

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM104Oct23

In the matter between:

Momentum Metropolitan Strategic Investments (Pty) Ltd

**Primary Acquiring Firm**

And

Royal Investment Managers (Pty) Ltd and  
Investment Managers Group (Pty) Ltd

**Primary Target Firms**

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Panel: L Mncube (Presiding Member)  
A W Wessels (Tribunal Member)  
M Mazwai (Tribunal Member)

Heard on: 21 December 2023  
Date of last submission: 17 January 2024  
Decided on: 23 January 2024

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### ORDER

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Further to the recommendation of the Competition Commission in terms of section 14A(1)(b)(ii) of the Competition Act, 1998 (“the Act”) the Competition Tribunal orders that–

1. the merger between the abovementioned parties be approved subject to the conditions set out in “**Annexure A**” in terms of section 16(2)(b) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

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**Presiding Member**  
**Prof. Liberty Mncube**

23 January 2023

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**Date**

**Concurring: Ms Mondo Mazwai and Mr Andreas Wessels**

# Merger Clearance Certificate

**Date** : 23 January 2023

**To** : Bowman Gilfillan Attorneys

Case Number: LM104Oct23

Momentum Metropolitan Strategic Investments (Pty) Ltd And  
Royal Investment Managers (Pty) Ltd and Investment Managers  
Group (Pty) Ltd

## Notice CT 10

### About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

You applied to the Competition Commission on **29 September 2023** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

- no conditions.
- the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

### Contacting the Tribunal

The Competition Tribunal  
Private Bag X24  
Sunnyside  
Pretoria 0132  
Republic of South Africa  
tel: 27 12 394 3300  
fax: 27 12 394 0169  
e-mail: [ctsa@comptrib.co.za](mailto:ctsa@comptrib.co.za)

### The Registrar, Competition Tribunal

*Tobago Moya*

**ANNEXURE A**

**IN THE LARGE MERGER INVOLVING:**

**MOMENTUM METROPOLITAN STRATEGIC INVESTMENTS PROPRIETARY LIMITED**

**AND**

**INVESTMENT MANAGERS GROUP PROPRIETARY LIMITED AND ROYAL  
INVESTMENT MANAGERS PROPRIETARY LIMITED**

**CT CASE NUMBER: LM104Oct23**

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**CONDITIONS TO THE APPROVAL OF THE MERGER**

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**1. DEFINITIONS**

In this document, the expressions used below will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 **"AFF 2"** means RMI Investment Managers Affiliates 2 Proprietary Limited;
- 1.2 **"Approval Date"** means the date referred to on the Tribunal's merger clearance certificate (Form CT10), being the date on which the Merger is approved in terms of the Competition Act;
- 1.3 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

- 1.4 **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Commission;
- 1.5 **“Competition Act”** means the Competition Act, No. 89 of 1998, as amended;
- 1.6 **“Competitively Sensitive Information”** includes, but is not limited to, information belonging to the RIM Affiliates concerning the Overlapping Activities relating to:
- 1.6.1 pricing including but not limited to pricing of specific products/services, prices/discounts offered to specific clients and planned price reductions or increases;
- 1.6.2 margin information by product, service or client;
- 1.6.3 cost information for particular products or services;
- 1.6.4 information on specific clients and client strategy, including information with respect to the sales volumes of clients; and
- 1.6.5 budgets, business plans, and marketing strategies;
- not generally available to or known by the public.
- 1.7 **“Conditions”** means these Merger conditions set out in this Annexure A;
- 1.8 **“Days”** means any calendar day that is not a Saturday, Sunday or public holiday in South Africa;
- 1.9 **“IMG”** means Investment Managers Group Proprietary Limited;
- 1.10 **“Implementation Date”** means the date, occurring after the last condition precedent to the transaction is fulfilled or waived, as the case may be, when the Merger is implemented in accordance with its terms;
- 1.11 **“iSabelo ESOP”** means an employee share ownership programme which holds approximately 3.5% of the shares in Momentum Metropolitan;
- 1.12 **“Merged Firm”** means the Target Group subject to control of MMSI;

- 1.13 **“Merger”** means the acquisition of MMSI of the Target Group;
- 1.14 **“Merging Parties”** means MMSI and the Target Group;
- 1.15 **“MMSI”** means Momentum Metropolitan Strategic Investments Proprietary Limited;
- 1.16 **“Momentum Metropolitan”** means Momentum Metropolitan Holdings Limited;
- 1.17 **“Momentum Metropolitan’s Overlapping Asset Management Business”** means Momentum Metropolitan’s asset management business relating to the Overlapping Activities as conducted through Momentum Asset Management Proprietary Limited;
- 1.18 **“Operational Involvement”** means the day to day running and management in respect of the Overlapping Activities of any of the RIM Competing Firm/s by any individual/s as part of their employment, contractual or directorship responsibilities;
- 1.19 **“Overlapping Activities”** means asset management products and services in relation to fixed income and South African Real Estate portfolios;
- 1.20 **“RIM”** means Royal Investment Managers Proprietary Limited;
- 1.21 **“RIM Affiliates”** means [Firm 1], [Firm 2] and [Firm 3];
- 1.22 **“RIM Competing Firm”** means (i) individually, [Firm 1], [Firm 2] and [Firm 3]; or (ii) any other firm in respect of which RIM holds an interest in respect of which it is able to appoint directors to the board and which provides the Overlapping Activities;
- 1.23 **“Qualifying Employees of the Target Group”** means the permanent employees, as at the Approval Date, of RIM and AFF 2;
- 1.24 **“Target Group”** means IMG and RIM;
- 1.25 **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and

- 1.25 **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.26 **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal.

