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19 August 2023

## COMMUNIQUÉ TO STAKEHOLDERS ON THE EVICTION OF MENZIES AVIATION (NAMIBIA) (PTY) LTD (“MENZIES”) FROM HOSEA KUTAKO INTERNATIONAL AIRPORT (“HKIA”) VIS-À-VIS PROVISION OF GROUND HANDLING SERVICES AT HKIA

Dear Stakeholders,

1. Kindly take note that Menzies was **evicted from HKIA today, 19 August 2023 and has ceased providing ground handling services at HKIA yesterday, 18 August 2023.**
2. We deem it prudent to give a holistic account of key events and developments of consequence that led to the **eviction of Menzies from HKIA.** We will outline the aforesaid events and developments in chronological order for contextual clarity and ease of reference.
3. During 2014, Menzies and NAC entered into a written agreement to provide ground handling services at HKIA. The agreement was for an initial period of five years and commenced on 1 January 2014. It lapsed on 31 December 2021 and was subject to the right of renewal for three years.
4. New bids were invited prior to the termination date of the said agreement and a six months extension was agreed to between the parties from January 2022 to 30 June 2022, subject to a month's written notice of termination should the procurement process (in terms of the Public Procurement Act 15 of 2015 for ground handling services at HKIA) that was pending at the time be finalised prior to the termination date.
5. Both Menzies and Paragon took part in the procurement process as bidders. Paragon's bid was successful. Menzies' bid was disqualified on the basis of non-compliance with certain tender conditions. Menzies took the matter to the Review Panel in terms of section 58 of the Public Procurement Act, but the review was dismissed during February 2022. Subsequently, the NAC, in terms of a letter dated 31 March 2022 gave notice of termination of the agreement between it and Menzies effective 30 April 2022.
6. Menzies disputed the lawfulness of the notice and in a letter on 22 April 2022, the NAC withdrew its notice of termination and informed Menzies that they stood by the termination date of 30 June 2022 as provided for in the extension of the original agreement and asked for an undertaking by Menzies that it would vacate the NAC premises when the agreement between NAC and Menzies expires. Menzies refused to give an undertaking to this effect.

7. On 27 May 2022, NAC launched an urgent application in the High Court seeking a declaratory order that the agreement would terminate on 30 June 2022 and that Menzies would be obliged to, on that day, cease to provide ground handling services to NAC and give vacant occupation of the premises to the successful bidder, i.e., Paragon.
8. **The High Court, per Justice Orben Sibeya, handed down judgment in favour of the NAC on 29 June 2022 and ordered Menzies to vacate HKIA on 30 June 2022. The High Court declared that the agreement entered into between the NAC and Menzies for Menzies to provide ground handling services at HKIA shall terminate on 30 June 2022.**
9. **The High Court further declared that Menzies shall at the end of the day on 30 June 2022 cease to provide ground handling services at HKIA; hand over all security access cards or other equipment entitling it to access HKIA or any premises which it occupies at HKIA by virtue of the ground handling services agreement with NAC; and, further, that Menzies shall vacate occupation of any premises at HKIA that Menzies occupied by virtue of the ground handling services agreement that will terminate on 30 June 2022.**
10. Another order of the High Court was to the effect that **if Menzies refuses to give effect to the High Court orders referred to above, then the Deputy Sheriff of the High Court is directed to evict Menzies from HKIA and from all premises of HKIA occupied by Menzies by virtue of the aforesaid ground handling services agreement. The Deputy Sheriff was further directed to remove all equipment belonging to Menzies from HKIA. Menzies was also ordered to pay the legal costs of NAC and Paragon.**
11. Menzies appealed the High Court judgment alluded to above and an appeal hearing in this regard took place in the Supreme Court on 19 April 2023. **The Supreme Court on 9 June 2023 dismissed Menzies' appeal with costs.**
12. In a unanimous appeal judgment written by Justice Theo Frank, with Justice Sylvester Mainga and Justice Elton Hoff concurring, the Supreme Court averred that **the rule of law demands that Menzies' unlawful hold over the premises and forcing NAC to make use of its services should be put to an end. The judgment emphasized that as Paragon was awarded the bid and that award had not been set aside, Paragon should be allowed to act in accordance with the bid as it is willing to do.**
13. The Supreme Court further stated that **Menzies stayed on rendering ground handling services at HKIA without any right whatsoever and refused to vacate on the basis of a fabricated defence** based on a tacit relocation of an expired agreement. The judgment also asserted that **Menzies had no right to remain on the premises of the HKIA and render the ground handling services after the expiry of the agreement to this effect on 30 June 2022, and it nevertheless simply refused to vacate the premises without obtaining any relief from a court of law entitling it to stay there.**

