

## ZARCLEAR HOLDINGS LIMITED

(formerly Sandown Capital Limited)

(Incorporated in South Africa)

(Registration number 2000/013674/06)

Share code: ZCL ISIN: ZAE000262820

("Zarclear")



## AFRICAN PHOENIX INVESTMENTS LIMITED

Incorporated in the Republic of South Africa

(Registration number 1946/021193/06)

Share code: AXL ISIN: ZAE000221370

("African Phoenix")



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# PROPOSED MERGER OF ZARCLEAR AND AFRICAN PHOENIX, API CAPITAL ACQUISITION AND CAUTIONARY ANNOUNCEMENT

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## A. PROPOSED MERGER

### 1. Introduction

- 1.1. Shareholders of both Zarclear and African Phoenix are advised that their respective boards of directors have, in principle, agreed to the implementation of a series of transactions to give effect to a merger of Zarclear and African Phoenix (the "**proposed merger**").
- 1.2. This announcement does not constitute an offer, undertaking or firm intention to make an offer by African Phoenix to Zarclear shareholders. The formal offer will be embodied in the JSE Limited ("**JSE**") and Takeover Regulation Panel approved circular to be issued by the parties in connection with the proposed merger.
- 1.3. Full details of the proposed merger, implementation terms and conditions and transaction timetable and *pro forma* financial effects will be communicated to shareholders of the respective companies in due course.

### 2. Rationale for the proposed merger

African Phoenix is an investment entity listed on the Main Board of the JSE which has interests in the API Capital Fund Partnership ("**the Fund**"), The Standard General Insurance Company Limited ("**Stangen**"), Gilt Edged Management Services Proprietary Limited (dormant), Ellerine Holdings Limited (in business rescue) and its subsidiaries and Residual Debt Services Limited (in curatorship).

At the Extraordinary General Meeting held on 13 November 2019, African Phoenix shareholders voted in favour of the termination of the API Capital Proprietary Limited's ("**API Capital**") mandate to act as a general partner of the Fund. Consequently, the newly appointed African Phoenix board (as detailed in paragraph 4.1 below) resolved to remove API Capital as general partner of the Fund with the intention of appointing a replacement general partner as contemplated in the Partnership Agreement establishing and governing the Fund on terms which are likely to be more favourable to African Phoenix and without any termination penalties.

In settlement of any amounts contractually payable as a result of the removal of API Capital as general partner under the terms of the Partnership Agreement, African Phoenix has concluded an agreement with the shareholders of API Capital pursuant to which, with effect from 31 December 2019, African Phoenix will (after having disposed of certain fixed assets and being released from liability under a property lease agreement, as more fully described in paragraph 10 below) acquire 100% of the shares in and claims on loan account against API Capital (the "**API Capital acquisition**") for an aggregate acquisition cost of R53 978 136 and on the terms and conditions

more fully detailed in Part B of this announcement. The API acquisition structure was adopted by unanimous agreement amongst the new African Phoenix board (as detailed in paragraph 4.1 below), API Capital and the current shareholders of API Capital (in lieu of a compensation amount being paid by African Phoenix to API Capital) to reduce the economic costs to African Phoenix associated with the removal of API Capital as general partner. In terms of the API Capital acquisition, API Capital has irrevocably waived its right to receive a Performance Participation, as provided for in the Partnership Agreement, and there will accordingly be no conversion of the 300 million unlisted B ordinary shares currently held by API Capital to A ordinary shares.

Further details of the API Capital acquisition are set out in part B of this announcement. The API Capital acquisition will be effected irrespective as to whether or not the proposed merger is concluded.

As stated above, the Partnership Agreement provides that in the event of the removal of the general partner, the African Phoenix board may appoint a replacement general partner. Under the Partnership Agreement, the replacement general partner must qualify as a B-BBEE Owned and B-BBEE Controlled Company and comply with paragraph 3.10 of Statement 100 of the B-BBEE Codes. It is anticipated that the replacement general partner will be appointed immediately prior to the effective date of the API Capital acquisition. A further announcement will be made once the African Phoenix board has appointed a replacement general partner.

