



Choppies Enterprises Limited
(Registration number 2004/1681)
JSE share code: CHP
BSEL share code: CHOPPIES
ISIN: BW0000001072
Tax reference number: C08710401018
("Choppies" or the "Company")

WRITTEN REPLY BY MR RAMACHANDRAN OTTAPATHU ("Mr Ottapathu") TO THE SUMMARY OF THE FORENSIC REPORT AND THE LEGAL REPORT ANNEXED TO CIRCULAR ISSUED BY CHOPPIES ON 14 AUGUST 2019

1. On 14 August 2019 the Company issued a shareholders' circular ("**Circular**") in respect of an extraordinary general meeting of Choppies shareholders to be held on 4 September 2019 ("**the EGM**"). The terms used herein have the same meaning as in the Circular.
2. The Circular made reference to and contained summaries of a Legal Report and a Forensic Report. The Board noted that Mr Ottapathu was not given an opportunity to respond thereto, and therefore afforded him the right to record a response to the Legal Report and the Forensic Report to be circulated on X-News and SENS by Choppies on or before 27 August 2019.
3. Mr Ottapathu has engaged lawyers in South Africa and Botswana to advise him in respect thereof and engaged an independent expert forensic accountant to review the Forensic Report.
4. The Board has received an abbreviated written reply from Mr Ottapathu (the "**Written Reply**"), which is attached to this announcement.
5. Company shareholders are advised that Mr Ottapathu's Written Reply to the Legal Report and the Forensic Report is immediately available on the Company's website: www.choppies.co.bw.
6. Copies of a more detailed response to the Forensic Report and a response to the Legal Report, together with supporting documentation, are available for inspection or review by any Shareholder (or a Shareholder's advisor or representative) from **28 August 2019** until the date of the EGM in accordance with the terms and conditions, and at the addresses provided, in Mr Ottapathu's Written Reply.

7. The Board advises shareholders that Mr Ottapathu's Written Reply records his own views and not those of the Board. The Board stands by the contents of the summaries in the Circular.

Per the announcement published on 1 November 2018, the trading of the Company shares on both the Botswana Stock Exchange Limited ("**BSEL**") and its secondary listing on the Johannesburg Stock Exchange ("**JSE**") remains suspended until further notice.

The Company's primary listing is on the BSEL and its secondary listing is on the JSE.

By Order of the Board

27 August 2019

BSEL Sponsoring Broker
African Alliance Botswana Limited

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MR OTTAPATHU'S RESPONSE TO LEGAL AND FORENSIC REPORTS REFERRED TO IN CIRCULAR ISSUED 14 AUGUST 2019

Introduction

1. On 14 August 2019 Choppies Enterprises Limited ("Choppies") issued a shareholders' circular ("Circular") in respect of an extraordinary general meeting of Choppies shareholders to be held on 4 September 2019 ("the EGM"). The Circular made reference to a Legal Report and a Forensic Report. The Board noted that Mr Ottapathu was not given an opportunity to respond thereto, and therefore afforded him the right to record a response to the Legal Report and the Forensic Report to be circulated on X-News and SENS by Choppies on or before 27 August 2019.
2. Mr Ottapathu has engaged lawyers in South Africa and Botswana to advise him in respect thereof and engaged an independent expert forensic accountant to review the Forensic Report.
3. This document records, in summary form, Mr Ottapathu's response to:
 - 3.1 the Legal Report and particularly addresses Annexure 1 to the Circular which annexure is said to constitute a summary of the Legal Report ("Annexure 1"); and
 - 3.2 the Forensic Report and particularly addresses Annexure 2 to the Circular which annexure is said to constitute a summary of the Forensic Report ("Annexure 2").
4. The terms used herein have the same meaning as in the Circular.

THE LEGAL REPORT

Preliminary remarks

5. The Legal Report traverses a number of concerns raised by the Board but focuses on three areas which criticise Mr Ottapathu. These are examined under the following areas of investigation in the Legal Report: (1) the Business Relationship as between Choppies, Payless and the Fours Group, (2) Major Payless Findings and (3) Major Fours Group Findings.

