

## REPRESENTATION PLAN ON BEHALF OF REAL QUIK CONVENIENCE STORES LTD

### A. BACKGROUND TO THE DISPUTE

Real Quik Convenience Stores Ltd. (“**Real Quik**”), the largest chain of convenience stores in Gondwana by market share, and Conglomerated Nanyu Tobacco Ltd. (“**Nanyu Tobacco**”), the largest tobacco producer in Nanyu have a long-standing business relationship dating back to 2000. On 14 December 2010, Real Quik and Nanyu Tobacco entered into a 10-year distribution agreement (“**the Agreement**”) that provided for, *inter alia*, the sale and purchase of tobacco products and related promotional merchandise to be distributed by Real Quik in Gondwana. On 11 March 2013, due to the implementation of the harsh tobacco-control legislation, Real Quik attempted to bring the severity of the situation to Nanyu Tobacco's notice. However, the Parties were unable to successfully renegotiate the Agreement during a later meeting on 11 April 2013. Citing the difficulty (and partial illegality) of carrying out its contractual duties, Real Quik terminate the Agreement on 1 June 2013. Nanyu Tobacco now seeks to claim USD 75 million in liquidated damages for early termination.

### B. NATURE OF THE DISPUTE

The dispute is contractual in nature, questioning whether Real Quik is liable for terminating the Agreement given the difficulties created by new tobacco-control legislation in Gondwana.

### C. ISSUES IN DISPUTE

The issue is whether Nanyu Tobacco should be allowed to claim damages given Real Quik's termination. Another pertinent issue is the possibility of renegotiating the Agreement.

### D. INTERESTS OF THE PARTIES

#### I. Real Quik Convenience Stores Ltd.

Given the difficulty and partial illegality of carrying out its contractual obligations under the Agreement, Real Quik's main interest is to have the liquidated damages waived. Real Quik is also keen on preserving its business relationship with Nanyu Tobacco if the renegotiated agreement is a viable arrangement reflecting the current predicament of the tobacco market in Gondwana. The agreement must also comply with Gondwandan legislation.

## II. Conglomerated Nanyu Tobacco Ltd.

Nanyu Tobacco's main interest is to claim the USD 75 million regardless of the hardship faced by Real Quik. Nanyu Tobacco also has an interest in preserving its long-standing business relationship with Real Quik. In addition to advancing its business interests, Nanyu Tobacco will likely want any renegotiated agreement to reflect a price premium for its tobacco products.

## **E. MEDIATION STRATEGY**

In his opening statement, Mr. Mancuso will provide a brief history of the dispute and state Real Quik's interests in the matter. In particular, Mr. Mancuso will highlight his concern about the unfairness of enforcing a substantial liquidated damages clause, given Real Quik's inability to carry out parts of the Agreement without breaking the law. Mr. Mancuso will also highlight the difficulty of selling premium-branded tobacco products in a commoditised market, thereby explaining the tenability of Nanyu Tobacco's premium pricing of its tobacco products. Mr. Mancuso is also willing to discuss the continuity of the parties' long-term business relationship. Mr. Mancuso will then seek to assess Nanyu Tobacco's interests and its attitude towards a compromise. Provided that the expectations of both parties are within reasonable bounds, Mr. Mancuso would be willing to explore all possible solutions. When necessary, the Counsel for Real Quik will provide a legal perspective on any proposed solution. Throughout the mediation, both Client and Counsel will remain flexible and reasonable in order to reach an amicable resolution to the dispute.