Following the completion of API Capital acquisition and the disposal of Stangen, African Phoenix will be left with legacy dormant assets and cash. Interactions with major shareholders of African Phoenix have indicated support for a return of capital and the adoption of a demonstrably value accretive strategy that enjoys shareholder support.

Zarclear is an investment holding company which seeks to capitalise on its status as a permanent capital vehicle by investing in a portfolio of high quality investment opportunities that offer exceptional investment returns with a focus on the financial market infrastructure companies that would benefit from the listed governance structures, access to liquid and flexible capital, a broad shareholder base, sector expertise and networks that the Zarclear's management and board offer. Zarclear's current portfolio consists of, *inter alia*, investments in Stenprop Limited, Peregrine Capital Hedge Funds and foreign cash balances. Zarclear has applied for a trade repository licence and its other infrastructure investments are in securities lending and exchanges. Zarclear is also a c22% shareholder in African Phoenix.

The respective boards of directors of Zarclear and African Phoenix have considered the capital base and structure, the cost base, the empowerment credentials and the strategic options of both companies and are of the view that there are a strong operational and capital markets rationale for the proposed merger. A proposed merger will position the merged entity as an investment holding company that is able to execute on its strategies of private equity and market infrastructure investments where management and shareholders are closely aligned.

The Zarclear board recognises that the proposed merger should be implemented on a basis that affords those shareholders of Zarclear that may not wish to participate in the proposed merger an opportunity to exit their investment in Zarclear for a fair cash consideration. As such, the proposed merger will be accompanied by a cash offer made to Zarclear shareholders that will allow Zarclear shareholders to monetise their shareholdings in Zarclear at a cash price that represents a meaningful premium to the recently traded price of Zarclear and which pricing will substantially narrow the discount to NAV at which the shares have historically traded.

Shareholders that elect to remain invested in the merged entity are expected to benefit from its new strategic focus, the combined resources, economies of scale of both companies and better alignment between management and shareholders, all aimed at delivering NAV accretion.

Post implementation of the proposed merger, the merged entity will take steps to:

- establish local and international private equity and specialist funds and invest alongside clients' funds;
- manage its own flexible capital base that generates market-related returns in South Africa and elsewhere;
- invest in financial-market infrastructure which both benefit South Africa and which have the potential to offer exceptional returns; and
- leverage off the prime broking and fund management services and skills network offered by Legae Peresec Proprietary Limited ("**Legae Peresec**").

### 3. **Proposed merger overview**

### 3.1. Terms of the proposed merger

It is contemplated that the proposed merger, if approved and subject to fulfilment of all legal, regulatory and other transaction conditions, will be implemented using African Phoenix as the vehicle through which the proposed merger is effected on the following salient terms:

- 3.1.1. the acquisition by African Phoenix of the entire issued share capital of Zarclear in exchange for Zarclear shareholders receiving African Phoenix ordinary shares in a ratio linked to the NAVs of each of African Phoenix and Zarclear, alternatively a cash consideration of R4.40 for every Zarclear share acquired by African Phoenix (the “**scheme consideration**”), to be implemented by way of a scheme of arrangement (the “**scheme**”) in terms of section 114 of the Companies Act, No. 71 of 2008, as amended (the “**Companies Act**”) between Zarclear and all Zarclear shareholders (the “**Zarclear acquisition**”). The cash alternative will afford those Zarclear shareholders who would prefer to monetise their shareholding rather than remain invested in the merged entity, an opportunity to do so at fair value and at a price which represents a 10.3% premium to the 30 day volume weighted average traded price of Zarclear shares prior to the date of this announcement. Following the implementation of the Zarclear acquisition, Zarclear will be a wholly-owned subsidiary of African Phoenix and Zarclear will be delisted from the JSE; and
- 3.1.2. as a result of the Zarclear acquisition, one or more existing and/or new African Phoenix ordinary shareholders may either directly or indirectly and either alone or together with any one or more related or inter-related persons and/or together with two or more persons acting in concert (as such terms are defined in the Companies Act) acquire and/or hold 35% or more of the African Phoenix ordinary shares in issue (being an “**affected African Phoenix shareholder**”), thereby triggering the requirement to make a mandatory offer to all other African Phoenix ordinary shareholders under section 123 of the Companies Act or otherwise. Accordingly, African Phoenix ordinary shareholders will, as a condition to the approval of the Zarclear acquisition, be required to approve a resolution (as required under regulation 86(4) of the Companies Act Regulations promulgated in terms of the Companies Act (the “**Takeover Regulations**”)) to exempt any affected African Phoenix shareholder/s from having to make a mandatory offer arising from African Phoenix ordinary shares held and/or acquired by an affected African Phoenix shareholder pursuant to or in connection with the Zarclear acquisition (the “**white-wash resolution**”),

(the Zarclear acquisition and the white-wash resolution are collectively referred to hereinafter as the “**proposed transaction**”).

