

**COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT CORPORATION**

**HELD AT**

**TSHWANE, PRETORIA**

10

**1 APRIL 2019**

**DAY 22**

20

**PROCEEDINGS HELD ON 1 APRIL 2019**

**CHAIRPERSON:** Good morning Adv Lubbe.

**ADV JANNIE LUBBE SC:** Good morning Commissioner.

**CHAIRPERSON:** And everybody else, what's happening, what are these lights for? Is it dark inside without them? They're shining straight into our faces.

**ADV JANNIE LUBBE SC:** I suppose it is for the benefit of the TV Mr Commissioner, but we can immediately make a plan with that.

**CHAIRPERSON:** Ja but I mean I've seen some pictures of us sitting up here on television and there's nothing wrong with them and these lights weren't there so please  
10 do something about them whoever has anything to do with them.

**ADV JANNIE LUBBE SC:** The secretary is busy doing the necessary Mr Commissioner. We're ready to start the proceedings of this week and our first witness is Ms Pamela Phala and she is ready to take the prescribed oath or would you prefer that we sort out this irritation before we start?

**CHAIRPERSON:** It's mainly these two, it's mainly these two.

**ADV JANNIE LUBBE SC:** Mr Secretary is there any way you can arrange for the switch off of those lights?

**MS GILL MARCUS:** I think the question would be rather than doing away with them is to turn them away a little bit so that you get the light but they don't shine on us.

20 **ADV JANNIE LUBBE SC:** Thank you.

**MS GILL MARCUS:** So I think if you just played around with a little bit and you see how to turn them, including the middle one but it doesn't, as long as it doesn't shine straight into our eyes otherwise we can't see anything.

**ADV JANNIE LUBBE SC:** Thank you.

**MS GILL MARCUS:** And we can't see the witness but it doesn't mean they need to be

off.

**ADV JANNIE LUBBE SC:** There we are. Thank you.

**MS GILL MARCUS:** As long as your television, but then they can't see, it's too dark.

So I would suggest put them on but just adjust where they shine.

**ADV JANNIE LUBBE SC:** Perhaps can I ask for a brief adjournment Mr Commissioner?

**MS GILL MARCUS:** Can we take, ja I would suggest you play around with it but somebody needs to sit here and see that there's nothing come into the face.

**ADV JANNIE LUBBE SC:** We'll do that.

10 **MS GILL MARCUS:** And then it can be sideways or coming to you towards there so that the television has some light but not blinding us.

**ADV JANNIE LUBBE SC:** I'm sorry for the inconvenience. We'll make a plan immediately.

**CHAIRPERSON:** You'll call us when you're ready?

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**ADV JANNIE LUBBE SC:** Mr Commissioner I trust it's an improvement.

**CHAIRPERSON:** Yes.

**ADV JANNIE LUBBE SC:** We have a new crew today and also apologies from them.

20 **CHAIRPERSON:** No, no it's much better.

**ADV JANNIE LUBBE SC:** Thank you. We are ready then to start with Ms Pamela Phala as our witness and she will take the prescribed oath.

**CHAIRPERSON:** Your full names please?

**MS PAMELA PHALA:** Pamela Mapakani Phala.

**CHAIRPERSON:** One moment. Pamela Mapaka?

**MS PAMELA PHALA:** Mapakani.

**CHAIRPERSON:** Mapakani?

**MS PAMELA PHALA:** Yes.

**CHAIRPERSON:** Ms Phala do you have any objection to taking the oath?

**MS PAMELA PHALA:** No Sir.

**CHAIRPERSON:** Do you swear that the evidence you're about to give will be the truth, the whole truth, nothing but the truth, raise your right hand and say so help me God.

**MS PAMELA PHALA:** So help me God.

**CHAIRPERSON:** Thank you very much. You may be seated.

10 **ADV JANNIE LUBBE SC:** Thank you Ms Phala. You have come to this commission voluntarily?

**MS PAMELA PHALA:** Yes Sir.

**ADV JANNIE LUBBE SC:** You have prepared your own statement?

**MS PAMELA PHALA:** I did Sir.

**ADV JANNIE LUBBE SC:** You were not asked to put in or take out anything in your statement by any of the members of my legal team?

**MS PAMELA PHALA:** Not at all.

**ADV JANNIE LUBBE SC:** Please then proceed to present your evidence as set out in your written submission please.

20 **MS PAMELA PHALA:** Yes I want to start then deviate a bit. I'm Senior Manager Corporate Legal within the Legal Counsel Governance and Compliance Division of the PIC. I have been silenced for too long and I will speak from the heart and I will do it in a manner that I know best using poetry which in my view depicts or portrays the environment at the PIC when I started and after change of management if you can allow me Commissioner to do so?

**CHAIRPERSON:** That would be in addition to your statement or is ... (intervention)

**MS PAMELA PHALA:** I will start with it yes in addition to my statement.

**CHAIRPERSON:** I see so it's not already in the statement now?

**MS PAMELA PHALA:** It's not in the statement I can circulate it afterwards but I think it's a perfect depiction.

**CHAIRPERSON:** Yes it is something that you have taken notes on or written down?

**MS PAMELA PHALA:** It's something ... (intervention)

**CHAIRPERSON:** Or are you speaking like a poet now from your heart ... (intervention)

**MS PAMELA PHALA:** I love using imagery to portray situations.

10 **CHAIRPERSON:** Yes, thank you.

**MS PAMELA PHALA:** Yes and it goes like this, it's an ancient poem:

“Once in an ancient city, whose name I no longer remember, raised aloft on a column, a brazen statue of justice stood in the public square...”

And that's the PIC:

“... upholding the scales in its left hand, and it it's a right a sword, as an emblem that justice presided over the laws of the land, and the hearts and homes of the people.

20 Even the birds had built their nests in the scales of the balance, having no fear of the sword that flashed in the sunshine above them.

But in the course of time the laws of the land were corrupted; might took the place of the right, and the weak were oppressed, and the mighty ruled with an iron rod.

Then it chanced in a nobleman's palace that a necklace of pearls was lost, and ere long a suspicion fell on an orphan girl who lived as maid

in the household.

She, after form of trial condemned to die on the scaffold, patiently met her doom at the foot of the statue of Justice.

As to her Father in heaven her innocent spirit ascended, Lo o'er the city a tempest rose; and the bolts of the thunder smote the statue of bronze, and hurled in wrath from its left hand down on the pavement below the clattering scales of the balance, and in the hollow thereof was found the nest of a magpie, into whose clay-built walls the necklace of pears was in woven."

- 10 That is a depiction of the environment that PIC, I'm now ready to start with my statement.

I am an admitted attorney of the High Court, I am an officer of court with high believes in legal ethics and good governance. I have a BProc and LLB Degrees from Wits University; a Masters in Laws LLM Degree from the University of South Africa Unisa in Commercial Law with specialisation in company law, banking law, labour 1 and labour law 2. In addition to that I have a number of certificates, I also have advanced companies laws certificate in company law 1 and 2 offered by Professor Katz from Wits University. I had enrolled and put on hold a doctoral thesis with Unisa on the topic employees sitting on boards of investee companies where do the loyalties lie. I intend  
20 to finalise my research, re-enrol and finalise my doctoral thesis in due course.

After long consideration I have decided to approach Commission. I have listened with fascination about how my character has been portrayed as both a victim as well as a very rude type of personality. On the one hand I have been spied on by the top two within the company but as the media states nothing seems to have happened to me. On the other hand one of the employees has referred to me as the

go-to person when it comes to labour matters of the PIC involving general employees and therefore some sort of terminator. I am a corporate lawyer of note known in the industry and refuse to accept the label of victim.

I will address the following in my testimony, my legal experience, my personal journey within the PIC, my ill-treatment by the top two executives and in my view which was rubberstamped by board, the structure of the legal department, the anomalies within the structure, the legal regulatory governance issues which I have been and/or am involved with for consideration that is inter alia policy on investee companies whether PIC should change to a schedule 2 public entity from a schedule  
10 3B public entity and concerns about the PIC regulatory environment.

**MS GILL MARCUS:** Sorry can I ask you a question which if you can't answer perhaps Adv Lubbe you could follow up, you make reference and we have seen in other testimony evidence of spying on people that had been identified.

**MS PAMELA PHALA:** Yes Ma'am.

**MS GILL MARCUS:** What legal requirement is there, if any, for any organisation to conduct such surveillance of its personnel?

**MS PAMELA PHALA:** I have not done legal research but I think the RICA Act or some other law regulatory, some other legislation is applicable but what I know is that you need to obtain consent or notify the person involved.

20 **MS GILL MARCUS:** Just check on the legalities and compliance with whatever legal requirements there may be for instituting such surveillance on your own personnel in your own company.

**MS PAMELA PHALA:** Okay.

**ADV JANNIE LUBBE SC:** It is Mr Commissioner we will also do the necessary.

**MS PAMELA PHALA:** Mr Commissioner the position of Executive Head Legal Counsel

Governance and Compliance has been advertised and the interviews which were scheduled for Friday the 29<sup>th</sup> have now been postponed. I have applied for the position, I am here not to influence the decision but merely to say that there has been a lack of management and leadership within legal. There must therefore be rethink about the profile of Executive Head Legal, the profile of senior managers within in legal. I'm trying to steer the Commission and the country toward the qualities of the PIC Legal Department and proposed interrelationship with the regulatory compliance should be. This is because the PIC is a queer creature of statute which is a mixture of both Government, asset management and company so you find peer being applicable, public finance management at companies law being applicable, FAIS Act being applicable and a myriad of other laws that surround those three key legislation.

I want to agree with the various speakers that the PIC is not what it seems to be and I will lay it hereunder. I will start with my legal experience. I did my articles of clerkship at MacRobert de Villiers Lunnon and Tindall Attorneys, now MacRobert Attorneys. I was admitted as an attorney in 1998. Upon admission as an attorney I became an associate at the same firm. I subsequently moved to Ledwaba Mazwai Attorneys and after two and a half years moved to the State Attorney Johannesburg where at the time I was the only corporate lawyer.

In my second month I was asked to manage the enquiry into the rapid depreciation of the Rand, the Rand Inquiry or the Inquiry into the fall of the Rand, acting for National Treasury. During the time where Minister Trevor Manual was Minister of Finance, Maria Ramos was Director General and the likes of Lesetja Kganyago, Elias Masilela, Phakamani Hadebe and Brian Molefe. The Rand Inquiry was one of the first of the judicial inquiries in the democratic South Africa. At the end of the inquiry after about five months at the State Attorney's office I was recruited by the Treasury where I

was Director Corporate Law working on all corporate commercial matters of National Treasury predominantly financial regulation and asset management division as my major clients.

To this end I advised the Minister on inter alia the merger of ABSA and Barclays, I consulted with the Registrar of Banks and the Competitions Commissioner in advising the Minister. The exposure that I got at the Treasury was brilliant. Working at the Treasury was the most honourable position that I ever had and we were all guided by ethics and utmost good faith. I was exposed to international law having briefly spent some time at an international law firm in New York and London. It goes  
10 without saying therefore that the natural progression after over four years at Treasury was to go to the PIC where I was appointed as Head of Legal, so-called Legal Manager at the time.

When I started at the PIC Brian Molefe was CEO, Dr Dan Matjila was CIO, Albertinah Kekana was the Chief Operations Officer, the most formidable team.

**ADV JANNIE LUBBE SC:** Can I interrupt you there, can you just put a year to that when you joined the PIC?

**MS PAMELA PHALA:** I joined the PIC in 2006, September. A month into my position I was also appointed Company Secretary therefore holding a dual role of Head of Legal and Company Secretary at the institution. This position I held for over a year and it is  
20 reflected in the 2007 PIC annual report where I appear with other managers of departments. At the time the focus was on work and not politics. There was an atmosphere of respect and engagement. Generally employees were content and happy. Incentives were based on good performance and not personalities. Good governance was the order of the day and you could feel a sense of belonging as you stepped into the office. Policies of the PIC were collectively reviewed annually,

workshopped by all heads of department in one forum and approved in that forum. The policies were clear and understood by all employees.

COO too her role very seriously and of importance there was involvement at the highest level in legal matters in particular CEO and COO. The interactions with the top were splendid and I could feel they valued us, they valued the contribution of the legal head and performance of legal as a whole. I would engage with the CIO on client mandates and external manager agreements. There was an open door policy. My understanding of basic investment management stemmed from the initial engagements and lectures that I got from the CIO.

10           When I started at the PIC there was no one except Jason a legal advisor. I was told at the time that the entire legal department had resigned and there was only Jason left for reasons that I don't know. I designed the structure of legal and employed a team to almost what it is today save for a few people who recently joined. The legal department was a hub. I recall we had a round table at the time where we had engagements, we will just sit there and engage, deliberate on updates and law, updates on work. I want to believe that we were a very happy and well performing legal team.

          A number of issues led to a drastic change in the legal department around the change of management which in my view, in my view led to my position being diluted. I want to believe that my role was guided ethics this did not go down in particular with the CIO at the time. I will give examples though upon thorough research I could not locate some of the documents on my work drive. During one of the first panel of attorneys at the PIC in trying to develop and restructure design a legal team. I did a panel of attorneys which was evaluated by an evaluation team through procurement, there was then a shortlist.

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CIO insisted that I must make sure that the particular firm which did not

make a shortlist was included in the shortlist. I rejected his request profusely.

**MS GILL MARCUS:** Just on that question, you rejected at that time, did that particular firm ever become a legal advisor to the PIC that you know?

**MS PAMELA PHALA:** No, no Ma'am I rejected it. I engaged with him several times and I made it clear I do not have authority to change the shortlist because there was an evaluation team which was managed through procurement. So I alone did not have the power to put any legal firm that did not make the shortlist.

Secondly another one of the few examples is a case of acting beyond the mandate, client mandate. So at the time the PIC or the GEPF mandate did not permit  
10 or authorise investing outside of the borders of South Africa. There was a case of an investment that was done offshore, if I can recall it was an investment in Mozambique and if I can recall it's the Sida Della Dimatola. An investigation was conducted ... (intervention)

**CHAIRPERSON:** Sorry can you just repeat the name?

**MS PAMELA PHALA:** I think it was the Matola transaction something to the effect of Sita Della or Sida Della Dimatola.

**MS GILL MARCUS:** Can we get that information provided to us?

**ADV JANNIE LUBBE SC:** It's noted Mr Commissioner.

**MR EMMANUEL LEDIGA:** Just a question there so this is different to the S & S  
20 Refinery or are they linked?

**MS PAMELA PHALA:** It was so long I don't remember the facts because the files were taken away from us immediately after I provided legal opinion so I don't have that details.

**MR EMMANUEL LEDIGA:** Okay, no it's fine, I think we will ...

**MS PAMELA PHALA:** So as I said it was a case of exceeding the asset classes set

out in the GEPF mandate. An investigation was conducted by an accounting firm which then provided phase 1 report, a preliminary report which if I recall found that there were certain breaches of mandate. Management at the time insisted that the accounting firm not conclude the investigation report and that we conclude same. I remember at the time insisting that it would be prudent for the accounting firm to them proceed with phase 2 or conclude the investigation and/or obtain senior counsel opinion due to the nature of the matter.

In any event I had to do the legal opinion and my conclusion was that there was certainly a breach. The CIO who had approved the transaction through a memorandum was a critical part of the breach. I relied on the legal principal if I recall at the time of *caveat subscriptor* which means that signatories beware you cannot escape liability on the basis that you did not know or you did not have an understanding of the facts. I never knew what happened to the matter or how it was resolved, the files were swiftly taken away from us after that opinion. For instance ... (intervention)

**ADV JANNIE LUBBE SC:** Sorry you mention also in this paragraph that the CIO was very displeased with your opinion?

**MS PAMELA PHALA:** Yes he was certainly during an engagement with him I could see that he was not happy with the conclusion that I reached.

**CHAIRPERSON:** And you say that he approved the deal?

20 **MS PAMELA PHALA:** He had signed off on the memo as the last signatory or approval, yes.

**CHAIRPERSON:** And at the time the CIO had authority to do so?

**MS PAMELA PHALA:** He may have authority but that was not the legal issue, the issue was, was he correct to approve on a transaction that was beyond the mandate, that exceeded the authority that we had in terms of the mandate.

**CHAIRPERSON:** And sorry the CIO was Dr Matjila?

**MS PAMELA PHALA:** Dr Matjila was CIO yes. For reasons that to date I do not understand, and I feel was sabotage and/or to get rid of me, my position was diluted on the basis that the legal department was not to be decentralised. What it meant was that the legal advisors were to sit in the business units in which they served and reported to the heads of those business units. I asked at the time what that meant for me as the appointed head of legal where do my legal risks start and end and I was informed categorically that there will be no dotted lines, no solid lines, my position then became Senior Manager Legal Services.

10 I was the only senior manager at the time, in fact for a long time and this meant that I was the only legal person who sat and advised in board meetings, audit and risk committee meetings, social and ethics committee meeting which I had assisted in establishing with the introduction of the Companies Act of 2008. A number of activities occurred that took me by surprise. I was asked to do a legal opinion whereby the PIC was to change from a schedule 3B to a schedule 2 public entity in terms of the PMFA. The instruction came from the CFO as was prudent from a person who provides a legal opinion you want to understand the rationale, the strategic rationale for seeking such a change and it was not forthcoming.

20 I sent the legal opinion in different formats through e-mail, through a right up in memo format ... (intervention)

**CHAIRPERSON:** Sorry just for purposes of the record, can you explain what is a schedule 3B and a schedule 2 entity?

**MS PAMELA PHALA:** So these are public entities in terms of the PMFA, PIC as a schedule 3B is a national government enterprise or entity. The distinction between the two is that a schedule 3B is a juristic person, in fact both of them are juristic persons,

ownership and control of the public entity rests with the national executive which is the case with schedule 3B and schedule 2. They are assigned financial and operational authority to carry on a business activity. They are financed fully from sources other than the National Revenue Fund or taxes or levies and in the case of PIC what it means that we derive our fees, we derive our income from the fees that we generate from investments that we make on behalf of our clients. Whereas a 3B is defined in the PFMA a schedule 2 is not defined but when you look at the type of entities, when you look at Denel and you look at Eskom, IDC, SABC, SAA, you find that they have the same characteristics however what is added to a schedule 2 is that they have a  
10 strategic public function which is evident in their respective pieces of legislation and which you do not see clearly in the PIC Act. So what you find in those pieces of legislation of the PIC establishing IDC, Eskom, SAA, *etcetera*, is that you find a clear objective. Over and above that they are ancillary objects which allow them to carry out other activities, that is not clear in the PIC Act.

So in seeking the opinion I mean I did it myself and I could not find any provision in PFMA regarding a change from a schedule 3B to a 2 I then engaged with the Treasury Asset Management Department, Legal Department just to be sure in situations such as this where I feel I need confirmation I then go further and engage. I then also engage without cost with an attorney who specialises in SOE governance for  
20 guidance on the matter. Through interactions on e-mail I could see that CFO was not happy, I concluded the CFO was not happy with the format in which I presented the opinion and therefore I tried, I did the legal opinion in a presentation format in the methodology of a thesis starting with a hypothesis. I then confidently went to see her to discuss the opinion and/or to obtain further requirements and what she said to me was that Dr Dan doesn't like you, Dr Dan wants Ernest. What she also said was that you

don't have to do the opinion I'm going to ask Ernest. What is interesting about that was that I have never seen Ernest do a legal opinion or conduct research despite the tools that we had internally.

**ADV JANNIE LUBBE SC:** Can you just for the record, the CFO at the time?

**MS PAMELA PHALA:** Matshepo More. What she also said was that in fact ... (intervention)

**CHAIRPERSON:** Just let me refer you to that quote, Dr Dan doesn't, you said like you, that ... (intervention)

**MS PAMELA PHALA:** She said something ... (intervention)

10 **CHAIRPERSON:** Want you I don't know whether that are synonyms ... (intervention)

**MS PAMELA PHALA:** Yes she said Dr Dan doesn't want you, Dr Dan wants Ernest. I remember jotting it down at that time.

**MS GILL MARCUS:** Can I just in relation to this matter, in your, what you've presented as the work done on the schedule 2, schedule 3 matter you make a point there the PIC runs a big risk of being accused of acting ultra vires its objectives should it continue making transactions as principal. Can you elaborate on that because clearly under what it exists as in terms of 3B, schedule 3B it can't as principal?

**MS PAMELA PHALA:** No.

20 **MS GILL MARCUS:** And has it being doing that and you give us some examples where it has been acting as principal which would require it being a schedule 2 company.

**MS PAMELA PHALA:** That quote at the end of my presentation refers to the object of the PIC. If you look, I think it's section 204 of the PIC Act it is very clear that the object of PIC is to be financial services provider and it ends there and I compare it with legislation of other public entities especially schedule 2 public entities which are very

clear and succinct in the sense that here is your objection and these ancillary objects that you are allowed to do. The PIC Act is very succinct as that, you are financial services provider in terms of FAIS and what clearly that means is that you are an agent acting on behalf of clients nothing more, nothing less.

**MS GILL MARCUS:** No I appreciate that but what I'm querying with your point here, which is, the pages are not numbered but it's almost to the end, the PIC runs a big risk of being accused of acting ultra vires its objectives should it continue making transactions as principals. That assumes from the way I would read that, that it has been making transactions as principal. Are you ... (intervention)

10 **MS PAMELA PHALA:** There may be examples, I may ... (intervention)

**MS GILL MARCUS:** Can we check that Advocate and see if there have been examples of acting in terms of principal by the PIC because ... (intervention)

**ADV JANNIE LUBBE SC:** It's noted.

**MS GILL MARCUS:** Thanks.

**MS PAMELA PHALA:** Ja so basically what it means you can only act as principal and nothing else and I had suggested at the time that we change that and add ancillary objects. Around that time, or shortly thereafter, Ngcedisi Jonas took over as chairman. Dr Dan was CEO. I remember attending a board strategy meeting and was surprised that whereas I've been the sole person who has attending strategic sessions at board  
20 from the Legal side Ernest Nesane, who I had appointed as junior lawyer, was one of the speakers.

