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WERKSMANS
A T T O R N E Y S
TRUST DEED
between
MERCEDES-BENZ OF SOUTH AFRICA (PROPRIETARY) LIMITED
and
JOE MANANA
WALLY SEROTE
CHRISTOFF KOPKE
PER BJORVIG
HILARY FALKOW-FRIEDLAND
MICHAEL HANKINSON
YUSEF SURTEE
MIMI COERTSE

TABLE OF CONTENTS

1
#0.)
ChU'1
10
11
12
13
14
15
16
17
18
INTERPRETATION
INTRODUCTION
CREATION AND NAME OF THE TRUST
DONATION
OBJECTS OF THE TRUST
INITIAL TRUSTEES
MINIMUM NUMBER OF TRUSTEES
GENERAL TRUSTEE PROVISIONS
SECURITY DISPENSED WITH
DECISIONS OF THE TRUSTEES AND
PERFORMANCE OF THEIR DUTIES
TRUSTEES' POWERS, PRIVILEGES AND DISCRETION
CONTRACTS WITH TRUSTEES, BOOKS OF
ACCOUNT, REMUNERATION AND EXPENSES
INCOME OF THE TRUST
MASTER OF THE SUPREME COURT AND GUARDIAN'S FUND
TERMINATION OF THE TRUST
GENERAL
ACCEPTANCE
VARIATIONS OF THE TRUST
COSTS
(.000
01U1LJ1hub
13
14
15
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17
18
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TRUST DEED

between

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MERCEDES-BENZ OF SOUTH AFRICA (PROPRIETARY) LIMITED

("the donor")

of the one part

and

JOE MANANA

WALLY SEROTE

CHRISTOFF KOPKE

tPER BJORVIG

HILARY FALKOW-FRIEDLAND

MICHAEL HANKINSON

(collectively hereinafter referred to as "the initial trustees")

of the other part

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INTERPRETATION

Headings of clauses are for reference purposes only and shall not be used in the interpretation of this trust deed.

Should any question arise as to the interpretation of this trust deed or any of the provisions hereof or as to the true construction thereof or as to the administration of the trust or otherwise howsoever, the trustees shall have

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- 1.3.1
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- 1.3.3
- 1.3.4
- 1.4
- 2.1

the power to decide such question either acting on their own judgment or upon the advice of counsel and any such decision shall be final and binding on all parties.

In this trust deed, unless the context clearly otherwise indicates -

words importing any gender shall include the other genders;

the word "trustees" shall mean the initial trustees and all other trustees appointed from time to time in accordance with the terms of this trust deed;

the word "Republic" shall mean the Republic of South Africa as presently constituted;

and the singular shall include the plural and vice versa.

Whenever reference is made in this trust deed to the discretion of the trustees, such discretion shall be sole and absolute.

INTRODUCTION

The donor recognises the urgent need to promote adult education, vocational training or technical education in relation to -

the performance and appreciation of classical and popular symphonic, choral and chamber music by residents of disadvantaged communities in the

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Republic and .generally to promote classical musical and instrumental training; and training and developing musicians, vocalists and conductors from disadvantaged communities in the Republic in the performance of classical and popular symphonic, choral and chamber music by, inter alia, the implementation of cadet training schemes with one or more of the symphony, chamber or philharmonic orchestras in the Republic.

3 CREATION AND NAME OF THE TRUST

A trust is hereby constituted and shall be known as "South African Music Education Trust" ("the trust").

4 DONATION

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The donor irrevocably donates R100 to the trust. That sum shall be paid by the donor to the trustees on behalf of the trust on signature of this deed by the last signatory hereto.

The donor and any other person shall be entitled from time to time to add to the capital of the trust by donation or otherwise as the donor or any such other person may deem fit. The terms of this deed shall apply mutatis mutandis to any such addition. The trustees shall have power to accept any such addition to the capital of the trust. No further deed shall be required to vest in the trustees any such additional capital which shall vest in the trust on the transfer or delivery by the donor or other person concerned of any asset or payment. of any sum to the trustees on behalf of the trust

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1 5 OBJECTS OF THE TRUST

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3 Having regard to 2 above, the sole and main purpose of
4 the trust is to initiate and implement formal
5 educational and training programmes in relation to
6 adult education, vocational training or technical
7 education for the benefit of disadvantaged communities
8 as well as the training and development of musicians,
9 vocalists and conductors from disadvantaged
10 communities in the Republic in the performance of
11 classical and popular symphonic, choral and chamber
12 music.

