COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT CORPORATION

HELD AT

TSHWANE, PRETORIA

16 APRIL 2019

DAY 29

PROCEEDINGS HELD ON 16 APRIL 2019

CHAIRPERSON: Good morning, everybody.

ADV JANNIE LUBBE SC: Good morning, Commissioner.

CHAIRPERSON: Can everyone hear me, because I have been told that I am speaking too softly.

MR DANIEL BURGER: Good morning, Commissioners. Before Mr Mahloele continues with his evidence, might I hand up a document? We have made three copies of the document. You will recall yesterday that there was some issue about Harith General Partners and when Mr Moleketi became a director of the company.

We now have the full document which gives the whole history of the company as issued by the CIPC and it indicates, as I have said yesterday when Mr Holomisa was being cross-examined, that Mr Moleketi became a director of Harith GP on the 23rd May 2012.

If I might hand it up to the Commission? It would have to have an exhibit number.

CHAIRPERSON: [Indistinct]

MR DANIEL BURGER: Sorry, your microphone.

CHAIRPERSON: Sorry. My last one was Exhibit 4 that I have here. I do not know if you went to five?

MR DANIEL BURGER: Five? Thank you, Commissioner.

CHAIRPERSON: So, this one will be Exhibit 5.

MR DANIEL BURGER: Thank you, Chair. Chair, I have just been informed that the big schedule of PIC Unlisted Investments was Exhibit 5. So, perhaps if this one could be marked Exhibit 6? And then you will see on the list of directors, Mr Moleketi's name and next to his name the date on which he became a director. Thank you.

CHAIRPERSON: Mr Mahloele, you are still under oath.

TSHEPO DAUN MAHLOELE: (s.u.o.)

CHAIRPERSON: Thank you. You may be seated.

MR DANIEL BURGER: Mr Mahloele, could you turn on your microphone, please?

MR TSHEPO MAHLOELE: Okay.

MR DANIEL BURGER: Yesterday, you were giving evidence and I believe you got to the end of paragraph 9 of your statement.

MR TSHEPO MAHLOELE: H'm.

MR DANIEL BURGER: You told the Commission about the contract between yourself and the facilitation trust. If you could continue with your statement from paragraph 10.

MR TSHEPO MAHLOELE:

> "Following internal procedures, the PIC loaned to the PAIDF Facilitation Trust seed capital in the initial amount of just over R17 million, reflected in a facility agreement..."

And this is captured in pages 29 to 45, I think, of Exhibit 3 in the document.

> "The loan was also approved by National Treasury and then also by the Minister of Finance at the time, Mr Trevor Manuel with the full recommendation of the PIC board. A copy of a progress report, dated 4 April 2006 and of the approval and the recommendation, dated July 2006..."

I also included it in the bundle at pages 46 – 50 and pages 67 – 69 of my – in the Exhibit 3, also like no list, the approval, which was granted by Treasury, you know in all – for the establishment of the Facilitation Trust, the provision of the Facilitation Trust Loan and the establishment of the trust.

And if I may, Commission? In Exhibit 3, on pages 67 – 69, that is the update... Pages 67 - 69 is the update report which was written to Minister Trevor Manuel at the time about the progress of the fund and that had been undertaken. Yes. And also mention of the loan is also mentioned in there.

Paragraph 11...[intervenes]

MR EMANNUEL LEDIGA: Let me ask him. All right. Let us rather deal with the loan and finish it off here, I guess. Because it does not come up again, I guess. The repayment, when one looks at the agreement, I could not get clearly in terms of the repayments of the loan. And then was there any security package surrounding that particular loan? Those are the two questions.

MR DANIEL BURGER: Your microphone.

MR TSHEPO MAHLOELE: Okay. The loan to the Facilitation Trust of R17 million was approved by National Treasury. Approved by the Minister of Finance. There was not a security package as such for that, since it was in any way seen as to been an initiative that the PIC is sort of like, you know, you putting forward.

And with regards to in the manner, I think it also provides for it, in the loan agreement, that the interest rate would be at 10%, but how these are repaid, Commissioner is that, once the fund gets closed and you have like, you know, all the investors having made their commitments, you get what is initially called an establishment fee of 1% which is charged to all the investors.

And out of that 1%, that is why you get a situation that at the end of 2007, once the fund was closed, the whole R22 million and interest was repaid to the PIC.

MR EMANNUEL LEDIGA: Yes, because you get the management fees from the fund.

MR TSHEPO MAHLOELE: The fund, yes.

MR EMANNUEL LEDIGA: And then you can then repay a particular loan.

MR TSHEPO MAHLOELE: Yes, payback. Yes, yes.

MR EMANNUEL LEDIGA: Okay.

MR TSHEPO MAHLOELE: But perhaps just like... For even – before the management fee, there is an initial, what they call an establishment fee, charged to all the investors of 1% and that is what was used to make sure – because the management fee of the one ...[indistinct] just on closure, would not have not like sufficed to have paid all the R22 million back to the PIC. So, that is how it was like covered.

> Paragraph 11:
>
> "The PAIDF was formally established. We set about establishing the managing company whose sole responsibility would be to manage the funds to be invested in the PAIDF.
>
> We embarked on fund raising roadshows to find private sector investors, pension funds and

> development financial institutions who would invest in the PAIDF and who would also believe in the vision of the African Renaissance.
>
> The GEPF through its board of trustees, approved them and committed itself in principle to an investment contribution to the PAIDF of 250 million dollars on 11 December 2006..."

If you look at page 70 of Exhibit 3, is the actual letter which came from the GEPF, signed by the chairperson of the GEPF, at this stage, Mr Martin Kuscus.

And it is also, I think, important to just like note in terms of in that letter. That letter, the approval, is to the PAN African Infrastructure Development Fund. It is not the PIC.

That is why I keep on reiterating the direct connection between the PAIDF and the relationship with Harith Fund Managers, as opposed to this going through the PIC. And even, the letter addressed to myself and addressed to the PAN African Infrastructure Development Fund. I continue.

> "We subsequently established Harith Fund Managers. The fund managing company devoted exclusive to the management of the PAIDF..."

As I have said earlier on. Once you create the fund you need a manager who then manages that and that was Harith Fund Managers.

> "The fund was never intended...[intervenes]

MS GILL MARCUS: Sorry. At that time, in terms of Harith, what was the ownership structure or the shareholding structure of Harith FM?

MR TSHEPO MAHLOELE: At that time, in November/October 2007, it was hundred percent held by the PIC at that time.

MS GILL MARCUS: And prior to that, Harith had been held by you?

MR TSHEPO MAHLOELE: Yes, because I have got the shelf company. I actually got two shelf companies because they were going to be for this purpose and then the PIC insisted that: Give it to us. We will hold it.

MS GILL MARCUS: So, in terms of when it was you holding Harith as yourself, the money that was deposited or agreed to by the GEPF went into Harith when you were owing it?

MR TSHEPO MAHLOELE: No, the money did not go into Harith, Chair. What happened is that, when the GEPF commits or all the investors, when they committed in October 2007, they commit by way of a commitment letter. Not their funds.

MS GILL MARCUS: I understand that. I am saying, did any funds go into Harith when you were the sole owner of it?

MR TSHEPO MAHLOELE: No.

MS GILL MARCUS: Any funds at all? There was no draw-downs.

MR TSHEPO MAHLOELE: No, there was no draw-downs then.

MS GILL MARCUS: And then because you wanted, according to your own letters originally, to get the permissions to set up the PAIDF, that it should be managed externally, you went from the PIC into that.

There was no procedure to look at who could be the best CEO for a fund manager. It was you transferred from within the PIC to Harith.

MR TSHEPO MAHLOELE: No. I did a – from the PIC, I then did a –

was engaged on contract with the PAIDF Facilitation Trust.

MS GILL MARCUS: So, you were first with the Facilitation Trust on contract to them.

MR TSHEPO MAHLOELE: Yes.

MS GILL MARCUS: And then, how did you go to Harith as the CEO?

MR TSHEPO MAHLOELE: When we closed the fund, I was then appointed as the CEO of the fund. I had been running with it...[intervenes]

MS GILL MARCUS: Appointed by who?

MR TSHEPO MAHLOELE: By the PIC at the time or by the shareholders and also the investors. I think it was taken to be common cause that I am the one who had run and putting things together. Putting the management team...[intervenes]

MS GILL MARCUS: So, there was no search for a CEO, either of the Facilitation Trust or Harith? It was just assumed that you would be the best person from within the PIC and transferred into those positions?

MR TSHEPO MAHLOELE: Yes, Chair.

MS GILL MARCUS: And therefore, during that period when you were at the Facilitation Trust, was it the PIC that paid your salary?

MR TSHEPO MAHLOELE: It was the Facilitation Trust.

MS GILL MARCUS: That paid your salary?

MR TSHEPO MAHLOELE: Yes.

MS GILL MARCUS: So, you seized getting any income?

MR TSHEPO MAHLOELE: It was a consultancy agreement in a way.

MS GILL MARCUS: It was a consultancy agreement that, that became part of the expenses of the Facilitation Trust.

MR TSHEPO MAHLOELE: Of the Facilitation Trust.

MS GILL MARCUS: And from that time onwards, you no longer received a salary from the PIC.

MR TSHEPO MAHLOELE: Yes, Chair.

MS GILL MARCUS: Including when you went into Harith.

MR TSHEPO MAHLOELE: Yes, Chair.

MS GILL MARCUS: Then you were paid from within whatever income came into Harith.

MR TSHEPO MAHLOELE: Yes, Chair.

MS GILL MARCUS: Okay.

MR DANIEL BURGER: Mr Mahloele, can I refer you to page 51 of the bundle? Do you see that document?

MR TSHEPO MAHLOELE: Yes.

MR DANIEL BURGER: Can you just describe what that document is?

MR TSHEPO MAHLOELE: This is an agreement entered into between the African Infrastructure Development Facilitation Trust and myself which spelt out my services that I would offer to the Facilitation Trust and what that would entail.

MR DANIEL BURGER: And this agreement was signed in about June 2006 which we see from page 66?

MR TSHEPO MAHLOELE: Yes was done in June 2006, after I have left the PIC.

MR DANIEL BURGER: Yes. You referred to this document yesterday, I believe?

MR TSHEPO MAHLOELE: Yes, I did.

MR DANIEL BURGER: And then, if you look at page 73... From page

73 to – I think it is page 92.

MR TSHEPO MAHLOELE: Yes.

MR DANIEL BURGER: What is that document?

MR TSHEPO MAHLOELE: After the fund was closed in October and after...[intervenes]

MR DANIEL BURGER: October of which year?

MR TSHEPO MAHLOELE: Of 2007 and after the fund had been incorporated... The fund manager created to manage the fund, because it needs a company to manage that, the PAIDF needs to contracting manager which HFM.

I was then given an executive fixed term employment contract which is between Harith Fund Managers and Tshepo Mahloele.

MR DANIEL BURGER: And if you look at page 75... Do you have it?

MR TSHEPO MAHLOELE: [No audible reply]

MR DANIEL BURGER: It is paragraph 2.3.3. We see that the contract term, the initial term of your contract was for seven years.

MR TSHEPO MAHLOELE: Yes.

MR DANIEL BURGER: And 2.3.5 shows that the effective date of that agreement was the 1st September 2007.

MR TSHEPO MAHLOELE: The effective date, means the date on which the executives employment with the employer commences, being 1 September 2007, notwithstanding date of signature hereof.

MR DANIEL BURGER: Yes.

MR TSHEPO MAHLOELE: The thing is, that by that time we had already concluding the agreements of the PAIDF in terms of like, finalising the whole establishment thereof and we have secured enough commitments from investors to be like be fairly certain that the fund is now going to be established.

MS GILL MARCUS: Can I just for following your points? Can we just get an indication from both of those agreements, who signed off as the counter part to Mr Mahloele? Who signed for the PAIDF?

MR TSHEPO MAHLOELE: The PAIDF...[intervenes]

MR DANIEL BURGER: Which page?

MS GILL MARCUS: It is page 66.

MR TSHEPO MAHLOELE: The PAIDF Facilitation Trust, if I am not wrong, I think that was signed at that stage by Mr Brian Molefe. Yes.

MS GILL MARCUS: Okay, so it was a PIC signing off on that?

MR TSHEPO MAHLOELE: No, it was PAN Infrastructure Development Fund.

MS GILL MARCUS: Yes but signed by Brian Molefe.

MR TSHEPO MAHLOELE: Yes, Facilitation Trust.

MS GILL MARCUS: Yes, I understand that, but the Brian Molefe was the CEO of the PIC.

MR TSHEPO MAHLOELE: Yes.

MS GILL MARCUS: I am just saying this is... I am not arguing with you. I am just trying to get clarity of what this relationship was between the PIC and the signing off. Because the PIC signed off on behalf of the Facilitation Trust.

So, in essence, it is still the link back to the PIC. It is all I am trying to establish. And then when Harith signs for you on page 90, it is done by the chairman of Harith, which is Jabu Moleketi.

MR TSHEPO MAHLOELE: Yes.

MS GILL MARCUS: Correct?

MR TSHEPO MAHLOELE: Yes. But can I, if I may, Chair argue that a separate legal entity to drive this process was created with two trustees, being Brian Molefe and Professor Wiseman Nukhulu. And when I contracted for that period and for that service in that time after I had left the PIC, I contracted with the PAIDF Facilitation Trust and with the one of the trustees thereof.

And when I contracted with Harith Fund Managers after I had left PIC and had left the Facilitation Trust, a legal entity established then the Harith Fund Managers which is now going to be the manager of the PAIDF, signed by the chairman, ex-official like who was like the chairman of the Fund Managers which was Jabu Moleketi then.

MS GILL MARCUS: And was...[intervenes]

MR TSHEPO MAHLOELE: The Harith Fund Managers had its own board at the time.

MS GILL MARCUS: I understand that.

MR TSHEPO MAHLOELE: Yes.

MS GILL MARCUS: And that was comprising of the different investors in their different shareholdings.

MR TSHEPO MAHLOELE: Yes.

MS GILL MARCUS: Yes, and Jabu Moleketi, at that time, was he still chair of the PIC?

MR TSHEPO MAHLOELE: Yes.

MS GILL MARCUS: Yes. That is all I am trying to establish.

MR TSHEPO MAHLOELE: Okay. No, thank you, Chair. Can I continue?

MR EMANNUEL LEDIGA: Just give me a minute.

MR DANIEL BURGER: I am sorry. Can he continue?

MR EMANNUEL LEDIGA: Yes, thank you. You may continue.

MR DANIEL BURGER: You are at paragraph 12, I believe.

MR TSHEPO MAHLOELE: Thank you.

> "The fund was never intended to be a public sector led initiative. On the contrary, the investors agreed to invest in the PAIDF expressly on the basis that they would not be subject to a fund, governed by the structures of the PAIDF and that they themselves would have an actual stake in the management company, and therefore, the right as shareholders to appoint directors to each board.
>
> The whole idea was that the investors themselves would be able to determine the progress of the management company and the manner in which their owns funds were to be dealt with..."

MR EMANNUEL LEDIGA: Let us stop there a bit. The GEPF put money into the fund, but the PIC funds the founding of the company. I mean, it becomes very confusing, because it would mean that the GEPF should be having their shareholding rather than the PIC, but now we see the PIC giving you a loan. You know, the trust. And it becomes mixed up, you know. Can you please explain that?

MR TSHEPO MAHLOELE: Thanks, Chair. In my view there is no confusion about the matter. The PIC is an asset manager owned by the state. The PIC manages funds of the GEPF and other funds. Like, there is other entities. I think like, the UIF and everything and those, that it does that.

The PIC as a manager, I think looks at other ways in which perhaps like it was looking at its own sustainability in terms of also the whole issue of like its own reliance on just managing the one – this one major fund.

So, the PIC out of its operations funded this initiative of the Facilitation Trust. This initiative to try and establish another business line or another revenue stream through which they could do that.

So, therefore, this was not even done out of the funds of the GEPF. The GEPF then looks at this individually on its own, on the basis of looking at an investment directly in the fund, as opposed to an investment in a speculative venture of trying to establish a fund manager to go raise a fund, two separate entities and I think that is why they prefer to keep it that way.

MR EMANNUEL LEDIGA: But then the other investors like ABSA and Old Mutual end up getting shares in the vehicle later, but the GEPF does not get the shares.

MR TSHEPO MAHLOELE: Not all the investors choice to have shares. Those who choice to have shares are those who felt that... If you look at it at that time. In 2006, it was fairly myself and one or two other individuals, trying to get this thing going.

And that is why I have told you. Like, even one of the first entities we went to – we even went like to the IFC. We said: Would you partner up with us? We went to Old Mutual: Would you partner up with us to do this thing? We went to, you know, ABSA: Would you partner up with this thing?

And the whole idea was to the extent that you are going to create this fund of this magnitude who would also like to be close it and then to actually perhaps, even help you in a way in terms of like ...[indistinct].

Because one of the things you buy in a fund management company is also like the team and they felt to the extent that they could be closer to the team. Perhaps they want to be also like close – be part of the management company.

And if you remember, then banks and some of these institutions also had some of like their, you know, private equity fund managers. And even at the time, I think one of the reasons why we even went to like to Old Mutual was that ...[indistinct]. We said: You know, you have got aim. Can we partner with you in this regard?

And that was why and there were those who then choice to not be in and those were who choice to like: Look, we will be in the fund manager.

MR EMANNUEL LEDIGA: Okay, all right.

MS GILL MARCUS: While you are dealing with that, perhaps I can ask a question which I think comes later, but I would ask it now. In offering shares to investors, did you have a mandate to do that?

MR TSHEPO MAHLOELE: In offering shares to investors, the investors insisted, some of them – some of them like asked, that they want to be like participants in the fund manager. And that is why from the beginning it was said that, you know, we would like to be.

That is why you had like, you know, from entity like ABSA a commitment in excess of 1250 million dollars who said, like: You know, we are going to give you like a nice big commitment, but we would also like to be part of like the fund management company.

MS GILL MARCUS: And this was in 2007?

MR TSHEPO MAHLOELE: Yes, 2006/2007. Yes. But even at the…[intervenes]

MS GILL MARCUS: You had a mandate to do – to offer shares to investors?

MR TSHEPO MAHLOELE: Yes, and as we can see, Chair even in the initial memo that I read earlier on of 2005, that we even wrote to the GEPF. There is – we do elude to that fact that like this funds would be and that we would also look to some of the other partners investors into there. It was not me just saying we would like to just do that.

MS GILL MARCUS: So, your communication to the GEPF stipulates that you can offer shares to investors and the GEPF did not…? Because their reply does not approve that as I can recall that reply from Ms Kuscus.

But the second question is. If it that was agreed, why did it take so long and with some, from the documentation, unless I am not fully understanding some of that documentation – why did it become a point of dispute or difference and why did it take until 2009 to transfer shares?

MR TSHEPO MAHLOELE: That was exactly the big war which happened during that time and actually caused a big riff at the time between even like HFM and PIC, Chair. Because what happened is that, at closure there was actually some draft shareholders agreement which then like, you know, the investors and the fund manager had agreed to, as to like now who would be all the participants in the fund manager.

After the fund was closed, and as you can see, earlier on, like in 2008 and everything, the investors started writing to the PIC and said: This fund was not intended to be this way. I think there is a clause. I can actually find it in some of my things, which actually...[intervenes]

MS GILL MARCUS: Find the clause but continue explaining it. That is fine.

MR TSHEPO MAHLOELE: Okay, okay. Which actually said to the GIP(?) by the PAIDF – the PAIDF said to the PIC: We as investors came into this fund on the proviso that it would not be a public sector owned entity. We came into this fund on the provision that certain shareholders would have participation in the fund manager and this has not happened...[intervenes]

MS GILL MARCUS: Sorry. Just for clarity for me. Sorry to interrupt. Just for clarity for me. At that point in time, the PIC still owned one hundred percent of it?

MR TSHEPO MAHLOELE: Yes.

MS GILL MARCUS: Okay, and it then – when this was resolved it reduced to forty-six and the other had different shareholding?

MR TSHEPO MAHLOELE: Yes.

MS GILL MARCUS: Okay but continue. Sorry to interrupt you. I just wanted to be clear.

MR TSHEPO MAHLOELE: Okay. Because that is – and it happened over a period of, I think, eighteen months, Chair. And that is actually when it got to a point whereby actually the investors gave notice to determinate the management agreement between Harith Fund Managers and PAIDF because the PIC had refused to give over the shareholding structure in the way HFM was supposed to be.

MR DANIEL BURGER: Mr Mahloele, can I refer you, while we are on that? It is a bit ahead in your statement, but if I can refer you to page 93 of Exhibit 3?

MR TSHEPO MAHLOELE: Yes.

MR DANIEL BURGER: I think that is the letter that you are looking for.

MR TSHEPO MAHLOELE: This is the letter that I was looking for. The fund closed in October/November 2007. There was some draft shareholders agreement which had been put together which would be done and then at the time the PIC said: Look, we will resolve these issues after closure. Let us close this funds and whatever and then we will finalise the shareholding structure. That is what it said to the investors.

By May 2008, it still had not done that. There was also like... There was a whole lot of many reiterations between this, whereby the PIC said: No, we will give you some Phantom shares in this entity and keep hundred present which the investors refused and everything.

And then on 29th May 2008, actually the chairman of the PAIDF at that stage writes then to the chairman of the PIC, Mr Phillip Jabulani Moleketi, chairperson board of directors of Harith...[intervenes]

MR DANIEL BURGER: And the chairperson of the PAIDF was the same Martin Kuscus who was the chair of the board of trustees of the GEPF?

MR TSHEPO MAHLOELE: Yes. He was chairman of the board of trustees of GEPF, but he was also like the chairman of the board of trustees of PAIDF by virtue of their investment in the fund. And actually, GEPF had two representatives on the board of the PAIDF.

MR DANIEL BURGER: And perhaps if you could just read out paragraphs 4 and 5? I think that is what you were looking for.

MR TSHEPO MAHLOELE: I would like to start at paragraph 3, if I may, counsel?

MR DANIEL BURGER: You may.

MR TSHEPO MAHLOELE: This is written to like the chairperson of Harith Fund Managers which is the Phillip Jabulani Moleketi, who was also at the time the chairperson of the PIC:

> "The reason why the PIC initially acquired the entire issued shared capital of Harith was that PIC operations decided to support the establishment of PAIDF by:
>
> 1. Forming a company Harith for the purpose of establishing PAIDF;
> 2. Making a loan facility of approximately R17 million available to Harith to pay the establishment costs of PAIDF…"
>
> Paragraph 4:
>
> "It was never the intention, nor was it ever contemplated that the PIC would remain the only shareholder of Harith. Harith set out raising capital for PAIDF and during discussion with certain proposed investors, it was made very clear that any investments

was subject to the investors acquiring a shareholding in Harith which is not unusual in funds of this nature…"

MS GILL MARCUS: Just for clarify then in terms of the different shareholding that comes under 6 and bringing it up to date. Were those shareholdings actually then transferred to those entities in those amounts, being the PIC then still holding 40% and the others as reflected in that document and what is the situation as at today in terms of the shareholding because now Harith – I mean the question of PAIDF1 is a closed fund, what is the shareholding of the PAIDF1 at this point?

MR DANIEL BURGER: Harith of PAIDF?

MS GILL MARCUS: PAIDF.

MR DANIEL BURGER: Shareholding of PAIDF?

MS GILL MARCUS: This is what this says here, that this is the question of ensuring that this was the investment of shareholding.

MR DANIEL BURGER: In Harith Madame Commissioner.

MS GILL MARCUS: In Harith.

CHAIRPERSON: In Harith, yes.

MR DANIEL BURGER: Not PAIDF.

MS GILL MARCUS: Not PAIDF and therefore given that Harith FM became Harith GP when that was transferred – I'm trying to get to whether there is any other shareholding other than the PIC and the Harith team in the Harith GP.

MR TSHEPO DAUN MAHLOELE: Okay.

MS GILL MARCUS: And Harith, was this ever transferred into the Harith FM or did they become shareholders, what happened to that shareholding, what is the state today?

