

MINUTES
OF THE 133rd ANNUAL GENERAL MEETING
OF THE NATIONAL HORSERACING AUTHORITY
OF SOUTHERN AFRICA, HELD ON MONDAY,
12 JANUARY 2015, AT 14:30.

ATTENDANCE:

National Board Directors: Adv A P Joubert (Chairman)
Mr D J Pillay (Chief Executive)
Mr C S Beyleveld
Mr R L Bruss
Mr W A du Plessis
Mr G T Hawkins
Mr J M Witts-Hewinson
Mrs S Rowett
Mr R J Trotter
Mr L Wainstein
Mr J M Witts-Hewinson

Members: Mr A M Costa
Dr L Konar
Mr D Kyriacou
Adv B Maselle
Mrs V Moodley
Mr A G O'Connor
Mr S J Reid
Adv N Riley

Apologies: Mr E G Anderson
Mr E Braun
Mr P Davis
Mr A Mohamed
Mr R Moodley
Mr P Rugg
Mr N Sanan
Mr V L Thurling

In Attendance: Mr C B Hall
Mr C George (Horwath, Leveton, Boner)
Mr N A J Roodt (Fasken Martineau)
Mr Z Weideman (Horwath, Leveton, Boner)

1. Welcome and Apologies

The Chairman welcomed the Members present and thanked them for their attendance. He confirmed that together with the proxies received from Messrs van der Linde, Shill and Abramowitz, a quorum for the meeting had been achieved.

The Notice of the Meeting had been published in the Racing Calendar, Tellytrack, Computaform, on the NHA Website and sent to all Members whose e-mail addresses were held on file.

2. Minutes of the Annual General Meeting and the Special General Meeting held on Monday 13 January 2014

Mr Kyriacou queried why the confirmation of the Minutes of the Special General Meeting was not contained in the Notice of the Meeting. The Chairman advised that at the time the Notice was published, the Minutes of the Special General Meeting had not been vetted due to an oversight. The Minutes had since been finalised and had now been added to the Agenda.

Adv. Maselle said that he had sent an e-mail to the Chief Executive on 4 April 2014 asking for the Minutes of the Special General Meeting. The Minutes of the Special General Meeting were only published on the NHA Website on 9 January 2015.

The Chairman asked Adv Maselle whether he had an objection to the meeting proceeding in light of the late publication of the Minutes. Adv. Maselle confirmed that he did not.

Dr Konar asked that, in future, the spelling used in the Minutes be consistent, either UK spelling or American spelling.

The Minutes were proposed by Mr Witts-Hewinson and seconded by Dr Konar.

The Minutes of the Special General Meeting held on 13 January 2014 were considered.

Adv. Maselle pointed out that Dr Konar and Mr Currie were not present for the Special General Meeting as they had left by that time. The Chairman agreed saying that he recalled that Mr Rugg had also left the meeting. It was agreed to amend the Minutes to reflect that Messrs Konar, Curry and Rugg had tendered their apologies for the meeting.

The Chairman said that, notwithstanding the amendment, the voting had taken place as a show of hands together with the proxies in favour of persons who were present at the time. He was therefore satisfied that the outcome of the voting was correct.

The Minutes of the Special General Meeting were proposed by Mr A M Costa and seconded by Mr J M Witts-Hewinson.

3. Chairman's Report

The Chairman elaborated on some of the work done by the National Board during the course of the year.

He said that the integrity of horseracing was of paramount importance. For this reason, a substantial amount of money had been spent on improving the laboratory in order to maintain its status as a leading international facility. He pointed out that the laboratory had never had a failure with any result in the International Comparison Tests. The Director and the Deputy Director of the Laboratory had also presented scientific papers at numerous conferences, the most recent of which was in Mauritius.

The Chairman reported that the National Horseracing Authority had previously employed a Human Resources Officer. However, when that person resigned, a decision was taken not to replace her. As there were now nearly 200 employees at the NHA, the National Board considered that it was imperative that a suitably qualified Human Resource Officer be employed.

The Chairman explained that Mr David McGillivray had been employed as the Racing Control Executive in an effort to improve the standard of control exercised by the Stipendiary Stewards. Unfortunately, Mr McGillivray had been offered a more lucrative position overseas. He did, upon the Chairman's request, make a number of suggestions to improve racing control prior to leaving.

The Chairman then reported on Handicapping. He said that a proposed increase of 6 merit rating points had met with some opposition. As a result, a Committee was appointed to investigate the Handicapping System, under the Chairmanship of Mr Robin Bruss. Wide consultation and lengthy debate took place. The outcome of the process was that the decision to increase the merit ratings was reversed.

