

**The State versus Jacob G Zuma and
others**

Forensic Investigation
Draft report on factual findings
For review only

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Abbreviations

We prepared a separate document that should be read with the contents of this report. The document contains a list of abbreviations used in the report and their meaning. The document also contains a list of persons and entities referred to in the report. A short description of the persons and entities is provided.

See separate appendix styled Abbreviations

Exhibits

We collated all the exhibits into exhibit files. The exhibits are the documents that have been relied upon for our findings and conclusions reached. The exhibits should be read with the contents of this report. Our approach to referencing and interpretation of the numbers that appear on each of the exhibits is reflected in a separate chapter¹.

Annexures

There are certain areas covered by this report that required the use of documents such as spreadsheets, diagrams, timelines etc in order to firstly collate the information, secondly to provide assistance in interpreting the information relied upon and lastly to assist in the presentation of the information relied upon in a Court of Law. These documents were created from the information obtained and collated during the investigation. We refer to such documents as annexures. Annexures are marked it at the bottom left hand corner as being prepared by KPMG in order to avoid confusion. The annexures should be read with the contents of this report and consequently form part of the report. The annexures included are:

Payments made to and on behalf of Zuma by Shaik and Nkobi group	A
Accounting treatment for payments to and on behalf of Zuma	B
Development cost write-off	C
Zuma's assets and liabilities	D
Payments from and on behalf of Zuma to Shaik and Nkobi group	E
Total liability towards Shaik and Nkobi group	F
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¹ Refer paragraph 16

Payments from Fakude-Nkuna of Bohlabela Wheels to Zuma	J
Payments from Vivian Reddy to Zuma	K, L, M
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1 Background

During November 1998 the Office of the Auditor-General identified the procurement of the strategic defence packages as a high-risk area from an audit point of view. It was then decided to perform a special review of the procurement process. Various consultations took place in the period thereafter until 28 September 1999, when the then Minister of Defence, Lekhota, approved the special review. We understand that the special review was completed by 15 September 2000.

The results of the special review were subject to hearings and deliberations of the Parliamentary Standing Committee on Public Accounts (“SCOPA”) and the final report was adopted by SCOPA on 2 November 2000. SCOPA allegedly suggested that a meeting be convened with the Auditor-General, the Public Protector, the National Prosecuting Authority (hereinafter referred to as the NPA) and the Heath Special Investigation Unit, in order to discuss an independent and expert forensic investigation.

On 6 November 2000 a preparatory investigation was instituted in terms of Section 28(13) of the National Prosecuting Authority Act, 32 of 1998, in order to determine whether there were reasonable grounds to conduct an investigation into allegations of corruption and/or fraud in connection with the acquisition of armaments by the Department of Defence.

On 13 November 2000 the proposed meeting of SCOPA took place, whereafter they were informed of the decisions. On 16 November 2000 a meeting took place between the various agencies in order to discuss the approach to the investigation, the responsibilities of the agencies, the sharing of information and the way forward. Thereafter, the investigation commenced.

Following the preparatory investigation, an investigation was instituted on 24 August 2001 related into the suspected commission of the offence of corruption, in terms of the Corruption Act, 94 of 1992 and/or the crime of fraud, involving the main contractors for the supply of the armaments for the Department of Defence *inter alia*, and more specifically the German Frigate Consortium (hereinafter referred to as GFC) as prime contractor for the supply of the Corvettes and African Defence Systems (Proprietary) Limited (hereinafter ADS) as sub-contractor for the GFC for the supply of the Combat Suites for the Corvettes.

On 15 October 2002, the investigation was extended to include the suspected commission of fraud and/or corruption arising from the following:

Payments to, or on behalf of, or for the benefit of Jacob Zuma (hereinafter referred to as Zuma) by Schabir Shaik (hereinafter referred to as Shaik) and/or by the Nkobi group and/or by the Thomson/Thales group of companies; and

The protection of and/or the wielding of influence and/or the using of public office by Zuma to unduly benefit the private business interests of Shaik and/or the Nkobi group and/or the Thomson/Thales group of companies.

The investigation was once again extended on 8 August 2005 to include the suspected or attempted commission of fraud pertaining to declarations made by Zuma to the following persons or entities:

Registrar of Parliamentary Members' Interests;

The Secretary for the Government of South Africa;

The South African Revenue Services; and/or

Persons or entities associated with the abovementioned persons or entities.

In respect of benefits received from Shaik and/or companies associated with Shaik.

The extension also included the suspected commission or attempted commission of contraventions of the Income Tax Act, No 58 of 1962 in respect of the declarations referred to above.

2 Objectives of the investigation

2.1 Initial investigation – State vs Schabir Shaik and others

Our involvement in the investigation by the NPA commenced when we were requested to provide forensic accounting services in the investigations preceding the trial of Schabir Shaik and others during the latter part of 2003. Our work was completed towards the end of April 2004, when a draft report was issued. The report was used during the prosecution of the case. The author of this report was required to present evidence in the matter during the latter part of 2004.

The primary objectives of the forensic accounting investigation were to:

Identify and describe all the relevant legal entities with reference to their shareholding, other interests and the changes in that regard during the period under review, group structures, office bearers, relevant business or intended business ventures (in the public and private sector), associates in joint ventures, particulars of such joint ventures and agreements in respect thereof;

Determine whether official state authorisation or approval or support for any of the ventures was given or was required, and if so, by whom, and what the procedures and prescripts were, or that had to be complied with;

Determine whether there existed any accounting or documentary evidence of Zuma, either in his personal or official capacity, having any interest in, or whether he committed any act or performed any duty or exercised any power in relation to, any of the relevant entities or business ventures;

Determine the financial position of the relevant entities or persons, including determining:

By whom;

Through whom; and

On behalf of whom benefits were made or given.

Determine the source, flow, destination and beneficiaries of payments/benefits and the underlying reasons for the payments/benefits;

Determine how the transactions were accounted for and dealt with in the financial records of the relevant entities or persons; and

Determine the degree of compliance in the manner of recording the transactions with Generally Accepted Accounting Practice and statutory prescripts.

We were in particular instructed to:

Identify outstanding documents or evidence, which need to be obtained to compile our report;

Collate, refer to, index and annex all relevant documentary evidence on which the factual findings are based;

Limit our reliance on and reference to the recollection of events, as set out in witness statements, to the extent that it is necessary to clarify or explain recorded/documented transactions;

Provide motivated opinions/conclusions, within our field of expertise, on the factual findings, ie forensic accounting and investigation;

Assist the NPA in any actions that may become necessary, which could include further investigations, consultations, court preparations and the providing of expert evidence in Court;

Report on our factual findings; and

Provide evidence of our professional expertise, which enabled us to compile the report and the opinions/conclusions set out in the report.

2.2 Extended investigation – State vs JG Zuma and others

Following the prosecution and conviction of Shaik on 2 June 2005, we were mandated to continue providing forensic accounting investigative services. The objectives of the initial investigation remained with the addition of the following:

A more detailed analysis and extension of the background information, company records, financial statements and bank statements of the following individuals and legal entities:

Shaik;

Zuma;

Reddy;

Kögl;

Fakude-Nkuna;

Nkobi group;

Thomson-CSF; and

Any other person or entity that may appear to have made payments to or on behalf of Zuma or to have received payments from Zuma.

An extended analysis on projects of the Nkobi group, including possible payments made to officials with regard to the Prodiba Drivers Licence contract but not limited to the aforementioned;

An update on the financial position of Shaik and the Nkobi group;

An update on the financial position of Zuma;

An update on the analysis of all relevant cash flow information and the accounting treatment thereof in the financial records of the relevant entities;

A more detailed analysis on the sequence of events with regard to the Combat Suite contract; and

The sequence of events regarding any other project, business enterprise, business dealing, contract or correspondence wherein Shaik, the Thomson/Thales group of companies and/or related entities sought, obtained or relied upon the protection of Zuma, and/or wielding of influence for, and/or using public office to unduly benefit the private business interests of Shaik and/or the Nkobi group and/or the Thomson/Thales group of companies, by Zuma.

As we did not have access to the detailed records of the relevant Government Departments and/or agencies involving projects in which the Nkobi group had an interest, we do not comment on any official adjudication of the projects concerned other than insofar as documentation and information are available. As a result we cannot, at this stage, fulfil that requirement in terms of our mandate in this regard. A detailed in-depth investigation would be required to fully address the said subject. We are aware that a report was prepared by the authorities, referred to as the Joint Investigation Report. Extracts have been used in our report for background purposes.

The purpose of our investigation was to consider and analyse all the available documents, financial records and other relevant information obtained during our investigation and ultimately to prepare a report on our factual findings in relation thereto.

2.3 Scope and nature of our investigation

This engagement was not performed by us in the capacity as a Registered Auditor and does not constitute an audit. There are no International Engagement Standards applicable to a forensic investigation of this nature. We have performed the procedures we considered appropriate in the circumstances.

