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CORPORATION**

**HELD AT
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20

PROCEEDINGS HELD ON 25 APRIL 2019

CHAIRPERSON: Good morning, everybody.

ADV SECHABA MOHAPI: Good, Commissioner, members.

CHAIRPERSON: Yes. What do we have got today, Mr Mohapi?

ADV SECHABA MOHAPI: Mr Commissioner, we have got today Ms Lindiwe Dlamini, who is going to be testifying on Steinhoff and she is ready to take the prescribed oath.

CHAIRPERSON: Your full names, please Ma'am?

MS LINDIWE DLAMINI: Lindiwe Siphiwe Dlamini.

CHAIRPERSON: Do you have any objections to taking the oath?

MS LINDIWE DLAMINI: No, I do not.

CHAIRPERSON: You do not. Do you swear that the evidence you are about to give, will be the truth, the whole truth and nothing but the truth? Raise your right hand and say, so help me God.

MS LINDIWE DLAMINI: So help me God.

LINDIWE SIPHIWE DLAMINI: (d.s.s)

CHAIRPERSON: Thank you. You may be seated.

MS LINDIWE DLAMINI: Thank you.

ADV SECHABA MOHAPI: Thank you, Mr Commissioner. Ms Dlamini, you have prepared a statement with a number of annexures, the basis of which is the evidence you will be going to the Commission. Is that correct?

MS LINDIWE DLAMINI: That is correct.

ADV SECHABA MOHAPI: Okay, if we can please start with your statement then. Paragraph 1.1.

MR EMANUEL LEDIGA: Sorry. Mr Mohapi and Ms Dlamini, there are

a lot of legal and financial terms in this submission. So, as you go along, just please explain the meanings of those terms, whether it is pledging, recessionary. Whatever it is, you know.

ADV SECHABA MOHAPI: Thank you, Mr Commissioner. We have discussed that in our preparation and we will take the Commission through.

MR EMANUEL LEDIGA: Ja, all right. Okay, thanks.

MS LINDIWE DLAMINI: Thank you, Commissioner. I will start with paragraph 1.1.

Paragraph 1.1:

“I am an adult female admitted attorney of the High Court of South Africa.

I join the PIC on 1 July 2013 as a legal advisor in Corporate Services.

From 6 September 2018 I became a senior legal advisor in Unlisted Legal Investments. The position that I am still holding today.

Currently, I am the acting head of legal. A legal counsel and a governance and compliance as of January 2019.

I have been requested to provide a statement which detailed the role I played in my capacity as a legal advisor in the Steinhoff transaction, particularly the Blue Buck transaction.

The facts contained herein are, save where otherwise stated, within my personal knowledge. The facts are

to the best of my knowledge and belief, both true and correct....”

Commissioner, through you, I will start with the background.

Background:

Paragraph 2.1:

There are two related transaction that the PIC entered into in relation to the Steinhoff matter, namely Project Sierra and Project Blue Buck.

I believe that the full details of these transactions and their relationship have already been ventilated before the Commission, during the testimonies of my colleagues, who have already appeared before the Commission...”

MS GILL MARCUS: Sorry, to interrupt you, Ms Dlamini. Perhaps as the advocate may be able to help us as well. One of the questions when your colleagues appeared was, before entering into the Lancaster 120 or Blue Buck, the full exposure of the PIC to the Steinhoff Group in all its capacities and whatever capacity it had investments in Steinhoff.

And we asked that the full exposure by the PIC be – that we will be advised of that total amount at the outset. What was the number of shares – the percentage of shares held by the PIC in whatever capacity of Steinhoff and the value before they entered into either of these transactions? Are we able to provide that information?

MS LINDIWE DLAMINI: Commissioner, from a legal perspective, we are able to provide a little bit of assistance, but I would like to state from the onset that this analysis is one that is provided or done by the

Risk Department within the PIC, because they have an overall – an overview of the entire portfolio as it relates to the various investee companies.

And one of the things that they need to look at from a risk perspective is the direct and indirect exposure in relation to any particular individual or company.

But Commissioner, if I point you to L1 of the annexures on page 4 We did indicate – and this was pursuant to us, and by us, I mean legal being provided with the transaction teams scoping report. What we did adduce from that report was that the PIC had an exposure of about 10.5% shareholding in Steinhoff on the listed portfolio, which represented an investment value of about R33 billion at a share price R72,70 as at 22 May 2017.

And it further held 12% in Shoprite shares and that is the extent of the exposure that we highlighted for purposes of our legal report. We also...[intervenes]

MS GILL MARCUS: Sorry. Are you able to quantify the Shoprite value of those shares at the time?

MS LINDIWE DLAMINI: Unfortunately, that assessment, as I have indicated Commissioner, is one that is done by the Risk Department. Legal would not be privy to that information.

ADV SECHABA MOHAPI: Thank you, Commissioner. We will endeavour to obtain from Risk the total exposure as requested by the Commission.

MS LINDIWE DLAMINI: Continuing on paragraph 2.1.

“There are two related transactions that the PIC

entered into in relation to the Steinhoff matter, namely Project Sierra and Project Blue Buck.

I believe that the full details of these transactions and the relationship have already been ventilated before the Commission during the testimony of my colleagues who have already appeared before the Commission.

I would like to point out at the outset, I wish to point out that I was not involved in Project Sierra, being the initial transaction, at the time it was entered into.

Save to the limited extent set out in paragraph 4, I am not in a position to make any detailed statements relating thereto, as such information would not be in my personal knowledge.

In order to ensure that the Commission understands the context within which I was involved within the Project Blue Buck, I set out the broad terms the role that the Legal department plays in relation to the consideration and conclusion of transactions at the PIC, and this really by way of background.

If I may now deal with paragraph 3:

The role of the Legal department in transactions:

“Normally a transaction is initiated by the investment team which is responsible for structuring same.

The investment team commences the process of gathering information from the investee companies in

order to *inter alia* develop a scoping report which is then submitted to the Portfolio Management Committee 1 for approval to proceed to due diligence stage.

Once the investment team is authorised to proceed to do due diligence, the investment team would request a resource from the Legal department in order to conduct a legal due diligence investigation....

ADV SECHABA MOHAPI: Just to be clear. When referring to a resource there, we are talking about a person.

MS LINDIWE DLAMINI: Yes, this is somebody who is selected by the executive head of legal to assist the transaction team from the initial stages of the transaction to completion.

“In our case, the executive head of legal would then allocate such resource on the transaction.

The Legal department consists of the executive head of legal; a senior manager; a senior legal advisor; a legal advisor; a legal officer and legal interns.

The senior manager, senior legal advisor and the legal advisor report directly to the executive head of legal.

A resource that would be allocated to work on...[intervenes]

MR EMANNUEL LEDIGA: Just to check...[intervenes]

MS GILL MARCUS: Sorry. Can I just...[intervenes]?

MR EMANNUEL LEDIGA: Oh, okay. Ja. No, go ahead.

MS GILL MARCUS: Just in terms of its executive head of legal, is there a distinction drawn between executive head of legal and the work done which relates to contract, relates to assessment of risk as a legal entity and in terms of the work of the PIC as distinct from a legal counsel who would work with the executive of the board, as to issues that – and the laws that apply to their work and how that is affected?

Does the executive head of legal play a role in that regard, regarding the executive? Are they in attendance at executive meetings or board meetings, playing the role of a legal counsel, rather than a legal, if you like, executive for the functioning of the PIC?

ADV SECHABA MOHAPI: Thank you, Commissioner. So, Commissioner you are quite correct. The role of the executive head of legal is a dual function, if I may. Maybe if I can zoom in on the legal department specifically.

The executive head of legal would obviously provide the legal team with a structural leadership, in the sense that any transactions that are coming through to legal would obviously need to be allocated by the executive head of legal.

The executive head of legal would also need to play an oversight role, to the extent that there is an impasse on transactions or the contentious issues that need to be dealt with.

The executive head of legal would effectively have to step in and assist the transaction team in dealing with some of those issues, given you know the seniority and the expertise that, that person will possess.

From a globular perspective and in relation to the PIC, the

executive head of legal, as you have rightly put it, will also play a management function and will sit in executive meetings; will play an advisory role in relation to the board and management as a whole; will also interface with the regulators and any other stakeholders insofar as legal issues are concerned, pertaining to the PIC.

So, it is quite a convoluted role. It is a multi-faceted role which the executive head of legal plays, not only within the scope of the business unit but also in terms of legal as a whole.

MS GILL MARCUS: So, would that person, as a general rule, sit in on board meetings?

MS LINDIWE DLAMINI: Perhaps if I can ask clarity from the Commissioner? Board meetings in the sense of investee companies?

MS GILL MARCUS: No, the PIC board.

MS LINDIWE DLAMINI: So, as part of management, the executive head of legal will sit at the PIC board and will provide the board with legal advisory services to the extent required. So, it is a normal function for the executive head of legal to sit at the board to provide legal services to the board.

MS GILL MARCUS: Can I just stay with that a minute? Do they provide a request or do they have, if you like, a kind of watching brief? The board is looking... We have seen quite a lot of discussion about what the board does or does not do and what – just given all the issues that have arisen.

Would legal counsel have been sitting in those meetings and saying to the board, in terms of the legislation, in terms of governance, in terms of this? Not whether you are asked, right.

But whether you say, you want to do the following. What is your role? As distinct from a person who has legal experience on the board, because we have seen that particular role.

The question of and the head legal playing that role of advising the board about its obligations, if you like, its parameters, the legal frame and so on. Does it play that role? Because that has not come through for me.

We have seen other people playing that role on the board, but I have not heard any reference to legal counsel advised to the board in all of these discussions.

MS LINDIWE DLAMINI: Thank you, Commissioner. So, Commissioner you are actually quite correct. So, it is two pronged approached. There will be submissions that are ordinarily made to the board that are emanating from the legal department which we will submit to the board and deal with those submissions and that would be in the ordinary course of business.

So, for instance, we will report on, you know, pertinent matters pertaining to litigation. We will report on investments that need to be brought to the attention of the board and the like.

But we will... You know, issues that are emanating from discussions of the board on an *ad hoc* basis, legal does sit in on those board meetings to provide legal advisory on those issues that are emanating from the board.

It is important to make a distinction that as the head of legal you owe a fiduciary duty to the company. You therefore need to advise the business on the legislative parameters that they can play within

and compliance issues.

So, that function is being played by the legal division of the head of legal and we do advise the board on issues that are emanating from the discussions that are happening at a board level.

MS GILL MARCUS: Sorry to... I do not want to belabour the point, but given the... I am not talking about Lancaster now, but if we are talking about the kind of discussions that we have been having about the processes, regarding investigations, the emails – the anonymous emails and so on.

One has heard of what is been part of testimony, is the role of different members, but did the head of legal play role in those discussions?