6. Both the Legal Report and Annexure 1 were prepared by attorneys Desai Law Group (“DLG”). The lead member of the DLG team, was its founding partner Mr Rizwan Desai, who was formerly a partner at Collins Newman & Co and for many years the attorney and legal advisor to both Choppies and Mr Ottapathu personally.
7. The series of transactions ostensibly investigated and impugned in the Legal Report by DLG, were transactions on which Choppies and Mr Ottapathu received legal advice from Mr Desai through Collins Newman & Co and later DLG. Mr Desai was involved in the planning, structuring, documenting, presentation for Board approval and implementation of these very transactions. In addition, Mr Desai also advised the Board and Mr Ottapathu on Choppies’ interactions with the Competition Authority (“CA”) which form an integral part of the Major Payless Findings. The criticisms levelled against Mr Ottapathu for having misled the CA arise from Mr Desai’s own involvement, and under DLG’s own advice to both Choppies and Mr Ottapathu.
8. Nowhere in the Legal Report is there any declaration of conflict of interest on the part of DLG nor indeed is there any mention of the roles of DLG and the Board in the transactions in respect of which the Legal Report seeks to attribute sole responsibility to Mr Ottapathu.
9. The Legal Report specifically disclaims that any findings on the correctness or reliability of the factual assumptions upon which it is based. It records *“in respect of each of the materials above, and in relation to interviews conducted with various persons ... and/or discussions with various other individuals, assumed the completeness, validity, veracity and correctness of each such document and the truthfulness of statements made by each interviewee or individual”*.
10. DLG did not seek to establish the truth and assumed that one-sided versions given to it were truthful. DLG neglected to raise these with Mr Ottapathu for his comment or response. Regrettably there was no attempt by DLG to present a fair and unbiased account in its Legal Report.
11. Furthermore, there is an unexplained incongruity between the sensational and pejorative language used in Annexure 1 and the actual findings (or lack thereof), which are in any event are largely exculpatory of Mr Ottapathu. Simply put:

- 11.1 there is no relationship between the emotive, sensational and pejorative headings and subheadings preferred in the Legal Report and Annexure 1 with the actual findings. The former creates an impression that is completely unsupported by the latter;
- 11.2 the conclusions drawn in the Legal Report and Annexure 1 are at variance with the analysis, which ought to have buttressed the same. The analysis is largely exculpatory of Mr Ottapathu and his conduct, but the conclusions drawn by DLG, in an apparent example of cognitive dissonance, condemn Mr Ottapathu.
12. As a result, both the Legal Report and Annexure 1 present a skewed version of events based on incorrect assumptions and is thus flawed.
13. In these circumstances Mr Ottapathu cautions shareholders to employ a measure of circumspection when considering the Legal Report and Annexure 1 before accepting same at face value.

Issues arising in Annexure 1

The Business Relationship

14. A false impression created is that the business relationship between Choppies, Payless and the Fours Group is somewhat untoward and was kept a secret. The business relationship was known to the Board. The agreements between the entities were drawn up by Collins Newman & Co and approved by the Board.
15. In 2017, at the end of the CA's three year exemption for the buying group arrangement, the Fours entities were unbundled as directed by the CA. The buying group agreement was not Mr Ottapathu's sole responsibility but was a transaction which was sanctioned by the Board which brought substantial financial benefit to Choppies.
16. The criticisms of Mr Ottapathu are an unjustified attempt to diminish Mr Ottapathu's character.

Payless Findings

Payments to Henning

17. Notwithstanding the pejorative language preferred therein, Annexure 1 records that Mr Ottapathu utilised Choppies' funds to finance an individual's acquisition of shares in an unrelated company without formal agreements being in place to record same. Mr Ottapathu has at all material times advised the Board that the payment to Henning is documented and forms part of the debt that Payless owes to Choppies. Indeed, the issue formed the basis of debate as between Choppies' previous auditor and the Board.
18. In that regard, the Legal Report recommends that a formal agreement be entered into with Mr Malique, the aforesaid individual, to formalise the arrangement, which agreement will be prepared by DLG.
19. On DLG's own analysis, no wrongdoing can be attributed to Mr Ottapathu, or at least solely to the exclusion of the remainder of the Board.

Loan to Payless

20. The Legal Report and Annexure 1 seem to suggest, once again, that there was something untoward in the loan to Payless.
21. DLG neglects to state in Annexure 1 that these agreements were "*prepared by CNC [Collins Newman & Co] and, on a prima facie basis, are inherently valid, suitable and fit for purpose*". As stated it is also pertinent to note that Mr Desai was a partner in CNC at the time.
22. Aside from the aforesaid shortcomings, DLG appear not to take any issue with the Loan to Payless.
23. However, the Legal Report does little analysis on the debt and instead of getting a version from Mr Ottapathu, they speculate a "potential rationale" for the "bizarre" agreements.

