

## 1. Executive Summary

### 1.1 The establishment of the North-West Higher Education Trust

1.1.1 Section 40 (2) of the Higher Education Act, Act 101 of 1997, effectively limits the total value of loans and overdrafts which a public higher education institution may enter into to a maximum of 5% of the average annual income of the public higher education institution during the two years immediately preceding the taking of a resolution authorising such loan or overdraft facility.

1.1.2 The NWU had previously obtained advice from PriceWaterhouseCoopers (PwC) to the effect that the limitations on borrowing could be avoided if an independent trust were created external to the NWU and whose assets and liabilities would not be consolidated in the financial statements of the NWU. In order to achieve this objective, two chief criteria had to be met:

- i) Firstly, no office bearer, employee or student at the NWU could be appointed as a trustee of the trust; and
- ii) Secondly, the NWU could not be the sole beneficiary of the trust to be established.

1.1.3 With this objective in mind, various meetings were held between 9 April 2013 and October 2013 with a view to setting up an independent trust along the lines set out above. Key roleplayers in these meetings were, *inter alia*:

- |   |                  |        |
|---|------------------|--------|
| ■ | Bian Jooste      | Dabiko |
| ■ | Dr Theuns Eloff  | NWU    |
| ■ | Prof. Johan Rost | NWU    |

At the first meeting on 9 April 2013 Prof Rost and Dr Eloff stated that they would be willing to make an investment of R10m to be used for the set up and operating costs of the Fund until such time as the Trust is able to provide in its own needs.

1.1.4 On 10 October 2013, the North-West Higher Education Trust (IT128/2013) (hereinafter “**NWHET**”) was registered in accordance with the provisions of the Trust Property Control Act, Act 57 of 1998. The founder of the NWHET, Dabiko Consulting (Pty) Ltd (CK No 2010/001791/07) represented by Barend Bartholomeus (Bian) Jooste (hereinafter “**Jooste**”), settled on the NWHET as the initial founding subject matter, assets to the value of R500.00.

1.1.5 The first trustees of the NWHET are:

- Barend Bartholomeus (Bian) Jooste (ID No 781224 5043 089);
- Lambertus Johannes van der Nest; (ID No 671120 5042 084)
- Izak Stephanus Fourie (ID No 461112 5077 081)

1.1.6 The beneficiaries of the trust are defined as:

*“any higher education institution as defined in the Higher Education Act, which is controlled and / or managed from the North West Province and specially includes the NWU, who may from time to time be selected by the Trustees in their sole and absolute discretion to receive any payments or distributions, in respect of any income or capital profits or gains, the rights in and to, or the use of or distribution in specie of any assets comprising the Trust Fund.”*

## **1.2 The circumstances surrounding the donation of R10 million to the North-West Higher Education Trust**

1.2.1 Category 2 of the Schedule of Authorisation Levels in the NWU *“Policy on Delegations and Schedule of Authorisation Limits”* which was approved by Council on 18 November 2011 provides for the *“Acquisition of Assets (including construction contracts and leases) and / or Operating Expenses from External Sources or any other means”*.

Paragraph 3 of the Policy on Delegations defines “Assets” as:

*“Assets are all items of which the expected period of use exceeds one year, and the value is more than R3 000. These assets must be acquired against the correct asset account and recorded in the Asset Register of the University i.a. to ensure correct procedure in terms of asset insurance.”*

“Operating Expenses” are defined as:

*“Operating expenses refer to all expenses that cannot be classified as assets listed above, e.g. Stationery etc. This includes the acquisition of inventory stock and the withdrawal of items from inventory stores.”*

In terms of this category, the Vice-Chancellor is entitled to authorise expenditure of between R5 000 001 to R10 000 000. Under the column *“Other Requirements / Determinants”* the following

appears “*Request Open Tenders*”. We interpret this to mean that the Vice-Chancellor is entitled to authorise the acquisition of assets (including construction contracts and leases) and / or operating expenses from external sources or any other means for between R5 000 001 to R10 000 000 only after an open tender process has been followed.

- 1.2.2 The Financial Manager of VBS Mutual Bank, Louis Trichardt, Mr P.N. Truter addressed a letter dated 18 October 2013 to the NWHET, in which he thanked the NWHET for opening a savings account with them and provided the banking details as Account No 563846001 with branch code 588000.

