

January 2019

APPRAISAL RIGHTS OF THE HOLDING COMPANY'S DISSENTING SHAREHOLDERS

In *Cilliers v LA Concorde Holdings Limited and Others*, the Western Cape High Court was confronted with the question if appraisal rights in terms of sec. 164 of the Companies Act 71 of 2008 (the "**Act**") are extended to the shareholders of a holding company if such holding company's subsidiary concludes a transaction to dispose of all or the greater part of its assets or undertaking.

In this case KVV South Africa (Pty) Ltd (the "**Subsidiary**") wholly owned by La Concorde Holdings Limited (the "**Holding Company**") entered into a transaction with a third party in terms whereof the **Subsidiary** would dispose of all of its operating assets. Said transaction constituted a disposal of all or the greater part of both the **Subsidiary's** and the **Holding Company's** assets (considering the **Holding Company's** consolidated financials). As such, the envisaged transaction required approval by way of special resolution of shareholders of both the **Subsidiary** and **Holding Company**, in terms of sec. 115(2)(b) of the **Act**.

Mr. Cilliers, being a minority shareholder of the **Holding Company**, objected and voted against the special resolution of the **Holding Company** and exercised his appraisal rights in terms of sec. 164 of the **Act**. The **Holding Company** offered to acquire Mr. Cilliers' shares, however, same was rejected on the grounds of inadequate consideration.

Subsequent to the above, Mr. Cilliers approached the court in terms of sec. 164 to determine the 'fair value' of his shares in the **Holding Company** and to obtain an order requiring the **Holding Company** to pay him the said 'fair value' of his shares.

An order was granted in favour of Mr. Cilliers and the court confirmed that, as a minority shareholder of the **Holding Company**, he can exercise his appraisal rights in respect of the envisaged transaction set out hereinabove.

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