Ownership of Payless by Choppies and was the CA misled?

24. DLG had made no attempt to investigate the issues at hand and to assess the evidence, but concludes that, "*if this is proved to be correct, Choppies will then have owned 90% of Payless...*".
25. The simple response is that this is not true and that DLG made no attempt to ascertain the

truth. The sum of its investigation finding is that the Board must investigate it.

26. Annexure 1, in paragraph 10.2.2, refers to a Trust Agreement, which is said to constitute evidence of ownership of Payless by Choppies. But in terms of the Legal Report, it is clear that the Trust Agreement was neither finalised nor instituted. Again, the reference to this Trust Agreement in Annexure 1 can only be seen in the context of an attempt to smear Mr Ottapathu's character; rather than in an exercise of truth-finding.
27. Mr Ottapathu indeed contests this allegation, though he remains open to the Board undertaking the necessary investigations if it believes that it is of moment.
28. The conclusion of the Legal Report does not follow logically from the analysis on which it is founded. DLG states that it had come to their attention that, *"Mr Malique, who is the sole director of Payless, has no input whatsoever into or knowledge of the operations of Payless. This means that there is a strong possibility that, notwithstanding the obligations recorded in the Joint Undertaking ... the relationship between Choppies and Payless has not been disentangled or unwound..."*.
29. The following issues arise:
 - 29.1 It is not stated how DLG came to this knowledge and they have already disclaimed that all the information they received was assumed to be true. In other words, on the basis of their speculation, they "find" that Mr Malique has no input or knowledge into the operations of Payless. The conclusion does not logically follow that Choppies and Payless are therefore not disentangled.
 - 29.2 The assumption that Mr Malique did not have any knowledge of the operations of Payless is false as Mr Malique himself has stated so on affidavit.
 - 29.3 Once again, Mr Ottapathu was not given an opportunity to contest this version and put forth a version on record.
 - 29.4 The generous leaps in logic evidence that the Legal Report's methodology and fundamental premises are deeply flawed.

Recommendations to the Board by DLG in connection with Payless

30. The Legal Report does little to investigate any of the issues raised by PwC with the view of finalising the 2018 AFS. Instead, DLG's investigation recommends that the Board do its own investigations.

31. There are no findings that implicate Mr Ottapathu.

Fours Group Findings

32. It has since transpired that the Fours Group has instituted action proceedings against Choppies for the delivery of the 50% Fours Group shareholding. Mr Ottapathu's intention in those proceedings is to file a notice to abide by the court's order and to tender delivery of the shares, subject to a resolution being passed by the Board of Choppies on behalf of which he holds the shares or a court order to that effect.

33. As was stated to DLG, rumours at the time were that Fours was having difficulties paying its debts. The shares were already pledged to Choppies. Mr Ottapathu could derive no benefit from shares because of the pledge nor did he ever intend to.

34. Importantly, the action itself reaffirms Mr Ottapathu's version that the 50% shareholding in the Fours Group was transferred to Mr Ottapathu who received the shares on behalf of Choppies as security for guarantees that Choppies had given to suppliers of the Choppies Buying Group. The guarantees having been cancelled, the rationale for retaining the Fours Group shares has fallen away and the shares should be returned; which shares are under the control of Choppies and not Mr Ottapathu.

35. The Circular and Annexure 1 were issued on 14 August 2019. By this date, DLG was fully aware that an action had been instituted against Choppies and Mr Ottapathu for the re-transfer of the shares. Quite inexplicably, this important fact is omitted from the Circular and/or Annexure 1, as is the fact that Choppies entered an appearance to defend through DLG on or about 15 August 2019.

Broader Recommendations

36. Corporate governance – Mr Ottapathu had proposed the very same recommendation to the Board in April 2019. The Board rejected Mr Ottapathu's proposals, because the

proposal did not include Mr Ottapathu's voluntary resignation. The Board has been in a position to adopt and implement these governance overhauls since April 2019 and has failed to do so.