MR TSHEPO DAUN MAHLOELE: Chair, this was May 2008 and this, the shareholders, as they are listed here, were the ones who at that stage had agreed that they would want shareholding and that this is the way it would be and what's also important to note is that like this is what the shareholders – the investors in PAIDF accepted because then the PIC would be below 50% and this made this entity not a PFMA subject entity.

The African Development Bank at this stage for its 10% - you know, in addition, as you know, African Development Bank is a DFI and whatever invest and everything like it has all these immunities and all sorts of like protections and whatever and they also insisted on having those in the fund management company and I think in terms of like Reserve Bank and like National Treasury it was not possible to be able to give those immunities in a fund management company of this nature because there were all these other shareholders.

So the African Development Bank actually ended up not getting – said no, it's fine, then like no, we will not participate then in the fund manager. And you see there there's an entity called Cycad Investment Partners as to 30%. That entity is the initial name of what was Harith Fund Managers because before we came up with the name of Harith, the initial name we had used was Cycad Investment Partners and that was the entity which was going to hold the shareholding of the management team. It was subsequently then changed to like HSIST through a trust as opposed to a (Pty) Ltd and I was also explained at the time because at the time actually with that I, you know, go these two shelf companies which was both – there was – they had some other names but then we changed each one to Cycad Fund Managers and another one to Cycad

Investment Partners and I will explain later on like, you know, why we had two and how that was going to happen. But then it ended up, the final one being that because African Development Bank did not come in, it was decided that that 10% would be shared amongst, you know, the other three entities which would be ourselves, Old Mutual and ABSA.

In the end Old Mutual and ABSA were given their share and we were not given our share of that 10% and I think it was all a matter of like the environment and then the standoff at that time between in a way HFM and PIC's insisting at that time that it actually wanted more and that's how they ended up 46% in HFM, Chair.

MR DANIEL BURGER: Mr Mahloele I think you misspoke when you were speaking about Cycad, you said that was the original name of Harith FM.

MR TSHEPO DAUN MAHLOELE: Yes, that was a shelf company, it was Bay something whatever.

MR DANIEL BURGER: Yes.

MR TSHEPO DAUN MAHLOELE: And we the changed it Cycad Investment Partners and then changed – once we had set up the entity we decided like let's find a very different name and that's when we came up with Harith Fund Managers.

MR DANIEL BURGER: So not Harith GP, Harith Fund Managers?

MR TSHEPO DAUN MAHLOELE: No, this is Harith Fund Managers. This was in 2007. Harith GP was not used then. This was 2007, the initial entity which we used to contract with PAIDF.

MR DANIEL BURGER: But this letter is talking about taking shares in Harith, being Harith FM.

MR TSHEPO DAUN MAHLOELE: Yes.

MR DANIEL BURGER: So how can Cycad, if that's Harith FM, be taking shares in Harith FM?

MR TSHEPO DAUN MAHLOELE: No, Cycad Investment Partners, we had two entities. One was Cycad Fund Managers, one was Cycad Investment Partners. To hold the shares in Harith we were going to use Cycad Investment Partners to hold the shares in Cycad Fund Managers. Many fund managers like, you know, use that interchange –particularly like one would be the fund manager and then the entity that they use to hold their shares which is separate from the fund management company is like Investment Partners, so that's how we were going to hold that but in the end we ended up using the trust, which is Harith Share Incentive Scheme Trust as opposed to a (Pty) Ltd and actually that entity is the entity which actually later on, you know, we kept dormant, never used and then later on changed to Harith General Partners, it never worked between 2007 and 2012.

MR DANIEL BURGER: And then can I just take you – I don't want to jump in your statement but if I can just ask you to go to page 95 of the bundle to finish off from Mr Kuscus, paragraphs 8 and 9. This is the letter of 29 May 2008.

MR TSHEPO DAUN MAHLOELE: Paragraph 8, this is a letter from Mr Kuscus Chairperson of the Board of PAIDF.

> "We are hard-pressed to understand the reason for PIC's recalcitrance..."

Doesn't speak English.

> "We are hard-pressed to understand the reason for PIC's recalcitrance when it was made unequivocally clear that the

> investors that their investment into PAIDF were intrinsically linked to…"

Intrinsically linked – my tongue's a bit tight today, please, Chair, bear with me.

CHAIRPERSON: I think it's inextricably.

MR TSHEPO DAUN MAHLOELE: Thank you, Chair, I think it's my fourth language.

CHAIRPERSON: I understand, I understand.

MR TSHEPO DAUN MAHLOELE: Okay.

> "…linked to holding shares in Harith and in the proportions contemplated by the draft shareholders' agreement. We hereby request that the shareholding arrangements envisaged in paragraph 5 above and as contained in the most recent draft of the shareholders' agreement be confirmed by no later than Friday 30 May 2008 and therefore implemented by no later than Friday 27 June 2008 failing which the investors will proceed with our remedies available at law."

And for us, Chair, this was the whole crux of the issue because even beyond this date, you know, beyond May and June up to December the shareholding was never changed, it actually ended up in December 2008, PAIDF board actually giving notice to terminate without cause the agreement between PAIDF and Harith Fund Managers to manage the funds of PAIDF and giving six months notice without cause that the manager wrap up and give back the management – all the documents and everything relating to PAIDF.

MS GILL MARCUS: I just want clarity then of what was the final outcome of this, did the shares get transferred into at some point because that is, I think 2009 when that occurs?

MR TSHEPO DAUN MAHLOELE: Can I ask ...[intervenes]

MS GILL MARCUS: And into which entities that had this because obviously African Development Bank was in a different category and that whether any of those investors moved with the fund to Harith GP as shareholders.

MR THEMBEKA NGUCKAITOBI: Can I ask Mr Mahloele to – I think he's dealt with everything up to the end of paragraph 16, so if he can start at 17 you'll see exactly how it all unfolded. You've just dealt in your statement at paragraph 16, dealt with a letter from Mr Kuscus up to page 95 of the bundle.

MR TSHEPO DAUN MAHLOELE: Okay, great stuff. Paragraph 17:

> "A compromise was reached and Harith Fund Managers shareholding was restructured with the approval of the then Minister of Finance Mr Pravin Gordhan and the PIC board as reflected in a letter of 26 May 2009."

This is like page 96 to 98 of my exhibit which is the approval letter which came from Mr Pravin Gordhan and I might also like note at that stage that whilst Mr Brian Molefe was still the CEO at this time this was after 2007, Chair, and in 2008 we remember then there was then the change of cabinet and like the resignation or the recall of President Thabo Mbeki and Mr Jabu Molekete at that stage, which was I think September or October, something there around, like resigned with some of those cabinet ministers then with President Thabo Mbeki and as a result stopped being the Chairperson of the PIC and that's why in this think like even the approval in 2009 is then by Minister Pravin Gordhan whose deputy at that time was Mr Nhlanhla Nene.

MR DANIEL BURGER: Yes and in 17.2...

MR TSHEPO DAUN MAHLOELE: 17.2, ja, that's where I talked about the whole issue of how like it moved from – you know, in terms of like, you know, whereas even the approval by Minister Nene said that like the Harith Employee Share Trust would have 36%, it ends up only with PIC having 30% and despite all sorts of like ...[intervenes]

MR DANIEL BURGER: No, no, Mr Mahloele...

MR TSHEPO DAUN MAHLOELE: Yes?

MR DANIEL BURGER: You said the PIC landed up with 30% but that's ...[intervenes]

MR TSHEPO DAUN MAHLOELE: No, no, the PIC ended up with 46%.

MR DANIEL BURGER: Yes, if I can just summarise. This letter at page 96 says that 12% would go to Old Mutual, 12% would go to ABSA, 36% to the HSIST and 40% to the PIC.

MR TSHEPO DAUN MAHLOELE: Yes.

MR DANIEL BURGER: But we know that subsequent to that the PIC went – landed up with 46%, in other words 6% more than what is contained in this letter and the HSIST had 6% less going from 36% to 30%. If you can just explain how that happened.

MR TSHEPO DAUN MAHLOELE: Okay. Through you, Chair. What happened is that at the time, as I had said, that African Development Bank business they couldn't be afforded all the immunities and everything which they normally have in any country in the fund management company, they decided that they would not longer participate in the fund management company in HFM. So therefore it was then decided that that 10% would be split proportionally between ABSA, Old Mutual and ourselves. ABSA and Old Mutual got their proportional 2% and the employee trust did not get its proportional 6%, so – ja. Even despite our whatever. So that's the way it's ended up.

MR DANIEL BURGER: But how was it that the PIC managed – if you look at this 96 and in particular at page 97, paragraph 2.5, it says there – and this is (inaudible – speaking simultaneously) remain with 40%.

MR TSHEPO DAUN MAHLOELE: The PIC (inaudible – speaking simultaneously) of shares in Harith consequent to the sale of the shares.

MR DANIEL BURGER: Yes, so in other words the PIC would go from a 100% down to 40%.

MR TSHEPO DAUN MAHLOELE: Yes.

MR DANIEL BURGER: But the PIC landed up with 46%. So how was it that the PIC managed to go from 40 as set out at page 97 to 46?

MR TSHEPO DAUN MAHLOELE: In our negotiations, Chair – ja, we were just denied the additional 6% which was supposed to be proportional. I can't use other words to describe that in this forum.

MS GILL MARCUS: Can I perhaps ask Adv Lubbe because don't forget the reason why we're here is to see whether there was any impropriety in the actions of the PIC and the question of this shareholding and 6% up down, whatever the end results are is there must be an explanation for it. So Adv Lubbe, perhaps in our further work we just looked at how that went from 40 to 46 in due course because I think that's what the question here is, is what happened here? It can't just happen, there has to be reason and explanation for it. It might be totally legitimate reasons and explanation and we need to have that and obviously that isn't something.

ADV JANNIE LUBBE SC: It is noted, it will be supplied.

MS GILL MARCUS: That Mr Mahloele can respond to.

MR TSHEPO DAUN MAHLOELE: Chair, that's one question I wouldn't mind that it be checked. [Laughs]

MR DANIEL BURGER: Yes, I think you're at 17.3.

MR TSHEPO DAUN MAHLOELE: "The PIC obtained the substantial

> [indistinct] Harith Fund Managers the largest single shareholding since it had provided the seed capital loan in an amount finally calculated just under 22 million"

This loan, as I'd said, it had been done because PIC had this material interest in the overall success of the PAIDF at the time.

> "The seed capital loan has been fully repaid with interest to the PIC. The PIC retains still its 46% to this day without at any time be exposed to any risk on its own account."

Can I just say ...[intervenes]

MS GILL MARCUS: Sorry, who was that? Okay, if I could just ask on that for some clarity because my understanding is, you say it retains – the PIC retains 46% to this day but Harith FM has nothing in it? So it's 46% of nothing?

MR TSHEPO DAUN MAHLOELE: Chair, that's what Tata Holomisa said yesterday. There is a whole lot in the 46%. The PAIDF is still contracted to HFM, that's the entity that manages it and then the day-to-day management is still subcontracted, it's subcontracted to HGP when HGP was connected but then to HGP PAIDF still pays fees to HFM which then like, you know, has subcontracted everything to HGP and at the end of the life of the fund, Chair, there is what we call a carry which we believe that there will still be one which will be like perhaps around 2023, 2024 and in then the carry is the outperformance above 8% that the fund achieves. To the extent that there is that carry, Chair, that will accrue to HFM and that's where that 46% is there and so therefore, the statement that HFM has been liquidated, dissolved, stripped, empty shell, is not true at all and HFM, Chair, if I may still say, still has a board of directors comprised of the initial shareholders, it's got a PIC representative on the board, it's got myself, it's got Mr Chris Koen from Old Mutual and it's got Ariaan Sebata(?) from ABSA. So they still sit as the board of HFM and also manage the subcontracting arrangement between Harith Fund Managers and HGP because that's the way it flows because we couldn't change that the management of PAIDF now go through to HGP because then the shareholders in HFM didn't want to change their arrangements. I hope it makes sense.

MS GILL MARCUS: I think that I would like to pursue that a little bit later because otherwise we may just get stuck on it but I just – perhaps we can draft something that actually explains this exactly what was transferred, what was transferred, what exists in HFM properly so that one can see that these are the assets that remain in HFM and what has been transferred into HGP is the management of it and there's a contract between, I would just like us, perhaps between you and your counsel and Adv Lubbe just to give us something in writing that explains this because I hear what you're saying but I would just like to see what it actually reflects.

MR TSHEPO DAUN MAHLOELE: Okay, Chair, actually I'm sure before the end of the day – you know, when we did all the changeover in 2012, 2013, we had to like write to all our investors who had to approve this, al the ten investors as PAIDF, all our creditors and everything in HFM and we actually set out how the whole thing works even to the shareholders, Old Mutual, ABSA and everything. That pack is always there and we will prepare and have same for you, which explains how it was happened and why.

MS GILL MARCUS: Adv Lubbe if we could do that I think that would help clarify this confusion about what has occurred here.

ADV JANNIE LUBBE SC: It's noted, thank you.

MR DANIEL BURGER: Mr Mahloele, I don't want to jump in your statement but just keep a finger where you are and just have a look at page 13 of your statement right at the top where you list the benefits paid to the PIC by HFM and we see there that as recently as May of 2018 HFM is still declaring dividends, is that correct?

MR TSHEPO DAUN MAHLOELE: Yes.

MR DANIEL BURGER: Please, your microphone?

MR TSHEPO DAUN MAHLOELE: Yes, that's further on in my statement.

MR DANIEL BURGER: Yes.

MR TSHEPO DAUN MAHLOELE: I think it's paragraph 39.

MR DANIEL BURGER: Yes.

MR TSHEPO DAUN MAHLOELE: Which spells out some of like the dividends which had also like been paid by HFM and this remains in HFM after the management fee and everything which has been paid to HGP do everything remains. Whatever sort of like you know, excesses remain in HFM is then declared to the investors in HFM and even – ja, as you highlight, counsel, there were dividends declared in July 2014, July 2015 and July 2018 and the dividend declared to them like I think for the past what, three, four years, is like close to about R9, R10 million out of HFM.

MR DANIEL BURGER: Yes.

CHAIRPERSON: If and when a question is asked and you feel that you have dealt with it or you will be dealing with it in your statement you can say so. Okay?

MR EMMANUEL LEDIGA: Ja, try to – yes, you know, you might answer something briefly but say there's a big, you know, answer somewhere else. Ja.

MR TSHEPO DAUN MAHLOELE: Okay, okay, Chair.

MR EMMANUEL LEDIGA: Ja, so that we just go paragraph by paragraph.

MR TSHEPO DAUN MAHLOELE: Okay, fine. Okay.

MR DANIEL BURGER: And also just – I know you're going to get there but the whole thing that you spoke about, about a carry, is dealt with in paragraph 20 of your statement.

MR TSHEPO DAUN MAHLOELE: Okay.

MR DANIEL BURGER: But we'll get there.

MR TSHEPO DAUN MAHLOELE: Do I – maybe I can jump some of those things I've dealt with them and they are in the statement anyway.

MR THEMBEKA NGUCKAITOBI: Move paragraph by paragraph.

MR DANIEL BURGER: Yes.

MR THEMBEKA NGUCKAITOBI: You go paragraph by paragraph, ja.

MR TSHEPO DAUN MAHLOELE: Thanks for the time, Chair. Can I go on?

MR DANIEL BURGER: Yes, please.

MR TSHEPO DAUN MAHLOELE: I'm now at what, 18?

MR DANIEL BURGER: Yes. Well, 17.4, 5...

MR TSHEPO DAUN MAHLOELE: I'll go to 18, we've dealt with the fleecing and the looting of PIC by – so I'm sure it's okay. Paragraph 18 ...[intervenes]

MR EMMANUEL LEDIGA: Okay, just before we leave this section there's a question from me. Just in terms of transferring shares, you normally do a valuation and all that, so did the new investors pay any money for their shares, you know, the ABSAs and the Old Mutuals?

MR TSHEPO DAUN MAHLOELE: Yes, what happened is that when PIC in 2009 then had to transfer over the shares to the different investors it then declared a dividend to itself of all the funds which were in HFM and at that time, Chair, then HFM was a shell then there was nothing in it because all the money was then taken out and paid to the PIC. That's where PIC got this whole R70 million out of in 2009.

MR EMMANUEL LEDIGA: And just to clear that, that 7 ...[intervenes]

MR TSHEPO DAUN MAHLOELE: And then the price which was then paid by Old Mutual for its 12% was R1 200. 1 200 is for Old Mutual – for ABSA and then 3 600 for our 30%. It was actually supposed to be R3 000 since we didn't get the whole 36%.

MR EMMANUEL LEDIGA: Was that cash out the 77 million which you guys have referred to, that cash, cash paid out?

MR DANIEL BURGER: No, it's 70 million.

MR EMMANUEL LEDIGA: 70 million.

MR TSHEPO DAUN MAHLOELE: Cash. Cash, Chair. Ja, the cash paid out as a dividend. It was cash paid out as a dividend.

MR EMMANUEL LEDIGA: As a dividend.

MR TSHEPO DAUN MAHLOELE: All of it out of Harith Fund Managers to the PIC operations.

MR EMMANUEL LEDIGA: Ja, to reduce the balance sheet to zero.

MR TSHEPO DAUN MAHLOELE: To zero, yes.

MR EMMANUEL LEDIGA: Ja, to make the – alright.

MR TSHEPO DAUN MAHLOELE: Yes.

MR EMMANUEL LEDIGA: Alright, okay, I get that. Then the next one is the shareholder trust, you know, the HSIST, the employee trust, owned 30%. Who were the people there? Was that just you?

MR TSHEPO DAUN MAHLOELE: [Laughs] I wish but then I wouldn't keep all my team.

MR DANIEL BURGER: Chair, I have a document here which I – if I could hand up, it will be Exhibit 7A and it's an affidavit which lists all the members of the HSIST. I must just say that it's signed by a Commissioner of Oats – O-a-t-s, but that notwithstanding I don't think it affects the validity of the document. Might I hand it up? And it lists all the beneficiaries of the trust.

MR TSHEPO DAUN MAHLOELE: Okay, ja.

MR DANIEL BURGER: And while I'm on that if I can ...[intervenes]

CHAIRPERSON: Why do you suggest its numbering is 7A?

MR DANIEL BURGER: 7A and 7B.

CHAIRPERSON: Where's 7?

MR DANIEL BURGER: Oh, because there are two documents, Chair.

CHAIRPERSON: Okay.

MR DANIEL BURGER: The one relates to the HSIST Trust and the other one relates to the HTET Trust.

CHAIRPERSON: Okay.

MR DANIEL BURGER: HHET Trust.

CHAIRPERSON: Ja.

MR DANIEL BURGER: Which relates to Harith General Partners.

CHAIRPERSON: Okay.

MR DANIEL BURGER: So if I can hand up both of them and they're both commissioned by the same Commissioner of Oats. (sic)

CHAIRPERSON: Okay. So the second one will then be Exhibit 7B?

MR DANIEL BURGER: 7B, yes.

MR EMMANUEL LEDIGA: I think I'm fine there but I just want to ask another question. Maybe before you proceed it might help for you to tell us more about private equity structures in a sense that how are they structured and [indistinct] trusts, what is a fund, what is a fund manager, what is a carry? You know, just briefly because these points come up somewhere as we go along. How do you structure the whole thing, you know?

MR TSHEPO DAUN MAHLOELE: Thank you, Chair. Let me see where I start. It's a - you know, in private equity trust – in private equity fund managers, a team goes out, tries to influence investors about a certain theses that they believe in that they can then get them to commit to invest in a certain private companies to buy and to get value out of and to exit and make them perhaps a return other than perhaps what they would get with perhaps buying government bonds or like, you know, investing in like, you know, on the stock exchange or something. Something which, by its nature, private entities by their nature also like most times perhaps slightly riskier sort of like transactions and then you raise the fund and then buy – then the fund, you know, depending on where you think you're best placed to go raise investors who have appetite for that type of risk, you then do that. It takes time. And you then have a fund management company and then you have then – there's different trusts, you get a bewind trust and you get a vesting trust and you also tend to find that like, you know, one would be maybe beneficial in certain circumstances and one would not, depending on like the tax treatment thereof but basically like in most situations in South Africa that's what you'd find.

In other situations you also find that no, you create also perhaps a limited partnership but in that's where all the funds or the commitment is made to – by whatever investors you find to do that. There are fund managers who sometimes register some of their funds in South Africa. We registered our fund and it was a trust in South Africa and because we also in that fund had also international investors, we also needed to get Reserve Bank approval which we sought and were given by the nature of like the special dispensation which was given to PAIDF to try and accept other non-South African investors into that fund.

So, therefore – and the fund manager then contracts with the fund, the investors ...[intervenes]

MR EMMANUEL LEDIGA: The fund itself, ja.

MR TSHEPO DAUN MAHLOELE: To say we will manage this on this theses of type of transactions we will get into for this type of fee for this type of hurdle rate and this is the way you will, you know, reward us. Some funds, you know, say you will reward us on a basis of valuation each year as we achieve that hurdle. Some funds, which is in our case it's like a more, I think a more firmer end, sort of like more stricter sort of like principle say, you know we will reward you on the basis of the cash return you have made back to us and that's the way you contract and in some instances, you know, when we started, the sort of like going like going like for funds used to be like in the region of about, you know, 2% and then would like, you know, a 20% carry and with a hurdle rate. Now, you know, it's – the market is tightening and it has done that since about like perhaps 2010 or so, you find that in your larger funds like, you know, your fees are now reducing to about –for the big sort of like infrastructure funds in the US and then about 1% but funds on the continent, I think still get away with about 2% for funds because of like by the nature you don't find big funds in South Africa.

MR EMMANUEL LEDIGA: Okay, ja. No, no, okay, ja. Just a quick one and then what is a carry trust and just explain LPs and GPs a bit. Just briefly?

MR TSHEPO DAUN MAHLOELE: Okay.

MR EMMANUEL LEDIGA: Ja, ja.

MR TSHEPO DAUN MAHLOELE: The GP is a general partner, that's the fund management company which manages – that would be like in this case Harith Fund Managers. That's what's called the GP. Harith Fund Managers manages the fund on behalf of the PAIDF. The PAIDF, the investors in the fund.

MR EMMANUEL LEDIGA: It's a fund, it's like ...[intervenes]

MR TSHEPO DAUN MAHLOELE: That would be the limited partner.

MR EMMANUEL LEDIGA: PAIDF is a fund, it's like a unit trust.

MR TSHEPO DAUN MAHLOELE: Yes.

MR EMMANUEL LEDIGA: Yes, yes.

MR TSHEPO DAUN MAHLOELE: That would be the limited partner, yes.

MR EMMANUEL LEDIGA: A carry trust is meant for what?

MR TSHEPO DAUN MAHLOELE: The carry is a motivation to the fund manager to the extent that they achieve any return above a certain hurdle rate that they then start sharing that return with the investors in the proportion of 20:80. Let's say above hurdle rate of about what, 8%, the manager starts participating to the extent of 20% in the profits above that and 80% to the investors.

MR EMMANUEL LEDIGA: Okay, ja.

MR TSHEPO DAUN MAHLOELE: To the limited partners.

MR EMMANUEL LEDIGA: Ja, thank you.

MR DANIEL BURGER: Mr Mahloele, can you start at paragraph 18?

> "The investors also envisaged that a portion of the fund management company would belong to management for purposes of incentivisation through and employees' equity trust. This is an industry norm."

And as I said, in this case we used a trust. Initially, you know, when we registered PAIDF and Harith Fund Managers we thought that Harith Fund Managers would be like the fund management company and we thought that we would hold our shares through the other company which was like Cycad Investment Partners but in the end we ended up using the Harith share incentives in trust, we were using a trust as opposed to a company, that's the difference.

MR DANIEL BURGER: Okay.

MR TSHEPO DAUN MAHLOELE: "In accordance with the compromise to the PIC therefore the shareholders became as to that stage in I think May 2009, the PIC 46%, Old Mutual Life Assurance 12%, ABSA Trading and Investment Solutions 12%. The Harith share incentive scheme as to 30%. This trust permitted the employees including myself to participate indirectly in an equity share of the company thereby incentivising us over and above our salary entitlements. It's a precondition(?) in the industry that these skilled employees who are necessary to administer and manage the funds under their control be of [indistinct] such and equity share."