**CHAIRPERSON:** Tell me, you referred to the Chair as Ngcedisi.

**MS PAMELA PHALA:** Ngcedisi.

**CHAIRPERSON:** Is his correct name not Mcebisi?

**MS PAMELA PHALA:** Mcebisi. Yes.

**CHAIRPERSON:** Mcebisi Jonas.

**MS PAMELA PHALA:** Mcebisi Jonas.

**CHAIRPERSON:** I think so.

**MS PAMELA PHALA:** He took over as chairman.

10 “Dr Dan was CEO. Ernest spoke on behalf of Legal and I was perturbed about in what capacity was he presenting as Legal was decentralised and I had been the only person who had been so I had not been warned about it. He was very clear in his statement that we are going to be enablers. We will not just sit here and say we can’t. Shortly thereafter, sometime late in 2015, Dr Dan called a staff meeting where I confidently sat in front in the boardroom, Mapungubwe boardroom. The positions of Executive Heads were introduced. Acting Executive Heads were also identified and introduced.”

**CHAIRPERSON:** You missed the previous sentence.

**MS PAMELA PHALA:** Yes, sir?

**CHAIRPERSON:** ‘He indicated...’ You missed that sentence.

**MS PAMELA PHALA:** Oh. So:

20 “He indicated that there will be a restructuring within the company. Positions of Executive Heads were then introduced as part of the restructure. Acting Executive Heads were then identified and introduced at the meeting.”

So the people who were heads of departments automatically became Acting Executive Heads at that time.

“Dr Dan introduced Nesane as the Acting Executive Head, Legal.”

What he said was 'I want to fix that Legal Department'. At that point my mind went into a daze, as can be expected, and I felt all eyes fell on me. I tried to compose myself and look fine. Then I heard him say something like, as my mind was in a daze I don't remember the chronology, about leaving to form a Machekeka Attorneys, Machekeka Incorporated. I had started at the PIC as Pamela Machekeka. What I did not state here was that I had just gotten divorced. I was going through a personal crisis, so the timing of it was unfortunate. So whereas I was not going to change my surname, Machekeka, because the industry knew me as Machekeka, this prompted me to change my surname to my maiden name, Phala. When they advertised for the position I did not  
10 bother applying, having sensed that the top two clearly did not want me at the institution. I was bruised but did not let them destroy me. So I went to see a coach as a corrective measure to help me deal with the dilemma strategically and this reinvigorated me. What she said to me was that you may not leave the institution at this moment, when you are at a low. Redeem yourself, prove yourself, and then you can consider your options at that time. That helped me to carry on at the PIC.

“With Nesane now as Executive Head the strategy was changed from a decentralised Legal Department to a centralised Legal Department. The decentralisation, which was the decision of management of the time, had damaged the Legal Department as a  
20 unit, which is to date, in my view, still fragmented. I continued to manage the Corporate Legal Department under the leadership of Nesane in the position of Senior Manager, Corporate Legal, and for some time, as the only Senior Manager in the unit, during this time, in a quest to get rid of me Nesane sidelined me, preferring to go directly to my subordinates. I got to learn from one of the team

members that he had promised my immediate subordinate my position if she supported him in trying to sideline me. This continued for some time until they realised that their exclusion of me was not going to make me leave. I continued to do whatever work I had and I did it well.”

**ADV JANNIE LUBBE:** Can I interrupt you here?

**MS PAMELA PHALA:** Yes, sir.

**MS PAMELA PHALA:** You testified that you appointed Nesane into the Legal Department.

10 **MS PAMELA PHALA:** Ja.

**ADV JANNIE LUBBE:** Is that correct?

**MS PAMELA PHALA:** That’s correct. I appointed him as a junior lawyer.

**ADV JANNIE LUBBE:** What was your relationship with Nesane after his appointment?

**MS PAMELA PHALA:** Excellent. We worked very well together. And in fact, what he used to do was to tap my bag and tell people ‘I am what I am because of this lady. You see this lady here? I am what I am because of her’.

**ADV JANNIE LUBBE:** And when did the relationship changed?

**MS PAMELA PHALA:** I think the decentralisation meant that we then became apart for it never really changed; he just became a different person.

20 **ADV JANNIE LUBBE:** Was there ever a discussion between you and Nesane about the dilution of your position and him now going up to be the Acting Executive Head, Legal?

**MS PAMELA PHALA:** There was ... (intervention)

**ADV JANNIE LUBBE:** Did you discuss it with him?

**MS PAMELA PHALA:** No, there was no engagement. In fact, I remember walking him

– with him at the old building from Block A to Block C and he said something about that we talk about parting ways.

**ADV JANNIE LUBBE:** Thank you.

**MS PAMELA PHALA:** “So I continued to do whatever work that I had quietly and I did it well. At that point, when Nesane took over, he indicated that there was no need for me to attend committee meetings, and that’s board AC and SEC. What he said to me was ‘I’m here now’ and at that stage I was the only Senior Manager, still the only Senior Manager in the whole department, yet I saw my peers, who were junior in positions, attending the most important committee meetings. I am speculating that his actions were clearly a directive from the top, and, in my view, including board, to get rid of me. That is, if I am sidelined I will leave for sure.”

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**MS GILL MARCUS:** Sorry, can I ask you, the implication here is that Nesane or others then attended board meetings and so on.

**MS PAMELA PHALA:** Yes.

**MS GILL MARCUS:** Is that correct?

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**MS PAMELA PHALA:** That is correct. I had stopped, with effect from 2015, from attending board meetings, SEC and Audit and Risk Committee, which I had attended from inception.

**MS GILL MARCUS:** But he now attended?

**MS PAMELA PHALA:** He said ‘I’m here now’. (Indistinct)

**MS GILL MARCUS:** Ja, that’s what he said, but he actually attended the meetings? So he was legal adviser to the president in those meetings?

**MS PAMELA PHALA:** As Executive Head it was prudent for him to attend.

**MS GILL MARCUS:** Yes?

**MS PAMELA PHALA:** As to whether he attended or not I don't know. He never gave us feedback.

**MS GILL MARCUS:** Can we check the attendance to see whether in the board... Particularly the board meetings.

**ADV JANNIE LUBBE:** It's noted, Commissioner.

**MS GILL MARCUS:** That's their Exec Head, Legal actually attended. Because I'm interested to see the role of the legal counsel in relation to the decisions taken by the board.

**MS PAMELA PHALA:** "The leadership of Nesane was havoc. It was fraught with favouritism and exclusion of me. He had his favourites. I continued to contribute to committee meetings, almost every committee meeting, even though I was not permitted to attend. I had a feeling sometimes that he did not read my submissions but trusted me to have done my job well."

He will look at my submission and see some sort of graph and he will say 'h'm, that's good' and he will sign.

**MS PAMELA PHALA:** "As a division we were now centralised but not united. We had no legal meetings."

To date we have not had a legal meeting since he took over.

"No one on one meetings, no deliberations on legal matters. The only meetings I remember as a team were for HR-scheduled meetings with divisions on mainly – of the PIC mainly to report back on incentives. I recall one meeting – interesting meeting. It

was Nesane's birthday party on the 3<sup>rd</sup> of November. The meeting was very impromptu. We were invited and asked to come to a boardroom within 10 minutes to celebrate his birthday and it was called at short notice. PA bought the cake."

He insisted that people get out of meetings. I recall he would say 'where is Moja? He is in a meeting. Can you ask him to come here? He must get out of the meet... Where is Sassa? Can she please come here? She must leave the meeting and come here'.

10 "Once most of the team members were there he then said at the meeting, raising his hands, that 'this is my empire'. Such was the nature of the leadership, that he was hardly ever at the office, there was no room for engagements, no team meetings, no discussions on anything, including updates in the law. I want to believe that he just signed my memos to committees without reading. Maybe he trusted me with my area of law. I don't know. During his tenure I saw my juniors being appointed to acting positions when he was not around, despite my being the only senior manager in the department. Such conduct could only have been, in my view, rubber-stamped at the top. I had contributed  
20 strategically in many ways to governance of the PIC albeit I was not permitted to attend committee meetings or strategic meetings. Even though my colleagues at the same level or junior attended strategic meetings and applicable committee meetings I was relegated to attending the IT and Risk committee meetings. I was not permitted and neither do I still attend Audit and Risk committee

meetings even though I submit reports at almost every meeting. I once met the current Deputy Chairperson of the PIC in the corridors and I introduced myself and he responded that 'oh, I have seen your submissions at board'. I have also seen my peers, including juniors, in Compliance, Risk and Audit Departments attending Audit and Risk committee meetings. I have seen over the months my juniors acting as Executive Heads, Setsedi and Sasa Fako, who, immediately before Nesane departed, were swiftly appointed Senior Managers. Both were appointed Acting Executive Head during Nesane's tenure when he was not around. Not once was I appointed to act when Nesane was away. With the departure of Nesane due to the VBS corruption Setsedi, who is another person that I appointed and developed, became Acting Executive Head. She used the same style as Nesane, no meetings, no engagements. Birds of a feather. She was subsequently removed and Lindiwe Dlamini, senior legal advisor, who was my junior, who I also developed and appointed, she joined the PIC, started at the PIC a day after her admission as an attorney. She was appointed Acting Executive Head, legal counsel, Governance and Compliance. I had appointed and developed all of them save for a few, including Sassa Fako, who started later. My work has, over the years, focused on Corporate Legal, governance, regulatory, employment law and litigation. I had absolutely no involvement with deals nor engagements with the CEO and CFO save through memoranda,

no reporting to committees. My work was, however, accepted and considered in respect of submissions. I could see activity on my laptop when I was busy working, whereupon I will sit back and fold my arms and allow them to continue spying. My name was splashed in the papers as one of the top six who were spied on, albeit with the remark that nothing seems to have happened to her. Of course nothing could have been found on me. I am an officer of court. My view is that they were trying to find something, anything, to nail me so I could be dismissed.”

10 I then go on to deal with the structure of Legal and challenges with leadership and the anomalies.

**MR EMMANUEL LEDIGA:** Question.

**MS PAMELA PHALA:** Yes, sir?

**MR EMMANUEL LEDIGA:** I just need to understand. It seems that there was some major fallout, you know, between you and the top two. I mean, maybe if you could come again on that issue, that, you know, what happened, what could have happened, what could have been the issues?

**MS PAMELA PHALA:** Sir, I don't know. I did my work diligently. I did my work ethically. Sometimes I feel that when you believe in ethics you don't belong in  
20 corporate. I almost feel you are in the wrong place. So to date I don't know what could have happened. Maybe they wanted to put their own people who will support their views and their business requirements. I don't know.

**ADV JANNIE LUBBE:** Perhaps I can follow up on that, Mr Commissioner. Did the CEO or the CFO at any time called you in to say we are not satisfied with your work or the quality of your work?

**MS PAMELA PHALA:** Not at all. I must say that I'm one of the few people who write very well at PIC so I have put my facts categorically. I enjoy doing legal research. I notably don't necessarily go and engage with external counsel unless it's very technical, so I am confident about my corporate legal skills, so I do not know, once again.

**MR EMMANUEL LEDIGA:** Just as a follow-up then, when you refused to appoint the law firm that the CE said you said you should do do you think that could have been the beginning of the fallout?

**MS PAMELA PHALA:** It was a series of events, in my view, of my acting ethically, of my not necessarily being a yes man, in my view. In fact, around that time he said to me  
10 a few times that 'don't you think it's time that you got a younger person'. So I would love to know one day.

**MR EMMANUEL LEDIGA:** And what could have been – what could have caused some fallout, some seemingly, you know, some fallout with the CFO then, you know? What could have been the issue there when she said Dr Dan doesn't want you here, you know?

**MS PAMELA PHALA:** She wanted an opinion that said yes, it's easy to change. It was not easy. There is nothing in the PFMA that allows us to change from a Schedule 3(B) and 2. She wanted an opinion that said yes, it is possible and we can do it now. It was not possible. I had interrogated the matter. I have engaged with specialists on the  
20 matter and I was confident it wasn't possible. I said we can do it, but only if we continue to change the PIC Act and include... As was the case with the SAA, that they were a subsidiary of Transnet and when they became its own entity they then inserted in their Act a provision that stated they were a Schedule 2 public entity. So I did not necessarily say no, you can't. I said there are mechanisms in which you can do it. So perhaps they wanted an opinion – or opinions over the years that said ja, it is possible.

That's not how I operate.

**MR EMMANUEL LEDIGA:** So that could have been the start of the fallout with the CFO then, possibly?

**MS PAMELA PHALA:** I don't necessarily feel it's a fallout.

**MR EMMANUEL LEDIGA:** H'm.

**MS PAMELA PHALA:** And I am not going to agree to a label that I'm a victim. I almost feel like it wasn't about me but it was about getting somebody who will enable what they want in whatever manner. I think so, yes. I'm speculating.

**MR EMMANUEL LEDIGA:** Alright. Okay.

10 **ADV JANNIE LUBBE:** Mr Commissioner, it's almost teatime. Would you like to take the tea break now or shall we continue with the next topic?

**CHAIRPERSON:** Let's see how far we can go.

**MS PAMELA PHALA:** I got the impression that... Where am I? Okay. Paragraph 8. Structure of the Legal Department, it's challenges with leadership and anomalies:

The Legal Division has the following sub-departments. There is Corporate Legal. There is regulatory compliance. There is labour law, properties legal, listed investments and unlisted investments. I am Senior Manager, Corporate Legal and I have assumed, over and above corporate law, responsibilities for senior labour lawyer, regulatory compliance as well. This..."

20

**CHAIRPERSON:** Sorry, change was to 'is'. You are? 'I am'?

**MS PAMELA PHALA:** Yes, I am.

**CHAIRPERSON:** Yes.

**MS GILL MARCUS:** And in addition, so that in the structure here there is no distinction between the Legal Department with all of these different specialities and areas of focus,

to a legal counsel, which is overall responsible to the board or with the board, with the CEO, and advises on the general legal frame within which the PIC offers there's no – operates there's no legal counsel that is distinct from the department?

**MS PAMELA PHALA:** So this... No, that's the Executive Heads who would be counsel for board. So under that position of Executive Head there are sub-managers.

**MS GILL MARCUS:** Ja, I understand that. But in essence, if I had to look at it, you would often have, in an organisation you will have a Legal Department with a head of department that looks at all the operational issues and you may well have a legal counsel which looks at the wider framework within which an organisation operates. The

10 PIC has not to – while you've been there had a legal counsel?

**MS PAMELA PHALA:** No, not at all.

20 “So I took over those responsibilities over and above my role as Corporate Law Senior Manager. This has presumably been due to my interest in corporate law, labour law, governance, litigation and interpretation of laws. As indicated above, the Legal Department is not in unison as we have had effective leadership since Nesane took over. Nesane seemed to have interest in investments. When Nesane left Setsedi seemed to be overwhelmed by her Acting Executive Head role and was somewhat of a bully. Dlamini, in my view, is so junior she is a yes man who clearly takes instructions from certain board members who, in my view, unnecessarily get involved in management issues. Dlamini, with due respect, in my view, fails to think independently and has, over time, tried to please select board members. She is also a specialist investments person.

**CHAIRPERSON:** Are you able to give us some examples of the interference by the board into management matters?

**MS PAMELA PHALA:** Yes. Yes. Victor Seanie case. Initially, when it started, I gave the view that the matter is under consideration by the commission and therefore it would be premature for us to do that. She insisted... What I actually proposed to her was that let's together go to Advocate Lubbe and get a view on whether or not we should proceed and she was insistent on we have to proceed, we have written to Lubbe. You know, as she was talking I could feel that it wasn't her but it came from somewhere else, you know. In fact, he has written to us. He's made it clear that it's a  
10 management issue and that we should proceed. There were a number of times when I went to her office and her phone was on speaker and you could hear board members talking to her and I was perturbed at the type of instruction that they gave to her with respect of operational matters of the law.

**MR EMMANUEL LEGIGA:** That's very recent, isn't it? That's a very recent activity.

**MS PAMELA PHALA:** That is recent, yes. And get affidavits. I mean, this is a job of a counsel, to... A board member sits there and makes decisions in unison with other board members. Board members singlehandedly cannot contact you as an in-house legal counsel to give a view. Albeit that you are an attorney sitting on board you do not have a right to interfere and advise me on what legal steps to take. I will consider the  
20 matter strategically and I will engage with you on how I decide the matter should be carried on.

**MS GILL MARCUS:** Can you indicate the name of the board member that was acting in this manner? No, we're asking you to do that. It's not ... (intervention)

**MS PAMELA PHALA:** So I went into her office. Ms Zulu phoned. The phone was on speaker. It's just the manner that you engage with a legal counsel. The interaction

surprised me. It's just the manner in which you talk with a professional Head of Legal at work. It just perturbed me that they could get deeply involved in internal matters in that fashion. They have taken over Victor Seanie case from us. In fact, it appears that my advice has now been taken by them. And another board member who I shall not name phoned through when I was there. The phone was on speaker. Board members should not be involved in operational members of the PIC. Their role is to act in terms of the fiduciary duties in unison with other board members. That is a governance principal.

10            "I felt my role was not respected. Nesane jumped and would go directly to my subordinates. Such has been the practice within Legal even when Nesane left and Setsedi took over. This, in my view, signified disrespect to my authority as Manager for Corporate Legal. If you do not respect my role how are my subordinates expected to respect me? Several matters were hidden from me, yet they will go directly to my subordinates who reported to me. I made ... (indistinct) submissions to ExCo board and board subcommittees but I was never called and I'm still not called, yet I'm asked to attend to urgent strategic matters because they have faith I can do it. This therefore calls into question the profile..."

20    **MR EMMANUEL LEDIGA:** Just a question here. Ja, question. If you could explain, what do you do at Corporate Legal? What is the work you do there?

**MS PAMELA PHALA:** Investment management in terms of doing client mandates. I used to do external mandates but now they lie with Listed Investments. I have... The Executive Head of Listed has made it clear that I am not to get involved with his work. In fact, he called anybody who asked me, who had faith in me to assist with legal

advice, he called them to a meeting and warned them that he will take action. So I do all corporate commercial matters. I do agreements. I do litigation. So I think, in brief, anything other than deals I will be responsible for.

**MR EMMANUEL LEDIGA:** Thank you.

**MS PAMELA PHALA:** “This therefore calls into question the profile of the Executive Head, Legal. Should a specialist be appointed or should a leader be appointed? I think these are the issues that I feel the PIC board and management need to consider. The profiles of senior managers within Legal should also be considered.”

10

**MR EMMANUEL LEDIGA:** Question there. Did you want to do deals? Because you are not doing deals currently.

**MS PAMELA PHALA:** There were people who were appointed to do them, so I was not involved.

**CHAIRPERSON:** But ... (intervention)

**MS PAMELA PHALA:** I’m sorry?

**CHAIRPERSON:** Was that from the beginning? Or did you do them first and then changed?

**MS PAMELA PHALA:** So at the beginning I was Head of the Legal Department and I appointed specialists in that regard, so I oversaw everything that occurred within the Legal Department until the change.

20

**CHAIRPERSON:** Oversaw everything including the deals that they would be dealing with, your – the people that you appointed?

**MS PAMELA PHALA:** All... That... Yes, sir. All activities of the Legal Department I was responsible for. “So I am saying:

“This calls into question the profile of an Executive Head position. The profile of Senior Managers should also be considered. And this is also due to the changing regulatory landscape of financial institutions and the strategy growth of the PIC. There are other anomalies that are concerning. Executives, especially HR, engage directly with attorneys without Legal’s involvement. I noticed the trend that we will merely be asked to attend to procurement and then they swiftly take over. This meant that legal fees are not properly managed.”

10 **ADV JANNIE LUBBE:** Can I...? Sorry, can I interrupt you? Is this in line with the existing policies of the PIC? Or is it in breach thereof?

**MS PAMELA PHALA:** We do not have a legal policy since Nesane. Initially, when I started, I had a legal policy that made it clear that business were not to appoint attorneys or engage with attorneys without the presence of a Legal person. I made it clear to the attorneys on the panel in their contracts of appointment that in the event that they do that I will not sign off on any invoices.

**CHAIRPERSON:** Are we talking about ... (intervention)

**MS PAMELA PHALA:** So it seemed to work well.

**CHAIRPERSON:** Are we talking about outside attorneys now?

20 **MS PAMELA PHALA:** External attorneys.

**CHAIRPERSON:** Ja.

**MS PAMELA PHALA:** Yes.

**ADV ISAAC MONNAHELA:** But we heard last week about some procurement process in the Legal Department. I mean, someone said there is a process and a framework around that.

**MS PAMELA PHALA:** We don't have a legal policy. I have never seen it. The last one that I saw was years ago when I... So I don't – I've never seen it. They need to produce it and show it to you.

**ADV JANNIE LUBBE:** Well, let's ask you... Sorry. Sorry, Mr ... (intervention)

**MR EMMANUEL LEDIGA:** So are you saying that you do not have a database of approved legal firms?

**MS PAMELA PHALA:** We have a panel of attorneys which – after procurement process was followed. That is a list of external attorneys appointed in accordance with a number of categories, areas of specialisation. So in the event that we need to appoint  
10 an attorney we will seek quotations from that panel, from that specific... If it's labour law we will get quotations from there and appoint from that panel.

**ADV JANNIE LUBBE:** Now to ask a practical example. For instance, if there is going to be a disciplinary hearing of employee A can HR then directly engage with a law firm and appoint them and appoint senior counsel to chair a disciplinary hearing? Or must it go through the Legal Department?

**MS PAMELA PHALA:** That process needs to go through the Legal Department for efficient management of legal costs as well.

**ADV JANNIE LUBBE:** And what you're stating here in paragraph 8.5.1, the tendency now is that HR now engage directly with attorneys without going through the Legal  
20 Department.

**MS PAMELA PHALA:** That has been the recent practice. And this means that fees were not properly managed and the legal fees then became exorbitant.