- 3.2. The proposed transaction will be made subject to compliance with the requisite provisions of the Companies Act, the Takeover Regulations and the JSE Listings Requirements.

Whilst the African Phoenix board is confident that the proposed merger will be implemented with the requisite support of an overwhelming majority of its shareholders, it has assessed that both in the scenario where the proposed merger is implemented and in the scenario where the proposed merger is not implemented, that African Phoenix has funds surplus to its requirements and strategic objectives (including funding obligations in terms of the proposed transaction). As such the African Phoenix board has resolved to distribute R599 342 214.24 of its surplus funds by way of a capital reduction distribution as a return of contributed tax capital (“**Distribution**”) which is to be paid to its ordinary shareholders on or about Monday, 13 January 2020 as more fully detailed in the “Distribution to Shareholders” announcement issued by African Phoenix simultaneously with the issue of this announcement.

- 3.3. Save for the Distribution referred to in paragraph 3.2 above, the scheme consideration assumes that neither Zarclear nor African Phoenix effect any other distributions and/or make any changes to their respective share capital structure prior to the implementation of the proposed transaction.

## 4. Approvals required for the proposed merger

### 4.1. Board approvals

Whilst the board of directors of Zarclear and the African Phoenix board (which comprise Oyama Mabandla and Koketso Mabe following the recusal of Warren Chapman and Andrew James Hannington who also sit on the board of directors of Zarclear) have in principle approved the proposed transaction, the proposed transaction remains subject to final board approvals following the conclusion of a formal merger agreement. Following the recent resignations from the African Phoenix board, the African Phoenix board is in the process of appointing additional independent non-executive directors and accordingly, the proposed merger will only be presented for approval by the African Phoenix board (excluding any conflicted directors) once the additional independent non-executive directors have been appointed and the enlarged independent board has had the opportunity to fully consider the proposed merger.

#### 4.2. **Zarclear shareholder approval**

In order for the scheme to be approved, the support of holders of at least 75% of the voting rights exercised at a general meeting of Zarclear shareholders will be required.

#### 4.3. **African Phoenix shareholder approval**

In terms of the JSE Listings Requirements, the Zarclear acquisition will be classified as a category 1 transaction for African Phoenix and, given the fundamental impact on African Phoenix, a reverse takeover requiring the support of holders of at least 50% of the voting rights exercised at a general meeting of African Phoenix ordinary shareholders (“**African Phoenix general meeting**”) will be required.

In addition, it is envisioned that African Phoenix will convert its current par value share capital structure into no par value shares and will be required to issue more than 30% of the African Phoenix ordinary shares in issue in order to settle a portion of the scheme consideration. These changes to the African Phoenix capital structure will require the support of holders of at least 75% of the voting rights exercised at the African Phoenix general meeting, as contemplated in section 41(3) of the Companies Act.

In order for the white-wash resolution to be approved, the support of independent holders of more than 50% of the voting rights exercised at the African Phoenix general meeting will be required.

### 5. **Exclusivity**

- 5.1. Each of Zarclear and African Phoenix have reciprocally undertaken in favour of one another that, until the earlier of 30 April 2020 or the date on which the proposed transaction terminates or is implemented (the “**exclusivity period**”), they will not, directly or indirectly solicit, initiate or encourage any expression of interest, enquiry, proposal or offer regarding any merger, amalgamation, business combination, takeover bid, sale or other disposition of all or substantially all of the equity in and/or business and/or assets of either party, or afford options to acquire equity, the business and/or assets of either party or enter into any negotiation or consummate any transaction for any type of similar transaction or series of transactions, which would or could constitute a change of control (as contemplated in section 123(5) of the Companies Act read with Regulation 86 of the Takeover Regulations) in relation to either party or reasonably be considered to be likely to preclude or frustrate the proposed transaction or its implementation.
- 5.2. The obligations contained in paragraph 5.1 above do not vary, detract or limit African Phoenix’s obligations in relation to the termination of the General Partner’s mandate, as described in paragraph 2 above.
- 5.3. The obligations contained in paragraph 5.1 above further do not vary, detract from or limit the fiduciary duties of the board of directors of Zarclear or African Phoenix under common law, statute and/or any regulatory framework.