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14 6 INITIAL TRUSTEES

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16 The initial trustees of the trust shall be

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18 JOE MANANA

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20 WALLY SEROTE

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22 CHRISTOFF KOPKE

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24 PER BJORVIG

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26 ' HILARY FALKOW-FRIEDLAND

27

28 and

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30 MICHAEL HANKINSON

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32 7 MINIMUM NUMBER OF TRUSTEES

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34 There shall at all times be not less than six trustees
35 in office for the purpose of the valid exercise of the
36 powers and discharge of the duties of the trustees in
37 terms of this deed; provided that pending the

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appointment of any successor to a trustee who has ceased to hold office as such, the trustees remaining in office shall be empowered to act in the preservation of and to attend to the formal administration of the trust.

GENERAL TRUSTEE PROVISIONS

The following provisions shall apply with respect to the appointment of trustees, a trustee ceasing to hold office and to the trustees generally -

75% of the trustees in office at any time shall be entitled in their unfettered discretion from time to time to -

appoint additional trustees;

remove any trustee;

appoint trustees in place of any trustee who ceases to hold office for any reason

whatsoever so that the minimum number of trustees shall be maintained.

A trustee shall be entitled to resign without an order of court by delivering written notice to that effect to his co-trustees.

Each trustee shall have power to appoint another person (approved of by a majority of the other trustees then in office) to act as his alternate during his absence or inability to act as a trustee; an alternate trustee, whilst acting in the place of the trustee who appointed him, shall exercise and discharge all of the duties and functions of the trustee he represents.

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A trustee shall vacate his office as such if -
he resigns;

he is found to be of unsound mind or a
lunatic;

he becomes unfit and/or incapable of acting
as a trustee;

he becomes insolvent or assigns his estate
for the benefit of or compounds with his
creditors;

he becomes disqualified to act as a director
of a company in terms of the laws applicable
to companies in the Republic;

he is removed as a trustee in terms of
8.1.2;

it (being a corporate body) is wound up or
placed under judicial management, whether
provisionally or finally, voluntarily or
compulsorily.

SECURITY DISPENSED WITH

The trustees shall procure that no trustee, whether
appointed in terms of this trust deed or as a
successor or additional trustee pursuant thereto,
shall be required by the Master of the Supreme Court -
or any other competent authority to furnish any
security' of any' nature nor shall any security be
required for the due performance of any duty under the
Trust Property Control Act No 57 of 1988 or under any
other statutory provision which may now be or may

1 hereafter become of force or effect; the intent and
2 purpose being that no trustee shall be required to
3 give any security in respect of or in connection with
4 or arising out of such appointment.

5

6 10 DECISIONS OF THE TRUSTEES AND

7 PERFORMANCE OF THEIR DUTIES

8

9 10.1 _ Subject to the trustees giving effect to the
10 terms and conditions of this deed, they shall, in
11 administering the trust and its affairs,
12 generally adopt such procedures and take such
13 administrative steps as they shall from time to
14 time deem necessary and advisable. They shall
15 meet together for the despatch of business,
16 adjourn and otherwise regulate their meetings as
17 they think fit. Any trustee shall be entitled to
18 summon a meeting of the trustees, provided that
19 such trustee gives forty-eight hours prior
20 written notice to all other trustees who then
21 hold office and such notice shall state the
22 place, day and hour of, and the nature of the
23 business to be transacted at that. meeting" of
24 trustees.

25

26 10.2 The trustees shall elect a chairman from among
27 their number to hold office for such period of
28 time as shall be determined at the time of
29 appointment of any such chairman.

30

31 10.3 Questions arising at any' meeting of trustees
32 shall be decided by a majority of votes. In the
33 event of an equality of votes, the chairman shall
34 not have a casting vote in addition to his
35 deliberative vote.

36

10.4 Saye as set out in 8.1.2, six trustees shall be required to form a quorum of trustees for the purposes of meetings of the trustees.