He said that one of the most significant achievements during the year was the revision of the penalties for the use of prohibited substances. After a great deal of work, which included consultation with a number of interested parties including the trainers, the prohibited substances were classified into different categories. Together with the categorisation of the prohibited substances were guidelines on penalties for the use of the prohibited substances. He said that this was a very well thought out and carefully considered document put together by lawyers, veterinarians and scientists.

The Chairman said that together with the assistance of the Racing Association, a mechanism has been put in place in order to deal with owners who had outstanding debts to trainers. A number of cases where trainers were owed money, had already been resolved.

Another issue that was dealt with by the NHA during the year was the distortion caused by the high value restricted races which were now taking place. The distortion mainly took place with regard to the breeding statistics as it was in this area where the restrictions had the greatest adverse effect.

The National Board resolved that three tables of statistics for Stallions and Breeders should be created, namely a table where the stakes for restricted races are not included, a table where they are included and a table where all stakes, including stakes earned overseas, were included. A meeting took place on 18 November 2014, as a result of objections to the Resolution adopted by the Board. The meeting was well attended and a robust debate took place. A report from that meeting is to be considered by the Board.

The Board also initiated an investigation into the terms and conditions of entry into the Durban July. Messrs J Cuzen and A M Costa conducted the public investigation. Their recommendation was made available to and taken into account by Gold Circle.

The Chairman spoke on the costs of the NHA. He said that the integrity of horseracing could not be compromised by a lack of funding. He said that the National Horseracing Authority had to exercise proper control and had to maintain its successful record when challenged in Court.

The Chairman said that issues and conflicts should be dealt with, as far as possible, in the absence of emotion and personality conflicts. Debates on important issues are a healthy part of the business and sport of racing, but when they are clouded by personal attacks and the like, issues become so much more difficult to resolve.

He concluded by stating that it was imperative that the NHA protected its independence. It was absolutely necessary that the NHA secured a sustained funding model which guaranteed its independence, both in fact and in perception. He confirmed that a meeting would be held in the near future to endeavour to establish such a funding model.

4. Financial Statements and Funds in Trust for the period ended 31 July 2014

The Annual Financial Statements for the year ending 31 July 2014 were considered.

Adv. Maselle pointed out that the Rules had previously stated that all fines paid and deposits forfeited had to be paid to the Riders' and Trainers' Benevolent Fund. The Rules had then been amended to state that only 20% of the fines and deposits forfeited should go to the Fund. The 2014 Financial Statements showed that only 14 or 15 percent had been paid to the Fund.

The query was referred to the auditors present at the meeting, who responded by saying that it would have to be investigated to establish how the amount was determined. It was possible that this was as a result of timing differences.

Adv. Maselle said that it was unacceptable that the Directors had approved the Financial Statements when a simple calculation would have shown that the amounts paid into the Benevolent Fund was incorrect. The Chairman said that this was an auditing issue and that the auditors had suggested it may be a timing issue.

He asked why Adv. Maselle had not given notice of this matter as it was very important. Adv. Maselle said that he had only recently become aware of the misappropriation of funds, after the period which provided for matters to be raised. He added that previously he had not received responses to matters that he had raised. He said that the NHA had ignored many of his previous questions so he was now raising the matter in front of the other members. The Chairman pointed out that misappropriation meant theft, which was a very serious accusation. Adv. Maselle said that the amounts had been incorrect for a number of years. He had prepared a document so that this issue was not misunderstood. The document showed the contributions made from 2010 and, since then, the amounts had been incorrect. The document prepared by Adv. Maselle was distributed to those present. It was agreed that the document would be attached to the Minutes of the Meeting. Mr Mattheyse asked who was responsible for the preparation of the financial statements as the NHA did not employ an accountant. The Chief Executive advised that they were prepared by the Financial Manager employed by Phumelela. The accounting function of the NHA is outsourced to Phumelela. Mr Mattheyse expressed concern regarding the outsourcing of the accounting function to Phumelela. He said that the purse strings of the regulator should not be held by the regulated.

Adv Riley said that he recalled that it had been agreed some time ago that a percentage of the fines and deposits forfeited would be used to offset the legal costs. The balance would be paid to the Benevolent Fund.

Dr Konar referred the attention of the meeting to page 5 of the Minutes of the previous Annual General Meeting where he had undertaken to assist with the preparation of the financial statements. He had subsequently prepared a document which had been sent to the NHA Executive. The NHA Executive had acknowledged receipt of the document and had undertaken to adhere to the King Commission principles. He said that the financial statements were defective in a number of respects.