Normally in other entities you'd also actually find that like normally the manager tends to 100% but in our case it was the first fund, the investors felt that they want to participate in that and then they had like, you know, the capacity to be able to negotiate that for themselves.

"Of course, a management company ...[intervenes]

MR DANIEL BURGER: Sorry, if you could just – that last sentence of 19.4, I'd like you to read out because I think you might want to elaborate on it.

MR TSHEPO DAUN MAHLOELE: This deals with actually the issue of the carry. The employees receive no equity benefit unless and until the clients for whom they are managing and investing the funds have been fully paid out. I don't think it's as when they have been fully paid out, it would be when they have achieved the hurdle rate of 8% but in our case it's not even a hurdle rate that must be by virtue of a valuation, the investors must have achieved the hurdle rate in terms of like cash back to them which makes it an even much more strenuous, you know, requirement to jump for any fund manager.

MR EMMANUEL LEDIGA: The carry, you know, the sort of hurdle rate, is that in dollar terms?

MR TSHEPO DAUN MAHLOELE: Yes.

MR EMMANUEL LEDIGA: The 8%?

MR TSHEPO DAUN MAHLOELE: Yes.

MR EMMANUEL LEDIGA: Is that in dollar terms?

MR TSHEPO DAUN MAHLOELE: Yes.

MR EMMANUEL LEDIGA: Because it looks like you guys are doing like 6% at the moment.

MR TSHEPO DAUN MAHLOELE: Yes it's about 6%, so we haven't like participated in this carry as yet, even after 13 years of managing this and this is anyway, I think, Chair, by virtue of the fact that, you know, we're dealing with infrastructure assets, they take longer. The initial year in terms of the learning curves was slightly perhaps steeper than, you know, what we thought. The deal flow and then the deal closures, in the earlier years between 2007 and 2011 was not as like, you know, as robust perhaps as what perhaps the deal flow is increasing now and rates of closure of investments, you know, didn't do that and we did have in one or two cases also like one investment which didn't do that well but in any case we still actually even haven't had an exit yet out of any of our investments but it is my belief that like, you know, within the next two years we'll be starting to see the listing of one or two of our major assets within PAIDF1 which would really lend like, you know, perhaps result in that situation whereby we'll be able to achieve that hurdle rate.

MR EMMANUEL LEDIGA: Fund 1 began around what, 2007 and it ends when, 2024? Is that correct?

MR TSHEPO DAUN MAHLOELE: 2023, there around, yes.

MR EMMANUEL LEDIGA: Okay.

MR TSHEPO DAUN MAHLOELE: But then with an additional year or two by virtue of if the investors agree to extend that.

MR EMMANUEL LEDIGA: Ja.

MR TSHEPO DAUN MAHLOELE: And if you look at some – ja.

MR EMMANUEL LEDIGA: Ja.

MR TSHEPO DAUN MAHLOELE: Ja.

MR EMMANUEL LEDIGA: So meaning that you are looking at – so 2007 to 2023.

MR TSHEPO DAUN MAHLOELE: Yes.

MR EMMANUEL LEDIGA: It might go to 2025, is that correct?

MR TSHEPO DAUN MAHLOELE: Yes because in the management agreement you have a provision which says that this is like a 15 year fund and at the time it was the first 15 year fund on the continent because we were trying to say like to the continent and to the world and to Africa that Africa needs much more longer capital to enable it to build infrastructure assets and this was the first – and I think even today we're still one of – like, you know, only 15 year fund by virtue of the sector that we are targeting, targeting like, you know, more patient capital. But besides that, I think, Chair, I'd still to say that even though that's like hurdle rate hasn't been sort of like now cheap. From a developmental impact point of view we have seen tremendous impact in terms of some of the assets that we have like invested.

MR EMMANUEL LEDIGA: Okay, good.

MR TSHEPO DAUN MAHLOELE: Yes.

CHAIRPERSON: You might still get your carry at some point in time in the future.

MR TSHEPO DAUN MAHLOELE: I'll make sure I'll keep healthy and be able to do that, Chair. Thank you. But I still believe that that will be achieved. If I may, Chair, since we're talking about it, there's just two assets that we have in our portfolio. One is a fibre optic company which should be able to come to the market soon with a market cap perhaps nothing less than maybe, if I were to be conservative, R18 billion and we have like about 35% share in that, around about. Also within the next two years we also have entity called Anagy(?) which is about 2 gigawatts of power under its managing which like, you know, touching in excess of like about 30 million Africans across the continent and we have aggregated some of our power assets together with those of AFC and we hope that within the next two to three years we can be able to list that power company and we believe that like no, at that entity two should do very well in terms of once it comes to market. And it's the nature of the assets I think that we look at. These are entities with life spans and power purchase agreement and concessions, nothing less than 25, 30 years. So therefore it is a long term gain.

CHAIRPERSON: Okay, let's continue.

MR TSHEPO DAUN MAHLOELE: Okay, am I at 20 now?

MR DANIEL BURGER: Yes.

MR TSHEPO DAUN MAHLOELE: I've dealt with this, can I go to 21?

MR DANIEL BURGER: You may.

MR TSHEPO DAUN MAHLOELE: And also in 21, Chair, I deal with all the issues which deal with, you know, infrastructure.

> "It is necessary that I provide a snapshot of what infrastructure investment in Africa until this point usually entailed ...[intervenes]

MR DANIEL BURGER: Mr Mahloele, you can go through this but I think you already dealt with this yesterday all the way up to paragraph 26.

MR TSHEPO DAUN MAHLOELE: Okay. Thank you.

MR DANIEL BURGER: Unless the Commission wants...

MR EMMANUEL LEDIGA: Ja, I just want to go back, ja, sorry. Can I go back to paragraph 20?

MR TSHEPO DAUN MAHLOELE: Yes.

MR EMMANUEL LEDIGA: Paragraph 20. Can you just explain to us how you – how the fees arrangement work and issues like, you know, you mentioned bonuses here and other things. Just broadly, without talking about the actual numbers, how fees get into the management company, what types of fees, are those management fees versus operation fees and then how are they expended broadly and especially issues like bonuses, you know, because there is no carry yet.

MR TSHEPO DAUN MAHLOELE: Thank you, Chair. Quarterly we charge our investors a fee of on average – like, you know, in the first fund about 1.75%, it goes like up to 500 million, you like charge 2% and anything above that you charge a lesser fee, 1.5%, and then in – and so that's a fee we charge quarterly and that's what the investors pay and that's what sort of like sustains us.

The issue of a carry, as I've said, has not been earned in terms of like, you know, PAIDF1 as at this stage. The issue of, you know, bonuses to the management team, they way we do that in our fund is that, you know, because we know that in the nature of our class, which is infrastructure assets, the carry takes is not like, you know, usual private equity thing whereby 5 years in and 5 years out you start appreciating the carry. In stage like, you know, we are even beyond 10 years before you start even getting the carry, it's more than – we have a bonus scheme which is then budgeted for out of like the fees that we get. So, therefore, there's a lesser sort of like, you know, guaranteed salary and then bonus is budgeted out of the same fee which we get. So, therefore, those are the fees that we'd get and be able like to like then have an annual bonus out of dependent on our performance as evaluated by our board for that year.

MR EMMANUEL LEDIGA: And then the 1.75% is based on what amount?

MR TSHEPO DAUN MAHLOELE: That's the – if I may, I just gave the average for like, you know, the 1. – the initial like 500 is like, you know, at 2%.

MR EMMANUEL LEDIGA: 2%.

MR TSHEPO DAUN MAHLOELE: Of fund 1 and like anything above that is 1.5% and then in PAIDF2 the fee is actually less, I think the fee in PAIDF2 is 1.5% if I'm not wrong or 1.75, it's lesser and that's what we've seen across the industry going forward.

MR EMMANUEL LEDIGA: Sure, sure, but give us some sense. If we take 1.75.

MR TSHEPO DAUN MAHLOELE: Yes?

MR EMMANUEL LEDIGA: What is it based on, on 650 million dollars or what?

MR TSHEPO DAUN MAHLOELE: The 1.75 would then be initially for the first seven years, you are then like charge a fee. In our particular case many funds have it differently, they charge fees differently by the way the negotiate with the investors. In our case the initial seven years was based on the commitments because the initial seven to eight were based – were seen as the investment period, then that's the fee that you charge and from year 8 or 9 to like, you know, the end of the life of the fund then it's based on the value of the assets as independently, you know, valued and audited, the cost of the assets, yes, not on the commitment, yes.

MR EMMANUEL LEDIGA: Give us a sense – ja. Ja, but give us a sense, so on the 1.75, is based on what, 600 million dollars or what is it per annum in dollars and in rands? Just give us a sense of that?

MR TSHEPO DAUN MAHLOELE: I think the 1.75, you know, would be based on about – I think the current thing about in the region – Commissioner, I could be wrong because now it's based on what you call the costs of the investments, so I think now for fund 1 it would be in a region of about 600. Say 600 million dollars. But there is a step down I think in it, but I'll share that.

MR EMMANUEL LEDIGA: Just roughly. Ja, roughly and then we can get the correct numbers.

MR TSHEPO DAUN MAHLOELE: Yes.

MR EMMANUEL LEDIGA: So you say 1.75 times 600 million dollars.

MR TSHEPO DAUN MAHLOELE: Yes.

MR EMMANUEL LEDIGA: What are we talking about, 11 million dollars or so, is that correct? 11,10?

MR TSHEPO DAUN MAHLOELE: I think it's like the annual management fees, if I would like to give you like the rand ...[intervenes]

MR EMMANUEL LEDIGA: Ja, roughly.

MR TSHEPO DAUN MAHLOELE: Like the rand like equivalent, you know, depending on whether discounting what the rate would be at a particular time, I'd say like our management fees per annum since about – I think for the last few years, averages about 110, between 110 and R90 million.

MR EMMANUEL LEDIGA: In...?

MR TSHEPO DAUN MAHLOELE: Yes, in rands, yes.

MR EMMANUEL LEDIGA: Or 10 million dollars or so per annum?

MR TSHEPO DAUN MAHLOELE: Yes. No, no, no, less than that. 10 million will be about R140 million. Yes.

MR EMMANUEL LEDIGA: Ja, okay, so it's about 8 million dollars or so?

MR TSHEPO DAUN MAHLOELE: Yes, yes.

MR EMMANUEL LEDIGA: Okay, alright, per annum?

MR TSHEPO DAUN MAHLOELE: Yes.

MR EMMANUEL LEDIGA: So you said it's 100 million for the past year?

MR TSHEPO DAUN MAHLOELE: I think like for the past ...[intervenes]

MR EMMANUEL LEDIGA: And 90 for the...

MR TSHEPO DAUN MAHLOELE: For the past three, four years.

MR EMMANUEL LEDIGA: Ja.

MR TSHEPO DAUN MAHLOELE: Yes.

MR EMMANUEL LEDIGA: Okay, alright. And they manage to meet all the costs and then all the bonuses and then you can declare dividends too. I mean, do you make some good profits from the 100 million per annum? Give us some sense of the costs and the profits.

MR TSHEPO DAUN MAHLOELE: I think, Chair, in terms of in the current period, you know, we – by the nature of like, you know, actually fund 1 coming towards like the end of its whole life, you know, the next couple of years the fee has like proportionally reduced and that's where it was important because had we not even like started like fund 2 and all the other initiatives that we have it's like the funds we've established in Nigeria, the funds we've established in Namibia, our fee out of one fund would not have been able to cover our costs in totally as a fund manager, that's we needed to start other initiatives and start doing that and we've actually seen that even the investors, the fee is much lower in fund 2 because from about 2010 investors start reducing their management fee to private equity funds and so the fee would not have been sufficient to do, that's why we have stated our initiatives as Harith General Partners and to manage other funds.

MR EMMANUEL LEDIGA: Do you – I mean, do you – these revenues, do they cover costs and do you issue out dividends to the PIC and the other people in HFM?

MR TSHEPO DAUN MAHLOELE: Okay. No, in HFM, what remained, you know, in 2018 – it's actually 2017/'18 there was like, you know, a – what you call a surplus which I think remained, I think it was in the region of about like what, 8 million or so and then that was then sort of like paid out as a dividend, as you can see in that schedule that HFM, that PIC got something. In HGP – and that's where the – like, you know, we've need to start other things for sustainability of the team.

MR EMMANUEL LEDIGA: Okay, ja, thanks and then we'll get to other things as we go along.

MR TSHEPO DAUN MAHLOELE: Okay.

MR EMMANUEL LEDIGA: Thank you very much.

MS GILL MARCUS: Sorry, can I have a couple of additional questions to that? Just –and I think it would be very helpful if we can get this in a written form, Adv Lubbe.

ADV JANNIE LUBBE SC: It's noted.

MS GILL MARCUS: Is if – you get a management fee, let's take the period while HFM was functioning from its inception to now, what exactly was earned in management fees, where there any transaction or advisory fees that where paid? Did you have any operational expenses met by any other party, for instance the PAIDF1, were any operational expenses met and therefore obviously we've said that the carry did not occur, what was the estimated fee in that composite income over that period. You can break it down per annum, if you like. And how much was then distributed to yourselves as earnings so we know exactly what was the fee earned in this totality for HFM1, HFM and then when this was transferred with PAIDF2 and HGP, what was the similar income in relation to fee transactional incentive or advisory fees earned and were any expenses, operational expenses met, by any other party, so we have a picture of exactly what the earnings are at this point in time for managing these funds. Okay?

MR TSHEPO DAUN MAHLOELE: Would be very happy to share that, Chair.

MS GILL MARCUS: That would be great.

MR TSHEPO DAUN MAHLOELE: And actually, perhaps as a matter of record, I might – we share our annual financial statements since 2007 with the PIC, we do like, you know, share that with them, so they do have that, Chair and so that is not – it's readily available, it should be available with Adv Lubbe as soon as, you know – we produce those every year without fail.

MS GILL MARCUS: Excellent.

MR EMMANUEL LEDIGA: Can I add because, you see, once you give us – once people know about these fees and everything, you know, people have been saying you are earning fees and these fees are going to Lebashe and all that. So if you can really tell people I think it will clear quite a lot of the issues, some of the issues about the fact that people say you are taking these fees and now you are funding Lebashe with those fees.

MR TSHEPO DAUN MAHLOELE: Thank you, Chair, and I really appreciate the clarity of the way that you've put it because that actually never even crossed my mind that that's what they think, perhaps Lebashe's fees come from but I can say it with my heart on my hand that that has never happened and you will see that in terms of in our financials and everything, for all the years since we've been in existence. We will gladly share that, Chair.

MR EMMANUEL LEDIGA: Just to jut in there, so are you saying that you have never used any fees from the funds to fund Lebashe? But look, if the fees are yours, I mean, you know, Tshepo Mahloele's fees, like it's your business but are saying broadly you actually haven't used the money from the funds to fund Lebashe?

MR TSHEPO DAUN MAHLOELE: Not even broadly, Chair. We have never used fees of Harith Fund Managers or Harith General Partners for any activity of Lebashe, none. None at all. And, you know, last years when some of these initial allegations were made, Chair, we offered to all and sundry and the journalists and everybody and say please come and look at our books, we are very open. It's sad to say that only one journalist came to come and check those and verify those and do a thorough interview with us in terms of that. So, therefore, that is scrutiny that like we have always availed since last year when this was made and nobody took it up. Even when we responded in court papers, I think there was one or two other journalists perhaps which cared to listen and read our submissions in court. I won't say which journalist and thank you for the journalist like, you know, doing their work in that way but everybody else has not cared to say what we have actually said and this was said in an affidavit but with regards to fees, anything of Harith Fund Managers or Harith General Partners, not a cent has funded Lebashe.

CHAIRPERSON: On that open book note can we take the tea adjournment please?

MR DANIEL BURGER: Chair, just two questions before take the adjournment just on this point and then we can wrap it up. The first question is, that journalist that you sat down with, was any story ever written pursuant to that interview after you'd spent your time explaining?

MR TSHEPO DAUN MAHLOELE: Actually, can I say – the journalist, actually it was – it was Biznews, it was Alec Hogg, he cared to listen and asked me and I offered please come, I'll tell the whole story of myself, Tshepo Mahloele of Harith and Harith Fund Managers what is our – and also of Lebashe and how that was started.

MR DANIEL BURGER: And he wrote on that afterwards or he produced a podcast, I believe.

MR TSHEPO DAUN MAHLOELE: He actually produced a podcast and that has been there since last year about July.

MR DANIEL BURGER: And then the second question is ...[intervenes]

MR TSHEPO DAUN MAHLOELE: And nothing between what I said then and what I'm saying today has changed.

MR DANIEL BURGER: And the second question is, did Mr Holomisa ever approach you for similar information?

MR TSHEPO DAUN MAHLOELE: Never. Never called. I remember very clearly we offered that thing in our statement, that anybody please come and check and see what we do. The sad thing about all of that is that all these transactions are not some opaque kind of structure, all of these are listed, we talk about them in the media, we mention them. So, therefore, there was nothing to hide. If there was anything to hide we wouldn't talk about them in the open manner that we did.

MR DANIEL BURGER: Thank you, Chair.

CHAIRPERSON: Thank you, we'll adjourn until quarter to twelve.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Mahloele, you are still under oath. I am just reminding you that you are still under oath.

MR TSHEPO DAUN MAHLOELE: (s.u.o.)

MR DANIEL BURGER: Mr Mahloele, you were going to go to paragraph 22. If your statement – you have confirmed your entire statement, so it is not necessary to read every paragraph, but I think you've covered from 21 all the way through to 27. But if there's aspects that you wish to touch upon, I do not want to cut your short. Just have a look at from 21 through to 27. It is background.

MR TSHEPO DAUN MAHLOELE: I am fine Counsel.

MR DANIEL BURGER: Alright.

MR TSHEPO DAUN MAHLOELE: Can I start on 28?

MR DANIEL BURGER: You can start on 28, yes.

MR THEMBEKA NGUCKAITOBI: Mr Burger, ja, just one or two things I wanted to ask. I think maybe paragraph 24, paragraph 24. And I just you know need some sense in terms of HFM Fund 1, sort of how many investments have been made broadly and what was the ticket size? And then which sectors? Just broadly and how they are doing so far.

MR DANIEL BURGER: Commissioner, if I could, if I could suggest there is a document in the bundle. If you look at page 3.

CHAIRPERSON: Page 3.

MR DANIEL BURGER: Of the exhibit.

CHAIRPERSON: Yes.

MR DANIEL BURGER: So there are two documents. There is one at page 3 which is the Table of Investments PIDF 1 and 2. And then at page 5 is the Project Awards for the various investments. Perhaps Mr Mahloele if you can speak to that?

MR TSHEPO DAUN MAHLOELE: Yes, I saw that. I was not sure which was in Fund 1, which were in Fund 2 and two is that I was not sure, I see the project value is like 100% of the project value, is not what PIADF invested in each, each investment. Am I clear?

MR EMMANUEL LEDIGA: Yes.

MR TSHEPO DAUN MAHLOELE: Ja.

MR EMMANUEL LEDIGA: So just briefly you know which were these that Power in Tanzania and you know, like how things are going and all that.

MR TSHEPO DAUN MAHLOELE: Okay. Ja, I will just try to go quickly through, through them Chair. Some of them like I do not like know the exact ticket size of our check, but then like I will more or less say like towards our like our percentage in that without being sort of like not held to the exact percentage.

But what I will do Chair, I will share with the Commission through Advocate Lubbe all our Developmental Impact Reports which we produced every year and our Integrated Financial Statements which we produce every year, which have a spell out in terms of all those things that we do and their performance. The first one I mentioned there is the Rabai Power Plant, it is in Kenya.

The project size was 72 million US dollars. It is a 90megawatt greenfield combined cycled diesel plant providing power to a major, to major metropolitan in Kenya. We have got Calvin Power Station.

MS GILL MARCUS: Sorry, if I could. I think that if it is a question – colleague if were in a situation where you were going to read this into the record, I think that we could take them as read, rather than have this read through.

MR EMMANUEL LEDIGA: Okay.

MS GILL MARCUS: I am not sure if there is some specific questions that need to be asked, but I think it does not help us to actually read this whole thing through. We have got it in front of us.

MR DANIEL BURGER: Perhaps to answer Commissioner Lediga's question, can you, can you indicate which of these projects was PIDF1 and which was 2? Are you able to do that?

MR TSHEPO DAUN MAHLOELE: Yes, perhaps. Ja, ja. Sorry. Rabai, Calvin, Lake Tucana, PIDF1. Azura-Edo, the 450megawatt Power Plant in Nigeria. This was like one of the largest IPP's in Nigeria, that is in PIDF2. Amandi, 190megawatt Power Plant in Ghana, that is in PIDF2. Main One, the 700 kilometre fibre optic cable that is in like West Africa stretching from Ghana, Nigeria, right up and connecting into Portugal. CIVH, actually that is ..

MR DANIEL BURGER: Sorry, what is Main One? Is that ...

MR TSHEPO DAUN MAHLOELE: Main One is a sub-sea cable stretching from ...

MR DANIEL BURGER: No, no, no. Is it PIDF1 or ...

MR TSHEPO DAUN MAHLOELE: That is PIDF1. CIVH, it is actually our investment which is like now our share in Dark Fibre Africa which is like a South African Fibre Optic company, that in PIDF1. The Henri Conan Bedi Bridge, that is a 30 year concession of like you know a tall bridge in Abidjan. Bongwe...

MR DANIEL BURGER: In which? 1 Or 2?

MR TSHEPO DAUN MAHLOELE: In PIDF1. Bongwe, that is the Sadek Committee Head Office in Gabarone. That came as a package with someone, other two infrastructure assets we bought from you know a portfolio, from a company.

MR DANIEL BURGER: Is that also PIDF1?

MR TSHEPO DAUN MAHLOELE: That is PIDF1. Novo Energy, that is like you know an entity. We are trying to build which will focus on like you know wholesale of gas in South Africa and build up of the gas ...[indistinct] in South Africa, that is in PIDF2. Lanseria, that is in PIDF1. TAV Airports, those are two airports in Tunisia, Monastir and Enfidha. This is in Tunisia. Traction, this like is in ...

MR DANIEL BURGER: TAV is in?

MR TSHEPO DAUN MAHLOELE: TAV is in PIDF1. Traction, this is like you know in the entity focussing like on the rail industry. That is in PIDF2. And OCL is a large like Malawian Telecoms Operator and that is in PIDF2.

MR EMMANUEL LEDIGA: Great. Just one or two examples in terms of how do you, how are they doing? I mean how do you get your money back? Is that through concessions or user pay systems and are you getting some capital profits or this is just mainly cash flow from this investments, and hence dividends and all that? Just briefly, you know just to understand how this, this investments are doing.

MR TSHEPO DAUN MAHLOELE: Okay, thank you Chair. There are different ones. In the power sector most of them would be a 20 or 30 year concession from a government wherein like you know then like we build finance and operator power plant that supplies power to that particular you know country. In the case of Lake Tucana, for instance it is the largest wind power project on the continent of about 310meggawatts.

You know with the transmission line that stretches over 400 kilometres from the northern part of Kenya. The project all in all, you know from conceptions by some local Kenyans to financial close and now starting this year to sort of like you know deliver power into the

Kenyan grid. I think it took nothing less than eight years, so that is the type of like, type of projects that sometimes it takes to do that. Then in that one we supply on a 30-year concession power to the Kenyan grid.

And this power plant I think like contributes about 20% to Kenya sort of like power sector. So it is a major investment. When it was made it was the one of the largest FTI in Kenya. And we have about 30% of that, of the equity in that project it has about an excess of about 12 other debt and mezzanines so like no providers to it, so a fairly large and complex project.

MR EMMANUEL LEDIGA: And who pays you there? I mean actually pays the rates?

MR TSHEPO DAUN MAHLOELE: The Kenyan government.

MR EMMANUEL LEDIGA: The Kenyan government.

MR TSHEPO DAUN MAHLOELE: Yes, the concession – it is actually let me say not like the Kenyan government. Why what you have is like this, the equivalent perhaps of an Eskom which is what we contract with and then we like know contract with that entity. But then that comes with a Kenyan government guarantee.

