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1. The parties to this agreement are:
1.1. The Accused, Mastermind Tobacco SA (Pty) Ltd, a company duly incorporated in terms of the company law of South Africa, duly represented herein by Richard Rujugiro in terms of the provisions of s 332(2)(a) of the

The Parties

PLEA AGREEMENT IN TERMS OF SECTION 105A OF ACT 51 OF 1977

MASTERMIND TOBACCO SA (PTY) LTD
Accused
represented by Richard Rujugiro, a 38 year old male in terms of section 332(2) of the Criminal Procedure Act, No. 51 of 1977

and

THE STATE
represented herein by Advocate Johan Roothman of the Director of Public Prosecutions, Eastern Cape.

In the matter between:

CASE NO: CC 85/06

IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE, EAST LONDON HIGH COURT)

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Criminal Procedure Act, No. 51 of 1977 ("the Act"), who is duly authorised to enter into this agreement and to plead guilty on behalf of the accused as provided for in the resolution annexed hereto marked Annexure "A".

1.2. The State ("the Prosecution"), duly represented by Advocate Johan Roothman of the Director of Public Prosecutions, Eastern Cape ("the Designated Prosecutor").

2. The Accused and the Prosecution hereby enter into an agreement in terms of which the Accused undertakes to enter a plea of guilty in terms of section 105A(1)(a)(i) of the Act ("the Conviction Agreement") on the second alternative counts 1 to 24, on counts 25 to 30 and on the first alternative counts 31 to 54 outlined in the indictment presented to the Accused and to be sentenced in terms of section 105A(1)(a)(ii) of the Act ("the Sentence Agreement") to a sentence as provided for in this agreement.

Authority of the National Director of Public Prosecutions

3. The Prosecution has been duly authorised in writing by the Investigating Director of the Directorate of Special Operations to enter into this agreement in terms of s 105A(1)(a) of the Act.

4. The Prosecution has also been authorised in terms of Section 18 (2) of the Prevention of Organised Crime Act 121 of 1998 (POCA) to bring an application for a confiscation order for the benefit which the Accused derived from the commission of the offences which forms the subject matter of these proceedings.

Consultation by the Designated Prosecutor with the Investigating Officer

5. The Prosecution consulted the investigating officer charged with the investigation of the criminal case, Senior Special Investigator Mithobeli Precious Gxowa of the Directorate of Special Operations, Eastern Cape, and obtained his consent to enter into this agreement, with due regard to:

5.1. the nature and circumstances relating to the charges;

5.2. the circumstances of the Accused;

5.3. the absence of previous convictions of the Accused; and

5.4. the interests of the community.

Consultation by the Designated Prosecutor with the Complainant

6. The Prosecution consulted Messrs. Heunis and Smit being representatives of the South African Revenue Services, the complainant in the criminal case against the accused ("the Complainant" or "SARS").

7. The Complainant was provided with an opportunity to make representations to the National Director of Public Prosecutions and the Directorate of Special Operations as to the terms and conditions of the Conviction Agreement and the Sentence Agreement and has indicated that it fully supports the Conviction Agreement and the Sentence Agreement.

M.P.

Mr R.R.

Recognition by the accused of its rights

8. Rujugiro confirms that before entering into this agreement on behalf of the Accused he was informed that the Accused has the right:

8.1. to be presumed innocent until proven guilty beyond reasonable doubt;

8.2. to remain silent and not to testify during the criminal proceedings against it; and

8.3. not to be compelled to give self-incriminating evidence.

The terms of the Conviction Agreement, substantial facts and admissions made by the Accused as to such agreement

9. The parties agree that Rujugiro will enter a plea of guilty on behalf of the Accused in terms of section 112 of the Act, in respect of the second alternative counts 1 to 24, counts 25 to 30 and the first alternative counts 31 to 54 as set out in the indictment presented to the Accused and to be sentenced on such charges to a sentence as provided for in this agreement, on the facts and basis set out herein below.

10. The Accused makes the following admissions in terms of s 220 of the Act:

10.1 that the Accused was duly incorporated on 10 December 1990 with registration number 1990/07376/07;

10.2 that at all material times the business address of the Accused was situated at 7 Osmond Street, Wilsonia, East London, South Africa;

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10.8 that excise duty and VAT are payable on all cigarettes sold in South Africa;

10.7 that the Accused imported rebated materials, manufactured cigarettes (tariff code 2402.20) from these materials and stored the cigarettes manufactured in a bonded warehouse that was recorded monthly on a Customs Excise Account (DA 260.00) for warehouse no: ELN VM 56 and Customs Code 602471 (1422204);

- as an importer (of raw tobacco);
- as an exporter (of manufactured cigarettes);
- for rebates (section 75 of Customs and Excise Act 91 of 1964, importation of material to manufacture cigarettes);
- in respect of a manufacturing warehouse;
- in respect of a storage warehouse.