And if so, what advise did they give in terms of process to look at? These kind of activities. I do know it is not relating to the subject matter that you are here now, but given that you are here, I think that, for me it has been something that I have not able to fully understand where legal has played a role in all of this conjulated activity of the board.

Resigning. Was the legal counsel there and discussed a part of the advice when the board decided to write a letter to resign. Those kinds of areas. Was legal counsel's opinion sought and given?

MS LINDIWE DLAMINI: Thank you, Commissioner. Commissioner, perhaps it is also quite pertinent for us to highlight that there were some discussions that the board will have that are *in camera* sessions, and that is where management would effectively be requested to recuse itself and I think this particular issue pertaining to resignation was one

such instance where management was requested to recuse itself.

So, you know, in those circumstances, no legal advisory would be provided because I was not sitting in that board meeting. Ja, I think Commissioner, issues that predate me, I unfortunately cannot speak on issues that are predating me in this role.

But what can I say, Commissioner and I can speak personally for myself is, I have been vigorously advising the board on a regular basis. The board has subsequently established a task team where I can provide regular reporting's on matters, pertaining to issues like Steinhoff, AYO and VBS, where robust action is being taken by legal.

You would have seen in the media that there has been quite a lot of activity on the AYO in relation to CIPC. So, those matters I would on a regular basis advise the board and the board task team on those instances.

Any matter pertaining to legal and pertaining to compliance which warrants us bringing it to the attention of the board is done so immediately and we do engage the board on how we need to proceed or what the way forward should be and we are given that level of direction but to the extent that, that decision needs to be taken by management.

There is also the executive committee that regularly sits where we deliberate these issues and decisions are effectively taken. So, there is a robust engagement. Legal is playing a very pertinent role in advising, not only the board, but management, in an effort to dispel its fiduciary duties to the company.

CHAIRPERSON: Let me ask a simpler question, hopefully. If the board were to have a legal issue that it has to deal with, whatever it is,

and they say, we need to be advised on what the law says in this regard and so. Does that issue gets referred to your legal department or do they outsource.

MS LINDIWE DLAMINI: So, Commissioner through you, that matter will definitely be referred to me as the head of legal and to the extent that I can deal with that particular matter.

If it falls within my purview and my knowledge, I will deal with it and advise the board accordingly. In instances where I do require time to obviously do the necessary research and provide them with a proper guidance, I will do that and I will request to revert to them at a later stage.

To the extent that it is a technical matter that really requires us to bring onboard an external resource to assist us with the technicalities surrounding that particular issue, we will do so and report it to the board and the board will accordingly take the decision, based on the recommendations that we have provided them.

CHAIRPERSON: Are you thus the first port of call if there is a legal issue within the PIC?

MS LINDIWE DLAMINI: Yes, Commissioner.

CHAIRPERSON: Whatever the matter is?

MS LINDIWE DLAMINI: Ordinarily, that is how it should be.

CHAIRPERSON: Is it? You say, that is how it should be.

MS LINDIWE DLAMINI: Commissioner, in the absence of being involved in some of the board deliberations, I would not if there any other legal issues that are emanating from example *in camera* sessions, but to the extent that I am in those sessions and legal issues

are discussed, I will definitely deal with those matters.

ADV SECHABA MOHAPI: Okay, thank you. Let us proceed from 3.5.

MS LINDIWE DLAMINI: Thank you.

Paragraph 3.5:

“A resource that would be allocated to work on a transaction would be selected from the positions of senior manager, senior legal advisor and the legal advisor.

The legal due diligence investigation maybe undertaken inhouse by the resource allocated on the project or it can be outsourced to an external service provider on the PIC panel of attorneys...”

ADV SECHABA MOHAPI: Okay. So, just to explain that point. When would the assistance of external legal service providers be enlisted in respect of legal due diligences?

MS LINDIWE DLAMINI: One of the assessments that we need to make from a legal perspective is the complexity surrounding that particular transaction. So, to the extent that it is a highly technical transaction, we would ordinarily procure the services of people who are specialist in the field.

I will give an example. One of the issues that we do not profess to be experts on is tax. So, to the extent that a matter has serious tax implications which on a first glance, we as the internal team, have highlighted, we will recommend to the committee that we need to get a tax opinion or we need to get advisory around this particular tax issue, to understand what the extent of the liability will

be for our underline clients.

I think the other issue that we also take into account is capacity, to the extent that we do not have capacity to deal with the matter that is quite voluminous and quite large, we will also procure the assistance of external advisors.

ADV SECHABA MOHAPI: So, just in relation to that latter point of capacity. Can you give to the Commission sort a sense of how many personnel there are in the legal department?

MS LINDIWE DLAMINI: So, the legal department, relative to the other departments within the PIC, is quite small. I think, if I can break it down, I do not have the overall number, but if I can break it down, there are in the listed division, I have two people sitting in the listed division, and I am not including interns.

In the unlisted space, we effectively have two people sitting in unlisted. In corporate services we have three senior people sitting in corporate services and ja, that is basically the composition of legal.

We have quite a few legal interns that we are training, but we – the training process that after they have spent a year with us, they go out and they spent a year at legal firms, so that they meet the requirements of the Law Society.

So, there is a bit of a gap in terms of... I did forget the properties division. There are two people sitting within the properties division as well.

MS GILL MARCUS: Do you have many vacancies in your establishment?

MS LINDIWE DLAMINI: Commissioner, through you. We do have

vacancies and I have recently advertised a few positions. We are sitting for those interviews in the next coming weeks. So, we are trying to deal with the issues of capacity.

MR EMANNUEL LEDIGA: Question. Just in terms of capacity. Do you guys benchmark with the biggest asset managers? I mean, you manage R2 trillion. Do you check how the other asset managers have in terms of legal departments? Sort of Investec asset management manages about R2 trillion. Actually, it is the same size as the PIC. So, do you guys sort of have a look and say, what kind of legal department would they have?

MS LINDIWE DLAMINI: Commissioner, through you. This is a very contentious matter that, you know we keep raising with the business, particularly HR. Every time we raise this question, that we are told that the structure has been benchmarked.

Unfortunately, I was not involved in the structural discussions, because those happened in 2015, when the organisation was restructured. At the time it was Ernest Nesani who participated in those discussions, but if you ask my personal view, Commissioner. I do not think it is aligned with the asset managers in the market.

MR EMANNUEL LEDIGA: Yes, because you probably sometimes end up spending more money with the external advisors than you know spending it locally – internally. In the sense that the basic things you can do, but there is not enough staff.

MS LINDIWE DLAMINI: I think, Commissioner you are absolutely hundred percent correct and one of the things that I did raise earlier on is the issue of capacity. The PIC in the normal course of business, is

generating transactions at the size of the other asset management and managers in this space, but unfortunately, from a capacity point of view, we are finding ourselves lagging seriously in that.

We are entrusting all these transactions to effectively two personnel within the respective spaces which, for me, is a serious risk and we have highlighted this risk and we – I do believe, in my personal opinion, that legal needs to be sufficiently capacitated.

Given the fact that we are not only looking at transactions. We are also looking at PIC Corporate, which effectively needs to look at the level of compliance from a legal perspective. We are also looking at labour related matters and compliance in respect of the Labour Regulations and the laws.

So, I think it is unfortunate that we find ourselves where we are. I am hoping pursuant to this, we will have more robust discussions about what the structure effectively needs to look like.

CHAIRPERSON: Otherwise, you do not have an idea as yet how many resources there should be.

MS LINDIWE DLAMINI: In the absence of doing the requisite benchmarking, Commissioner. I do not have the numbers. Perhaps this is something that can be provided by the head of HR at the PIC.

MR EMANUEL LEDIGA: Just to check something. Given that there are so many vacancies within the PIC. Is this is a question of money or like are you getting enough fees from GEPF and the other clients? Or is it just a question you are not getting the people? You are advertising the positions, but you are not getting the people. What is it? What is the problem here?

MS LINDIWE DLAMINI: Commissioner, through you. I think my response can only be limited to the legal space. But I think it is a general discussion that perhaps the Commission needs to be given a proper response, because I really think there is a serious problem in...

I think post 2015, there had been mass resignations at the PIC and the time within which we find ourselves replacing those vacancies, I think it is something that is a little bit concerning.

But if I come back to the legal space, Commissioner. We have sent adverts in an effort to fill vacancies and people are responding. So, I do not think it is a question of whether or not there are people who are interested in coming to the PIC because I think the interest there.

From a budgeting perspective, Commissioner. I think the budget is there. I think it is just us having the will. You know, the will to fill these vacancies and do the necessary work that is required to fully capacitate the PIC, because you are quite right, it does affect the operations.

In that, the PIC cannot function optimally if it is not adequately capacitated.

MR EMANNUEL LEDIGA: So, it is just a question of just doing it? Because the money is there. The people are there. You must do it.

MS LINDIWE DLAMINI: I agree.

MR EMANNUEL LEDIGA: Ja, ja. Okay, all right.

ADV SECHABA MOHAPI: Thank you. Moving onto...[intervenes]

MS GILL MARCUS: Sorry, sorry. I know we are stuck here a little bit on other issues, but just a quick word about the panel of attorneys.

How often? How broadly? What is the process to appoint the panel?
Do you appoint firms?

Do you appoint individuals? Is it rotational? What is the time period? Just a sense of the panel – the fixability to draw on the legal profession, externally and as part of adding to the skills that are required.

MS LINDIWE DLAMINI: Thank you, Commissioner. So, the legal panel is revised on a three year basis. We run a tender process where we send out an RFP. We send out an RFP to all the firms in the country. We run a robust RFP process.

What I can say about the panel is that we look at different firms and we categorise them based on their skillset. So, we look at everything from properties to litigation to corporate and commercial, finance and banking and the like.

So, once that work has been done in conjunction with our procurement team, we then select the panels that obviously meet the administrative requirements and that are obviously score high in terms of the procurement scoring.

We then bed down this legal panel and we categorise the firms, based on what we think, you know, from their skillset, what we think they can provide the PIC with the necessary skills.

So, it is quite a voluminous panel. It is quite a big panel. It is quite a diverse panel. What we try to do as well within the PIC when we procure the services of these firms, is to ensure that there is a rotation system and that process is managed by our procurement team.

But obviously, as the head of legal, you get a sense of the

firms that keep coming back over and over again. So, there needs to be a level of pushback on your side as well, because I think people start building relations with individual lawyers and you start to see a trend of preference been given to certain lawyers.

So, you have to also play that role to say, there has to be a rotation system because the skillsets are unquestionable. The credibility of the firms is unquestionable. The fact that they are on our panel means that they are credible firms.

We have assessed them and they can do the work. So, we do try by all means to ensure that there is a fair rotation process. There is also a twinning exercise that we do encourage the firms to embark on.