“I have noted that board has also been doing the same, get involved in management matters, get attorneys briefed and run with it, excluding management. The anomaly is that, as per

delegation of authority and depending on the amount, I then have to sign off on invoices through the system that we have, Great Plains, in respect of matters none of us at Legal have been involved in. And there is a recent scenario where a procurement process cannot be verified and accounts have to be settled and I have been pushed to sign off, which I've refused.

Centralised or decentralised model of the PIC: I have experienced both centralised and decentralised models of the PIC. I have preference for a centralised model. Business may view a centralised model as a problem in the sense that they may see it as running it like a legal team, a law firm, but if run well and with good leadership risks will be managed effectively. Legal risks are better managed with a team sitting together and strategizing together. The risk of a decentralised legal model where legal teams report to a business head means that there is no segregation of duties. Legal will fear providing independent legal advice and the business head does not have the legal qualifications and experience to advise on or sign off on issues of the law. This in itself is a risk to business. What model would be suitable for PIC? I am making a proposal here that, having been there for a number of years, both in a leadership role and from an eagle-eye view, having been shoved aside, my view is that the model best suited for PIC is a centralised model which has a split between corporate function and investment function due to the different expertise and volumes of work involved in both areas and

my proposal is that this may entail having two legal heads due to the nature of the PIC, reporting either to CIO and COO respectively, or I am proposing that there be an Executive Head with General Manager, Corporate Legal and Investments Legal, both reporting at that level, at that senior role, reporting to the Executive Head, Legal.”

I am setting out here, in paragraph 10, strategic governance projects that I have been involved in, cases and regulatory compliance at the PIC. I have dealt with the change from Schedule 3(B) to Schedule 2 and I am asking that perhaps the  
10 commission may make a recommendation to propose that through the PIC Amendment Bill the PIC should be classified as a Schedule 2 public entity. I also deal with the framework and policy on investee companies and I would love to address this into two aspects. I want to deal with the precedent-setting case on board fees that I was – I had dealt with, and secondly, with the framework on directors of the PIC and employees sitting on boards that I managed with a CFO ... (intervention)

**MR EMMANUEL LEDIGA:** A question. Ja, a question.

**MS PAMELA PHALA:** Yes, sir?

**MR EMMANUEL LEDIGA:** Just going back to 9.4. Just come again there, because you are speaking about CIO, COO, and then from there you are talking about General  
20 Manager. Just come again there. (Indistinct)

**MS PAMELA PHALA:** I’m saying due to the nature of the PIC and the volumes of work and the level of expertise required I am making two proposals, either/or, yes, sir. So the first one, I’m saying that there be two heads, one responsible for investments, the other for corporate, reporting to CIO or COO if it is introduced. Alternatively, I am proposing that we have an Executive Head, we retain it, but there be two senior General

Managers at that level who one will be in charge of investments, the other one in charge of corporate law function.

**MR EMMANUEL LEDIGA:** So if there is an CIO and a COO function would the Corporate report to the COO?

**MS PAMELA PHALA:** Yes.

**MR EMMANUEL LEDIGA:** And the investment 1 reports to the CIO?

**MS PAMELA PHALA:** Ja.

**MR EMMANUEL LEDIGA:** Is that what you are saying?

**MS PAMELA PHALA:** That is correct sir. That's correct. The nature of the rule of  
10 Executive Heads is that they are hardly ever there. They go from one meeting to another. So you need somebody at that level to then assist with the role – the respective roles yes.

**MR EMMANUEL LEDIGA:** And the second proposal is that if there is no CIO or COO you are saying then what must happen?

**MS PAMELA PHALA:** I then propose that we retain the roll of Executive Head but then we have General Managers at that – currently we have EH and then we have senior managers and everybody is doing their own thing. I am saying for efficient running of the department perhaps what should be introduced is General Manager for Corporate and Investments. Who the EH can rely on strategically on the various issues.

20 **MR EMMANUEL LEDIGA:** Alright ja thank you, thanks.

**MS GILL MARCUS:** Can we just stay with this question about the schedule 2 and schedule 3b. If I understand this correctly, that in essence being a schedule 3b and in terms of the PIC Act it is restricted as a financial service provider and can act only as agent. The question of schedule 2 changes the ability to borrow and the question to act as principal, is that the key difference between the two?

**MS PAMELA PHALA:** There may be aspects of remuneration. I got a sense and I do not know in what sense that schedule 2 have an advantage in that case. I don't know whether – perhaps you need to bring a specialist from treasury asset management to come and explain the two. The difference between the two.

I think there may have been an advantage of perhaps maybe not getting approval from Minister in that regard. There are other number of aspects pertaining to the difference which I tried to probe the CFO but could not get a sense.

**MS GILL MARCUS:** In essence what you raising is that their ability for payment can be different in terms – remuneration policy was at this point in time in terms of the PIC. As  
10 it stands now the Minister actually determines what the levels of remuneration bonus pool and so on is. Is that what you raising, that they would have under schedule 2 the ability to borrow without necessarily having approval as well as their ability to set remuneration levels without the direction or decision of the Minister?

**MS PAMELA PHALA:** I think they are borrowing limitations for sure contained I think in Section 66 of the PFMA that apply to schedule 3b and schedule 2. Definitely that's one of the key differences between the two. But I am speculating that there may be other issues of remuneration. There may be issues of approval on certain aspects from the Minister but that needs to be probed and researched.

**MS GILL MARCUS:** Can we arrange for something to be presented to us on this  
20 question and because it does reflect on our recommendations regarding governance and changes to the act or measures to look at in terms of the PIC Act.

**ADV JANNIE LUBBE SC:** It's noted Commissioner. We'll do that.

**MS GILL MARCUS:** So I'm now going to deal with the Kagiso Butihelo case, which is a president setting case that I was involved in with significant impact to the PIC.

“So in that case a former employee of the PIC instituted action against the

PIC in the amount of about R2-million of fees and bonuses that were due to him by virtue of him sitting as nominee Director on boards of investee companies as a representative of the PIC. The basis for his action was that when he sits on the board of Investee Company he owes a fiduciary duty to the company on whose board he sits on. He argued at that time that the PIC was therefore not entitled to remuneration due to him. That is remuneration in the form of board fee and bonuses by virtue of him sitting on boards of those investee companies.

10 The PIC based its defence on employment law in the sense that the employee was sitting on the various boards at the behest of the PIC as the employer and therefore he was simply not entitled to the board fees.”

**MS GILL MARCUS:** sorry just for clarity. In terms of a, does that mean board fees were paid but they went to the PIC and not to the individual?

**MS PAMELA PHALA:** Yes so board fees were indeed paid and bonuses were paid but they went to the PIC. The argument of PIC at that time were that transactors or people who sat on boards were remunerated sufficiently to cover those type of activities.

**MS GILL MARCUS:** No I understand. I just wanted to be clear that the fees were actually paid.

**MS PAMELA PHALA:** Yes ma'am, yes.

20 “The PIC won the case at the ...[indistinct] or court of first instance and the employee took the matter on appeal at the full bench comprising of three Judges and the employee was successful. The PIC board was then almost divided on whether or not the PIC should appeal the matter further to the Supreme Court of Appeal. So it was difficult to get them to commit with regards to whether or not we should proceed with the appeal. For me it was

significant that we appeal and in a way they left it to me to decide and basically made it my risk.”

**MS GILL MARCUS:** Sorry just for clarity again. When did this occur, when did this case take place? The year?

**MS PAMELA PHALA:** We can ...[indistinct].

**ADV JANNIE LUBBE SC:** We will check the year and we will come back later in the day with that.

**MS GILL MARCUS:** Ja.

**MS PAMELA PHALA:** “The PIC was successful at the Supreme Court of Appeal.

10 Employee took the matter to the Constitutional Court on the basis of an infringement of his rights in terms of the Constitution. His referral to the Constitutional Court was dismissed in course even before it was considered. The former employee therefore became liable for taxed costs from the court of first instance until the Constitutional Court which he duly paid.”

**COMMISSIONER:** I don’t think the Constitutional Court would like it when you say before even being considered.

**MS PAMELA PHALA:** I’m sorry. Before it was deliberated by the parties.

**ADV JANNIE LUBBE SC:** I think the technical point Mr Commissioner as she correctly pointed out. The application for leave to approach the Constitutional Court on this  
20 issue was dismissed. It was not fully argued in the Constitutional Court.

**COMMISSIONER:** I understand but the reader or the report might say, oh so they don’t consider matters ...[indistinct].

**MS PAMELA PHALA:** My apologies.

“So I have attached the various judgments. The citations will be clear together with ...[indistinct] in the judgements. The implication of the case is

that had the PIC failed in the case or abandoned the right to appeal the decision of the full bench of the three judges would have had far reaching implications to corporate South Africa. It was going to open the flood gates of liability and it would basically mean that previous employees all over South Africa would lay claim to their fees where they sat as nominee Directors.

10 I then proceed to deal with the framework, governance policy which I worked on. I have attached the relevant documents. The CFO at the time had insisted that before we start with drafting a policy which was what I was good at. I can write policy but I will struggle to do the framework but we came up with a framework. I cannot locate the specific framework. It is not anywhere on my system and it cannot be located but it was a wonderfully written – prepared slide presentation of the principals that will guide the policy.”

**ADV JANNIE LUBBE SC:** Before she – it was now established the matter was heard in the Supreme Court of Appeal in November 2013 and the Judgment was delivered on the 22<sup>nd</sup> November 2013 Mr Commissioner.

20 **MS PAMELA PHALA:** “So there are a number of principals that came out of the governance framework. We had proposed a creation of a database in respect of third parties or nominee directors. We had proposed a selection criteria that will limit the number of directorships per Director. We also propose robust risk and compliance management framework. So there were a number of strategic proposals that we made. For example multiple board seats that we said maximum of board seats per person. Cross directorships that no person may sit on two boards seats in the same sector, insider

trading, taxation of employees and directors. We proposed taxation for employees and Directors from sitting on boards in respect of listed investments in South Africa but that they may sit off shore.

Representation in respect of listed investee companies should only be in the form of a pool - from the pool of third parties and the PIC employees were not to receive any remuneration for sitting on boards. Personal Directorships, we said that employees should obtain approval from the CEO. Another significant matter that I worked on was disclosure of personal financial interest. I have attached ...[intervenues].”

10 **ADV JANNIE LUBBE SC:** Before you deal with that. I hope I am not catching you by surprise but we have heard evidence in this Commission about the concentration of power within the offices of the CEO and the CFO at the PIC at the moment. What is your view as a legal person on the CFO and the CEO sitting on boards of Investee Companies?

**COMMISSIONER:** If you have a view.

**MS PAMELA PHALA:** I don't have a view, I don't know. But I think if you follow – if they still follow the framework that was approved at the Directors Affairs Policy and the requirements are adhered to there may not be a problem.

**MR EMMANUEL LEDIGA:** A question ja. Let me get a view from you if possible  
20 please. So directors of the PIC, they sit on the boards of these companies and they – in some ways they get, you know payment for that. Then the fees that the PIC seem not to be enough. You know I mean they augment each other you know.

So do you think that the PIC should take away their fees and pay them more within the PIC or this should stay way it is?

**MS PAMELA PHALA:** Sir I also I don't have a view in that regard. I think the person

who works closely with that, I have not been attending board meetings and so I really don't have view in that regard.

**MR EMMANUEL LEDIGA:** Okay do you think the normal board fees at the PIC are sufficient; do you have any view on that?

**MS PAMELA PHALA:** Board fees need to be paid to non executive directors. Board fees should not be paid to employees of the PIC including executive directors.

**COMMISSIONER:** Because that is part of their job, attending board meetings is part of their job isn't it?

**MS PAMELA PHALA:** Yes sir.

10 **MR EMMANUEL LEDIGA:** Wait, wait, wait. I am just trying to find something here. So the PIC board people, do you think the way they are being paid now with two sides of, is the correct way?

**MS PAMELA PHALA:** With two sides in what respect?

**MR EMMANUEL LEDIGA:** Hence that they get money from the companies where they are nominee directors and they get payment from the PIC – the normal work which they do for the PIC?

**MS PAMELA PHALA:** Perhaps a benchmark needs to be done in that respect with regards to other SOE's how they do that. Companies like IDC perhaps, DBSA, how they manage such a situation. I have never really considered such an issue.

20 **MR EMMANUEL LEDIGA:** Because my concern is that you know for boards to do good work within the companies they need to be paid relatively well to spend enough time you know to do good work – you know. So I would be worried if they are not paid enough for that time they spent there.

**MS PAMELA PHALA:** Ja I think it's a matter of principal. I do not see anything wrong with them being remunerated for board attendances.

**MS GILL MARCUS:** But just as a point of clarity. That as I understand it non-executive directors are paid for their work on the PIC board but any director sitting – an employee of the PIC sitting on a board does not get paid. Those fees go into the PIC.

**MS PAMELA PHALA:** That's correct.

**MS GILL MARCUS:** And if it is a board member – non-executive board member sitting as a nominee on another board, do they get the fees or does the PIC get the fees?

**MS PAMELA PHALA:** If it is a non-executive director ...[intervenes].

**MS GILL MARCUS:** They get the fees.

**MS PAMELA PHALA:** They get paid.

10 **MS GILL MARCUS:** So they get paid for sitting on the PIC board plus any other board that they may sit on?

**MS PAMELA PHALA:** Correct. What I said to Advocate Lubbe during break was that after we successfully – we were successfully in the Kagiso Butihelo case. I did not feel any excitement from the PIC and I got to learn afterwards they would have preferred that they be paid. Perhaps it is something commission should consider as well. That despite the decision of Court perhaps because of the nature of the PIC employees should be paid for attendances as nominee Directors.

**COMMISSIONER:** The time they spend at those meetings is time that they could have spend ...[intervenes].

20 **MS PAMELA PHALA:** That they should be at work and they get paid sufficiently.

**COMMISSIONER:** ... doing their work at the PIC.

**MS PAMELA PHALA:** Investments people get remunerated sufficiently at PIC. I will not deal with the disclosure of personal financial interest. I have attached the legal opinions.

**MS GILL MARCUS:** Sorry can I just ask whether there is an evaluation in relation to

the non-exec directors. We talking specifically now non-exec. If they serve on the PIC board and a number of other boards as nominees is there ever an evaluation as to what percentage of their earnings comes from working on the PIC because that's go to effect their ability to be independent.

If you're an independent director – an independent non-exe director and dependent on your fees for your income it's got to affect your ability to be independent and therefore it may be what you do but then you should not be classified in the recording as an independent director you should be classified as a person who is a non independent director.

10           Is there anything in the work that you've done in relation to the board that if you like classifies the independent director and the non-independent director in relation to the extent to which they get board fees? Whether directly PIC board or nominee positions?

**MS PAMELA PHALA:** When we did the framework we did an analysis of who sits where to get an understanding of how many – how much time is spent attending – especially on the part of employees. I don't know how it was taken further but that analysis has been done and I propose that it should continue to be done.

**MS GILL MARCUS:** Can we also find out in relation to the non-execs how much time, because it would relate again to time. How much time spent on the various boards that  
20 they serve on and in relation to that? What remuneration they get because they must help determine whether they are independent or non-independent.

That would then assist us in understanding the relationship or the numbers in relation to the board of independent directors, non-independent directors and so on. I think it would just help us.

**ADV JANNIE LUBBE SC:** It is noted Commissioner, we will definitely do so.

**MR EMMANUEL LEDIGA:** Can you give us a sense in terms of numbers of the board – the board that the PIC sits. Say on the listed side roughly. I mean we know there are like top 40 companies or top 60 companies on the JSE.

**MS PAMELA PHALA:** I don't know.

**MR EMMANUEL LEDIGA:** We'll get ...[intervenes].

**ADV JANNIE LUBBE SC:** Mr Commissioner ...[intervenes].

**MS PAMELA PHALA:** I think there should be the right person within the PIC who can provide that.

**ADV JANNIE LUBBE SC:** We will get the statistics for the Commission.

10 **MS PAMELA PHALA:** Disclosure of personal financial interest. I will not deal with it at this session. I have attached legal opinions. I have submitted them. I did not get consent from the author of the opinions but I have attached them for your reading. The PIC regulatory framework ...[intervenes].

**COMMISSIONER:** Sorry just to say, you are not reading it but you are confirming its correctness?

**MS PAMELA PHALA:** Yes.

**COMMISSIONER:** The paragraph that you are not going to read.

**MS PAMELA PHALA:** Yes. I will now deal with another strategic factor.

“The regulatory framework at the PIC.

20 So the PIC has two regulatory compliance departments. There is the compliance officer sitting within risk and there is a regulatory compliance sitting within legal. I had enquired at the beginning from Nasane what the strategic role of legal is in respect of regulatory compliance and I never got a response. From the PIC compliance officer has insisted that he is only responsible for the FAIS Act. He also indicates that his role is independent

and that his role is to monitor. So meaningful engagements have really taken place in that regard. From the legal role we just continued to do what we thought was suitable.

We have a system which sends out regulatory alerts on a daily basis on updates on the law. We have a regulatory universe which we update every quarter or bi-annually and table at Committees of board. We have procured a CRMP in an attempt to digitise the regulatory process at PIC and we started with a few about just less than ten pieces of legislation. This has not been effective due to lack of engagement. We also ...[intervenes].”

10

**ADV JANNIE LUBBE SC:** Sorry can you just explain to the Commission what is CRMP?

**MS PAMELA PHALA:** It is a compliance risk management plan. We project manage implementation of new laws. We have a training plan for the year, we invite attorneys with specialisation to come and present to us. We also invite regulators to come and do the various presentations on their respective acts. Recently we had hosted the national treasury and the FSCA in respect of the COFI Bill.

**ADV JANNIE LUBBE SC:** What is the Coffee Bill?

**MS PAMELA PHALA:** Conduct of Financial Institutions Bill. It is going to replace the FAIS Act. All the laws pertaining to financial institutions.

20

“I want to believe that the PIC regulatory framework is haphazard. It is not supported globally. It is not taken seriously by board or ...[indistinct] at the PIC. There is no engagement around it. I think the focus on PIC is more on investments than on the regulatory part. I don't believe that it is supported globally and that is through engagements with other specialist in other

entities, financial institutions, some of whom have done a global benchmarking. It needs to be attended to as a matter of urgency. I have made a proposal in that regard.

10 PIC is a complex entity with a number of laws that apply to it and therefore this area within the business of PIC needs to be taken very seriously. The COFI Bill is introducing market conduct. Which means that there will be a move away from the rule spaced approach to a principal based approach. That is the mere fact that you can tick all the boxes in terms of the – of legislation should not be sufficient and therefore the focus will not be on culture and ethics. I have spoken to a number of financial institutions. Some of whom have done this international benchmarking. I have also been considering the COFI Bill which introduces a culture based – a conduct based approach.”

**MS GILL MARCUS:** Sorry can I just ask for clarity. The document you reading from is?

**MS PAMELA PHALA:** It's just my summaries.

**MS GILL MARCUS:** Okay if you can ensure that that's handed into ...[intervenes].

**MS PAMELA PHALA:** I'll hand it in, yes ma'am.

20 “The current framework of the PIC it doesn't work and it may leads to gaps. I have also done a comparison. I've looked at Regulation 49 of the Banks Act who are the prudential authority and I find that their approach is clear and ...[indistinct]. The COFI Bill is also not clear and that's one of the comments I'm going to submit to the regulators in that regard. Regulatory compliance cannot only focus on FAIS. There needs to be a strategic framework in that regards. So the view of compliance has been, ask legal. I mean we were

audited on this aspect recently and they said, ask legal and we said compliance.

10 So I am proposing a number of steps. We have myriad of legislation. We are unlike any other asset manager in the country. We government, we asset manager, we financial institution, there is thousands of other laws. The PIC regulatory universe has over a 100 pieces of legislation that apply to it. I'm proposing a unit where there are subject matter experts and I'm proposing in respect of the categories data and privacy. So at the moment I do everything with limited staff members that I have. I have to look at implementation ...[indistinct], data and privacy. I have to look at section by section of each new law and we cannot keep up and that is a big risk to the business. So I'm proposing categories of subject matter experts on data and privacy on financial regulation on FICA, that's money laundering.

20 On governance pieces of legislation. That's IT governance, that's companies act, that King Four and other pieces of legislation that fall under governance. Those people will look, read the pieces of legislation as they come in, including existing legislation. Do a section by section analysis of the legislation. Do an impact analysis and engage with the business throughout continuously. The principal that comes out of the COFI Bill is treating customers fairly. So the strategic approach of the PIC should now shift because of the introduction of the COFI Bill to treating customers fairly. I am proposing that those subject matter experts instead of having a system which we have to understand that they do the CRMP's in respect of the legislation they fall – which fall under them as subject matter experts.

I further propose that they be risk manage the step to risk

managers that will fall under the risk and compliance team monitoring as well with regard to learning and development. Currently that falls under HR. That is training staff. I have done a benchmarking with ESKOM and some academies and I propose with and I propose with regards to the PIC because of the nature of the entity that the PIC learning and development in respect of regulatory work fall under regulatory compliance and there be a dedicated team for proper coordination in that regard. I propose digitisation including e-learning.

10 It may be necessary in order to implement this two, to have a task team. Other institutions have done an international benchmark and PIC needs to their own analysis through a task team and do that international benchmarking and come up with a proposal for the PIC. That is my proposal Commissioner.”

**COMMISSIONER:** With regard to your proposals where you’ve done some analysis and analyses, are you prepared to make those available to us?

**MS PAMELA PHALA:** I’ve been engaging with people and my conclusion is that – I mean I spoke to the banks, financial institutions. Some of them have done their own so I have not seen their paper. But I’ve been engaging very widely in that regards. My conclusion is the PIC is a special dispensation. Perhaps the process for compliance  
20 should also be considered in the process of the PIC Bill that it should be clear and ...[indistinct] because of the nature of laws that apply to us.

What regulatory compliance should entail with regards to the PIC. Perhaps in the regulations to the PIC Act.