In some instances we do take political risk cover. In some instances when we were still learning the ropes, there is one or two sort of like projects initially for something like TAV which are like the two airports in Tunisia which is Monastir and Enfidha, which was like in the early years of our investment cycle we unfortunately failed to take political risk cover there and when you know the erupt spring hit, you know we lost us short a bit there.

But then we are hoping that that is a 40 year concession and then we are sticking around. And then we will see what happens, but with a 40 year concession, with Tunisia coming back on stream, that is what will happen. And in that case, you know the concession is with the Tunisian government. So those they are different. In a different entity perhaps like Main One, the Main One was initially meant to be like a sub-sea cable, connecting like different countries and then like having a mobile operators buy sort of like you know capacity from it.

We got into that in a region of about, I think 2008, 2009. The industry has since changed. You no longer get this sort of like you know 10 and 20 years sort of like you know off take agreements from the mobile operators. We've needed to change the business model to one whereby you know like the entities directly supplying to banks, to like you know universities, to ISPs in West Africa in the different economies.

So therefore they change. Sometimes like change is forced upon you by technology and disruption like we did have in Main One.

MR EMMANUEL LEDIGA: And so ja thanks and then so, so that it means Lake Tucana is more like the Eskom and the IPPs which we normally have here basically?

MR TSHEPO DAUN MAHLOELE: Yes, Lake Tucana would be like the IPPs we have here.

MR EMMANUEL LEDIGA: With Eskom paying them ...

MR TSHEPO DAUN MAHLOELE: With Eskom pays here.

MR EMMANUEL LEDIGA: Paying them out and all that?

MR TSHEPO DAUN MAHLOELE: Yes.

MR EMMANUEL LEDIGA: Okay.

MR TSHEPO DAUN MAHLOELE: But the nice part about that one is that the PPA is in euros.

MR EMMANUEL LEDIGA: Okay, alright. Which is hard currency. Thank you very much.

MR TSHEPO DAUN MAHLOELE: Thank you Chair.

MR DANIEL BURGER: Can we go to 28?

MR TSHEPO DAUN MAHLOELE: Can I go on?

MR DANIEL BURGER: 28, Yes.

MR TSHEPO DAUN MAHLOELE: 28. Just to bring the matter back. As far as the PIC is concerned to bring the matter back to its present context in the light of Mr Holomisa's accusations and speculations, the significant factors that the PIC secured a 46% stake in the management company without exposing itself to too much risk since the repayment of it's you know 22 million rands in costs and interest.

The PIC exposure was limited to its seed capital loan. There has been no other funds or anything that the PIC has provided to Harith in any form or whatsoever since operations and the management of the funds started. If I may even like highlight it, there was a time even – okay I won't even get into that one.

MR DANIEL BURGER: You are still on 29.

MR TSHEPO DAUN MAHLOELE: The PIC's exposure was limited to its seed capital. However the total benefit to the PIC for its 46% shareholding in Harith Fund Managers as at May 2018, is now in the sum of almost 96 million rands. Mr Holomisa's conjectures and suspicions that Harith Fund Managers is underhandedly engaged in illicitly or frivolously investing the funds of the PIC for the benefit of an elite cartel within the management team and is therefore fragrantly risking the life saving of innocent civil service pensioners is therefore entirely nonsensical.

If anything, the PIC has greatly benefitted from its stakes in Harith Fund Managers and Harith General Partners. And I might even take the point to know that at this stage I reiterate again, the funds that Harith Fund Managers manages, all come from the investors directly into PIDF fund 1 and PIDF fund 2.

There are no investment monies by PIC in those two funds. And in that regard, even in reporting, in decision making of those investments, all the investments that I have listed that we have across the continent, all that reporting, investing and making of the investment decisions is by the Investment Committee of the funds.

As far as the PIDF was concerned, the intention was to raise the billion dollar fund after a period of 18 months had been spent on fund raising on the continent and internationally. This is what the seed capital was spent on. In addition to all other setup and related administrative costs, the loan was paid back to the PIC within two years with the interest and costs.

By September 2007, Harith Fund Managers had secured 625 million dollars for the PIDF and thus becoming the first 15 year infrastructure fund of its size and scope ever to be established on the continent. Fund raising, especially for a new fund in Africa, perused by a small team lacking any real funding track record proved to be complex and a lonely task.

And it required enormous resources of time, persistence, negotiation, skills and faith. Every time when I tell people about the funds that we raised Chair, I actually say that with regards to our focus and on the cont ...[indistinct], we actually have a triple whammy.

First of all you are trying to get to convince people to invest in Africa on a long-term basis, in infrastructure which is a long-term asset and more so most of our investments are green fields. A triple whammy of a focus in all and all, so that is the tough sell by any means. You know trying to like anybody but I am glad that we did managed to do that and with some of our investors.

The success in raising the fund was itself a critical milestone and one which will involved – it is something that we were proud of and still remain proud of. And in a sense it has resulted in PIDF pioneering entirely new ground on the continent that opened up the way for the other numerous Pan African Infrastructure Funds now available in Africa.

By July 2009 the fund had its final close of the committed capital in an amount of 630 million dollars. The investors when we closed at that stage were the GEPF, ABSA Bank, the Development Bank, African Development Bank, Old Mutual, Stanlip, Snit. Snit is the Ghanaian pension fund. Momentum, Metropolitan Holdings and the Eskom Provident and Pension Fund.

It is important to note that contrary to the conjecture of Mr Holomisa, the decision of the GEPF to make the investment in the PIDF, I reiterate again was entirely independent of the PIC. The GEPF was and is managed by an independent board of trustees, thereof which at that stage was Mr Martin Kuscus. None of the directors or otherwise involved in the management of the PIC are involved in that decision.

About half the GEPF board consists of representatives from labour and unions and other half are government employees nominated by government. It was accordingly an independent decision of the GEPF to invest in the PIDF and to permit Harith Fund Managers to manage the funds so invested.

Exactly the same principles are applied and the same situation obtained later when it came to the advancement of the GEPG in PDIF2 administered by Harith General Partners, which I will deal with further below. The investors ...

MR EMMANUEL LEDIGA: Question. A question here. Just in terms of Fund 1, what is it fully drawn down now and is it fully invested?

MR TSHEPO DAUN MAHLOELE: Yes, the Fund 1 is fully drawn down. There is a – I think there is less than about, you know without – I cannot give you the exact figure now because I have not checked it, but I can provide it to you.

MR EMMANUEL LEDIGA: Roughly, rough figure here, but you can look.

MR TSHEPO DAUN MAHLOELE: I think there is less than even nothing in excess of about 10 or 15 ...

MR EMMANUEL LEDIGA: Million dollars.

MR TSHEPO DAUN MAHLOELE: Million sort of like dollars of the commitments left, which are also supposed to cover even for the remainder of the period, the management fees. So therefore there is a stage at which the fund itself must be self-funding and then beyond the committed amount of the investors, we cannot even further draw down on PIDF1 or management fees of those and which goes to the whole sustainability of our model and why the HGP was needed to be developed.

MR EMMANUEL LEDIGA: Then what do you do if you got staff who have been doing the like the investing the money and now it has come to an end? I mean do you – what do you do with them because?

MR TSHEPO DAUN MAHLOELE: That is exactly the reason why Chair we actually created HGP, because we have now built up a team of people who have managed to do this activities over all these years very well. It is an IP which we thought like you know is like you know done a lot of good, learnt some lessons. We have actually even developed our own like you know 10 commandments of what to do and not to do in infrastructure.

And then then what then do we do with that sort of like you know team and capacity. And that is why you know from about 2010, 2011 we started saying that round about 2013, 2014 we would have run out of funds in terms of like you know PIDF1. What then do we do? We cannot then start laying off people. That is why SGP was then created to say to have that continuity and have a new entity going forward. And I will say as I read further down how that process happened.

MR EMMANUEL LEDIGA: Okay, thank you.

MS GILL MARCUS: Can I just ask a couple of questions? If one looks at PAIDF1 and the funding raised, it is about 10% of the fund that is not South African. That includes the African Development Bank. 90% Of that funding raised was from South African entities?

MR TSHEPO DAUN MAHLOELE: I would say so Chair. Yes.

MS GILL MARCUS: So it is focussed really, I mean you did not necessarily get the buy in that you wanted from the other countries and their pension funds, this is basically PIDF is largely South African funded? And then if you went to PIDF2, it was 435 million US dollars of which only 35 million came from outside, so PAIDF2 actually was even less responded to from external to South Africa?

MR TSHEPO DAUN MAHLOELE: Yes Chair, but if I may explain.

MS GILL MARCUS: No, I think that is – I just wanted to get the position right around it. We can explain later. We are just a little bit – I do not want to get stuck here, I just wanted clarity that in actual fact this is largely South African driven in terms of the investment, if you don't mind. And then the second question that I would have with that relates to moving from HFM to HGP. I don't understand the argument. Why would you not just go back to the founding shareholders in HFM and say we want to expand the nature of our investments, we've got the team, we are working on it and we are going to do more broad and change your mandate, rather than create another company? Why would you go into another company with other shareholders, changing the shareholding? And all the issues that arose out of that, because their – and we will come back to that if later on in your testimony to say that you needed to create another fund to do additional investments, why would you not have just changed the mandate of your first fund? Your management team? It is your HFM?

MR TSHEPO DAUN MAHLOELE: Yes. Chair we did do that. We went to ABSA, we went to Old Mutual, and if you also remember at the time I think after about 2009, 2010 and everything after like you know the whole you know financial crisis and everything, ABSA took a decision to stop investing in funds and fund management.

Also because of like not basal 2 and 3 and decided that they would not go on into new fund management business. And then they would not – and also because also like investing in funds of that nature on that long-term basis affected their capital adequacy sort of like you know ratios and all that. And at the time Old Mutual believed that it was going to focus more on its partnership that it had with Maquari(?) in aim, in which they had like more of 50/50 sort of like percentage.

And it actually that was starting to even compete with some of like you know this in the same space for some of the assets. The – as a result of that the shareholders and the board decided that they will not expand the mandate of Harith Fund Managers, beyond that of managing PIDF1. And that is exactly what happened. And as a management team we did that, there was board meetings, there was board strategy sessions and that could not – those shareholders decided to do that.

We went to the PIC and we said as management we would like to continue, would like to like with this thing of raising another fund and continue because we got the team, we have now built up some skills, some infrastructure, some knowledge, some like networks, some pipeline. PIC, would you like to continue in the new, in a new fund manager that we will establish which can do mighty funds and that?

The initial thing we said to the PIC, would you like to take – and to befriend even at that stage we actually said to the PIC, you know we can partner with you even more in terms of like doing that because at that stage I think also like the PIC had also like started having an Africa wide mandate in terms of its ability to do that.

And we said, can we partner with you in terms of like doing more things with you outside of South Africa based on your extended mandate, based on our you know desire to continue as a management team and build up this platform. And we said, you know you can have – negotiations went back and forth whereby we said, you know we can have 30% and then you know – so that then we can partner together.

Or you can retain 10% to the extent that we say you know you do not – then you can go and compete with us, do whatever you do. But by virtue of the fact that you know we recognise that like in the beginning you know PIC was involved in the support or the seed funding of Harith Fund Managers and it was in the region of 46%, even though PIC had now started investing itself directly in the continent, independent of you know Harith Fund Managers. We said can we do that?

Back and forth. Ended up PIC deciding to settle for 30%, but the co-funding and that funds never sort of like know I think materialised outside of South Africa. Outside of South Africa we have not co-funded or been in any project together or that much collaboration, but in South Africa we have for our own purposes like you know invested in two assets which is Lanseria and Calvin. They invested directly, we invested directly in those infrastructures. That is basically what happened. I don't know if it answers the question Chair.

MS GILL MARCUS: Thank you, but in just in addition, the GEPF was comfortable with the new fund? Because both of the monies are substantially theirs?

MR TSHEPO DAUN MAHLOELE: Chair, I think the GEPF's support has been phenomenal through this. The GEPF looks after this investment itself. It has committed in this fund directly again itself. And also even for this fund, I think if for itself it also negotiated an even lower fee, by the fact of it being a significant investor you know from the normal let say like 1,5% ...[indistinct] to about 1% if I am not wrong, by virtue of the support for this.

And also I think by virtue of seeing what this investments in PIDF1 had done and continued to do and how they have like contributed to that developmental aspect in terms of like what infrastructure assets are supposed to do. So therefore GEPF, by own its own account, as a management team of Harith General Partners we went there, presented to them and that is the commitment that we got from them, directly.

MR DANIEL BURGER: Mr Mahloele, Commissioner like I said we can deal with this later, but there is no later in your statement. So if I could just ask you briefly to address that issue of if you want to say anything more about the 90% odd funding from South Africa for PIDF1 and even lesser for PIDF2, whereas you were investing in infrastructure across Africa, so what was the reason that the, that there was comparatively speaking less investment from the rest of the continent, more investment from South Africa?

MR TSHEPO MAHLOELE: Through you, Chair. Counsel, if you look at the continent and you look at the development of the capital markets and you look at the development of the pension funds and savings industry, I think South Africa, in many respects like, you know, is far more – is a bit more advanced in that respect than those.

For instance... You know, I will not mention countries for lack of whatever. You know, many of the countries, when we went there and talk to their... It is not even their pension funds. It is called the social security networks or like, you know, savings that those are pools of funds.

In many of those, even their chief investment officers would not have been exposed to any investments outside of their country, except buying government bonds and real estate within their own country.

In many of those, there were some in 2007 but it was even by law that like, you know, because of some of like their debt arrangements that they had with some of their countries, that they cannot even invest outside of their countries. And so, as opposed to investing anywhere else outside of your country ...[indistinct] only invest in Europe.

So, that is the type of environment you found. We went one of the North African countries and to the, you know, the pension funds we were like managed out of like the treasury unit there, they told us that like, you know, infrastructure investments on a user pay principle and concessions like will never work.

That is was like the scenario that we found a lot in 2007, and in some of those trips, Commissioner we were even accompanied by the African Development Bank, because it was actually very eager and very, you know, trying to do that at that stage.

And even today, even for PAIDF2, if you look at also what has happened. The past couple of years, between 2009 to 2014/2015, you know, also as a result of like perhaps then the financial ...[indistinct], there has not been much recovery or change in some of those institutions.

Where we have seen funds starting to like, you know, mature more and do more, is in a place like Namibia. In Namibia we manage a fund with local – a Namibian asset manager, but that fund is strictly restricted to Namibia. We manage that fund with an entity called E&O(?) Harith. So, that is the scenario there.

In Nigeria the pension funds was become a bit more organised and structured. They still do not invest outside of Nigeria. So, we have formed there a partnership with a Nigerian asset manager and wherein the funds by Nigerian pension funds are, you know, eighty percent can only – eighty percent thereof can only be invested in Nigeria and only twenty percent in West Africa.

So, that is the scenario that you still find. North Africa has been a bit quiet by a virtue of like some of the challenges we have had in the past.

MR DANIEL BURGER: Can we continue with your statement? I think you are at paragraph 35. Your microphone.

MR TSHEPO MAHLOELE: Okay, sorry.

"The investors were not required to immediately to pay over the full amount of their commitments, as is practice in the industry. They undertook to make the funds available, as and when they are required by the fund manager. The head of fund manager should draw-down funds in line with demands of the relevant projects.

Funds are not held idle in bank accounts to be drawn-on as and when the fund manager pleases. What actually happened, they give their commitment as and when they approve a project. You then draw-down. You send a letter off, and before you do that, that must be approved by an investment committee of the investors and the board of trustees of the investors before you can draw funds. It is not a sole decision by the manager to do that..."

MR EMMANUEL LEDIGA: A question here. Clarification. In terms of the fund of the management fee, the 2% that you charge them – say at the beginning it was 2%, say - is it charged on the full commitment of 630 or on the drawing – on the amount draw-down at that particular point?

MR TSHEPO MAHLOELE: During the initial eight years you charged 2% on the initial 500 and 1.5% like now on anything above that.

MR EMMANUEL LEDIGA: So, from day one you would charge that way and get the money on a quarterly basis?

MR TSHEPO MAHLOELE: On a quarterly basis, Chair.

MR EMMANUEL LEDIGA: Okay, all right.

MR TSHEPO MAHLOELE: And from a governance point of view, I reiterate again, that the investors are able to scrutinize all gains and losses made or incurred during the course of the investment cycles and of all the amounts utilised for the purposes thereof.

We have quarterly valuations done, which are internal and we have annual valuations done which are external and independent of these investments.

> "As a result, there is a high degree of accountability and transparency in the manner in which HFM accepted visa vie the investors. These principles are recognised as standard in practice in the fund management industry, but I would like to believe that in HFM, I think, they went much more, in terms of being sure of like partnering with the manager in the management and development of this fund.
>
> As at 31 March 2018, the GEPF's initial investment of 248 million out of the 250 million committed by the GEPF, which is about 2.3 billion and forming part of the 630 million by all the other investors, was independently valued and audited at 279.3 million of the fund.
>
> The gross IRR and on this investment has been 6.2% in US dollar terms and about 11.7% in ZAR terms..."

MS GILL MARCUS: Sorry. Just for future or for clarity. I think you must be dollar to dollar. It does not help to look at Rands because Rands would reflect the exchange rate differentials. And therefore, it is not an earning necessarily from the entity. It is a result of the exchange rates.

And therefore, I think if it is dealing with dollars, give the returns in dollars which is fine. You have done that. I am just saying that when giving it in Rands it is a little bit misleading because you do not reflect the exchange rate differential that would have occurred.

MR TSHEPO MAHLOELE: Noted, Chair. And have you seen most of the South African currencies in the past couple of years have actually taken a beating in terms of like the strength of the dollar. So which has been affected in some of these but very much noted, Chair.

MR EMMANUEL LEDIGA: A question here. Paragraph 3.7 again. Gross IRR. Just explain that and then, you know, and then explain the net one. The net IRR. Because those are two different concepts and they could change these numbers significantly.

MR TSHEPO MAHLOELE: The gross IRR, with respect to the funds, would be like the figure which is like net of fees and actually that is why you would also see the difference like in the gross IRR in Fund 2 being very high of about like 40% later on in the thing.

Because in this one, it has been like in existence for the past ten years – in excess of ten years. So, the fee factor would have come in there. So, you then have a net IRR which had been in the region of about, you know, 4%.

MR EMMANUEL LEDIGA: All right. So, are you saying then the IRR's of 6.2, when you subtract the fees goes to about 4% in dollar terms?

MR TSHEPO MAHLOELE: In that region, yes. In dollar terms, yes.

MR EMMANUEL LEDIGA: Which takes you away further from the 8%

the headline rate that you need to achieve?

MR TSHEPO MAHLOELE: The headline rate that is from our ability to participate in the carry.

MR EMMANUEL LEDIGA: Sorry?

MR TSHEPO MAHLOELE: Yes, from the ability to partake…[intervenes]

MR EMMANUEL LEDIGA: It takes you away further and further. Yes, yes.

MR TSHEPO MAHLOELE: Ja. But as I have said earlier on. I think the last couple of years, you know, forget even the narrow(?) in which like, you know, we have also some of – most of our investments and how that has performed against the dollar in total like, you know, like fallen quite tremendously.

And also, if you even look at like the Rand. Between 2011 and today, you know, I sometimes make the difference to people that, you know, in 2008 like to be a dollar millionaire, you needed R7 million today to be a dollar millionaire. You need R14 million and then that shows you the extent which like, you know, these currency issues impact on the performance of our investments across the continent.

And that is why I think in a later stages of our investments we have focused more in terms of like some of our, you know, concession, sort of like, assets with more with hard currency type of like, you know, off takes in the likes of like, you know, Azura and Nigeria it is like a dollar, so like PPA. Lake Tukana is a Europe PPA.

So, therefore, as I am saying, I still believe that like, you know, once – and some of these are still in construction. Some of like

Azura still have not come into operation.

So, therefore we believe that all things being equal. We would like to believe that by the time, you know, we get about to 2023/2024, we should at least be able to meet the hurdle rate that we promised our investors.

MR EMMANUEL LEDIGA: Just to say on here because it never comes up again. Let us finish it off. A 4% net IRR in a private equity environment or an infrastructure fund, that sounds pretty low, generally. Given that private equity seems to be doing what 10% per annum in dollar terms, more than they probably. Am I right? I mean, broadly. Private equity and infrastructure funds, globally. They would do far more than the 4%?

MR TSHEPO MAHLOELE: They would not... If you say they would do far more than the 4%, that would be a moot point. But then like 4% in our case is not something that we are also like happy about, but within that should be proved(?).

But for the 2008 – sort of like 2009 vintage, if you look at that like because that has also to do with that. That then takes into account when the fund was started and what like that things were there.

The 2008 and 2009 were sort of like vintages, performing about 6%, 7% and would like to believe that we should be able to do that. When you talk about like, you know, IRR's like giving you about 10% in lets like, in the US market, developed markets. Those would be your top tier ends sort of like, you know, manages in job private equity. That is what they would be promising you. Not infrastructure.

We would like to think that infrastructure would be much more correlated, perhaps like into interest rates. Much more... Not interest... Inflation and then just maybe perhaps slightly better than that, to give better than perhaps government bonds, but would like to think that, that is the number that we should be able to come out with in the end.

And those numbers we already seen perhaps also even in our Fund 2, but I think also, maybe the other challenge, I would say, that we have perhaps in Fund 1, was that, you know, we were also like in the initial like stages, invested in a lot of more development stage infrastructure assets, prior to perhaps that. And so I think that affected us in, you know, one or two assets that we have invested in then.

MR EMMANUEL LEDIGA: But you are still looking at about 7% to 8% in dollar terms over the long term which is global benchmark. Is that what you are saying?

MR TSHEPO MAHLOELE: Yes, for this, we still believe that we will be able to do that by the time these funds like reaches its total maturity, Chair.

MR EMMANUEL LEDIGA: Okay. All right. Thank you.

MR TSHEPO MAHLOELE: Can I continue?

MR EMMANUEL LEDIGA: Yes.

MR TSHEPO MAHLOELE: Thank you.

> "Due to the large pool of foreign capital raised for the PAIDF and which investment mandate(?) which ran across the entire African continent, the funds short and received the Reserve Bank's approval in compliance with the South African Reserve Bank

Regulations…"

And this like clear in pages 71 and 72 of my Exhibit. I also talk clause 39. I think it is a repetition, because I have also ready dealt with that the PIC earned in terms of its like, you know, exposure to like Harith Fund Managers.

And perhaps in this case, Chair if I may? It seems like the person who has like done the best as opposed to investors, should be perhaps the PIC because of their seed capital, they have an …[indistinct] 89% in IRR. So, for what it is worth.

I know turn my attention to HGP. Can I continue? Okay.

Clause 41:

> "When Harith Fund Managers was established in 2007, it was envisaged that it would be a single fund manager. This meant that when the PAIDF reached closure, the company would not be able to raise another fund and manage it under the same entity.
>
> Given this limitation, it was anticipated that it would be necessary to incorporate a multi-fund entity to manage further funds.
>
> Therefore, Harith General Partners was established, following extensive discussions with stakeholders and after obtaining the necessary approvals, including from the investors, in the original PAIDF1 which then became known as PAIDF1.
>
> As its name suggests, Harith General Partners was mandated to manage several funds under a single

umbrella..."

Can I perhaps also just make a note, Chair with Harith General Partners? In that, actually Harith General Partners as was noted yesterday by counsel for Mr Holomisa. It was started in 2007.

When I took the two shelf companies in 2007 to establish Harith Fund Managers, it was both – one of was Cycad Investment Partners and one was Cycad Fund Managers. Both in 2007.

It was intended at that stage – we thought that, you know, Cycad Fund Managers would be the fund manager and Cycad Investment Partners would be the entity through which we would hold our shares as a management team in Harith Fund Managers.

So, to the extent that we ended up using HSIST(?) which is a trust as opposed to – at that stage, Cycad Investment Partners which real name was Harith General Partners.

