

FTG Holdings Limited  
Nairobi, Kenya

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in association with  
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Dear Sirs,

31/01/2022

**REPORT ON LEGAL HIGH LEVEL COMPLIANCE REVIEW – FTG HOLDINGS LIMITED  
FOR THE YEAR 2021**

Munyaka Advocates LLP Advocates (The “Firm”) has been requested by FTG Holdings Limited (The “Company” or “FTG”) to conduct a high level legal audit on the Company.

Below is our report prepared based on the information and documents available to us at the time of the exercise and our opinion based on the findings set out in the report.

**1 BACKGROUND**

1.1 FTG Holdings Limited is an investment holding company that operates in the manufacture and sale of plastic and allied products, paints, fibre glasses, iron, cosmetic, and synthetic hair products for clients based in Kenya and regionally.

**2 METHODOLOGY**

2.1 In preparing this report, we reviewed the documents (“**Documents**”) and information which were provided to us by the Company via email and that were available to us as at the date of this report.

### 3 ASSUMPTIONS

3.1 Below we set out the assumptions on which the information contained in this report has been collected and presented. Thus:

- i) where we have not been shown all the originals of documents referred to, we have assumed the genuineness of all signatures on them and the authority of those signing on behalf of the company concerned to do so;
- ii) where we reviewed copies of documents we assumed that the copies were true and complete; and
- iii) we have assumed that all information or documentation supplied to us or examined by us in connection with the preparation of this report was and remains true and complete and not misleading in any way.

### 4 SUMMARY OF FINDINGS

#### 4.1 General Corporate Matters

4.1.1 The Company provided us with the following documents for review:

- i) Certificate of Incorporation on Change of Name of the Company dated 15th July, 2014 issued by the Registrar of Companies, Republic of Mauritius.
- ii) The Constitution in respect of the Company dated 15<sup>th</sup> September, 2014;
- iii) Certificate of Compliance issued dated 4th September, 2014 issued by the Registrar of Companies, Republic of Kenya;
- iv) Register of Directors as at 31<sup>st</sup> December, 2020;
- v) Register of Shareholders as at 31<sup>st</sup> December, 2020;

4.1.2 From the a review of the above documents we were able to confirm that the Company is registered as a public company limited by shares in the Republic of Mauritius.

4.1.3 Being a foreign company, it is required under section 974 of the Companies Act, 2015 ('CA 2015') to only conduct business if it is registered in Kenya. In this regard we note that the Company has been registered in Kenya as a foreign company and has a Certificate of Compliance issued by the Registrar of Companies to confirm the same.

- 4.1.4 Foreign companies are required to comply with certain specific requirements under PART XXXVII of CA 2015.
- 4.1.5 We are aware that the Company in compliance with section 979 has in place a local representative Mr. Heril Colbert Bangera.
- 4.1.6 We are aware that the Company in compliance with section 983 has a registered office L.R No 209/8918, off Enterprise Road Opp Road A ,Industrial Area of P.O Box 27621 -00506 Nairobi. In compliance with section 984 the Company should ensure to have its name displayed at its place of business indicating that it is a registered office.
- 4.1.7 Further we are aware that the Company makes annual filings of its financial statements with the Registrar of Companies and it should continue to do so in compliance with the provisions of section 987 of CA 2015.
- 4.1.8 The Company should ensure to keep the records of the company at the Registrar of Companies well up-to-date reporting any changes that may occur to the constitution, directors and local representatives and the powers of local directors in compliance with section 986 of the CA 2015.
- 4.1.9 Based on the information availed, the Company is compliant with the provisions of the CA 2015.
- 4.1.10 Lastly, being a Mauritius registered company, the Company is required to comply with the provisions of the Mauritian Companies Act, 2001. In respect of filings required to be made by the Company under that statute, the company has provided us with certificate from its secretaries, Juristax Ltd, which confirms that all filings required under that act were made for the year ended 31<sup>st</sup> December, 2020.

#### 4.2 **Trading Contracts And Commitments**

- 4.2.1 The Company confirms that it does not enter into contracts and commitments with suppliers and traders in respect of the day to day business of the FTG Group companies. Such contracts are negotiated and entered into on a subsidiary level.

4.2.2 Given that the scope of the review is limited to the affairs of the parent company, we shall not cover the contents of the subsidiary level trading contracts in this report.

#### 4.3 **Service Provider Contracts**

4.3.1 The Company provided us with the following other contracts for review:

4.3.1.1 Statutory Audit Engagement Letter dated 15th February, 2021 Crowe ATA, Mauritius

4.3.1.2 Letter of Engagement for Provision of Governance Audit Services dated 29<sup>th</sup> March, 2021 Scribe Services, Kenya

4.3.1.3 Letter of Appointment as Arranger and Sole Placing Agent dated 21<sup>st</sup> May, 2015, Kestrel Capital (East Africa) Ltd, Kenya

4.3.2 We have reviewed the contracts as to their form and manner of execution.

4.3.3 The three engagement letters are relate to the provision of services by three different suppliers and have been prepared by them.