## **2. COMPETITIVELY SENSITIVE INFORMATION**

### **2.1 Board seats and management**

2.1.1 For as long as RIM is able to nominate or appoint individual/s to the board of directors of any RIM Competing Firm, the Merged Firm shall ensure that-

2.1.1.1 any individual/s serving, nominated and/or appointed by RIM to the board, management committees or sub-committee of a RIM Competing Firm or who have Operational Involvement in a RIM Competing Firm are not the same individuals serving, nominated and/or appointed on any board, management committees or sub-committee or having Operational Involvement in Momentum Metropolitan’s Overlapping Asset Management Business; and

2.1.1.2 in addition to, and without derogating from the requirement in clause 2.1.1.1, any individual serving, nominated and/or appointed by RIM to the board, management committees or sub-committee of a RIM Competing Firm or who have Operational Involvement in a RIM Competing Firm should not have served on the board of or had any Operational Involvement in Momentum Metropolitan’s Overlapping Asset Management Business for 6 (six) months preceding their appointment to the board or management committees or sub-committee of a RIM Competing Firm.

### **2.2 Information flow restriction**

2.2.1 RIM shall procure that prior to the appointment of any of its representative/s to the board of any RIM Competing Firm, such representative/s sign a confidentiality undertaking confirming that they will keep confidential the Competitively Sensitive Information of the RIM Competing Firm from any representatives on the board of Momentum Metropolitan’s Overlapping Asset Management Business.

### **2.3 Confidentiality and Information Exchange Framework**

- 2.3.1 RIM shall design and implement a Confidentiality and Information Exchange Framework to the satisfaction of the Commission that will be used in respect of the Merger. The Confidentiality and Information Exchange Framework shall stipulate *inter alia* that the RIM representative/s on the board of any RIM Competing Firm shall not share or discuss any Competitively Sensitive Information with any board member of Momentum Metropolitan's Overlapping Asset Management Business or having Operational Involvement therein.

### **3. ESOP Condition**

- 3.1 Momentum Metropolitan will ensure that the Qualifying Employees of the Target Group are included in the iSabelo ESOP.

### **4. DURATION**

The conditions in clauses 2.1 and 2.2 above shall apply for as long as RIM is able to nominate or appoint individual/s to the board of directors of any RIM Competing Firm.

### **5. MONITORING**

- 5.1 Within 5 (five) days of the Approval Date the merging parties shall notify the Commission that the employees of the target firm have been included in the iSabelo ESOP.
- 5.2 Within 5 (five) days after the Implementation Date, the Merged Firm shall notify the Commission in writing of the Implementation Date.
- 5.3 RIM shall within 60 (sixty) Days of the Implementation Date, develop and submit for approval a Confidentiality and Information Exchange Framework to the Commission in line with these Conditions.
- 5.4 The Commission shall provide comments on the Confidentiality and Information Exchange Framework contemplated in these Conditions to RIM within 60 (sixty) Days of receipt.
- 5.5 RIM shall within 20 (twenty) Days of receipt of the Commission's comments provide the Commission with a final version of the Confidentiality and Information Exchange Framework.

- 5.6 Within 20 (twenty) Days of the Implementation Date, RIM shall submit to the Commission an affidavit, deposed to by a senior official–
- 5.6.1 confirming that a copy of these Conditions has been circulated to RIM's representatives and nominees to the board of directors of each RIM Competing Firm;
- 5.6.2 listing the names of its representative/s on the board of directors of each RIM Competing Firm;
- 5.6.3 confirming that the requirements set out in clauses 2.1 and 2.2 have been met; and
- 5.6.4 attaching a copy of the signed confidentiality undertakings referred to in clause 2.2.1 above.
- 5.7 For as long as the Conditions in clauses 2.1 and 2.2 remain in place, RIM shall annually, on each anniversary of the Implementation Date, provide the Commission with an affidavit deposed to by a senior official –
- 5.7.1 attesting to compliance with clauses 2.1 and 2.2 of the Conditions as well as compliance with the Confidentiality and Information Exchange Framework; and
- 5.7.2 highlighting any changes to RIM's representatives on the board of any RIM Competing Firm.
- 5.8 The report referred to in clause 5.7 above shall be accompanied by an affidavit attested to by senior officer within RIM confirming the accuracy of the annual report and full compliance with these Conditions in the 12 months to which the report relates.
- 5.9 The Commission may at any time request additional information from the Merging Parties, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with the Conditions.
- 5.10 Any person who believes that the Merging Parties have failed to comply with these Conditions may approach the Commission with their complaint. If the Commission determines that there has been an apparent breach by the Merging Parties of these Conditions, the matter shall be dealt with in terms of clause 7 below.



**6. VARIATION OF CONDITIONS**

The Merging Parties and/or the Commission may at any time, and on good cause shown, apply to the Tribunal for any of the Conditions to be waived or relaxed, including any resultant modification or substitution thereof.

**7. APPARENT BREACH**

If the Merging Parties appear to have breached the Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

**8. GENERAL**

All correspondence concerning these Conditions must be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).