

**INTERIM REPORT ON THE RECENT ACTIVITIES OF THE LIMPAST  
BOARD OF DIRECTORS**

*CPR Cronjé*

23 May 2009

With reference to your request dated 22 May 2009 I wish to report on the recent occurrences in the LIMPAST program that led to the current situation. I will not include all the correspondence involved and trust that an oversight of the major events will suffice as an indication of the general trend during the past three months.

**Brief History of the events that contributed to the crises**

Leon de Villiers contacted me around 3 December 2008 to inform me that the LIMPAST traditional program funding would be drastically cut. He also informed me that the funding for the Expanded Production Program will be channeled through LIMPAST to Naas Joubert. When I received the letter confirming the situation it was clear that there were some confusion with the two applications that LIMPAST submitted. I consulted with the vice-chairman (Gert Rall at that time) regarding the situation and then contacted Leon and informed him that we suspected that some confusion arose between the two applications that LIMPAST submitted.

Leon examined the records and confirmed that there was some confusion, but that there will be drastic funding cuts and imminent termination of the traditional program. On 14 December 2008 I faxed this information to all LIMPAST directors. I did not have any response.

In January 2009, Leon contacted me and confirmed that a further R600 000.00 would be made available to the LIMPAST program for the current season, but that the continuation of funding would be doubtful past the end of the current season.

I then organized a general meeting and AGM for 24 March 2009 and put the Maize Trust funding and shortfalls on the budget as major discussion points. At this stage a request was also sent to all member organizations to pay their annual subscription fees and to verify (in writing) who their directors on the LIMPAST board would be for the next two years (a general rule in the Articles of Association of LIMPAST).

On the 10 of March I was called by Masenya Maseya of Progress Milling to inform me that Progress Milling would not be nominating a director, implying termination of their membership. We discussed this and the reasons he gave at the time was that Progress would be focusing on business development and that LIMPAST is not part of their future plans. He also indicated that the current directors do not participate and give direction and that the meetings were information sessions and not discussions of strategy. (This is very true and a long running frustration).

On the 24<sup>th</sup> March we held the business meeting, and there was an underlying tension right from the start. The meeting soon degraded to a disorganized debate about some very old issues (the suspension of TAU, the firing of the earlier Program Manager etc.). These issues were discussed at length previously and came to a majority conclusion at the time. Some of the directors then insisted that the resignation of Progress Milling will not be accepted.

All the austerity measures suggested by the CEO were shouted down. These included the termination of the memorandum of understanding with Progress Milling regarding the current program manager, the frequency of meetings and the request that only one director per organization attend meetings instead of two- all cost saving measures. It was also suggested that the field program be curtailed to the regions where Naas will work to form a support for his program rather than having isolated plots.

Although Progress Milling reneged on the Memorandum of Understanding (MOU) and the Program Manger had not done any effective work for LIMPAST since November 2008, the directors insisted that it was a racial issue and that the untrained lady would be a better program manager than Naas Joubert.

Although the whole agenda was not completed, we commenced with the AGM after 14H00. When we came to constituting the meeting it was confirmed that only two of the seven members actually officially nominated directors correctly, and the same two were the only members that paid their affiliation fees.

The Chairman ruled that the meeting should proceed in spite of this, basically scrapping the Articles of Association (AoA) of the organization in the process. He was re-elected Chairman and a new vice-chair was elected in the place of Gert Rall who resigned. The director of Agri-Limpo

(Willie van Jaarsveld) minuted an objection to the whole process, but he was overruled. The meeting finally ended in chaos after directors started leaving and a quorum was no longer present. In effect we met from 10H00 till 15H30 and took no sensible decisions or discussed anything of crucial value to the LIMPAST program.

Leon and Karibo accompanied me to a farmer's day of the Expanded Production program on the 26<sup>th</sup> March and I mentioned that we were experiencing problems. Leon confirmed that the funding for the traditional program would probably end after the current season.