Sometimes it can be initiated by us. Sometimes it is initiated by the firms themselves, where you would see a big firm partnering with medium size firm or a smaller firm to ensure that there is adequate skills transfer.

What we do try to do in twinning arrangements, is to also make sure that the work is equitable distributed and you do not see the situation where the small firm doing menial work and the larger firm is doing the bulk of the work. So, that process is also managed by myself.

MR EMMANUEL LEDIGA: Just another question. Sorry to stay on this matter, ja. In terms of – I just want to check, in terms of the big legal firms, ENS and all that, I mean they are multi-disciplinary, they've got tax, they've got everything. How do black firms actually manage to do the work? What kind of work do black firms do given that they might

have limited disciplines within their firms?

MS LINDIWE SIPHIWE DLAMINI: Commissioner, I'd like to take this opportunity to just demonstrate the work that some of these black firms are doing. I'll give you an example. There's a firm called Gwina Attorneys that's doing exceptional work for the PIC. They have been assisting us with, you know, very complicated matters and I think, Commissioner, what's important is the PIC having the will to have faith in the firms that are on our panel especially the black individuals behind the firms.

We do, you know, we do try and make sure that on complicated transactions, for instance, your derivative type structures, you know, your CIPS portfolio, your CIPS' type structures we obviously bring in – and what you will find, Commissioner, before I lose the point, what you will find is that behind these smaller black firms it's x employees of the bigger firms. So, you know, we cannot question the credibility of those people that are running the firms, they are doing credible work and I think we do have those ongoing discussions with them to say look, perhaps you need to be far up on your compliance function, you need to be far up on your tax function and I think it's a matter of is the PIC giving us enough work for us to bring in a resource to deal with these matters specifically because we can't have an expectation that they're bringing this resource but we are not giving them the work to be able to, you know, sustain this structure that we are asking them to implement within their organisation.

So there are very credible small firms. I can name all of them but I don't think we have the time but we are really doing good work

with the smaller firms.

MR EMMANUEL LEDIGA: And Gwina, what do they do, I mean what is their speciality?

MS LINDIWE DLAMINI: It's a multi-disciplined law firm, they do corporate and commercial, they do finance, they do litigation, there's a little bit of tax, so while the skill sets are there within the firms obviously they can't diversity if they are not sustained by the work that's coming through. So I think, for me, that's the biggest issue that we are trying to grapple with to capacitate them enough so that when they bring in the resources we're requesting we are able to sustain them.

CHAIRPERSON: I think we refrain from naming the firms lest we are accused of advertising on their behalf.

MS LINDIWE DLAMINI: I agree, Commissioner.

ADV SECHABA MOHAPI: Okay, we can proceed to 3.7.

MS LINDIWE SIPHIWE DLAMINI:

“Upon completion of the legal due diligence investigation a legal due diligence report gets prepared by the resource. The report is submitted to the executive head of legal for review and signoff. The resource will then submit the report to the company secretary for onward submission to the portfolio management committee too. The report would include recommendations relating to *inter alia* what conditions precedents, conditions subsequent and standard warranties and representations to be included in the definitive legal agreements. These would generally be informed by legal and

commercial risk identified in the legal due diligence process.”

ADV SECHABA MOHAPI: Okay, can you just spend some time explaining to the Commission these terms conditions precedent, conditions subsequent, standard warranties, representations.

MS LINDIWE SIPHIWE DLAMINI: Thank you. So the legal due diligence process involves identifying the legal risks on any particular transaction. One of the things that we need to then bring to the legal report is potential risk mitigants that we think legally can be bedded down in the definitive transactions to mitigate that particular risk that we’ve highlighted.

Condition precedents are typically things that need to be fulfilled before the transaction is finalised by the team. So those conditions would need to be satisfied before the PIC – in the event that there’s a disbursement required, the PIC would need to satisfy itself that those conditions have been met prior to the disbursement flowing. So typically this would be the requisite resolutions from a governance perspective, the requisite resolutions have been signed by the company authorising the transaction but it really just depends on the risks that you’ve highlighted.

Conditions subsequent are obviously conditions that can come after the disbursement process has happened and typically this would involve things like the registration of bonds because nobody has, you know, control over the timeframe within which these processes can be finalised, for instance the registration of a mortgage bond can be a condition subsequent as long as the bond papers have been lodged it now becomes an automatic process of finalising the bond registration.

So typically you would see that coming through as a condition subsequent.

Warranties are typically where we require our counterparties to warrant certain state of affairs. For instance that, you know, the entity is a valid entity with a valid legal standing so those are the things that we would want our counterparties to give us assurance on and these are typically sometimes things that we can't verify for ourselves and I think similarly with representations is akin – it's similar to warranties where certain representations are made to the PIC in the absence of us confirming such representation. So those are typically the security type structures that we try to include in legal agreements to mitigate risk that we've identified in the transaction.

ADV SECHABA MOHAPI: Ja, we can move on to 3.9.

CHAIRPERSON: What happens, just for interest sake, what happens if there is a condition afterwards, after you have made the disbursement and there is no fulfilment of that condition?

MS LINDIWE SIPHIWE DLAMINI: So typically if conditions aren't met especially if it's conditions subsequent, Commissioner, the PIC will have a legal recourse or remedial action that it can take against the counterparty for not complying with those conditions.

In such instances it would ordinarily now be construed as a default or a breach of the legal agreement and typically in those circumstances we would then issue a default letter to say that you haven't complied with the condition and given the security or the rights that we've negotiated in the legal agreements we would obviously follow that process in then perfecting our security or following our

rights in terms of the legal agreements.

CHAIRPERSON: So ordinarily there will be a security?

MS LINDIWE SIPHIWE DLAMINI: Ordinarily there will be.

“If PMC2 has the final authority to approve a transaction in terms of delegation of authority the transaction proceeds to the implement testing stage. If the transaction value exceeds PMC2’s delegation of authority the submission would be referred to either the investments committee or the fund investment panel depending on the nature of the transaction. Once a transaction has been approved by the relevant committee the legal department assume a role of ensuring that the transaction terms, as approved by such committee, are reflected in the transaction agreement. Prior to the actual execution of the transaction agreements the relevant department involved in the transaction are required to sign a signature memorandum which is prepared by the legal department. The other departments provide input into the signature memo and the transaction agreements in respect of their respective areas in relation to the transaction.”

ADV SECHABA MOHAPI: Okay, so when talking about execution there we’re talking about signing the agreement.

MS LINDIWE SIPHIWE DLAMINI: Yes.

ADV SECHABA MOHAPI: Okay. And when talking about signature memo it’s one of your annexures, it’s L4 and that is an example of a signature memo.

MS LINDIWE SIPHIWE DLAMINI: Yes.

“Once the transaction agreements are signed the legal department would assist in the process for the fulfilment of CPs and where applicable disbursement of the funds.”

Paragraph 4:

“Summary of the previous security arrangement under Project Sierra.

On or about 8 September 2016 the PIC entered into a term loan facility agreement with Lancaster. In accordance with the terms of the PIC loan agreement the PIC advanced a five year term loan facility to L101 in the amount of 9.35 billion for purposes of, among others, acquiring a 2.75% equity interest in Steinhoff International Holdings NV - I’ll refer to it as Steinhoff from here on – and that was Project Sierra. L101 entered into a five years average term collar with City Bank Limited pursuant to which L101 ceded and pledged as primary ranking security its rights, title and interest in and to 75% of the Steinhoff shares as security for its obligations under the collar to City. The balance of the 25% of the Steinhoff shares were ceded and pledged to the PIC as security for L101’s obligation under the PIC loan. As part of the five year average term loan ...[intervenes]

MR EMMANUEL LEDIGA: Ja, there are many terms there, many legal terms, many financial terms, just explain them and the other question is this, is that in terms of the cover ratio, what did the PIC get in terms of the loan that they gave to L101?

MS LINDIWE SIPHIWE DLAMINI: Commissioner, through you, in

relation to the cover ratio I can have a look at the legal agreements if you will indulge me but I think I don't know if I can express a view regarding the commercial terms but I can attempt to look at the legal agreements and give you an answer.

MR EMMANUEL LEDIGA: Yes, but it seems that the collar does cover some of the security to – in some ways, given that, you know, the share price.

MS LINDIWE SIPHIWE DLAMINI: Yes, the collar does – you know, without professing to be a financial expert but the collar did cover the downside protection and I think the arrangement there was that it was on a reversionary basis because 75% of that was then ceded to City and the balance was then ceded to PIC.

Perhaps if I can look at the terms and perhaps Advocate can help me, which terms do I need to explain?

CHAIRPERSON: Start off with your reversionary that you've just mentioned.

MR EMMANUEL LEDIGA: Just the terms, ja, just the terms. Stuff like L101 ceded and pledged the shares, so you know, when you give a loan you give the shares to the lender, you know?

ADV SECHABA MOHAPI: Let's, if I can be of assistance, explain what is meant there in paragraph 4.2. Yes, that L101 ceded and pledged its rights.

MS LINDIWE SIPHIWE DLAMINI: So, Commissioner, for the security for the loan that the PIC provided, L101 – PIC I think at the time, because this was Project Sierra, would have indicated to L101 that as security for the loan that I'm giving you, I will effectively take over the

shares. On an in a default scenario, depending on what the value of the shares, the PIC has the ability to realise some value under the shares. Obviously that now becomes a valuation issue but that now secures the PIC's position insofar as if there's a default and L101 is unable to pay under the loan obligations it will have the right to effectively step into the shoes of L101 and take over the L101 shares as security for the loan obligation.

And perhaps if I can then deal with the concept of reversionary. So typically what happens if one takes security on a reversionary basis it means that there's somebody obviously front ranking you. In this particular instance it would have been City because City would have - in a default scenario City would have had the first bite of the cherry so to speak and the PIC would have been secondary or would have been in a position to realise any residual value after City had realised whatever security was accruing to City, so being in a reversionary position, effectively means that you are – you are next in line to take over whatever the residual value of the security is.

MR EMMANUEL LEDIGA: And am I right saying that the 100% of the shares that PIC got from Lancaster they had to cede or give away 75% of the shares to City for the collar and keep only 25% of the shares?

MS LINDIWE SIPHIWE DLAMINI: You are right, Commissioner.

MR EMMANUEL LEDIGA: As security, is that correct?

MS LINDIWE SIPHIWE DLAMINI: You are hundred percent and that was in an effort to protect the downside.

MR EMMANUEL LEDIGA: Ja, okay. Alright.

CHAIRPERSON: And how do you prove that your – that the shares have been ceded to a particular party? Is there a certificate issued or is it just the agreement that you rely on?

MS LINDIWE SIPHIWE DLAMINI: So, Commissioner, through you. Typically what we will do is we will enter into a pledge and cession agreement which will stipulate the rights that you as the security holder effectively have in relation to the security at hand. Once you perfect that security obviously the necessary certificates will obviously need to be handed over to you to confirm your ownership of those shares so that typically happens on a default scenario where we are perfecting our rights but the pledge and cession agreement is critical to demonstrate the right that the PIC effectively has over that security.

