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Deon Basson
deonbass@mweb.co.za

(New) old Corpcapital lives on

Haunted by spectre of contingent liabilities

WHEN the shareholders of Corpcapital meet at the group's old head office in Rosebank on 17 June, it won't be for a company burial in the usual sense. Because even though one of the proposed special resolutions on the agenda makes provision for the voluntary liquidation of Corpcapital, another proposed ordinary resolution makes provision for a dividend in specie to shareholders – which means in practice that the company will continue to function under the banner of New Corpcapital.

New Corpcapital will have a so-called mirror listing on the JSE Securities Exchange after Corpcapital has distributed its shares in New Corpcapital to shareholders.

It's an interesting and creative scheme. However, the real reason behind it is unclear. Why is it not explained clearly and openly in the circular to shareholders?

In fairness, the circular gives the following reason for the scheme: "If shareholders approve the New Corpcapital proposal, an exemption from STC (secondary tax on companies) will apply to the January dividend and the dividend in specie. This would allow either Corpcapital or New Corpcapital to make a further interim cash payment to shareholders on an STC-free basis of an aggregate amount of R40m, equal to 10,5c per share.

"The board expects that Corpcapital or New Corpcapital will be in a position to make this payment no later than 90 days after the general meeting."

It's not clear from that explanation why the proposed scheme will lead to an STC exemption. Especially since the further payment of 10,5c could possibly still be made by the existing Corpcapital. At least, that's what the circular seems to be saying.

Corpcapital distributed around R965m to shareholders in the 2003 and 2004 financial years – by way of dividends or a capital reduction. Nevertheless, its STC liability for the two financial years was R1,6m and R6,3m respectively.

In the absence of an explanation it's therefore difficult to understand why STC is put forward as the reason for the new scheme.

New Corpcapital was formerly a private company known as Corpcapital Controlling Company and a wholly owned subsidiary of Corpcapital. The circular states that the shares in New Corpcapital are Corpcapital's only asset.

What's not explained clearly in the circular is what assets New Corpcapital has. The balance sheet on 28 February shows equity at R126,3m. From the previous balance sheet on 31 August one can deduce that consisted mainly of net cash, shares (and the licence) of Corpcapital Life and a 35% interest in Forza.

On 31 August, the equity was R316m and a dividend of R190m (50c/share) was distributed. The remaining net asset value is 33,2c/share and further distributions of 29c/share (which includes the 10,5c mentioned) are forecast.

Contingent liabilities could possibly be the real reason for the scheme. A number of sentences in the circular are significant. Such as: "Corpcapital's only liability is an inter-group loan account due to New Corpcapital. As previously disclosed to shareholders, Corpcapital is engaged in litigation, arbitration and other potential proceedings regarding claims against it, including the intimated claim by Clear Channel Independent and the claim by Nic Frangos, all of which are disputed.

> **"New Corpcapital... has agreed to bind itself as surety for Corpcapital in respect of the disputed claims."**

"The board, on the basis of professional advice, believes that the disputed claims do not have reasonable prospects of success. However, the estimate of further payments depends on the outcome of the disputed claims."

The circular also states: "New Corpcapital has undertaken to the board, and not for the benefit of third parties, that it shall indemnify Corpcapital against all liabilities of Corpcapital, if any, but subject to shareholders' approval of the New Corpcapital proposal, and has agreed to bind itself as surety for Corpcapital in respect of the disputed claims, subject to appropriate limitations so that claimants will not be unfairly prejudiced and the financial position of New Corpcapital is the same as that of Corpcapital."

At first glance, it therefore looks as if provision has been made neatly for contingent liabilities. However, the balance sheet quantifies only the Clearwater claim of R50m. After the envisaged distribution of R40m, Corpcapital's net asset value will be R86m, which should be more than enough if the Clearwater claim succeeds.

But it's not reported how much is involved in the other claims against Corpcapital, including Frangos's.

By delisting and liquidating Corpcapital the company sidesteps any possible future claims. It's also theoretically possible that some shareholders could later also submit claims against directors rather than against the company.

Another possible reason for the scheme is that a new shareholder has appeared on the scene. The circular states that Flagship Private Asset Management has a 31,4% interest in Corpcapital. The Registrar of Companies' records show the directors of Flagship as Winston Theodore Floquet (63), Simon de Villiers Hudson (38), David Andrew Pretorius (31) and Ronald Cornelis Walterus van 't Hof (53).

At the current share price of 27c, Flagship's interest in Corpcapital is worth around R32m. It's not known how much the group paid for its block of shares, but the price probably discounted the contingent liabilities not being realised.

Flagship is now by far Corpcapital's largest shareholder and could potentially emerge as the controlling one. There are a few interesting weeks ahead.