Early in April I contacted Leon again to ask if I could submit a funding request for LIMPAST early in order to have clarity on the way forward. He agreed and after the meeting of the steering committee he contacted me again to confirm that the funding would probably not continue.

In the meantime the directors requested a meeting with the Maize Trust on 8 or 9 April. I informed that chairman that it would not be possible for two reasons, been that the Trustees travel from different areas, and that meeting in Polokwane just before Easter week-end in not a good idea. I suggested that a smaller contingent meet with the Trust at a later date, once we have unity in the board of directors, and the effects of the funding situation had been clarified.

There was a meeting of some directors on the 11<sup>th</sup> April, after which they instructed me to arrange a meeting for 20 April 2009. I pointed out that we would be breaching the Company Act if we schedule meetings in the manner they suggest, and also requested an agenda for such a meeting. They did not respond, and arranged a "private meeting" for some of the directors, excluding the CEO and Agri-Limpopo. It turned out that this meeting was hosted by Progress Milling. I cautioned them specifically against incurring new debt for LIMAPST after they have been informed of the financial position. This would constitute "reckless trading" and the debts so incurred would be for their personal accounts.

On the 21<sup>st</sup> April the CEO received a fax informing him that he was not to conduct any further business in the name of LIMPAST, and the reason quoted was for "insubordination to the board" for not following the "instructions" given at the board meeting of 24 March. The CEO immediately telephoned the chairman to request clarification- was he now suspended or fired?. The chairman did not give any clear indication as to what the expectation of the board was. The CEO then said that his contract requires him to conduct the program on behalf of the funder and

that he had no option but to continue with scheduled tasks. The chairman did not comment on this.

The CEO then contacted the Agri-Limpopo director to enquire about the meeting held on the 20<sup>th</sup> April. Willie was not invited and he strongly disagreed with the procedure and decisions taken. He drafted a letter to the chairman and asked the CEO to forward the letter.

At this stage the chairman's fax machine was out of order (sic) and all the alternative numbers he provided were out of order for some reason. The CEO then requested a meeting, but the chairman was very "busy" and could not be reached since he was traveling all over Limpopo at the time.

The CEO continued with organizing and attending to field visits and normal LIMPAST activities. On the 11<sup>th</sup> May 2009 the CEO tried to pay money from the LIMPAST account, only to learn that the account was suspended by the directors on the meeting held on the 20<sup>th</sup> April.

After attempting to get clarification from the chairman as to the intentions and meaning of this action, and not having heard anything to indicate why this was done, the CEO requested a letter from Leon to confirm that the monies left in the LIMPAST account was predominantly the monies intended for the Expanded Production program under Naas Joubert. The chairman indicated that the board will meet again on 21 May 2009 to discuss the various documents that the CEO forwarded. These documents included a legal opinion advising the directors to close LIMPAST due to the lack of continued funding. The same document indicated that if the directors would continue trading after notice of lack of funding is given, they will be liable for reckless trading and no longer be protected by the AoA of the company.

The CEO then called a meeting of the executive which includes the CEO, chairman, vice-chairman and the Agr-Limpopo director. The CEO obtained legal advice from Anton Bekker of Prinsloo and Bekker on the 13<sup>th</sup> May regarding the conduct of the directors and was advised to terminate his contract and to demand payment of his salary and damages. Anton then proceeded to write the letter which the CEO handed in at the Exco meeting. The chair was once again not available because his wife was ill. The exco met on the 14<sup>th</sup> May 2009. At this meeting the vice-chairman informed us that the meeting held on the 20<sup>th</sup> April was to choose new managers for LIMPAST from the directors, and that they would hold salaried positions within LIMPAST in future- this of course is a blatant contravention of the AoA . The issue of LIMPAST (founded by

Progress Milling) was now working with NTK (Naas) was also mentioned, and for this reason LIMPAST would be brought into the Progress camp. The new CEO would be Jean Simpungwe the absconding program manager. Still- the current CEO is not fired or suspended?- Apparently the intention was that he would still have to write proposals and get funding for the organization. The contract that will expire at the end of June 2009 will not be renewed. It would be expected of the current CEO to consult on an informal basis.