He said that firstly, it was necessary to state the name of the person who prepared the financial statements. This had been omitted from the financial statements.

He said that 12 different core values were listed on page 3 of the Annual Report. He said that these were action steps rather than core values. Core values included independence, objectivity, transparency, fairness and discipline. He suggested that they be revised taking into account what values actually were.

He said further that the report referred to the Corporate Governance practised by the NHA. He referred to Clause 20.1 of the Constitution which stated that the Licensing Board had the power to grant, refuse to grant, renew or refuse to renew any privilege in its absolute discretion, without any obligation to furnish reasons. He expressed the view that this was unconstitutional and suggested that the NHA Attorneys be asked for advice.

He said that page 9 of the Annual Report showed a group photograph of the Directors. There were four directors who were absent from the photograph.

The way the page had been designed, however, it looked as though the four persons were absent Directors.

At page 13 of the Annual Report, the Chairman stated that the NHA was committed to the principles of good corporate governance. Dr Konar had provided the NHA Executive with copious documents containing the 75 principles and 195 sub principles of good governance. He said that good corporate governance included the evaluation of the effectiveness of the National Board and the auditors, etc. Good corporate governance also requires the indication of the attendance or absence of directors from meetings. This had not been done. There was no indication of whether or not the effectiveness of the National Board had been evaluated either internally or externally.

He also expressed the view that it was disrespectful for the Chairman to refer to the Racing Control Executive by his surname only in his report. The Chairman responded, saying that this was a common legal practice and that no disrespect was intended.

Dr Konar then continued, pointing out that at page 38 there was a statement that the external auditors were responsible for independently reviewing and reporting on the “company’s” financial statements and that the financial statements had been examined by the “company’s” external auditors. This was a fundamental flaw as the NHA was not a registered company.

On page 44, in the Statement of Changes in Equity, the total comprehensive income for the year was shown in brackets. This was incorrect as the amount was positive and not negative. This, he said, should have been picked up by the auditors. The auditors responded, saying that the financial statements had been printed prior to them having had sight of them.

He referred to the statistics relating to the number of trainers registered. At page 30 the number was given as 164 whilst at page 22 the number was 202. The Racing Administration Manager explained that the numbers were different in that the one number was the total number of trainers that had been registered throughout the course of the year. This would include those trainers who had stopped training during that period. The second number was a count of the number of registered trainers as at 31 July 2014.

In response to a question from the Chairman, Dr Konar said that the matters that he had referred to in the Financial Statements were not such that the Financial Statements could be adopted by the meeting.

The financial statements were proposed by Mrs Rowett and seconded by Mr Witts-Hewinson, subject to the matter raised by Adv Maselle regarding the Benevolent Fund being resolved.

5. Appointment of Auditors

The Chairman proposed that the same auditors be appointed again.

Dr Konar asked whether the Audit, Risk and Finance Committee of the NHA had evaluated the effectiveness of the auditors prior to making the proposal to re-appoint them. Mrs Rowett confirmed that the Audit, Risk and Finance Committee had been satisfied with the performance of the auditors. Dr Konar said that it was usual for auditors to motivate their re-appointment. He asked if the auditors' representatives could give some information with regard to their company, particularly in respect of transformation, reprimands, empowerment rating, inspections, etc.

The Chairman asked the auditors to motivate their re-appointment, as suggested by Dr Konar.

The auditors' representative said that he had been an auditor for 25 years. The company in which he was employed has been established in 1928 and was part of a global organisation which was present in 40 countries. The company had been subject to an URVA review. The company dealt with a number of listed entities. There were 15 partners altogether. The company was in the process of obtaining a BEE rating.

Mr du Plessis said that whilst he fully supported good corporate governance and transformation, the NHA was not a listed company. It was however accountable to its members and funded by the Operators. He expressed the view that the corporate governance requirements need not be as onerous and as costly as that of a listed company.

The appointment of the auditors for a further year was proposed by Mr Trotter and seconded by Mr Beyleveld.

Dr Konar and Adv Maselle abstained from supporting the motion.

6. Any Other Business

6.1 The Khumalo Review

The Chairman advised that the NHA's heads of argument would be filed by the end of January. A date for the Court hearing would then be sought.

Mr Reid said that the matter had taken more than 18 months. He asked why it had taken so long. The NHA's attorney advised that Mr Khumalo had availed himself of all legal processes at his disposal, including an application to introduce new evidence. This resulted in the matter being drawn out.

The Chairman said that an interim application to prohibit Mr Khumalo from riding could have been applied for, but this would have been unwise as it is very unlikely that it would have been successful.