ADV SECHABA MOHAPI: And in this instance we've got a pledge and cession agreement as annexure L12C in this particular transaction.

MS LINDIWE SIPHIWE DLAMINI: Yes, I think I deal with it further on in the statement.

ADV SECHABA MOHAPI: Yes, we can proceed. Okay we can proceed, paragraph 4.3.

MS LINDIWE SIPHIWE DLAMINI:

“As part of the five year average term collar L101 had a put option against City in respect of its 75% security of the Steinhoff shares. As security for L101's obligations under the PIC loan agreement the following security was provided in favour of the PIC. A session of any proceeds received under the put options referred to in 4.3 from City a primary ranking cession of 25% of Steinhoff shares not pledged to City.

Session of dividends on the shares in respect of which City is not required to borrow for its ongoing risk management for the collar, the non-Delta shares and a reversionary cession over 75% of Steinhoff shares pledged to City.”

Paragraph 5:

Summary of the security arrangements ...[intervenes]

MR EMMANUEL LEDIGA: Just to be clear. So in 4.4.1 basically you are saying the proceeds of the put option that happened gets given to the PIC, ja?

MS LINDIWE SIPHIWE DLAMINI: Correct.

MR EMMANUEL LEDIGA: Ja and the 4.4.3 you are saying any dividends that are given out by Steinhoff, the ones that are not related to City will go to the PIC.

MS LINDIWE SIPHIWE DLAMINI: Correct.

MR EMMANUEL LEDIGA: So there is some cash of sorts coming back to the PIC.

MS LINDIWE SIPHIWE DLAMINI: Correct, Commissioner.

MR EMMANUEL LEDIGA: Okay, alright.

CHAIRPERSON: I think let's go back to put option, I think somebody explained it to me but it's gone out of my mind again. What is a put option?

ADV SECHABA MOHAPI: So – ja, continue?

MS LINDIWE SIPHIWE DLAMINI: So Commissioner a put option is basically an agreement where you have the ability to put the shares to the counterparty so you have a right or an option to put those shares to your counterparty in the put option arrangement. I'm not sure if it was

explained in that fashion but that's simplistically how I can explain it.

MR EMMANUEL LEDIGA: But the rationale of having one is to protect you – to give you downside protection.

MS LINDIWE SIPHIWE DLAMINI: Correct.

MR EMMANUEL LEDIGA: If one understands it, it's the ability for somebody who has bought shares to protect themselves and they buy a put option from somebody and that somebody pays them something for that put option, is that correct?

MS LINDIWE SIPHIWE DLAMINI: Correct.

MR EMMANUEL LEDIGA: Yes, yes. And they're protected also.

MS LINDIWE SIPHIWE DLAMINI: Correct.

MR EMMANUEL LEDIGA: On the downside at the particular share price.

MS LINDIWE SIPHIWE DLAMINI: Okay.

MR EMMANUEL LEDIGA: I don't know whether it's clear but that's the best that can be done.

MS LINDIWE SIPHIWE DLAMINI: I think it's – for me it makes sense.

MR EMMANUEL LEDIGA: I think proceed.

ADVOCATE ISAAC MONNAHELA: Let's proceed to paragraph 5.

MS LINDIWE SIPHIWE DLAMINI: 5.1:

“Following conclusion and implantation of Project Sierra, L101 and Lancaster Group (Proprietary) Limited approached the PIC to request the PIC support for Lancaster's proposed equity participation in a newly established and separately listed entity, Steinhoff Africa Retail now renamed Pepkor Holdings Limited that would ultimately house Steinhoff Africa's assets

and 22.73% equity interest in Shoprite referred to as project Blue Buck. In accordance with the structural mechanics of project Blue Buck Lancaster Group would obtain third party funding from City in an amount of circa R6.57 billion...”

We refer to it as the City Loan.

“...to amongst others a 5.9 equity interest in STAR through L101. Furthermore, Lancaster Group established a new BEE SPV, the special purpose vehicle, which we refer to in the statement as L102, which would in turn obtain funding from Steinhoff-related entities for the purposes of acquitting an additional 5.9% equity interest, STAR, 102 STAR shares. The total purchase consideration for the two acquisitions of equity in STAR was circa R6.2 billion each. In order to facilitate project Blue Buck the PIC agreed to effectively subordinate its security interest under Project Sierra as set out in paragraph 4 above by substituting the abovementioned security package for a new security package under project Blue Buck as follows.”

CHAIRPERSON: Sorry, what is – I think you said – how did you pronounce that word c-i-r-c-a?

MS LINDIWE SIPHIWE DLAMINI: Sierra.

CHAIRPERSON: Circa. What is it?

MS LINDIWE SIPHIWE DLAMINI: Circa, it’s approximately.

CHAIRPERSON: Approximately?

MS LINDIWE SIPHIWE DLAMINI: Yes.

“As security for L101’s obligation under the City loan the PIC would relinquish its rights over the primary ranking cession

over 25% of Steinhoff shares not pledged to City such that City would have primary ranking security over 100% of the Steinhoff shares. The PIC ...[intervenes]

MR EMMANUEL LEDIGA: Okay, sorry, so meaning even that 25% is now gone, you know, the...

MS LINDIWE SIPHIWE DLAMINI: This is Blue Buck, yes. And this – and I think it's important to highlight, this was on the backdrop of City bringing in its funding to allow L101 to acquire the STAR shares.

MR EMMANUEL LEDIGA: For the R6.5 billion loan.

MS LINDIWE SIPHIWE DLAMINI: Ja.

MR EMMANUEL LEDIGA: Okay, Which is from City.

MS LINDIWE SIPHIWE DLAMINI: Yes.

MR EMMANUEL LEDIGA: Okay.

MS LINDIWE SIPHIWE DLAMINI:

“The PIC would acquire reversionary security over 100% of Steinhoff shares pledged to City, so this is where the reversionary arrangement come in, City would effectively take 100% primary and we would take a reversionary position on Steinhoff. City would be entitled to downside protection from the proceeds of the collar option on a primary basis and the PIC would instead obtain downside protection on a reversionary basis. The PIC would acquire primary ranking cession and pledge over 100% of the L101 STAR shares. L102 would provide a guarantee in favour of the PIC for the due and punctual performance of L101's obligations under the PIC loan agreement and the PIC would acquire reversionary cession

and pledge over 100% of the L102 STAR shares in respect of which Steinhoff, as the primary lender to L101, would have a primary ranking cession and pledge. This cession and pledge instruments were to be provided by L102 as security for its obligations under the guarantee agreement referred to in paragraph 5.3.5. The re-ranking of the security package as a condition to City agreeing to make the City loan available to L101 for the purposes of acquiring equity interest in STAR.”

MR EMMANUEL LEDIGA: Just to check something, 5.3.6 didn't happen because Steinhoff didn't supply that loan.

MS LINDIWE SIPHIWE DLAMINI: Commissioner – and I deal with it later on in my statement, the actual participation on Steinhoff on L102 didn't happen but from a legal perspective what we did do was to make sure that the necessary agreement to make sure that the PIC's rights were preserved were bedded down so you will see that the – and it's included in the annexures – the guarantee, the limited guarantee agreement was entered into and was signed between PIC and Lancaster and the pledge over the shares was also signed between PIC and Lancaster and this was in anticipation of Steinhoff bringing in its funding to L102 to then acquire the 5.9% shares of STAR but you are quite correct that the funding never came through.

“The re-ranking of the security package as a condition to City agreeing to make the City loan available to L101 for the purposes of acquiring equity interest in STAR. The legal department's understanding of the commercial rationale underpinning PIC's participation in project Blue Buck was that

the PIC would be secured to a value of approximately 12.4 billion taking into account 102 STAR shares pledge with the additional requirement that the collar option executed in relation to the PIC loan agreement would remain in place. No additional capital was injected by the PIC in relation to project Blue Buck.”

Will move on to paragraph 6 which depicts my role in project Blue Buck.

“I am legal resource that was assigned by the then executive head legal Mr Ernest Nesane to work on project Blue Buck following the approval of the project by PMC1. In light of the fact that project Blue Buck was in essence the restructuring of the security arrangements under and therefore an amendment to the PIC loan agreement it was not necessary to undertake a detailed due diligence investigation nor to outsource any analysis thereof to external legal consultants. On 26 June 2017 and following the analysis of the project Blue Buck I then compiled a memorandum containing our findings and recommendation in relation to the proposed restructuring of the security arrangements under Project Sierra addressed to PMC2. This memorandum is attached as annexure L1.”

ADV SECHABA MOHAPI: L1?

MS LINDIWE SIPHIWE DLAMINI: Yes, L1. It is ...[intervenes]

MR EMMANUEL LEDIGA: Sorry, if we can just have a look at your recommendations or conclusion of that particular memo? I note that it's paragraph 16 and 17, if you can just read that into the record?

MS LINDIWE SIPHIWE DLAMINI: “The recommendation is as follows:

Legal risk in respect of the transaction is moderate. From a security perspective due to the fact that the PIC is not a shareholder in L102, we are of the view that this exposes the PIC in that the security proposed in the L102 structure is insufficient to cover the PIC’s full exposure on the L101 loan. To mitigate this risk the PIC intends to negotiate a shareholding and upside participation in L102 for the risk taken as a result of subordinating the PIC’s security in L101. The PIC will now have a primary cession and pledge over the L102 Lisco shares and a reversionary cession and pledge over 100% of L101 shares in Steinhoff. Furthermore, the PIC must be provided with the primary cession and pledge over the L101 Lisco shares once City has perfected its security realising the value of its loan under the L101 Steinhoff shares. In the above circumstances legal recommends that the transaction approval be considered subject to the abovementioned mitigation measures and proposed security structure.”

ADV SECHABA MOHAPI: Alright, thank you. You can move on to paragraph 6.4.

MR EMMANUEL LEDIGA: Just to check something were these taken – I mean were these approved, implemented?

MS LINDIWE SIPHIWE DLAMINI: Yes, Commissioner.

MR EMMANUEL LEDIGA: Okay.

MS LINDIWE SIPHIWE DLAMINI: These were adopted in the IC resolution which is also annexed to the submission as annexure L2.

MR EMMANUEL LEDIGA: Alright. Okay, thank you.

MS LINDIWE SIPHIWE DLAMINI: 6.4.

“It is to be observed from the Legal DD Memo that the legal department identified legal risks and made proposals on how best to mitigate such risks. Further, the legal department made recommendations relating to security arrangements around the L101 STAR shares and the L102 STAR shares. Project Blue Buck was approved by the investment committee on 24 July 2017.”

A copy of this resolution is attached as annexure L2.