The purpose of the investigation was to evaluate and analyse all the available documents, financial records and other relevant information obtained during our investigation and ultimately to prepare a report on the factual findings in relation thereto.

2.4 Limitations and subsequent events

We were granted unlimited access to the documents and statements in possession of the NPA investigating team. We are not qualified to determine the admissibility of evidence and therefore selected all of the documents and information made available to us that we deemed relevant.

We have attempted to include all information made available to us prior to the date of this report and relevant to the execution of our mandate. However, it is possible that documents and information exist which we were unable to locate. Any documents or information brought to our attention subsequent to the date of this report which would affect the findings listed below, will require our findings to be adjusted and qualified accordingly.

The scope of our work was limited to a review and analysis of the documentation and information provided to us during the course of our investigation. We have not verified the validity or authenticity of the relevant records and documentation, other than the instances specifically indicated in the report.

2.5 Restriction on distribution of report

This report was prepared solely for the purposes of reporting our findings to you. This report should therefore not be utilised for any other purpose. No part may be quoted, referred to or disclosed in whole or in part, by any party, without our prior consent.

2.6 Legal advice

Although our report may contain references to relevant laws and legislation, we do not provide legal opinion on the compliance with such laws and our findings in this report are not to be

construed as providing legal advice. Our discussion of the relevant laws is intended solely to facilitate the determination of applicable facts which may be relevant to the interpretation and/or application of such laws. Should such interpretation require legal advice, we recommend that independent legal advice be obtained.

3 Approach adopted

We were not involved in the investigations that were conducted prior to 12 September 2003, the date of our appointment with regards to the State vs Schabir Shaik and others matter. Subsequent to our appointment, the investigation team consulted with us on an ongoing basis. The NPA investigating team completed the investigation up to a fairly advanced stage in respect of the first part of our mandate that resulted in the prosecution and conviction of Shaik and others. The extended mandate dealt with above required us to continue with the investigation and consider all documents and information that had been obtained by the investigating team.

Various search and seizure procedures had been carried out during the investigation that led to the prosecution and conviction of Shaik and others. The documents and information obtained also apply to the extended mandate. Following the extension of the investigation, further search and seizure procedures were carried out. (We were requested to assist the designated officials in a support role during the searches. Our role was to assist with the on site evaluation of any documents identified during the searches that might have been of an accounting nature).

A material part of the documentation and records that were used in our report were presented in the matter of State vs Schabir Shaik and others and were obtained in the period prior to our appointment. We familiarised ourselves with the available documentation and to consider additional documentation required that could assist with the completion of the objectives of this report at the time. The documents and information obtained during the completion of the investigation in the matter of State vs Schabir Shaik and others were available and were reconsidered in the present case. This information was combined with the documents and information obtained in the search and seizures that were conducted after the prosecution and conviction of Shaik.

Additional documentation was requested by us and obtained (as far as possible) by the investigating team, whereafter it was considered by us for purposes of this report.

The scope of our mandate, as set out above, is particularly based upon the relationship between Shaik and the Nkobi group, on the one hand, and Zuma, on the other hand. It also became evident during the investigations conducted by the NPA that Shaik also interacted with various other office bearers (in particular political).

In order to place the dealings and relationship with Zuma in context, we identified those and described the nature thereof as far as it could be deduced from the information and documentation at our disposal. This also included dealing that Shaik had with the Nkobi family. The office bearers dealt with in this report had been identified by us based on our evaluation. It is possible that there may be others that we had not identified due to a lack of description or identification in the records of the Nkobi group. To describe this relationship, it was necessary to adopt an approach, in the investigation and the presentation of this report, in which we investigated and described the following aspects, which in our view are appropriate to describe the relationship:

The historical purported context that led to the establishment of the Nkobi group;

The nature and extent of Shaik's business interests;

The historical purported context of contract(s) between Shaik and Zuma;

Zuma's financial interest in the Nkobi group and the inter relationship between Zuma's financial position and that of the Nkobi group; and

The business transactions in which the Nkobi group participated and the nature and extent of Zuma's involvement with such transactions.

We explain the context of issues dealt with in this report², as a precursor for the reader in understanding the context of the detailed findings of the report and advise the reader hereof as to the reasons for adopting this approach.

² Refer to paragraph 7

4 Period under review

Our investigation was not restricted to a particular period. The exact time periods covered for each of the topics addressed will be evident from the contents of the report.

In general, the period under review is 1994 to 30 June 2005. However, insofar as it concerns cashflow analyses conducted on the bank accounts of Zuma, we extended the period beyond 30 June 2005 in order to identify any further cash flows that may affect our findings. Generally this approach provided conservatively based conclusions and findings.

5 Procedures performed

The procedures performed by us were performed based on available facts, supported by documents and records.

The general procedures performed include:

A review of the relevant legal entities with regard to shareholding, group structures, office bearers and relevant business;

A review of the financial position of the relevant legal entities and persons;

An analysis of the source, flow, destination and beneficiaries of payments and the underlying reasons for the transfer of the funds;

Identification of relevant transactions that were accounted for in the financial records and commenting on the degree of compliance with generally accepted accounting practices and statutory prescripts; and

Reporting on our findings.

Additional specific procedures were performed, which are evident from the contents of the report and the manner in which it is presented. We were also requested to participate and assist with certain official inquiries conducted by the NPA.

The procedures performed in order to serve the objectives detailed in this report were carried out in different phases. The objective was a structured, all inclusive process that ensured the most complete analyses and consideration of information.

The different phases can be summarised as follows:

Consideration and evaluation of available evidence;

Identification of additional documentation and evidence that could assist us in serving the objectives of our involvement;

Consideration of additional documentation and/or evidence obtained; and

Compilation of the report on our findings.

A detailed exercise was undertaken whereby the available evidence and documentation were reconciled to the receipts issued during the search and seizures. This provided us with the

assurance that all of the documents and evidence that were obtained during the course of the investigation were made available to us for consideration.

All of the documents and evidence were physically reviewed in order to determine relevance insofar as they concerned the part of the investigation that we were responsible for.

Transactions, by nature, are supported and underlined by a number of actions through individuals representing entities and/or their own interests. In order to understand and explain the nature and forms of the transactions one has to consider these actions. This contextualises the eventual outcome of the transactions or attempted transactions.

Any business engages into individual transactions and when classified together over time periods the individual transactions, which represent results and the financial position of the business. We attempt to describe the transactions and eventually the drivers of the transactions derived from the approach described. The drivers of any business comprise both internal and external sources.

The extent of the available documentation required the electronic scanning and storing of documents in a database for purposes of conducting electronic searches that furthermore enhanced our capability to identify relevant documentation.

The scanning was performed under our supervision in order to ensure completeness and accuracy. The completeness of the scanning was continuously tested throughout the period of our fieldwork. We are therefore able to provide the assurance that all of the documents and/or evidence were considered in the compilation of this report insofar as they concern the stated objectives.

A large amount of electronic data was also obtained during the search and seizure procedures that were carried out by the NPA. Certain technical procedures were performed by independent computer forensic experts in order to preserve any possible evidence that might be extracted whereafter the data was handed over to us for consideration. As in the case with hardcopy documents, we used the data obtained insofar as we deemed it relevant to the objectives of our investigation. This process was supplementary to the primary exercise of reviewing and considering of hardcopy documents.

It became evident during the conducting of the procedures in the fieldwork stage that the financial records, both in electronic format and hard copy, are not complete. This is evidenced by *inter alia* the fact that general ledger information does not agree with the audited financial statements. A process of reconstruction was used, applying knowledge and expertise particularly related to our field of expertise, to complete, as far as possible, a set of accounting records that supports the information reflected in the audited annual financial statements. Electronic information seized during the official searches conducted, information reflected in the respective audit files and information extracted from other documentary support were used to complete this exercise.

Furthermore, the information available in support of the daily transactions entered into by the respective affected entities was not in all instances sufficient to identify transactions that might have been relevant to the objectives of our mandate. In order to provide additional assurance and to ensure an effective analysis of the information at our disposal, we analysed all of the bank statements that were made available, and identified additional bank statements and information that might still be in the possession of the relevant banks. This is not a complete exercise due to the fact that some of the banks were not able to provide all of the information requested. However, this procedure was performed as a support procedure rather than a procedure to conclusively identify the relevant transactions and we were therefore able to conclude that the obtaining of additional outstanding information would not affect the findings noted in this report.

6 Sources of documents and records obtained

The documentation and/or records used in performing our investigation were neither tested nor verified in order to ascertain the authenticity thereof, unless specifically so reported. We have provided in the footnotes to the report, references to the documentation and sources relied upon in support of our findings and conclusions.

There are two sets of manual numbers that are reflected on the documents relied upon.