Adv. Maselle asked about the new evidence that Mr Khumalo wanted to be introduced. The NHA Attorney explained that the Appeal Board had relied on evidence submitted by Mr Tarry. However, the day before the Appeal Board wrote the reasons for its decision, Mr Tarry filed an affidavit recanting his evidence. Additional submissions were also made by Mr Mike de Kock.

The application by the NHA is to disallow the evidence that had been submitted after the appeal hearing. He said that allowing the evidence would be contrary to the appeal system where the Appeal Board took into account only that evidence which was before it.

6.2 The Voting List

The Voting List prepared in 2014 was now correct. Adv. Maselle wanted to know why this was not done in previous years. The Chairman said that it was not possible to give an explanation for what had happened previously. However, decisions were made in good faith. Those decisions would be valid until set aside on review. That being so, all decisions previously taken, were valid.

6.3 Lack of Response

In response to Adv. Maselle's complaint that he never received a response to correspondence sent to the NHA, the Chairman said that, as Chairman, he received many e-mails. It was neither possible nor appropriate to personally deal with them all. He had dealt with those e-mails which he felt were appropriate. The e-mails of a legal nature were referred to the NHA's attorneys. Those e-mails which needed a decision from the Board, were placed before it for consideration and decision.

6.4 The Merit Rating

Adv. Maselle referred to the decisions taken by the Board following the meetings held on Merit Rating which was that the current system used by the Handicappers was the most practical. He asked whether the review of the merit rating system was now over. The Chairman responded, saying that if improvements were suggested, they would be considered.

Adv. Maselle said that it did not make sense that the NHA held public hearings to discuss merit ratings, came to a conclusion, but then did not make the document, on which the conclusion was based, available to the public. He said that the decision to reduce the merit ratings by 6 points affected all owners, and as such, the document should be made available to them.

The Chairman said that the decision had been made and that decision remained in place. He said that if anything new arose, it would be considered. The Chairman asked Mr Bruss to deal with the Merit Rating System and related matters. (Mr Bruss did so later during the meeting, under "General".)

6.5 Complaint Lodged against the Chief Executive

Adv. Maselle referred to the decision taken by the National Board regarding the complaint he had lodged against the Chief Executive. He said that the Board had taken the decision without consulting Adv Maselle when he had specifically requested that he be consulted.

The Chairman said that Adv. Maselle has often lodged complaints against the process followed by the NHA and asked for explanations and reasons for decisions amidst the process. It was neither practical nor advisable to always respond to such requests. A regulatory organisation could not be run in such fashion. When a matter was completed, the decision would be given. In this case, Adv. Maselle alleged an agreement between himself and the Chief Executive. When taken up with the Chief Executive, he stated that he could not recall such an agreement. As it was clear that further evidence was not going to take the matter any further, the Board decided not to rule on the complaint and to refund the complainant's deposit.

Adv. Maselle responded, saying that his complaint should not be trivialised as it was one which related to the integrity of the NHA. The matter related to the awarding of National Colours to the jockeys which should not have been awarded. He said that he took the complaint very seriously and, as such, had been prepared to meet a fine of R50 000 if it was found to be unwarranted. The manner in which the complaint was dealt with did not demonstrate a high level of integrity.

The Chairman said that the matter of the awarding of Protea Colours was taken very seriously by the National Board. Lengthy debate had taken place at meetings of the Board. Finally, a press release was issued. The press release explained the final decision taken by the Board. The serious issue of the awarding of Colours was therefore not trivialised by the Board. But whether or not there was an agreement between the Chief Executive and Adv. Maselle, was an ancillary issue.

Mr Reid confirmed that he was present when the Chief Executive had made the agreement with Adv. Maselle. In order to establish the truth, the Board should have contacted him. The Chief Executive said that he did not recollect having given Adv. Maselle an undertaking to provide him with a copy of the documentation received from SASCO. He recalled that he had agreed to make the outcome of the investigation into the matter, public. Adv. Maselle said that the Chief Executive did promise that he would provide him with the documents and that he had it recorded.

Mr du Plessis queried the motivation behind the unhappiness with the awarding of National Colours to the Jockeys. He said that large sums of money were being spent on defending a decision which was in the best interests of racing. He asked what the substance of the complaints were.

Mr Reid said that for a number of years, the NHA had acted outside of its own Rules. This was demonstrated by the fact that the Rules had been amended subsequently to remedy the situation.

The Chairman said that the history of the awarding of Colours had been dealt with.

Adv. Riley said that the complaints that had been lodged were not constructive, but were destructive. He said that it appeared that certain individuals had their own agendas. These views were not supported by the Owner's representative bodies and as far as he was aware, no complaints had been received from any other sporting body regarding the awarding of Colours to the Jockeys. He said that he failed to understand why, in this time of crisis in the racing industry, it did not stand together.