4.3.4 The engagement letters all adopt accepted formats for contracts of their kind and contain terms that are standard in the respective industries of the service providers.

4.3.5 The documents have all been signed by Mr. Heril Colbert Bangera, director and group CEO who has the authority to bind the company.

4.3.6 The letters of engagement are therefore valid and enforceable contracts for services.

#### 4.4 **Financial Arrangements And Borrowing**

##### 4.4.1 **Financial Facilities**

##### **SBM Bank**

4.4.1.1 FTG Holding Limited received an offer letter on the 10<sup>th</sup> of August 2021 on a Facility Agreement from SBM Bank Limited. The Client shared a supplemental letter dated 13<sup>th</sup> September, 2021 to the offer together with the Facility agreement.

4.4.1.2. The company passed board resolution authorising the company to borrow :

- i) KES. 240,000,000 by way of an Overdraft facility
- ii) KES. 283,873,600 by way of a Revolving Asset Finance Line facility.
- iii) USD. 5,400,000 by way of a Composite Trade line facility
- iv) USD. 500,000 by way of a standby letter of a credit facility
- v) USD. 1,000,000 by way of a forward and Spot FX Line facility

4.4.1.3. The security set with respect to the facility is the:

- i) Fixed and floating debentures over the entire assets of FTG Holding Limited for USD. 6,139,200, KES. 240,000,000 and KES. 290,000,000.
- ii) Cross company corporate guarantee and indemnity from FTG Holding Limited for an amount of USD. 5,900,000 and KES. 530,000,000 guaranteeing facilities to the subsidiary companies.
- iii) Joint registration of motor vehicles and trucks under FTG Holding Limited and SBM Bank (Kenya) Limited.

Other securities are under the subsidiaries of FTG Holding Limited.

4.4.1.4. The facilities have been taken in FTGs name but for the benefit of subsidiaries.

4.4.1.5. The terms we have reviewed are standard terms in respect of facilities of this kind.

4.4.1.6. Under the constitution of the Company the directors have been granted powers to borrow and to issue securities as required in performance of its obligations to SBM Bank Limited. The constitution provides as follows in article 13.1:

*The directors may exercise all powers of the company to borrow or raise or secure the payment of money or the performances or satisfaction by the company of any obligation or liability and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue mortgages, charges, bonds, notes and other securities and other instrument whether outright or as security, for any debt liability or obligation of the company or of any third party. In addition, such power*

*shall be exercised, in compliance with Section 143 of the Companies Act 2001.*

- 4.4.1.7. Further we note that the supplemental offer letter has been signed and sealed by the directors of the Company and the lender.
- 4.4.1.8. The facility as result is valid and legally binding on the company.
- 4.4.1.9. The Company has informed us that there has been no incident of default so far in respect of their commitments therein.

#### **Commercial Paper**

- 4.4.1.10. The company has retained Kestrel Capital (East Africa) LTD which is a CMA licensed investment bank to be an arranger and sole placing agent in connection with the private placement of commercial papers with the company's investors.
- 4.4.1.11. The company confirmed it has KES 30,262,174 worth of commercial paper currently outstanding.

#### **Other Arrangements**

- 4.4.1.12. The Company confirmed that trade credit arrangements, deferred payment arrangements, bonds and other financial facilities are all done by the company's subsidiaries.
- 4.4.1.13. The Company confirmed that it does not enter into any hire purchase agreements and leasing agreements. This is done at the subsidiary level.

#### **4.4.2 Risk Management**

- 4.4.2.1. The company provided the following information to the risk management arrangements they have put in place:
  - i) Foreign currency exposure – Their purchases and payments are made in USD and channelized through SBM facilities. When situation arise, their CFO will hedge the USD rates with bank. This was done in 2020.
  - ii) Interest rate exposure – Their CFO will negotiate the advantageous interest rates with all financial institutions they deal with based on market

conditions. This can be evidenced from copy of SBM facilities listed in 4.4.1. above. The Company also deals with private investors, to diversify the source of funding and minimize risks.

iii) Commodities prices – The Company’s CEO makes a competitive and comparative study on the international market prices of materials and decide on procurement from a pool of different suppliers in different countries. The company ensures that they have an alternative plan. However, a massive increase of international prices in any commodity – like oil prices in 2021 – and shipping costs, will indeed affect the margins of the Company.

#### 4.4.3 **Intra-Group Trading**

4.4.3.1 The Company provided us with the following information with regard to intra-group trading.

4.4.3.2 In order to benefit from economies of scale and synergies, the Company produces the same or similar products at one production facility and distribute to other subsidiaries. This leads to intra-group trading that is governed by TP regulations, especially when involving subsidiaries located in different countries.