The referencing system used by us indicates the original exhibit number determined by the NPA on the top right hand corner and a sequential number allocated by us, is reflected in the bottom right hand corner of each document.

It is possible to ascertain from the NPA reference number, the date, location and source of each document.

We refer to both the numbers on each document in the footnotes of this report. The NPA reference numbers are in parenthesis.

The supporting documentation has been arranged in a manner to facilitate ease of use and support for each of the main sections in this report. The numerical references follow the chapter headings of this report eg exhibits relevant to chapter eight start with the digits 08 followed by a sequential number that serves to facilitate quick and easy access to the document referred to. Sequences 01 to 07 were not used, as the chapters one to seven serve as the introductory part of the report and as a consequence do not require any documentation as support.

In summary, the following sequences are used:

- 08 – Period leading to the establishment of Nkobi group;
- 09 – The Nkobi family;
- 10 – Jacob Zuma, associated persons and entities;
- 11 – Payments made to and on behalf of Zuma;
- 12 – Financial position of Zuma;
- 13 – Acknowledgement of debts;
- 14 – Zuma's register of members' interests;

- 15 – Revolving loan agreement;
- 16 – Shaik as advisor to Zuma;
- 17 – Zuma and early business opportunities of the Nkobi group;
- 18 – The Combat Suites;
- 19 – Political office bearers and the Nkobi group;
- 20 – Supply and personalisation of Drivers' Licence Cards;
- 21 – The financial position and performance of the Nkobi group; and
- 22. Financial position of Shaik.

The resulting of work performed out in order to provide an analysis and summary of the statutory information of the entities is reflected in a separate document that should be read in conjunction with the contents of the report.

We relied on a number of documents which were translated from French to English. The translations were facilitated by the investigation team of the NPA. We understand that the translator used by the NPA is a sworn translator. We relied on the translated versions for purposes of completing this report. It was deemed necessary to include this report as the actions of the Nkobi group and of the Thomson group are inter-related and, as a consequence, relate to the findings in this report. The accuracy of our findings, where the French translations were relied upon, depends on the accuracy of such translations. References to documents, translated from French, are indicated in the relevant footnotes.

7 Context of issues dealt with in this report

We identified documents and information that we deemed relevant to the issues identified to be addressed in this report. As indicated, these have been collated and cross-referenced to the factual findings. To place the factual findings in context, we prepared this section of the report and furthermore generally the sections are introduced with a summary of our findings, assumptions, inferences and conclusions reached. In order to avoid duplication, we did not cross-reference the introductory paragraphs. The introductory paragraphs as well as this section in our report should therefore be seen as providing a background rather than statement of fact or conclusions reached.

In the present case, we found that the relationship between Shaik and Zuma was woven between a whole host of persons and entities; hence it was necessary to investigate and describe these persons and entities. These parties have been described in detail with reference to the Nkobi group³.

Shaik, as a member of the ANC purported to act on behalf of the ANC in the pursuit and consideration of business opportunities, especially with Malaysian business from the early part of 1994. The late Thomas Nkobi (hereinafter referred to as the late TT Nkobi), who was the Treasurer General of the ANC at the time, was aware of Shaik's activities and in some instances accompanied Shaik on visits in Malaysia. It was during this time that the concept of a structure of businesses, aligned with a political party (we understand – similar to the Malaysian Bumiputera model), was considered and suggested by the late TT Nkobi to Mandela and the ANC as an economic model for the post-apartheid South Africa. The late TT Nkobi passed away shortly after the communication with Mandela and was replaced by Reverend M Stofile (hereinafter referred to as Stofile) as Treasurer General of the ANC. The economic model proposed by TT Nkobi was not endorsed by the ANC and Shaik was informed accordingly. This marked the commencement of a period where Shaik continued his endeavours in the name of a group of companies which is now generally referred to as the Nkobi group. It is during this time (early 1994) when the name of Zuma started surfacing in documents at our disposal. The documents indicate that Shaik ceased to act on behalf of the ANC in his business dealings (in an official capacity) but continued his business dealings under the name of the Nkobi group, involving Zuma in various instances.

³ Refer Appendix 2

Shaik is a director of a number of legal entities. Most of these legal entities formed part of the Nkobi group. The shareholdings in these entities were structured in such a manner to ensure the shares in Nkobi Holdings were held by various entities. Shaik eventually had effective control over the group, *via* his shareholding in Star Corp. SA. The Nkobi Group has its origin in the early parts of 1995 when the first companies were incorporated.

Indications are that a relationship between Shaik and Zuma existed and had its origin during the years that pre-ceded the time when the Nkobi group was set up. The relationship between Shaik and Zuma, prior to the existence of the Nkobi group, is not covered in this report.

Except arguably, in the case of pure friendships and platonic relationships, most relationships have a financial implication on the parties participating in such relationships and, more often than not, the financial implications on the parties are inter-related.

We also examined the business of the Nkobi group in relation to some of the projects in which it was involved. This includes the Arms Deal and in particular the Corvette programme. We examined whether Zuma acted in the advancement of the business of Shaik/Nkobi group due to his relationship with Shaik and the Nkobi group. Where we found that he had done so, we have described the nature and extent of his actions. We investigated and identified instances where Zuma ostensibly acted and intervened on behalf of the Nkobi group and instances where reference is made to Shaik's and/or the Nkobi group's relationship with Zuma by Shaik in correspondence by third parties. It is evident that Zuma, throughout the existence of the Nkobi group, at various points and especially with regard to the relationship of the Nkobi group with the Thomson group of companies, attended meetings and visits with representatives of the Nkobi group, on issues that were of interest to the Nkobi group⁴.

The financial implication of the relationship between the parties is another aspect that was investigated. This was predominantly dominated by payments that were effected by Shaik and/or an Nkobi group entity for and on behalf of Zuma.

The first payment identified was on 25 October 1995, shortly after the ANC dismissed the concept of integration of the ANC with business outside the structures of the ANC, proposed and developed by Shaik and the late TT Nkobi. This marked the establishment of the Nkobi group. These payments were effected under the title of Shaik acting variously as "*Financial Advisor*", "*Economic Advisor*" and "*Formerly Appointed Financial Advisor*" of Zuma⁵.

Zuma, in his personal capacity, did not have access to sufficient funds solely from his position as an official employed by the South African Government, to fund his lifestyle and as a

⁴ Refer paragraphs 18 and 19

⁵ Refer paragraph 19

consequence had to rely on funds from external sources such as borrowing from financial institutions, Shaik, third parties and the Nkobi group. This necessitated, *inter alia*, the Nkobi group, Shaik and other entities, related to the Nkobi group, settling debts and other personal expenses for and on behalf of Zuma in excess of R4 million during the period covered by this report.

The eventual manner, in which the transactions were recorded in the accounting records of the entities, as well as in the personal balance sheets of Shaik and Zuma, indicate that none of these entities treated the payments as loans to Zuma up until the matter of State vs Schabir Shaik and others and even then the full balance “owing” (in the event that these payments could be regarded as loans) by Zuma was not disclosed or recorded.

These payments stretch over the period October 1995 to 1 July 2005. This practice ceased on 1 July 2005, shortly before Shaik “resigned” as “Financial Advisor” of Zuma on 13 July 2005. The General Power of Attorney that Shaik had on the bank account of Zuma at ABSA was formally cancelled on 13 July 2005.

A part of the funds advanced to and on behalf of Zuma was written off as development costs against Prodiba (an investment that the Nkobi group held). This write-off occurred against a fictitious non-distributable reserve created in the records of Nkobi as it had not had any distributable reserves at the time. The write-off was reversed after having being discovered by the NPA during their investigations. Therefore we investigate the investment that Nkobi had in Prodiba.

Furthermore, there are instances where funds flowed from Zuma to Shaik and/or entities forming part of the Nkobi group. Most of the transactions were effected by Shaik as he was in control of Zuma’s accounts and carried a general power of attorney on Zuma’s local accounts. These transactions have been identified and total an amount in excess of R1.2 million.

Zuma experienced financial difficulty from as early as January 1995, when he was issued a letter of demand from his banker at the time with regards to repayments on a mortgage bond that was in arrears.

A general pattern emerges from the analysis of the financial position of Zuma indicating that debts were incurred at times when, as is evident from the subsequent repayment history, he could not settle the debts with the means at his disposal. There were times when not even the

first payment due cleared the bank. As a consequence, Zuma's financial position deteriorated over time to such an extent that legal proceedings were instituted for the recovery of such debts.

Shaik involved himself in dealing with the financial affairs of Zuma over time. He presented himself on numerous occasions to various institutions as the "*Financial Advisor*", "*Economic Advisor*", "*Special Advisor*" and "*Formerly Appointed Financial Advisor*" of Zuma and, as a consequence, the institutions communicated directly with Shaik in order to resolve the financial position of Zuma. Zuma's financial position did not improve during the time that Shaik acted as his financial advisor⁶.