At the foot of the letter is a manuscript note to Prof. Johan Rost signed by Dr Theuns Eloff dated 29 October 2013, which reads as follows:

*“Johan*

*Handel asb af? Betaal dus R10 m (tien miljoen) as skenking?”*

*[“Johan*

*Please deal with this? Pay R10 million (ten million) as a donation?”]*

- 1.2.3 On 1 November 2013 a payment requisition was prepared by a certain Danie Walker for the payment of R10 million from the North-West University to the bank account of the North-West Higher Education Trust held at the VBS Mutual Bank (Account No 563846001). The purpose of the payment was described as a donation (“skening”). Professor I. J. Rost, Executive Director, Finance and Facilities, Institutional Management, NWU approved the payment to the NWHET. The Payment Requisition also bears the signatures of Errol Earl, Director: Financial Administration and Frikkie Venter, Senior Accountant: Payments.
- 1.2.4 We were provided with a NWU General Ledger Account Detailed Report drawn on 7 August 2014. This report indicates that on 4 November 2013 two amounts of R5 million each were paid from the G103070 – Central Cost Budget – Inst to the NWHET.
- 1.2.5 We have further had sight of a letter signed by Professor Rost dated 9 May 2014 and addressed to the Trustees of the NWHET in which he confirms the donation of R10 million to the NWHET and continues to state as follows:

*“The above stated amount may be used in the absolute discretion of the trustees for the sole purpose of promoting the principal objectives of the Trust.”*

In our interview with Professor Rost on 15 February 2015 he stated that the letter had been drafted for him by Bian Jooste for audit purposes, that he was satisfied with the content thereof and that he signed it off.

- 1.2.6 On 4 February 2015 we submitted a letter to Webber Wentzel attorneys, which represented the trustees of the NWHET and requested them to provide clarity on a number of issues surrounding the NWHET and the manner in which the R10 million donation had been utilised or invested by the trust. We received a detailed response supported by voluminous documentation on 2 March 2015. Our specific queries and the responses received thereto (*in italics*) are set out below.

**“The activities of the NWHET to date**

- i) The NWHET was established in October 2013 and an initial donation of R10 million from the North-West University was paid into the bank account of the NWHET in early November 2013. Has the NWHET embarked on any further fund raising campaigns since then and have any other substantial donations been made to it?

*The NWHET did embark on fund raising campaigns and substantial progress was made in securing finance for the project. In principle commitments were received from large funding institutions.*

*No other donations have been received.*

- ii) How many meetings of trustees have been held between October 2013 and the present?

*Several informal meetings were held which were not minuted.*

*Formal meetings were held on 28 February 2014, 30 May 2014, 8 August 2014 and 18 November 2014.*

- iii) Were these meetings of trustees minuted? If so, kindly provide copies of the said minutes.

*Yes, the relevant documents are attached marked “X2” to “X5”.*

- iv) Have any benefits been distributed to the beneficiaries of the trust between the time of its

establishment and the present? If so, kindly provide details.

*No*

- v) Have the books of account of the NWHET been audited? If so, kindly supply a copy of the audited Annual Financial Statements.

*Yes, a copy of the audited financial statements is attached marked "X6". The audited financial statements for the period ended 28 February 2015 will also be available shortly and will be made available on request.*

**The purpose for which the donation of R10 million from the NWU has been utilised**

- i) We have previously been advised by Mr Bian Jooste that the amount of R10 million donated by the NWU was invested in two investment funds, namely:

- Hein Kruger International Fund Managers (Pty) Ltd (from where it was placed in two unit trust fund of funds portfolios with Stanlib)
- Corion Capital.

Was an amount of R5 million invested in each fund?

*No, an amount of R4 500 000 was invested in each fund.*

*An amount of R1 000 000 was retained by the NWHET for short term working capital and operational expenses.*

- ii) If not, what amount was invested with each of the two funds?

*See the response above.*

- iii) What part, if any, of the R10 million donation was utilised by the NWHET towards its operational expenditure? Kindly provide full details.