“It is to be observed that some of the terms that were approved by IC included primary cession and pledge of a 100% of the L101 STAR shares and reversionary cession and pledge over 100% over the L102 STAR shares as per the Legal DD Memo. Following approval of Project Blue Buck by the IC the legal department outsourced the drafting and negotiation of the relevant agreements to two law firms, namely Cliffe Dekker Hofmeyr and Gwina attorneys. The agreements that needed to be drafted and concluded, included without limitation, the release and implementation agreement, an addendum to the PIC loan agreement, the primary pledge and cession in respect of the 101 STAR shares, the L102 guarantee agreement and reversionary pledge and cession in respect of the L102 shares.”

All these agreements have been annexed to the submission.

“The process of negotiating and conclusion of *inter alia* the

release agreement, the loan agreement and the 101 STAR shares pledge commence from July 2017 following the IC approval. A signature memo was circulated on 23 August 2017 for signing. I attach hereto copies of the release agreement, the loan addendum and the 101 STAR shares pledge marked as annexure L3A, 3B and 3C respectively. I deal with the balance of the other key agreements in paragraph 6.24 to 6.26 below.”

ADV SECHABA MOHAPI: Sorry. Mr Commissioner, I note that it's eleven o'clock and I wonder whether Commissioners wish to take a tea adjournment.

CHAIRPERSON: The suggestion is that we carry on.

MS LINDIWE SIPHIWE DLAMINI:

“It is to be observed that in terms of clause 4.1.4 of the release agreement the CPs to Project Blue Buck included the inclusion – the conclusion of the following agreements, which is defined as the transaction documents in compliance with the IC approval. In respect of L101 and L102 agreements the conclusion of the loan addendum between PIC and L101, the conclusion of the 101 STAR shares pledge, the conclusion of the reversionary session and pledge in respect of 100% of the Steinhoff shares ceded to City, the conclusion of the guarantee agreement and the conclusion of the 102 STAR shares pledge. In respect of Steinhoff agreements the Steinhoff funding instruments, the conclusion of a loan agreement between Steinhoff and L102 in the amount of 6.2

billion and the conclusion of the primary cession and pledge agreement between Steinhoff and L102 in respect of the 102 STAR shares as well as L102 shares in Thibault Square Financial Services.

In respect of Citi Bank agreements, the conclusion of a loan agreement between Steinhoff and L101 in the amount of R6.2 billion and the conclusion of a primary session and pledge in respect of 25% of the Steinhoff shares released by the PIC.

Further, included as a CP to the release agreement, the PIC had to be provided with evidence to its satisfaction that the listing of the Star shares was to take place on 30 September 2017.

In terms of the release agreement, read with Clause 3.1 of the Loan Addendum. In essence, the above CPs had to be fulfilled by 25 August 2017.

In terms of Clause 4.5 of the release agreement, the date for the fulfilment of the CPs may be extended by agreement in writing between the parties.

On 23 August 2017, I compiled a signature memo addressed to the then CEO, Dr Daniel Matjila *inter alia* identifying some of the key agreements that needed to be signed for Project Blue Buck. (The memo is attached as Annexure L4).

On 25 August 2017, been the date on which the CPs had to be fulfilled. We received an email from ENS Africa, who were the attorneys to Lancaster L101 and L102, to the effect that their

clients were encountering challenges in fulfilling certain CPs and asking the PIC to waive the fulfilment of such conditions.

(The ENS CP's email, which is attached as Annexure L5.)..."

ADV SECHABA MOHAPI: Ja, just as a point of emphasis. If we can go to that annexure and if you can just deal with this email.

MS LINDIWE DLAMINI: Thank you. We received an email from the ENS counsel, Debra Carmichael, which basically stated that there was a requirement that the lender satisfied itself that the listing will occur.

"How will... How will be... How will it be..."

I am not sure. I do not think it reads correct. But the gist of it is that.

"How will be satisfy ourselves that the CPs is met? Should we provide the draft prelisting statement? Perhaps, Steve, you can chat to your partner at CDH, Willem Jacobs, who is running with that transaction for Steinhoff.

On the Steinhoff funding document, CP, we are not going to be in a position to satisfy the second leg of that CP, the Thibault Subscription. Although, we do have an unsigned execution version of the Thibault Subscription Agreement to hand, Thibault has been unable, given the timing pressures of this transaction, to give effect to the administrative requirements (resolutions, etcetera) to affect the necessary increase and the authorised share capital, in order to issue the shares.

Further, I understand that the relevant Thibault signatories are not there as of today. What we do have, however, is the unconditional loan agreement with an obligation on the relevant Steinhoff entity to fund L101.

Although PIC will not be able to take the reversionary security, it would over the Thibault shares today. It does in its capacity as shareholder of L101 have an indirect claim as shareholder to the R4 billion cash currently available in L102.

In the circumstances, we would ask the PIC to take a commercial view on the CP and partially waive fulfilment of it i.e. waiver of only the second leg of the transaction.

We will be grateful for your time period waiver, where we could start work with Thibault on Monday to start working on the documents necessary to increase the share capital of Steinhoff and to authorise the issue of the Lancaster 102...”

ADV SECHABA MOHAPI: So, just in conclusion. That waiver, what happened? What happened in relation to the request to waive the CP?

MS LINDIWE DLAMINI: Commissioner, through you. The matter was brought before me. I then indicated my discomfort with the waiver to the commercial team. I indicated that - to the extent that this condition was going to be waived, we would obviously need to approach the committee to approve that.

It was then suggested to me that, can we defer the CP to a later date. If you look at Annexure L6, there is an email that – an email correspondence between myself and Mervin, where I said that I am happy to extend, provided that, by the time we release, we obtain the confirmation.

I think it will be a timing issue, more than anything. I have requested Steven to find out how long they need, but ideally we should be provided assurance prior to our release and this instruction was then communicated to ENS. If you look at Annexure L7, where there is an email from *Mashudo Titiela* to Debra Carmichael, which indicates that:

“Pursuant to discussions that were held yesterday, please note that our instructions are to hold the release letter, instructing Standard Bank to remove the flag over the pledge shares in Escrow until further all CPs under the release and implementation agreement have been fulfilled...”

So, I think that is how we dealt with that particular situation.

Paragraph 6.13:

“It is to be observed that the challenges highlighted in the ENS CP’s email, related to the conclusion of the Steinhoff Funding Instruments and therefore by extension to the security arrangement, relating to L102’s guaranteed and share pledge.

I immediately shared this ENS email with my colleagues who were directly involved in this

transaction, namely Mr Vuso Raseroka, who is the Fund Principal Private Equity; Mr Horatius Maluleka, who is also Fund Principal Private Equity and Mr Mervin Muller who was then the Executive Head of Private Equity at the time.

Mervin inquired, instead of waiving the relevant CPs as proposed in terms of the ENS CPs email, PIC could make the relevant CPs a condition, subsequent i.e. deferring the date of their fulfilment.

In response thereto, I indicated that PIC would not necessarily be compromised if such CPs could be fulfilled prior to the release of the security in favour of Citi, as it was only a timing issue.

On the same day, CDH held discussions with ENS regarding the request to waive the relevant CPs as per the ENS email.

As per the advise that I provided to the PIC team, it was agreed that the fulfilment of the outstanding CPs will be deferred to a date prior to the listing of the Star shares and that PIC would not release the security in favour of Citi until all the outstanding CPs are fulfilled.

On 26 August 2017, CDH addressed an email to ENS, notifying them of PIC's instructions not to release. A letter to Standard Bank to release the PIC's security under Project Sierra in favour of Citi until all the

remaining CPs under the release agreement had been fulfilled.

(That correspondence is attached as Annexure L7.)

However, in the light of the fact that failure to implement the release agreement and the loan addendum was going to affect Citi's ability to make arrangements to put the collar in place, which needed to be done a few weeks before the listing and were to be unable to do so without its security being in place i.e. the release of PIC's 25 primary ranking security in favour of Citi.

It was then agreed that CPs relating to the L102 funding and security arrangements will be fulfilled as a post-closing item i.e. a condition subsequent.

Specifically, Citi was unwilling to commit and release funding under the Citi loan to L101 to acquire the Star shares until the PIC releases its security and therefore that the listing could not have taken place, had the PIC not released the security.

At the time of preparing the statement, I was unable to adequately consult with CDH team to obtain all relevant correspondence in this regard.

Should the Commission so require, I can establish with CDH whether they have the relevant correspondence..."

Commissioner, if I can also bring your attention to one of the

annexures. I cannot recall the email, Commissioner but if I do, I will come back to it.

CHAIRPERSON: I am sure it is a matter of when you do.

MS LINDIWE DLAMINI: Yes, Commissioner.

CHAIRPERSON: Rather than if you do.

MS LINDIWE DLAMINI: Yes, Commissioner.

ADV SECHABA MOHAPI: 6.19.

MS LINDIWE DLAMINI:

“In attending to the process of ensuring the fulfilment of the outstanding CPs on 29 August 2017, CDH circulated the draft guarantee agreement and the L102 Star shares pledge to ENS for comments. (The documents are attached as Annexure L8.)

During the negotiations of these agreements, a dispute arose between the parties relating to the scope of the guarantee agreement and in particular whether it should be a limited guarantee i.e. limited to the amounts recoverable from the realisation of the L102 Stare shares or an unlimited guarantee. (I attached hereto copies of the correspondence between CDH and ENS from 29 August 2017 to 8 November 2017, regarding discussions on the dispute, including alternative proposals that L102 submitted to the PIC, around 7 November 2017 in relation thereto, marked as Annexure L9.)

As a result of this dispute between the parties, the

guarantee agreement and the L102 Star pledge were not concluded at the time of listing of the Star shares, around 15 September 2017.

In light of the continuing and unresolved impasse and following receipt of the PIC of a proposal from L102 on 7 November 2017, regarding the restructuring of the security package, as set out in the release agreement, on 8 November 2017, I requested a meeting between the parties, including the respective legal representatives and warn that if the dispute is not resolved, we will need to approach the IC to provide an update on the reasons why Blue Buck transaction had not completed, over six months after approval. (The correspondence is attached as Annexure L10.)

Despite numerous attempts on the part of the PIC team to procure a meeting with the counter parties, there was no cooperation from them.

I believe this was so because the transaction relating to the L101 Star shares had already been consummated.

On 8 December 2017, I prepared a memorandum addressed to the PIC team, primarily working on the Blue Buck Project *inter alia* highlighting the status of Project Blue Buck, whether L101 is in breach of the PIC loan agreement, the possible legal risk and the

legal remedies available to the PIC. (I attached hereto a copy of the memorandum as Annexure L11.)...”

Commissioner, if I may. Just to reiterate and emphasise the point. This is the advise that I provided the transaction team and the correspondence is Annexure L11. If I may just go through on a few of these paragraphs just to emphasise the point?