We analysed the activities of the Nkobi group and determined that the group activities comprised *inter alia* of investments in two main entities, ie Thomson-CSF, that in turn had an interest in ADS (a company that formed part of the GFC, which was awarded a contract in the Arms Deal amounting to at least R1.3 billion) and Prodiba (a company that was awarded the contract for the supply and personalisation of the South African Drivers' Licences). The Frigate Consortium comprised the German Consortium, which is not the subject matter of this report, and the Thomson Consortium, comprising Thomson-CSF (France) and ADS. The Nkobi group eventually held its investments in the Thomson group *via* Thomson-CSF.

The Nkobi group held one-third shareholding in Prodiba together with Thomson-CSF Holding (SA) and Denel.

Apart from the two main investments noted above, the Nkobi group had interests in projects that were hosted in various special purpose vehicles. It is evident from the information reflected in the accounting and other records of the special purpose vehicles that the projects were not particularly profitable and that the Nkobi group had great expectations of the returns from the association with Prodiba and Thomson particularly in the early years.

The Nkobi group financed its operations mainly from the facilities provided by commercial banks on overdraft. Parallel to the bank accounts of the Nkobi group were the bank accounts of Shaik. It is evident from the investigation that Shaik and the Nkobi group were required to carefully manage the available cash resources and, as a consequence, had to make various representations to the banks, especially ABSA, due to their overdraft position. At times, the

⁶ Refer paragraph 12

Nkobi group exceeded its overdraft limits and the bank, due to insufficient funds being available, returned material numbers of cheques and debit orders.

Zuma experienced a similar position. Despite the position in which the Nkobi group found it continued to support Zuma and made payments from bank accounts within the group. Shaik also continued to make payments to and on behalf of Zuma in his personal capacity. Even during times of financial difficulty, the cumulative amount paid to Zuma by the Nkobi group and Shaik over time had a direct relationship to the extent the Nkobi group went into overdraft. We could not find any evidence or indication of an intention on the part of the Nkobi group and Shaik to recover such payments from Zuma.

The analysis of the financial statements of the Nkobi group indicates that account balances were presented, especially from 1999 onwards, which resulted in a fundamental overstatement of the net asset position of the Nkobi group. A surplus position was reported while the group was in a deficit position.

The frequency of the payments to Zuma was of such a nature that it could be concluded that the Nkobi group and Shaik provided continuous financial support to him during the period under review. This is also evident in the steady growth of the cumulative balance of payments made.

Shaik viewed his political connectivity as a key attribute to the business of Nkobi. This featured in many forms. A key person viewed that way was Zuma, whose name was used in many ways and forms and as will be evident contributed at least on some occasions to that. It could be argued that in some cases he knowingly or tacitly approved of this practice.

It became apparent that there were more persons fitting this category (in support of Shaik's claimed political connectivity) that featured in the records of the Nkobi group. We investigated these in the context of the relationship with Zuma. The names of the individuals will be evident in the detailed findings. The individuals received in some way or the other financial benefit from Shaik.

When compared to Zuma, it is evident that apart from isolated instances, Shaik relied much less on his connectivity with the individuals, if at all. The financial benefits received (without discounting the principle) are in value and number of occurrences far less when compared to Zuma. In the same context we attributed a part of our report to the attempts of the Nkobi family to cover the value for use of the family name, following the death of TT Nkobi, in this instance without success.

8 Period leading to the establishment of Nkobi group

8.1 Introduction

Indications are that Shaik attempted to establish business links with various parties in the period leading to the establishment of the group of companies that is now generally referred to as the Nkobi group. It is also generally known that Shaik purported to represent the ANC on various occasions, either in an official or unofficial capacity. We are not in possession of all of the documents reflecting his actions during this early period (prior to and including 1994) and as a result we are not in a position to provide a complete account thereof. However, the available information and documentation are dealt with in this report in order to contextualise the existence of the Nkobi group and the interactions that were effected with various third parties, political figures and the ANC. Shaik's involvement with the ANC stretches far back and that his interaction with persons and organisations referred to in this report originated prior to the period covered by this report. This report deals with information known to us and covers the period from 1994 onwards.

Shaik interacted with various parties under the banner of the ANC in the period leading up to 1994, whereafter he continued in his own name and/or under the name of entities that now form part of the Nkobi group. There were also some transactions that were entered during the period leading to the creation of the Nkobi group that we were not able to trace in any official records of Shaik and any of the Nkobi companies. We are not in possession of the records of the ANC hence we could not confirm the transactions and none of the Nkobi companies existed at the time. Furthermore, we are not aware of any accounting records of Shaik that existed covering the period from 1994 to the creation of the Nkobi group.

It is evident from the analysis of the financial position of the Nkobi group that Shaik in his personal capacity initially provided funding (in the form of loans) in order to create substance in the then companies. We have assumed that the funding for the loans provided by Shaik originated from the earlier transactions. The group operated on very low levels of equity with very limited shareholder funding. In essence the capital that existed in the group was nominal and only supplemented with the addition of retained earnings during the latter years. This meant that until very late during the period covered by this report the Nkobi group had to rely on funding from its associates, long term financing of capital assets acquired and short term funding from its associates and the commercial banking sector. The group generally had no substance in its capital base.

It is generally known that the Nkobi group was named after the Late TT Nkobi, previous Treasurer General of the ANC. Shaik in his earlier endeavours in the business world, as a representative of the ANC and/or in his personal capacity, interacted on various occasions with TT Nkobi.

8.2 Establishment of Floryn Investments

Floryn Investments was established as an entity at the time when Shaik pursued business ventures with TT Nkobi particularly in Malaysia when he was purportedly acting on behalf of the ANC. This entity was at least viewed as part of the structure that would have been required to act as a vehicle and/or host for the ventures that were considered at the time. The strategies and the plans as envisaged by Shaik and TT Nkobi at the time came to an end on 9 May 1995 by way of a letter from Stofile indicating that *“The initiative of the late Cde TT Nkobi for which he proposed you to head would not be pursued or authorised”*. The person referred to in this letter as “you” is Shaik.

However, Floryn Investments did not cease to exist on 9 May 1995 but continued in the newly established Nkobi group, eventually as a 10% shareholder in Nkobi Holdings. Floryn Investments became a 20% shareholder in Nkobi Holdings on 3 June 1996 but this was subsequently reduced to 10% on 15 January 1997. The payments made on behalf of Floryn Investments through the Nkobi group, is discussed elsewhere in this report⁷.

The company was incorporated on 15 June 1994⁸ with an authorised share capital of 2 000 ordinary shares at a nominal value of R1 per share⁹. One hundred shares were issued to Prakash Ramlal on 15 June 1994¹⁰. The company registration number is 1994/004032/07. According to the share transfer register, Ramlal transferred 100 ordinary shares to Shaik on 16 June 1994¹¹.

Shaik was the public officer from incorporation until 2 February 1999 when Isaacs was appointed as the public officer¹². Desai Jadwat was appointed as the external auditor on 15 June 1994. On 29 September 1999, DS&T were appointed as the external auditors¹³. Prakash Ramlal was appointed as a director on 15 June 1994 and resigned on 16 June 1994¹⁴. Shaik was appointed as a director of the company on 16 June 1994¹⁵.

⁷ Refer paragraph 21.4

⁸ Refer to 08 001(1 02560 File 162)

⁹ Refer to 08 002 (1 02563 File 162)

¹⁰ Refer to 08 003(90 00008 Box 295)

¹¹ Refer to 08 0005 (90 00006, 90 00048 Box 295)

¹² Refer to 08 0006 (90 00033 Box 295)

¹³ Refer to 08 0007 (1 02565 File 162)

¹⁴ Refer to 08 0008(1 02566 File 162)

¹⁵ Refer to 08 0008-08 0010(1 02567 and 1 02568 File 162)

In the Memorandum of Association of the company it is stated that the main business of the company is to invest in all types of businesses, properties and institutions¹⁶.

In a document styled “*Details of Nkobi Group of Companies*”¹⁷ it is stated under the heading “*Floryn Investments (Pty) Ltd*” that “*This company, which was initially established to provide donations to political parties, has now become dormant and has no assets or liabilities*”.

This document reflects information contrary to that is contained in the records at our disposal. The company’s main business as described in the Memorandum of Association does not include the business of providing donations to political parties; there are various instances indicating that the company was not dormant as described therein as well as the Annual Financial Statements.

We are in possession of all of the Annual Financial Statements of Floryn Investments from 1997 (first date of preparation of Annual Financial Statements) to February 2004. A detailed review of the financial statements, discussed elsewhere in this report,¹⁸ indicates that the company was dormant for the period. This is also supported by a draft report of directors to the members of Floryn Investments representing that the company was dormant since 15 June 1994, date of incorporation, to that date¹⁹.