The CEO handed the lawyer's letter to the vice-chair for distribution to the LIMPAST directors. Again the chair denied having received the lawyer's letter, but did quote from it at a meeting held on 21 May 2009.

The Directors reconvened on the 21 May 2009, this time including Willie van Jaarsveld. The CEO did not attend since the lawyer's letter was delivered indicating that the CEO repudiated the contract and was no longer in the employ of LIMPAST (The chairman still asked the CEO to invite some directors to this meeting ??).

Again there was a prepared, but not previously circulated agenda. The gist of the meeting was that there would other organizations that will fund LIMPAST and that they no longer needed the Maize Trust. The directors also alluded that the CEO was a friend of Leon and could therefore manipulate the Trust into a format of funding that suited the CEO. In spite of the depleted funds and the contraventions of the AoA, LIMPAST will continue in a new format and under new management of some of the directors themselves. Apparently LIMPAST will become part of Progress Milling again.

After the meeting the CEO accompanied Willie to FNB to assert what could be done to release the funds back to the Maize Trust to prevent any unauthorized use. Upon arrival, some of the other directors were already in consultation with the bank official to try to get her to release R45 000 for the account to them for meeting expenses.

This figure is about 3x more than the normal meeting rate.

Fortunately they need my signature to be able to release the money, something I am not prepared to do. They were very upset and left the bank swearing at the "FICA law". We then discussed

the issue and background with the FNB and they suggested that we rather get a court order against FNB to release the funds back to the Trust rather than reasoning with the directors. The CEO phoned Anton Bekker and Leon to inform them of the latest developments.

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The following is excerpts from the letter of a legal advisor the CEO went to early April 2009

**Current financial status of LIMPAST and change in funding rules and aims of the Maize Trust**

With reference to the letter received from the Maize Trust on 4 December 2008 stipulating the designation of funds and a further letter on 9 April 2009 indicating the possible discontinuation of funding it was clear that a new source of funding needed to be found to continue with the project referred to as the “traditional” program. It was obvious that this would be very difficult to achieve. It was clear that the majority of small farmers will not be able to achieve commercial status under current conditions and finding sources of funding for such projects is at best problematic. The CEO e-mail records reflect that he faxed documents to the chairman and vice-chairman of LIMPAST on several occasions to inform them of this situation.

The fax to the Chairman on 1 April 2009 specifically stated that extreme caution should be used not to incur costs for the LIMPAST account due to the tenuous financial position. In spite of this the directors met twice after that warning, probably incurring more costs for which they could reasonably expect to be compensated for. These meetings were not called properly, no agendas was provided beforehand, and the notice period of 21 days was not adhered to, and the correct procedures to waive the 21 day notice period was also not adhered to. I also record here that you state that the director for Agri-Limpopo was not invited to any of these meetings.

I also confirm that the records show that none of the directors other than the director of Agri-Limpopo responded to the information. You did receive a fax on 21 April 2009 instructing you to discontinue certain activities. I also confirm that in my opinion you would have been outside the requirements of your contract and responsibilities of your position in the company if you adhered to the conditions set out in the fax. Under the stipulations of the Companies Act 61 of 1973 the accounting officer has to alert directors of a major change in the company cash position and have to do all necessary to prevent further losses or degradation of the financial position. As a matter of fact, failure to disclose such facts timiously is punishable by law.

I also confirm that I examined the LIMPAST financial records and that you have a sum of R492 022.10 left in your Money Market account with FNB. The full sum of R489 636.00 would belong

to the expanded production program according to the Maize Trust letter dated 4 December 2008. According to this letter and the Maize Trust norms and procedures for the project these funds are considered to be trust funds and as such cannot be used for any other purposes.