10.5 A resolution in writing signed by all the trustees shall be as valid and effectual as if it had been passed at a meeting of the trustees duly called and constituted.

0 11 TRUSTEES' POWERS, PRIVILEGES AND DISCRETION

1
2 Provided that the trustees do not have the power to
3 carry on any business on behalf of the trust, the
4 trustees shall, in their absolute and unfettered
5 discretion, invest and deal with the assets of the
6 trust for the purpose of the trust and possess and
7 enjoy all powers necessary for such purpose and they
8 shall, inter alia, and without limitation of the
9 general powers or discretions hereby conferred, have
0 the following rights and powers, which they may
1 exercise in their absolute and unfettered discretion -

2
3 11.1 to open and operate any banking account and/or
4 building society account and to draw and issue
5 cheques and to receive cheques, promissory notes
6 and/or bills of exchange, and to endorse any of
7 the same for collection by the bank and/or
8 building society at which the said account was
9 opened;

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1 11.2 to buy or sell (by public auction, private treaty
2 or otherwise) movable, immovable or incorporeal
3 property of whatever nature, and to sign and
4 execute any agreement or deed of sale in relation
5 thereto, and to sign and execute all requisite
6 documents and do all such things necessary for
7 the purpose of effecting and registering, if

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needs be, transfers according to law of any such property, whether movable, immovable or incorporeal, bought or sold by the trustees; to buy, sell and/or exchange shares, stocks, debentures, debenture stock, units, insurance policies, promissory notes, bills of exchange and any other negotiable instruments and documents of any kind, and to do all things requisite and sign all documents requisite to acquire or, as the case may be, to give transfer and title thereto, provided that the trustees shall not acquire shares in any private company in which a donor of the trust, a trustee and/or any of their relatives are shareholders;

to lend money on such terms and conditions and at such rates of interest (which shall not be less than prevailing commercial rates of interest from time to time), and to such persons (other than a trustee, a donor of the trust, and/or any private company in which such trustees, donor, and/or any of their relatives are shareholders), as the trustees may determine, and either without security or upon such security of nmvable or immovable property or such personal suretyships and/or guarantees, as the trustees may determine, and to sign and execute all requisite documents and to do all things necessary for the effecting and registration of any such security;

to vary any investment made in terms hereof by realising the same and/or by substituting therefor any other investment which the trustees are empowered in terms hereof to make;

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to borrow money on such terms and conditions and at such interest and from such person as the trustees may determine, and either without security or upon such security of movable or immovable property or such personal suretyships and/or guarantees as the trustees may determine, and to sign and execute all requisite documents and to do all things necessary for the effecting and registration of any requisite instrument of debt and of any such security;

to mortgage; pledge and/or hypothecate any movable, immovable or incorporeal property forming part of the assets of the trust and for the purpose of any such mortgage, pledge or hypothecation to sign and execute all requisite documents and do all things necessary for effecting and registering the same;

to let, either by written agreement of lease or otherwise, improve, alter or maintain any immovable property belonging to the trust or any improvements thereon;

to collect and receive rents and, if necessary cancel any lease or other tenancy and take all legal proceedings for ejectment or otherwise in connection with any such lease or other tenancy or the cancellation thereof;

to sue for, recover and receive all debts or sums of money, goods, effects and things whatever, which may become due, owing, payable or belonging to the trust;

to defend, oppose, adjust, settle, compromise and/or submit to arbitration all accounts, debts,

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claims, demands, disputes, legal proceedings and matters which may subsist or arise between the trust and any person, company, corporation or body whatever, and for the purposes aforesaid to do and execute all necessary acts and documents; to attend all meetings of creditors of any person, company, corporation. or 'body' whatever indebted to the trust whether in insolvency, liquidation, judicial management or otherwise and to vote for the election of a trustee or trustees and/or liquidator/s and/or judicial manager/s and also to vote on all questions submitted to any such meeting of creditors and generally to exercise all rights accruing to a creditor; to exercise the 'voting power attached to any share, stock, debenture or unit, in such manner as they may deem fit, for the purpose of amalgamation, merger of, or compromise in, any company or trust in which the share, stock, debenture or unit are held; to exercise and take up or to sell and realise any rights of conversion or subscription attaching, accruing or appertaining to any share, debentures or units forming part of the assets of the trust; to cause, in the case of any company or unit trust scheme which is precluded by its articles of association or trust deed or which refuses to transfer any shares, debentures or units forming part of the assets of the trust into the name of the trustees as such, the transfer of the said shares, debentures or units into their own names