You know, that stayed as a shelf company until we like, you know, started using it again in 2012 when we changed over to forming now Harith General Partners and that shelf company, at that stage then I was the only single director and for the sake of clarity, and I think which is some documents which have already been provided to yourselves, Commissioners – is that it actually definitely shows that I was a director in 2007.

When we changed over and started forming Harith General Partners, that is when we had all the other directors appointed in 2012 into Harith General Partners, as we were moving the operations, the people and everything out of Harith Fund Managers into Harith General Partners. I hope that makes sense.

MR EMMANUEL LEDIGA: Can I just follow up? I think let us deal with this once and for all. So, HFM, what happened there? I mean, you know, in a nutshell. I mean, did you take the computers from there and the furniture and the IP, you know, the intellectual property of HFM into HGP? You know, people have been saying that you stripped off HFM, you know. What happened? I mean, what happened to the computers? What happened to the – all the brand and the IP and all of that?

MR TSHEPO MAHLOELE: The brand Harith remains. The main asset of Harith Fund Managers is the management agreement between it and PAIDF1. That is what it gets for its fees. That still happens. And it is still HFM which then like calls for those like got rich(?) from investors. So, that remains. The people and computers and those issues, those moved to Harith General Partners.

And fund management agreement with PAIDF remained with the board of directors and as the board of directors which still foresees there, and what then Harith Fund Managers did, was to get into a sub-contracting arrangement between Harith Fund Managers and Harith General Partners.

Because Harith General Partners can now manage many funds. Because this, as I have said earlier on, the other investors in Harith fund did not want to proceed with – to do other – do other funds.

So, therefore, the people, the computers moved to Harith General Partners. The fund management agreement, they carry – the fee being paid to Harith Fund Managers and then being paid through to Harith General Partners, that remains with Harith Fund Managers.

So, therefore, their ability to still get the carry and still like charge fees for managing PAIDF directly, remains with that because that is a contractual agreement between Harith Fund Managers and PAIDF for the life of the fund, until the fund is dissolved.

MR EMMANUEL LEDIGA: When it has moved, I mean, were they bought by the general partners or they were just transferred, you know? I do not understand.

MR TSHEPO MAHLOELE: They were...[intervenes]

MR EMMANUEL LEDIGA: Were they valued or were they bought by the other company or...? It is like a small point, but I would just want to... You know, it is small money but I just want to understand the process, you know.

MR TSHEPO MAHLOELE: Ja, they were all bought into... It is like the computers. Because besides that and the furniture, there was not much. It was all like taken into Harith General Partners, but for the sake of being hundred percent certain as to like how that thing legally and thing, there is actually an agreement between HFM and HGP to that effect which we will share with you and there is also approvals by all the investors in PAIDF that Harith Fund Managers can sub-contract the management to Harith General Partners. We will supply all that to yourselves.

MR EMMANUEL LEDIGA: That is clearer now. So, you are saying then the carry is still in the main company.

MR TSHEPO MAHLOELE: HFM.

MR EMMANUEL LEDIGA: Ja, and what you normally do is, the management fee when it is paid by Fund 1 gets transferred to HGP because that is the same thing already.

MR TSHEPO MAHLOELE: Yes.

MR EMMANUEL LEDIGA: Because of the agreement which you got as a sub-contractor to HFM.

MR TSHEPO MAHLOELE: Yes, sir. Exactly.

MR EMMANUEL LEDIGA: Is that...[intervenes]?

MR TSHEPO MAHLOELE: That is exactly the way it is.

MR EMMANUEL LEDIGA: Okay.

MR TSHEPO MAHLOELE: I think we retained about 5% or so in HFM or 10%... For its operational things, for like, you know, the audits. For it to still have the board meetings. Because it still has those four shareholders, still having board meetings and to do all that and even the audited financials of HFM are still produced and we can still share all those with yourselves.

MR EMMANUEL LEDIGA: And the 95% of the fees, goes to HGP because that is where the skills are in all the issues?

MR TSHEPO MAHLOELE: Yes, and the running around, the management, the evaluation, the using of the computers. All of those ...[indistinct].

MR EMMANUEL LEDIGA: Okay. All right. The disputed computers again. Thank you.

MR TSHEPO MAHLOELE: Yes.

MS GILL MARCUS: At that point, did HGP have the necessary licensing and regulatory approvals to do that work at the time when you transferred it?

MR TSHEPO MAHLOELE: All those were secured, Chair and they are – I think if they are not in here and even also with the registration with the Financial Services Authority and also with the approvals that we needed. Even for PAIDF we needed Reserve Bank approval. We have got those. So, those were also like obtained. So, all those were done.

MS GILL MARCUS: At the time that you started working with HGP, all of those approvals were in place and the regulatory approval and the licensing was all in place?

MR TSHEPO MAHLOELE: All in place, Chair. We could not start managing and doing some of those functions unless we are. And also, some of the tests done which a private equity fund manager needs to do in connection like as regulated by the Financial Services Board at that stage. All done and passed.

ADV JANNIE LUBBE SC: Mr Commissioner, can just perhaps ask my learned friends - the witness is under oath - to check that, because my information is contrary to what he is stating.

CHAIRPERSON: I am sure you have noted that, Mr Burger?

MR DANIEL BURGER: Does this relate to the approvals necessary and the licensing? You want us to check that?

CHAIRPERSON: [No audible reply]

MR DANIEL BURGER: We have noted.

MR TSHEPO MAHLOELE: Okay, we will check that. I find it odd that we would operate without it, but we will be able to do that. The licensing of HGP. Okay. Continue?

CHAIRPERSON: H'm.

MR TSHEPO MAHLOELE:

> "And therefore, Harith General Partners was established, following extensive discussions with

stakeholders and after obtaining the necessary approvals, including from the investors in the original PAIDF which then became known as PAIDF1.

As its name suggests, HGP was mandated to manage several funds under a single umbrella. Approvals for HGP under the Public Finance Management Act were duly sought and obtained..”

If you see pages 99 to 102 and 103 in Exhibit 3. If I may go there. On the 23rd April 2012, there is an approval. There is a recommendation from the Public Investment Corporation to the Minister of Finance and then, Mr Pravin Gordhan, for the participation by PIC in Harith General Partners.

And as at Clause 2.3 on page 100 of the exhibit page:

“Harith was formed to funds of Pan African Infrastructure Fund only. However, the Harith Management is of the view that Harith has now reached a point where it can manage, not only PAIDF but other funds as well.

In addition to that, PAIDF is closed to be fully invested and the second fund, PAIDF2 must be established and Old Mutual and ABSA were not keen in expanded the Harith Fund Managers’ mandate then. PIC intends to take part in the new structure by acquiring 30% shares of the issued capital of Harith Partners and the PIC board has approved this acquisition. A copy of the extracted of the board

> minutes were attached for the minister's reference.
>
> The consideration for a 30% share acquisition by PIC will be a nominal value for the equity, which is currently anticipated to be R30,00. This was the proposal recommendation done to Minister Pravin Gordhan in April 2012 for the recommendation…"

Signed by then the legal department, the CFO and the then CEO, Mr Alias Masilela and recommended by the Deputy of Minister of Finance which then was Mr Nhlanhla Nene.

> "The approval took a while to come through between application to – by the PIC to the Minister of Finance which approval comes through on the 15th October 2012. Proposed acquisition of a 30% shareholding in Harith Partners.
>
> I referred to your correspondence regarding the proposed acquisition of 30% shareholding in Harith Partners by the Public Investment Company and this was approved then. This is page 103…"

MR DANIEL BURGER: Mr Mahloele, I have just been advised that you were speaking about somebody. You spoke about a Mr Masele or Mr Matjila?

MS GILL MARCUS: No, Mr… Well, when the – that application was done and recommended by the PIC to participate as to the extent of 30% in Harith General Partners, then in April 2012 the CEO was Mr Masilela. Not Matjila. And the chairman was Mr Nene.

Paragraph 42:

> "With effect from 1 April 2012, Harith Fund Managers resolved to sub-contract to Harith General Partners..."

That is the time when the then Harith General Partners, we started registering all the other shareholders... Not the shareholders. The directors to it in a form of... I think that is where the likes of Mr Moleketi, Mr Anthony Ball, some of the PIC directors, then also became directors of Harith General Partners in 2012.

MS GILL MARCUS: Sorry. Can we just be clear on the dates? Because approval, according to the letter that you read earlier on, on page 103 was in October 2012.

MR TSHEPO MAHLOELE: Yes.

MS GILL MARCUS: Did this occur prior to that approval or post that approval?

MR TSHEPO MAHLOELE: The...[intervenes]

MS GILL MARCUS: What you are reflecting in paragraph 42, prior or post?

MR TSHEPO MAHLOELE: With the directors? The directors, some of the directors were appointed to the board of HGP prior to the approval of the minister approving the participation of PIC to the extent of 30%.

That was what our take on that was, that the recommendation has been done up to the level of the Deputy Minister of Finance. It was in April and then it took a couple of months until October for the approval to come out of the Minister of Finance which was in October 2012.

But then the usage of – I think HGP – because we had all the approvals by the investors to sub-contract to HGP. That was done then. I can get the exact date. It is like when the things were moved over, but I think it was in 2012. The directors I know to HGP was in 2012, if I look at the CIPC thing. Which month, I am not exactly sure.

MR DANIEL BURGER: The CIPC showed that it was in May.

MR TSHEPO DAUN MAHLOELE: Okay, yes. The restructuring from HFM to HGP paved the way for the formation of the second fund.

MR EMMANUEL LEDIGA: Sorry, so, so sorry. Can I stay with paragraph 42? You know like people have said that you know you work in various companies in terms of your time allocation you know, I just want to know which CEO of which company are you and where do you, where are you a director? Just, just explain to us those three, those three or four companies. I mean are you stretched in terms of being able to manage you know PIC funds and all that?

MR TSHEPO DAUN MAHLOELE: I do not manage PIC funds, I manage PAIDF funds through PIDF1 and PIDF2. And I am CEO of Harith General Partners. And Harith General Partners subcontracts the work from Harith Fund Managers. That relationship is clear. All the other entities which are as a result under, you know which are the investment companies of the funds like DFA, Lanseria, Novo, Anergy(?), Letkhana(?), some of these entities.

Those are as a result of being CEO of Harith General Partners and managing the funds of PAIDF. The other entities in which I have my private interest, am not the Executive, I am the Chairman thereof and I dare say that I think it is not unusual for people or asset managers or other people to have like you know other private interests which they do.

And my performance and management of Harith General Partners is managed by a board and which I report to. And our reporting and everything to all the funds is all done through, through HGP. And my interests which I will ...[indistinct] in Lebashe, those are my private interests which I hold.

MR EMMANUEL LEDIGA: Is the sort of the MD of Lebashe? The CEO of Lebashe?

MR TSHEPO DAUN MAHLOELE: We, we have Warren Wheatley doubling up as both the CIO and CEO of Lebashe. He runs with that on a daily basis with a small team that supports him.

MR EMMANUEL LEDIGA: Alright, so you do not spend a large amount of time at Lebashe?

MR TSHEPO DAUN MAHLOELE: I do not know what is a large amount of time, but I spend the larger amount of my time managing Harith and its funds. And I will say I do look after some of my interests in Lebashe. There is time that I spend on that. That is all declared in my declaration.

MR EMMANUEL LEDIGA: Okay.

MR TSHEPO DAUN MAHLOELE: In all the companies that I sit with and my declarations in Lebashe and other private investments which I have are all declared in the Harith Board.

MR EMMANUEL LEDIGA: And the ...

MR TSHEPO DAUN MAHLOELE: And I would like to think that perhaps what I do and what is done, I have seen many other people with even more capacity than me doing that, even much more than what I am doing. But I want to believe that I do what is necessary in terms of like my job in both these two private entities and what how I serve them.

MR EMMANUEL LEDIGA: That is fine.

MR TSHEPO DAUN MAHLOELE: Can I continue?

MR DANIEL BURGER: Paragraph 43.

MR THEMBEKA NGUCKAITOBI: 43.

MR TSHEPO DAUN MAHLOELE: The restructuring from Harith Fund Managers to Harith GP paved the way for the formation of the second fund which became known as PAIDF2 which reached first close in June 2014 with total capital commitments of 435 million dollars. Reserve Bank approvals were duly obtained for these and this is in page 107 to 112. And 113 to 18 of EXHIBIT 8 that I have provided.

So the Reserve Bank approvals even for those were obtained and they have been attached. HGP became active in October 2013 with the following shareholders, 70% as to Harith Holdings and 30% as to the PIC which it acquired for the 30 ...[indistinct] that I talked about earlier. Harith Holdings in turn is held 100% by HHET, in which its skilled employees participate in a manner described above. I think that says HSIST, I think that is meant to be HHET – on paragraph 45.

MR DANIEL BURGER: Yes, that is the correction in paragraph 45.

MR TSHEPO DAUN MAHLOELE: Yes.

MR EMMANUEL LEDIGA: HH?

MR TSHEPO DAUN MAHLOELE: ET.

MS GILL MARCUS: Sorry, can you just explain that to us? What is HHET and how did Harith Holdings come about?

MR TSHEPO DAUN MAHLOELE: What the ...

MS GILL MARCUS: This is just the first reference to Harith Holdings that I have seen, so just to get a better explanation of that.

MR TSHEPO DAUN MAHLOELE: Oh okay. If you are in the structure which I think was provided, I don't know in which like thing it is. You see that HGP, Harith General Partners, is held as to 30% by PIC and 70% by the management team. But that 70% is held by an entity called Harith Holdings Pty Ltd. It is in that legal structure. And HHET is then all the 29 employees of Harith, how they participate you know through an employee share incentive scheme in that in Harith Holdings through that trust. So the employees ...

MS GILL MARCUS: What is the relationship to HSIST then?

MR TSHEPO DAUN MAHLOELE: HSIST participates to the 30% in Harith Fund Managers. We did not change the shareholding of HFM as I said earlier on. The shareholding of HFM remains for the 6% PIC, 12% ABSA, 12% Old Mutual and 30% Harith Share Incentive Scheme Trust. In that entity we use the trust holder shares directly in HFM. In Harith General Partners, the shareholding of the management as to the 70% is held through Harith Holdings Pty Ltd. And the employee share trust created for the employees to participate in Harith Holdings, is then called HHET.

MR DANIEL BURGER: And that, that appears from EXHIBIT 7B as well? That is the list of names of the trustees – I beg your pardon of the beneficiaries in HHET, which is the trust that falls under – yes, but it is the equivalent of HSIT.

MR TSHEPO DAUN MAHLOELE: Yes.

MR DANIEL BURGER: In HG ...

MR TSHEPO DAUN MAHLOELE: In HGP. And I might also, since I think it was also like referred to yesterday that HHET, there is participation by Jabu Moleketi in there. In 2015 we put to the initial entity we put together which we have now since not used and used a different entity. We were thinking of bringing you know into the company, maybe other black entities and then also maybe some of like the directors that we had and the team and like to expand the breadth of Harith Holdings and we then created that trust.

But after that we decided not to use that trust, after some advising to like the way it is structured, issues of like how the tax will operate and a new entity was then created and worked up which is then HH – it is also like called HHET which new entity only takes into account you know the current 29 employees of Harith General Partners. We have since you know shelved the plans to bring in other shareholders until we can – we have other plans going forward of creating very different structures in terms of like the building and financing of infrastructure assets which are not I think relevant for this, for this platform. And in terms of like you know the participants, in the first trust which was in PIDF1, HSIST, you know we have – I have provided counsel with a list of all those participants in HHST.

MR DANIEL BURGER: And that is, that is EXHIBIT 7A.

MR TSHEPO DAUN MAHLOELE: And also in HHET, which is like the new participants in Harith Holdings, you know held through the trust. HHET, all those participants, 29 of them, as at like even the last allocations were done in the last financial year 2018, those have also been provided to yourselves as to those participants are.

MS GILL MARCUS: Okay, just hang on a second there because in the list you have given us I do not see Mr Moleketi's name. Can you please just check that? And if I understand this correctly then that in terms of this HGP, that the staff is 29 member staff, actually are the holders, the 70% ownership of that fund? Of that HGP? 30% Is PIC and 70% is your HHET.

MR TSHEPO DAUN MAHLOELE: Yes, the team of 29 staff members.

MS GILL MARCUS: 29 People own that?

MR TSHEPO DAUN MAHLOELE: Yes. And we have I think after about 2015, 2016 we resolved that you know whereas we had staff of like intentions of increasing that to other BEE shareholdings and including, getting other entities to sort of like draw the balance sheet of HGP, we since shelved those plans. So therefore the participants in Harith Holdings who have been now – we had the first two allocations I think in 2017 and 2018, all those are the 29 staff members of the company.

MS GILL MARCUS: So the full compliment is 29 people and they are all part of this. Is that correct or only 29 people of the full staff compliment are part of this?

MR TSHEPO DAUN MAHLOELE: The 29 people in HHET, I think is the full staff compliment.

MS GILL MARCUS: And can we ...

MR TSHEPO DAUN MAHLOELE: If not, it might just be perhaps one or two, but no, no, I think even our – I know that even like, even like someone or there is two of our drivers I think – if I may look at that, then I can just ensure that all, the whole 29 team players participate. Let me just, just verify quickly for you.

MS GILL MARCUS: Okay, and perhaps just clarify the position of Mr

Moleketi.

MR DANIEL BURGER: Well Commissioner Marcus, that is exactly the point. He is not on either. Mr Moleketi is not on either list of HSIST or HHET.

MS GILL MARCUS: But why I am raising it is because Mr Mahloele has said specifically that Mr Moleketi was part of it.

MR DANIEL BURGER: No, no, he said the opposite.

MS GILL MARCUS: Well then I am sorry, because I think I misheard then.

MR TSHEPO DAUN MAHLOELE: Okay, I can just confirm.

MR DANIEL BURGER: Ja.

MR TSHEPO DAUN MAHLOELE: In HHET, is the whole staff compliment of everybody who works within Harith has participation in the 70%.

MS GILL MARCUS: And just to reconfirm what you are saying, because then I misheard you was that Mr Moleketi is not part of either?

MR TSHEPO DAUN MAHLOELE: Mr Moleketi has not a part of the participant in ...

MS GILL MARCUS: That is fine.

MR TSHEPO DAUN MAHLOELE: The Harith Holdings inter like the allocations which have been done over the past two years.

MS GILL MARCUS: No, my apologies then because I then heard differently.

MR TSHEPO DAUN MAHLOELE: Yes.

MR EMMANUEL LEDIGA: Let me just say, just say you know a question, so give us a sense of the shareholding within HGP? How big is your shareholding? You know people allege that you own like the bulk of the shareholding there and all that. How big is your shareholding? Mr Moleketi's shareholding? Just give us a sense if it is, if his shareholding is separate from the trust.

MR DANIEL BURGER: Mr Lediga, Commissioner Lediga, I apologise but the point is that Mr Moleketi does not have a shareholding in HDP.

MR EMMANUEL LEDIGA: In HDP.

MR DANIEL BURGER: That is the point I just made with Commissioner Marcus.

MR EMMANUEL LEDIGA: Oh okay, I was not ja, because I thought it was separate may or something ...[indistinct].

MR DANIEL BURGER: No and then, and then as regards the, the proportion of the – as between the ...[indistinct].

MR EMMANUEL LEDIGA: Of different ...

MR DANIEL BURGER: No, different beneficiaries in the HHET as opposed to HSIST.

MR EMMANUEL LEDIGA: Yes.

MR DANIEL BURGER: I am not sure that that is a figure that needs to be mentioned. If the Commission is insistent then we can take a position, but it is really seems that that inquiry goes way beyond the terms of reference.

MR EMMANUEL LEDIGA: I agree. I mean if he wants to it is fine, but I agree that you know he does not have to. He does not have to.

CHAIRPERSON: Can I? Can I?

MR TSHEPO DAUN MAHLOELE: I do not ...

CHAIRPERSON: No, no. Shall I allow you time to talk to Counsel and consider that?

MR DANIEL BURGER: No.

CHAIRPERSON: I want to adjourn now for lunch until 13:30. Is that okay? We adjourn until 13:30.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV JANNIE LUBBE SC: Mr Commissioner, with regard to the programme forward. I had a discussion with my learned friends and it is highly unlikely that we will finish today. We have agreed that a better option is not to carry on tomorrow until four, but rather use Tuesday to complete the testimony, and if it is fine with the Commission, that is how we plan to do it.

CHAIRPERSON: Tuesday next week?

ADV JANNIE LUBBE SC: Tuesday, next week. I have witnesses available for that, but I can make other arrangements.

MS GILL MARCUS: Sorry. I am just a little bit confused with that. So, would we continue at all tomorrow with this team?

ADV JANNIE LUBBE SC: NO, we will not.

MS GILL MARCUS: So, we would go to the next witnesses we planning for tomorrow anyway, and the rest of this evidence will be on Tuesday, next week?

ADV JANNIE LUBBE SC: That is correct. Thank you.

MR DANIEL BURGER: If I can just confirm that arrangement. Perhaps, it would be best if we, and hopefully we will finish with Mr Mahloele today and then that is where we will stop, and then deal with Mr Moleketi and Mr Wheatley on Tuesday, the 23rd. I think that sounds like the most... And we should, because their statements together come to the size of Mr Mahloele's statement. There is a good chance that we will finish with both of them on the 23rd.

CHAIRPERSON: Yes, Mr Burger. You are free to raise an objection, even to questions asked by us, if they are outside out terms of reference.

MR DANIEL BURGER: Thank you, Chairperson. That is what I sought to do just before the lunch adjournment.

CHAIRPERSON: And I shall try to stick to my parameters.

MR DANIEL BURGER: Might I also raise just one issue that was raised by Commissioner Marcus just before lunch, and also commented on by my learned friend, Mr Lubbe, relating to the licensing. I do not know to what extent Mr Mahloele can deal with this.

I know for a fact that Mr Wheatley has the particular licensing knowledge because of his qualifications to deal with this, but what I can just put on record at the moment is that, our understanding is that the management agreement between the sub-contract, the management agreement was seeded on the 1st August 2012, that the licence to trade...[intervenes]

CHAIRPERSON: There is something that is distracting me from this side. Some voice mail or whatever. Please, turn that down.

MR DANIEL BURGER: So, as I was saying. The management agreement was seeded on the 1st August 2012. At that time, HGP, I am told, became the juristic representative of HFM which is a practice common in the industry.

Mr Wheatley can explain what that means. The licence was granted on the 11th September 2012. That is the licence to trade on the 11th September 2012, and HGP formally began trading in October 2013 which is more than a year later.

But this whole issue or juristic representation is something that... I do not know if Mr Mahloele can deal with it, but certainly Mr Wheatley will be able to deal with it.

MR EMMANUEL LEDIGA: Can I ask you something first? So, HFM like had a licence and then HGP applied to be a juristic rep, using the HFM licence. Is that correct? Is that what I am hearing?

MR TSHEPO MAHLOELE: Just perhaps, so that there is not any mis-statement or any point that lets say I am not a hundred percent on this point, I will ask my compliance officer at Harith to write a statement as to what happened, when and on which date and how this relates.

And I think it might perhaps be much more hundred percent on point than what I would try and like maybe put together now here, and with all those dates, sometimes just being a difference of a month and what happened when...

But in my understand, we have always like traded – we have traded properly all the time, with proper licence. So, that is a difference of a month. I do not... But can I ask my compliance office to please prepare that statement on behalf of the Commission and present and submit to Advocate Lubbe for perhaps for submissions for yourself, Chair?

CHAIRPERSON: That is fine, thank you.

MR TSHEPO MAHLOELE: Thank you, Chair.

CHAIRPERSON: Thanks for the offer.

MS GILL MARCUS: I think that is very welcome, but just for clarification. If there was any period in which HFM stopped functioning, seeded the work to HGP and then HGP traded with that licence for any period of time or without a licence or without due process, whether it is for a week or whatever the period of time is, to see that actually when that authorisation was given to HGP.

If that can be included in the statement, as to what licensing prevailed at what point in time.

MR TSHEPO MAHLOELE: That will be done, Chair.

MR DANIEL BURGER: I think, Mr Mahloele you were at paragraph 46 of your statement.

MR TSHEPO MAHLOELE: Okay.