A review of the financial records of the Nkobi group indicated²⁰ substantial movements of funds recorded against various loan accounts and reflected on summaries of “*loan accounts*”. A detailed breakdown of the movements is discussed elsewhere in this report²¹. Names of individuals, in no particular order, that ostensibly benefited from the existence of Floryn Investments are *inter alia*:

Zuma;

Flisane Investments (an entity related to Maharaj);

Walter Felgate;

King Goodwill Zwelithini;

¹⁶ Refer to 08 0011-08 0014(212 000240 to 212 000243 specifically 212 000241 Box Z212)

¹⁷ Refer to 08 0015-08 0025(120 005191 to 120 00597 specifically 120 005192 (Box Z099) and 120 005247 to 120 005250 specifically 120 005 249 Box Z099)

¹⁸ Refer paragraph 21.6

¹⁹ Refer 08 0026 (DJ006196 Box 9)

²⁰ Refer paragraph 21.6

²¹ Refer paragraph 21.6

ANC; and

Mlaba.

Payments to the above were effected, mainly in the period 1995 onwards. There are also indications that these payments were at some points also regarded as dividends paid, presumably by Nkobi Holdings, as this is the only known investment that Floryn Investments carried²². The description of the payments as dividends cannot be reconciled with the absence of any dividends from Nkobi Holdings unless a *quasi* dividend was paid to parties that were undisclosed shareholders of the company.

Furthermore, there were various bank accounts in the name of Floryn Investments with various commercial banks within South Africa.

Lastly, Floryn Investments became a 20% shareholder in Nkobi Holdings on 3 June 1996; this was subsequently reduced to 10% on 15 January 1997.

8.3 Shaik as representative of the ANC

The early involvement, by Shaik, in business ventures primarily as a representative of the ANC is noted in various documents. Shaik did not only act in the capacity as a person in charge of business development on behalf of the ANC, but also assisted during elections.

Shaik's role during the elections is evident from the letter that he received from Stofile on 9 May 1995 where it was stated that he, Shaik, had been appointed to assist with the last election²³.

Further proof of his involvement in that capacity is a draft that was filed in a file marked "A.M. Moolla" and dated 11 March 1996 which appears to have been prepared on behalf of M Haffejee at A.M. Moolla by Shaik²⁴. The letter is addressed to "The ANC, The National Chairman, Mr. Jacob Zuma". Shaik indicated on the letter "Mehmoud, Kindly perouse(sic) the above and if satisfactory copy on your letterhead, Regards S. Shaik:"

The letter continued to deal with the issue that was raised with Zuma as follows:

"We wish to note our concern on the above matter, in which our group and the late Thomas Nkobi, - in his the in capacity as Treasurer General, - were involved in importing clothing and

²² Refer Appendix 1

²³ Refer paragraph 8.3

²⁴ Refer to 08 0027 (80 07874 Box 119)

other items for and behalf of the African National Congress for use during the 1994 National Elections.

As you would no doubt appreciate that this matter is long overdue, and from our perspective, we would be keen to resolve this matter as soon as possible. We have prepared an Income and Expenditure account reflecting all issues of this transaction and enclose a copy herein, for your perusal.

We believe that his information is extremely sensitive and as such tried to convey this message to Mr Stofile in our previous requests to his office soliciting a meeting with him directly. In this regard, the gravity of this matter seems unappreciated.

You assistance in resolving this deadlock will be welcoming.”

TT Nkobi, in his capacity as Treasurer General of the ANC wrote to one Ismail Coovadia on 2 June 1994²⁵. In this letter TT Nkobi indicated that he intended to visit Malaysia on Monday 6 June 1994 and requested Ismail Coovadia to set up appointments with “...companies and government offices you discussed with Schabir Shaik.”

It appears that Ismail Coovadia had some financial association with the ANC as TT Nkobi indicated in the abovementioned letter to him “We have not been able to reach you by telephone today, so please try and phone us so that we can discuss your financial situation and any other details.” TT Nkobi also referred to business initiatives that the ANC intended to embark upon. Details of the initiatives were not mentioned in this letter.

In a fax to Shaik dated 13 July 1994, from a person by the name of Carina Chow, who appears to have been in Bangkok at the time. The purpose of the fax was to inform Shaik that YD Datuk Wira Halim Saad of Renong Berhad wanted to meet with Shaik as soon as possible in order to discuss “...the SA Project”. The proposed date for the meeting was 14 July 1994²⁶. We have not located any evidence that the proposed meeting took place as proposed.

On 10 August 1994, TT Nkobi wrote to Mandela in his capacity as the President of the ANC²⁷. It is indicated in the letter that it was also distributed to Mbeki, Alfred Nzo, Trevor Manuel, Jay Naidoo, Walter Sisulu and Cyril Ramaphosa. The letter was prepared on the ANC letterhead

²⁵ Refer to 08 0028(P76)

²⁶ Refer to 08 0029 (P77)

²⁷ Refer to 08 0030-08 0032(P78 to P80)

and informed Mandela of, *inter alia*, the following as regards business ventures with Malaysian business:

TT Nkobi and Shaik visited Malaysia in June 1994 to meet with certain “...*key and extremely prominent businessmen in the Malaysian economy*” and that the meetings were arranged by Ismail Coovadia who is mentioned to be the ANC’s “*Chief Representative*”. Furthermore the persons with whom they met were also known to the “...*Prime Minister, Mr Mahathir, his deputy Mr Anwar Ebrahim, the minister of Finance, Mr Tun Daim, the Treasurer General of the Amno Party, former Finance Minister, and currently the economic adviser to Malaysia and Vietnam.*”

They were briefed on the scope of investments and the intentions of the Malaysians to invest in South Africa and “...*particularly their willingness to include our organisation in their investment strategies.*”

The inclusive strategy of the Malaysians was based on their understanding that the ANC is indeed in a strategic position to “...*guide their investments within the context of the RDP*” and furthermore “...*they have come to share our common belief and concern that our organisation needs to be financially strong and secure and that we ought to move away from a past where we had to depend on the international community for funding of our various programmes and the normal functioning of a political party*”

They would be in the position to immediately assist the ANC to the value of R40 million “...*in removing our current and growing bank debt.*”

TT Nkobi, instructed Shaik, Tempe Lexeme (then Head of Finance of the ANC) and Halim Daniels (then external auditor of the ANC) to work on “...*the structures required to be put in place to develop these joint initiatives. This structure is envisaged as being outside of the ANC, but with necessary reporting mechanisms established.*” It was suggested that the reporting should be done to Mandela as President of the ANC, the Secretary General and the Business Projects Co-ordinator within the Finance Division. It was stressed that “*The nature of the relationship would require that all matters relating to these ventures be dealt with sensitivity and with confidentiality.*”

From the letter it can be inferred that the ANC, represented by *inter alia*, Shaik, was in discussions with Malaysians as regards potential investment in South Africa that would yield some financial return for the ANC, but outside of the normal structures of the ANC.

On 21 September 1994 a person by the name of Nik Mamaruddin faxed Shaik in his capacity as representative of the ANC²⁸. The fax was sent to Shaik in Durban and was captioned “Appointment to meet Hon. Dato’ Sri Mohd Najib (Minister of Defence, Malaysia)”. Nik Mamaruddin confirmed that he had contacted the office of the Honourable Dato’ Sri Mohd Najib and confirmed that he would have been out of the country during the week commencing 26 September 1994.

Nik Mamaruddin furthermore confirmed that he had arranged a meeting on 4 October at 04:00 in the afternoon with that office. In a handwritten note, made by Shaik on the original fax it is indicated “Copy to: Jean-Marc – ATE”. ATE, also known as Advanced Technologies and Engineering is an aeronautical service provider that specialised in avionic solutions²⁹ and was allegedly established in 1984 with a track record as a leading player in the South African avionics industry³⁰.

TT Nkobi passed away on 25 September 1994 and was replaced as Treasurer General of the ANC by Stofile during late 1994 to early 1995.

On 6 October 1994 Shaik, as a representative of the ANC, was sent a fax under the cover of Renong Berhad, based in Kuala Lumpur³¹. In this fax a person by the name of Florence indicated that a person by the name of Nik Kamaruddin had requested her to relay a message to Shaik that the Malaysian Minister of Defence, Honourable Dato’ Sri Mohd Najib, was available to meet with ATE Chairman and Shaik on 12 October 1994 at a venue in Kuala Lumpur.

We are in possession of a black note book (hereinafter referred to as “the black notebook”) with Renong in gold on the front cover of the notebook³². The black notebook appears to have belonged to Shaik from as far back as 1994. Most of the notes are in cryptic form. The notes represent a mix of minutes of meetings, share structures, planned trips, phone calls etc.

