

MINUTES
OF THE SPECIAL GENERAL MEETING
OF THE NATIONAL HORSERACING AUTHORITY
OF SOUTHERN AFRICA, HELD ON MONDAY,
20 JANUARY 2016, AT 14:30.

ATTENDANCE:

National Board Directors:	Mr A G O'Connor Mr C S Beyleveld Mr W A Du Plessis Mr J J du Toit Mr C B Hall Mr G T Hawkins Mr A D Hyde Mrs S Rowett Mr V L Thurling Mr R J Trotter Mr L Wainstein Mr J M Witts-Hewinson	(Chairman)
Members:	Mr E G Anderson Mr A M Costa Mr C G Eudey Mr M Greene Mrs C J Hartley Mr M B Javett Mr W B Kobusch (The Count of Konigsberg) Adv B W Maselle Mrs B A Napier Mr R A Napier Mrs J de Nys Mr R C B Price Mr S J Reid Mr L F Scribante Ms J Smith Mr G W Wiggill Mr K A Woolward	
Apologies:	Mr P de Beyer Adv A P Joubert Mrs V Holtman Mr G Holtman Mr W J C Mitchell Mr R Moodley Mr N P Sanan	
In Attendance:	Mr N A J Roodt	(Fasken Martineau)

The Chairman confirmed that, in terms of Clause 26 of the Constitution, any amendments to the Constitution must be done by way of a special resolution carried by a majority of not less than 2 thirds of the votes, both given by proxy and by members present and entitled to vote at a Special General Meeting called for that purpose. The National Board had called a Special General Meeting to consider amendments to the Constitution as set out in the Notice of the Meeting.

The Chairman asked whether the Members present wished to cast their votes by a show of hands or whether they wished to cast the votes secretly. The Members agreed to cast their vote by way of a show of hands.

Mr Maselle queried whether the proxies could be counted if voting took place by way of a show of hands. The NHA Attorneys advised that the proxies would be counted if the holders of those proxies were present.

All Members who were holders of proxies were present.

Mr Maselle said that he was aware that more than 20 proxies had been submitted in favour of the Chairman. Mr Maselle asked how the proxies had been treated.

The Chairman advised that 38 proxies had been submitted in favour of himself. He had elected to vote on behalf of those persons who had personally given him their proxies.

Mr Maselle also pointed out that there were proxies which had voted in favour of some of the proposed amendments and against others. He advised that he had been informed that these proxies had not been accepted. The Chairman confirmed that such proxies had not been accepted.

It was also confirmed that there were a number of proxies where the name of the person in whose favour it had been made, was left blank, as were the instructions on how to vote. These proxies had also not been accepted.

The Chairman advised that 56 proxy forms had not been accepted altogether, for various reasons.

The Chairman asked that members indicate how they voted in respect of Resolution 2.1.

Voting took place. There were 14 votes in favour of the proposal and 9 votes against the proposal.

Discussion then took place regarding whether or not the various proposals could be voted on separately. The NHA Attorney explained that it was not the intention that the different parts of the amendments to the Constitution be voted on separately.

Mr Reid said that some proxy forms had been rejected because they were in favour of some proposals and against others. If the voting was to take place on each separate proposal, then those proxies should not be rejected.

Mr du Plessis said that he was aware that even if all members present voted in favour of the proposals, they would not be carried as there were too many proxies opposing the proposals. He suggested that the meeting accept that this was the case and that the meeting be opened for discussion.

The Chairman confirmed that the majority which was required to amend the Constitution could not be reached. He asked if there was any objection to accepting this and opening the meeting for discussion. There was no objection.

The meeting was opened for discussion.

Mr Reid said that it did not seem to make sense that a short while ago the Constitution was amended so that Kenilworth Racing had a seat on the Board and now it was being proposed that all Operators come off the Board. He said that there had not been a proper explanation for the change of position on the part of the Operators.

Mr du Plessis said that for a number of years the Operators had absorbed double-digit increases in the cost of the NHA. When a budget proposing an 18% increase in the cost of the NHA had been presented to Phumelela, it had been rejected. As a result, a dispute arose between the Operators and the Board. A mediation process then took place which culminated in a Memorandum of Understanding. A Working Committee was then established to modernise the relationship between the Operators and the NHA. This involved investigating the cost structure of the NHA, the Board and its functions, the powers of the NHA, amongst other things. The Operators had concluded that the best model was for the NHA Board to be completely independent and for there to be a normal contractual relationship between the NHA and the Operators.