> "The second fund, PAIDF2, in the amount of 435 million dollars was raised by Harith General Partners with the following investors; The Government Employee Pension Fund, DTD, AFDB, DBSA and BPOPF.
>
> PAIDF was finally closed with no further funding contributions in June 2016 and the funds invested in similar projects as PAIDF1.
>
> As at March 2018, the GPH's initial investment commitment in the sum of 350 million dollars of the overall investment value of the fund of 435 million dollars had been drawn-down only to an extent of some 87.5 million dollars.
>
> The total value of that investment was independently

valued at 102.6 million dollars equating to somewhat R1.2 billion. At 102 million dollars from the 87 million invested.

Between March 2018 and February 2019, the further sum invested by the GPF then increased to almost 182 million dollars. There were some more investments made during the period of that year.

The gross IRR earned to March 2018 was 44.4% in US dollars terms and 40% in ZAR terms. So, it is 44% in US dollars in that investment…"

MS GILL MARCUS: Can I ask that when we doing internal rates of return, we actually do net not gross? You can do gross and net, but not just gross. And that would assume that this is 182 million drawn-down of 350 million dollars. Is that correct?

MR TSHEPO MAHLOELE: Yes, Chair. Your… Sorry. I forget myself.

"The same principle of scrutiny, accountability and transparency as described for PAIDF1 apply also in regard to PAIDF2.

Since the inception of the two funds, the position has remained the same and PIC has never been an investor in either of PAIDF1 or PAIDF2.

The investment process can be described as follows.

The Harith Team sources projects, review them for presentation to the PAIDF Investment Committee.

The investment committee is made up of ten representatives.

In that investment committee you have banks and institutional investors, form part of that investment committee.

So, all those investors that I have mentioned, they have representatives on the investment committee. I think it is a very clear case of the capital owners looking after their money very closely.

Harith proposes investments to the investment committee. The investment committee reviews those proposals. Those that pass the investment committee's review test are then recommended for approval to the board of trustee which also has an investor representation..."

MR DANIEL BURGER: That is the board of trustees of PAIDF?

MR TSHEPO MAHLOELE: Of the PAIDF.

"It is made in the main by the investors in the fund, the board of trustees with only about two independents and also myself, the CEO of Harith General Partners as a trustee..."

MS GILL MARCUS: And among those trustees on the board are GPF representatives?

MR TSHEPO MAHLOELE: Among those trustees, you have GPF representatives. GPF has two representatives.

MS GILL MARCUS: And who chairs it?

MR TSHEPO MAHLOELE: The PAIDF is chaired by Renosi Mokate at the moment. She is the current chair of the GEPF.

MS GILL MARCUS: GEPF. That is fine, ja.

MR TSHEPO MAHLOELE: So, she chairs the fund.

MS GILL MARCUS: I just wanted to see that the GEPF is there and what their role is in that board of trustees.

MR TSHEPO MAHLOELE: Okay, they have actually two representatives on the board of trustees.

MR DANIEL BURGER: And the other representatives?

MR TSHEPO MAHLOELE: The other representatives... ABSA has two representatives. Old Mutual has a representative. African Development Bank. It is afternoon, Ma'am. It is going a little bit slower. Please bear with me.

MR DANIEL BURGER: Okay.

MR TSHEPO MAHLOELE: Okay. But then, as I have said, it is got some of all these investors on it. In the main, all of them. That is why for us the construct of this fund works very well, in the sense that you have the investors very close to the money, impacting on how it is done and how it is managed and being very close to its performance.

> "The first trustees of the PAIDF were appointed in accordance with the terms...[intervenes]

MR DANIEL BURGER: I am sorry. I think you have left out 51.7 which is quite important.

MR TSHEPO MAHLOELE:

> "The PAIDF Board of Trustees has final approval regarding which of the recommending investments are to be made.
>
> The first trustees of the PAIDF were appointed in

accordance with the terms of the trust deed. The first trustees in turn appointed invested trustees in accordance with their participation ratio in terms of the trust deed, the trust deed of the fund..."

And below I set up the criteria for the eligibility of each investor to appoint a trustee to the board of trustees. I do not know... Counsel, can I pass these because...[intervenes]

MR DANIEL BURGER: I think you can jump over that.

MR TSHEPO MAHLOELE: Can I jump over that? Because it just says how each represents.

Paragraph 53:

"The PAIDF Board of Trustees is a final decision making body in all matters relating to the PAIDF, including its investments. Both the PAIDF Investment Committee and the Board of Trustees are controlled by its investors. The people who own the capital.

With currently seven investor participants, myself and the two independent trustees that I talked about. I must point out that Harith General Partners has co-invested with a number of financiers on a large scaled projects which is a norm to reduce risk exposure to financing parties..."

This is a norm in all major infrastructure projects that you find in multitude of investors. In Lake Turkana as I have mentioned, there is over like twelve investors in that one project from all over the world.

"The PAIDF has co-invested with a number of institutions and investors, such as:

- The African Finance Corporation of Nigeria;
- The African Development Bank;
- The European Bank;
- The European Investment Bank;
- Standard Chartered Bank;
- Finn Fund (which is like the Finish Government Development Fund);
- Rand Merchant Bank;
- Investec;
- Remgro;
- BMC Bank International;
- Sky Bank;
- First City Monument Bank;
- First Bank of Nigeria;
- MIGA (which is a Multilateral Investment Guarantee Agency of the World Bank and which like also provide most of our - some insurance cover and some of the projects across the continent);
- And the IFC (which is the World Bank Investment Arm. It is also a partner in the airport in Tunisia);
- FMO (which is the Dutch Government Development Finance Investment Arm);
- And KFW (which is the German government Development Fund).

All these DFI's by the European entities and the American

> entities are very active in the infrastructure spaced across the continent.
>
> The PAIDF and the PIC have also co-invested in two projects in South Africa, which is Lanseria International Airport and Kelvin Power Station…"

And in those projects, PIC invested for its own purposes. They did not fund us and then the PAIDF invested for its own account. The same in Kelvin and Lanseria.

> "I pose to know that the investments of PAIDF has made for mostly Greenfield Projects. These have a much more developmental impact on the continent, including the creation of employment, stimulating economic activity and skills development…."

A table of investments in respect of PAIDF1 and PAIDF2 can be found on pages 3 and 4 which we have dealt with earlier.

MR DANIEL BURGER: Which we have dealt with. Thank you.

MR TSHEPO MAHLOELE:

> "Many of these investments and projects have received awards. (See pages 5 and 6 which is in my Exhibit 3, listing out all of these awards.)
>
> We are very proud into like the impact into some of these has done and even PAIDF1 and PAIDF2. Even as funds in themselves by the economical impact that they have had, they have also won funds in their own right over the years.
>
> The cavalry allegation by Mr Holomisa that these

> projects are under performing lacks any factual basis.
>
> On the contrary, these projects have created a demonstrable developmental impact on the continent and the funds are on cost to deliver very favourable returns to investors in this regard.
>
> Harith has invested in over fourteen signature infrastructure projects over the two funds that it currently manages…"

If I might say and perhaps like, you know, just allow me one line to sort of brag about a project like Lake Turkana in Kenya which is one the largest like, you know, renewable projects and like, you know, it is wind power project in Kenya.

310 megawatts in that environment. I think it is a very like, you know, it is something to be proud of. Something like Hendrick Conon Bridge. If you can see and if you to go to Abidjan then you see what that one bridge has done for the city. It is very impressive. So, these are the type of things that sort of like, you know, we do across the continent.

Our of the 616 million dollars of equity invested in these projects that we have put together in these funds, I should highlight that an additional 4.9 billion dollars of financing has been unlocked for the continent.

This is in the form of some of the debt and some of the major structures and some of the insurance which covers some of these projects. So, that equity which has been done out of this fund, has really unlocked a lot.

If I make an example of what the continent looked like in 2006, what we have invested then and what it is today, we believe and we will continue to invest even PAIDF2 on the basis that the next five years will be better than the last five that we come from.

> "This figure excludes the joint ventures which we have with AFC which is like the power IPP that I talked about, where two other projects which is Sen Power, a 400 megawatt gas power plant, supplying power to the Canyon grid, has a total project costs of some 600 million dollars, and Cabeolica which is a 26 megawatt wind farm, operating in the majority of the power on the Island of Cape Verde..."

MR EMMANUEL LEDIGA: Just a question here on 6.2. Do you take, you know, preference shares and ...[indistinct] on your own or you guys, you just write the equity checks only?

MR TSHEPO MAHLOELE: Sometimes, Chair like, you know, with even like structure, even some of our ...[indistinct], perhaps as even a shareholder alone, so that we can perhaps then maybe start like generating some form of like, you know, going on some of the cash which comes out of the project.

Or, you know, so that, you know, there is a – it is not necessarily a smaller component of equity, but it is a structure that is dead sometimes, becomes a bit perhaps more tax effective from a return point of view and that is what we do.

But we are in pure equity. We are in some of like the ...[indistinct] instruments you would look at. We also like would do things which look like a shareholder loan but in the main being an equity instrument.

Both our funds are equity funds. So, therefore, that is the main focus and that is why it is been unable to unlock all of these other projects, and this is the biggest problem why these two funds were created.

Africa lacks equity capital to support a long term developmental need in the form of infrastructure and much more of this capital is still need to make sure that infrastructure can be build, and we need people to take a bet on that.

That is where the biggest thing is and that is why even in the beginning the PAIDF, you know, went beyond other funds and was structured as a fifteen year fund.

> "These projects have created over 600 direct jobs and thousands of indirect jobs..."

If I talk about something like Main 1 in Nigeria. This had done a lot of indirect jobs by all the other ISP's which have been created.

> "We have contributed to economic growth, an enormous tax to governments. We have attracted leading pension funds, including the Social Security National Insurance Trust of Ghana.
>
> We have the Botswana Public of Suspension Fund of Botswana as an investor, and the Government Institutions Fund of Namibia with the funds created in Namibia, and on the back of that, developed two original funds. One in Namibia and one in Nigeria

with local asset managers there.

These are world class infrastructure projects, developed in partnership with international and reputable project developers, as well as respected development finance institution and banks…"

MS GILL MARCUS: Can I just take you back a second to 65.3? Did SSNIT of Ghana actually invest?

MR TSHEPO MAHLOELE: SSNIT of Ghana, Chair? Yes, they had invested in PAIDF1 and actually when PAIDF was launched initially, it was actually launched in Ghana in Accra in 2007.

MR DANIEL BURGER: Chair, can I just say that Mr Mahloele has got now to paragraph 61 of his statement which is he where he deals with an overview of Lebashe. This is a high level discussion of what Mr Wheatley is going to deal with in quite some detail.

So, I am not sure to what extent the Commission would like Mr Mahloele to deal with this now, just to get an overview of what happened, but remembering that Mr Wheatley is still going to be covering very much of the same ground. Perhaps, Mr Mahloele can just highlight his particular role in Lebashe.

CHAIRPERSON: Yes, I think let us take that route.

MR EMMANUEL LEDIGA: And perhaps he can just start to just to - with the Coral Lagoon. Just the history. A bit there. Because I know this has been a long story of BEE transactions, around there. Ja.

MR DANIEL BURGER: So, you can start at 61. Your microphone.

MR TSHEPO MAHLOELE: Now I deliver my focus to Lebashe Investment Group and how I became involved that.

"Lebashe is a private company and its genesis has nothing to do with the PIC. Although, as it will be seen, it later contracted at arm's length with the PIC in various respects which benefited both parties greatly.

I am a beneficial shareholder in Lebashe to an extent of 27% of its issued share capital. I became a beneficial shareholder in an investment company called Coral Lagoon. My stake amounting to some 7%..."

If I can just perhaps like there, I think, for the benefit of the Commission. There was a consortium, like most BEE consortiums created in 2007 which was Coral Lagoon and I was a member of – I was a part of that consortium to the extent of 7% in my beneficial shareholding.

"Coral Lagoon sole business was its investment in Capitec Bank of which it was a shareholder to the extent of the 10 million shares.

By virtue of its shareholding in Capitec, Coral Lagoon was entitled to nominate a director to the Capitec board. So, I was nominated and served as a non-executive director of Capitec from April 2007 to January 2011 when another director was appointed in my place.

During 2012, Coral Lagoon approached the PIC with an offer that the PIC purchase some of its Capitec

> shares. In February 2012, the PIC purchased almost 5.3 million of those Capitec Shares from Coral Lagoon for R156,00 per share.
>
> This sale was disclosed to the public through Johannesburg Stock Exchange and published widely in the media on 29 February 2012. These announcements are still available on the Capitec and JSE websites, as well as through a basic internet search.
>
> Three years later in 2015, Lebashe was established. Initially under the name of Petro Touch. Petro Touch/Lebashe presented a fully funded proposal for Lebashe to purchase 5.3 million Capitec shares. By that stage, the Capitec share had risen in value to R325,00 per share…"

I think that was around March 2015, if I am not wrong. But Mr Wheatley will elude to the finer details of this.

> "The PIC was prepared to accept Lebashe's offer to purchase the 5.3 million shares, it had originally acquired from Coral Lagoon at R325,00 per shares but the deal was still subject to various conditions precedent.
>
> By the time those conditions were met the share price has risen to R461,00 per share…"

This happened over a period of about two, three months, you know, which nobody would have like foreseen at that stage.

"The PIC insisted that the consideration payable under the agreement should be increased to R461,00 per share, after an agreement had been concluded at R325,00.

Lebashe was unhappy with the increased price because it had already secured funding for the entire transaction at R325,00 per share from Investec Bank.

The increased price was a consequence of the delay caused by the PIC in satisfying some of these conditions precedent.

It was eventually agreed that the PIC would lend the difference in the purchase price to Lebashe to enable it to buy the shares. The amount of the loan or the difference which resulted as a result of the share price movement, was R720 million.

In summary, the PIC had purchased the shares from Coral Lagoon in February 2012 at R156,00. The PIC sold the shares in May 2015 at R461,00 to Lebashe. The profit made by the PIC from this transaction was therefore R360,00 per share which equated to some R1.7 billion.

This sale was disclosed again in the public through a Sens announcement and published widely in the media on 12th May 2015. These announcements are still available today on the Capitec and JSE websites as well as through a basic internet search.

> The total cost of the shares amounted to approximately R2.4 billion. It was funded by Investment Corporate Bank to the extent of R1.7 billion and in that shortfall which happened as a result of the share price movement between March and May to the tune of R27 million was then plugged by PIC in the region of R720 million…"

MS GILL MARCUS: Sorry. What interest rate was charged for the R270 million?

MR TSHEPO MAHLOELE: I might be wrong, Chair but I think it was about 13%, if I am not wrong. Ja, but I think. Ja, it was exorbitant.

> "The loan received by Lebashe from the PIC was disclosed in the PIC's widely publicised Isibaya Investment Schedule which identified all the PIC's investments as at 31 March 2016.
>
> It was essentially a back-to-back mechanism whereby a part of the purchase consideration due by Lebashe to the PIC was deferred and spread out over a time…"

And I think we have requested a period of three years to try and cover that.

> "About two years later, we became interested in purchasing the remaining other 4.7 million shares which were in Coral Lagoon.
>
> As Lebashe, we went to Coral Lagoon and said: Can we buy some of the shares? Our intention always being that, from a Lebashe point of view, to build a

> balance sheet, and perhaps that is where the name stems from, whereby we changed it from Petro Touch to Lebashe. L-e stands for Legacy. B-a for balance. S-h-e for sheet. Our aspiration is to build up a legacy balance sheet to that extent. Lebashe approached the PIC..."

It says here, the GEPF ...[indistinct], but it is just that, you know, when agreements are done and loan agreements are done by the PIC, it says like, done on behalf of the GEPF because it was the GEPF's funds.

MS GILL MARCUS: That is quite an important question, because given the issues earlier about what was a GEPF direct investment and the PIC. The PIC clearly acts in terms of its memorandum of understanding and delegations and agreements with the – as the agent of the GEPF. So, in terms of 7.4, when you saying GEPF, are you talking about your interaction with the PIC or directly with the GEPF?

MR TSHEPO MAHLOELE: I am talking about our interaction with the PIC.

MS GILL MARCUS: Can we then...[intervenes]?

MR TSHEPO MAHLOELE: On this transaction, Chair there was no interaction. We did not interact with GEPF. It was an interaction with the PIC.

MS GILL MARCUS: And can we amend 7.4 accordingly because otherwise it creates confusion as to who you were dealing with?

MR DANIEL BURGER: Yes, it is our fault.

MR TSHEPO MAHLOELE: I totally agree, Chair.

MR DANIEL BURGER: It is actually paragraph 74. Yes, and so the words: The GEPF through... Those three words should be deleted.

MR TSHEPO MAHLOELE: Ja, it is Lebashe approached the PIC. That is the right...

MR DANIEL BURGER: Yes.

MR TSHEPO MAHLOELE: You are right in that regard, Chair.

> "In this transaction we were funded by the PIC, Paragreen Securities and Sanlam. The funding which was secured was in the region R1.4 billion with R1.2 billion of that coming from the PIC..."

I think that should also be changed, counsel. To PIC as opposed to GEPF.

> "Lebashe's repayments of the GEPF loan are fully up to date and the smaller loan has been repaid...."

The loan which was like to take to breach us at the period when the share price moved between March and May 2015, was fully repaid by, I think the 7th or 14th April 2018, wherein... Ja, the whole R720 million was repaid with interest in excess of about R200 million.

MR DANIEL BURGER: Mr Mahloele, can I just pause there because there are some corrections that you have spoken about, but just to put them clearly on record. So, the words, the GEPF through, in line 3 must be deleted. And then...[intervenes]

MR TSHEPO MAHLOELE: Yes, it must Lebashe approached the PIC for funding.

MR DANIEL BURGER: Correct. And then when it says: The funding was secured with the GEPF loan in Lebashe. That should be the PIC loan in Lebashe.

MR TSHEPO MAHLOELE: Yes, counsel.

MR DANIEL BURGER: And again in the third last line: Lebashe's repayments of the GEPF loan should be of the PIC loan.

MR TSHEPO MAHLOELE: Yes, counsel.

> "This sale was disclosed to the public through a Sens announcement and published in the media on 7 July 2017. These announcements are still available on the Capitec and JSE websites as well as through a basic internet search….

And I also dare say that even…[intervenes]

MR EMMANUEL LEDIGA: Just a question. Sorry. Oh. Ja, continue.

MR TSHEPO MAHLOELE: Even on the website of Lebashe, the details of it is like transactions is also listed.

MR EMMANUEL LEDIGA: Question. When you kind of repay the PIC, do you sell shares or you get funding from somewhere to repay the PIC, broadly?

MR TSHEPO MAHLOELE: [Indistinct]

MR DANIEL BURGER: Sorry, your microphone.

MR TSHEPO MAHLOELE: We were given a very strenuous short term bridging thing for that balance of about R720 million and we had to like find a way to repay that within that three year period, the R700 million. Chair, we went to financial institutions which helped us with raising that money. One of the big fives supported us with that funding to enable us to pay that back.

MR EMMANUEL LEDIGA: Okay, great stuff. And then the 1.2 billion, how are you repaying it, the PIC amount? Are you paying through dividends or how is it being paid, being repaid?

<u>MR TSHEPO MAHLOELE</u>: We pay that twice a year through the dividends that we receive. And then with regard, if I may say, for and we would want to believe and there is ample security of that, if you look at like the amount of the shares that it is.

And the other thing to note, Chair is that, these are restricted shares. Evergreen BEE shares. So, thereby meaning they trade at a very steep discounted intrinsic value.

However, as a platform, we ...[indistinct] account fund find whereby we used this balance sheet to enable us to do other things and grow the company in terms of like other sectors.

But then the other support in terms of funding, we have been able to source from the other banks and assets managers.

> "The loan that Lebashe received from PIC was also disclosed in it is widely published Isibaya Investment Schedule which identified all the PIC's investment as at 31 March 2018.
>
> In the first quarter of 2018, Lebashe repaid in full the first loan which I have already talked about..."

<u>MR DANIEL BURGER</u>: Mr Mahloele, sorry. I need to just interrupt you. For accuracy. Paragraph 76, that schedule is dated 31 March 2017. It is Exhibit 5. Sorry, please continue.

<u>MR TSHEPO MAHLOELE</u>: Okay, thank you.

> "In the first quarter of 2018, Lebashe repaid in full the first loan that it received from the PIC of R270 million

in 2015 in respect of the first tranche of the Capitec shares which I have already talked about earlier on.

Lebashe also paid the PIC, all its accrued interest. The PIC therefore earned interest on this loan of R700 million in excess of R200 million over a period of two and a half years.

All of these transactions were above board, transparent and at arm's length. The PIC profited and will continue to profit handsomely on these transactions. It has already received in excess of R1.7 billion in capital profits and in excess of R200 million in accrued interest.."

MR EMMANUEL LEDIGA: A question. Ja, a question. Before you go to section... Sorry, paragraph 79. Just a broad question and please if you can answer it, you know, if you can. I am just asking. Lebashe owns about 7.3% of Capitec. Is that correct?

MR TSHEPO MAHLOELE: That is correct, Chair.

MR EMMANUEL LEDIGA: And the market cap of Capitec is around R160 billion. Is that correct?

MR TSHEPO MAHLOELE: As at which price on which date, Chair? Because I think between now and I think the last three months, the share price has been doing funny things. Not funny things. Good thing. But in like it has risen I think between in the beginning of the year from about less than R1 000,00 to maybe currently today about R1 300,00.

And then, you know, last year with the that.. What is that?

The Viceroy sort of like debacle. It went down to about 700 bucks. So, that has been what we have been ...[indistinct]. So, it depends at which point in time you are talk about.

MR EMMANUEL LEDIGA: Yesterday. Let us just take….

MR TSHEPO MAHLOELE: I did not watch that one. I was here.

MR EMMANUEL LEDIGA: Okay.

MR TSHEPO MAHLOELE: So, you can tell me better.

MR EMMANUEL LEDIGA: The share price is R1 670,00 somewhere there.

MR TSHEPO MAHLOELE: Serious?

MR EMMANUEL LEDIGA: Ja, R1 300,00. Ja, let me just say...[intervenes]

MR TSHEPO MAHLOELE: I think it is about... I do not now. You say. I have not checked. Yes.

MR EMMANUEL LEDIGA: Ja, but just suffice to say. So, your 7% is worth something like R11 billion. Is that correct?

MR TSHEPO MAHLOELE: Yes, in an open market.

MR EMMANUEL LEDIGA: Say, R10 billion or R11 billion.

MR TSHEPO MAHLOELE: Without debt. We have debt on our balance sheet.

MR EMMANUEL LEDIGA: I am coming there.

MR TSHEPO MAHLOELE: Okay. Yes, Chair. Yes, it is worth about that.

MR EMMANUEL LEDIGA: Ja, and then you took debt of 2.4 at the beginning and then 1.2. I have just done the numbers here. 2.4 and 1.4. That is 3.8. But you sort of repaid that 720.

MR TSHEPO MAHLOELE: Yes, Chair.

MR EMMANUEL LEDIGA: So, in total you took debt of odd R3 billion, roughly. Because 3.8 minus around 700 million... Rough numbers.

MR TSHEPO MAHLOELE: No, no. You mean from the PIC, Chair?

MR EMMANUEL LEDIGA: From broadly. No, from all...[intervenes]

MR TSHEPO MAHLOELE: Oh, from broadly.

MR EMMANUEL LEDIGA: All the debt, ja.

MR TSHEPO MAHLOELE: Oh, yes. Yes, Chair.

MR EMMANUEL LEDIGA: Ja. So, it is about R3 billion of debt. So ...[intervenes]

MR TSHEPO MAHLOELE: I think we have slightly more than that debt, Chair.

MR EMMANUEL LEDIGA: Okay.

MR TSHEPO MAHLOELE: So, therefore, our net value is not a number that you are thinking about, but we do have a higher – we have more than debt than that.

MR EMMANUEL LEDIGA: Oh, okay.

MR TSHEPO MAHLOELE: As you can imagine why our debt would be a bit higher than that is that, I am not dealing here with a completely hundred percent marketable share. It is one which has restrictions which therefore then would attract a lower than market price of what it is.