*We refer you to the audited financial statements for the period ended 28 February 2014 attached as annexure "X6" and to the financial statements for the period ended 31 January 2015 attached hereto marked "X7".*

iv) Kindly provide details of the current value of the investments listed in subparagraph (i) above.

*We attach hereto the statement from Corion Capital dated 16 January 2015 and the statement from Kruger International dated 9 February 2015 marked "X8" and "X9" respectively.*

The statements show that the value of the Corion Capital investment as at 16 January 2015 stood at R2 874 825.56 and the Kruger International investment stood at R4 716 640.44. The total value of the two investments was therefore **R7 591 466.00**.

1.2.7 We note from the audited annual financial statements for the year ending 28 February 2014 that Dabiko received management fees totalling R1 026 000.00. The unaudited financial statements for the period to 31 January 2015 reflect that management fees totalling R2 661 426.00 were paid to Dabiko.

1.2.8 We also requested the trustees of the NWHET to indicate to us what their attitude would be in the event of the NWU attempting to recover the remainder of the R10 million donation from them. They responded as follows:

*"You will appreciate that it took an enormous effort to create the NWHET, to manage its day to day activities and to pursue projects almost exclusively for the benefit of the NWU. As a consequence of the conduct of the NWU, the activities of the NWHET have come to a stand-still and it lost an enormous amount of goodwill from the professional team.*

*The trustees are of the view that it is probably best to liquidate the entities under the NWHET umbrella and bring an end to the existence of the NWHET. The NWHET would be prepared to return the funds to the NWU after all costs of winding down the affairs of the NWHET have been paid. This is, however, subject to the NWU confirming that it has no claim against the NWHET or the trustees and subject to the NWU indemnifying the trustees and the NWHET against any claims of whatever nature."*

## **2. Conclusions**

2.1 We conclude that the NWHET was established in 2013 with a view to creating a vehicle that would not be consolidated in the financial statements of the NWU and would thereby fall outside of the provisions of the Higher Education Act, Act 101 of 1997, in order to allow for easier access to finance for capital projects. For this reason, the NWU could not be the sole beneficiary of the NWHET and employees, office bearers and students at the NWU could not be appointed as trustees. However, by appointing alumni as trustees and by specifically mentioning the NWU as a beneficiary by name, the intention was clearly to favour the NWU over other higher education institutions in the North-West Province. To date, no benefits have accrued to the beneficiaries of the NWHET although, it is apparent from the minutes of the meetings of the trustees which have been made available to us, that a number of projects including the proposed PBS building, had been under consideration.

2.2 With regard to the donation of R10 million from the NWU to the NWHET, we conclude as follows:

- i) Dr Theuns Eloff purported to authorise the donation and instructed Prof. Johan Rost to process the transfer of R10 million from the NWU to the NWHET, which the latter did in early November 2013.
- ii) In our view, Dr Eloff was not possessed of the authority to authorise a donation of this nature to the NWHET. We are of the view that Dr Eloff's delegated authority to authorise expenditure of between R5 000 001 and R10 000 000.00 was limited to the acquisition of assets and / or operating expenses of the NWU after an open tender process had been followed. In our opinion, this cannot be interpreted as authorisation to donate R10 000 000 to an independent trust over which the NWU has no control.
- iii) Without suggesting an improper motive, neither Dr Eloff nor Professor Rost appear to have appreciated that the delegated authority was for a specific purpose namely the acquisition of assets or the payment of operating expenses after an open tender process had been followed, and they both appear to have focussed purely on the monetary value of that authority.
- iv) Of the R10 million donation, R9 million was invested in Stanlib and Corion Capital Unit Trust Portfolios and R1 million was set aside by the NWHET for operating expenses. Between the establishment of the NWHET on 10 October 2013 and 31 January 2015 an amount of R3 687 426.00 has been paid by the NWHET to Dabiko, an entity in which one

of the trustees has an interest, in respect of management fees. The current total value of the investments of the NWHET with Corion Capital and Stanlib is R7 591 466.00.

### **3. Recommendations**

- 3.1 We recommend that the donation of R10 million to the NWHET be referred to the Council, which may either ratify it or elect to recover the monies paid to it. In the event of Council electing to recover the monies paid, the trustees of the NWHET have indicated that they would be prepared to cooperate subject to certain conditions stipulated in their response.