It is evident from the notes that are contained in the black notebook that they relate to early discussions that Shaik had with various individuals in his role as business developer for and on behalf of the ANC. Considering the period during which these notes were prepared in context with the letter that TT Nkobi wrote to Mandela and others, referred to above, it would it would

²⁸ Refer to 08 0033(80 11658 Box 135)

²⁹ Refer to 08 0034-08 0035(80 11619A-B Box 134)

³⁰ Refer paragraph 19.2.1

³¹ Refer to 08 0036 (80 11659 Box 135)

³² Refer to 08 0037-080110(80 03935 to 80 04008 Box 97)

appear that these were discussions that took place under the instructions and guidance of TT Nkobi.

It is not clear as to whether any of the intended ventures materialised in whole or in part. However, from the notes that we include below it is evident that there were discussions at that point for the ANC to obtain an interest, or at least to participate, in the Arms Deal. It will be evident from the part of the report dealing with Thomson-CSF that the Nkobi group eventually shared in the Arms Deal³³.

A note on, presumably, a meeting that took place on 12 October 1994 appears in the black notebook as follows³⁴:

“12/10/94 ATE/SS/P. Lee/

- 1) JM: Shareholders meeting approved equity participation in SA+ Ma. Trf of Technology, skills, R+D.
Rooivalk as first project with other developments forthcoming developing an aeronautical capability; JM discussed this matter with his attorney and was assisted accordingly.*
- 2) Looking of R/20% equity offshore for present sensitivities and as option to list on JSE, visibility can emerge. Luxemburg as ref. entity.*
- 3) Air-Rod option; JM to study this option + advise accordingly*
- 4) JSE – 2 to 3 years to be listed.*
- 5) What is (sic) the goals of ATE/Renong in Malaysia?
Funding Air-Rod – Renong – ATE (Loan from Renong)
Other factors:
Air-Rod self financing
Servicing Charge BO*
- 6) Starting-up - requirements*
- 7) Political lobbying across the defence force – Nik to handle this part*
- 8) Non payment of royalties + intellectual property rights.*

Plan of Action

³³ Refer to paragraph 18

³⁴ Refer to 08 0111-08 0112 (80 03 939 to 80 03940 Box 97)

1) *Agree on JM's proposals*

1.2) *30m – 20%*

1.3) *50 – 40 -10*

1.4) *2m start-up capital*

Re 20%

NK 25%

WLon 55%”

The minutes referred to above were followed by a note in the black notebook that reads as follows³⁵:

“Ministers blessing ATE

January trip MK problem

ATE: 1) SS visit to ATE two occasions in SA one by Nik + Dato Hakim

2) ATE visit to Malaysia to meet Renong + Nik + to explore options of JV's + developing joint strategies;”

The black notebook contains another note that is dated 12 October 1994³⁶. This note is after the note discussed above in the sequence that the pages follow. The note reads as follows:

“12/10/94

Min.

1) Joe Modise – Blessing S.S local content know how base S African ATE no Israeli

2) SS Complete brief on ATE + Renong

3) Min. Modise fostering of the South – South Co – op. Technology transfer + skills transfer.

4) Modise – Dec trip.

5) Renong visit ATE Dato Halim + Nik

6) ATE/SS/KL – 1st time

JV options

Regional/S.E. presence

7) ATE 2nd trip – Conclude on JV – Start-up operations – Jan 95

JM: R+D – Mik 29

³⁵ Refer to 08 0113(80 03942 Box 97)

³⁶ Refer to 08 0114-08 0116(80 03943 to 80 03945 Box 97)

Drone:

Aeronautical Avionics

Jet turbines for long range missiles

Progress on Rooivalk

Closer look at Rooivalk

22nd – (5 days)

Maritime

Draft proposal: ATE strategy

22nd Tues

23rd

24th

25th

26th

27th

Migs

April/May

UEC:

Nik: *Cellular ph:010 348899”*

A note, in the black notebook, on a page from which the bottom part was torn, out reflects on the top part as follows³⁷:

“Mid – November

- 1) Agreement on principles*
- 2) Proposal to minister – Nik, JM, PL*
- 3) JJ / Sapura*
- 4) Geneva date confirmation. (Nik Kamatodien) (Peter Lee)*

Required by PL

- 1) Agreement from JM attorneys.”*

The black notebook reflects a schedule of travel that appears to be that of Shaik as follows³⁸:

“October Schedule

³⁷ Refer to 08 0117(80 03947 Box 97)
³⁸ Refer to 08 0118(80 03 943 Box 97)

25th – 27th London (3 days)

27th, 30th Geneva (4days)

Float offshore Co. before Geneva meeting.

25th – 27th

27th Thurs] Metro Tournaire

28th Fri]

29th] Break

30th]

Start up in Malaysia

15th Jan 1995 (was November and then replaced by Jan)”

Without repeating the notes included above, in summary there are a number of salient features that are contained in the notes:

- They were prepared at the time when Shaik was still acting under the vision shared with TT Nkobi, although shortly thereafter, TT Nkobi died;
- The notes relate to an involvement in the arms industry;
- Various sectors of the arms industry were considered;
- UEC, whose name was subsequently changed to ADS, was already under discussion. ADS, as will be evident from this report, was the entity that formed portion of the GFC and was selected for the supply of the Combat Suites for the Corvettes to the SA Navy; and
- Joe Modise’s blessing was considered during the discussions.

The documentation at our disposal indicates a clear distinction between the period leading into 1995 and the period thereafter. This is supported by the fact that Shaik was excluded from acting on behalf of the ANC, as is evidenced in the following paragraph.

8.4 Shaik’s exclusion from acting on behalf of the ANC

On 9 May 1995, Stofile (Treasurer General of the ANC) wrote to Shaik on an ANC letterhead³⁹. The letter is titled “*The ANC and your position*”. Shaik was informed in the letter that he,

³⁹ Refer to 08 0119(P82)

Stofile, had returned from a “*consultative meeting*” with other officials of the ANC. Stofile informed Shaik that the meeting was briefed with the reports provided by Shaik “...*in writing and by way of answering my questions.*” Stofile informed Shaik that he, Stofile, insisted that Shaik’s status within the ANC be defined “*categorically*”.

Shaik was informed in this letter that:

“The initiative of the late Cde TT Nkobi for which he proposed you to head would not be pursued or authorised...”

“You had been appointed to assist with the last Election and as such have no position within the ANC...”

“My communication with you on behalf of the ANC should come to an end, including imminent programmes or plans...”

Stofile further went on to state “*This, comrade, throws all our plans for Malaysia and elsewhere completely overboard. I regret this terrible inconvenience and personal embarrassment for me*”.

It can therefore be assumed that, with this letter, the efforts by Shaik in his capacity as representative of the ANC in developing business and other ventures *inter alia* with the Malaysians ended. The ANC, however, did not end its efforts to maintain the ties already built as is evident from the letter discussed below.

We are in possession of a letter ostensibly from Stofile, in his capacity as Treasurer-General of the ANC⁴⁰. The letter is dated 9 May 1995 as is the case with the letter discussed above, but it is not signed, neither is it on letterhead. It is addressed to The Executive Chairman, Dato Halim Wira Saad of Renong Berhard. This letter was filed in a file at Nkobi styled “*Renong*”. A signed version of this letter on an ANC letterhead was handed in as an exhibit during the matter of *State vs Schabir Shaik and others* by his legal representatives⁴¹.

In this letter, Stofile indicates that he would visit Malaysia on 11 to 14 May 1995 and that the purpose of the visit would be to introduce himself as the Treasurer-General of the ANC, Member of Parliament and the Chief Whip for the ANC in the House of National Assembly. He also indicated that he had been briefed by Shaik regarding the activities of Renong in South and

⁴⁰ Refer to 08 0120-08 0121 (80 11637 to 80 11638 Box 135)

⁴¹ Refer to 08 0122-080123 (P85 to P86)

Southern Africa and wished to fully acquaint himself therewith. It was also his intention to fully understand the investment requirements and how best he, Stofile, could assist in the Renong region.

It is thus clear that the ANC did not discontinue the efforts that were put in place by Shaik and that the letter from Stofile was merely informing Shaik that he is no longer required to fulfil that position.

A second version of the unsigned letter, referred to above, is attached to a document that appears to be a continuation of the letter. However, on closer analysis, it appears that the continuation of the document is a part of another document that was generated at the time. The continuation is more fully dealt with elsewhere in this report⁴².

The two letters from Stofile on 9 May 1995 differ. It is clear that the letter to Shaik was generated on a different letterhead and with a different font style to the letter discussed above. The possibility cannot be excluded that the letter discussed above and addressed to Renong was generated by Shaik possibly on behalf of Stofile. This assumption is furthermore supported by the fact that the font style and style of writing used on this letter is similar to that used by Shaik in his correspondence at the time.