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or into the name or names of any one or more of
them;
to give receipts, releases or other effectual
discharges for any sum of money or things
recovered;
to engage the services of professional
practitioners, tradesmen or other persons of
whatever nature for the performance of work and
rendering of services necessary or incidental to
the affairs of the trust;
to pay out of the funds of the trust all debts
incurred on behalf of the trust by the trustees
in the exercise of their powers in terms hereof;
to accept on behalf of the trust all or" any
donations from the donor or from any other person
whatever, provided that such donations to the
trust are irrevocable by the donors thereof;
to determine whether any surplus on the sale of
any assets of whatever description of the trust
and whether movable or immovable and the receipt
of any bonus, shares or units by the trust be
regarded as income or capital of the trust and to
revise any such decision taken by them;
to do all or any of the foregoing things and to
exercise all or any of the foregoing rights and
powers in the Republic or in any other part of
the world, provided that the funds of the trust
shall only be applied in the Republic.

12 CONTRACTS WITH TRUSTEES, BOOKS OF
ACCOUNT, REMUNERATION AND EXPENSES

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Subject to 11.3 and 11.4, a trustee shall be entitled to contract with the trust and/or with any company in which the trustees or the donor may be interested, directly or indirectly, and as a trustee he may vote on any such contract and on any other matter in which he shall be interested, directly or indirectly, provided that before doing so he shall disclose the nature and extent of his interest to his co-trustees.

The trustees shall ensure, forthwith upon receipt of all monies accruing to the trust, that such monies are deposited in an account to be opened in the name of the trust with a registered bank or building society.

The trustees shall keep proper records and books of account of their administration of the trust in such manner and form as is necessary in order that the records and books shall at all times reflect a fair position of the trust. There shall be recorded in such books and records, inter alia, any change in the assets of the trust from time to time, income and all outgoings applicable to the administration of the trust.

The accounts of the trust shall be audited by such auditors as shall be appointed from time to time by the trustees who shall be entitled to terminate any such appointment and appoint other auditors. The financial year of the trust shall coincide with that-of the donor.

The trustees shall from time to time be entitled to reimburse themselves and pay and discharge out of the income of the trust all expenses incurred in and about the execution of the trust and the

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carrying out of the powers conferred upon them by this trust deed.

Notwithstanding any of the provisions of this trust deed, a trustee shall be entitled to act in his professional capacity and perform professional services for the trust and to charge his reasonable fee therefor.

None of the trustees shall be answerable for or liable to make good any loss occasioned to or sustained by the trust from any cause whatever save for any loss as shall arise from the wilful act of dishonesty of the trustee involved. No trustee shall be liable for any act of dishonestly committed by any trustee unless he was a party thereto. The trustees shall at all times be deemed to have been indemnified out of the assets of the trust against all claims and demands of whatever nature arising out of the exercise or purported exercise by them of any powers conferred under this trust deed.

INCOME OF THE TRUST

The trustees shall apply the whole of the net profits, interest and income (hereinafter called "income") from the assets of the trust by either -
making payment of the whole or any portion of the income to promote and implement the objects of the trust (referred to in 5) and to defray any expenditure incurred on behalf of the trust;
retaining the whole or any portion of the income and adding it to the capital of the trust for the purposes set out in this trust deed;

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provided that the trustees shall be obliged to apply a minimum of 75% (or such other minimum percentage as may from time to time be required to obtain the exemption from tax referred to in section 10(1)(f) of the Income Tax Act 1962, as amended (or any statutory amendments or substitution thereof)) of the income which accrues to the trust during any of its financial years by making payment by not later than the expiration of a period of twelve months (or such period as may from time to time be required to obtain that exemption from tax) after the end of the trust's financial year in question.

MASTER OF THE SUPREME COURT AND GUARDIAN'S FUND

Neither the tMaster of the Supreme Court of South Africa nor any other competent authority shall have any control over the capital of the trust or any income of the trust and no portion of such capital or income shall be paid into the Guardian's Fund.

