

ELB GROUP LIMITED

Incorporated in the Republic of South Africa
(Registration number 1930/002553/06)
ISIN: ZAE000035101
JSE Code: ELR
("ELB" or "the Group")



TERMS ANNOUNCEMENT REGARDING RELATED PARTY TRANSACTIONS, THE DISPOSAL OF ELB AUSTRALIA, THE CANCELLATION OF THE ELB EMPLOYEE SHARE SCHEME AND WITHDRAWAL OF CAUTIONARY ANNOUNCEMENT

1. Introduction

- 1.1 ELB shareholders ("**Shareholders**") are referred to the cautionary announcement published on 8 January 2020 ("**Cautionary SENS**"), wherein Shareholders were first advised that ELB was contemplating various initiatives ("**Initiatives**") to restructure the Group in order to strengthen its balance sheet and better position the South African subsidiaries to continue trading profitably in the current challenging economic environment.
- 1.2 The Initiatives included, *inter alia*, bridge financing, a restructuring of the engineering services business, the downsizing of the head office function, and a potential sale of ELB's Australian equipment business.
- 1.3 Shareholders are advised that the operational restructuring Initiatives are progressing as per plan and are expected to be completed within the current financial year.
- 1.4 Shareholders are further advised that:
 - 1.4.1 ELB has secured a bridge loan of R100 million ("**the Bridge Loan**") from FirstRand Bank Limited (acting through its Rand Merchant Bank Division) ("**RMB**") to finance the restructuring including the exit of onerous contracts and headcount reduction, on the basis of a guarantee provided to RMB by Apex Partners Holdings (Pty) Ltd ("**Apex Partners**"), a material shareholder of ELB ("**the Guarantee**");
 - 1.4.2 Apex Partners has charged a fee for the Guarantee provided to RMB of R2 million ("**Guarantee Fee**");
 - 1.4.3 Apex has been appointed to provide advisory services to the Group, including the secondment of Charles Pettit as CEO of ELB ("**Advisory Mandate**");
 - 1.4.4 ELB has agreed to sell its Australian equipment business ("**Disposal**");
 - 1.4.5 ELB proposes a collapse of the 2010 ELB Executive Share Incentive Scheme ("**Employee Scheme**"), comprising:
 - 1.4.5.1 a repurchase of shares held by participants who still have outstanding vendor loan balances owing to the the ELB Share Incentive Trust (the "**Trust**") in respect of the Employee Scheme, in final settlement of the loan balances owed;
 - 1.4.5.2 a cancellation of outstanding/unexercised options; and
 - 1.4.5.3 a cancellation of the Employee Scheme, which is currently out of the money and a disincentive to key management and employees ("**Scheme Repurchase and Cancellation**"); and
 - 1.4.6 ELB proposes an increase in its authorised share capital, through an amendment of its memorandum of incorporation ("**MOI**") to provide it with flexibility to raise equity capital as and when required in future ("**MOI Amendment**").

2. The Bridge Loan and Guarantee

- 2.1 During December 2019, ELB approached Apex Partners, as a material shareholder of the Group, to gauge its appetite to provide capital to the Group, whereafter ELB appointed Apex Partners to also act as its corporate advisor in the structuring and implementation of the Initiatives. Apex Partners is a related party to ELB in terms of paragraph 10.1(b)(i) of the JSE Listings Requirements (“**Listings Requirements**”).
- 2.2 In the Cautionary SENS, Shareholders were informed of the Initiatives and the possible need for bridging finance, which Apex Partners, acting on behalf of the Group, secured from RMB in January 2020.
- 2.3 The Bridge Loan was conditional upon additional security being provided to RMB by Apex Partners. Apex Partners provided this security by entering into a put and call option agreement with RMB to purchase and take assignment of RMB’s rights and title to the Bridge Loan on certain terms and conditions (“**Option**”). In the event that the Option as set out in the Option agreement is exercised, Apex Partners would step into RMB’s position and become the lender to ELB, resulting in secured funding being provided by a related party to the Group, which is a related party transaction in terms of section 10 of the Listings Requirements. The Option will be subject to Shareholder approval if it is required to be exercised.