ADV SECHABA MOHAPI: Okay, and that seems to be an email from yourself to Mr Mervin, Mr Horatius Maluleka, Mr Vusi Raseroka and Ernest Nesane with the subject title: Project Blue Buck note.

MS LINDIWE DLAMINI: Yes. If I can bring the Commission’s attention to paragraph 3.3 to 3.6 and paragraph 4 of the correspondence. I will read it. It goes as follows:

“If one has regard to the various approval documents and correspondence between the parties leading up to the implementation of Project Blue Buck, there is undoubtedly an expressed intention that PIC’s willingness to relinquish as primary security in respect of the Steinhoff shares, was predicated on the provision of Lancaster security and that this has always been within the contemplation of the PIC and Lancaster and that this security is intended to be confer to the PIC.

Due to the timing imperatives of implementation of Project Blue Buck and Citi’s requirements to arrange the hedging under the collar, in anticipation of the

listing of Star, the security documents relating to Lancaster 102 Star shares were not concluded on closing of Project Blue Buck, with the understanding that they will be concluded soon thereafter, but in any event prior to the listing of Star.

Despite numerous attempts and requests to do so, Lancaster 101 and Lancaster Group have failed to procure the execution and delivery of Star security, as it relates to the security in respect of Lancaster 102 Star shares from Lancaster 102, a wholly own subsidiary of Lancaster 101 (guarantee and pledge of the Star shares).

Clause 18.2 (other obligations):

Of this PIC loan agreement provides that failure by Lancaster 101 and Lancaster Group to comply with any provisions of the finance documents, constitutes an event of default, provided that no default will occur if the failure to comply is capable of being remedied within ten business days of the PIC giving notice to Lancaster and Lancaster becoming aware of the failure to comply.

In our view, Lancaster 101 is in breach of this undertaking, in that PIC has on numerous occasions notified Lancaster 101 of its failure to comply with ensuring that the Lancaster security in the form of L102 Star shares is conferred to the PIC.

The dispute giving rise to the failure to comply with this obligation and Lancaster's recalcitrant approach relates to Lancaster's contention that the guarantee referred to in paragraph 3.1 was never intended to be an unlimited guarantee, but rather PIC's request under the guarantee should be limited to L102 Star shares.

Clause 18.8 (Acceleration):

Of the PIC agreement, entitles the PIC on and at any time after the occurrence of the event of default by notice to Lancaster 101 to declare that all or part of the loans, together with accrued interest and all other amounts outstanding, be immediately due and payable.

Typically this clause would also provide that the lender will be entitled to exercise or all its rights, remedies, powers and discretions under the security document, which is not provided in this clause.

However, this is not a fatal flaw, as PIC's enforcement rights are in any event embodied in the relevant transaction security documents.

Clause 4:

Notwithstanding that Lancaster 101 and Lancaster Group may be in breach of their obligations under the PIC loan agreement.

In calling a default, the PIC must be mindful of the

following issues which may be consequential to the decision taken:

- Pursuant to Project Blue Buck and the concomitant re-ranking of the security package under Project Sierra, PIC's recourse to the Steinhoff shares and the option proceeds rank behind Citi loan.
- PIC is currently under collateralised in respect of the Star Security.
- The options under the collar are European style, which means that the collar call inputs can only be exercised at specific expiration dates.

Ultimately, the decision of how to proceed as a commercial one, which the PIC will need to make.

The purpose of this notice is to highlight certain aspects and material legal issues which we consider material in the context of the decision on how to proceed and those aspects which are likely to have a material bearing on PIC's final decision..."

MS GILL MARCUS: What was the response?

MS LINDIWE DLAMINI: Commissioner, through you. I did not receive a response to this particular correspondence. I must put it on record that soon thereafter, I went on maternity leave, but I did inquire with the team what happened pursuant to me highlighting these risks and these potential beaches and the team did indicate that they were commercial discussions between PIC, Steinhoff and Lancaster which I was not privy to.

I then requested that perhaps we need to do a proper write up to the Commission, just detailing what happened in those deliberations, but I am not privy to any of those discussions.

MS GILL MARCUS: Has this... Mohapi, has this issue and the discussions that took place consequent to this, appeared in any other document that we have received? Because I am not familiar with it.

ADV SECHABA MOHAPI: I do not recall that there was anything that was placed before the Commission, speaking to that, Commissioner.

MS LINDIWE DLAMINI: Commissioner, if I may. I did the inquiry yesterday and I was told telephonically that there were discussions that happened between the three entities and I did advise the team that perhaps it would be worthwhile to provide the Commission with this information.

MS GILL MARCUS: I think it is necessary to provide us with the information. Ja, it is imperative to do that. But if you are able to - what exactly is the exposure of the PIC now and to whom, given all of these issues?

There is the Citi Bank. There is the whole convoluted structures that have been created around this deal. Exactly what is the PIC's exposure to Steinhoff? '

As we have said earlier, Steinhoff itself, but particularly, Lancaster in any form. What is that exposure? Do we know off hand?

MS LINDIWE DLAMINI: Commissioner, we can certainly provide the Commission with that information, but given the legal structure or the transaction structure that was implemented in relation to Project Blue Buck, the PIC's exposure is on L101 and our exposure insofar as L102

is concerned, is in relation to the guarantee and the pledge that was signed between the two entities.

But as I have indicated earlier, because of Steinhoff's non-participation in L102, we effectively have security and we have rights over the shares of L102, which are legally enforceable, but unfortunately there is no value underpinning any of those shares, because of the non-participation by Steinhoff.

But I think from our end, we will definitely do a write up to the Commission, just explaining the exposure and detailing what steps were taken pursuant to this email being issued from the PIC's end.

MS GILL MARCUS: And perhaps if you could – I know you come to it a little bit later, but in terms of the structure that was put in place, is it – can you look at the arrangements made and advice or comment on whether there was adequate protection for the PIC in all of this structure, because again, I think in one of our previous discussions or witnesses who appeared, the roll up now of the exposure was 11.5 billion from the 9.5 billion originally lent.

So, I think that it would be important to just look at what the structure of this meant for the protection of the PIC in relation to Citi and the loan and Lancaster and Steinhoff, all together.

To say: Did they PIC take its own protection seriously enough? Did it guard against default in a particular manner? Did it actually preserve its right in an adequate way? Because it seems to be questionable to me.

MS LINDIWE DLAMINI: Commissioner, through you. We will do – we will definitely take those points into consideration and prepare a write

up for the Commission.

Paragraph 6.26:

“I pause to mention that the conclusion of the guarantee agreement and L102 Star share pledge alone, was not sufficient in the absence of the conclusion of the Steinhoff loan agreement and the advancement of the R6.2 billion and the actual subscription by L102 for the Star shares.

On 11 February 2018, Mr Jayendra Naidoo on behalf of L102 Lancaster, apparently addressed an email to Mervin, dealing with steps that Lancaster was supposedly taking to address the non-compliance with the outstanding conditions.

As I was not copied of the said mail from Mr Naidoo, I am not privy to the contents of such email.

As a follow up to Mr Naidoo’s email, EMS circulated a letter from Steinhoff International, dated 27 July 2017. (A copy of which is attached hereto as Annexure L13.)

I was requested by the PIC’s internal team to advise on the legal effect of the Steinhoff letter. I provided my views thereon on 14 February 2018, to the effect that *inter alia* the letter had been overtaken by events and that it has no legal consequence and not legally binding.

It is to be noted that the Steinhoff letter was provided

to Lancaster at the time when Lancaster approached the PIC in respect of Project Blue Buck.

On 15 February 2018 and following my advise on the status of the Steinhoff International letter, my colleague, Mervin who was the executive head of private equity at the time the transaction was concluded, indicated that he had asked Lancaster to conclude a binding agreement with Steinhoff International in relation to the contents of the letter. (A copy of the email correspondence between myself and the other PIC team members is attached as Annexure L11.)

ADV SECHABA MOHAPI: You mean L14.

MS LINDIWE DLAMINI: L14. My apologies.

MS GILL MARCUS: And sorry. Can I just go back a second? And can we try to obtain that 11th of – what the document referred to in 6.27 from Mr Naidoo about – to Mr Muller – about the steps taken – that Lancaster was supposed to be taken. Can we obtain a copy of that, advocate?

MS LINDIWE DLAMINI: Commissioner, through you. I think it was an email correspondence... An email referring to a correspondence. I am not in possession of that correspondence.

MS GILL MARCUS: No, that is why I am addressing that to the advocate.

MS LINDIWE DLAMINI: Okay, noted Commissioner.

MS GILL MARCUS: Yes.

MS LINDIWE DLAMINI:

Paragraph 6.31:

“I understand that discussions between business and Lancaster were held afterwards, in order to resolve the breach of the release agreement and or the loan agreement.

The legal department was not part of such discussions and therefore, I am unable to advise the Commission on what was agreed...”

But if I may read into the record that we will provide the Commission with undertaking that we will source that document.

MS GILL MARCUS: And indicate exactly when you talk about business. Who and what business. I am assuming you are referring to elements within PIC, who would have dealt with that, but can we just get exactly who.

MS LINDIWE DLAMINI: Yes, Commissioner. By business, I am referring to the transaction team which would have comprised of Mr Mervin Muller, Mr Vusi Raseroka and Mr Horatius Maluleka.

Perhaps if I can now deal with paragraph 7, Commissioner which relates to lessons learnt.

Paragraph 7.1:

“We reiterate that the role of legal in any transaction is limited to assessing and identifying and mitigating legal risks.

Commercial decisions do not fall within our purview or with the purview of legal. Our is to ensure that the

legal documentation reflect the commercial agreement between the parties.

As it relates to the swapping of securities, our was to ensure that from a legal perspective, the existing security was released and replacement security was properly in place.

The decision to relinquish security in favour of Citi Bank and replacing it with new security over Star shares was purely a commercial one...”

MS GILL MARCUS: Sorry. I want to stay with that a second, if I could. It comes back to the earlier question about whether you fulfil legal obligations in a technical manner and whether there is legal counsel.

Because if there is legal counsel then it does matter what the commercial is and it is that ambiguity that is of concern. Because it is not just commercial.

It maybe in terms of the department’s job to do that, but as legal counsel, if there are things that actually weaken the position of the PIC from a commercial point of view, your legal counsel’s advice matters.

And I would just ask you to talk to a little bit of that in relation to this paragraph, because, given our earlier discussion, this is not quite the same thing. I do not want to put you on the spot in that sense.

MS LINDIWE DLAMINI: Not at all.

MS GILL MARCUS: But to me there is a big difference between the role of a legal counsel in relation to commercial decisions as distinct

from fulfilling the technical obligation of the contract, etcetera, etcetera.

And then the assessment of those contracts. Are we disadvantaged or are we not disadvantaged, as the entity?