The events discussed above lead to the establishment of a group of companies that is now generally referred to as the Nkobi group.

8.5 Establishment of the Nkobi group

It is not clear when exactly the activities of the Nkobi group commenced. However, it is stated in a brochure of the Nkobi group⁴³ that it was formed in 1995 and furthermore that *“The name Nkobi, is in tribute to the late Thomas Titus Nkobi who served the African National Congress as National Treasurer for 27 years until his demise. The late Nkobi was also a senior member of the National Executive Committee, (NEC) and the National Working Committee (NWC) of the ANC and until his death had served as a parliamentarian in the National Assembly.”* It continues to state that *“His commitment to forming a business organisation premised on the principles of the RDP was the focus of his thoughts and efforts particularly in the latter part of his life. Underlining his strategy was the fundamental principle of black economic*

⁴²

Refer paragraph 17

⁴³

Refer 08 0124-080127 (120 006764 to 120 006768A (Specifically 120 06765) Box Z114)

empowerment in harmony with social and economic development. This endeared vision of the late Thomas Nkobi forms the cornerstone of the vision and mission of Nkobi Holdings.”

The above, read with the letter that TT Nkobi wrote to Mandela some weeks prior to his death⁴⁴ wherein it was suggested that joint ventures with the Malaysians would be financially beneficial for the ANC and that this inclusive strategy of the Malaysians is based on their understanding that the ANC is indeed in a strategic position to “...guide their investments within the context of the RDP” and furthermore “...they have come to share our common belief and concern that our organisation needs to be financially strong and secure and that we ought to move away from a past where we had to depend on the international community for funding of our various programmes and the normal functioning of a political party...” contextualises the origin of the Nkobi group.

The actual structure that was envisaged at the time when the letter was written by TT Nkobi is not known to us, however, notes reflecting the envisaged structure of the group⁴⁵, indicates characteristics of a structure which would be outside the normal structures of the ANC.

With the death of TT Nkobi and the appointment of his successor as the Treasurer General of the ANC, Stofile, the ANC decided and informed Shaik that “*The initiative of the late Cde TT Nkobi for which he proposed you to head would not be pursued or authorised*” on 9 May 1995. By this time the company styled Nkobi Holdings was already established as the first shares had been issued to Shaik on 27 February 1995⁴⁶ and thereafter to Mthetwa and Shezi on 29 September 1995⁴⁷.

Documentation at our disposal indicates that various permutations of shareholding in the Nkobi group were considered. The Nkobi group was developed over time with the addition of various companies. However, the date of incorporation of Nkobi Holdings is 27 February 1995⁴⁸. This is the date when the first shares were registered as having been issued.

We identified handwritten notes resembling records of discussions or considerations at the time when the group structures were discussed. These are structures that were not considered at the time when Shaik was purportedly acting on behalf of the ANC but thereafter. It is assumed that

⁴⁴ Refer paragraph 8.3

⁴⁵ Refer paragraph 8.3

⁴⁶ Refer to Appendix 1

⁴⁷ Refer to Appendix 1

⁴⁸ Refer to Appendix 1

the handwritten notes were generated during or before the date of incorporation as they do not reflect the initial structures that were put in place⁴⁹. It is however of significance to consider the contents of these records as they provide insight into the initial considerations when the structuring of the group was envisaged.

One of the notes, styled “*Share appropriations*” indicates three classes of shares, ie “A”, “B” and “C”⁵⁰. The “B” and “C” class shares are noted as having no voting rights. However, in respect of the “A” class, there is mention of the figures 2 000 minus 50 minus 50, leaving 1 900, with “SS” noted next to it. Although this document does not indicate the relevant entity, it is clear that it relates to the shares issued in Nkobi Holdings during the period 27 February 1995, the date of incorporation, to 29 September 1995, the date when 50 shares each were issued to Mthetwa and Shezi⁵¹.

A further document in manuscript indicates the names of “*S Shaik*”, “*T Mthetwa*” and “*B Shezi*” against the numbers “1 900”, “50” and “50” respectively⁵². Below the names of the individuals a note by the same author indicating the names “*Shezi*” and “*Zuma*” in brackets with “ANC” noted on top and “*Nominee document*” in brackets. The initials noted against the names are not legible. The word “*Trust*” appears to have been replaced by “*Nominee document*”. The shareholding would provide Shaik with a 95% holding and the other two individuals a stake of 2.5% each. It cannot be concluded from this document alone that the Zuma referred to in this document is Jacob Zuma. However, in the document that followed the abovementioned, the initials “*JZ*” are noted, again with a 2.5% interest⁵³ in Nkobi Holdings. The initials “*JZ*” are consistently used in documentation of the Nkobi group to refer to Jacob Zuma.

The use of the term “*Nominee document*” is an indication that the shareholding as set out in this document against the names of “*S Shaik*”, “*T Mthetwa*” and “*B Shezi*”, may not represent the actual shareholding and that some, or a combination of the indicated shareholders, were intended to be acting as nominee for and on behalf of the ANC and/or Zuma.

A further document details a group structure of various entities that *inter alia*, currently form part of the Nkobi group. Part of this document also indicates the following:

Narrative	%
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⁴⁹ Refer to 08 0128-08 0134 (BS1 to BS5 Docket file 303)

⁵⁰ Refer to 08 0135 (BS1 Docket file 303)

⁵¹ Refer to Appendix 1

⁵² Refer to 08 0136 (BS2 Docket file 303)

⁵³ Refer to 08 0137 (BS3 Docket file 303)

ANC	20%
TM	2.5%
BS	2.5%
SS	2.5%
JZ	2.5%
Unions	20%
No narrative	50%
Total	100%

It is evident from the above that the use of nominee shareholders was considered and not foreign when the Nkobi group structure was considered and that Zuma was considered as a shareholder whereby his shareholding would have been held in a nominee capacity.

Nkobi Holdings went through a number of share restructuring exercises during the period covered by this report. An analysis of the actual shareholding at approximately the time when the notes (conceptual shareholding) described above were generated, reflects the following:

Narrative	% conceptual	% actual
ANC	20%	Nil
TM	2.5%	2.5%
BS	2.5%	2.5%
SS	2.5%	95%
JZ	2.5%	Nil
Unions	20%	Nil
No narrative	50%	Nil
Total	100%	100%

The differences are noticeable in that the initial shareholdings for “JZ”, the Unions and that with no narrative were all in the hands of Shaik.

The unions, through the Workers College, eventually became a registered shareholder in Nkobi Holdings, holding 10% of the issued share capital. At no point was Zuma's name listed as a registered shareholder of Nkobi Holdings.

9 The Nkobi family

9.1 Introduction

This paragraph provides a background on this section of our report in order to place the factual discussion that follows in context. The statements made and conclusions reached in this paragraph are supported by documents at our disposal and in order to avoid duplication we do not refer to any exhibits in this introduction.

It is evident from marketing material as well as the contents of this section of our report that the Nkobi group was established on the back of the ideologies shared by Shaik and the late TT Nkobi.

They travelled, particularly to Malaysia in the days before the Nkobi group had been established and following the death TT Nkobi as well as the fact that the ANC informed Shaik that it would not support the proposals made by the two individuals.

The late TT Nkobi died and the Nkobi group was established. It is evident in the material at our disposal that there was at least the intention to include the ANC as a shareholder in the Nkobi group and even at least Zuma, who was an office bearer of the South African Government and the ANC at the time.

It is also concluded in our report that Shaik viewed his political connectivity as a key driver in his business strategy. This is borne out by the fact that Shaik had regular contact with office bearers, particularly political, and even used the names of those in his business dealings. The name of Zuma was frequently used in this context. Furthermore, Shaik made payments to and on behalf of these office bearers, the payments made are discussed elsewhere in this report⁵⁴ with Zuma having received the most of all. The involvement, if at all of the office bearers, in the business activities is also dealt with in our report.

We have already dealt with the impact and involvement that the late TT Nkobi had had on Shaik and eventually the ideology generated between Shaik and the late TT Nkobi that led to the establishment of the Nkobi group. This section deals with the attempts of the Nkobi family to share in what they believed was due to them as a contribution to the use of the family name and other attributes of the late TT Nkobi that contributed to the success of the Nkobi group.

⁵⁴ Refer to paragraphs 19.3 to 19.6

Senior members of the ANC, particularly Msimang, endeavoured to resolve the dispute between Shaik (the Nkobi group) and particularly Mrs Nkobi, representing the family.

Apart from attempts that appear to have never materialised, it appears that the family received no benefits despite an apparent dire financial position the family found itself with. This is contrary to then current and even still office bearers whom received benefits from the Nkobi group and/or Shaik, including Zuma in the amount of in excess of R4 million.

