustees may, whether by loan or otherwise, encroach upon the capital of the Trust Fund and may use any portion or portions of it and the income to fulfil the objects of the Trust.
- 6.2 The trustees shall by the exercise of their powers and authorities under clause 6.1 expend for the purpose of achieving the objects of the Trust not less than 75% of the net income within 12 months of the end of the financial year in which it accrued or such other proportion as the Commissioner for Inland Revenue (“the Commissioner”) may from time to time require or approve. Any unused income shall be accumulated or

capitalised as the trustees from time to time deem fit. Should the trustees, however, wish to accumulate funds, for example for a specific capital project, that trustees will nevertheless have the power to approach the Commissioner for a ruling to waive the 75% requirement.

7 AREA OF OPERATION

The Trust shall operate only in the Republic

8 TERMINATION OF THE TRUST

The Trust shall continue indefinitely provided that the trustees shall have the discretion to terminate the Trust at any time by awarding or applying all the income and all the net capital of the Trust in terms of this deed. If, on termination of the Trust, for any reason, there remain any undistributed trust assets they shall devolve on such other organisation or organisations of a public character as may be selected by the trustees within the Republic, which have similar objects to that of the Trust and which are exempt from income tax, donations tax and estate duty.

9 POWERS OF TRUSTEES

The trustees shall administer and invest the Trust Funds for furtherance of the objects of the Trust and for those purposes shall have full and unrestricted powers of dealing with assets and, without limiting the generality of their authority, it is recorded that they may:

- 9.1 Retain or realise, invest and reinvest the trust assets in such manner and in such assets, movable or immovable, whatsoever and wheresoever, in any part of the world as they deem fit.
- 9.2 Carry on any charitable or educational enterprises on behalf of the Trust whether through a company or otherwise and make grants, donations, loans and contributions to institutions, associations and societies of a public character;
- 9.3 Lend money or other assets, whether upon security or otherwise, to such persons and upon such terms and conditions as may seem expedient to the trustees;
- 9.4 Buy, sell, lease, borrow, mortgage, burden with any charge or real right, insure, alter, maintain, turn to account, demolish, amortise, exchange or

alienate any property, movable or immovable, but not engage in business of a speculative nature;

- 9.5 Engage in any litigation for and on behalf of the Trust, and commence and prosecute or defend any proceedings before any court or any competent body or person;
- 9.6 Accept further irrevocable gifts and bequests in favour of the Trust subject to such conditions as may be imposed thereon as are not inconsistent with the terms of this Trust or to refuse to accept such gifts and bequests;
- 9.7 Register investments or other assets acquired by the Trust in the name of the Trust without specifically naming the trustees, or in the name of a nominee company, or in such manner as the trustees may deem expedient from time to time;
- 9.8 Determine the time of capitalisation of any income and determine which assets constitute capital and which constitute income;
- 9.9 Open and operate banking or deposit accounts;
- 9.10 Enter into any agreement for, and for the delegation of any discretion for, the management of the Trust's portfolio of investments;
- 9.11 Authorise the signing of all documents, including agreements, cheques, promissory notes, bills of exchange, powers of attorney and any document required to be executed in relation to the affairs of the Trust through designated persons;
- 9.12 Cooperate or consolidate with any other body, provided that such body is also exempt from income tax, donations tax and estate duty;

Provided that the trustees may not carry on any business in the ordinary commercial sense (including letting of property), save in the case that income-earning property is bequeathed to the Trust.

10 TRUSTEES

- 10.1 The trustees shall, by unanimous agreement in writing, have the power to appoint one or more trustees in addition to those already in office, it being intended that there shall always be not less than six. Should the number of trustees fall below this number, the remaining trustees shall within not less than 60 days appoint at least sufficient trustees to bring their number up to six: should they not do so within 60 days, all their powers, except

that of appointment, shall be suspended until at least six trustees are in office.