14. The Supreme Court judgment also asserted that **Menzies relied on unlawful self-help to stay put and had to date hereof occupied the premises unlawfully for about a year, despite the fact that Paragon presently has the right in accordance with a bid awarded to it by the NAC to be placed in possession of the premises so as to render ground handling services at HKIA pursuant to the bid awarded to it by NAC.**
15. Finally, **the Supreme Court found that Menzies resorted to self-help to remain in possession of the premises and hence, because of the necessity of the ground handling services, is in essence blackmailing the NAC, to use them in the meantime. The apex court also found that on the other hand it is Paragon who has been awarded the agreement to render ground handling services at HKIA, which award has not been set aside.**
16. In the immediate aftermath of the Supreme court judgment alluded to above, Menzies sought from NAC and was granted a meeting to discuss the implementation of modalities and logistics relating to the aforesaid order of the Supreme Court.
17. At the meeting attended by representatives of NAC, Menzies and Paragon; NAC and Paragon, at the request of Menzies, indicated their preparedness and readiness, without derogating from the binding and immediate effect of the said court order, to work on and finalize the handover arrangements and practicalities by close of airport operations on 12 June 2023 for Paragon to commence ground handling operations on 13 June 2023.
18. On 12 June 2023, Menzies instituted urgent legal proceedings in the High Court that were served on NAC and Paragon in the late afternoon of 12 June 2023, seeking suspension of the court orders in terms of which Menzies was supposed to cease rendering ground handling services at HKIA on 12 June 2023. A court hearing in this regard commenced at 17:30 p.m. on the same day, i.e., 12 June 2023, which adjourned in the late evening.
19. Pursuant to hearing legal submissions from the parties' respective legal representatives on points *in limine* i.e., preliminary matters strictly confined to purely legal issues, without considering the substantive merits of the case, the court reserved the ruling, which was eventually delivered at 10:00 a.m. on 15 June 2023, the upshot of which was that the High Court postponed the case to 4 July 2023 for a hearing in respect of the merits of the matter.
20. The court postponed the case in the manner aforesaid to afford NAC and Paragon an opportunity to file their Answering Affidavits as they did not have time to do so on 12 June 2023, since Menzies only gave NAC and Paragon 30 minutes for aforesaid purposes. This is because Menzies required NAC and Paragon to file their opposition notices by 17:00 on 12 June 2023, whereas they set the matter down for hearing 30 minutes thereafter, i.e., 17:30 p.m. Menzies was also be afforded an opportunity to file a Replying Affidavit to the Answering Affidavits that were filed by NAC and Paragon, after which all parties, i.e., Menzies, Paragon and NAC filed their respective Heads of Argument for the

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judge's consideration in substantively adjudicating the case on the merits as enunciated above.

21. After hearing the submissions of the respective parties' legal representatives on 4 July 2023 in respect of the merits of the matter, the High Court postponed the matter to 4 August 2023 for delivery of judgment.
22. On 4 August 2023, the High Court indicated that the judgment was not ready for delivery on that day as initially envisaged, and, further, conveyed that the judgment will only be handed down on 8 August 2023.
23. In the afternoon of 7 August 2023, less than a day before the High Court was due to deliver its judgment, Menzies instituted an interlocutory application on an urgent basis in terms of which it requested the High Court to permit Menzies to file further evidence against NAC and Paragon in respect of the urgent application that Menzies instituted against the said parties on 12 June 2023.
24. Affidavits were filed by the parties on excessively truncated timelines, i.e., NAC and Paragon were ordered to file their Answering Affidavits by 16:00 on the same day, i.e., 7 August 2023, whereas Menzies was ordered to file its Replying Affidavit by 18:00. The hearing in respect of the aforesaid urgent interlocutory application took place from 20:00 on 7 August 2023 still, and the judge postponed the matter to the following day for a ruling.
25. **On 8 August 2023, the High Court per Justice Shafimana Ueitele dismissed Menzies' application to file further evidence. The court also ordered Menzies to pay the costs of NAC and Paragon in respect of the said interlocutory application.**
26. On the same day, i.e., 8 August 2023, the High Court per Justice Ueitele also delivered judgment on the merits of the substantive application that was filed by Menzies against NAC and Paragon on 12 June 2023. The High Court remarked that taking into account the notice periods contained in the contracts between Menzies and NAC, which contracts have now terminated by effluxion of time, **it found that a reasonable period of notice for Menzies to vacate HKIA is 30 days.**
27. The High Court further indicated that **"once the Airports Company has given Menzies reasonable notice that the agreement for it to render ground handling services at HKIA is terminated, Menzies will have no right to remain at HKIA and render ground handling services"**.
28. On 9 August 2023, NAC implemented the said High Court judgment by formally giving Menzies 30 days' notice to cease providing ground handling services at HKIA and vacate NAC's premises at HKIA. NAC also informed Menzies that the aforesaid notice commenced to run on 10 August 2023 and would end on 10 September 2023 at 22:00 p.m.
29. NAC also stipulated in the said notice that it required and expected Menzies to take immediate steps to prepare itself to cease providing ground handling

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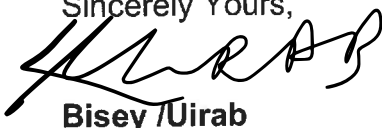
services at HKIA by 22:00 p.m. on 10 September 2023. The NAC notice further asserted that should Menzies not cease providing ground handling services and vacate HKIA by 22:00 p.m. on 10 September 2023, NAC will take immediate steps to evict Menzies from HKIA by having recourse to appropriate legal remedies available to NAC in this regard. Receipt of the aforesaid NAC notice was acknowledged by Menzies itself, as well as Menzies' legal representatives.