Dr Konar said that all views relating to this matter had now been aired and dealt with. He proposed that it be concluded. Adv. Maselle confirmed that he had nothing further to add.

6.6 Appointment of Mr Wainstein to the National Board

Adv. Maselle queried the appointment of Mr Wainstein as the owners' representative on the National Board. He said that the appointment was unconstitutional as Mr Wainstein was not a member of the Board of the Racing Association. He said that it was simply a matter of integrity that the NHA should follow its own Constitution.

During the debate it became apparent that there were two versions of the Constitution.

It was agreed that the attorneys would be asked to look into the matter.

6.7 General

Mr Reid said that in a previous discussion that he had with the Chief Executive, he was advised that Mr McGillivray had been appointed to remedy the deficiencies of the Stipendiary Stewards. He asked how this was now going to be addressed in the light of Mr McGillivray's resignation.

The Chairman said that before Mr McGillivray had left, he prepared a comprehensive document of matters relating to the Stipendiary Stewards. This document would be taken into account when Mr McGillivray's successor was appointed.

Mr Reid said that in the last racing year, the following number of objections per race were lodged in the respective countries:

- Mauritius 1 per 26 races
- Singapore 1 per 41 races
- France 1 per 57 races
- Japan 1 per 57 races
- South Africa 1 per 430 races

He said that this indicated that there was a problem in South Africa. He expressed the view that the current Rules were partly to blame for the problem in that the Stipendiary Stewards had to exercise judgement in deciding the outcome of objections. Mr Witts-Hewinson explained that an Admission of Guilt system was used in South Africa which, to a large extent, alleviated the need to deal with racing infringements by way of objections. Mr Reid responded, saying that these penalties were not publicised widely. Punters were therefore not able to see that justice was being done. Mr Witts-Hewinson answered, saying that the publication of penalties had to be done carefully as too many penalties gave the (wrong) impression that there was a problem with the integrity of racing.

The Chief Executive invited Mr Reid to sit with the Stipendiary Stewards during a race meeting so that he could identify the areas of concern.

Mr Reid asked that the Rules relating to objections be reviewed. He said that the French Rule was easy to apply and was consistent. Mr Costa responded by saying that the French Rule was draconian. South Africa did, at one time, have the same Rule, but fortunately, it was changed. He suggested that Mr Reid write down what he thought that the Rules should say and give it to Mr Pillay to table at a meeting of the Rules Committee.

The Chairman asked Mr Bruss to comment on the Merit Rating System. Mr Bruss said that the proposal to raise the merit ratings of all horses was made at an Industry Liaison Meeting after it had been noticed that the merit ratings had slipped downwards for various reasons. As a result, the level of the South African ratings were lower than other countries. When the Asian Graded Races Committee issued its Guidelines, the South African Graded Races did not meet those requirements because of the low average merit ratings of the races. After some discussion, it was agreed that the merit ratings of all horses be increased by 6 points. Unfortunately, the implementation of the increase had been delayed and eventually took place at the change of the Racing Season. This affected the races that had been programmed as horses which previously qualified for certain races no longer qualified. Because of the disruption, it was agreed that the ratings would revert to what they had been prior to the increase.

Thereafter a meeting of all interested parties took place. Arising from the meeting, a comprehensive report was prepared and submitted to the National Board.

The Board considered the report carefully and decided to monitor the merit rating system. It did, however, decide that the report would not be made public as the matter was concluded.

Adv Maselle thanked Mr Bruss for the information.

Mr Reid asked why there were not more plate races to cater for good horses which deserved to win more races. Mr Bruss said that it was up to the owners to demand more plate races.

Mr Reid asked why there was no longer any NHA personnel at Kimberley. The Chairman replied that it had been considered, but it was felt that the cost could not be justified, as racing only took place a few times a month there. Adv. Riley said that the placement of a Stipendiary Steward in Kimberley should not be considered in terms of the number of race meetings. There were a large number of unsound horses' there and also greater opportunities for malpractice there. Mr Hawkins suggested that consideration be given to having the Stipendiary Stewards spend more time in Kimberley when they do go there for the race meetings. Mr du Plessis said that unfortunately, it was not possible to have the ideal regulatory system as the Operators lost money on horseracing. He said that the cost of the NHA to the Operators was already high.

This concluded matters for the meeting.

Mr Trotter proposed a vote of thanks to the Chairman on behalf of the members of the NHA. This was accepted by the meeting.

Adv A P Joubert
Chairman

CBH/PR
1 June 2015