MS LINDIWE DLAMINI: Commissioner, through you. I think you are quite spot on. Commissioner, I think this 7.1 was limited to this particular transaction. Perhaps where I think you are going, Commissioner is more on generally what should be the role of legal.

And one of the things that I have highlighted earlier on, Commissioner is the fact that the structuring process of this particular transaction, legal was not involved in this structuring process.

We have highlighted this issue to business – to the transaction teams before, because what we have identified is that there is pivotal input that can be provided by legal in the initial stages of structuring transactions.

Obviously, the structure that is effectively bedded down, needs to be a structure that makes sense. Unfortunately, legal was not involved in the commercial discussions with sponsors when these structures are being discussed and bedded down.

And I think this is an opportunity for PIC to now relook at its processes in terms of, you know, at what point should legal be involved in the investment process.

So, I really think your point is quite correct, because what it then ultimately does, it means that by the time legal gets involved in these transactions, it is too late. The input that we provide on the structure, you know, it almost has the effect of setting the team back,

in the sense that the structure has already been agreed with the counter parties.

So, I think this is an opportunity for us to relook at our processes, but as it relates to Lancaster, 7.1 is basically highlighting the fact, that this is the role that we effectively played.

Should have it been the role that legal played? In my opinion, no. I think legal should have been involved on the onset when the first meeting happened regarding the structure.

MS GILL MARCUS: Would you have any view as to – I mean, if I recall correctly, and colleagues perhaps help me – PIC did not have any advisors on this deal. Lancaster had Ataraxia and Symphony. It became Ataraxia with different split between them.

And between then are the two deals, they earned R100 million, if I remember. Around that kind of figure. With R80 million and R20 million. Something to that effect to the best of my recollection.

And yet, the PIC had no legal – I mean, had no advisor in that regard and left it to the transaction team and yet you have this very convoluted structure and arrangement.

Did legal have any view on the fact that the PIC did not have advisory counterpart to Symphony Ataraxia on this whole initiative of was it something that was then just part of commercial and not affected by your own positions?

Would it be something that legal would consider in saying, are you...? I mean, I am using it in a colloquial term. Are you equally matched? You may have, because you are looking at the people who have done the – who have drawn up the deal, dealing with somebody

who is setting all of this out. Was there something that the PIC could have done differently in relation to the structuring, given that there was a counterparty, a very sophisticated skilled counterparty at Symphony and Ataraxia?

And I am not saying the PIC did not have the skills, but it was they who were doing the deal from an internal point of view, not necessarily from the same perspective.

MS LINDIWE DLAMINI: Commissioner, through you. I think the biggest issue here was Project Blue Buck was effectively a follow on transaction. So, I think there was an assumption that the interest were aligned between Lancaster and PIC, insofar as Project Blue Buck is concerned.

And I must on the record, I am expressing a personal view. I really think that the transaction team was off the view that the interest were aligned. They were familiar with the transaction.

I am not sure what the reason was, you know, a decision was taken not to bring on technical advisor to assist with the structuring. Perhaps it was also a function of being familiar with Project Sierra and Project Blue Buck would effectively be a follow on. So, it should not be complicated or complex.

From a legal perspective, Commissioner. I think a similar view was also adopted. In the sense that this is a follow on transaction. Our assessment is limited to the restructuring of the security and what could possible be the pitfalls of not putting adequate security under Project Blue Buck.

But I do believe, Commissioner with the benefit of hindsight,

perhaps we could have brought onboard technical advisors that would have advised on an adequate structure to also identify the gaps and the loopholes, such that, from a legal perspective, we could have been in a better position to put the necessary mitigation measures, to ensure that we do not find ourselves in a situation that we find ourselves today.

MS GILL MARCUS: And given that, as you have said earlier in the statement, that there was a reluctance or a recalcitrance on the part of Lancaster to address the issues. Was there not something even at that stage that should have required a different action?

MS LINDIWE DLAMINI: I think, Commissioner you are correct in the sense that, once we picked up this behaviour from Lancaster, we as legal we thought it would be prudent to highlight the fact that pursuant to Citi's funding flowing, there is no will to finalise this transaction to ensure that the PIC's security is safeguarded.

Which is why we sent the email to say, perhaps it would be opportune for us to call on our security and basically unwind this entire structure, so that we can realise whatever value we could possible realise, given the fact Lancaster which...

And I must put it on record, Commissioner that we have not had any interactions with Steinhoff directly. So, they were essentially the go-to or the middleman between ourselves and Steinhoff. So, it became very...[intervenes]

MS GILL MARCUS: Who was the middleman?

MS LINDIWE DLAMINI: Lancaster.

MS GILL MARCUS: Lancaster?

MS LINDIWE DLAMINI: Yes. I can speak from personal experience. I have not had any interactions with Steinhoff. That is why it became critical for us to assess, whether or not, given the risk of the share depreciating in value and the fact that our security was not forthcoming, we needed to take a view as the PIC whether we revert to the original status of the PIC and reverse this entire transaction, so that we can safeguard our position, but unfortunately, the steps that need to be taken pursuant to that email did not follow through.

ADV SECHABA MOHAPI: All right, paragraph 7.2.

MS LINDIWE DLAMINI:

Paragraph 7.2:

“With the benefit of hindsight, one is now able to reflect on processes leading up the listing of Star and implementation of Project Blue Buck critically.

Undoubtedly, one could never have foreseen the eventual decline of Steinhoff shares and consequential losses to, amongst other things, shareholders and funders.

With this in mind, the question as to whether the PIC could have done anything better should nevertheless be addressed. In order to make good Steinhoff’s commitment to provide additional funding to L102, we ensured that the funding and security arrangements relating to the L101 and L102’s acquisitions of Star Shares were included as CPs in the transaction agreements.

In addition, when on the date of fulfilment of the CPs, it became clear that such commitment was not provided to L102, we insisted on an arrangement which was aimed at ensuring that the PIC would not release the securities until this commitment is provided.

However, due to time pressures relating to the listing of the Star shares, the PIC made a concession to release the securities to enable the injection of Citi funding into L101 and therefore the listing of the Star shares.

With the benefit of hindsight, perhaps the PIC should have insisted on the commitment related to the funding of L102 prior to the release of the securities, irrespective of the fact that it would have had a prejudicial effect on Citi's funding and the listing of Star and possibly collapsed the transaction...”

ADV SECHABA MOHAPI: Mr Commissioner, that concludes Ms Dlamini's evidence.

MR EMANNUEL LEDIGA: Yes. Your last line of paragraph 7.3 is quite something that worries us a lot, a bit. In the sense, that even with the AYO listing, there was those pressures about this listing and all that and then it ends up compromising the PIC.

I just want to understand. I mean, why can PIC not collapse transactions and say: Look, this is not in our interest. We are just going to stick to what we want to do.

MS LINDIWE DLAMINI: Commissioner, it is a very loaded question and I think it is a very difficult question, because... Unfortunately, Commissioner we are not involved in the commercial discussions between the likes of Jayendra and the CEO at the time.

And unfortunately, we find ourselves in a position where – you know, we try by all means, as has been demonstrated in the annexures and this submission, to stick to the principles of the governance processes or structures.

And I think, at all times, we indicated to our counterparties that to the extent that you need us to move. We need to move through a governance process. Unfortunately, Commissioner we find ourselves where – and I think this is also evidence in Ms Carmichael's email, where we are being instructed that: Look, at the end of the day commercial discussions need to be had and commercial decisions need to be made.

And I think we are then operating of the premise of advising the business but allowing the business to make commercial decisions, such that we are not stifling the business in making those decisions.

It is a bit of a Catch-22 for us as legal, because while may not necessarily agree with the decisions that are being made which has, I think, been adequately evidenced in the submission that I have made, at the end of the day commercial decisions were made to...

Well, whether it is taking into account legal advise or not, I think that remains to be seen.

CHAIRPERSON: If I understand you correctly. On your side you did your bit as legal in the PIC?

ADV SECHABA MOHAPI: Agreed, Commissioner. And I think we have tried our level best to demonstrate that we needed to keep within the confines of the resolution that was provided by IC and to obviously deal with the implementation issues as best as we can, but also in keeping with the prescripts of the IC resolution.

MR EMANUEL LEDIGA: But, I mean, really, it is – this stuff about the PIC not wanting to collapse a transaction because of a listing. I think, is something which needs to be looked into, because it has cropped up a number of times, I think.

MS LINDIWE DLAMINI: Agreed, Commissioner.

MR EMANUEL LEDIGA: Ja? Okay. Further question. One or two more questions. Just in terms of complexity of transactions within SIPS. Is this the one – this one, is it the most complexed or there are more which are more complexed?

MS LINDIWE DLAMINI: Commissioner, I think with the benefit of having done a few SIPS portfolio or SIPS transaction, Pareto would have been one of them which was...

Also, I think each sub-transaction is complicated in its respective right. I mean, if you look at Pareto, it was the first time we were implementing a contingency repurchase obligation type structure.

So, I do believe that they are complicated in their own respective rights. It is just a matter of understanding what the end goal is and making sure that all the necessary steps to get there are effectively implemented.

MR EMANUEL LEDIGA: Next one. These are broad questions now.

MS LINDIWE DLAMINI: No problem.

MR EMANUEL LEDIGA: Ja. Transactions take long at the PIC and other places in general. And if you look at say vacancies in the legal department. I mean, how long does a typical transaction take?

Like, in terms of legal, as they say: These are transactions and it must go to legal. And you know it is another two, three months or so. Do you think that the vacancies actually worsen this kind of a problem?

MS LINDIWE DLAMINI: Commissioner, it actually brings me to the point that I touched on in my statement or in one of the annexures, where I indicated to the team that if we do not close this transaction within a period of six months, we need to go back to the committee and appraise the committee of any material eventualities that have happened on the transaction that are leading to the transaction not closing.

So, that now talks to the process of finalisation of transaction agreements within the PIC. There is a – I am not sure if it is a process or a policy, but there is a process within the PIC, that indicates that if a transaction does not close six months post approval, then you need to bring to the committee the reasons why this transaction is not closing.

It could typically really be, you know, the negotiations are very protracted and they are just taking a long time or it could be, there is something fundamental that is stopping this transaction from closing.

You, therefore, have to bring it to the attention of the committee. So, under those circumstances, we would make a formal submission to either request an extension, but also highlight what the negotiation processes and what happened, the hiccups or the potential

impasses on that particular transaction.

So, we give ourselves a six month leeway to finalise transactions and post that, we will have to take it to the committee. One of the things that the committee needs to consider, is whether they still have appetite, given the material eventualities that may have happened on the transaction, whether the PIC still has appetite to proceed with the transaction.

MR EMANUEL LEDIGA: But given, you know, there is something like pre-approval. I mean it is another what, three or four months or so and then post-approval is another three months or so. Is there a way in which transactions can be fast tracked? I mean, if we say, you fill vacancies and all that. Is that possible? Is that doable?