**COMMISSIONER:** I’m now not sure whether you say no I can’t make those analysis available or you can.

**MS PAMELA PHALA:** I have been engaging I have done my own analysis yes. I propose a task team which should look at it. But PIC should do their own.

**COMMISSIONER:** If we are to make recommendations based on what you tell us, we must be able to say why this is proposed.

**MS PAMELA PHALA:** I think what the Commission needs to know is, PIC regulatory framework currently is not working and there needs to be urgent changes. AK I don't think are prioritising it. In fact what - I don't attend it but what I consistently get as feedback is, change your report. But change your report on the basis of what? What strategy which has not been conceded.

10 **ADV JANNIE LUBBE SC:** I think what the Commissioner is really after is, have you done any analysis and research on the subject that you can present to the Commission to assist them in their work to make recommendations to the President?

**MS PAMELA PHALA:** I have engaged with people from financial institutions including banks. Some of whom have done their own research and after engaging with them I have come to the conclusion that PIC regulatory framework is not supported globally and urgent steps need to be taken in that regard. In whatever format, my proposal may or may not be taken into account but I mean there's about two of us within Legal who including myself who is senior manager who work in pieces of legislation.

20 We are struggling to find time over and above our other legal work to do a section by section analysis of pieces of legislation. Therefore I propose a dedicated team which should look at that. Whether it falls under us or in compliance but there has to be a dedicated - subject matter experts who will make time to go through that.

**CHAIRPERSON:** I think I hear you. I think I hear you where you can't give us an analysis are you saying that we should propose that the team look at it? I would have though having engaged with whoever you're engaged with you made yourself some

notes and you said this can't work, this is what I got from this person and this is what I got from this person and I think it's a good idea, I don't think it's a good idea.

**MS PAMELA PHALA:** I don't know if they would want me to disclose, I had spoken to them in good faith because that's the strategies of their companies.

**CHAIRPERSON:** That's fine but you can delete the names. Okay you may proceed.

**MS PAMELA PHALA:** I want to conclude, I have listened to the testimony of others at the Commission and my intention initially was that my story is so minute I don't think it should be told but as people testifying it brought back memories and in a way prompted me to come here. I agree that the chiefs at the PIC were powerful, too powerful beyond  
10 words. I agree with the previous speaker, Nomzamo Petje, that they destroyed destinies.

Yes, there were elements of victimisation of employees. I have seen employees become very sick and leave the PIC, some without a job. I am speaking for those fried colleagues who suffered and left. I still remember one of the employees who I shall not name but left for an international job, shattered and broken when I met him in the lift and he was categorically and he was very angry, that this is not a government institution, this is not their company. Shortly thereafter he left the PIC.

I have been spied on without due notice as require by law. For me this was random and there was no basis for the top to do that. I was far removed from the  
20 investment transactions which were the subject matter of media scrutiny of any deals for that matter as my main focus was corporate legal. The PIC and the top knew that I am a highly ethical professional and I could not have been the cause of those leakages at the PIC. The only basis in my view was to find something which they could use to nail me and they failed and I want to believe that the top six list could have been sanctioned at the top, at the board.

South Africa now know me as a victim and I want to say to South Africa I refuse that label, I am no victim. They tried to break me and they failed and I kept my head high and carried myself with dignity and continued to do my work diligently and with high levels of ethics. I continued to fight to the end for what is right without fear.

I have tried to rationalise the conduct of the top towards me. I cannot think of a single reason why board and top executives would exclude a capable corporate lawyer, a leader who successfully managed a legal team. The conclusion that I have come to is it is not really about me and in fact there is nothing wrong with me but they tried to appoint somebody who will support their decisions, somebody like Nesane.

10 Anybody but me.

Somebody last week said to me since you were removed there has not been law practised at the PIC. Pam, go to the Commission and state your case, you were once also Company Secretary. Yet another lady recently commented when they appointed Dlamini by far a junior and when I was mentioned the Commission, that Pam don't worry be strong, some of us women are in awe about your strength and draw strength from you and we women of the PIC want to be like you. Another one last week said to me when I was catching up with her after some time, Pam some of us have seen you go through the worst of challenges and torn apart yet you became stronger and happier and I want to state that I am not breakable, I am simply unbreakable.

20 To Dr Dan and Matshepo and the board members who supported, you tried to break me and you failed and I'm still here when there's a cloud over your heads. I am confident that the PIC will recover and that a new era shall bring a new dawn. And that concludes my statement Commissioner.

**ADV JANNIE LUBBE SC:** And you wanted to end with a poem.

**MS PAMELA PHALA:** I started with my poem, I concluded that yes.

**ADV JANNIE LUBBE SC:** Thank you Mr Commissioner that is the evidence.

**MS GILL MARCUS:** Advocate can we check with the Company Secretary whether the issue of spying on those individuals who've been named not only by the current witness but previously in our testimony ever went to the board, the director affairs committee or any individual of the board so that was it simply the management who took that decision or was any individual board committee, directors affairs committee, board as a whole, aware of, endorsed in whatever way you want to put it so that there isn't a question that says oh you didn't ask me exactly that of that decision to spy or the outcome of that?

10 **ADV JANNIE LUBBE SC:** It is noted and it will be reported.

**MR EMMANUEL LEDIGA:** One or two questions. When all this stuff was happening were your bands changed, bonuses structures, LTI you know the STI issues?

**MS PAMELA PHALA:** My salary remained the same but I feel my bonuses were less than, much less than what I got at the beginning when I started at the PIC, it get lesser and lesser and in my view the bonus review evaluation process is very subjective it depends who likes you, who doesn't like you.

**MR EMMANUEL LEDIGA:** And I think you pointed out in, I think it's 11.8 that you think there could be a new dawn, but from here where are you now, I mean are you happy now or are you still unhappy and how is the relationship with the others, Sesedi and  
20 Dlamini and the others because you work in the same team?

**MR KHAYA ZONKE:** We work in the same team by name but we are very fragmented, the people, other people, many people not talking to each other. So you do your own things, there's no meetings so we never know who's thinking what, who's doing what at any given time at the legal department. So legal department is not in unison, a legal department should be a hub of activity of people engaging, putting their minds together

on issues of the law, certainly the opposite at the PIC for many years now. Am I happy? I've never allowed myself not to be happy.

**ADV JANNIE LUBBE SC:** You have also ... (intervention)

**MS PAMELA PHALA:** I continue to do my work.

**ADV JANNIE LUBBE SC:** You have also mentioned that this position has now again been advertised, the Executive Head Legal and you have applied for that?

**MS PAMELA PHALA:** I have applied for a position that is mine.

**ADV JANNIE LUBBE SC:** And you will be interviewed for that position?

10 **MS PAMELA PHALA:** They were moved from Friday, I'm meeting them today at three o'clock.

**CHAIRPERSON:** I suppose you do realise of course that the bonus pool have been dropping in size haven't you, isn't that why your bonus has not been what it was before?

**MS PAMELA PHALA:** Well as an example my rating was changed from a 4.1 or a 4.2 to 3.6 and I think it's because the legal views, there was nothing wrong or different with the manner in which I did my work. It must be the type of opinions that I've given or the type of actions that I've taken the past year. I never asked why, I just let it go but it did affect my bonus at the end of the day.

20 **CHAIRPERSON:** So that is it. You will make available to the legal team the documents that you have been reading through, that is not in your statement okay.

**MS PAMELA PHALA:** I will do so Sir, thank you.

**CHAIRPERSON:** Otherwise thank you very much for your time, thank you for the decision to come and place some evidence before us as to what's happening in the PIC, we are not promising about your position but it's part of our work to look at the governance within the organisation. So you've helped us a lot with some of your

evidence. Okay thank you very much.

**MS PAMELA PHALA:** I thank you for the opportunity, thank you.

**CHAIRPERSON:** And I hope if there is anything that we need you for that you would be able to come back for whatever thing that we want clarity on, you'll be prepared to come back to us?

**MS PAMELA PHALA:** Anytime.

**CHAIRPERSON:** Thank you so much.

**MS PAMELA PHALA:** Thank you Sir.

**CHAIRPERSON:** Thank you, you are excused.

10 **ADV JANNIE LUBBE SC:** Mr Commissioner we're ready to proceed with the next witness but perhaps we can have a brief adjournment before we do so?

**CHAIRPERSON:** Who is your next witness?

**ADV JANNIE LUBBE SC:** It's the witness Zonke and it will be on the VBS matter Mr Commissioner.

**CHAIRPERSON:** Alright let's take a 15 minute break, quarter past 12.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**ADV SECHABA MOHAPI:** Thank you Mr Commissioner our next witness, Mr Zonke is ready to take the oath.

20 **CHAIRPERSON:** Good day Mr Zonke.

**MR KHAYA ZONKE:** Good day Commissioner.

**CHAIRPERSON:** Can you stand up please. Your full names are?

**MR KHAYA ZONKE:** My name is Khaya Zonke.

**CHAIRPERSON:** I didn't hear?

**MR KHAYA ZONKE:** My name is Khaya Zonke.

**CHAIRPERSON:** Khaya Zonke.

**MR KHAYA ZONKE:** Yes.

**CHAIRPERSON:** Do you have any objection to taking the oath?

**MR KHAYA ZONKE:** No I don't.

**CHAIRPERSON:** Do you swear then that the evidence you're about to give will be the truth, the whole truth and nothing but the truth, raise your right hand and say so help me God.

**MR KHAYA ZONKE:** So help me God.

**CHAIRPERSON:** Thank you. You may be seated.

10 **ADV SECHABA MOHAPI:** Mr Zonke you've prepared a statement from which you're going to be giving your evidence on the VBS transaction is that right?

**MR KHAYA ZONKE:** That's correct.

**ADV SECHABA MOHAPI:** And you do so in the context of what you do in your particular division, the Portfolio Management and Valuations Division is that correct?

**MR KHAYA ZONKE:** That's correct.

**ADV SECHABA MOHAPI:** So you'll be taking the Commission through how you've monitored this particular investment at VBS?

**MR KHAYA ZONKE:** That's correct.

20 **MR EMMANUEL LEDIGA:** Can you please get your mic closer, I think you know Advocate, ja okay.

**ADV SECHABA MOHAPI:** Okay so can we begin in your statement from paragraph 1.

**MR KHAYA ZONKE:** Thank you. Thank you Commissioner. I'm an adult male currently employed by the Public Investment Corporation as a Senior Manager in Portfolio Management and Valuations in Isibaya. I joined the PIC as a Senior Market Risk Analyst in 2012 after spending three years at the Reserve Bank as a Senior

Analyst for Market Risk in the Banking Supervision Department. I spent three years at Market Risk at PIC first as a senior analyst and then manager before moving to Isibaya PMV as a manager in 2015 and as a senior manager in 2016. I have obtained the following qualifications; a MPhil Degree, BCom Honours and a BCom Degree all from the University of Cape Town.

I am going to move to the second part ... (intervention)

**MR EMMANUEL LEDIGA:** Mr Zonke can you please explain what market risk is, what do you do there when you say you deal with market risk?

**MR KHAYA ZONKE:** So that was my first position at the PIC. So our role had mainly  
10 had to do with listed investments so it entailed among other things analysing the risks in the portfolios. We looked at all types of risks including market risk, credit risk, issues around derivatives and we did a lot of stress testing on the underlying portfolios for the different clients and we reported to the Chief Risk Officer at the time. So that was my role when I joined, that's where I spent three years before moving to Isibaya as a manager in PMV.

**MR EMMANUEL LEDIGA:** Did you look at mandate risk?

**MR KHAYA ZONKE:** Mandate risk or mandate compliance there was a team that looked at that aspect of you know risk, otherwise market risk was not responsible for mandate compliance.

20 **ADV SECHABA MOHAPI:** Just before moving, for the sake of completeness do you know which team was looking into that, into mandate compliance?

**MR KHAYA ZONKE:** There was a team, I think it was called static data and mandate compliance under risk.

On paragraph 3: I have been requested to give evidence to this Commission relating to the VBS Mutual Bank which I refer to as VBS. I set out below in some detail

the role of the portfolio management and valuations, PMV, a division to give the proper context to our division's monitoring of VBS. PMV forms an integral part of the Isibaya Division. Its primary responsibilities are to proactively monitor and analyse both financial and non-financial performance of Isibaya investments through deal life cycle. Some of the key functions of the department include but are not limited to actively monitoring financial performance and financial governance of Isibaya investments through the investment tenure of the investment; assess the quality of investment and detecting early warning signals of deterioration and thereby aide to minimise impairments.

10 We provide early warning signals for possible distress scenarios to the relevant PIC governance committees and implementation of remedial actions. The team identifies triggers for distress and recommend distress companies to PMC unlisted for workout and restructuring. The team recommends investments to PMC unlisted for workout.

**ADV SECHABA MOHAPI:** While we're here Mr Zonke what's the staff compliment, who constitutes the team?

**MR KHAYA ZONKE:** Alright thanks. I've already, I do have a section that deals with this that's section or paragraph 22 to 24 which I'll read. The departments reports to the Executive Head Investment Management. The department is made up of one senior  
20 manager, that's myself, four portfolio managers, nine associates and two analysts which is a staff compliment of 16. Currently there are four vacancies, one for portfolio manager, two associates and one analyst and these positions were created by there were resignations and a promotion but we are currently filling these vacancies.

I have been involved with monitoring of Isibaya investments since 2015 when I was appointed to the role of portfolio manager PMV and later moved to a

position of senior manager PMV. I have thus been involved with the monitoring of VBS since June 2015 when I joined Isibaya PMV. The structure of the team is such that an associate is responsible for most of the monitoring work at an investee company level and that includes compilation of reports for internal committees, client site visits, liaison with investee company and any other related work.

The portfolio manager is responsible for overseeing the work of the associates that report to them and to assist the senior manager with the unit's work. The senior manager is responsible for the overall work of the team including coordinating internal committee submissions and presentations, stakeholder both  
10 internal and external management, client engagement, strategy for the unit and more importantly to provide leadership to the unit.

**ADV SECHABA MOHAPI:** Okay so we're going to go back to paragraph 6 of your statement having covered the department, while we are also here Mr Zonke can you give the Commission a contrast with the listed department, the listed division in relation to monitoring investments, how does that happen?

**MR KHAYA ZONKE:** Thanks. So the investment process is slightly different between the two divisions in that within unlisted I've actually attached the investment process here for unlisted investments. It's different in a sense that in the unlisted investments a deal maker or a transactor and mainly these are unknown unlisted companies all the  
20 way through exit right. And the difference is that in listed investments most of the investments or the companies they analyse are listed and in most instances there are no intentions to exit. So for unlisted investments the process is such that a transactor will take the transaction from initiation up until its approved by relevant committees and after that the transaction is handed over to support functions that will monitor the investment. But that does not mean that the transactor divorces himself or herself from

the transaction, they are still part of it but the heavy lifting you know is transferred to another division which is PMV and ESG. And most of the work post the first disbursement is done by those two teams. I think the difference are Commissioner is that the intention in the unlisted space in the main is that the deal life cycle is different in that there's origination up to exit wherein unlisted in the listed space in most instances there's no intention to exit.

**ADV SECHABA MOHAPI:** Thank you, let's move on.

**MR EMMANUEL LEDIGA:** Ja if you could just give us the pecking order, you know who do you report to is that the GM and then the executive heads, just give us a sense  
10 there.

**MR KHAYA ZONKE:** Right I report to the Executive Head Investment Management, there's no general manager in our division and I think she reports to the CFO.

**ADV SECHABA MOHAPI:** Okay paragraph 6?

**MR KHAYA ZONKE:** Paragraph 6, our involvement in the Isibaya investment process or deal life cycle is demonstrated by the diagram sourced from the PIC's investment process for unlisted investments. So I've attached this diagram so as to demonstrate exactly where PMV gets involved. As you would see on the top left there there's an arrow which shows that we PMV team gets involved at handover.

**ADV SECHABA MOHAPI:** So that's where the heavy lifting begins as you described?

20 **MR KHAYA ZONKE:** Exactly, in the main in that the transactors after approval right they hand over the investment to supporting units which is post investments, PMV and ESG right and from there most of the work that's done and that also goes through committee submissions it will be done by the PMV team but of course the transaction team will always be part of that particular investment. So what I'm trying to demonstrate here the team gets involved from the meeting handover up to exit. So if I

may move on to paragraph 7?

**CHAIRPERSON:** Just before you do, if I can just refer you to paragraph 5 you are speaking of 5A where you speak of financial governance, what does that mean, can and can all, or must be done and mustn't be done and mustn't be done was things that need to be adhered to?

**MR KHAYA ZONKE:** Thank you Commissioner. Financial governance are mainly risk mitigants in these transactions and companies are meant to adhere to. So what the team does is an assessment firstly we get a governance certificate from the company itself that will confirm if they still meet our financial governance and the associate or  
10 the person for it will go through it to analyse if it is actually indeed the case. So it's something that these companies are meant to adhered to.

**ADV SECHABA MOHAPI:** Great, let's proceed paragraph 7.

**MR KHAYA ZONKE:** So from paragraph 7, once all CP's have been met a process run by the legal team. The legal team prepares and issue a legal issue precedence satisfaction letter to the client serving as a confirmation that all CP's have been met and that the agreements are unconditional. After the finalisation of legal agreement a handover meeting is convened by the investment management operations team where all relevant stake holders including PMV, investment finance, investment teams, ESG, legal and risk will be invited to the meeting. The purpose of the meeting  
20 ... (intervention)

**MR EMMANUEL LEDIGA:** Just a question, to take you back to my question earlier, in terms of the structure I just want to understand a senior manager and a general manager are they same level, same pay grade so to say?

**MR KHAYA ZONKE:** I don't know.

**MR EMMANUEL LEDIGA:** Okay because in the listed section it seems there's a

general manager before the executive head and in your division there's a senior manager and the executive head.

**MR KHAYA ZONKE:** Correct Commissioner that's the structure in our team.

**MR EMMANUEL LEDIGA:** Ja, ja okay alright.

**ADV SECHABA MOHAPI:** Thank you, we are at paragraph 8 of your statement.

**MR KHAYA ZONKE:** Alright thanks. The purpose of this meeting, the handover meeting, is to appraise all relevant internal stakeholders about the transaction where the structure of the deal and investment fundamentals are explained by the investment teams to ensure common understanding and to clarify any transaction related issues.

10 Once the handover process is complete the transaction will move to a disbursement process. Following completion of the handover stage the investment team assisted by the Isibaya operations team prepares a disbursement file.

The initial disbursement file will be prepared in line with the disbursement checklist which is signed off in line with the delegation of authority. Once disbursed the transaction moves to the post investment monitoring teams which includes PMV and ESG. For subsequent disbursements the Isibaya operations team is responsible for initiating drawdowns upon receipt of drawdown or utilisation requests from the investee companies.

**ADV SECHABA MOHAPI:** So in other words when dealing here with VBS they would  
20 make their drawdown requests in respect of the R350 million revolving credit facility they were to do that with you, with the PMV Department?

**MR KHAYA ZONKE:** Alright thanks. No the process is that the request will go the investment operations team so the team, I think Sello was here, he explained what they do and what they will check. So it will go through their team first and they will check what they need to check and then process the drawdown. The drawdown will come to

our team because we also check, we're also signatories to the subsequent drawdowns so we'll also confirm that the conditions have been met.

I'm on paragraph 14. Post disbursements the transaction is monitored and reported on by PMV, ESG and investment teams until exit. PMV prepares and investment report based on the approved structure which includes financial performance, risk rating and any other monitoring aspects of the investment. The portfolio reports are prepared on a quarterly basis once information from investee companies has been received for submission to finance and valuations committee and subsequent committees as per the delegation of authority.

10 All Isibaya investments are risk rated quarterly, the portfolio is disaggregated into four categories namely: performing, underperforming, watch list and distressed, in accordance with the internal risk classification criteria. Performing investments are those performing in line with expectations and do not exhibit significant deviation from base case assumptions. Furthermore, these companies show no observable signs of the clients' investments to be at risk.

Underperforming investments are those performing below expectation and have significantly deviated from base case assumptions. These investments depict material adverse change to key financial performance measures such as, but not limited to, EBITDA margins, changes in working capital and changes in capital  
20 structure. These investments usually require performance improvement initiatives to improve revenues, margins and profitability and this leads to a close and ongoing interaction between the company's management and the PIC.

And mainly the discussion with regards to underperforming investments is with management of these investee companies but it will be reported to PIC committees on a quarterly basis. On paragraph 19 watch list investments are those investments

that depict early signs of distress that are characterised by high debt levels, declining revenues, increasing overheads, loss of competitive edge amongst other factors and other qualitative factors. There are other several material factors such as, but are not limited to, breach of covenants, default on payments and *force majeure* events that are considered as triggers for classification under watch list.

Distressed investments are those investee companies that are reasonably unlikely to pay their debts as and when they fall due or will become insolvent within the immediately ensuing 6 months or have their fair value of its liabilities exceeds its assets and other several triggers.

- 10 **ADV SECHABA MOHAPI:** When you speak of triggers Mr Zonke is there a criteria that triggers these criteria which we can submit to the Commission and which detail each one of these categories?

**MR KHAYA ZONKE:** Alright thanks. We do have an approved criteria that we have submitted and it was approved by PMC which I'll be happy to share with the Commission.

**ADV SECHABA MOHAPI:** I confirm Mr Commissioner that we will obtain that document that speaks to this classification.

**CHAIRPERSON:** So you're not able now just to summarise?

**MR KHAYA ZONKE:** I can provide it Commissioner.

- 20 **CHAIRPERSON:** Can you? No, no I mean now that you are giving evidence before us, are you unable to summarise for us?

**MR KHAYA ZONKE:** Oh the triggers?

**CHAIRPERSON:** Yes.

**MR KHAYA ZONKE:** Yes I can.

**CHAIRPERSON:** Please do.

**MR KHAYA ZONKE:** Alright I'll go back to underperforming investments because there are several triggers under performance, they are about 15 triggers for watch list and there's about eight for distress investments. So I'll take you through all of them.