Mr Reid said that it was his understanding that in future the NHA would be paid a certain amount if it performed adequately. He asked if this was the case and what would happen if the NHA did not perform to the required standard.

Mr Witts-Hewinson said that a solution had to be found which addressed both the Operator's concerns and the NHA's concerns. He said that a solution had been arrived at where a base finance cost would be established and there would then be a cap on the increase to the Operator's financial obligations year on year. In addition to that there would be a Service Level Agreement. In terms of the Agreement the NHA would receive 12 thirteenths of the agreed budget amount. The remaining thirteenth would only be paid if the NHA met the performance requirements. He said that provided the level of service required was reasonable and the "pass mark" was reasonable, there should be no danger to the NHA that it should not receive the full amount from the Operators.

Mr Maselle said that the NHA should be an independent regulatory body. It was unacceptable that it should effectively become an employee of the Operators by having to achieve certain levels of performance. He said that the Members could not be asked to approve changes which would include a Service Level Agreement where the terms of the Agreement were not known.

He said further that he was extremely concerned to learn that there was an Agreement already in place in respect of service levels. He asked if there were any other Agreements in place which had not been made known to the Members.

Mr Witts-Hewinson confirmed that the only agreement which was in place was the existing Service Level Agreement. Negotiations were still taking place with regard to the base finance cost on which future increase would take place. He said that in order for the NHA Board to operate effectively, it had to be independent and it was therefore imperative that the Board be restructured.

Mr du Plessis explained that the NHA was the regulatory authority for horseracing. It was not the controlling body of Breeders or of Jockeys or of Owners or the Operators. The NHA should also not concern itself with betting.

Mr Maselle asked if the terms of the Service Level Agreement could be made known to the Members. He also asked whether the NHA employees could take comfort in the fact that when the Agreement was in place they would not be transferred to the Operators.

Mr Witts-Hewinson confirmed that there was no immediate notion that any of the existing NHA employees would be moved to any other organisation. He said that the efficiency and structure of the NHA did form part of discussions with the Operators. If things could be done in a more efficient and cost effective way, changes may be implemented.

Mr Hawkins explained that there was no intention from the Operators to withhold any of the NHA's operating costs.

Mr du Plessis said that the situation which currently existed whereby the NHA could vote on any quantum of increase to its budget, was totally unacceptable. Even if the Operator's representatives on the Board voted against the increases they would simply be outvoted. He added that an efficient NHA was in the interests of the entire industry.

Mr Maselle suggested that the NHA's funding requirements could be solved by giving it the Nomination Fees for all races and also all of the unclaimed totalisator dividends.

Mr Wainstein advised that 50% of unclaimed totalisator stakes was paid directly into the stakes pool. He said that 68% of horses raced in South Africa, were owned by Racing Association Members. He said that the destination of the nomination fees for the remaining portion should be decided on by the Owners.

Mr Witts-Hewinson advised that since Kenilworth Racing had been given a seat on the NHA Board, other organisations such as the Groom's Association, had also demanded a seat on the Board. It was becoming more and more difficult for the NHA to defend the current structure of the Board. The Board was becoming dysfunctional as a result of the disparity of interests of those persons serving on the Board.

Mr Maselle agreed but said that the Operators had to be bound by and subject to the NHA rules.

Mr Witts-Hewinson agreed, saying that nothing was being proposed which would change the situation which currently existed with regard to the Operators being subject to the Rules of the NHA.

Mr Napier said that the NHA's relationship with the Operators was similar to the relationship between the Financial Services Board (FSB) and the Insurance Companies. The FSB unilaterally determined what the Insurance Companies had to contribute each year. He said that the regulator had to decide for itself how it was going to regulate. He said that the determination of the reasonableness of the budget was the crux of the problem.

Mr Wainstein confirmed that changes had been made to the budgeting process.

Mr Napier pointed out that the difficulties arose with regard to funding of new equipment for the laboratory.