MS LINDIWE DLAMINI: So, Commissioner, through you. I think we need to discern between the processes of getting the transaction approved and a process of implementing the legal agreements. So, the process of implementing the legal agreements, it is a standard practice, that six months is attributed to that process.

Given the complexity of the documents and the protracted negotiations that may eventually happen. But in terms of the approval processes, I think people before me, would have come to just explain the governance process.

But given the fact that transactions need to go through various governance committees and if issues arise, we have to go back. We need to do some more work, you know.

To get the transaction to a point where it is palatable to the PIC and PIC is comfortable with the transaction that is packaged before

them. So, until a stage or until a time that happens, unfortunately, the transaction cannot be approved, simply because it needs to be fast tracked.

We need to ensure that all the risks that have been identified are adequately mitigated in our proposals as assurance providers. We also need to make sure that the financial terms of that particular transaction are in line with the PIC's mandate with its client.

And I think those are the considerations that really take quite a bit of time to get the transaction to a mature stage before approval.

CHAIRPERSON: Not much can be done about this. Is that what you are saying?

MS LINDIWE DLAMINI: Commissioner, I do believe that if you capacitate the PIC with the necessary resources, it will obviously have an impact on the deliverables. It will have an impact on efficiency. I think you will resolve those two issues by effectively capacitating the relevant units, because the work will obviously be done a lot faster and a lot more efficiently. So, I think it takes care of the efficiency element in that regard.

But I still do believe that the governance processes will still need to remain intact and will still need to be respected, in the sense that the PIC will need to apply its mind to whatever the proposal is brought before them and make sure that it ventilates the issues robustly and ensures that it is comfortable with the transaction that comes out on the other end.

MR EMANUEL LEDIGA: Next one. Just in terms of the legal department and how things – the climate there, how things are. We

heard witnesses here. They are saying you have lost the head. I think Mr Nesane and there are issues up and down there. How is the climate there currently in the legal department. You are the acting head now.

MS LINDIWE DLAMINI: I got a sense that this one was coming. Commissioner, through you. And I think this a very serious matter. Commissioner, I can only speak for the role that I have currently played in the three months that I have been acting.

Perhaps if I can take the Commissioner back. I was presented with an opportunity to head up legal in January this year and I was not given any formal reasons, but I think, you know, it is really pursuant to my interactions with the relevant members of the management team and the board, in the transactions that I have been managing.

I think the rationale was that: Look, we are looking for somebody who strategically can manage the legal department. Provides strategic leadership and steer the ship in the right direction and to adequately and efficiently deal with the issues that are currently at play at the moment.

I took up this opportunity – this is pursuant to the board resolving to bring me onboard. I have assisted the PIC and I think I need to put it on record that one of the functions that spouse to is to servicing the PIC. I do not service any individual on any board. I do not service management. I service the PIC in all the legal issues that the PIC effectively needs to deal with.

One of the issues that – and I do agree, Commissioner. The legal environment was quite a segregated environment. People were working in their own respective spaces. They were working in silos.

One of the things that I have undertaken to do as the acting head of legal, was to make sure that the issues are emanating on the ground are effectively dealt with.

I have had one on one sessions with each individual within the PIC legal space and I try to engage them to find out what are the issues that we need to deal with, to make sure that we optimal and efficient and working to service the company.

We have had those discussions. I can safely say, Commissioner, through you, that one of the key issues that people that wanted to do was to have access to work.

This is primarily one of the things that I have since done and I can report to the Commission that the environment is slowly but surely changing. People are becoming more and more confident in their roles. People are becoming more and more comfortable in what they are doing.

I think ultimately at the end of the day, people are servicing the business, which is what we need to ensure. We need to ensure that we are functional and we functioning optimally and not sub-standard.

So, I think that is all I can say in relation to the culture of legal at the moment. Obviously, this is a process. It will take time, but I think it is quite imperative that we deal with the issues on the ground to make sure that legal team or the legal unit is functioning optimally.

MR EMANUEL LEDIGA: The final question is. I am sure you might have answered it here, but if you can add more, it is fine. I note that there was no... Advocate Mohapi, in terms of the person, the witnesses

that we normally see qualifications and the job they have done and all of that, but I know this was not here. It was just on the PIC only.

ADV SECHABA MOHAPI: Commissioner, in respect of that, I will let the witness speak to that, but she decided – it was a conscious decision on her part, not to put those qualifications, but I think she can give evidence to that affect.

CHAIRPERSON: It is up to her. She must decide if you want to do it. If you do not want to do it, it is still fine.

MS LINDIWE DLAMINI: Commissioner, it was actually an oversight on my part. I actually realised when I was watching one of the witness's testimony yesterday, that the resume in relation to the education and the background is read out, but I can provide the Commission with this information.

I have it on my laptop, if the Commission would...[intervenes].

MR EMANUEL LEDIGA: Tell us for a minute or so. I mean, you know yourself.

MS LINDIWE DLAMINI: I know. Yes, Commissioner. As I have indicated. I am an admitted attorney of the high court. I just need to get a list of all my certificates. There are quite a few.

MR EMANUEL LEDIGA: Just briefly. The key ones.

MS LINDIWE DLAMINI: Okay. Commissioner, I do possess an LL.B. I possess an LLB with the University of Johannesburg. I possess an LLM with University of South Africa. I am currently doing my LLD with the University of South Africa. I have done quite a few certificates on Company Law. I have done quite a few certificates in the financial space.

So, in terms of the financial markets and the like. Unfortunately, I do not have the whole list with me. Previously, I was at Cliffe Dekker Hofmeyr. I did my articles there and I was an associate there. I then left Cliffe Dekker Hofmeyr and I joined the PIC.

I started off in the Corporate Services, servicing the corporate part of the PIC, but I was also doing listed transaction, while I was there. I subsequently move to unlisted in 2015, where I was primarily servicing the private equity team.

I was servicing the developmental – it is called impact investment now. But I was still doing some listed transactions. So, I have got an all round view on the PIC, because I have essentially serviced each and every single department, including the IT space.

I think the only department I really have not serviced at the PIC has been the human resources department, which I am currently working with now. But that is effectively my background and my experience, Commissioner.

MR EMANNUEL LEDIGA: Doctorate. What area are you doing there? You know I am a lecturer. So, I am a part-time lecturer. So, I am quite interested normally in this.

MS GILL MARCUS: So, Commissioner. I did my LLM on Consumer Credit Law, focussing on the Development Of Consumer Law in relation to the Companies Act. What are the loopholes; what are the consumer rights and the like.

I have consciously decided that I need to do further work on that space, because there is critical developments happening in the space. So, I have opted to proceed with that top, Consumer Credit Law

for purposes of my dissertation on my LLD.

MR EMANNUEL LEDIGA: Thank you very much. I am enlightened.

MS LINDIWE DLAMINI: It is a pleasure.

CHAIRPERSON: So, having presided in some cases concerning the Credit Act, we will find some criticism in your dissertation relating to our judgments and I think I have written one them. I am not sure.

MS LINDIWE DLAMINI: You certainly will, Commissioner.

CHAIRPERSON: Yes, thank you. So, that is it for the day?

ADV SECHABA MOHAPI: That is the business of the day, Mr Commissioner.

CHAIRPERSON: Right. Ms Dlamini, thank you very much. And thank you so much for your time. You know, I need to mention that I have been impressed by actually all... Being a lawyer myself. I am impressed of all of the people who come from your department who have testified before us. I am quite impressed.

MS LINDIWE DLAMINI: I am glad to hear that, Commissioner.

CHAIRPERSON: In fact, I ask myself whether you in particular would maybe go back to practice and want to become a judge.

MS LINDIWE DLAMINI: Once my kids are a lot older, Commissioner.

CHAIRPERSON: Yes, all right. Thank you, once again.

MS LINDIWE DLAMINI: It is a pleasure.

CHAIRPERSON: Thanks for your time and thanks for the work that you have done in putting together your affidavit. There are certain or there is certain information that has been requested of you. Do not be surprised thereafter, if you are called in again to come and clarify certain issues relating thereto, okay? Otherwise, thank you very much

and you may be excused.

MS LINDIWE DLAMINI: Thank you.

CHAIRPERSON: Mr Mohapi, we are going to adjourn now and it seems that we will adjourn until the 13th May. Ten o'clock again at this venue. Just to explain that we are understand that...

In fact, it has been confirmed this morning that on Monday we would not be able to sit because of some protest or some action that is going to take place in Pretoria.

ADV SECHABA MOHAPI: That is correct, Commissioner.

CHAIRPERSON: Yes.

MR EMANUEL LEDIGA: On the 29th, is it not?

CHAIRPERSON: 29th.

MR EMANUEL LEDIGA: Monday, the 29th.

CHAIRPERSON: That is correct.

MR EMANUEL LEDIGA: There is a shutdown.

ADV SECHABA MOHAPI: This Monday there is a shutdown?

CHAIRPERSON: Yes.

MR EMANUEL LEDIGA: Yes.

ADV SECHABA MOHAPI: Okay.

CHAIRPERSON: And then we would have just one day following that and the next day is a public holiday again, the 1st May. Usually, we finish on Wednesdays. So, we would not be able to come back and the next week again, we understand that there might...

There is going to be council meetings and so on at this venue and then on Wednesday will be the elections which means that we would have just one day in between and that would be the...

ADV SECHABA MOHAPI: That is correct, Mr Commissioner. So, we have got these pockets of days which would not serve any purpose.

CHAIRPERSON: Yes, yes. So, for the next two weeks, it will not be practical for us to come and sit. Yes?

MR EMANNUEL LEDIGA: And it seems that on the week starting the 6th, Monday the 6th people want to go home to vote, the legal team and all that. So, we could not even look at that week too.

ADV SECHABA MOHAPI: That is correct, Mr Commissioner.

CHAIRPERSON: I have just been given a note to say that we actually come back on the 14th. I am not sure about that.

MS GILL MARCUS: Yes.

MR EMANNUEL LEDIGA: Is that the 14th?

ADV SECHABA MOHAPI: That is how I have it, Mr Commissioner.

CHAIRPERSON: 14th May?

ADV SECHABA MOHAPI: We have been provided by the secretariat with a schedule, saying that in our planning we should take all of what Mr Commissioner is pointing out and that the next sitting will be on the 14th.

CHAIRPERSON: Yes. So, let us correct that. It is not the 13th but rather the 14th May. Yes. Okay?

MR EMANNUEL LEDIGA: Suffice to say the work continues.

CHAIRPERSON: No, certainly. They will continue. It is your work as a legal team.

ADV SECHABA MOHAPI: Most certainly, Mr Commissioner.

CHAIRPERSON: And our work, sitting here. It will continue. Yes, we will then adjourn until the 14th May at ten.

INQUIRY ADJOURNS UNTIL 14 MAY 2019