**CHAIRPERSON:** Are they different?

**MR KHAYA ZONKE:** Yes they are different.

**CHAIRPERSON:** The distressed investments one now then you can give the rest to council.

**MR KHAYA ZONKE:** Thanks Commissioner. One of the triggers we look at for distress investments is material adverse events in these companies. Impairments of the debt instruments we look at whether or not the company is likely to be placed under business rescue or there's a pending liquidation application. We look at if for instance a company is about or has lost its operating licence. We look at if the company has failed to redeem the pref shares or its debentures to the PIC or other debt holders. We look at if the company intends for instance to see some, a big portion of its operations then we deem that to be distress. So there's quite a number of them, there's about eight under distress like I say but for watch list it's about 15 and there's about five for underperforming and that we'll share with the Commission.

**ADV SECHABA MOHAPI:** It's just the last sentence of your paragraph 20.

**MR KHAYA ZONKE:** Paragraph 20 right, I'm still reading on paragraph 20 under distressed investments. Again what we assess if there are observable signs that the clients' investment is at risk and there is a reason to doubt the recoverability of the invested capital if a turnaround strategy or restructuring is not commissioned. So with these distress investments it's not an indication that these investments are written off, it's a classification such that the interventions that we put in if successful we are able to turn them around and they are rated differently.

**ADV SECHABA MOHAPI:** Now while we're here Mr Zonke can you tell the Commission what happened in relation to VBS, under what categories did it fall and yes, so what happened there?

**MR KHAYA ZONKE:** Thank you. So with VBS it was one of those scenarios that will happen once right, I mean this investment was rated green, i.e. it was performing in line with the expectation until the liquidity crunch. So it moved from performing in line with expectation to distressed so it didn't move between performing, underperforming, watch list, it skipped underperforming and watch list and all the way to distressed.

**ADV SECHABA MOHAPI:** And what was the cause for that.

- 10 **MR KHAYA ZONKE:** So the cause for that, throughout our monitoring of the company we were quite happy with the performance, I mean the issues, we started raising issues in around October 2016 when we saw that the municipal deposits were declining and we actually sent a question to the CFO and the question was actually answered and the response we got was they typically you know we'd get municipalities withdrawing funds close to the year end and they will replace those deposits once they close their year end and that was the response. And that happened around October 2016, we do have that response in writing I think from the company itself. So at that time the company was doing well, we supported their strategy, I mean among other things I remember a meeting we had with the company in 2016 outlining their five year strategy, that among
- 20 other things they want to move being a regional bank to a national bank.

They want to move from being a mortgage bank to a corporate and retail bank and to that end they had raised about R360 million from the three municipalities, R350 million from the PIC and they were in the process of approaching other targeted clients such as taxi unions, churches, SME's and you know the general retail clients and we actually supported that strategy, we thought it's something that could work. And

they had actually demonstrated that they were actually you know on their way in doing that, I mean the initiatives that they put together we, and that was reported us, they were quite good, they had opened a corporate office here in Joburg in Rivonia. They had opened a branch in Joburg CBD, they had actually started with internet banking. So for us those signs were very good signs of a bank that wants to expand and want to do the right things. So it is because of that that it was rated as a performing investment.

**MS GILL MARCUS:** Were you aware at the time that municipal deposits were not legal and you said they raised R350 million was that not a very specific revolving credit  
10 facility that had been earmarked for certain types of activity?

**MR KHAYA ZONKE:** Yes, thank you Commissioner. The 350 indeed was for the fuel facility that was raised from the PIC.

**MS GILL MARCUS:** Just the fuel facility not general contract facilities with government?

**MR KHAYA ZONKE:** Yes, and they had raised about R360 million from three different municipalities at the time, I think they had raised about, I'll quickly check that. At the time they had raised about R160 million from Vhembe, R60 million from Capricorn and another R146 million from Westrand.

**MS GILL MARCUS:** But were you aware that those were, that the municipalities were  
20 not allowed to invest into a mutual bank?

**MR KHAYA ZONKE:** Alright Commissioner we were not aware of that at the time and we could not think that they were not allowed to deposit because the bank was specifically targeting municipalities as part of their growth strategy so we thought that it's something that was legal.

**ADV SECHABA MOHAPI:** I note that you mentioned churches. Do they have money?



**MS GILL MARCUS:** The month and year of granting the revolving credit facility.

**MR KHAYA ZONKE:** Okay. I think I do have it somewhere here.

**MS GILL MARCUS:** Perhaps continue and we can find that and just provide it.

**MR KHAYA ZONKE:** Okay. Alright.

“VBS duly complied and paid the outstanding amount on the same day. I have attached both the letter of demand and proof of payment as Annexure F25 and F27.”

**ADV SECHABA MOHAPI:** So in the documents which have been submitted to the commission, Mr Commissioner, it's tab F25 and F27.

- 10 **MR KHAYA ZONKE:** “We issued another letter, but this time it was a letter of notification for outstanding management accounts and overdue quarterly meetings on the 3<sup>rd</sup> of March 2017 as VBS was in breach of the obligation set out in clause 10.1.1.1 up to 10.1.5 of the loan facility agreement.”

And I believe the agreement is also attached.

**ADV SECHABA MOHAPI:** The final – or executed credit facility agreement appears at tab 10, for the record, and those clauses appear pages 20-21, Mr Commissioner, of the document starting in tab 10. Alright.

**MR KHAYA ZONKE:** On paragraph 28...

- 20 **ADV SECHABA MOHAPI:** Continue.

**MR KHAYA ZONKE:** “VBS main shareholders, the GEPF, held a 25.26%

stake, Dyambeu Investments 25.22, and various organisations and individuals held about 49.51%.”

**MS GILL MARCUS:** Can you tell us who Dyambeu is and the various organisations

and individuals.

**MR KHAYA ZONKE**: I can provide... I actually don't know who Dyambeu Investments, and the other organisations and individuals, I don't have specific details but I can provide that information to you.

**MS GILL MARCUS**: I think it's important.

**MR KHAYA ZONKE**: Noted, Commissioner. We'll provide that. So these were shareholders before the company embarked on a long-term capitalisation strategy, and I think this links to what I mentioned earlier, the strategy 20/21. That's when they first started with the rights issue.

10                   “The first rights issue was approved by a special General Shareholder's Meeting in December 2015 and was implemented in March 2016. At the time Vele Investments did not own shares in VBS and subsequently held 5 100 shares to the value of 51 100 after the first rights issue.”

**MS GILL MARCUS**: Sorry, can you explain how if there is a rights issue, a first rights issue, how a company that does not own shares gets shares? I would have thought the rights issue is for existing shareholders to follow their share – their rights to acquire more shares, so how would Vele, and who Vele is, obtain those shares and at what value the shares were and did they actually – did money actually arrive in the account?

20   If you've bought that amount of shares, 5 100 shares to the value that is there, so much per share, who Vele is, how they followed their rights when they didn't have any shares in the first place and whether the actual money was paid into the VBS account.

**MR KHAYA ZONKE**: Thanks, Commissioner. The issue around Vele was very problematic to us in that we asked for a registration of shareholders from the company. We wanted to find out exactly how this entity came from zero shareholding to, I think at

the time they held about 4% after the first rights issue, and after the second rights issue they were majority shareholders in the business. We expressed our concerns and management actually never responded to our concerns. They never gave us the share register and it's something that we requested for the longest time. And to answer the question around whether the money was paid for the shares, Commissioner, I actually don't know if the money was actually paid, and from PIC's perspective it would be difficult to verify, you know, if monies were paid by either Vele or the individual shareholders when they were exercising their rights.

**MS GILL MARCUS:** But you have two members on the board who are there to  
10 represent the shareholder and I would have thought it is a very simple question to ask representatives, as PIC, how does somebody follow their rights when they don't have shares in the first place and did the money get paid? Surely your CEO should have said – raised the concern. He's written a letter before in relation to what you'd pointed out earlier in terms of management accounts in paragraph 27. I would have thought you would want to know how somebody becomes a shareholder following rights when they don't have a share in the first place, and then the PIC's shares get diluted. It doesn't make much sense to me that you can't get that information.

**MR KHAYA ZONKE:** Thank you, Commissioner. Our shareholding was not diluted because we followed our rights. But ... (intervention)

20 **MS GILL MARCUS:** At the time? Because elsewhere I seem to have read that you did it later, that you weren't notified.

**MR KHAYA ZONKE:** Yes. Yes.

**MS GILL MARCUS:** So was done later.

**MR KHAYA ZONKE:** Ja, subsequent, ja. It was done later.

**MS GILL MARCUS:** Why would you have not been notified if it's a board decision to

issue shares?

**MR KHAYA ZONKE:** So, Commissioner, these are the issues that we've had with the company.

**MS GILL MARCUS:** But did you raise it with the CEO and was it raised with the board?

**MR KHAYA ZONKE:** It was raised with the board.

**MS GILL MARCUS:** Yourselves, or by the CEO?

**MR KHAYA ZONKE:** It... Well, I wouldn't say... Not to the board. Let me correct that. But it was raised to the CFO because CFO would issue all the shareholder's  
10 communication, right, so we would raise that with the CFO and that was our contact person at VBS. So we'd raise all these issues and he had all, you know, manner of excuses on why we did not get the notification, ranging from sending it to wrong people and trying to correct that and trying to find out exactly who they should be sending such communiqué to the PIC. So these issues were raised at various stages in both the first and the second rights issue.

**MS GILL MARCUS:** And within the PIC who did you raise it with? I mean, the question I'm trying to get to is given the problems that you were experiencing how was it escalated within the PIC given that your Head of Risk and your Head of Legal are sitting on the board?

20 **MR KHAYA ZONKE:** Chair, from the post-investments team it's probably an oversight from our side in that we did not have a formal, you know, session where we'd go to either the Head of Legal or the Head of Risk where we had concerns. We'd express our concerns to, firstly, the company via the CFO and to our internal committees, but not to the direct individuals. So everything that we experienced, all the problems that we had, were raised through our internal committees, through the post – sorry –

portfolio management committees for unlisted investments.

**MS GILL MARCUS:** And perhaps would it be a question that said if you would normally do that through Risk and Legal the question would be those very people are sitting on the board so they either should have been able to answer you or there would have been a conflict of interest?

**MR KHAYA ZONKE:** Correct, Commissioner, because the two individuals were actually – they were part of PMCs, PMCs that sat on these issues that we would have raised. But I don't recall these two individuals responding to any of the issues we had.

**MS GILL MARCUS:** Then just in relation to paragraph 28, if we can follow up with  
10 exactly who Dyambeu Investment is, the various organisations and individuals, and whether Vele had the ability to follow – or to obtain shares in a rights issue where they had no shares in the first place. And finally, in relation to that, what price they paid and whether that money was actually deposited into the VBS account.

**MR KHAYA ZONKE:** Noted, Commissioner. We will do so. Paragraph 29:

“The Board of Directors resolved to embark on a second rights  
issue.”

**MS GILL MARCUS:** When was this in relation to the first one?

**MR KHAYA ZONKE:** This one... I'm going to have a look. I'll get back to you.

**MS GILL MARCUS:** Again, if you can, just indicate whether the PIC was notified on  
20 this occasion in due time that it could follow its rights.

**MR KHAYA ZONKE:** If I can be of assistance, Commissioner, appearing at tab 2 is the round robin resolution which approved the second and third rights issue, but I haven't looked to see whether the first rights issue, you know, the date between that and the exercising of the second and third. Paragraph 29:

“The Board of Directors resolved to embark on a second rights

issue and this was done on a two-shares-for-everyone held basis. Shareholders who did not take up their rights were diluted, and this includes the GEPF due to the timing and committee approvals processes at the PIC. It was during this process that Vele Investments' shareholding increased to 53.2% with 8-million and about shares to the value of 80 000 051."

On paragraph ... (intervention)

**MS GILL MARCUS:** Sorry, just in relation to that, looking at your document, paragraph 14 under tab 2, it says:

10            "The PIC was unable to timeously take up its rights issue due to the late delivery of the rights issue notice and the bank agreed that the PIC be allowed, with the third rights issue, to take up its rights because they were diluted down to 11.9% so that they could go back to its initial shareholding of 25.26."

              So the question for me is: You don't get notified on the 1<sup>st</sup>. You don't get notified on the 2<sup>nd</sup>. Does it not ring some alarm bells that you've then got two board representatives, nominees are sitting on the board and the board, the shareholder they're supposed to represent the interests of are not notified of rights issues? I mean, was there not something internal in the PIC that picks this up and says hey, there's  
20 something going on here that's not kosher, for want of a better word?

**MR KHAYA ZONKE:** Commissioner, perhaps, you know, we should have raised, you know, alarm bells then, but at the time, like I said earlier, that all our issues are tabled at committee and the committee, that's where you have the CEO and the CFO and you have all the ExCo members that deal with investments, so – and including these two gentlemen. So, at the time, for us, when you raise these issues at committee we're of

the view that it's the highest structure of, you know, investments and thus if any decision or any queries – they can be tabled there because the two individuals are part of the committee. But I suppose then, I mean, maybe we should have done it differently. On paragraph 30 ... (intervention)

**MS GILL MARCUS:** Just stay with paragraph 29 a second. I think the same thing applies, is that Vele, who then had a very small shareholding, suddenly becomes the major shareholder, with shares to the value of R80-million, as I understand that. And was that funding actually also deposited into the Venda bank account? I want to know that the shares were actually paid for. If we can find that out? And I think, again, we  
10 just need to know exactly who Vele is.

**MR KHAYA ZONKE:** Noted, Commissioner. We will provide that... We will obtain and provide that information. On paragraph 30, Mr Tshifhiwa Matodzi was already the chairperson of the board of VBS during the first and second rights issue and the post-investments team was not aware of this fact during this process, and the reason I put this here, Chair – Commissioner, is that this gentleman happened to be the chairperson of Vele Investments at the same time. But what I was trying to point out is that we were not aware because, I mean, before the first rights issue Vele Investments were nowhere and suddenly after the second rights issue they were the major shareholder in the business.

20 **MS GILL MARCUS:** At the same time he is the chair of Vele and you only discovered it subsequently?

**MR KHAYA ZONKE:** Correct.

**MS GILL MARCUS:** Okay, so he chairs the board and he chairs Vele?

**MR KHAYA ZONKE:** Correct.

**MS GILL MARCUS:** And they become the major shareholder, so it does become

important to know what was actually paid for.

**MR KHAYA ZONKE:** Yes.

**ADV SECHABA MOHAPI:** If you look at... A question there. You know, the Annexure 3, Annexure 3 talks about, if you look at page 2, paragraph 5, it talks about the shareholders of the bank.

**MR KHAYA ZONKE:** Yes.

**ADV SECHABA MOHAPI:** Ja.

**MR KHAYA ZONKE:** I'm looking at it.

**ADV SECHABA MOHAPI:** Could it be that the Vele bought out all these people  
10 without the PIC knowing about this. There was an exchange of shares there.

**MR KHAYA ZONKE:** Commissioner, that was the communication we got from VBS, in that where other organisations and individuals don't take up their shares that's then Vele actually took up the – actually subscribed for their shares. That was the communication we received from VBS, as into how they became major shareholders.

**ADV SECHABA MOHAPI:** Didn't the PIC have first right of refusal on the shares?

**MR KHAYA ZONKE:** Not necessarily. But I can... Let me say I can provide more information on this, because I'm not sure if there were pre-emptive rights, according to the shareholders' agreement.

**ADV SECHABA MOHAPI:** Okay. Right. May I continue? Okay. I'm on the second  
20 sentence of paragraph 30.

“We were aware that Vele Investments had diluted most of the individual shareholders who did not take up their rights during the second round of capital raise and, to a large extent, also Dyambeu Investments were diluted. PIC's participation in the rights issue was to assist the company with their capitalisation programme and

had no intentions to increase GPF shareholding in the business, hence only subscribed to what was allocated and maintained the 25.26 shareholding. Our interaction was mainly with the investee company, which is VBS in this instance, and not the other shareholders, whom we did not have exposure to.”

So here I was trying to point out that we never had bilateral meetings with Vele or Dyambeu Investments when they were the second-largest shareholder. Our interactions were mainly with VBS, our investee company. Commissioner, that is my statement.

10 **MS GILL MARCUS:** Just for clarity, the CEO at the time was Mr Ramavhunga?

**MR KHAYA ZONKE:** That’s correct.

**MS GILL MARCUS:** And the chair Mr Matodzi?

**MR KHAYA ZONKE:** That’s correct.

**MS GILL MARCUS:** And the two nominees on the PIC – on the board on representing or looking after the interests of the PIC were Mr Magula and Mr Nesane, the Head of Risk and the Head of Legal?

**MR KHAYA ZONKE:** That’s correct.

**MS GILL MARCUS:** Thank you.

20 **ADV SECHABA MOHAPI:** In fact, in relation to the appointment of Mr Nesane and Mr Magula tab 1, Commissioner, speaks to that. It’s a memo to the board to nominate the two gentlemen to the VBS board.

**MS GILL MARCUS:** And Mr Nesane was the main member. Mr Magula was the alternate until he became a full director as well. That’s correct.

**ADV SECHABA MOHAPI:** Ja. Another question is on the exposure of the PIC to the bank. In total, when the bank went down, what was the total amounts, both equity and

the facility?

**MR KHAYA ZONKE:** Alright. So we... Excuse me. The equity exposure was around 108-million, 1-0-8, and then if you add the 350-million facility that takes our exposure to 458.

**ADV SECHABA MOHAPI:** Ja. H'm.

**MR KHAYA ZONKE:** That was the – GPF's exposure at the time of liquidation.

**ADV SECHABA MOHAPI:** And did the PIC have other clients there like UIF or the others? No?

**MR KHAYA ZONKE:** No. No, Commissioner. It was only GPF that was exposed to  
10 VBS.

**ADV SECHABA MOHAPI:** And what happened to the facility? Was it ever repaid? Or it's still in court processes now? What happened to it?

**MR KHAYA ZONKE:** Yes, we are still waiting for the liquidation process, so that's where we are. At the moment the facility is not serviced.

**ADV SECHABA MOHAPI:** Because you are PMV, do you know whether the amounts, you know, were given, you know, the loans were extended to the fuel suppliers and all that?

**MR KHAYA ZONKE:** Thanks, Commissioner. So what we used to do is that we used to have quarterly meetings with the company based on this facility and the quarterly  
20 meeting really had... It was part of the legal agreements, that we need to have an update meeting on a quarterly basis and they will give us a list of the underlined clients, companies that they have lent out money to. And the list, we never – we did not go through, you know, these companies, who they are and so forth, but what was confirmed by the company, in that this is what these companies do, this is the amount that was advanced to them and this the amount of fees they are generating and their

repayment profile. That we used to get on a quarterly basis from the company.

**ADV SECHABA MOHAPI:** This could be coming through, you know at some point, but was that list real? I mean, you know, was that a proper list? Was that business being done there? Hindsight, maybe?

**MR KHAYA ZONKE:** Ja. Perhaps, Commissioner, we should have done a bit of – a bit more work on that in terms of verifying these companies. I mean, the answer to that, I don't if those companies were real companies. But, you know, we... I think, from our – from the team, we relied mainly on management. What management told us, you know, we did not have a reason to second-guess what they were telling us because we did not  
10 have any experience of, you know, wrongdoing and so forth. Our relationship with the company was okay, so when they provided us with the list we believed that was – those companies were in existence and the amounts that the – you know, that were reflected in the report were actually the amounts that were advanced to these companies. That was our belief.

**ADV SECHABA MOHAPI:** And broadly, I mean, given the – what the PIC, you know, suffered from the losses, or is suffering, where do you think the fault lies? I mean, was it from the PIC side? Or you were blindsided by the bank? You know, where does the blame lies?

**MR KHAYA ZONKE:** Commissioner, it's a difficult one for us in that with all the three  
20 lines of defence at the bank they could not prevent this massive fraud. We relied on assurance providers such as Internal Audit. That was done by PWC. External audit that was done by KPMG. And, of course, since it's a mutual bank they were interacting for the Reserve Bank. So in... It was difficult for... It's quite difficult for us to say, you know, PIC is to blame here in that we actually placed a lot of reliance on these external – or these assurance providers and, you know, if we get audited statements from a

reputable audit firm there was no reason for us to second-guess that. And I wouldn't say, you know, PIC was entirely at fault here. I think, you know, when, you know, most of things are put together the – you don't anticipate that, you know, fraud will happen at the highest level from board and executive managements, so when you put these things together you want to prevent, you know, employees or junior staff from defrauding the company but, I mean, you don't anticipate that your board of directors and your executive management will collude to defraud the company. So from our side, as the PIC, it was – it's a difficult situation and I still don't know how we could have done it differently.

10 **ADV SECHABA MOHAPI:** Ja, the concern is that this happen again, in a sense that, you know, what are the lessons learnt? Because if the PIC kind of relies on the big name accounting firms, the Reserve Bank or, in the place of Steinhoff, JSE and all that, I mean, what are the lessons learnt, you know, by the PIC? Because if they are not learnt this could happen again. Some massive fraud can happen again and this can be billions of rands, not the 500-million or so that the PIC lost at the – with the VBS Bank.

**MR KHAYA ZONKE:** Commissioner, it's a difficult one for us. I mean, these transactions, ideally they are done on – they are concluded on trust, you know. You trust that your counterpart is doing – what they are doing is right. And like I said earlier, you know, at no point where we were concerned, especially where we had, you know,  
20 assurance providers of the calibre of PWC and you had KPMG as auditors. There was no point where we actually thought that there was something untoward that was happening. Now, to come back to lessons learnt, again for us, we still rely heavily on external – or assurance providers. We still rely on external auditors. We don't have other avenues, if I can call it that. We assume that the audited statements, you know, are what they are. We don't assume – or we don't... Like I'm saying, even now,

Commissioner, we still use audited statements. We don't think that there's something wrong or they're concealing, you know, information from us. So it's quite a difficult one and there is quite a lot of things that we are learning, including, I suppose, you know, our nominees on these boards, how we interact with them, but it's a process that's going on internally on what lessons actually are learnt from this experience.