TERMINATION OF THE TRUST

The trust shall terminate upon a resolution approved of in writing and passed by at least 75% of the trustees for the time being in office. The trust shall terminate upon such date as shall be determined by such resolution.

Upon such termination the capital of the trust together with any undistributed income shall be transferred to some other association, institution, trust or a company incorporated under section 21 of the Companies Act No 61 of 1973, as amended (or any statutory amendments or substitution thereof) in _ the Republic (hereinafter referred to as "recipient/s"),

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whether registered or not, having objects similar to those of the trust established in terms of this deed, as shall be determined by the trustees upon or before the termination of the trust or failing determination by the trustees then to such recipient/s as may be nominated for this purpose by the Supreme Court of South Africa upon application by 'any' interested party, provided that the activities of such recipient/s are conducted in the interests of the public of the Republic and provided further that such recipient/s is/are exempt from the payment of income tax and donations tax in terms of the Income Tax Act No 58 of 1962, as amended (or any statutory amendments or substitution thereof). In making payment out at any time of any portion of the assets of the trust or the income pursuant to the provisions of this trust deed, the trustees shall be entitled to make any such payment either in cash or in specie or partly in cash and partly in specie. The trustees' valuation of any asset distributed by them in specie in terms hereof shall be final and binding on all interested parties. For the purpose of this clause the word "specie" shall be deemed to include any capital asset at that time held as portion of the assets of the trust which is in a form other than cash money.

16 GENERAL

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The trustees shall be entitled to treat as income any periodic receipts although received from wasting assets and shall not be required to make provision for the amortisation of the same. They shall also be entitled to determine in such

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manner as they may consider fit what shall be treated as income and what shall be treated as capital in respect of any liquidation dividend or return of capital or capitalisation of profits in the case of companies whose shares are being held as portion of the assets of the trust by the trustees and generally to decide, by apportioning in such manner as they may consider fit, any question which may arise as to how much constitutes capital and how much constitutes income.

The trustees shall be entitled from time to time to employ accountants, attorneys, agents, brokers or other professional advisers and employees ("professionals") to transact all or any business of whatever nature required to be done pursuant to this trust deed and shall be entitled to pay all such charges and expenses so incurred as well as market related salaries and bonuses and gratuities on the retirement of any employee or former employee of the trust, all as first charges against the funds of the trust. Neither the trustees nor the trust shall be responsible for the default of any such professionals or for any loss occasioned by such employment. Any trustee being a professional may be employed by the trustees in his professional capacity as such and shall be entitled to receive from the trustees reasonable fees for such service.

All taxes which may be lawfully levied by any government or other competent authority on the trustees in their capacities as such or on the assets of the trust shall be paid out of the trust assets or the income therefrom. All taxes which may be levied on the donor or any other

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donor of the trust or on any donee or other beneficiary' in respect of anyl portion of the income which will be derived from the investment of the assets of the trust may, in the discretion of the trustees, be paid out of the assets of the trust or the income therefrom.

In the event of the donor or any other person who donates to the trust becoming liable for any duties in respect of the trust or any donation made to the trust, the trustees may pay such duties out of the capital of the trust.

The taxes and/or duties referred to in 16.3 and 16.4 shall mean the difference between the total taxes and/or duty levied because of or arising from this trust and the taxes and other duties which would have been payable but for this trust. The trustees' liability however shall only be to the extent of the capital, if any, remaining at the time of the assessment of the aforesaid taxes or duties.

17 ACCEPTANCE

The trustees, by their signatures hereto -

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accept the donation referred to in 4.1; accept office as such; and undertake to discharge their duties in terms of this trust deed and to carry out the terms and conditions stipulated herein contained.

18 VARIATIONS OF THE TRUST

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Signed

Signed

Signed

Signed

Signed

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The terms of this trust may from time to time be varied by a resolution passed by 75% of the trustees in office for the time being.

COSTS

All costs of and incidental to this trust and the establishment thereof shall be borne and paid by the trust.

on 1993

Donor

on 1993

Trustee

on 1993

Trustee

on 1993

Trustee

on 1993

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Signed at

on

Trustee

Trustee

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