4.4.3.3 Examples of related party transactions as discussed:

- i) Roto Moulders Ltd which is one of the Company’s subsidiary manufactures water tanks and allied plastic products and sell the same to Jojo Plastics ltd. Roto Moulders Ltd also manufactures plastic parts of outdoor play equipment and sell to Polyplay Ltd.
- ii) Jojo Plastics Ltd which is one of the Company’s subsidiary manufactures containers for filling cosmetic items for Flametree Africa Ltd., and also manufactures containers used to fill spices for Chirag Africa Ltd.
- iii) Flame Tree Africa Ltd., manufactures cosmetic items and market it at Rwanda and Mozambique through Flame Tree Brands Ltd. Rwanda and Flame Tree Brands Mozambique LDA, Mozambique.

iv) Cirrus International FZC.UAE procures materials collectively for Rino Tanques LDA., Mozambique & Roto Tanks Ltd., Rwanda.

#### 4.5 **Intellectual Property Rights**

4.5.1 The Company indicates that it does not have any registered intellectual property rights. The Company confirmed that the trademarks for the group are registered in the names of the respective subsidiaries of the Company. Those trademarks are not within the scope of our audit report which is restricted to the holding Company and not its subsidiaries.

#### 4.6 **Material Assets**

4.6.1 The Company does not have an asset register showing assets owned by the Company. This is because the company has no assets/ real property registered under its name except for its shares in the subsidiary companies. The main assets of the group companies are held by the respective subsidiaries.

#### 4.7 **Litigation**

4.7.1 The company confirms that it has no actual, threatened or anticipated investigations, court proceedings or other litigation, including prosecutions, other legal or administrative hearings, enquiries (including tax audits) by or before official bodies, and any arbitrations, mediations or other disputes.

#### 4.8 **Employment**

4.8.1 The Company has confirmed that it has a limited team of five personnel all based in Kenya. While the contract with employees will be signed with the Mauritian entity, the contracts will be governed by Kenyan employment law for all personnel as they are based in Kenya and in this regard the company should ensure that it complies with Kenyan labour laws in all respects.



4.9 **Insurance**

4.9.1 The company provides for the Directors and officers liability policy insurance. The policy runs from 1<sup>st</sup> January 2022 and Expires on 31<sup>st</sup> December 2022.

4.9.2 The policy covers a liability up to Kes. 75,000,000 (Seventy Five Million Kenya Shillings) where the premiums payable amount to Kes. 733,285 including taxes.

4.9.3 To support this the Company provided us with:

- i) AIG Kenya Executive Guard Form dated November, 17<sup>th</sup> 2021
- ii) Corporate Guard for Directors and Officers Liability Insurance for Public companies. Policy Number: 233100333

4.9.4 From the information gathered, we confirm that all premiums due on the insurances have been paid. The Company has informed us that is not aware of any circumstances which could vitiate any of the policies. Therefore, there are no outstanding claims or any claim that has been made in the past.

4.10 **Competition**

4.10.1 The Company confirmed that there are no correspondences or dealings with or investigations or inquiries by the Competition Authority.

4.11 **Regulatory Compliance**

4.11.1 The Company should ensure that it has complied with the regulations set out under the Capital Markets Authority Act, CAP 485A Laws of Kenya to ensure that it practices good corporate governance as required by public listed companies in Kenya such as ensuring good governance in corporate performance, capital formation and maximization of shareholders value as well as protection of investors' rights.

4.11.2 The Company as set out under the Fifth Schedule of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002 should ensure that it complies with the continuing obligations set out.

4.11.3 The Company should also confirm that it has disclosed to the general public any information that affects the financial position and corporate governance or that materially affects its share price in accordance to Section 30 of the Capital

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Markets Authority Act, CAP 485A Laws of Kenya, which states that: "*An issuer who fails to keep the Authority, its shareholders, any listing exchange and the general public promptly informed of any information that affects the financial position and corporate governance or that materially affects its share price commits an offence*".

4.11.4 The Company should ensure that it prohibits any illegal dealings with Company's security and that it is compliant with Section 32A, 33 and 34 of the Capital Markets Authority Act, CAP 485A Laws of Kenya.

## 5 RELIANCE

5.1 This report and review of agreements and documentation contained is a high level report and any findings made are limited to the documentation that was made available to us by the Company at the date of this report.

5.2 Except as otherwise herein stated, this report is limited to matters of Kenyan law and we are not reporting on and express no opinion with respect to the laws of any other jurisdiction or any documents or agreements which may be subject to or governed by the laws of any other jurisdiction.

5.3 We cannot be liable to any party for any claim arising from any negligence, misrepresentation or wilful default perpetrated by any of the people from whom we have obtained information.

5.4 The report is strictly confidential and may not be transmitted to and may not be relied upon in any way by any other party other than the Company without the prior written consent of Munyaka Advocates LLP and accordingly Munyaka Advocates LLP will not be responsible to or accept any liability from any unauthorised third party.

Yours faithfully,

  
Mbatia Mwasaria

Munyaka Advocates LLP