**ADV SECHABA MOHAPI:** Okay. Alright.

**MS GILL MARCUS:** Can I just ask one last question in relation to the revolving credit facility, that if you could it with R350-million how much was used as intended, how much was spent somewhere else, and whether any of that was actually drawn down or how  
10 much was drawn down of the facility in relation to that expenditure? So that was it the full 350-million that was drawn down and utilised? Obviously, because you're saying that that was part of the exposure on assumes that it was, but how much of that was then used for the intended purpose? Thank you.

**MR KHAYA ZONKE:** Thank you, Commissioner. We will also obtain that. I might, at this point, just put on record that I'm aware of the application for liquidation of Vele and sequestration of various role-players in that matter. It's the matter of VBS v Vele and Various Others and Judgment came out. It's the Judgment of Mr Tsoka (J). Perhaps that might also be of assistance because it paints the entire picture of how this massive fraud was perpetrated within VBS.

20 **MS GILL MARCUS:** Can we get the Judgment submitted to us so that we can go through that? When was the Judgment made?

**MR KHAYA ZONKE:** Pardon me?

**MS GILL MARCUS:** When was the Judgment given? Some time back?

**MR KHAYA ZONKE:** It must have been late last year.

**MS GILL MARCUS:** Okay, if we can get that as part of the documentation on VBS I

think that would be very helpful.

**CHAIRPERSON:** Should we adjourn? Should we adjourn now?

**MR KHAYA ZONKE:** I see that we are into the lunch hour, Mr Commissioner.

**CHAIRPERSON:** Yes. Yes, we've stretched it a bit, and, speaking for myself, I want my whole hour, so we'll adjourn until 14:30.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**ADV SECHABA MOHAPI:** Thank you Mr Commissioner our next witness Ms Leroke is ready to be sworn in.

10 **CHAIRPERSON:** Good afternoon Ma'am.

**MS BOITUMELO LEROKE:** Afternoon Commissioner.

**CHAIRPERSON:** Can you give me your full names please?

**MS BOITUMELO LEROKE:** Ms Boitumelo Leroke.

**CHAIRPERSON:** Boitumelo Leroke.

**MS BOITUMELO LEROKE:** Yes.

**CHAIRPERSON:** Leroke?

**MS BOITUMELO LEROKE:** Yes.

**CHAIRPERSON:** Can you stand up please. Do have any objection to taking the prescribed oath?

20 **MS BOITUMELO LEROKE:** No Commissioner.

**CHAIRPERSON:** No objection, do you swear that the evidence you're about to give will be the truth, the whole truth, nothing but the truth, raise your right hand, no your right hand, so help me God.

**MS BOITUMELO LEROKE:** I do, so help me God.

**CHAIRPERSON:** Thank you.

**MS GILL MARCUS:** Sorry before we start Mr Mohapi I just wanted to ask an additional request in relation to the previous statement, if we looked at, if I can see the third rights issue Vele became a 54 or 53% shareholder, if I recall correctly there needs to SARB approval when you cross certain thresholds of percentages, you know I think when you become over 25, over 50, 49 to 50 etcetera, were the SARB approvals obtained in relation to VBS at any point in time and if so which ones were obtained in terms of majority shareholding or movement of shares or the significant stake in shares at what point and what thresholds were crossed if any that required if any SARB approval and were those if they were required obtained, okay, thank you.

10 **ADV SECHABA MOHAPI:** Thank you Commissioner duly noted. Now Ms Leroke you've prepared a statement in relation to the evidence you're going to give before the Commission is that correct?

**MS BOITUMELO LEROKE:** Correct.

**ADV SECHABA MOHAPI:** Can we start with your statement from paragraph 1?

**MS BOITUMELO LEROKE:** Okay introduction, the facts herein contained are to the best of my knowledge true and correct. I'm a major female person employed by the Public Investment Corporation as a legal advisor at Menlyn Maine. I was employed by the Public Investment Corporation as a legal advisor on the 8<sup>th</sup> December 2014 whereas the VBS transaction was approved on the 24<sup>th</sup> June 2014. The transaction  
20 precedes my appointment.

**ADV SECHABA MOHAPI:** If I can just, so the evidence that we are going to hear from you will relate in particular to the insertion of certain clauses into the final credit or revolving credit facility agreement is that correct?

**MS BOITUMELO LEROKE:** Correct.

**ADV SECHABA MOHAPI:** Okay let's proceed, paragraph 4.

**MS BOITUMELO LEROKE:** My first involvement in the VBS transaction was on the 4<sup>th</sup> March 2015 through an e-mail addressed to Madhlopa Incorporated. At this stage the parties were working on the pre-execution version.

**MS GILL MARCUS:** Sorry can you just explain who Madhlopa was?

**MS BOITUMELO LEROKE:** Madhlopa Incorporated is the external legal counsel appointed on the transaction by the PIC.

**ADV SECHABA MOHAPI:** What was their responsibility in this regard?

**MS BOITUMELO LEROKE:** They had to draft and implement the approval, committee's approval.

10 **ADV SECHABA MOHAPI:** Does that happen often where you appoint external counsel and when does that happen as opposed to agreements being concluded internally?

**MS BOITUMELO LEROKE:** Okay so after approval of any investment committee we as legal are given the task to implement what was approved in committee through the resolution and we either have an option of drafting the documents ourselves or we have external legal counsel assisting in the drafting and implementing the approval as per the investment committee. So in this case an external legal counsel was brought in to assist with the drafting so after approval was obtained from committee then they had to be brought in to assist in the drafting.

20 **CHAIRPERSON:** I'm a traditionalist, we are talking about Madhlopa Inc and counsel interchangeably, when I was in practice I knew counsel to mean an advocate.

**MS BOITUMELO LEROKE:** Oh okay I'll stick to external legal lawyers or external lawyers.

**ADV SECHABA MOHAPI:** It's used loosely it sounds to me like when you refer to external legal counsel it's loosely to refer to everybody outside ... (intervention)

**MS BOITUMELO LEROKE:** Yes, yes in my case.

**ADV SECHABA MOHAPI:** Let's proceed paragraph 5.

**MS BOITUMELO LEROKE:** I was also included in an e-mail correspondence dated the 23<sup>rd</sup> April 2015, I'll just not say for the first time because it was not the first time, but in which Nesane responded to the investment team and advised that he has incorporated the final amendments, sorry final comment.

**CHAIRPERSON:** Can we delete 'the first time'?

**MS BOITUMELO LEROKE:** Yes, yes because it's incorrect. Okay at all material times the draft of the revolving facility agreement of which I was asked to review did not have clauses 3.5 and 3.6 which fell outside the committee's approval. It is unclear to me  
10 when the clauses were inserted in the agreement.

**ADV SECHABA MOHAPI:** Now we have a tab 10 to the submission the final agreement, if you can just have a look at it.

**MR EMMANUEL LEDIGA:** Tab 10, the annex 10?

**ADV SECHABA MOHAPI:** Yes, I think starting from page 1 I see it is initialled is that correct?

**MS BOITUMELO LEROKE:** Yes it is.

**ADV SECHABA MOHAPI:** And if we go to the end of the agreement it is signed on behalf of the Public Investment Corporation by it seems to me by yourself as, was it signed by yourself and Dr Matjila on behalf of the PIC?

20 **MS BOITUMELO LEROKE:** Yes, yes it was.

**ADV SECHABA MOHAPI:** And it seems also to have been signed by VBS and it's not clear to me who the signatories there are but on the 30<sup>th</sup> June 2015.

**MS BOITUMELO LEROKE:** Correct.

**ADV SECHABA MOHAPI:** Okay now if we can just go to the clauses that are in question, clauses 3.5 and 3.6 they both appear on page 12 of that document?

**MS BOITUMELO LEROKE:** Yes they do.

**ADV SECHABA MOHAPI:** And 3.5 reads as follows:

“The facility shall be ring fenced for its purpose as defined in this agreement as such shall be subordinated against the borrower creditors.”

Correct?

**MS BOITUMELO LEROKE:** Correct.

**ADV SECHABA MOHAPI:** And then 3.6:

10 “The facility outstanding amount or any portion thereof may be converted into equity at the discretion of the lender at any time before the final repayment date.”

Correct?

**MS BOITUMELO LEROKE:** Correct.

**ADV SECHABA MOHAPI:** Now these clauses as they stand, these were not what was approved by the investment committee were they?

**MS BOITUMELO LEROKE:** Correct.

**ADV SECHABA MOHAPI:** So this is what you are saying in paragraph 6 of your statement that neither of these clauses as they stand were approved at IC?

**MS BOITUMELO LEROKE:** Yes.

20 **ADV SECHABA MOHAPI:** Okay.

**MS GILL MARCUS:** Can I ask a couple of questions in that regard. Has there been any follow up, well first of all if you signed this off were you aware at the time that these two clauses were inserted somewhere and not part of the original agreement?

**MS BOITUMELO LEROKE:** No Commissioner so I was aware of clause 3.5 that had been inserted at the last minute on the execution version.

**MS GILL MARCUS:** So you were aware of 3.5 but not 3.6?

**MS BOITUMELO LEROKE:** Yes correct.

**MS GILL MARCUS:** And were you then when you were signing was this drawn to your attention or were you then made aware that these were two insertions that were not, so you hadn't at that point in time you had read a document prior to that, thought it was intact and now when you came to sign, you didn't re-read to see if there'd been any changes, you were not drawn to your attention that there were changes made?

**MS BOITUMELO LEROKE:** Okay so when I was drafting the signature memo, so we draft the signature memo to accompany any agreement which is being signed by  
10 whoever is signing the signatory so at that time the document which was attached to the signature memo did not have 3.6. So it had 3.5 which we got the document directly from the lawyers so they printed and delivered the documents to us. So that version of agreement had 3.5.

**MS GILL MARCUS:** But you were not aware that 3.5 was not part of the original mandate or were you aware that 3.5 was not part of the original mandate and it had been included by the lawyers and you didn't know ... (intervention)

**MS BOITUMELO LEROKE:** So I was aware, I was aware that as per the approval it said ring fenced and it ended there, no subordination, nothing. So last minute I didn't know how it got there but we now had 3.5 upon execution.

20 **MS GILL MARCUS:** With ring fencing, with subordination?

**MS BOITUMELO LEROKE:** Yes with ring fence and subordination.

**MS GILL MARCUS:** But you didn't have at that point in time 3.6?

**MS BOITUMELO LEROKE:** Yes, yes.

**MS GILL MARCUS:** So do you know when 3.6 got inserted?

**MS BOITUMELO LEROKE:** No.

**MS GILL MARCUS:** And in that question given that this is also signed off by Dr Matjila was he then, was anything brought to his attention that there was now a 3.5 and a 3.6 so subordination and the question of equity?

**MS BOITUMELO LEROKE:** Not that I know of Commissioner.

**MS GILL MARCUS:** So did he just sign, do you know?

**MS BOITUMELO LEROKE:** I don't know, so the actual signature memo together with the agreements were dropped at, with his PA, were left with his PA for him to sign. As for, if there was any communication between Dr Dan and any other person letting him know of the insertion I do not know but as far as I was aware there was no 3.6.

10 **MS GILL MARCUS:** Okay so you were not aware – you were aware of 3.5 subordination but not 3.6. Has there been any follow up subsequent to this with the legal team Madhlopa as to how these two got inserted, exactly when they got inserted, who instructed for them to be inserted, did they initiate the insertion, I mean they were at PIC mandate, so has there been any discussion with them?

**MS BOITUMELO LEROKE:** So upon us finding out that there is a 3.6, a 3.5 as well and since there was no explanation internally who inserted the two clauses I had to call Madhlopa Incorporated, I had to, well I asked them what had happened, I asked them for an explanation as to who exactly from the PIC instructed them to insert 3.5 and 3.6.

20 So their response was 3.5 yes it's there and it came later on after an instruction from Mr Ernest Nesane.

**ADV SECHABA MOHAPI:** Okay and in fact there was a letter which they wrote to you isn't it and that appears at tab 9 of the submission?

**MR EMMANUEL LEDIGA:** Which one?

**ADV SECHABA MOHAPI:** There's a letter from Madhlopa & Thenga Incorporated dated 4 February 2019 in which they address to you ... (intervention)

**MS BOITUMELO LEROKE:** Correct.

**ADV SECHABA MOHAPI:** Address to you with attention Ms Boitumelo Leroke and if you can just read what's said then into the record.

**MS BOITUMELO LEROKE:** Okay it says:

“Regarding PIC funding facility VBS Mutual we have gone through our file and have found that clause 3.5 was inserted after we received from the head of legal at the time. A copy of the instruction is annexed. However, clause 3.6 does not seem to feature in our execution version sent to the PIC. We hope the above is in order.”

10 **MS GILL MARCUS:** And I don't seem to see the instruction, do you have a copy of the instruction?

**MS BOITUMELO LEROKE:** So the instruction is in the form of an e-mail.

**MS GILL MARCUS:** Ja?

**MS BOITUMELO LEROKE:** Which forms part of ... (intervention)

**MS GILL MARCUS:** If you could give us the reference?

**MS BOITUMELO LEROKE:** Tab 8.

**MS GILL MARCUS:** Tab 8.

**ADV SECHABA MOHAPI:** If you can just take the Commission through tab 8.

20 **MS GILL MARCUS:** Perhaps just read that through which is, and who it's from and ... (intervention)

**MS BOITUMELO LEROKE:** Okay so this is an e-mail from Ernest Nesane from the PIC who was the executive head at the time, dated Monday 7<sup>th</sup> April 2015 to Mashudu Thenga from Madhlopa Incorporated and the e-mail says:

“Dear Thenga, as per our discussion this morning and the proposals from Andile below we have discussed internally and you are

instructed to make the changes as discussed in the facility agreement to add the following clause in the agreement, add clause 3.5 and send back the revised agreement. The facility shall be ring fenced for its purpose as defined in this agreement as such shall be subordinated as against the borrower creditors. If we can finalise this without delay, kind regards Ernest Nesane Executive Head Legal.”

**MS GILL MARCUS:** And can you also read into the record from, what’s referred to as Andile and give the full names and times thereof and who that’s to?

**MS BOITUMELO LEROKE:** Okay so on the 6<sup>th</sup> April 2015 at 8:34 p.m. Mashudu

10 Thenga wrote:

“Dear Ernest, please find herewith from Andile. Please let me have your comments regards MT.”

So this is an e-mail from Mashudu, from Madhlopa Incorporated writing to Mr Nesane asking for him to comment on the below. So the below refers to an e-mail from Andile Ramavhunga.

**MS GILL MARCUS:** That is directly from Andile Ramavhunga who is, what’s his position at the time please?

**MS BOITUMELO LEROKE:** So at the time he was the CEO of VBS.

**MS GILL MARCUS:** And he is writing to the legal team instructing them what to put in  
20 the contract on behalf of the PIC?

**MS BOITUMELO LEROKE:** Yes.

**MS GILL MARCUS:** Subordinating the loan?

**MS BOITUMELO LEROKE:** Yes.

**MS GILL MARCUS:** And then Mr Thenga just says give us your comments. Hello, who was awake? Perhaps just read it into the record because this seems to be that

you know as the recipient you're dictating the terms of subordination and then obviously we then have to make some surmises about how we get clause 3.6 but let's stay with this and let's get it in the record.

**MS BOITUMELO LEROKE:** Okay so Andile's e-mail, so he says:

“Hi Mashudu, please see below for the amendments and clarification on the loan.”

And then he suggests:

“2.15 it should read prime rate less 1%.”

**MS GILL MARCUS:** And what did the original have, the original loan agreement  
10 should have had in 2.15 ... (intervention)

**MS BOITUMELO LEROKE:** Sorry Commissioner can I just go through the document and just see.

**MS GILL MARCUS:** Page 4, 2.15 which is prime less 1%. Is this item, the document that we have as 10 the amended one because was the interest rate prime minus 1% as originally agreed by the PIC on the loan or was it different because I wouldn't know why he should say what it should read and then it does read that, so was the original loan term prime minus 1%?

**ADV SECHABA MOHAPI:** Perhaps what might be helpful is to get the pre-execution agreement and then to have that compared with the final signed agreement and we will  
20 get the pre-execution agreement for the Commission.

**MS GILL MARCUS:** It really is important to know whether even the interest rate charged was changed.

**MR EMMANUEL LEDIGA:** Ja, but if you look at the agreement, the RCF page 15, page 15 point 6 interest on annex 10, no annex – ja if you look at page 15 annex 10, 6.2 yes.

**MS GILL MARCUS:** That's why we're asking whether this was what the original pre-execution agreement was whether this is the same because we don't know whether this has now been changed as per the e-mail from Mr Ramavhunga into this the final document as to whether this was the original interest rate that the PIC had set for this facility. So yes it does reflect exactly that in this document but I want to be clear that the original agreement with the PIC pre-execution, before the lawyers and everybody else got hold of it what was the interest rate that was going to be charged?

**CHAIRPERSON:** So is that original one, the pre-execution one is it present, do you have it?

10 **MS BOITUMELO LEROKE:** Yes I do have the pre-execution and a signed and the minutes because I'm looking at all of them at once. So the minutes refers, the pricing referred to prime less 100 basis points plus one third of the upside on the contracts to achieve the blended internal rate of return around 17% and then if you look at the agreement, okay the execution, the pre-execution version clause 6.1 it's captured the same as the minutes of the committee and then if you look at the signed version it reads the same as well. So it is per the approval, committee's approval.

**MS GILL MARCUS:** Why then would Mr Ramavhunga include it as 6.2 in his e-mail which you're coming to which says can we remove reference to a blended IRR of 17% it's confusing as we don't know how it was calculated. So it was not removed but he  
20 requested it to be removed to the lawyers?

**MS BOITUMELO LEROKE:** He requested.

**MS GILL MARCUS:** So perhaps if we can just go through all his points there as to the others because there's a few questions on the others as well.

**MS BOITUMELO LEROKE:** Okay.

**CHAIRPERSON:** So just to be clear, prime rate less 1% there's no change there and

one just wonders why he put it in his e-mail but there's no change am I correct?

**MS BOITUMELO LEROKE:** No actual change to the agreement.

**CHAIRPERSON:** No change, pre-execution same alright.

**MS BOITUMELO LEROKE:** Okay so he later then says:

“Clause 2.17 our auditors are KPMG

2.12 see e-mail attachment and then 6.2 can we remove reference to blended IRR of 17% it's confusing as we do not know how it was calculated.

10 6.3 is this an interest suspension or a moratorium i.e. is the interest going to be accrued on the loan or is this an interest free loan for 12 months?

7.1 can we make the repayments to be quarterly rather than monthly?

8.1.26 can we align with suggestion on 7.1 above?

8.1.14 align with 7.1

13.1.21 can we not limit this to the appointment of the CEO.”

And then what he refers to as general:

“Since agreement includes shareholder issues can I suggest that we include shareholder approval and also sub notification as part of the agreement?

20 If possible can we include 50 million subordination of the loan as part of the agreement this is to enable to comply with sub-prudential requirements?

Regards Andile Ramavhunga.”

**ADV SECHABA MOHAPI:** So it seems to me the notion of subordination comes from Mr Ramavhunga?

**MS BOITUMELO LEROKE:** It seems so yes.

**ADV SECHABA MOHAPI:** But also another extraordinary ... (intervention)

**CHAIRPERSON:** Sorry, sorry does the minutes say anything about this insubordination?

**MS BOITUMELO LEROKE:** No, the minutes do not say anything regarding insubordination, if anything the minutes refers to ring fencing.

**ADV SECHABA MOHAPI:** And in the evidence of Ms Mdluli she said that ring fencing would notionally as a commercial concept be contradictory to subordination?

**MS BOITUMELO LEROKE:** True.

10 **ADV SECHABA MOHAPI:** Okay but I think another interesting feature of Mr Ramavhunga directing the external counsel of the PIC on how to draft the agreement is that you have here a situation where an investee company's CEO is giving instructions to legal counsel for the PIC, that's not normal is it?

**MS BOITUMELO LEROKE:** It's not. So if there was any communication, firstly he was supposed to copy our legal person and then further to that it wouldn't be an instruction it would be more within the approval terms, so it wouldn't be changing anything from what we got from committee.

20 **MS GILL MARCUS:** But in addition to that this is the head of legal simply passes it on, does not interrogate it, does not question why there's a direct communication from the investee company with the legal team that as advising the PIC and simply says give us your views. So clearly Mr Nesane has played a different role from this statement in terms of what would be expected of a legal counsel of the PIC, the Head of Legal of the PIC that's where it would seem to mean. Is there anything else Advocate around this question of the communication because this question of you know the interest is it a suspension is it a moratorium, is it an interest free loan, all of this calls into question the

agreement and who has determined the terms of agreement and equally the interpretation of that. So I would have a lot of difficulty understanding what was actually agreed by whom in relation to this final signoff even though it has been signed off because if you had to look at it you would actually look at it and say well has this been cleared and would it be then a point of contention or difference as to whether this is an interest free loan, can we make payments quarterly, well okay let's make payments quarterly not monthly, who determines that, is it in the signed agreement and on what basis. So I'm not sure within this, and obviously you would look at what the pre-agreement document was whether any of these other than the subordination and 3.6  
10 the equity were any of the other terms changed in keeping with this communication from Mr Ramavhunga to the legal team?

**MS BOITUMELO LEROKE:** Commissioner so if you look at the e-mails I was not copied, so the only reason I have these e-mails was because when we found out regarding the insertion of the clauses I then contacted Mr Thenga from Madhlopa Incorporated so he then sent all these e-mails otherwise we wouldn't have even known how the clauses, how he acted, on whose instructed he acted and why now they form part of the agreement.

**MS GILL MARCUS:** What his explanation for acting on the instructions that are not from the PIC?

20 **MS BOITUMELO LEROKE:** He says he was instructed to do it so ... (intervention)

**MS GILL MARCUS:** Instructed by who?

**MS BOITUMELO LEROKE:** By Mr Ernest Nesane as the head ... (intervention)

**MS GILL MARCUS:** And do we have the document where Mr Nesane is instructing them to comply with the subordination in 3.6 or is it just his word that says so?