FORENSIC REPORT

Preliminary remarks

37. Annexure 2 presents a skewed and contrived version of what is otherwise a bland, poorly drafted and largely inconclusive Forensic Report. Similarly to the Legal Report, the Forensic Report has taken excessive liberties with its assumptions and its fundamental premises are flawed.
38. A cursory reading of Annexure 2 and the Forensic Report is sufficient to highlight the glaring incongruency between the two documents. To the extent that the Forensic Report is incorrect, which is largely the case, Mr Ottapathu has had an expert forensic accountant review the EY report to provide comments thereto taking into account the additional explanations and information provided during the course of his review.
39. The Forensic Report and Annexure 2 was only made available to Mr Ottapathu on 6 August 2019.
40. It is important to note that EY's engagement commenced in November 2018. The Forensic Report was only made available on 6 August 2019 by EY subject to strict access and without the ability to copy. Mr Ottapathu and his legal and accounting advisers have had just over two weeks to review, digest and comment on a report that took EY approximately eight months to complete.

Deficiencies in the EY report and Annexure 2 summary

41. The Forensic Report and Annexure 2 clearly indicate that EY did not obtain all the information and explanations that they asked for. The information and verbal advices actually provided to EY by certain of the individuals interviewed overtly appear to be incomplete and conflicted with other information available and verbal advices of other interviewees.

42. Like with the Legal Report, EY has not resolved these inconsistencies and as a result of its failure, it appears to simply ignore the inconsistencies. Thus, the credibility of the Forensic Report is questionable at best.
43. The methodology of the EY investigation is also flawed. It is important to note that neither a draft nor extracts of the Forensic Report were circulated to the various parties who were interviewed to enable them to comment on the remarks allegedly attributable to them or the findings that are influenced by EY's interpretations of the interviews and information provided or lack thereof. No interested person, either affected by the report or who had given information, was afforded a right to be heard or a right of reply.
44. It is significant that Annexure 2 indicates that EY have not quantified the actual adjustments to be made to the 2018 AFS, although the Board indicates that it may be in a position to quantify the accounting impact (on a provisional unaudited basis) by the time of the EGM.
45. In order for the accounting impact to be determined, it would be necessary for Choppies' management (and in due course, PwC) to make additional enquiries, obtain additional information and clarification and resolve apparent conflicting interpretations of the facts and conflicting verbal representations of the parties.
46. The above matters are pervasive throughout the Forensic Report. These deficiencies fatally impact on the findings on the Forensic Report (especially the conclusiveness thereof) and the inferences that may validly be drawn from such findings as articulated in Annexure 2.
47. Insofar as Annexure 2 relies on the flawed Forensic Report – the inferences which appear to have been drawn in Annexure 2, the motives which appear to be ascribed to the various persons in Annexure 2, and the linkages of various transactions in Annexure 2, are all premature and inconclusive. The language and leaps of logic in Annexure 2 appear to have been designed to embarrass Mr Ottapathu instead of focusing on what the Forensic Report actually says.
48. Adjustments to the financial statements of Choppies can only be determined after completion of the additional procedures to validate the process and findings (including the assumptions made and premises upon which the Forensic Report is prepared) and so

determine the appropriate adjustments that are in fact required to the books of account or financial statements.

Specific shortcomings

49. Annexure 2 is not sufficiently comprehensive to fully portray the findings or the degree of reliance that can be placed on the findings in the Forensic Report or the nature and extent of the uncertainties that are still to be resolved. Specific examples of this are:
 - 49.1 The interpretation that bulk sales lack commercial substance seems to have been reached by conflating “bulk sales items” with rebate / reserve stock items. It also does not take into account or explain the operational stock monitoring processes fully or the test stock counts which PwC conducted in April 2019 and which did not indicate any significant variances. Likewise, no physical stock count was undertaken by the internal auditors. It is important to note that the bulk sales relate to a number of customers over a number of days and are in respect of a number of transactions.
 - 49.2 It also does not deal with the relevance of the Easter trading period to the ability of Choppies to effect significant bulk sales and other factors highlighted by interviewees. Bulk sales were made to a number of customers over a period of a week comprising the Easter trading period.
 - 49.3 In relation to the store acquisitions from ANE Western Cape Proprietary Limited (“ANE”) no regard is had to the cash flows received by Choppies from the four stores acquired, when such flows started and the returns on the acquisitions. In fact, the risk and rewards of the ownership of those stores passed to Choppies on the initial dates of the conditional acquisitions. The fact of the matter is that the stores acquired by Choppies were generating over approximately R450million per annum. However, EY simply failed to understand what was needed for it to investigate these transactions.
 - 49.4 In addition, the fact that Choppies had the right to reverse the sale within a 24-month period if the deal did not work out to Choppies' satisfaction, was ignored.
50. Certain transactions that are recorded in the Forensic Report as prima facie anomalous, can be demonstrably shown to have commercial substance taking into account the practice and

operations employed by the relevant Choppies stores. These factors were specifically not investigated by EY where the information is in fact easily obtainable. For example:

- 50.1 The ageing of the “perishables” is determined with reference to the date that the items were first transferred to the Rebate Stocks although expiry dates are not captured on the systems and can only be determined by inspecting the stock items. This was not done.
- 50.2 The stock holding capacity of stores is determined with reference to information provided by interviewees rather than with reference to historical stockholdings at the stores. By way of example, the store in Bellevue in Zimbabwe held three times more stock in 2014 and 2015 than that referred to in the Forensic Report.
- 50.3 The systems used to record cash receipts and payments in Zimbabwe: such cash receipts and payments are an integral feature of the Zimbabwean operations and records thereof were maintained. Again, this demonstrates the EY did not appreciate the facts that it was dealing with.
- 50.4 The extent to which vouchers and supporting documentation evidencing cash expenditure on capital items were available for inspection and the circumstances surrounding the purported missing vouchers were baseless. These are projects that were completed and that are able of being quantified by a quantity surveyor, valuator or other suitably qualified professional.
- 50.5 The reference to the backdating of documents by professional advisers seems to make reference to the proposal for a misnamed feasibility report conducted by the professional advisers in connection with the store acquisitions. The misnamed feasibility report was in fact an analysis of purchase consideration and goodwill allocation for accounting purpose. Therefore, that report was in fact a purchase price allocation exercise and could only be finalised with reference to the value of the assets at the conditional acquisition dates of those stores and after the final purchase consideration had been determined.

51. The simple conclusion to be drawn from Annexure 2 and the Forensic Report is:

- 51.1 Annexure 2 represents an inaccurate and incorrect summary of the Forensic Report;
- 51.2 The Forensic Report fails to verify any of the information it received and failed to resolve any conflicting versions of facts presented to it. Instead, it simply ignored certain facts. As a result, the Forensic Report cannot credibly resolve any issues relating to the finalisation of the 2018 annual financial statements.

ENDS

Company shareholders are advised that Mr Ottapathu's abbreviated response to the Legal Report and the Forensic Report is immediately available on Company's website: www.choppies.co.bw

The following documents will be made available for inspection or review by any Shareholder (or a Shareholder's advisor or representative):

1. a copy of the response to the Legal Report;
2. a copy of the response to the Forensic Report;
3. a copy of a detailed response to the Legal Report;
4. a copy of a detailed response to the Forensic Report as prepared by an independent expert forensic accountant;
5. supporting documents thereto;
6. relevant legal agreements, share pledges and hypothecation of assets; and
7. relevant board minutes.

The abovementioned documents can be viewed during business hours or otherwise by appointment on the following dates and at the following locations:

From **28 August 2019** until **30 August 2019**:

South Africa: RM Partners Inc.
Suite 16, Katherine & West
114 West Street

Sandton, 2196

Norton Rose Fulbright South Africa Inc.

15 Alice Lane

Sandton, 2196

Botswana: Bookbinder Business Law
9th Floor, iTowers North,
Lot 54368, CBD Gaborone
Gaborone Central, Botswana

Desai Law Group

3rd Floor, North Wing

Central Square

Central Business District

Gaborone, Botswana

From **02 September 2019** to the **date of the EGM**:

South Africa: RM Partners Inc.
85 Grayston Drive
5th Floor
Sandton, 2196

Norton Rose Fulbright South Africa Inc.

15 Alice Lane

Sandton, 2196

Botswana: Bookbinder Business Law
9th Floor, iTowers North,
Lot 54368, CBD Gaborone

Gaborone Central, Botswana

Desai Law Group

3rd Floor, North Wing

Central Square

Central Business District

Gaborone, Botswana

Inspection of documents will be done under the following conditions:

1. only after verification of identity and proper standing as Shareholder;
2. upon signing of a register to be maintained for this purpose RM Partners Inc., Norton Rose Fulbright South Africa Inc., Desai Law Group or Bookbinder Business Law;
3. under strict supervision; and
4. Copies, facsimiles or otherwise of Mr Ottapathu's detailed response to the Forensic Report will not be allowed and viewers will be required to accept, in writing, a 'non-reliance and hold harmless letter' prior to being allowed to inspect or review the report. A copy of such letter will be available at the viewing location.