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The Chief Executive: Mr Shaun Adriaanse

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20 August 2024

BY EMAIL: ceo@swimsa.org (and neriah.molamu@swimsa.org)

Dear Sir

**SWIMMING SOUTH AFRICA QUADRENNIAL ANNUAL GENERAL MEETING – 25
AUGUST 2024 – EXECUTIVE COMMITTEE NOMINATIONS**

1. I refer to the above matter and the Quadrennial Annual General Meeting to be held on 25 August 2024 (the **QAGM**).
2. I confirm that I am a registered member of Swimming South Africa (**SSA**) with SSA Reg number: 841127MATAKEMP.
3. I confirm further that I have been provided with a copy of the notice from your office distributed on 11 August 2024 pertaining to nominations received for the SSA Executive Committee for voting upon at the QAGM (the **Notice**). A copy of the letter from your office and the list of Executive Committee Nominations 2024 is attached herewith marked "A".
4. It is evident from the list of nominees for the Executive Committee positions (the **List**) that four of the nominees on the List ought not to have been included as a result of their ineligibility to be re-elected for a further term of four years.
5. The following are the four nominees in question:
 - 5.1. Mr. A Fritz. He has been a member of the Executive Committee of SSA since 2004 (5 consecutive terms of 4 years - having served as Deputy

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Legal Practice Council, membership number: 81295
Solicitor of the Supreme Court of England & Wales, Attorney of the High Court of South Africa

David Becker - Managing Partner - BA LLB (UCT) / Post Graduate Certificate in Sports Law (King's College) / GMP
(Harvard) Matt Kemp - Partner - BA LLB (UCT) Calli Solik - Consultant - BA LLB (UCT) Guy R. MacLeod - Consultant - BA
LLB (Stell) LLM (int.trade) (Stell) Bryge Wachipa - Consultant - LLB (UFH)

President from 2008 - 2016 and as President from 2016 - 2024) and is the only candidate nominated for President for the next term.

- 5.2. Mr. J Naidoo. He has been a member of the Executive Committee of SSA since 2004 (5 consecutive terms of 4 years - having served as President from 2004 - 2016 and Vice President from 2016 - 2024) and is a nominee candidate for the position of Deputy President for the next term.
- 5.3. Mr. J Ellis. He has a member of the Executive Committee of SSA since 2012 (3 consecutive terms of 4 years – having served all 3 consecutive terms (2012 – 2024) as Honorary Treasurer) and is a nominee candidate for Honorary Treasurer for the next term.
- 5.4. Mr. Z Molusi. He has been a member of the Executive Committee of SSA since 2012 (3 consecutive terms of 4 years - the last 2 consecutive terms of which (2016 - 2024) were served as Deputy President) and is a nominee candidate for Deputy President for the next term.

Breach of SSA Constitution

6. As I am certain you are aware, the above nominees are ineligible for re-election to the SSA Executive Committee pursuant to Article 6.23 of the SSA Constitution which reads as follows:

*"6.2.3 The term of office for all Executive Members will be limited to three consecutive periods."*¹

Non-Alignment with Governing Bodies and Global Best Practice

7. Moreover, and notwithstanding their ineligibility in terms of the SSA Constitution, the four nominees', and Mr. Fritz and Mr. Naidoo in particular, election as members of the Executive Committee would (and arguably already has in terms of the periods already served) caused SSA to fall foul of the best practices and principles of corporate governance regarding the maximum term of office that an Executive Committee member may serve in terms of the Constitution of the South African Sports Confederation, Olympic and Paralympic Committee (SASCOC), the World Aquatics Constitution and the King IV Code on Corporate Governance. These all being organisations to which SSA has either committed itself to compliance with, alternatively, in the case of the King IV Code, a set of principles which SSA has voluntarily adopted.

¹ Article 6.6 of the SSA Constitution provides context for the duration of the "periods" of office for Executive Committee Members, the relevant portion of which reads as follows: "The Executive Committee Members of SSA shall be elected at the Quadrennial Annual General Meeting of SSA which is held during the year of the Summer Olympic Games, shall hold office for four years, ..." (my emphasis)

8. Finally and for the sake completeness, you will appreciate that should any of the four nominees be elected to the Executive Committee for the forthcoming term, all actions taken by what would be an improperly constituted Executive Committee would be open to scrutiny and administrative challenge on the basis of unlawfulness.

Demand

9. In the circumstances, and on behalf of all of the members of SSA, I accordingly demand that SSA undertakes immediately to:- (i) review the List of nominated candidates for the election of the Executive Committee at the upcoming QAGM; (ii) cause any ineligible candidates to be removed therefrom; and (iii) distribute a new list of nominee candidates² for election at the planned QAGM.
10. There is no apparent prejudice to SSA in providing the undertakings sought and I accordingly look forward to receiving them by no later than the close of business on Wednesday, 21 August 2024.
11. You will appreciate that this reasonable request is made with a view to obviating the need to institute urgent proceedings to protect my (and other SSA members') rights. In the event that SSA fails to furnish the undertakings requested in paragraph 9, I shall have no option but to approach the High Court for the appropriate urgent relief and confirm that I will seek a punitive costs award as against SSA in the event that this becomes necessary.
12. I trust that you will be guided accordingly.

Yours sincerely,

BECKER KEMP ATTORNEYS

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CC: The CEO and COO – SASCOC - Nozipho@sascoc.co.za and patiences@sascoc.co.za

CC: Executive Director - World Aquatics - brent.nowicki@worldaquatics.com

CC: SASCOC Member Affairs - K Pople and C Cobbers - kim@sascoc.co.za and clifford@sascoc.co.za

² In so far as is reasonably possible given the time involved such list should comply with Principle 7 of the King IV Code regarding each candidate's profile, qualification, background and, if applicable, performance on any committee to date.