**MS BOITUMELO LEROKE:** So in the e-mail Mr Nesane says Mr Thenga should

implement as suggested by Andile.

**MS GILL MARCUS**: As per our discussion this morning the proposal's been discussed internally and you are instructed to make the changes as discussed in the facility agreement and to add the following clause in the agreement at clause 3.5 and send back the revised agreements, if we can finalise this without delay and that is from Mr Nesane.

**MS BOITUMELO LEROKE**: Yes.

**MS GILL MARCUS**: But that does not reflect 3.6.

**MS BOITUMELO LEROKE**: Yes, no the 3.6 Mr Thenga had said he had nothing to do  
10 with it, he didn't even know about it until I raised it with him.

**MS GILL MARCUS**: We don't know how it came in?

**MS BOITUMELO LEROKE**: No.

**MS GILL MARCUS**: I'm assuming at some point we're getting Mr Nesane here.

**ADV SECHABA MOHAPI**: So just to understand the process, it appears Mr Nesane was almost in the middle coordinating and receiving documents and sending them to the PIC or to the external legal counsel so he would be the channel, the person who would oversee all pre-execution drafts as well as the final document, he would be conversant with all of the terms?

**MS BOITUMELO LEROKE**: Correct so the legal person would be the gatekeeper, he'd  
20 be the one communicating with the external lawyers, he'd be the one even, so the actual draft would go between him and the lawyers yes, that's correct.

**CHAIRPERSON**: And then he'd get somebody else to sign.

**MS GILL MARCUS**: Have Madhlopa been used in other ... (intervention)

**MS BOITUMELO LEROKE**: Transactions, yes.

**MS GILL MARCUS**: In transactions by the PIC?

**MS BOITUMELO LEROKE:** Yes correct.

**MS GILL MARCUS:** And you've never had a problem with them not doing what's required?

**MS BOITUMELO LEROKE:** No.

**MS GILL MARCUS:** So they're a reputable firm that caught into an instruction?

**MS BOITUMELO LEROKE:** (No audible answer)

**CHAIRPERSON:** Can I just mention please in future the nodding of the head is not recorded so you've got to say yes or no.

**MS BOITUMELO LEROKE:** I apologise Commissioner.

10 **ADV SECHABA MOHAPI:** Okay let's proceed on your statement.

**MR EMMANUEL LEDIGA:** I just want to check something, where was Mr Nesane when this was signed because it was signed by you and authorised by Dr Dan?

**MS BOITUMELO LEROKE:** So the signature memo, I'll be the compiler on the signature memo but every other department head they'll be signing off as well. So you have a signature where you have the person who's compiling the memo, you'll then have their boss which was Mr Nesane, after my boss it will then be someone from investments who was working on the deal, after that their boss, so you don't have only two people signing you will have a whole lot of people who worked on the transaction together with their immediate bosses.

20 **MR EMMANUEL LEDIGA:** Just saying the final agreement was signed by you and authorised by Dr Dan.

**MS BOITUMELO LEROKE:** So I as a witness signed afterwards yes, so I ... (intervention)

**MR EMMANUEL LEDIGA:** As a witness.

**MS BOITUMELO LEROKE:** Yes as a witness.

**ADV SECHABA MOHAPI:** So just to be clear Mr Nesane was still at the PIC and was still executive head when this final agreement was signed by yourself as a witness and by Dr Dan as the person signing on behalf of the PIC?

**MS BOITUMELO LEROKE:** Correct.

**ADV SECHABA MOHAPI:** Okay.

**CHAIRPERSON:** So you witnessed Dr Matjila's signature? I mean you signed as a witness.

**MS BOITUMELO LEROKE:** Yes, yes so I signed afterwards, after he signed, so I was not present when he signed but I signed afterwards, I acknowledge that he did in fact  
10 sign.

**CHAIRPERSON:** Alright but when you sign as a witness what are you signing actually as a witness?

**MS BOITUMELO LEROKE:** I guess I was confirming his signature that he's the one who signed.

**CHAIRPERSON:** From the fact that you know how it looks like or what it looks like because when you are signing you are saying actually I saw it is his signature, I saw him sign. So there was a bit of an omission there am I right?

**MS BOITUMELO LEROKE:** Correct.

**CHAIRPERSON:** Yes.

20 **MR EMMANUEL LEDIGA:** Let me just try to understand the timeline, so 3.5 was sort of being put there and you saw that but you didn't see 3.6 until it was signed?

**MS BOITUMELO LEROKE:** Yes.

**MR EMMANUEL LEDIGA:** Until it was closer to signature, who could have put that 3.6?

**MS BOITUMELO LEROKE:** So on the, sorry Commissioner, on the 23<sup>rd</sup> April there

was an e-mail that went out where Mr Nesane was saying I've incorporated all your comments, being addressed, addressing the investment team saying I've incorporated all the suggested comments and this is the final version. So he sent out that e-mail, after that later that day Mr Thenga issued a pre-execution so the pre-execution did have the 3.5. So when Mr Nesane sent out – so after the investment team incorporated their changes and Mr Nesane had now incorporated their changes he then said this is the pre-execution version so that version had the 3.5. After that Mr Thenga himself issued out the execution version, that version had 3.5 but then after that Mr Thenga delivered the actual agreement to the PIC which only had 3.5. Then after that I don't  
10 know what happened between the time Mr Thenga had delivered the documents and the documents being signed but the insertion happened between that time because the insertion was not there prior to the pre-execution stage.

**MS GILL MARCUS:** So that was at the PIC, the legal had already delivered and whatever changes occurred within the PIC offices somewhere?

**MS BOITUMELO LEROKE:** Somewhere.

**MR EMMANUEL LEDIGA:** And who was supposed to do the, was someone supposed to do the final changes to add 3.6 and who would that be if they had to add something?

**MS BOITUMELO LEROKE:** So the agreement, so the drafter of the agreement was Madhlopa Incorporated, the documents could – you cannot change a document you  
20 didn't draft that's the law. So meaning Madhlopa Incorporated if there were any changes which had to be implemented they had to implement them. So there was no communication to tell anyone within the PIC do these changes or insert this, it couldn't have happened. If anything Madhlopa Incorporated they themselves were supposed to incorporate the insertion. So I don't know what happened but it was incorrect, it was not even supposed to happen that way. So if there were any proposed changes it was

supposed to, at least Madhlopa Incorporated they were supposed to be involved to assist with the drafting because it's their document, you can't change someone else's document.

**CHAIRPERSON:** They drafted it, it's not necessarily their document because they're doing it for the PIC isn't it?

**MS BOITUMELO LEROKE:** Yes.

**CHAIRPERSON:** And for the parties.

**MS BOITUMELO LEROKE:** Yes.

**CHAIRPERSON:** But I'm interested in the signature memo, what is in it?

10 **MS BOITUMELO LEROKE:** So a signature memo will give you background of the transaction, will also give you, well background of what was taken to committee, background of what was approved by committee, it will together have – so on the actual, it's called a memo file ... (intervention)

**MS GILL MARCUS:** Can I suggest instead of trying to explain it the actual signature document for this particular transaction be provided to the Commission because it would allow us to look at that paper trail as well and who signed off at what point in time given the question of 3.6. And if I could just for my own clarity understand that if there was to be a 3.6 it's not that it can't be changed but it would be referred back to the legal team Madhlopa to say we want to insert this just as you had with 3.5. So if they didn't  
20 do it then on delivery the document which they regarded as final somewhere within in the PIC an additional clause 3.6 was inserted but you don't know by whom?

**MS BOITUMELO LEROKE:** Correct.

**MS GILL MARCUS:** If it was to have been formally done then there should have been a notice back to Madhlopa to say please make this addition they would have then done it and referred back with a final document with that in, that didn't occur?

**MS BOITUMELO LEROKE:** Yes.

**CHAIRPERSON:** Why I was asking about the memo, the signature memo is I wanted actually to understand whether you do say in it I have gone through the document and I'm satisfied that it is the document that you know concerns that certain transaction. Did you go through the document before you ... (intervention)

**MS BOITUMELO LEROKE:** Yes.

**CHAIRPERSON:** You did the signature memo?

**MS BOITUMELO LEROKE:** Yes, yes so prior to, so additional to you drafting a signature memo for agreements to be signed obviously it means you have, well you  
10 must have gone through the agreements, you must have been involved in the execution of the agreements and additional to that ... (intervention)

**CHAIRPERSON:** And there was no 3.6 when you went through it.

**MS BOITUMELO LEROKE:** Yes there was no 3.6 and then you also attach the actual resolution from committee to show that it has been approved under these terms.

**CHAIRPERSON:** So that means it was inserted even after you had gone through it and signed the signature memo?

**MS BOITUMELO LEROKE:** It seems.

**ADV SECHABA MOHAPI:** Just to be clear Ms Leroke what was envisaged by the investment committee was ring fencing the facility?

20 **MS BOITUMELO LEROKE:** Correct.

**ADV SECHABA MOHAPI:** That at some stage was in the initial clause 3.5 of the pre-execution agreement?

**MS BOITUMELO LEROKE:** Yes.

**ADV SECHABA MOHAPI:** But that was later changed especially by Mr Nesane because if we look at that e-mail from him to the external legal counsel of 7 April that

wording of 3.5 is what appears in the final agreement and that's through his suggestion at least as far clause 3.5 is concerned it's changing from simply ring fencing to ring fencing coupled with subordination came from, I'm asking, Mr Nesane through this e-mail because his exact wording there is what's adopted in the final execution, executed agreement is that correct ?

**MS BOITUMELO LEROKE**: Correct.

**ADV SECHABA MOHAPI**: So we know at least in relation to 3.5 that that's the situation but 3.6 was also, to use the colloquial term, snuck in at some stage after you had reviewed the documents and it now forms part of the final agreement?

10 **MS BOITUMELO LEROKE**: Correct.

**MR EMMANUEL LEDIGA**: Who would have in terms of these agreements who would have the final sight so to say, who will have the final sight or the final say on the agreement and say everything is fine we can execute, we can sign the document?

**MS BOITUMELO LEROKE**: The Executive Head of Legal. Executive Head of Legal because he as well signs the signature memo just after the compiler to say I've seen the agreements and I'm fine with them.

**MS BOITUMELO LEROKE**: Of course one wouldn't expect the person who signs the document simply to sign without reading it?

**MS BOITUMELO LEROKE**: True.

20 **MS GILL MARCUS**: And given the magnitude of the loan but also the question of what it's saying I mean it's not something that you can just bypass and say oh that really doesn't, you know it's not a big deal, this is actually a very big deal and given the confidence in which the CEO Mr Ramavhunga is dictating, I think he felt very confident that he could make the changes that suited him. So the challenge for me and perhaps we need to just explore that a little more is that if Mr Nesane is the board member

representing the PIC and required to in fact protect the interests of the shareholder in what he's doing and he authorises or approves the subordination of a loan of that nature at what point in time would that be dereliction of duty? I mean he's supposed to act in the interest of the PIC so you know obviously maybe that isn't necessarily your question and something that would need to come when we have the regulator here, but I would have thought that this is grounds for the professional bodies, the legal professional bodies to start enquiring as to whether this is fit and proper behaviour.

**MR EMMANUEL LEDIGA:** Another question is that the CEO signing this document wouldn't necessarily know the minute you know of the agreement isn't it, I mean you'd  
10 gloss over and sign or does he have to really have a good read and question these things?

**MS BOITUMELO LEROKE:** So the signature memo would also assist him in getting the background, getting what was approved what was not and giving him, so the actual signature memo will for example say revolving facility agreement and then give a summary, session agreement give a summary, so at the end he would at least have an idea but he himself he normally did go through the agreements as well, he would have gone through the agreements and seen them. But yes he would also rely on the executive head to give a signoff and say I've say I've seen these agreements and I know what's in them.

20 **MS GILL MARCUS:** But isn't the question that the 3.5 is actually material, this is not a small amount, this is a material change and therefore if there was to be such a change from the agreement it should have been reflected in the agreements that were done but also before you sign off there're obviously clear areas that you would look at, I mean 3 would be, the heading for 3 is, let me just get there, revolving credit facilities that this is in fact what you're agreeing to, if you don't read everything else the minimum you

should look at is what have we agreed to in relation to that. So it's six paragraphs of material matter.

**ADV SECHABA MOHAPI:** Then just finally Ms Leroke what were your perceptions or views of Mr Nesane as your line manager, as your boss so to speak?

**MS BOITUMELO LEROKE:** I respected Mr Nesane, I mean I relied on his experience so he was at the PIC for a very long time when I got there so I really, he really depicted a picture of a respectable man, a professional, an individual who knew his work. So he knew a whole lot, I mean he had been there a while and he knew the processes, you could see it even in a meeting you could see what kind of professional person he was  
10 and he really did know law and ja so I really respected him.

**ADV SECHABA MOHAPI:** Did that at any stage change, did he from being this respectable person did he change within the PIC?

**MS BOITUMELO LEROKE:** So during his tenure there no, until the very last minute where there were allegations but throughout he was just, he carried on with that name, respectable being so only until late when we found out allegations against him. So you wouldn't even have thought he'd do something, like he'd do anything untoward, he was even respected throughout the company. He was respected throughout in the field so it was just not at the PIC only, like outside PIC he was respected.

**ADV SECHABA MOHAPI:** Okay so I see we are into the final remarks of your  
20 statement in paragraph 8 if you can just read that into the record.

**MS BOITUMELO LEROKE:** Okay so relationship with Mr Nesane the Executive Head of Legal. I have had a collegial relationship with Mr Nesane however in this transaction Mr Nesane did not directly involve me as illustrated above. Perhaps this might have been the case since I got involved at the tail end of the closing of the transaction.

**CHAIRPERSON:** I suppose at the time of signing of this agreement Mr Nesane was

not as yet a member of the board of the VBS?

**MS BOITUMELO LEROKE:** No. I think it happened afterwards, normally ...

**ADV SECHABA MOHAPI:** If we can just have regard to tab 1 so that is a memo written by the Company Secretary Ms Louw, Wilna Louw it's dated the 9<sup>th</sup> May 2012 and it's heading there is PIC nomination to serve on the board of Venda Building Society Mutual Bank VBS and it seems to suggest in paragraph 1 that Mr Nesane and Mr Magula be nominated to the board.

**MS BOITUMELO LEROKE:** Okay my mistake sorry, the dates it seems he, at the time we signed the agreement he was already appointed.

10 **CHAIRPERSON:** No further questions Mr Mohapi?

**ADV SECHABA MOHAPI:** Mr Commissioner that's the evidence unless if there are further questions that is I suppose business for the day.

**CHAIRPERSON:** No I understand there's one more witness.

**ADV SECHABA MOHAPI:** There's one more witness I'm advised by the chief evidence leader.

**ADV JANNIE LUBBE SC:** Mr Commissioner sorry to interrupt, I have one more witness, the estimate is about 40, 45 minutes if I can be allowed to call that witness? He is a witness that testified last week and he testified on one part of his statement, I just want to conclude him on the other part.

20 **CHAIRPERSON:** Is that Mr Mongalo okay. Ms Leroke not Leeroke.

**MS BOITUMELO LEROKE:** Leroke.

**CHAIRPERSON:** Ms Leroke thank you very much for your time and thank you for the evidence that you've placed before us. I think we know more now about the VBS transaction than we did before, so thank you so much.

**MS BOITUMELO LEROKE:** Pleasure Commissioner.

**CHAIRPERSON:** Alright.

**ADV JANNIE LUBBE SC:** We can quickly try and arrange the chairs without an adjournment Mr Commissioner. Mr Commissioner, Mr Mongalo must just take the oath again before he starts with the second part of his testimony.

**COMMISSIONER:** Yes indeed. Mr Mongalo, can you rise please? You don't have any objection to taking the oath, you have done so before?

**MR BENEDICT MONGALA:** No Commissioner, no objection.

**COMMISSIONER:** Do you swear that the evidence you're about to give will be the truth, the whole truth and nothing but the truth, raise your right hand and say so help  
10 me God.

**MR BENEDICT MONGALA:** So help me God.

**COMMISSIONER:** Thank you very much, you may be seated.

**ADV JANNIE LUBBE SC:** Mr Mongalo thank you, you have already testified before the Commission last week and you have told the Commission who you are and your position at the PIC. Your testimony this afternoon deals with a different topic and that is the investment into Independent PDA, is that correct?

**MR BENEDICT MONGALO:** That's correct Commissioner.

**ADV JANNIE LUBBE SC:** You have also prepared a written statement dealing with your evidence, can you please proceed with your evidence based on your statement.

20 **COMMISSIONER:** Is it in the statement, can you just remind us what is Mr Mongalo is going to ...[intervenes].

**ADV JANNIE LUBBE SC:** There are two statements Mr Commissioner. The one deals with Independent Media and the other one deals with Tosaco. He has testified on the Tosaco deal. The other statement was handed to the Commission I hope, last week and that deal with the Independent Media investment.

**COMMISSIONER:** No it's just that I don't have it before me but that's okay.

**MS GILL MARCUS:** Me neither. We did get it but we were not aware that he was coming now.

**ADV JANNIE LUBBE SC:** I can quickly arrange for it to be placed before, unless you want to adjourn. Can you do that?

**COMMISSIONER:** I suggest we take a – what 7, 8 minute adjournment?

**ADV JANNIE LUBBE SC:** 5 Minutes will suffice thank you Mr Commissioner. Thank you Mr Commissioner. Mr Mongalo you can then start with your evidence on paragraph 3. You state there that you have been requested by the staff members to provide this statement. Can I just ask you before you proceed. This is your statement?

**MR BENEDICT MONGALO:** That is correct Commissioner.

**ADV JANNIE LUBBE SC:** You have not been asked to take anything out or put anything in against your will?

**MR BENEDICT MONGALO:** That's correct.

**ADV JANNIE LUBBE SC:** Please proceed.

**MR BENEDICT MONGALO:** "Commissioner I have been requested by the staff members of the Judicial Commission of enquiry to provide a statement in respect of my role and or involvement in the Independent News and Media SA (Pty) Ltd or INMSA transaction that was approved by the relevant committee of the PIC. In providing the facts contained in this statement I have relied on certain documents that were prepared for submission to the relevant Committee in relation to the INMSA transaction email correspondence with the transaction team members and have provided certain facts which are to the best of my knowledge belief and recollection true and accurate.

During December 2012 I was assigned by my then line manager Mr Paul Magula to assist the transaction team that was responsible for conducting a due diligence analysis on the proposed INMSA transaction and to accordingly provide a risk assessment and report in respect thereof. The proposed transaction entailed a proposal for the PIC to commit a bridge funding package in an amount totalling R2 040 000 000,00 to INMSA. It was envisaged that the funding will be partly refinanced by commercial banking debt of R750-million at a later stage. The transaction also entailed a competitive bidding process wherein potential buyers were invited to submit their bids.

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At the time of my involvement the Sekunjalo Consortium was not yet the preferred bidder to acquire the business of INMSA. The transaction team advised that to their knowledge there were three other short listed bidders which included a consortium lead by a Groovin Nchabeleng's Blueprint Group and HSBC Bank and also another Chinese Consortium. To my knowledge PIC had opted to support the Sekunjalo Consortium.

I assisted the transaction team between the years 2012 and 2013 in my capacity as Senior Credit Risk Analyst in the Risk Division of the PIC. My involvement on the transaction was limited to providing independent advice to the transaction team, executive management and sanctioning Committees of the PIC of the feasibility, level of risk and possible risk mitigation strategies. In line with the unlisted investment approval process detailed in the statement presented to the Commission on or about the 21<sup>st</sup> January 2019 by the Executive Head of Impact Investment, Mr Roy Rajdhar, the transaction for INMSA was considered by the following committees:

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- Portfolio Management Committee Unlisted Investment or PMC on the 4<sup>th</sup> February 2013.
- Investment Committee on the 6<sup>th</sup> February 2013
- It was then referred to the Government Employees Pension Fund Investment Committee, GPFIC on the 21<sup>st</sup> February 2013
- And ultimately the PIC board of directors on the 11<sup>th</sup> March 2013.

The risk report was submitted to all the aforementioned committees for consideration. For ease of reference the risk report which served at the final sanctioning authority being the PIC board of directors is attached as Annexure A. The risk report highlighted various considerations and made affirmative recommendations in respect of the proposed funding contained in paragraph 6 above which was subject to the following conditions presidents.

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1. Formulation of a solid turnaround strategy detailing interventions and resources including turnaround specialist resources to be deployed to enable the company to restore profitability.
2. The implementation of all recommendations detailed in the legal due diligence prepared by the law firm Cliffe Decker which was vendor commissioner as well as ENS.
3. Appointment of two nominee directors on the INMSA board and where possible and independent industry expert be nominated as non-executive directors.
4. Step in right by PIC on the occurrence of material adverse event by the Sekunjalo Consortium.
5. The sureties being obtained from Sekunjalo Investment Holdings and

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lastly.

6. Completion of all transaction documents to PIC satisfaction, including but not limited to loan agreements, shareholder agreements, security or collateral agreements including session of Sekunjalo Consortium shares in INMSA.

The risk report also proposed further undertakings to be implemented post the financial close of INMSA transaction which included succession planning strategies to be implemented within the first trimester. Sekunjalo to provide bi-annual financial information and covenants for the bank debt which was to be raised to be acceptable to PIC.

10

Some of the key risk raised by the risk report which were to be considered by the relevant committees are summarised below.

1. Industry outlook – there was concern that the print media industry is a sunset industry as exhibited by the declining circulation figures. There was further concern of INMSA’s ability to transition the model to a digital domain. In a global context studies also suggested that media and leisure industry companies were more prone to default.
2. Reputational risk – given that PIC is a State owned and Sekunjalo Consortium comprised of various politically exposed groupings there was a concern that there may be reputational risk whether perceived or real. The specific mitigation suggested to manage this risk was to appoint an independent board and define their role such that it allows for independent editorial policies.
3. Quality of sponsor – there was concern that the main sponsor Dr Iqbal Survé does not have prior experience in running a print and or any media

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company. Comfort was however derived from the various intervention proposed and also the fact that he was running a diversified investment holding company at the time.