10.6 that the Accused was licensed under Customs code numbers, 602471 and 1422204;

10.5 that the Accused was at all material times registered for Value Added Tax at SARS East London; that VAT number 4100103854 was allocated to it and that it was obliged in terms of the provisions section 28(1) of the VAT Act 89 of 1991 to submit monthly VAT returns on the prescribed VAT 201 form;

10.4 that the Accused is a company registered in terms of the Companies Act, No. 61 of 1973, and therefore a corporate body within the meaning of s 332 of the Act;

10.3 that the Accused' business consisted of the importation of tobacco and the manufacturing of cigarettes for export out of South Africa and for sale within the Southern African Customs Union;

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10.9 that the Accused manufactured cigarettes for local distribution as well as for export to countries outside the SADC Region;

10.10 that cigarettes for export to countries outside the SADC Region are zero rated for VAT purposes and are exempted from excise duty upon acceptance by the Commissioner of the form DA 550 (Bill of entry export) submitted to the Commissioner for acquittal of such export;

10.11 that the Accused in breach of the provisions of s 83(a) of the Customs and Excise Act dealt with cigarettes in a customs and excise warehouse as set out in the second alternative charges 1 – 24 of the indictment, by permitting such cigarettes to be removed from the customs and excise warehouse without payment of the applicable duties thereon;

10.12 that in consequence of the above breach of the Accused, SARS failed to collect excise duty and VAT on the cigarettes referred to in the second alternative charges 1 – 24 of the indictment;

10.13 that in breach of the provisions of s 80 (1)(o) of the Customs and Excise Act the Accused diverted consignments of cigarettes manufactured for export as referred to in charges 25 - 30 of the indictment, to destinations other than the destinations declared on the entry for exportation, without the permission of the Commissioner;

10.14 that in consequence of the above the Accused is liable for the payment of excise duty and VAT on such cigarettes;

10.15 that the accused permitted VAT returns to be signed on its behalf without reasonable grounds for believing same to be true for the purpose of being exempted from paying tax and/or obtaining a refund of the consignments of cigarettes referred to in charges 31 – 54 of the indictment;

R.R. [Signature]

14. The Accused has entered into a settlement agreement with the Complainant in terms whereof the Accused undertook to pay amounts totalling R27,5 million to the Complainant in full and final settlement of all amounts due and payable and outstanding by the Accused to the Complainant, and that the Accused has pursuant thereto and in

13. The Accused has no previous convictions.

12. The State and the Accused agree that the substantial facts and admissions recorded in the Conviction Agreement ought to be incorporated herein insofar as the facts are relevant to the Sentence Agreement.

The Terms of the Sentence Agreement, Substantial Facts and Admissions made by the Accused as to such agreement

11.2. as a result of the above conduct the Accused is guilty of the offences set out in the second alternative counts 1 to 24, counts 25 to 30 and the first alternative counts 31 to 54 as set out in the indictment.

11.1. as a result of the above conduct, the Accused benefited in amounts totalling R 60 million;

11. The accused admits that:

10.16 that in consequence of the conduct referred to in paragraph 10.15 above SARS exempted the Accused from paying tax and/or permitted the Accused to obtain an exemption from paying tax on the consignments of cigarettes referred to in charges 31 – 54 of the indictment with the result that SARS was prejudiced.

anticipation of the conclusion of such agreement, already paid an amount of R3 million to the Complainant on 27 March 2009.

CONFISCATION

15. The Accused admit that a benefit has been derived by the Accused from the commission of the offences, as contemplated in section 18 (1) of POCA.

16. The Accused consents to a confiscation order being granted in terms of section 18(2) of POCA in respect of the amounts payable in terms hereof, *the amount of R30 million*
17. The parties record that on 26 March 2009 the Accused made payment of an amount of R3 million to the Complainant at the latter's special instance and request.

18. The Accused in compliance with the provisions of the settlement agreement and the terms of this agreement will pay the balance of the amount of R60 million, being R57 million, into the nominated Trust account of the attorneys representing the Prosecution and the Complainant, attorney N N Dullabh & Co of 5 Bertram Street, Grahamstown, Eastern Cape with account details, N N Dullabh & Co, Trust Account, Absa Bank, Grahamstown, Branch Code: 420-517, Account No: 01-011-03-11-50. Attorney N N Dullabh will hold such amount as a stakeholder on behalf of the Prosecution and the Complainant in trust for the payment to the Prosecution and the Complainant as agreed between them.

19. The amount of R57 million is payable as follows: -

19.1 an amount of R27 million within 7 days of signature of the settlement agreement referred to above;

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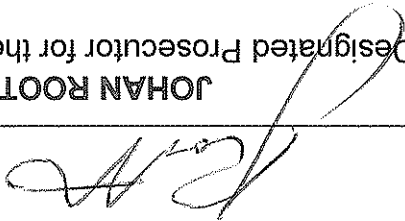
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Dated at East London on this 5th day of June 2009.

21. The parties agree that the Conviction Agreement and the Sentence Agreement are just and equitable and that the Accused should be convicted and sentenced accordingly as set out herein.
- 20.1.2. the Accused not be convicted by a criminal court of any contravention of the VAT Act and/or the Customs and Excise Act or Fraud committed during the period of suspension for which a sentence of a fine of not less than R100,000 is imposed.
- 20.1.1. the Accused pays the balance of the confiscation amount of R60million to the Prosecution as set out above;
- 20.1. a fine of R 250 million which fine is to be wholly suspended for a period of 5 years on condition that:
 20. The Accused and the Prosecution are in agreement that in the light of all the above facts and circumstances the following sentence constitutes a proper, just and equitable sentence:-
- 19.3 the final payment of R2,5 million on or before 1 June 2010 .
- 19.2 the balance of R30 million in instalments of R2,5 million per month, the first instalment payable on or before 1 July 2009 and monthly thereafter on or before the first day of every succeeding month thereafter until the full amount outstanding is paid;

JOHAN ROOTHMAN
Designated Prosecutor for the State



DATED at *EC* this *5* day of *June* 2009.

ACCUSED
As represented herein by Richard Rujugiro