Mr Witts-Hewinson said that this would be resolved by establishing the appropriate base finance cost on which future increases would be calculated. The amount should take into account the future cost of new laboratory equipment.

Mr Costa asked whether there was a dispute resolution mechanism if the NHA and the Operators could not agree on the base amount.

Mr Witts-Hewinson advised that Rule 100.3 provides that it would be referred to the Auditors for resolution.

Mr Reid asked if the amendments were to be approved, would the NHA Board be reconstituted. He said that as it stood at the moment, there was an abundance of legal skills but very few skills in any other important areas.

Mr Trotter said that the amendments provided for a Nominations Committee whose responsibility would be to appoint the appropriately skilled Board.

Mr Reid pointed out that the Nominations Committee itself comprised mostly legally qualified persons.

Mr Maselle asked how the Nominations Committee would be appointed.

Mr Witts-Hewinson explained that the Members of the Nominations Committee were de facto appointed by virtue of their historic status. It would comprise past Chairmen of the NHA who had served more than 1 year and who had not passed the age of 80 years. He said that whilst this system could be criticised, it was better than the existing mechanism which had created the situation where there was an imbalance in the skills of the Board.

Mr Trotter pointed out that many of the breeders had objected to the proposed amendments to the Constitution. He asked what the nature of the objections were.

Mrs de Nys explained that the NHA affected the breeders business through decisions that it made. As such, the breeders were of the view that they had to be represented on the Board.

Mr Reid said that this argument applied to all organisations and groups within the industry.

Mr Wainstein said that not having representation on the Board would not prevent any organisation or body from engaging with the NHA.

Mr Napier pointed out that the future discussions regarding the funding were extremely important as the NHA would not be independent until it was financially independent.

Mrs Rowett said that the NHA was a National organisation which regulated Racing and Breeding. The validity of the organisation depended on it being properly representative of its members. The proposed amendments effectively divided the Members and provided for representation from the Racing sector but not from the Breeding sector.

The Chairmen said that the Nominations Committee would be tasked with ensuring that there was appropriate representation.

Mr Hawkins said that there would still be various sub-committees which would meet with other organisations whenever necessary.

Mrs Rowett expressed concern regarding the laboratory equipment. She said that there was a plan to replace equipment in the laboratory at a cost of R10 Million. There was, however, already an existing debt of R4.5 Million.

Mr Costa asked what the reason was for proposing that the TBA no longer has a representative on the NHA Board.

Mr Witts-Hewinson advised that it had been agreed by the Working Committee that exactly the same conditions and principles should apply to all members on the NHA Board. He said further that not all breeders were members of the TBA. All members of the NHA Board should be completely independent and should not be comprised by having to speak on behalf of any other organisation.

Mrs Rowett said that it would be acceptable if the Constitution required that the Nominations Committee had to appoint at least one person who was a registered breeder.

Mr Maselle pointed out that the TBA was the only organisation which represented the breeders. This was different to the situation where there are a number of different Racing Operators.

He also expressed concern regarding the Service Level Agreement between the NHA and the Racing Operators. He suggested that the Members be asked to vote on the agreement before it was signed.

Mr Witts-Hewinson pointed out that the Operators were taking a risk by agreeing to come off the NHA Board even though the Service Level Agreement was not yet in place.

Mr Thurling explained that previously Kenilworth Racing was part of Gold Circle and was therefore represented on the NHA Board through the Gold Circle representative on the Board. The demerger resulted in Kenilworth Racing becoming an independent operator. Kenilworth Racing currently operates at a loss and it cannot afford the increases imposed by the NHA. The proposed changes provide for future security for both organisations. He said that the proposed amendments are not intended to exclude any part of the racing industry, but rather to enable the NHA to be truly independent.

Mr Beyleveld confirmed that the basic guiding principle for the proposed amendments was that the NHA should be completely independent.

Mr du Plessis said that the breeders' concerns could be addressed by also having a Service Level Agreement for the Stud Book.

Mr Wainstein advised that there were also Liaison Committees in all regions except KwaZulu-Natal. He said that many of the issues affecting all areas of the Industry were discussed at meetings of those Committees.

Mr Napier proposed that the Working Committee meet with the TBA in an effort to resolve the objections to the proposed amendments.

The Chairman closed the meeting and thanked all Members present for their participation.