4. Governance and ownership – with PIC afforded two board seats and the remainder being Sekunjalo Director nominees there was concern around managing sensitivities presented by the perceived political exposure of prospective shareholders and the public perception around pro-government agenda. It was therefore recommended that an independent industry expert be appointed in a non-executive director role.

10 5. Quality of management – the quality of the management team was considered fairly good on the current business model. However given the print media landscape was changing rapidly there was concern that the team had limited experience in the digital media business which was expected to be a significant contributor going forward. It was therefore recommended that the new growth strategy to be crafted by the new shareholders included dedicated resource responsible for the digital business growth.

20 6. Legal risks – it was noted and acknowledged that in the ordinary course of business INMSA is from time to time involved in litigation. The significant legal risk on which a view was held that it could be damaging both on reputation and financially was the Competition Commission investigation for anti competitive practices. If found guilty the maximum penalty was suggested to be up to 10% of the company's gross revenue which would have been detrimental to the company. It was proposed that to mitigate such risk a guarantee of R100-million from Sekunjalo

Investment Holdings be negotiated. It was also recommended that all recommendations of the legal due diligence service providers Cliffe Decker and ENS be implemented as part of the transaction documents.

7. Valuations risks – the valuation conducted by the transaction team was considered to be in the top quartile of the valuation range particularly in comparison to PS. The main shortcoming of the valuation was that it was dependent on the turnaround strategy assumption given that the company's earnings were on a negative trend – for the past three years at least. If the turnaround interventions do not materialise as projected there were material downside risks to the valuation.

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8. Structuring risks – so the majority of funding to Sekunjalo Consortium was proposed in a structurally subordinated structure thus debt service was dependent on distributions or dividend from the operating company. Non performance of INMSA would result in low or no dividends and therefore rolling over of the debt position. Considering the targeted entity INMSA was experiencing decline in earnings in prior years and Risk considered it a turnaround acquisition. The view was held that Commercial Banks were expected to provide debt funding will in all likelihood restrict any distributions which will in turn result in debt not being serviced.

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As indicated in paragraph 10 above the risk report made affirmative recommendations in respect of the proposed funding of the INMSA transaction. The risk report however did not explicitly indicate the transactions level of risk, ie whether it was high, medium or low risk. It is however evident in the risks and potential mitigants in the risk report that the

transaction was considered high risk. In my view this can be evidence from the recommendation that the services of a turnaround specialist be sought.”

**ADV JANNIE LUBBE SC:** Can I just ask. Why didn't this risk report spell out the level of the risk?

**MR BENEDICT MONGALO:** Through you a Commissioner. It was not a requirement that we indicate the level of risk. However the role of risk was merely to advise the sanctioning committees on the pertinent risks in the transactions. So a number of risks that I have pointed out were presented to the sanctioning committee and I guess ultimately the committees would decide whether they view them as you know high, 10 medium or low risk.

**ADV JANNIE LUBBE SC:** Thank you.

**MR BENEDICT MONGALO:** Sure.

“The committee outcome

To the best of my recollection all PIC committees referred to in paragraph 8 above approved the INMSA transaction by way of majority vote of the members of the respective committees with certain conditions. The respective committee resolutions and/or extract or minutes are attached as Annexure B for ease of reference.

20 To the best of my recollection, one non-executive directors recorded his dissenting vote during the PIC board meeting held on the 11<sup>th</sup> March. Mr Jan Strydom who was at the time the Chairperson of the investment committee indicated that he was not voting in favour of the proposed transaction. Mr Elias Masilela who was the Chief Executive Officer of PIC at the time had recorded a conflict of interest in one of the earlier committee meetings. To the best of my recollection the conflict emanated

from his involvement and or relationship with one of the bidding consortiums.

In light of the quantum of the proposed amount that was to be committed to the INMSA transaction the PIC decided to also approach GEPF IC pursuant to deliberations that were had at the investment committee. On or about the 21<sup>st</sup> February 2013 the PIC held a meeting with the GEPF IC during which the transaction team requested an analyst from Standard Bank Group Securities to present an independent assessment and to provide information on the print media sector of South Africa to the members of the GEPF IC.

10                   The presentation which attached as Annexure C highlighted amongst others the following views on the sector.

1. That the print circulation is likely to continue declining.
2. The print advertising market share could decline 28% by the financial year 2014.
3. And low broadband penetration protects print media albeit the view was that this will be short lived and consequently would adversely impact the print media.

20                   T           To the best of my recollection the GEPF IC indicated its discomfort on the INMSA transaction to the PIC. However despite this reservation the GEPF IC acknowledged and asserted that the PIC had a full discretionary mandate that empowered the PIC to decide whether to invest in the INMSA or not.

The PIC bought a presentation process.

In respect of the presentation of the proposed INMSA transaction to the board of PIC I recalled that the board had a closed session which I was not

privity to. The transaction team as well as the risk team members waited outside the meeting room during this closed session. The team was subsequently invited into the board meeting and was requested to present the INMSA transaction to the members of the board.

To my recollection the transaction team is the only team that presented a summary of the transaction to the board. None of the other teams presented their respective reports. Following the presentation by the transaction team the board deliberated on the proposed INMSA transaction and pursuant to the deliberations the PIC board Chairperson who at the time was Mr Nhlanhla Nene invited the members of the board to vote on the proposed transaction. To my recollection all of the members of the board approved the transaction with the exception of Mr Strydom.

Commissioner in conclusion the purpose of this statement is to provide a detailed account of my role and/or involvement in the INMSA transaction and as can be gleaned from the statement contained herein my role primarily included assisting the transaction team in performing a risk assessment and preparing a risk report which was submitted to the aforementioned committees for consideration in accordance with the procedural processes of the PIC.

20 **ADV JANNIE LUBBE SC:** Thank you Mr Commissioner that is the evidence.

**MS GILL MARCUS:** Thank you very much. It is a bit difficult because some of the questions that I would have may or may not be applicable to you. But I think it's just – I'm going to table them anyway and if they relevant to subsequent witnesses we will then deal with them.

Perhaps just if we could move on your documentation to business valuation

on page 19. In essence and you've mentioned that in your statement to the question of the value attributed. Because the proposed enterprise value of R2-billion implies an entry abider multiple of 7.35 wherein the industry norm is 6.7 and therefore a significant overpayment. Is that correct – overvaluation?

**MR BENEDICT MONGALO:** Commissioner I wouldn't necessarily call it an overpayment. I would simply say that it was certainly above the industry medium and there are instances where the premium may be warranted. In which case we would need to look into those particular reasons.

**MS GILL MARCUS:** But if you looked at it in conjunction with 2.64 which is the  
10 shortcoming of the discounted cash flow valuation is that the company's earnings have been on a negative trend for the past three years.

That is the indicative valuation assumes successful implementation of various turnaround initiatives. To price your payment on what might happen if you do a turnaround and it's implemented successfully. Surely in the interest of the PIC you would be looking at to say that should be proven before we pay that amount.

The valuation should be on what it, not what may be.

**MR BENEDICT MONGALO:** That is correct Commissioner. So I guess from a risk perspective what we were raising here, we were simply saying that given all the factors that Ms Marcus has raised there is an issue in paying a premium towards the industry  
20 ...[indistinct]. So there are other ways that you know we would obviously try to limit the downside but it's mostly on structuring. So in a company that is experiencing declining earnings.

In an industry that perhaps has got a negative outlook one would not necessarily pay a premium.

**MS GILL MARCUS:** If we went to your clause 6 of the document. That was a bridge

funding package in excess of R2-billion with a refinancing by Commercial Banking of about R750-million at a later stage. Did that refinancing ever take place?

**MR BENEDICT MONGALO**: Commissioner not to my knowledge. I must however indicate that that following the transaction I then moved from risk and therefore I wasn't really looking into the transaction. I think the transaction team that was looking into the asset now may well be in a good position to advise.

**MS GILL MARCUS**: And again the risk report on page 12 about further undertakings were implemented post the financial close, succession planning etcetera and paragraph 12 – page 4, paragraph 12. To provide bi-annual statements and covenants for the  
10 bank debt which was to be raised. Was that ever implemented either, do you know?

**MR BENEDICT MONGALO**: No Commissioner this were the conditions that we have placed as risk and to my knowledge the committees approved the transaction with this conditions. So they ought to have been carried to the legal documentation but I am not in a position to comment. I am not sure if they were indeed carried through.

**MS GILL MARCUS**: Advocate as we looking at these things we can look and see whether they were in fact carried through and what this conditions were.

**ADV JANNIE LUBBE SC**: Commissioner yes we will follow that up.

**MS GILL MARCUS**: If I then went to page 7, 13.8. Your concern was given the trends and the question of the likelihood that any bank funding would restrict the debt – I mean  
20 restrict distribution which would result in the debt not being serviced. Do we know whether this debt was serviced or is being serviced?

**MR BENEDICT MONGALO**: Commissioner once again I'm not privy to this transaction so I don't know if indeed it's being serviced. But it is correct there is an issue that we were raising that given that the funding structure is structurally subordinated it will require the company to declare distributions and in the event that they have taken bank

debt ordinarily banks would put in conditions which would restrict distributions if their debt is not being serviced.

So consequently we were seeing the risks that our facility may not be serviced due to that.

**MS GILL MARCUS:** And yet a premium was paid. We looked at just a general question and I understand that this is not necessarily your area but I think it's just coming out of your statement so I do feel obliged to respond to or to ask questions about it.

Is it standard procedure for the Committees to actually vote so it becomes a  
10 majority decision not necessarily a consensual decision?

**MR BENEDICT MONGALO:** Commissioner I'm not sure of the terms of reference but I think the – they would normally try to reach consensus failing which the members would vote. But the practice is that the Chairperson of the committee will ask each committee members whether they are comfortable with the transaction.

In this particular instance as I've indicated I do recall one member – a Mr Strydom indicating his discomfort with the transaction and I specifically remember it because he was the Chairperson of the Investment Committee.

**MS GILL MARCUS:** So if we looked at your statement paragraph 15 o page 7, there is a majority vote of the members and then on page 22. The Chairperson inviting  
20 members of the board to vote on a proposed transaction which I am assuming from that it was an outcome of not getting consensus that it was being put to a vote. If it was not standard practice that you tried to reach consensus rather than standard practice.

**MR BENEDICT MONGALO:** Commissioner I think to the best of my recollection there was only one person who had indicated discomfort on the transaction.

**MS GILL MARCUS:** That was Mr Strydom.

**MR BENEDICT MONGALO:** Yes. So I'm not entirely sure what would have prompted the Chairperson to invite the vote unless it was the view that we should get the majority of the board members to vote on the transaction given that one member was uncomfortable.

**MS GILL MARCUS:** My final question would be on paragraph 20 on page 9. This is something that – I want to just get clarity from you because the wording there actually is quite serious. The GEPF indicated discomfort on the insert transaction to the PIC. If that's the case how can or what would be the rationale for the PIC asserting against its own client who says I don't want to do it but we've got a discretionary mandate.

10           Because you do have a discretionary mandate but if I'm expressing a concern I would have thought you would like to hear what I have to say which is why you came to talk to me in the first place. So that's the first part of it and the second part of it is for me even more concerning.

          The GEPF Investment Committee acknowledges that the PIC has a full discretionary mandate and therefore they can do it. So I express a concern but say go with your mandate, you got a full discretionary mandate. How would that and perhaps that is something else we need to follow Advocate Lubbe. Because to me that is a dereliction of duty, a duty of care and skill and responsibility. If you said I express a concern but you have a full mandate, go and do it and I say I've come to consult you.

20           We expressed a concern and I'm ignoring your concern, I'm going ahead because I got a full mandate – full discretionary mandate. That paragraph, is that your understanding of what occurred there?

**MR BENEDICT MONGALO:** Commissioner that is my understanding of what occurred at the GEPF IC. I mean to answer the question I'm not sure what would have prompted PIC to proceed with the transaction. Although if I'm simply looking into the issue of the

fully discretionary mandate it would seem to imply that in the very first instance if you were comfortable to approve the transaction there is no need to have referred it to the GEPI IC.

But it was referred there and they look into the transaction and to my recollection there was discomfort on it. So it may also be an issue of not wanting to create a precedent wherein you have got a fully discretionary mandate and the client holds a different opinion to yours in which case you still have to make the decision. Because you could have made a decision to not proceed with the transaction given what the client is saying. But given your fully discretionary mandate you proceeded  
10 with it.

**MS GILL MARCUS:** But even if you had a fully discretionary mandate means you can also say no. A discretionary mandate does not mean that you have to do the transaction. Your discretionary mandate says I can say no, I've heard the client. In my discretion we've had a difference of view in the committee and I can say no.

So it's a question of saying yes notwithstanding the concern that a member, a chair of the investment committee and the client have we are proceeding because we have a fully discretionary mandate.

**MR BENEDICT MONGALO:** Commissioner I agree – I agree with that proposition. Just what I was simply saying is that I don't think that I don't think that the PIC  
20 approved the transaction on the view that they've got a fully discretionary mandate. I think they approve it because they believed in the transaction in the very first place.

**MR EMMANUEL LEDIGA:** Ja questions, I just think the bulk of the questions which are being raised can be I think answered by PMV also because.

**ADV JANNIE LUBBE SC:** We are going to call them Mr Commissioner.

**MR EMMANUEL LEDIGA:** Ja because you were not part of the you know the future of

the transaction. But I got one or two questions there. In terms of 13.2 – 13.2 paragraph. You talk about reputational risks and politically exposed groupings. Can you talk more about that and who the groupings were and what the concerns were there.

**MR BENEDICT MONGALO:** Commissioner on Annexure A which is the actual risk report, page 4 we have detailed the number of the consortium partners and I think our concern from a risk perspective was that when this transaction was being appraised from a PIC perspective there was already a whole lot of external noise from the media that politically exposed groupings would be – may well be on this asset.

10           So Commissioner to answer the question. The discomfort from the risk perspective was simply that whether these politically exposed groupings run the business it was immaterial. It was whether the perception – it's perceived or real it was going to be immaterial. That is why we went ahead and even proposed that they appoint an independent board.

We also put in a condition that they need to have independence in their editorial policies and it was largely to ensure that apart from this perception that may be there that the business does not seem to be advancing certain agendas based on who the shareholders were.

**MR EMMANUEL LEDIGA:** Alright in terms of the risk report and high risk versus low risk. Do you – does the PIC typically invest in companies' where they say it's very high risk and I do know it looks like there was a lot about BEE within the media sector that you know. But does the PIC money in high risk companies generally?

**MR BENEDICT MONGALO:** Through you Commissioner. I think it does differ. There are instances we would ordinarily invest in start up companies. In fact in the impact investing most of the transactions that we were investing in are either starting up or

they're projects. So there are high risks but the risk is slightly different to this one because mostly those are project finance type transactions.

This was a pure acquisition deal which was on an existing business in an industry that you know we could sort of benchmark over years. We know exactly what the industry or the circulation figures or the advertising revenue is doing. So it was slightly different in that sense. But yes we do invest into companies that are considered or that would be considered to be high risk.

**MR EMMANUEL LEDIGA:** And finally in terms of structuring of the transaction. Wouldn't it have worked better if the PIC is senior lender of the transaction could have  
10 fallen through given the high risks. I mean couldn't the structuring maybe been done better? Couldn't it have been done better – no?

**MR BENEDICT MONGALO:** So Commissioner the total quantum that was being requested at the time was R2 040 000 000,00 and part of that was that the R750-million was going to be bank debt. That was going to be senior debt. So I think in this particular instance its immaterial given that you were providing the full quantum what was going to be senior debt, what was going to be ...[indistinct] equity up to you know the equity.

So it was full the entire capital structure that we had advanced. The question that was asked earlier was whether I know whether that R750-million senior debt  
20 materialised. I don't know if it has materialised but if it did materialise it would have been better given that it would have been reduced in the PIC exposure.

**MR EMMANUEL LEDIGA:** And there was no way that stuff like put options could have been done or some protection?

**MR BENEDICT MONGALO:** We had proposed a guarantee that only restricted to the competition commission liability that was likely to arise. So typically if we put a put

option we put a – you get a put option from someone who could give you protection. I think in this particular instance none of the sponsors were going to give us adequate protection.

**MR EMMANUEL LEDIGA:** And the R100-million was for the suretyhip. Did it cover the R100-million you know that the competition commissioner ensures? Was it for the competition commission issue?

**MR BENEDICT MONGALO:** Yes so the proposal from risk was that given that we know that the Competition Commission was investigating a matter that may result in a penalty of 10% of the company's revenue we would need a cover or protection for that  
10 potential liability. So that's where the suretyship came from.

**MR EMMANUEL LEDIGA:** Okay thank you, thank you very much.

**ADV JANNIE LUBBE SC:** Can I – if there is still more questions is it – can I proceed ...[intervenes].

**COMMISSIONER:** Just two questions. In fact I think you may proceed Mr Lubbe then I'll ...

**ADV JANNIE LUBBE SC:** Mr Commissioner I have one question to Mr Mongalo. Mr Mongalo when we look at your report holistically I see the following. The PIC is investing in a company already in financial difficulty. I see earnings for the past three years negative. There is a risk report, media and leisure companies likely to default.  
20 There is a huge reputational risk, there is a huge legal risk.

This is reported to the investment committee and then they take the extra ordinary step to go to the investment committee of the GEPF and discuss this with the mandatory. The GEPF tells them we are uncomfortable with this investment. Then the IC takes the further step and it takes this proposal to the board and then a strange thing happens at the board according to your report.

The investment committee presents to the board. But legal and risk are not given the opportunity to present to the board and on that limited presentation and with the background you mentioning the board takes a decision to invest. Can you comment on that?

**MR BENEDICT MONGALO:** Commissioner I think maybe just to comment on one thing. So for me from a risk perspective the fact that we did not present to the board it wasn't unusual. There are instances where the board – where the members agree. They simply say we consider that everyone has read the report and accordingly no one needs to – well there is no need for us to present.

10                   So I mean I did not take it to be anything unusual. However everything else that has been mentioned by Mr Lubbe I think it is correct. I don't have any comments.

**ADV JANNIE LUBBE SC:** My concern is – if I can follow up. Taking into account the run up of this whole investment procedure to the board stage. Shouldn't at least the risk people be allowed to explain to the board which you label as a high risk investment? Should that not have been and I am talking about the background of this whole transaction and the run up to the board. Would it have not have been the proper thing to do for risk to present to the board and explain why it is labelling this investment as high risk?

20                   **MR BENEDICT MONGALO:** Commissioner possibly it would have been ideal to get risk to present but as I've indicated we – I certainly at the time did not consider it to be unusual. The other thing is that we had presented the transaction to the investment committee and ordinarily the chair of the investment committee is the one who gives the feedback to the board. In this particular instance it was slightly different given that the chairperson of IC – he was not comfortable with the transaction.

**MS GILL MARCUS:** Again you may not know but in terms of the board resolution that

there was approval subject to three preconditions. Senior debt being in the capital structure within six months, the introduction of a proper ...[indistinct] staff scheme and the current CEO remain with the company for at least three years. Were any of those implemented?

**MR BENEDICT MONGALO:** Commissioner I'm not in a position to comment, I'm not sure but it relates to the R750-million that I spoke about.

**ADV JANNIE LUBBE SC:** Mr Commissioner evidence will be presented on that score.

**COMMISSIONER:** Will we - Mr Mongalo will we be in a position to know the names of the GEPF IC members who were at the meeting with the investment committee at the

10 PIC?

**MR BENEDICT MONGALO:** No Commissioner I do however know the chairperson, it was Mr Arthur Moloto but the other members I don't know them.

**COMMISSIONER:** He was present?

**MR BENEDICT MONGALO:** He was present yes.

**COMMISSIONER:** The other question relates to what you said in paragraph 14. I just want to make sure that I understand it. Is it that despite the findings and the discomfort expressed by the risk committee, the risk report made affirmative recommendations which meant that the deal can go through? Is that what it means?

**MR BENEDICT MONGALO:** That is correct Commissioner. I think from a risk  
20 perspective we said the deal can go through subject to all of the conditions that we have placed yes.

**COMMISSIONER:** Yes that's fine, you've answered the other question that I had as to why the matter had to be taken to the board but you've answered that. The chairperson of IC was not satisfied or had some discomfort himself or herself.

**MR BENEDICT MONGALO:** Commissioner I don't think that was the reason it went to

the board. I think the reason it went to the board was that post the GEPF IC there was a view that the matter must be heard by the board. I think in most of the terms of reference of the committees is that to the extent that a committee requires a higher committee to look into a particular matter they can always refer to that committee.

My understanding is that given firstly the reputational issues and also the fact that the matter had gone through to GEPF, there was a view that the full board must hear the transaction.

**MR EMMANUEL LEDIGA:** I you can recall was there any pressure maybe political pressure or pressure that you know sort of the BEE pressure that this transaction has  
10 got to be done. Was there some pressure in terms of BEE, say this is media, BEE has got to be done here or any political pressure given that there were PEPS around?

**MR BENEDICT MONGALO:** So Commissioner my role is largely back office at risk so I would not have got pressure if there was any pressure. Certainly not from my side. I don't know of the transaction team would have got any pressure and perhaps they will be in a position to advice. But I did not get any pressure and that's why we could look into, you know the transaction the way we looked into it and make some recommendations. You know that we did. But certainly there was no pressure on my side.

**COMMISSIONER:** Yes thank you Mr Mongalo, I thanked you the other day and I  
20 repeat what I said on that day. Thank you very much.

**ADV JANNIE LUBBE SC:** Thank you Mr Commissioner, members, this is the business of the day. Can we then adjourn till 10 o'clock tomorrow morning?

**COMMISSIONER:** Yes will you please see us in our chambers afterwards? Will you please see us in our chambers afterwards? We'll adjourn until 10:00 am tomorrow.

**INQUIRY ADJOURNS TO 2 APRIL 2019**