### 6. **Shareholder support for the proposed merger**

*African Phoenix*

Steyn Capital Management which holds 25.5% of African Phoenix ordinary shares, Legae Peresec which holds 8.3% of African Phoenix ordinary shares and Peregrine Capital which holds 4.6% of African Phoenix ordinary shares, have each irrevocably undertaken to vote in favour of all the African Phoenix shareholder resolutions necessary to approve the proposed transaction.

#### *Zarclear*

Nkholi Consolidated Investments which holds 15% of Zarclear, Hampden Capital Proprietary Limited which holds 10.4% of Zarclear shares and Zolospan Proprietary Limited which holds 8.3% of Zarclear shares, have each irrevocably undertaken to vote in favour of all the Zarclear shareholder resolutions necessary to approve the scheme.

## **B. ACQUISITION OF API CAPITAL**

### **7. Rationale**

The API Capital acquisition will facilitate the removal of API Capital as General Partner on a basis that reduces the economic costs to African Phoenix associated with the removal of API Capital as General Partner of the Fund.

### **8. API Capital acquisition**

On 2 December 2019, African Phoenix concluded a purchase and sale of shares agreement (the “**API Capital acquisition agreement**”) with Siyabonga Sizo Nhlumayo, Shafiek Ahmed Rawoot, Alupheli Kwanele Sithebe, Kamogelo Mudimbu and Crocopillar Proprietary Limited (collectively, the “**sellers**”) for the acquisition of all the shares in (“**sale shares**”) and claims on loan account (“**shareholder loans**”) against API Capital.

### **9. Salient terms and conditions of the API Capital acquisition agreement**

9.1. The aggregate purchase consideration payable for the sale shares and the shareholder loans is R53 978 136 (“**purchase consideration**”), to be paid as follows on 31 December 2019 (the “**effective date**”):

9.1.1. an amount of R4 052 500 in respect of the shareholder loans; and

9.1.2. an amount of R49 925 636 in respect of the sale shares.

9.2. On the effective date:

9.2.1. each of the sellers will cease to be shareholders of API Capital;

9.2.2. the total assets of API Capital will include 20 000 000 African Phoenix Class A shares held by API Capital in the issued ordinary share capital of African Phoenix (the “**Class A shares**”), net of the liabilities of API Capital due to Rand Merchant Bank (“**RMB**”) in relation to the Class A shares and the associated tax liabilities on the growth thereon; and

9.2.3. other than the assets and liabilities noted in paragraph 9.2.2 above, the net asset value of API Capital will be RNil.

9.3. Given that API Capital commenced its operations on 1 April 2019, its net profit after tax as at 31 March 2019 was RNil.

9.4. The API Capital acquisition agreement is subject to the fulfilment or waiver, as applicable, of the following suspensive conditions:

- 9.4.1. the approval of the sellers and the board of directors of API Capital, Crocopillar and African Phoenix of the terms and conditions of the API Capital acquisition agreement;
- 9.4.2. the approval of the shareholders of API Capital, Crocopillar and African Phoenix of the terms and conditions of the API Capital acquisition agreement, to the extent required in terms of the Companies Act, the API Capital shareholder's agreement and the API Capital memorandum of incorporation;
- 9.4.3. the waiver or exercise of rights of pre-emption held by any of the shareholders of API Capital as conferred under the memorandum of incorporation of API Capital or its shareholders agreement;
- 9.4.4. all necessary consents, notices, waivers and/or deeds required to be obtained, executed and/or delivered in terms of API Capital's memorandum of incorporation or its shareholders agreement, having been duly obtained, executed and/or delivered;
- 9.4.5. confirmation from the company secretary that all the obligations of the sellers under API Capital's shareholders agreement have been satisfied;
- 9.4.6. any statutory and/or regulatory obligations on the sellers, African Phoenix and API Capital Fund in relation to API Capital acquisition having been satisfactorily fulfilled, including securing a fairness opinion from an independent expert as to the fairness of the terms of the API acquisition; and
- 9.4.7. all liabilities of API Capital having been settled, including current tax payable and current liabilities to other creditors reflected in the statement of financial position of API Capital as at 30 September 2019, but excluding the long term liability to RMB and the deferred tax liability (which will be settled by African Phoenix on the effective date), alternatively there being sufficient cash in the bank account of API Capital to cover the liabilities of API Capital, save for the exceptions in this clause.