Technically the company has no more funds to continue activities and the board of directors should therefore not hesitate to terminate the activities and go into voluntary closure. Failure to close the company could lead to directors been held liable for financial losses in spite of the stipulations of the Articles of Association. Continued activities would be seen by the Companies Act 61 of 1973 to constitute reckless trading, and in such a case the process of law will override any stipulation in Articles of Association- I quote the relevant section:

Section 424 (1) of the Companies Act states:

When it appears, whether it be in a winding-up, judicial management or otherwise, that any business of the company was or is being carried on recklessly or with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court may, on the application of the Master, the liquidator, the judicial manager, any creditor or member or contributory of the company, declare that any person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.

In view of this I would strongly caution you against attempts to continue trading in the current company.

### **Allegations made by some Board Members**

I have examined your e-mail records and with specific reference to the e-mails sent by your Pretoria office to the Polokwane office on 1 April 2009 where you request draft minutes for a meeting held on 24 March 2009 to be forwarded chairman for comments and correction. Your records show that no reply was ever received from the chairman. According to your records you sent another fax on 3 April 2009 in response to a call for a special directors meeting to be held on 9 April 2009 and that the Maize Trust should be invited to such a meeting. You indicated the reasons why such a meeting would not be possible without due notice and also indicated that the Trust has no wish to become involved with internal LIMPAST matters. The chairman consented



not to have such a meeting, but then sent a fax to you that such a meeting did take place and that a new meeting was to be called for the 20th April 2009.

This time the chairman did supply a proposed agenda, but the notice period required for a meeting was ignored. You again contacted the chairman giving reasons why such a meeting should be delayed. You received no further communication from the chairman and then received a fax on 21 April that contained some serious allegations. These allegations contained references to “not carrying out instructions given in the minutes of 24 March 2009”, “insubordination”, “not acting in the interests of LIMPAST” and “banning from any further action on behalf of LIMPAST”.

You called the chairman on the evening of 21 April to verify if the intention was to terminate your contract or services and if you were in fact suspended or fired. The chairman responded that neither situation was implied in the fax. I wish to comment as follows- there were no reasonable grounds for the conclusion drawn by the meeting. In fact I find it puzzling that the directors of Agri-Limpopo were not invited to such a meeting and that the chairman found it necessary to send a fax of which he verbally retracted the written content on the same day.

I would caution the directors that such actions are very risqué in view of the stipulations of the contract that the CEO has with LIMPAST, the Articles of Association of the company, his job description and the stipulations of the Companies Act (61 of 1973). Under the terms of these documents the CEO would have a strong case for unfair practice against the directors as well as claim for a breach of contract.

### **Impact on Expanded Production Program**

You also reported to me that you received a call from a Mr. Naas Joubert during the week of 27-30 April reporting that while he was working in the Expanded Production project area he was approached by Government officials working in the area informing him that he needs to stop his program. This was based on information they received from a Limpast director in the area that the program was terminated and the CEO fired. This amounts to misinformation and rumor mongering, and could be construed as malicious intent to discredit the development program and project leaders. The chairman denied responsibility when phoned by you informing him of the incident. In my opinion it is difficult to comprehend how the CEO could be implicated with statements such as “not having the interests of Limpast at heart” while directors are directly

implicated in making damaging statements that could influence future relationships with project beneficiaries.

### **Termination of CEO contract**

In view of the current cash position of the company it is obvious that the contract entered into with the CEO would have to be terminated when the company disbands. In the case of the CEO contract, the regular renewal of the fixed term contract lead to a point where the employee could rightly claim he had a reasonable expectation of a further renewal. The law states that not renewing a contract where there is such a reasonable expectation could be regarded as unfair dismissal.