- 10.2 A certificate signed by not less than two trustees shall constitute proof of the identity of the trustees for the time being.
- 10.3 None of the trustees from time to time holding office shall be required to furnish security for the administration of the Trust hereby created, either individually or collectively, to the master of the supreme court or to any other government official, and the need for furnishing any such security under any law for the time being in force is hereby dispenses with.
- 10.4 The trustees shall meet at least once per annum, on notice of not less than 30 days, and shall convene and regulate their meetings and the manner of conducting their business as they think fit. Five trustees, or one half of the total number of trustees in office, rounded up to the next whole number, whichever is the greater, shall constitute a quorum. A trustee may at any time convene a meeting of trustees on reasonable notice to the remaining trustees.
- 10.5 Should any difference or dispute arise between the trustees they should as far as possible resolve the difference or dispute by discussion, either with or without such professional advice as they may consider appropriate, but if they are not so able to resolve such difference or dispute, then, subject to any provisions of this deed which provide otherwise, the decision of a majority of the trustees as a meeting shall bind the minority, and accordingly the powers, discretions and authorities given or vested in the trustees may be exercised by a majority of them; provided that every such decision shall be regarded as a decision of all trustees and shall be binding upon all persons, but not as to render any trustee liable for anything done or omitted by a majority of the trustees without his knowledge or approval.
- 10.6 Every decision of the trustees shall be taken as a meeting: provided that a resolution in writing signed by all of the trustees or their authorised agents shall be as valid and effective as if it had been passed at a meeting. A resolution in writing signed by a quorum of trustees shall be as valid and effective as if it had been passed a a meeting of the trustees duly called and constituted, provided that such resolution shall be reported at the next meeting of trustees.
- 10.7 The trustees shall keep proper records reflecting the affairs of the Trust and their administration of the Trust Fund and shall prepare annual statements of account: they shall arrange for the annual statements to be audited by an accountant registered with the Public Accounts and

Auditors Board of the Republic. The audited annual statements shall be available for inspection by any member of the public.

10.8 The financial year of the Trust shall end on the last day of march in each year.

10.9 A trustee shall cease to hold office as such:

10.9.1 If he is declared insolvent, is placed under curatorship, or is convicted under the laws of any country of any offence involving dishonesty;

10.9.2 If he becomes permanently mentally or physically incapacitated;

10.9.3 If he resigns upon four weeks' notice to the remaining trustees;

10.9.4 If, after receiving written notice from the remaining trustees in office calling upon him to resign, he fails to do so within four weeks.

10.10 Save in the case of any loss arising from his own gross negligence or wilful dishonesty:

10.10.1 No trustee shall be personally liable for any loss, howsoever arising, including specifically any loss arising from any error of judgement or mistake of law or fact;

10.10.2 A trustee shall be indemnified out of the Trust against any claims made against him arising out of or in any way connected with any act or omission in the course of his administration.

10.11 In arriving at any decision, the trustees may rely upon such information or advice as they may think fit and may take into consideration any factors whatsoever which they regard as relevant.

10.12 No trustee may receive any remuneration, or whatever kind, from the Trust.

11 COPIES OF TRUST DEED

Any member of the public shall, on payment of the prescribed fee, be entitled to obtain a certified copy of the trust deed from the Master of the Supreme Court in Pretoria.

12 RIGHT TO SUE AND DEFEND

The trustees shall be entitled to sue and be sued in any court having competent jurisdiction in respect of any matter arising out of the Trust, and all costs, expenses and disbursements incurred by them in or arising out of any proceedings shall be a first charge on the Trust Fund.

13 AMENDMENT TO TRUST

The trustees shall by unanimous agreement in writing of all the trustees then in office have the power to alter, vary or add to the conditions of the Trust, including the power of authority of the trustees, by means of an agreement which shall be submitted to the Commissioner for his prior approval.

14 MEMBERSHIP

Membership of the Trust shall consist of the trustees.

15 CONTRIBUTIONS

Any contribution whether in cash or kind, or any other monies (including sponsorship) must be collected under the control of the trustees.

16 RIGHTS OF BENEFICIARIES

No beneficiary or any other person shall have, or by virtue of the provisions of this deed or any distribution made pursuant thereto, any right to any income or assets of the Trust Fund or against any trustee or member of the allocations panel. The distribution of any part of the income or capital of the Trust Fund shall not create any right to future distributions of any nature against the trustees and the decision of the trustees and the allocations panel with regard to any distribution shall not be subject to review.