Therefore, our ability to gear that up to the yield, you know, is not possible because then it is not a – it is shares which we normally can trade amongst the black participants. So, therefore, that is what happens to that value.

So, it just does gets a bit tempered. We are taking a long term view on that stock, Chair. Yes, and as is clear... Ja, let me just leave it at that.

MR DANIEL BURGER: Chair, I can say that Mr Wheatley will deal with this as well.

MR EMMANUEL LEDIGA: Will deal with that, ja.

MR DANIEL BURGER: But there is no doubt that Lebashe's assets exceeds its liabilities.

MR EMMANUEL LEDIGA: Ja, ja. Okay. All right. That is fine.

MR TSHEPO MAHLOELE: In that regard, in terms of like our currently 1.4 or 5 billion odd debt to the PIC with interest, you know, they are fairly covered in terms of like the risk and there are some other plans we have in future as to how to further and even improve this from a liquidity point of view. We do have some plans in place.

CHAIRPERSON: Just for purposes of the record. I think you used a term. You called a number and you said bucks. Is that – I am sure you meant Rand?

MR TSHEPO MAHLOELE: I meant Rand, Chair.

MR DANIEL BURGER: Because it could mean dollars. Mr Mahloele, I think you were at paragraph 79.

MR TSHEPO MAHLOELE:

> "I must emphasise that Lebashe did not seek the involvement of the PIC in its any of its other funding arrangements with Aluwani, Rand Fin, EOH and 4AX and the other entities referred to by Mr Holomisa...

As is clear, it reflects that, you know, we have in excess of that, you know, the debt from the PIC, we have been able to be supported by some of like the big five banks and in some of our growth ambitions of creating a balance sheet on the side of Lebashe.

> "Above all, it is important to note that the PIC publicly discloses all its investments. The name of the borrowers and the full nature of each transactions are fully identified and disclosed to the public.
>
> In addition, the PIC reports on its activities to parliament's standing Committee on Public Accounts and to the Public Finance Committee.
>
> All members of parliament, including Mr Holomisa, are able to access this information and we had offered it to all in sundry, last year.
>
> It is public knowledge that the value of the assets of the PIC is some R2 trillion. The PIC through its unlisted investment portfolio has approximately 119 private companies which it has backed up to the tune of some R147 billion.
>
> Of that, Lebashe has only been funded to the extent of R1.4 billion as opposed to the total R147 billion which constitutes about 0.95% of that portfolio of 119 companies.
>
> This excludes the PIC's investment in listed companies which accounts for approximately 12% of the listed capital on the Johannesburg Stock Exchange.

There have never existed any conflicts of interest amongst the various parties I represent as alleged as by Mr Holomisa or at all.

There is no evidence of any sort to support this claims of looting or a cartel of PIC operatives or a fleecing of the PIC.

I am a businessman with interest and networks in both the public and private sectors.

I would like to believe that I am very deliberate in the positive outcomes which I wish to attain for our investors and stakeholders through the building of innovative stable platforms which can serve our country and our continent and also, my own interest, where possible, to the appropriate degree into the best of my ability.

The continued sustainability of my professional commitments in these respects is uppermost and what like gets me up every morning to go and work.

Dis-colourless and unfounded allegations by Mr Holomisa have really done damage to our reputation and my dignity.

I want to believe that the correct forum of remedying all that will be in a court, but I would ask the Commission to tread with great caution the alleged conclusions at which Mr Holomisa claims to have arrived at.

> The damage done is not confined to me alone. I have a team of 29 people who work with me at Harith. Most of them, especially the professionals, have been with me in excess of ten years, building and investing in these things.
>
> It is important that we maintain and preserve the value of those investments to the fruition and ultimately them doing very well…"

And as have been noted earlier. They are still looking forward to that carry which must like, you know, happen one day, to the extent that some of these allegations are made in a manner to cast out on some of those investments.

Besides the fact that I like talk about 6000 jobs which have been created, the amount of people who work in all these companies in Main 1 in Lanseria, in Kelvin, in Rabie Power Station, in the airport in Tunisia.

There are thousands and thousands of people whose investments now become impacted by our equity participation in those because those then starts being questions as to like, you know, now what is the source of those.

> "Mr Holomisa's allegations place Harith and its initiative in the building of this infrastructure at risk and threaten to derail or delay a number of this initiative which we are engaged in…"

I am now on paragraph 87:

> "Harith and Lebashe welcomes scrutiny in any

> constructive form and we have offered this since last year. The Harith website includes of the projects that we have invested in and we provide our investors with regular reports on the status and performance of each of our assets. Much of which is in the public domain, in any event…"

Besides the annual financial statements we have prepared. Besides the developmental impact report which we have prepared, each year of all our investments.

We also, you know, report quarterly to our investment committee and the board of trustees of the funds.

I go to paragraph 89:

> "Neither Harith nor Lebashe is a front nor a conduit for the PIC or any other entity. An allegation was made that we by fronting as BEE party on behalf of some white organisations…"

I take terrible exception to that. Our idea is build up platforms that we can be very proud of. That we have started building many years off and have spent lots of time of our own doing that and been very deliberate about the outcomes that we are looking to achieve.

> "As I have shown, Harith and I repeat again, has not funded Lebashe and has not received any funds from the PIC on behalf of Lebashe.
>
> Because an allegation was made by Mr Holomisa that the PIC gave Harith funds to manage on its behalf. That is very far from the actual truth which I have

spelt out in this forum.

"The two entities are distinctly separate and have entirely different functions and purposes. Mr Holomisa makes an allegation as page 19 of his transcript which are also not correct. It is correct that the PAIDF1 owns 50% of Lanseria Airport and I am a director of that, and that Mr Wheatley and I only jointly own a Chartered and Finance Company called TWCP whose funds we also like supported by the one of the big five in terms of starting that company. One of the big five banks, I am talking about. And that, for that matter, is also outside of Lebashe.

Under TWCP, we charter and finance the purchase and leasing of airplanes. We deal with airlines and private individuals, but never with the airports. We have no relationship with any airport, nor do we need such a relationship.

There no payments made or services rendered as between Lanseria Airport and TWCP. The only direct and irrelevant connection is that an entity called Lanseria Jet Centre, leases premises from Lanseria Airport and offer services for some of the charters and financing which we pay it for…."

These allegations, are yet another example of Mr Holomisa's unfounded conjecture which is as damages as it is…. Ja, I will not say that word.

“As I have said, the allegations have placed all of us in a position where we are now required to explain repeatedly to potential partners the truth about the unfounded allegations by Mr Holomisa which have, as we fully intends, regularly been spread in the media.

We bear the full brand of the insults and the innuendo in that regard and yet not once single fact has been proven by him to support his claims and speculations.

In each meeting, we start with any of our partners or funders. Especially even with the banks, we have to start with an explanation of what is happening. We have been blessed and we are fortunate that we have been with some of our partners for many, many years and some of them have actually been participants, even in the funds.

The amount of resources, both as concerns legal cost and other expenses and efforts, including the many hours and the enormous sums of money which we have been compelled to spent to try to respond to these allegations, cannot be overstated or again said. It has taken a lot of time and money.

In this environment in which the country finds itself in, we would not be able to leave and not attend to some of these allegations.

However, those will form part of an action which we are pursuing in the high court to the extent of the deformation of the entities involved and the individuals concerned.

I remain available to this Commission at any time to assist in any further way I can in its aims and purposes, should the Commission need me in that regard…"

CHAIRPERSON: Yes, thank you. Any further questions, Mr Burger?

MR DANIEL BURGER: I have no further questions. Thank you, Chair.

CHAIRPERSON: Mr Lubbe.

CROSS-EXAMINATION:

ADV JANNIE LUBBE SC: Thank you, Mr Commissioner. Before I start with my questions, can I just explain to you my position in this commission? I am not a prosecutor. I am the chief evidence leader and my duty to the Commission is to ensure that the correct facts are placed before the Commission to enable the Commission to perform its mandate and report to the president.

So, when I ask you questions and challenge some of the statements you have made, it is for that purpose to ensure that correct facts are placed before the Commission. Do you understand that?

MR TSHEPO MAHLOELE: [No audible reply]

ADV JANNIE LUBBE SC: I will start off with asking you some questions in general but before I do so, can I just ask you about yourself. You stated in your statement that you obtained BProc at Rhodes University in 1998 and shortly thereafter, you joined RMB in a management programme.

MR DANIEL BURGER: Your microphone.

MR TSHEPO MAHLOELE: I think Rhodes was in 1998.

ADV JANNIE LUBBE SC: Yes, that it was. And you joined shortly thereafter in 1990 RMB in a management programme for young graduates.

MR TSHEPO MAHLOELE: Yes.

ADV JANNIE LUBBE SC: What I want to find out. Did you do your articles? Did you write the attorney exam for admission to practice?

MR TSHEPO MAHLOELE: No, I did not... I did my articles for about nine months and then I left and then I went into corporate. I did not finish my articles, nor did I practice as an attorney. I went into corporate.

ADV JANNIE LUBBE SC: So, you have no practical experience as a law practitioner?

MR TSHEPO MAHLOELE: No.

ADV JANNIE LUBBE SC: Can you just briefly tell me what courses you completed in corporate governance?

MR TSHEPO MAHLOELE: In corporate finance or in corporate governance.

ADV JANNIE LUBBE SC: Corporate finance. Sorry. Corporate finance.

MR TSHEPO MAHLOELE: Okay. I did courses in valuations and I did courses in private equity.

ADV JANNIE LUBBE SC: Is it three months, six months or twelve months' course?

MR TSHEPO MAHLOELE: No, some of these were certificates, sort of like stuff or courses that you just attend. Some of them were like three or five days courses over my experience of the time.

ADV JANNIE LUBBE SC: And the Harvard Advance Management Programme in 2010, is that a twelve month thing or what was it?

MR TSHEPO MAHLOELE: That is, I think, a three and a half months programme, full time at Harvard.

ADV JANNIE LUBBE SC: The 2014 CEO of the Decade Award. What is that about?

MR TSHEPO MAHLOELE: The Association of Black Securities and Investment Professionals, each year recognise an individual within the financial services sector whose had achievement over a period of many years within the section and then each year that Association of Black Securities and Investment Professionals would identify an individual to honour with that award, and I was given that award in 2014.

ADV JANNIE LUBBE SC: So, that is an award made to professionals belonging to ABSIP?

MR TSHEPO MAHLOELE: Yes.

ADV JANNIE LUBBE SC: You also mentioned that you served on boards, but what I want to find out to cut it short, Mr Mahloele is, when you joined the PIC was that in 2003?

MR TSHEPO MAHLOELE: Yes, it was in 2003.

ADV JANNIE LUBBE SC: What practical experience did you have?

MR TSHEPO MAHLOELE: I had spent – after my articles I was sort of like – I went to Nelspruit. Worked in a brewery for a couple of months.

ADV JANNIE LUBBE SC: That is great experience, I must say.

MR TSHEPO MAHLOELE: Yes.

ADV JANNIE LUBBE SC: I must take in my career.

MR TSHEPO MAHLOELE: It is even better because it was not like even not the side of beer, it was [speaking vernacular]. And after that, I then went and joined the head office in the legal secretariat of the National Sorghum Breweries then. After that, that is when then I was – I went to go and work at Rand Merchant Bank.

During those years Rand Merchant Bank had what they call the Class of Programme and the Class of Programme identified young graduates to put through the bank in a different, you know, units and departments to take them through banking.

And they normally took graduates and young individuals who had previously not been, you know, been in the financial services sector, and that is where my sort of like, I think, interest within the financial services sector sort of like started and got built up.

After Rand Merchant Bank... You know, within Rand Merchant Bank, I was in, you know, within those years that I was there, I think, about two and a half to three years, I was exposed to credit. I was exposed to corporate finance. I was exposed to BEE funding and that is actually one of like one of those periods in my experience wherein I actually learned about how actually an entity like Rand Merchant Bank had been built.

And then when I look at it back now into like an entity which was started, you know, with about R100 000,00 that is in Rand Bank, whatever, in the middle of town and up today, looking like Rand Merchant Investments.

So, that was one my – of learning how some of these institutions can be build and that was what started my interest in all of this. After Rand Merchant Bank, in those various departments, corporate finance and it actually was that Rand Merchant Bank that I did also some of those course in corporate finance and stuff like that.

Some were done internally and some, I think, were like run, you know, one I attended at WITS or something. I cannot remember. And then after Rand Merchant Bank, I went to go work for the Common Wealth Development Corporation.

At the Common Wealth Development Corporation, I got experience in infrastructure funding. That is where I started learning my exposure to... It was actually at that time, I think it was about early 1994, 1995 there around, wherein which, you know, even at that time the projects like the N4 was starting to be considered and being developed, which rand from Witbank to Maputo.

It was one of those first cross-border infrastructure projects on the continent and at CDC I got, you know, to be involved in that and that was like my first actually into infrastructure finance.

And CDC is the British Government Development Finance Institution. So, after 1994 when they set up the office here my boss then, the guy who setup office, David Molly, I was one of his first hired in that regard.

And after CDC, I thought – a very good friend of mine said: Perhaps, you know, we can try very different business. And I can remember my mother was still alive at that stage and she then thought I was crazy because that very different business was to sell furniture.

I think I was about 27, 28 at that stage. There was a furniture business which was for sale.

ADV JANNIE LUBBE SC: Was it Steinhoff ...[indistinct]?

MR TSHEPO MAHLOELE: It would still be around, if it was Steinhoff.

ADV JANNIE LUBBE SC: Yes.

MR TSHEPO MAHLOELE: At that stage, I think I was about 27, 28, a very good friend of mine said ...[indistinct] a family who is like moving to Australia. They are selling their furniture business and the business is for sale. It is like 40 people. It has like facilities in Randburg.

It turns over about R700 000,00 a month and the building and the business, you know, is for sale for R10 million and I was 27 and I was fortunate enough... I did not go to the PIC for the money.

Citi Bank and Investec funded that entity. It was roundabout 1998. I think interest rate, to give you context at the time, R10 million funding, total debt, interest rate about 16% - 17%. It was a tough slog for about three years.

Roundabout 2000, interest rates, if one remembers, goes back then – remember when interest rates shot up to about 18 and 19% and that is when like, you know, because our money was debt, you know, we ended up having like no bearing interest rate of about 25% per month on a furniture that is a hundred percent funded.

There was probably not too many outcomes than the fact like then the debt would start running rings around you. And then that business went bust. Even though that ...[indistinct].

A very tough time. I went back into the formal employment. Dusted myself, got up and started looking for work again and putting my CV out. And then I got employed at the Development Bank of Southern Africa in the private sector investments unit as the head thereof and looking at infrastructure investments in South African and in the SADEC Region.

Then in 2003, I was then approached by then Mr Molefe to go join the PIC. That is how I get there in 2003 and 2006.

ADV JANNIE LUBBE SC: Thank you. That is what I was looking for. So, you had a good dose of practical experience and training in the private sector before you joined the PIC. Would that be correct?

MR TSHEPO MAHLOELE: That would be correct, ja.

ADV JANNIE LUBBE SC: And you also had the experience as a young entrepreneur of starting a business and seeing the ups and downs of business in life.

MR TSHEPO MAHLOELE: Proper ups and downs.

ADV JANNIE LUBBE SC: All right. If we can move now to your position at PIC and the later move to Harith. As I look at PIC, Harith Fund and Harith Partners and Lebashe, there are two main role players that feature everywhere. That is you and Mr Moleketi. Is that correct?

MR TSHEPO MAHLOELE: That is correct?

ADV JANNIE LUBBE SC: The idea to approach the GEPF in 2007, was that the idea of Mr Brian Molefe?

MR TSHEPO MAHLOELE: I think the initial approach was in 2006, not 2007.

ADV JANNIE LUBBE SC: Sorry, the memo was in 2007. Ja, you are quite right. It is 2006.

MR TSHEPO MAHLOELE: Yes. I think it was – you can say as the CEO then. He did that. I did the work. But then it was something drawn by the PIC under the leadership of Mr Molefe.

ADV JANNIE LUBBE SC: Why I am asking this question is. My understanding is, at the time the PIC was dealing with more than eight plus percent of the investments by GEPF. Is that correct?

MR TSHEPO MAHLOELE: I do not know the exact percentage, but I think that would be it. Yes.

ADV JANNIE LUBBE SC: But at the time, the PIC had no mandate to invest outside the republic in Africa and other countries.

MR TSHEPO MAHLOELE: I do not know whether about other countries, but the PIC did not have a mandate for Africa. Yes.

ADV JANNIE LUBBE SC: So, to move into Africa and to take part in the dream of former President Mbeki, another vehicle had to be sought. Is that correct?

MR TSHEPO MAHLOELE: To pursue the ideals of a PAN African Infrastructure Development Fund...

ADV JANNIE LUBBE SC: Yes.

MR TSHEPO MAHLOELE: Out of that challenge which was put to the PIC at the time and to attract other private sector investors, other capital and other Africans, it was agreed that a separate entity would need – a vehicle would need to be formed to do that, outside of like the core of the PIC. Yes.

ADV JANNIE LUBBE SC: Yes.

MR TSHEPO MAHLOELE: And also to seek other partners.

ADV JANNIE LUBBE SC: Yes, and was stated in your statement in paragraph 12:

> "The fund was never intended to be a public sector led initiative..."

Is that correct?

MR TSHEPO MAHLOELE: Yes, that is correct.

ADV JANNIE LUBBE SC: And it is also stated that in the memorandum to the GEPF and if I recall correctly, also in the annual report of the PIC in 2007. Be that as it may. In your statement, you make it clear that there was no intention that this be a public sector initiative.

MR TSHEPO MAHLOELE: As I have said also in one of my exhibits under page 14, it says that under discussion, paragraph 26:

> "It is envisaged that investors in the fund will consist of public pension funds from the African continent as well as investors from the private sector..."

ADV JANNIE LUBBE SC: Yes.

MR TSHEPO MAHLOELE: Yes.

ADV JANNIE LUBBE SC: So, as I understand your statement. It was decided, you are the jockey for this new venture and you will establish this new entity and money will be obtained from the GEPF. Is that correct?

MR TSHEPO MAHLOELE: Yes, form the GEPF and other investors across the continent.

ADV JANNIE LUBBE SC: Yes, yes. Can you recall who drafted the facilitation trust and the trust and the legal documents for this new venture? If I can help you? Is it perhaps TWB, Tugendhaft Wapnick Banchetti and Partners or is it a different firm?.

MR TSHEPO MAHLOELE: I think at that stage there was TWB but also I think there was some of the work, which was done by, I think, it was Hofmeyr. Yes, Hofmeyr, Herbstein and Gihwala, at the time. I think which assisted me with some of like the trust and the stuff like that, if I am not wrong. Yes.

ADV JANNIE LUBBE SC: All right. Now, you have testified, you have established this entity HFM. First of all, there was this Facilitation Trust and then HFM. Originally, hundred percent owned by you and then the shares transferred to PIC. Who was, except for yourself, who was the team in HFM in 2007/2008?

MR TSHEPO MAHLOELE: Up to the stage... You know we did – we started fundraising in 2006 when we worked outside of like the PIC and operating through the Facilitation Trust at the time and we actually found premises in Fairy Glen for the facilitation...

I think it was about April/May 2006 and I had a secretary then which I started off with, Ms Vosja Sidwell. She is still with me today because she had at the time been tempting at the PIC and I said: Okay, you are just temping there. There is this thing, you can still temp. Let us see what happens. Maybe just like... So I took her.

There was Tenduja Vanda, who was like, you know, who used to work at my team at the Isibaya who was one of like on the research side and everything and worked with me.

And also there was at the time Stuart Bradley and Stuart Bradley was a gentleman which I knew and I had met through my, I think perhaps some of my interactions at... I cannot remember. I think it was something like Common Wealth Development Corporation or something.

But Stuart was like a British citizen who had been working on trying to raise his fund and everything and then I said: Stuart, can you come and consult with us whilst we do this? So, those were like within the first, I think, three or four months the people that we got to do that.

There was a point at which, you know, when we tried to work together with the Nigerians. They actually said some gentleman who is called Reginald Hebo, who was going to come and maybe also bring some of like the Nigerian Government money into the fund which just never worked out and then like the thing went wrong.

And then later on, up to then raising this fund and get on initial, on first close, when in October 2007. By then, I had already hired two other individuals to join the team because by then we were seeing that we are getting close to – there might be a business that might be possible and which might be that the fund might exist.

And so at that stage, by the time we reached final first close of the fund, I had Sipho Makhubela hired and Lesebo Marulani by then on the team. Because also, with most of these funds, once you start doing them and putting them together, the investors want to know that once there is a fund that people are going to be able to work on it.

ADV JANNIE LUBBE SC: That is what I want to find out from you. Was there anybody in your team with experience to deal with complicated and complex investments in Africa?

MR TSHEPO MAHLOELE: Yes.

ADV JANNIE LUBBE SC: Who are they?

MR TSHEPO MAHLOELE: Myself. I had worked at the Development Bank of Southern Africa. We had invested in infrastructure across the continent. We had done the N4. We had done some of those things.

Sipho Makhubela, when I got him, he had been working on infrastructure on some projects in Nigeria, and he is a CA and an MBA graduate. He has got that.

Lesebo Marulani, he is an MBA graduate. He had been working for Vodacom in Tanzania or something like that. So, therefore, those were some of the experiences which were there to do that.

ADV JANNIE LUBBE SC: The reason why I am asking you this is that in paragraph 32 of your statement, you state the following:

> "By September 2007, HFM had secured 625 million US for the PAIDF. Thus becoming the first fifteen year infrastructure fund of its size and scope, ever to be established in Africa. Fund raising, especially for a new fund in Africa, pursued by a small team, lacking any real funding track record, proved to a be complex and lonely task, etcetera..."

To cut it short. What I find astonishing is that the GEPF and other investors just decided to put 630 million into a start-up fund in South Africa.

MR TSHEPO MAHLOELE: I do not think on my part I find it that odd. I had spoken about the experience which I have had up to then. I spoken about my experience at the PIC, at the Common Wealth Development Corporation, at the Development Bank of Southern Africa.

I have told you about Mr Sipho Makhubela and to that. And also, immediately all after that on closure, I hired our chief investment officer, because that was like going to be the thing.

You know, Mr Alwyn Wessels. We had been working at ABSA. Who had worked on projects like, you know, the... What you call it?

Gautrain and some other infrastructure projects while at ABSA.

So, therefore, a team was built in the process and when you look at – perhaps, that is why we had the construct of the fund manager in the manner that it was put together, that you had the likes of Old Mutual, sitting on the board and giving some of that advice and some of that oversight, in terms of what they had been able to do.

You had ABSA Bank sitting on the board, giving some of that oversight and helping and assisting in some of that into like the way it is done. And if you also look at the vigorous, you know, approval processes, the head of the fund.

You know for that ...[indistinct]. That is why there were even much more, the investors took – were able to take a bet on that because even like the investment process and the investment decision approvals relied on an investment committee setup overseeing and independently chaired by the investors and the board of trustees.

ADV JANNIE LUBBE SC: The point I am trying to make. There is a huge difference between building the Gautrain or the N4 in South African and building a power station or a wind farm in Kenya or Sudan. Any team member that had exposure to that type of investment in Africa?

MR TSHEPO MAHLOELE: If you look at, as I sort of like said, you know we... In the DBSA, we worked on SADEC. DBSA invested not just in South Africa. In SADEC. And in these programmes, Advocate Lubbe when you look at it. I mean, through your Chair. You will find that, you know, a fund of our nature invests alongside other equity providers who do you do that with.

And that is why and also like in the management of risk and the sharing of that and the development of those projects, you find the type of structures which you find like three or four equity partners who do that.

There is normally a developer of a project who does that, and as a fund, we normally do not show like, you know, whilst we will fund and like sit on a board of those things, you will find that the development and operation of that is by entirely different company or team, which we then come in and back up as a financial partner. As an equity participant.

So, therefore, those projects we have participated in. We have done. Those are projects finance type structures and we have been exposed to them.

ADV JANNIE LUBBE SC: Mr Moleketi did he join in 2008, Harith?