Entering into an agreement where somebody works for you as an independent contractor has distinct advantages. In certain aspects the current contract could be interpreted in this manner. The person employed in this manner would not enjoy the rights and protections afforded by legislation, such as protection against dismissal, minimum wage, restrictions on working time, annual leave, sick leave, etc.

The questions to ask would be whether the manner in which the person works and the hours of work are subject to the control or direction of another person; whether the person forms part of the organisation (business card, uniform, etc.); whether the person has worked for that person or organisation for an average of at least 40 hours per month over the last three months; whether there is economic dependency; whether the person is provided with his or her tools of trade or work equipment; whether the person only works or supplies services to one person or organisation.

If one or more of the above-mentioned factors are present, a person who provides a service to you would be presumed to be an employee until the contrary is proved. For example, if you terminate the contract without a hearing and the person says it was an unfair dismissal, you would have to prove that the person is not an employee.

The definition of an independent contractor would be in a situation where certain specialist skills are needed on a temporary basis; the contractor is required to provide a result - supervision and control not required; contractor acts independently and invoices the client. Although this could be

true of the current relationship, several incidents arose that could argue against this been a true reflection of the current relationship

### **Fiduciary responsibility of directors**

In view of the above arguments, my suggestion would be to voluntarily terminate the registration and activities of the company. The grounds for such a decision would be that there are no longer funds available to continue operations. An agreement needs to be reached with the CEO not to pursue with a claim against the company. If the company continues trading while in this position, a claim could be made for the breach of contract compensation. Since there are no surplus funds, and no obvious stream of income in the near future, such a claim will then be payable by the directors themselves.

I mentioned earlier that the directors will be held accountable for reckless trading and such a case would be very easy to prove in a court of law.

### **Problems related to nomination of directors, non-payment of affiliation fees and representation**

The examination of documents pertaining to the nomination of directors at the previous annual general meeting held on 24 March 2009 as well as the regulations stipulated in your articles of association revealed several technical problems with the current status of the directorships.

In brief these infractions reflect the following digressions from the rules:

Some directors nominated themselves and was not proposed by their organizations

Some directors also nominated themselves at the AGM on hastily handwritten notes not reflecting any letterheads or proper documentation

All member affiliation fees are in arrears except the fees for Agri-Limpopo

A matter not noted previously but that has significant implications is the fact that some organizations are actually affiliated to others and in this manner a power block is created within

the directorships. Our research indicates that Great North Farmers Union and NAFU are affiliated, and Greater Tzaneen Farmer's Union has indicated that they are also in the process of affiliation (Pers Comm). This has far-reaching implications for virtually all decisions made by the current board of directors. To understand the analogy- it would be similar to regional branches of Agri-Limpopo been represented on the board of directors of Limpast by different directors.

It is my opinion that only the truly unaffiliated unions are represented on the board of directors according to the articles of association. These unions would be Trudo, LFDC and Agri-Limpopo. Progress Milling has not withdrawn their written resignation from the board of directors and are therefore no longer represented as directors. I am also of the opinion that this implies that the current board of directors is compromised and cannot be entrusted to make legally binding decisions on behalf of the company.

### **Recommended course of action**

It is my recommendation that Limpast seizes its operations and that the remaining Trust funds and equipment be transferred to a holding account with a lawyer until a new management entity can be formed for the expanded production program still funded by the Trust. This action is the only option allowed for in the articles of association and also the only manner in which the directors can remain under the protection of the Companies Act.

In order to finalise the matter a CM 26 form should be completed in duplicate, together with a waiver(CM 25)that will allow a decision to be taken without the normal 21 days notice been given. These forms should be handed to the company auditors who will then proceed with deregistration.

Any other course of action will incur costs and other liabilities for the company that will amount to reckless trading and will cause the current directors to become directly financially and legally liable for the company.

It is also recommended that a settlement be negotiated with the CEO to prevent any future unfair dismissal claims and recourse to the same claims.