3. Guarantee Fee and Advisory Fee

- 3.1 Apex Partners concluded a fee agreement with ELB on 28 February 2020 for the credit support provided to the Group in respect of the Bridge Loan. The fee is calculated as 2% of the value of the Bridge Loan (R2 million plus VAT).
- 3.2 In addition, Apex Partners is providing corporate advisory services to ELB, as well as the secondment of Charles Pettit as CEO under an advisory agreement concluded on 25 February 2020 (“**Advisory Agreement**”), the salient terms of which include:
 - 3.2.1 a term of agreement from 1 January 2020 up to and including 31 March 2020 with a monthly retainer that will total R2.27 million over the 3 month period, excluding VAT, payable to Apex Partners under the Advisory Agreement, aggregated with a payment paid to Apex Partners in January 2020 totalling R0.73 million, collectively totalling a maximum fee of R3 million (“**Advisory Fee**”);
 - 3.2.2 the scope of services includes assessing and assisting in resolving short, medium and longer term cash flow requirements, development of detailed turnaround and restructuring plans as required, implementing corporate action and restructuring initiatives, including obtaining all approvals required, negotiating with all stakeholders (lenders, creditors, suppliers, customers, employees, shareholders etc) on behalf of ELB, providing strategic guidance and the secondment of Charles Pettit as CEO of the Group; and
 - 3.2.3 a termination clause entitling ELB to terminate the Advisory Agreement on 3 months’ written notice.
- 3.3 The payment of the Guarantee Fee and the Advisory Fee together will exceed 0.25% of the current market capitalisation of ELB as at the date of this announcement but will not exceed 5% of the market capitalisation of ELB and accordingly is considered a small related party transaction in terms of section 10 of the Listings Requirements (“**Small RP Transaction**”).
- 3.4 The JSE has granted ELB a dispensation on the need to procure a full valuation opinion on the Guarantee Fee and the Advisory Fee, as the agreements only relate to services being provided. In lieu of a valuation opinion, an opinion on the reasonability of the Guarantee Fee and the Advisory Fee has been procured from an independent expert acceptable to the JSE. This opinion has been provided to the JSE for approval. Once approved, the reasonability opinion will be available for inspection at the Group’s offices for a period of 28 days. A further announcement will be made in this regard.

4. Disposal of ELB Australia

- 4.1 ELB, via its wholly-owned subsidiary ELB Engineering (Pty) Ltd (“**ELB Engineering**”), has reached agreement on the sale of its Australian equipment business through the disposal of 100% of the shares in its Australian subsidiary Metquip (Pty) Ltd (“**ELB Australia**”), to Contura Mining (Pty) Ltd, or its nominee, an entity within the CFC Group of Companies (“**CFC**”). CFC is a diversified group of businesses with interests in distribution, supply chain logistics and specialised mining, infrastructure and utility services. The following salient terms apply to the disposal:
- 4.1.1 a total purchase consideration of AUD19.25 million, to be settled in cash, (“**Purchase Price**”) of which approximately AUD10.31 million will be used to settle promissory notes owing from ELB Australia to ELB Engineering;
 - 4.1.2 usual warranties and indemnities for a transaction of this nature will be provided by the Group. These will be secured by AUD1.7 million in guarantees or escrow arrangements (9% of the Purchase Price);
 - 4.1.3 usual undertakings for a transaction of this nature will be provided by the Group to CFC. ELB Engineering has agreed to provide a restraint of trade for a 5-year period from completion, which extends to the sale of current ELB Australia products within current operating jurisdictions, namely Australia and New Zealand;
 - 4.1.4 the conditions precedent, which are to be fulfilled by no later than 31 May 2020 include:
 - 4.1.4.1 conclusion of formal legal documentation in respect of the sale;
 - 4.1.4.2 approval from more than 50% of the Shareholders at a Shareholders’ meeting. In this regard ELB has received irrevocable support to vote in favour of the Disposal from the following Shareholders: Apex Partners (19.6%), Visio Fund Management (19%), and Tango One Proprietary Limited (11.6%) which together hold 50.2% of the issued share capital in ELB, excluding treasury shares;
 - 4.1.4.3 approval from the SARB; and
 - 4.1.4.4 other conditions customary for a transaction of this nature including change of control consents and variations and extensions of key material contracts and leases.
- 4.2 ELB Australia imports, distributes and maintains underground utility construction equipment and green waste processing equipment. Markets served are gas, water, sewage, electricity, communications, the defence force, and airport and dock authorities.
- 4.3 The Disposal constitutes a Category 1 transaction in terms of section 9 of the Listings Requirements as the value of the Disposal exceeds 30% of ELB’s market capitalisation, and accordingly requires approval from more than 50% of Shareholders present in person or proxy and eligible to vote at a Shareholders’ meeting. CFC is not a related party to ELB.
- 4.4 The proceeds of the Disposal will be utilised to settle the Bridge Loan and for general corporate purposes including the recapitalisation of the remaining operations of the Group. The expected effective date of the Disposal is 1 June 2020.
- 4.5 The net asset value and net profit after taxation in respect of ELB Australia as at 30 June 2019 are R146 544 000 and R22 714 000 respectively, which have been extracted from the ELB audited consolidated financial results for the year ended 30 June 2019, which was prepared in accordance with International Financial Reporting Standards.