30. On 10 August 2023, Menzies filed an appeal to the Supreme Court against, *inter alia*, the paragraph of the High Court judgment that found that a reasonable period of notice for Menzies to vacate HKIA is 30 days. The practical effect of Menzies' appeal was that it negated the notice that NAC issued to Menzies for the latter to cease providing ground handling services and vacate HKIA.
31. The nugatory effect of Menzies' appeal on NAC's aforesaid notice stems from the fact that the said notice to vacate sought to implement the High Court judgment that found that 30 days is a reasonable period of notice that NAC should give Menzies to vacate HKIA, and such notice was automatically rendered ineffective the instant Menzies filed an appeal to the Supreme Court in this regard. This is because NAC's notice referred to above was contingent on the aforesaid High Court judgment and same could no longer be independently operative when the relevant portion of the judgment on which it was premised was appealed by Menzies.
32. On 18 August 2023, Paragon filed an appeal to the Supreme Court against the remnants of the High Court judgment that were adverse to Paragon. **The effect of Paragon's appeal is such that the current legal position has reverted to the position that the parties were in when the Supreme Court handed down judgment on 9 June 2023 to the effect that the contract between NAC and Menzies for the provision of ground handling services at HKIA terminated on 30 June 2022 and, further, that Menzies has been unlawfully providing ground handling services at HKIA since 30 June 2022 as Menzies has no legal right whatsoever to perform such services at HKIA,** as more fully set out in the preceding section of this communiqué.
33. Aptly put, the aforesaid Supreme Court judgment of 9 June 2023 which upheld the High Court judgment of 29 June 2022 is extant, operative and legally enforceable. It is instructive to reassert that **the High Court judgment that was upheld by the Supreme Court declared that Menzies shall at the end of the day on 30 June 2022 cease to provide ground handling services at HKIA; hand over all security access cards or other equipment entitling it to access HKIA or any premises which it occupies at HKIA by virtue of the ground handling services agreement with NAC; and, further, that Menzies shall vacate occupation of any premises at HKIA that Menzies occupied by virtue of the ground handling services agreement that will terminate on 30 June 2022.**
34. It is likewise worthy of emphasis that the same High Court judgment with which the Supreme Court utterly concurred is to the effect that **if Menzies refuses to give effect to the High Court orders referred to above, then the Deputy**

**Sheriff of the High Court is directed to evict Menzies from HKIA and from all premises of HKIA occupied by Menzies by virtue of the aforesaid ground handling services agreement. The Deputy Sheriff was further directed to remove all equipment belonging to Menzies from HKIA.**

35. **In plain terms, the Supreme Court on 9 June 2023 authorized the eviction of Menzies from HKIA.** For the sake of clarity and avoidance of doubt, there is neither a court order preventing eviction of Menzies from HKIA, nor is there any other legal hindrance or obstacle that prevents Menzies from being stopped from providing ground handling services at HKIA.
36. In keeping with the Supreme Court judgment alluded to above, Menzies was evicted from HKIA today, 19 August 2023. The eviction of Menzies from HKIA is in conformity with and gave practical effect to the said Supreme Court judgment that averred that **the rule of law demands that Menzies' unlawful hold over the premises and forcing NAC to make use of its services should be put to an end,** as the relevant Supreme Court judgment was implemented by evicting Menzies in the manner aforesaid.
37. In light of the foregoing, kindly take note that Paragon has commenced providing ground handling services at HKIA with effect from today, 19 August 2023. Paragon's commencement to perform ground handling services at HKIA heeds the Supreme Court's assertion to the effect that **Menzies relied on unlawful self-help to stay put and had to date hereof occupied the premises unlawfully for about a year, despite the fact that Paragon presently has the right in accordance with a bid awarded to it by the NAC to be placed in possession of the premises so as to render ground handling services at HKIA pursuant to the bid awarded to it by NAC.**
38. All stakeholders are hereby requested and implored to fully cooperate with Paragon as the legitimate provider of ground handling services at HKIA. Eviction of Menzies from HKIA in the manner detailed above was justified as it allowed Paragon to commence rendering ground handling services at HKIA, more so regard being had to the factual matrix chronicled above, coupled with the judgment of the Supreme Court that permitted the eviction of Menzies from HKIA.
39. We will continue to closely liaise with all stakeholders to ensure seamless provision of ground handling services at HKIA.
40. We trust you would find the foregoing to be in order and will accordingly proceed in the manner aforesaid.

Sincerely Yours,



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CHIEF EXECUTIVE OFFICER