9.5. The remaining terms, including warranties provided, are standard for a transaction of this nature.

## 10. Acquisition and disposal of fixed assets and contractual liabilities

- 10.1. Shareholders are further advised that a further agreement (the “**disposal of fixed assets and contractual liabilities agreement**”) was concluded on 2 December 2019 between African Phoenix and a newly incorporated company (“**Newco**”), wholly-owned by the sellers, relating to:
  - 10.1.1. on or before the effective date and for no consideration, the conclusion of a new lease agreement between Newco and West Ferry 26 Proprietary Limited (“**West Ferry**”) and the simultaneous termination of the head lease agreement between West Ferry and African Phoenix in respect of the building known as Global House, being the premises from which African Phoenix and API Capital currently operate (the “**leased property**”) or alternatively, the conclusion of a sub-lease agreement between African Phoenix and Newco in respect of the leased property; and
  - 10.1.2. the acquisition by Newco of certain fixed assets for a purchase consideration of R100 000 with effect from the effective date.

10.2. The disposal of fixed assets and contractual liabilities agreement is subject to the fulfilment or waiver, as the case may be, of the following suspensive conditions:

10.2.1. African Phoenix, the sellers and the respective boards approving the terms and conditions of the disposal of fixed assets and contractual liabilities agreement; and

10.2.2. all the necessary consents, notices, waivers and/or deeds, as may be required in terms of API Capital's memorandum of incorporation and its shareholder's agreement being duly obtained, executed and delivered.

## 11. **Small related party considerations and fairness opinion**

Siyabonga Sizo Nhlumayo and Shafiek Ahmed Rawoot were each a director of African Phoenix within the 12 months preceding the date of the API Capital acquisition and the acquisition and disposal of fixed assets and contractual liabilities (collectively, the "**API Capital transactions**") and are each a related party of African Phoenix in terms of paragraph 10.1(b) of the JSE Listings Requirements. The aggregate purchase consideration receivable by Siyabonga Sizo Nhlumayo and Shafiek Ahmed Rawoot as a percentage of the African Phoenix market capitalisation of African Phoenix amounts to 3.11%. The API Capital transactions accordingly constitute a small related party transaction in terms of paragraph 10.7 of the JSE Listings Requirements.

The API Capital transactions, as a small related party transaction, are not subject to shareholder approval in terms of section 10 of the JSE Listings Requirements, provided that an independent expert has confirmed that the quantum of the purchase consideration payable by African Phoenix to the sellers is fair insofar as African Phoenix shareholders are concerned. In this regard, the African Phoenix board has appointed Mazars Corporate Finance Proprietary Limited as independent expert to advise and report to the African Phoenix board on the fairness of the terms of the API Capital transactions by way of a fairness opinion prepared in terms of the JSE Listings Requirements.

A further announcement will be published in due course detailing the outcome of the fairness opinion.

## C. **CAUTIONARY ANNOUNCEMENT**

Each of African Phoenix ordinary shareholders and Zarclear shareholders are advised that discussions between African Phoenix and Zarclear in respect of the proposed transaction remain ongoing and, accordingly, each of African Phoenix ordinary shareholders and Zarclear shareholders should exercise caution when dealing in their respective shares until a further announcement in respect of the proposed transaction has been made.

3 December 2019

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**Corporate advisor and sponsor to Zarclear**  
**Transaction sponsor and corporate advisor to African Phoenix**

**JAVACAPITAL**

**Legal advisor to African Phoenix**

**WEBBER WENTZEL**  
in alliance with > **Linklaters**

**Sponsor to African Phoenix**