MR TSHEPO MAHLOELE: Mr Moleketi became a director of Harith Fund Managers in 2007 whilst he was still also the chairman of the PIC. Because at that time, the PIC was very much like, you know, holding the share and also because of the nature of we know partners which we tried to create this thing, the PIC selected him as the chairman of Harith Fund Managers in 2007.

ADV JANNIE LUBBE SC: I will come to that. Had he any experience in this type of fund management, Mr Moleketi?

MR TSHEPO MAHLOELE: Mr Moleketi was a director. He was not an executive and he had the experience of being a chairman of the PIC.

ADV JANNIE LUBBE SC: Now, can we deal now with this issue which I find interesting. That it seems to me, and please correct me if I am wrong, that the PIC had an about turn about the independence of this fund management – of the money that the GEPF put into this fund. They were very reluctant to give the shares to what was originally agreed with investors into the fund.

MR TSHEPO MAHLOELE: That is very clear in the correspondence which I have shared with you, that having promised and having raised these funds and having gotten the investors to commit to the PAIDF in the manner that they did and in a manner that they believe that the Harith Fund Managers would be structured, that there were many, many if, I would to be totally honest, battles about that.

If I were – I would even be able to share with you some of the letters I wrote personally because I could not let like, you know, cloud this Commission, whereby we intimated that the management team and some of the people which had now been hired, because by then, now you had like a fuller team, had not signed up to this type of formation of a manager and were prepared to leave.

And if I were to be very even much more clearer. This is – this caused a big rift between the management team of Harith and PIC, because the investors, you know, demanded and insisted on these arrangements.

When we were raising the fund and going all over the place, that was an undertaking which was given to the investors that this would be a private sector led a managed entity and that is why some of like insisted on having shares in the company.

So, there was... Ja, I will leave it at that. There was a major, in a sense, some for couple of years... Not couple. Some many –

some form of a fallout between the two, for that exact thing.

ADV JANNIE LUBBE SC: Who was the difficult person at the PIC taking the staff? You can open your heart. You are in front of a commission of inquiry.

MR TSHEPO MAHLOELE: And the whole country. I do not know what to say, Advocate Lubbe. It was a very, very tough time in our lives at that time as Harith, interacting with the PIC management at that time.

There was a total fall out and I think that is why you actually find – you find that for many, many years there was not even much of any form of collaboration. Even in the sense of like investing in other infrastructure projects or tackling them together.

And that is why you even found, perhaps like PIC, also starting to like making its own direct investments outside of South Africa, when we thought that like, you know, we would be, you know, the entity to partner them with some of our experiences and shares we had lost in one or two of those investments across the continent, which as you rightly say, you know, it is not like an easy environment in which to do some of the things which we have done up to thus far.

But I am loathed to say, it was this individual or that individual. I am very loathed to say that.

ADV JANNIE LUBBE SC: I can see that you are uncomfortable to do that, but would it then be correct to say that.. It is not in dispute. There is evidence before this Commission that since 2009, the PIC had a mandate to invest in Africa or in fact, invested in Eco Bank in Nigeria, etcetera.

And is it correct then to say that because of the bad blood between Harith and the PIC, when you started the second fund in 2012, you went back to the GEPF for funding and did not go the PIC as a partner? Would that be correct?

MR TSHEPO MAHLOELE: No, the reason why we went to the GEPF and not the PIC was that in going forward and when we were having discussions with the GEPF, because they are also are invested in PAIDF1 and had sit on the board and we talked to them and we approached them, they decided that like they would again look at that investment on their own.

We, it is true to say that there was not perhaps much engagement with the PIC, in terms of that regard. I would, you know, elude to the fact that, we did try to have that partnership being strengthened and so that we could do things together.

We thought that we had built up some expertise. You know, like in making money and losing you built up – you learn some lessons, sometimes. And we had learned some of those in terms of what we do.

And we felt that perhaps we could partner with them more, when the others were not happening but I guess perhaps at that time the ground was not that fertile enough yet for that to be resurrected.

And as a management team at Harith, there was a need for survival and continuity and to continue into some of those ...[indistinct].

ADV JANNIE LUBBE SC: Are you aware that the GEPF is still not satisfied with the situation of PIC and that the shares that the PIC hold, should actually be the shares of GEPF? You know, are you aware that they are still unhappy about that situation?

MR TSHEPO MAHLOELE: Advocate Lubbe, that has not been shared with me that the GEPF would like those shares to be theirs. To the extent that they felt that way, I am not sure perhaps that could have been raised when we were doing Harith General Partners and I am sure it would have found fertile ground.

ADV JANNIE LUBBE SC: I am not going to waste your time and the time of the Commission, but I just want to put on record and you can comment thereon. I have received an legal opinion by Tugendhaft Wapnick Banchetti and Partners, the firm who originally drafted the documentation for Harith.

It is dated today, 16 April 2019 and I will make a copy available of this legal opinion to your legal team and to the Commission, where the GEPF is advised by this law firm that they should take legal action against the PIC because the shares belong to them and payments made to the PIC and dividends and management fees belong to the GEPF. It seems to me you agree with that.

MR TSHEPO MAHLOELE: No, Advocate Lubbe. I did not say I agree with that. I have not seen that opinion. I am loathed to get involved in that one. I have unfortunately not been told as yet by the GEPF of that action of what they intend to do, but I am sure the GEPF is free to invest and manage according to the way they would like to do that.

At the time, if I may sort of like say, how the PIC, as I have eluded earlier on, got to sit with the 46% was that they funded the seed capital to get the initiative going out of their operations budget and not out of the money which they manage on behalf of the GEPF.

MR DANIEL BURGER: Chair, I wanted to let Mr Mahloele give his answer first. But in the scheme of things that question about whether Mr Mahloele agrees with the legal opinion is unfair question. We have not seen it. He has not seen it. We have no idea what the basis for that opinion is. I am not sure that Mr Mahloele's response in this regard can take the matter anywhere.

ADV JANNIE LUBBE SC: I am quite prepared to withdraw the question, Mr Commissioner but...[intervenes]

MR DANIEL BURGER: But we would like to see the opinion.

ADV JANNIE LUBBE SC: I will hand over the opinion. But the opinion is directly in line with the evidence of this witness about the rift between Harith and PIC. But I agree with my learned friend. It is not necessary for this witness to elaborate on that.

CHAIRPERSON: Yes, that is fine. Can I just ask? The 46% shareholding that is held by the PIC, is that from the time that they advanced the R17 million or is in respect of the R250 million that came directly from the GEPF?

MR TSHEPO MAHLOELE: Chair, the 46% that they hold today, stems from the initial time when we started in 2006/2007 when the PIC made the loan of R17 million to the Facilitation Trust to get HFM and PAIDF going. So, the 46% the enjoy to this day, stems from that time. And, yes. It is not from... As I have said earlier on. The PIC has not made an investment in PAIDF1 or PAIDF2.

ADV JANNIE LUBBE SC: Am I correct and did I understand you correctly that the GEPF made available the commitment of the 250 million US in December 2006?

MR TSHEPO MAHLOELE: Yes, it was a commitment in principle. If you – I can actually read the letter. What then happened then is that first of all, you know, that the motivation was done to the GEPF and what they gave was a – it is almost like an approval in principle, subject to negotiation and agreement on the finer details of the trust and what it would look like and every other thing, and the involvement of all other investors in the fund.

ADV JANNIE LUBBE SC: Can you refer me to that letter, please?

MR TSHEPO MAHLOELE: It is on page 70 of my...[intervenes]

ADV JANNIE LUBBE SC: Seven zero?

MR TSHEPO MAHLOELE: Yes, seven zero. Of my index, the annexures. It is direct to Mr T Mahloele. See PAN African Development Infrastructure Development Fund, 11 December 2006; Headline: PAIDF Infrastructure Development Fund:

> "Dear, Tshepho. I refer to your proposal dated 11 November 2005. The board of trustees of the GEPF at its meeting of 6 December 2006, granted approval to invest 250 million dollars into the PAN African Development Infrastructure Development Fund.
>
> Approval is granted, subject to negotiation of acceptable terms and conditions in the detailed agreement and based on the materialisation of the government structure and procedures confirmed by your office..."

ADV JANNIE LUBBE SC: We know. We have heard that. When was this agreement concluded that the author of this letter, Mr Kuscus referred to? Can you remember? The date of the agreement. It says:

> "The approval is granted, subject to the negotiation of acceptable terms and conditions in the detailed agreement and based on the materialisation of the government structure and procedures confirmed by your office..."

When was that agreement with the GEPF?

MR TSHEPO MAHLOELE: There was not an agreement concluded with the GEPF up to that stage. What the GEPF have been provided at that stage, was that motivation for them to commit 250 million dollars to the fund and how that would operate. So, that is how that was done. So, this letter is based on that initial motivation to them.

ADV JANNIE LUBBE SC: When was the agreement concluded between the GEPF and Harith to manage the fund?

MR TSHEPO MAHLOELE: The agreement between... It was not between GEPF and Harith to manage the fund. The agreement is between Harith which was Harith Fund Managers then and PAIDF. What GEPF does is sign a commitment letter to the PAIDF to be an investors, and then all the investors commit to the PAIDF Fund and then the fund transacts with the fund manager.

PAIDF Fund then contracts with Harith Fund Managers to manage PAIDF on the back of those commitments from all the eight or nine so investors.

ADV JANNIE LUBBE SC: Were you able or was it legal in 2006 and in the beginning of 2007 to raise funds without a licence, being approved by the authority. I think it is FAICS.

MR TSHEPO MAHLOELE: Ja, we were... Until you have raised the fund, you do not have the fund and until you have registered the fund manager, you do not have the fund manager. So, that fund manager was registered and then the fund was done.

So, and I want to believe that we had all those approvals and things required as Harith Fund Managers to be a manager and we can supply whatever, you know, approvals we required.

I think that in 2006/2007 to register as a fund manager. I am not sure we would have probably not have been able to do that with all the approvals that we have got.

ADV JANNIE LUBBE SC: I think Mr Burger indicated that your colleague has all the information about all the approvals. We will deal with that when he testify.

MR DANIEL BURGER: Yes, I said that we would get back... We would lead Mr Wheatley on that. Oh, yes and my learned friend, Mr Sloan has just reminded me that Mr Mahloele had said that he would also be giving – getting input from his compliance officer.

ADV JANNIE LUBBE SC: Yes, that is correct.

MR DANIEL BURGER: As to what licences were in place and in relation to Commissioner Marcus's question, the relevant dates of all the licences. Both for HFM and for HGP.

ADV JANNIE LUBBE SC: Thank you, Mr Commissioner. Is it correct that you were appointed and employed as the CEO of HFM with effect from 1 September 2007?

MR TSHEPO MAHLOELE: Yes, counsel.

ADV JANNIE LUBBE SC: The position was not advertised? You were selected the previous year as the man to do the job. Is that correct?

MR TSHEPO MAHLOELE: No, I was not selected the previous year as the man to do the job. The previous year, from April 2006, what I was selected to do, was to run with the secretariat of the PAN African Infrastructure Facilitation Trust to work on the initiative in establishing this thing and letting it going.

Ad once we had been successful in securing the commitments we had been able to do and the fund manager was – we got a shelf company which was going to be the fund manager and with the PIC owning that entity at that time and with the investors, it was clear that I was going to be the CEO, since I had spent most of the time and everything and doing everything up to that stage.

ADV JANNIE LUBBE SC: That is the point I have tried – that I tried to make. Is that, there was no need to look for anybody else. You were from the start busy with this new venture. You did all the work and you were the person to do the – to take over as CEO.

MR TSHEPO MAHLOELE: I can say, I actually like put in a bit of my own, to try and ensure that I at least ensure that I get that job.

ADV JANNIE LUBBE SC: The point made by General Holomisa in his evidence was that, and I would like your comment on that, was there any direct or indirect benefit for you and or Mr Moleketi moving from the PIC to Harith? Was there any impropriety that is covered by the terms of reference of this Commission? Can you comment on that?

MR TSHEPO MAHLOELE: Advocate Lubbe, I do not think that there was any conflict of interest. Everything from the beginning of resigning from the PIC, having a facilitation trust, going all around the world with all the other partners that we tried to get onboard to build this fund and have it come to fruition.

All the approvals which were even short and received and even for establishing the Facilitation Trust, not only by the board of the PIC, but also like National Treasury and the relevant minister at the time.

And all the approvals and checks which were done, the investors, you know, when you think about this, it was not only GEPF. We also had the likes of ABSA with a huge commitment. 125 million dollars. They would make sure that everything is proper and above board. Old Mutual...

You know we drew on all these partners to do that and I would, you know, venture to even say that Harith is structured the way it is and actually, very well so, in the sense that it actually protects it from, without sounding in any other way, political interference in the investments that it makes on behalf of its investors.

Those investors are at the table. They make the decisions and they are very much involved, across the table. Private sector and public sector. And so, therefore, the issue of conflict does not arise at all in my case with regards to that.

There is very little involvement on a day-to-day basis in the operations and management of HFM or HGP by the PIC. There is no involvement or whatever in the investments made or done by the PAIDF or recommended by the PAIDF by the PIC. There is none at all.

And I think the investors have in this case created a platform which protects their investment from that type of like thing and makes it very clear. So, there was a time you asked about... I cannot remember where it was Commissioner Lediga or Commissioner Marcus who asked about the whole issue of whether the investment made – the decision to invest directly was made by the GEPF and not the PIC and what I felt about that.

And perhaps I can say that today here that at the time, as I said, I had my concerns, saying, you know, the GEPF the issue of like interacting with it with draw-downs, with fund management things, is not something that they had done that this would be problematic.

And in that, actually like, you know, the PIC had done this before. Perhaps it would be easier for them if they manage it. And it actually, when one sees then the issues which had happened, as you say, then what happened then from 2008 to very little into like that whole drift which happened.

I think it actually worked out very well. That you actually had the actual investors and owners of the capital close to the management with the other private sector investors and they had make sure that we are able to out of this vehicle to attract other private sector investments and make the type of investments that we have done, free of those other types of issues which would not be commercial or in the best interest of the investors.

So, that is the way I would see it, sir.

ADV JANNIE LUBBE SC: I do not want to dwell too long it, but my- the information given to me by the investigating team is that the investments made with PAIDF1, returns are poor. Is that correct or incorrect?

MR TSHEPO MAHLOELE: We talked about the returns in terms of like the gross returns like in dollar terms of PAIDF1 which are like in the region of about 6% and like no net, as I said, maybe they are around – I am not sure of the exact number.

I would venture to say that, if you look at PAIDF1 and the period in which it invested after the financial crisis, that effects the whole issue of the investments that you got which were made in all these countries in local currency and against the dollar.

And if you look at like what has happened to all the local currencies across the continent that has been effected and if you also look at the fact that, you know, we – and I put to the fact that there was one investment which like did not go well which was like in Kenya which was called U.

It happens. I think in a portfolio of about ten investments, that you would get one or two entities which would do that, in any private equity portfolio.

But as we sit here and we look at some of the investments that we have under PAIDF1 and what we are projecting that they will do, as I have eluded earlier on, as to like some of what – and I did mention them, to the likes of the fibre optic company. The likes of like the power company.

And also the fact that, you know, Mr Lubbe, in all these years we also have not had an exist yet in terms of like any of these investments. We are very comfortable that we would be able to meet that.

And if you look at also like, we have had a lot of volatility of

African currency in the past, sort of couple of years. That is why for Fund 1 there was that type of thing. And I think it would have like subjected to that, but to the extent that say like, no that they have lost money. No, we deny that.

And to the extent to say like, you know, that this would turn out good, that we thoroughly believe in and if you look at the performance of our current assets that we have in a form of the fibre optic company, the sub-C cable, the 2.2 Gigawatts of power that we have across the continent in various projects and inherent value in all of that.

Some of like, you know, the infrastructure assets. The what you call it? The airport assets that we have. We believe that and as you can see, I think it is also even clear from some of like the investment of – even the advert that you saw from GEPF itself, into like how to some of those underlying entities are performing.

We are very optimistic that by the life of the fund, you know, we will reach that. Sometimes like, you know, if I may just make an example. If you look at then what the currency would have done between valuation in 2013 and 2011, moving from about perhaps in a region of about ...[indistinct] just in Rand. I am not even talking about Nigeria or the other countries.

That would impact on the dollar return of an investment, but in that regard still, I would still argue that getting a return which perhaps would beat US Treasuries in that for infrastructure, for across the continent I think we are still on target to that.

But besides that, we also look at that from a developmental impact point of view. We believe that we are on the right track and we have generated other benefits for our investors and for the continent and for South Africa. But the return must still be met and I believe that we will be able to satisfy that.

ADV JANNIE LUBBE SC: Can I ask you? On PAIDF1, there was a huge effort put into getting funding from other African countries and pension funds. I believe there was even a workshop in South Africa where African countries where invited to. It seems to that the appetite by other African countries to invest in this fund was nowhere. Only two of our neighbours and Ghana showed any interest.

MR TSHEPO MAHLOELE: As I eluded earlier on, Advocate Lubbe. In PAIDF1 in 2006/2007, it go to like, I think eight percent of these countries, you would find that they have not even invested in any private equity fund. So, investing in that type of structure for them was foreign. For some of them even today it is a still a foreign concept. If you look at...[intervenes]

ADV JANNIE LUBBE SC: So, you agree that the appetite was not there?

MR TSHEPO MAHLOELE: No, I would not say that the appetite was not there. What we then do in some of the instances... Take for instance the fund we have with the partnership in Nigeria. That fund invest only in Nigeria and it is a Nigerian Pension Fund. So, therefore, we invest alongside it there, but it is unable to invest in PAIDF because it would only invest in the Nigerian Pension Fund.

ADV JANNIE LUBBE SC: All right. Let me ask you this then. When you launched PAIDF2, the South African investors also walked away.

ABSA, Old Mutual. Not interested.

MR TSHEPO MAHLOELE: I think, Advocate Lubbe, ABSA walked away because from the bank's point of view having that type of equity on the balance sheet effected that in terms of basil two and three. It affected them adversely. And if you look at that period, ABSA had pulled out actually out of most, if not all or some of like their private equity funds and commitments to those and sold out, and we were fortunate enough that they decided to stick with us throughout that.

With regards to Old Mutual. The big issue with Old Mutual – we actually said it to them then that: Old Mutual, you have an exposure and a partnership with Makwari and you have an exposure and a partnership with us. What would then be then, you know, would you choose between the two?

And then at the time then like Makwari then choice to do that. And also, Advocate Lubbe if you look at other infrastructure fund which tried to raise funds, I do not know perhaps which one we can list which like perhaps manage to get an excess of 400 million dollars.

It is a tough challenge in this environment. Investors are looking more for liquid platforms. To invest in infrastructure is a tough sort of like sell, but besides that, with the bit that we are doing, we still manage to get some of like AFDB to come in. Botswana Pensioners Fund. It is not a huge fund.

So, but then what they could do, they could do that. Namibia as opposed to coming into that fund. We are managing a fund for them in Namibia. The Nigerians. Managing a fund for them in... They are not in that fund.

So, therefore, that is a structure we see going forward and also, we are also currently waiting on... You know in this environment, where in like, you know, commitment to fifteen years, you know, infrastructure fund which are in liquid, is proving very difficult for all in sundry.

Even pure private general private equity funds, are having a struggle at doing that. So, therefore, with what we have been able to do, I am fairly confident that we have done that. And also, you do need that believe by African capital to start doing that. And the extent which we have – what we have done now, we still see positive results.

CHAIRPERSON: Mr Mahloele, just to remind you as I did with Mr Holomisa yesterday. When you are asked a question – it now sounds as if the two of you are having a dialogue, because you are addressing yourself to Advocate Lubbe. Address yourself to us.

ADV JANNIE LUBBE SC: Can you just explain to the Commission, Mr Mahloele. Against this background of the rift between GEPF and PIC with the first fund. Now you launch HGP as the second fund. Why did you sell 30% of the shares in that company to the PIC? For what reason?

MR TSHEPO MAHLOELE: As a management team, we felt that PIC had been there in the initial fund. Like, we went to all the other investors and like they had their reasons for not continuing like ABSA. Getting out of fund management. Old Mutual moving with their other own fund which is like aim.

We felt that like we cannot just go and start on our own. We said: No, let us go and discuss with PIC. Do you still want to be in this partnership? We went to them. There were many discussions and negotiations.

And we said, maybe we can still work together with regards to infrastructure on the continent. But even besides that, I think my personal feeling was that to the extent that they had been there with their initial seed funding.

You cannot not just say: I am going ahead then without you. It was a thing of saying: We started... Can we still work together? Nothing, I think, much more than that.

ADV JANNIE LUBBE SC: Thank you. And can you just explain to the Commission, and it is something I do not understand, and I must readily confess I am not a financier or a banker and I have little knowledge. I immediately concede that.

Why would you consider raising funds, investing in infrastructure in Africa, while there is a massive need in South Africa for investment and infrastructure? Basic services like water and electricity. Why not invest in South Africa?

MR TSHEPO MAHLOELE: I think all funds get different mandates. They look at look at different things what they would like to do. But I also believe that there is a huge opportunity for South African investors to also invest on the continent.

If you look at some of the ability to be able to contract with a power company in Kenya and get an off take agreement in euros or in Nigeria, to get an off take agreement in dollars.

But also in addition to that, we are still very much invested in South Africa. If you look at some of the assets that we have right now and that we are developing in the form of our ambition. We are to develop and perhaps, hopefully, around Kelvin.

One day you can develop this gas power station to the extent of about 600 megawatts and that is actually one of the reasons why we thought that we think there is a huge opportunity there to look at something like that when it happens.

The fibre optic company that we have an investment in. The airport operation that we have invested in. So, therefore, there is that. But in addition to that, I think South Africa has a huge opportunity in terms of its programmes and in terms of its debts of its capital market.

To be that platform and that vehicle which can contribute the development of Africa and in that sense to its own development because through that it can be able to create some of like the black flow which will then end up like benefiting South Africa to the extent that it is part of that.

And I think there are returns to be made out of that but besides that too, I think South Africa has an opportunity to be that capital markets, you know, capital for the continent by the depth of its industry.

ADV JANNIE LUBBE SC: Mr Commissioner, it is ten to four. I may have further questions, but there is some documentation that I still need to have a look at and I do not want to waste the time of the Commission. If there are perhaps questions by the Commission to complete the time until four o'clock?

CHAIRPERSON: So, all in all, you have not finished your questioning of your cross-examination?

ADV JANNIE LUBBE SC: No.

CHAIRPERSON: Okay. Is there any arrangement that has been made?

ADV JANNIE LUBBE SC: Mr Commissioner, we have agreed, if it is sanctioned by you, that I will make other arrangements for Tuesday and that we will adjourn until Tuesday to complete this part of the work. I do not know if it would be possible to start a bit earlier, but we are in agreement that if we have Tuesday, we will finish in the day.

MR DANIEL BURGER: Chair, can I just make a suggestion? We thought that we would be finished with Mr Mahloele today. If there is still questions from my learned friend for Mr Mahloele and we still have to have Mr Moleketi and Mr Wheatley on Tuesday, the 23rd, can I then ask that we perhaps start at 09:30, if that is possible, on Tuesday the 23rd? Just so that by ten o'clock, hopefully, we can start with Mr Moleketi.

CHAIRPERSON: Will that be okay with you?

ADV JANNIE LUBBE SC: I am fine with that, Mr Commissioner. I do not know much time the Commission will need. I am sure my learned friend will have – will spend some time on re-examination.

MR DANIEL BURGER: No.

ADV JANNIE LUBBE SC: No? That is good to hear. So, yes, then we can finish. Again, without limiting the Commission to time. We should be finish by ten.

MR DANIEL BURGER: And will be able to sit until four o'clock on the 23rd? Then I think we should finish.

CHAIRPERSON: All right. On Tuesday then. We will adjourn now with Mr Mahloele. And then on Tuesday we will resume at 09:30 by agreement. But tomorrow we continue with the programme. Yes.

MR DANIEL BURGER: Thank you, Mr Chair.

CHAIRPERSON: That is correct. We shall then adjourn until tomorrow at ten.

INQUIRY ADJOURNS TO 17 APRIL 2019