



HERBERT
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THE FOURTH HERBERT SMITH FREEHILLS AND NLU DELHI

INTERNATIONAL NEGOTIATION COMPETITION

8 - 10 SEPTEMBER 2017

A RACY SITUATION GENERAL BACKGROUND INFORMATION

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GENERAL BACKGROUND INFORMATION

The parties

Egon Mesk

Egon Mesk ("**EM**") started out as a humble veterinary surgeon working on ranches in the US. A charismatic and forward-thinking individual, he was able to attract seed funding and build up his own premier racehorse stable, which rapidly rose in renown for producing the most consistent performers in US national flat races.

On moving 35 years ago to the UK, where racing has a more established history, EM started a global stable with the backing of the Norwadia Sovereign Wealth Fund (the "**NSWF**"). Today, the global stable business is owned and operated by a UK company called EM Stables Company Limited (the "**Stable**") and its various subsidiaries.

After successive capital raises, EM owns 15% of the Stable's issued share capital, NSWF owns 50%, and 35% is owned by Max Jacobs Belvedere Laurent ("**MJBL**"), a luxury products group based in Switzerland (NSWF and MJBL together being the "**Shareholders**").

EM is CEO of the Stable. NSWF and MJBL have director representatives on the board. EM remains the public face of the Stable, and is a very high-profile figure in the racing industry.

Norwadia Sovereign Wealth Fund

NSWF is one of the world's biggest sovereign wealth funds with investments worth over US\$800 billion in various companies worldwide.

NSWF places a great deal of importance on transparency and maintains high ethical standards which prevent it from investing in companies that breach certain guidelines regarding the environment, human rights and corruption, among other criteria.

NSWF invested in the Stable many years ago and has recently started to receive negative coverage in the press and criticism from the general public regarding its involvement with the Stable.

Background

The dispute

Despite the Stable enjoying 15 very successful years, over which it rose to become the stable with the largest number of race cup wins in history (including Royal Ascot and the Melbourne Cup), the performance of the Stable's horses has been disappointing for the last three years. As a result, it is becoming more difficult to secure new investment, attract high quality trainers and jockeys, and obtain sponsorship. A major sponsorship deal was lost at the end of last season, denting both the Stable's revenue and reputation.

As CEO, EM has been under increasing pressure to improve performance and secure sponsorship. Although EM is a widely respected veteran of the industry, he is also known as an autocrat who is difficult to work with and notoriously resistant to factoring in other people's opinions.

As the situation at the Stable has deteriorated, the Shareholders have become increasingly frustrated with

the ageing EM. Rumours are circulating that despite him being a wonderful vet, trainer and stable leader, he is unable to keep up with the commercial realities of managing a global brand. Efforts by NSWF and MJBL (which in particular has extensive experience in branding and sponsorship in other industries) to influence EM's stewardship of the Stable have fallen on deaf ears.

As a result, the Shareholders are now seeking to remove EM as CEO. They are happy for him to remain as a minority shareholder, as they feel they can easily overrule any obstructive behaviour.

EM has refused to step down, and has stated that he has no intention of being a passive shareholder in the Stable, which he built from the ground up. He has stated that the Shareholders will have to buy him out if they want him gone.

Under the terms of his service contract, EM is set to remain as CEO until 31 December 2019, with the option to renew for a further four years. It is possible to terminate

GENERAL BACKGROUND INFORMATION (CONTINUED)

the service agreement without notice on grounds of gross misconduct, or with two months' notice on grounds of poor performance. In the event that his service contract is terminated prematurely, EM is entitled to receive full consideration under the contract, which would require a payout of US\$15 million.

EM has stated that he is currently negotiating a series of lucrative sponsorship deals which will be derailed if he is fired. He also claims to have discovered the source for the Stable's horses' recent poor performance, which he expects will result in a turnaround within a year.

The negotiation

The two directors representing the Shareholders have called a board meeting to move that EM's service agreement be terminated and EM be dismissed from the board. EM in return has sought an injunction to prevent this, arguing that removing him would not be in the best interests of the company, and that voting for the resolution would therefore be a breach of multiple directors' duties, including the duty to exercise independent judgment. He is also making claims of unfair prejudice as a minority shareholder.

The situation is drawing increasing attention from the press.

The Shareholders have managed to arrange a settlement meeting between EM and NSWF before the injunction hearing.

It has been agreed that NSWF has the power to negotiate on behalf of all Shareholders subject to final signoff by all parties.

Additional information about the industry

Horse racing is a highly technical, high-profile and prestigious industry.

Success of commercial racing horse stables is dependent upon a variety of factors, including the following:

- access to large volumes of capital;
- purchasing the best thoroughbred fillies and colts;
- providing high-quality feed and facilities for the horses;
- attracting and maintaining the best trainers and jockeys;
- sponsorship (the main source of revenue); and
- maintaining a high-profile and 'luxury' image through attending and hosting high-profile events (required for attaining lucrative sponsorship contracts and attracting investors).