5. Share Repurchase and Scheme Cancellation

- 5.1 On 23 November 2010, Shareholders approved the Employee Scheme whereby employees of the Group could be granted share options for ordinary shares in ELB.
- 5.2 Once awarded, employees had a period of up to 10 years to exercise their share options after which, if not exercised, the share options are forfeited and would lapse.

- 5.3 If exercised, employees could elect to pay the Trust in cash or could elect to fund the option exercise price through an interest free loan from the Trust ("**Employee Vendor Loans**"), or a combination of the two.
- 5.4 Given the reduction in ELB's share price, the unexercised share options are currently significantly out of the money, with the total Employee Vendor Loan balance divided by the total number of shares associated with the loans equal to R19.01 versus a current share price of R3.91. Accordingly, the Employee Scheme can no longer be considered as an incentive to employees.
- 5.5 Various options have been investigated by ELB to restructure the Employee Scheme.
- 5.6 Based on these investigations, the board of directors of ELB ("**Board**") proposes collapsing the Employee Scheme and cancelling the agreements between the Trust, employer companies and employees for all unexercised options and to repurchase shares from participants who have exercised their options, but not yet settled their liabilities to the Trust ("**Specific Repurchase**"). On repurchase, the shares previously held by the share scheme participants would transfer back to the Trust at the original option price, and the outstanding share option loan liabilities (number of share options previously exercised multiplied by the exercise price at grant date) due by employees will be settled on repurchase by arrangement with the Trust.
- 5.7 In order to collapse the Trust in its entirety, all remaining shares held by the Trust will be sold by the Trust to ELB (or any wholly owned subsidiary within the Group at the share price) and the remaining balance of the loan between ELB and the Trust waived. All repurchased shares will be cancelled.
- 5.8 Prior to the collapse of the Trust as above-mentioned, excess shares held by the Trust will be cancelled, which will be effected by way of a specific repurchase of shares from ELB ("**Trust Share Repurchase**").
- 5.9 Shareholder approval from at least 75% of Shareholders present in person or represented by proxy is required to give effect to the Specific Repurchase and the Trust Share Repurchase, excluding those Shareholders participating in the Specific Repurchase. The shareholder approval will allow the Trust to:
- 5.9.1 sell excess shares to ELB and for ELB to cancel the excess shares;
 - 5.9.2 repurchase shares from participants that have exercised and not yet paid for their shares at their original exercise price; and
 - 5.9.3 on repurchase to sell these shares to ELB, which shares will then be cancelled by ELB.

A notice of meeting to vote on the Specific Repurchase and the Trust Share Repurchase will be detailed in a circular to Shareholders.

- 5.10 As certain of the current and previous directors constitute participants that will participate in the Specific Repurchase, and as the total implied repurchase price exceeds the Group's 30-day VWAP, an independent expert opinion on the fairness of the Specific Repurchase will be included in the circular to Shareholders.

6. MOI Amendment and General Authority to Issue Shares for Cash

- 6.1 ELB proposes to increase its authorised share capital to 500,000,000 shares to ensure sufficient share capital is available for future equity funding as required. This increase in authorised share capital requires an amendment to the MOI, which can only be made with the approval of a special resolution of the Shareholders in terms of section 16 and 36(2) of the Companies Act, 71 of 2008 and section 8.2 of the MOI, requiring the approval of at least 75% of the Shareholders present in person or by proxy, and entitled to vote.
- 6.2 In terms of regulation 31(2) of the Companies Regulations, 2011, ELB may not authorise any further par value shares. Accordingly, due to the fact that the current authorised share capital of

the Group comprises par value shares only, the MOI will also require an amendment for the conversion of shares from par value shares to no par value shares.

- 6.3 In addition, listed companies commonly seek general approval from their shareholders for the issue of up to 10% of the unissued shares of the Group, or securities convertible into shares, in terms of paragraph 5.52 of the Listings Requirements. As ELB has not previously presented these resolutions at its annual general meeting, the Group now proposes to put forward a resolution to Shareholders for the Board to obtain a general authority to issue shares for cash, which will require approval from at least 75% of the votes present in person and represented by proxy.

7. Circular to Shareholders

- 7.1 Given that certain of the above-mentioned transactions, namely the Disposal, the Scheme Repurchase and Cancellation, and MOI Amendment will, *inter alia*, require approval from Shareholders, a circular to Shareholders setting out the details of the above, and incorporating the necessary independent expert opinions, and notice of Shareholders' meeting, will be published in due course.

8. Withdrawal of cautionary

- 8.1 As the terms of the Initiatives have been detailed in this announcement, Shareholders are advised that the cautionary as set out in the Cautionary SENS is withdrawn.

By order of the Board

Johannesburg
28 February 2020

Corporate Finance Advisor
Apex Partners Holdings Proprietary Limited

Sponsor
Questco Corporate Advisory Proprietary Limited