9.2 Use of Nkobi Family name and Reputation

According to a letter dated 18 January 1999 from Jordaan & Wolberg to Shaik⁵⁵, it is mentioned that Mrs Nkobi (the surviving spouse and executrix of the estate of the late TT Nkobi) was shocked to hear that one year after her husband's death Shaik had started a company with her family name (Nkobi).

It was further mentioned that Mrs Nkobi believed that *"Shaik has capitalised on and exploited the late Mr Nkobi's reputation, ideologies, business and political connections of which have been instrumental in the success of the business"*. She mandated Jordaan & Wolberg to investigate Shaik's conduct and to take such action as may have been necessary to protect her rights. If it was necessary, Mrs Nkobi indicated that she would interdict the Registrar of Companies against further use of the family's name.

Mrs Nkobi understood that Shaik had had the intention of listing the company on the Johannesburg Stock Exchange in the near future and Jordaan & Wolberg suggested that it may be necessary to interdict the listing until the issues between their client and Shaik had been resolved.

The purpose of the letter was to request Shaik to urgently contact Jordaan & Wolberg in order to set up a meeting to discuss possible resolution of the matter. Jordaan & Wolberg mentioned that Mrs Nkobi *"...felt extremely aggrieved and would not hesitate to execute every legal remedy in pursuit of her rights both in her personal capacity and in her capacity as executrix of her late husband's estate"*. The deadline set for Shaik to contact Jordaan & Wolberg was on 21 January 1999 at 16h00, failing which Mrs Nkobi would proceed as she considered appropriate.

⁵⁵

Refer to 09 0001-09 0003 (80 08216C, 80 08217, 80 08230 Box 122)

On 21 January 1999 Ditz wrote to Jordaan & Wolberg informing them that they were mandated by Nkobi Holdings to respond to a letter sent to Shaik on 18 January 1999⁵⁶. Their reply included the following that:

- Nkobi Holdings denied Mrs Nkobi had the right to the sole and exclusive use of the Nkobi name and also denied that the estate had any proprietary rights in respect of the name Nkobi which it could enforce against Nkobi Holdings;
- Nkobi Holdings were surprised and disappointed at the attitude adopted by Mrs Nkobi, as she has always been aware that Nkobi Holdings' intentions had been nothing but honourable towards her late husband. It was stated that the use of the name "Nkobi" in Nkobi Holdings was intended as a tribute to the late TT Nkobi and in commemoration of his effort and achievements in championing the cause of previously disadvantaged South Africans;
- Nkobi Holdings denied it had capitalised on and exploited the late Mr Nkobi's reputation, ideologies, business and political connections. In order for Nkobi Holdings to gain clarity on this point, Mrs Nkobi was requested to advise them exactly as to who those connections were, so that Nkobi Holdings could deal with the matter. Mrs Nkobi's failure to provide Nkobi Holdings with the names would be viewed in a serious light and more particularly that her comments were defamatory and if she failed to provide them with the details Ditz would have all Nkobi Holdings' rights reserved;
- The ideologies referred to in Mrs Nkobi's letter were not exclusive to the late Mr Nkobi and that she did not have the rights to claim any proprietary consequences in that regard;
- Mrs Nkobi provides names of all political connections that Nkobi Holdings made use of to enable Ditz to investigate the allegation fully. If Mrs Nkobi failed to provide them with the names, Ditz would have all the rights of Nkobi Holdings reserved;
- Mrs Nkobi to advise Ditz of the basis on which she contended that connections had been instrumental in the success of Nkobi Holdings. Failure to provide the information required would be viewed in a serious light, more particularly as Nkobi Holdings considered the statements to be defamatory, not only of them, but also of various political leaders who she may mention as her letter suggests that they are biased in giving Nkobi Holdings preference; and

- Any action by Mrs Nkobi would be strenuously defended.

In a letter dated 25 January 1999 Jordaan & Wolberg informed Ditz that the response received from Nkobi Holdings has been referred to Mrs Nkobi for her instruction⁵⁷. On the same day Ditz faxed through the reply received from Jordaan & Wolberg to Shaik⁵⁸.

According to a letter dated 17 September 1999 de Broglio Wolfson wrote to Jordaan & Wolberg informing them that Garth Harrison had left Ditz and that de Broglio Wolfson had been appointed to deal with Nkobi's response to Mrs Nkobi's matter⁵⁹. According to de Broglio Wolfson, the matter appeared to be capable of settlement without the need for litigation.

The purpose of the letter from de Broglio Wolfson was to enquire as to whether Jordaan & Wolberg still held the mandate from Mrs Nkobi, and if so, contact should be resumed with a view to reaching a method of resolution of the dispute. It was also mentioned that the letter was not intended to concede that Mrs Nkobi had any cause of action or that any allegations that may have been made in previous correspondence were admitted.

According to a letter dated 27 October 1999 from de Broglio Wolfson to Shaik, Wolfson gave feedback about the discussion he had held with Jordaan from Jordaan & Wolberg⁶⁰. Wolfson stated that it was clear from the discussion that the particulars of claim apparently prepared sought to interdict the future use of the Nkobi name and would not appear to have included a claim for monetary compensation.

Wolfson stated that against the background of the fact that there were some difficulties on Mrs Nkobi's part in claiming monetary compensation, it was necessary to examine whether there might have been certain moral issues which should have been addressed and which would not have affected legalities as such.

Wolfson stated that Mrs Nkobi believed that Nkobi Holdings had capitalised on the Nkobi name and there was the belief that the family should have been entitled to some compensation for the success already achieved and some compensation for success which would be achieved in the future.

⁵⁷ Refer to 09 0006 (80 08237 Box 122)

⁵⁸ Refer to 09 0007 (80 08236A Box 122)

⁵⁹ Refer to 09 0008 (80 08244 Box 122)

⁶⁰ Refer to 09 0009-090010 (80 08240/1 Box 122)

Wolfson stated that it had been disclosed to him that following recommendations made by the late Joe Modise, a trust document had been prepared for a trust which he understood was intended to be the recipient of a portion of the companies' profits and/or turnover. He indicated that it may well have been the length of time that had elapsed since proposals had been on the table that might have had an impact on the ability of the Nkobi family to pursue the proposed interdict.

Wolfson mentioned that, in principle, the Nkobi family had accepted that financial compensation might have been the solution to the tension, at that time, and in the light of the other party might have had some legal difficulties with a claim for compensation. He canvassed the notion of paying a six figure number in full and final settlement of any potential claim without conceding any legal liability therefore. He mentioned that Jordaan finally suggested that the family was entitled to at least R1 000 000 for the past use of the name and some compensation for the future use.

Wolfson stated further that he had explained to Jordaan that he had no mandate to propose any financial settlement but was merely exploring whether that could have been the basis to resolve the unpleasantness. He stated that he undertook to take instructions from Shaik and would revert to Jordaan in the near future and that he was looking forward to Shaik's comment on the monetary suggestions.

Surman, on the instructions from Shaik, faxed through a draft copy of The Nkobi Family Trust deed to Msimang on 3 December 1999⁶¹. According to the draft Deed of Trust drafted by Ditz, the donor to the Trust was Shaik and the beneficiaries were the surviving spouse of the late TT Nkobi and the descendants of the late TT Nkobi, who were alive at the termination of the trust. The first trustee was Shaik and the other trustees are any person assumed by or succeeding them as trustee namely ie Riaz Shaik or Yunis Shaik (Shaik's brothers).

The object of the trust was to acquire property for investment purposes and to invest in all types of businesses, whether in partnership or by acquisition of shares in a private or public company or otherwise for the benefit of the beneficiaries. The trust would terminate upon the fiftieth anniversary of the date upon which it was established, provided that the trustees by unanimous decision and in their sole discretion may anticipate or postpone the date of termination of the trust.

⁶¹ Refer to 09 0011-09 0030 (80 11139 to 80 11158 Box 134)

The draft deed of trust was not signed and we are not in possession of the final signed trust deed.

On 11 January 2000 Jordaan & Wolberg wrote to de Broglie Wolfson, replying to a letter sent to their client by Nkobi Holdings on 26 November 1999⁶². The reply to de Broglie Wolfson addressed the following issues:

- Mrs Nkobi was satisfied in principle with the suggestion and the terms of the share allocation. If Nkobi Holdings had prepared a draft trust deed it was suggested it be forwarded for consideration;
- Advice was requested regarding the terms of the share allocation and when Nkobi Holdings was anticipating to list;
- Mrs Nkobi proposed that the trustees of the trust would be Advocate Chaane, Alfred Nzo, Jordaan, herself and four trustees to be appointed by Nkobi Holdings;
- In addition to the transfer of shares, Mrs Nkobi required a lump sum payment of R1 000 000 which would extinguish her debts in respect of her property and a loan from the ANC. The payment was not based entirely on her liabilities but included an amount in respect of compensation for Nkobi Holdings' infringement of the Nkobi's "*dignitas*" in terms of common law and Section 10 of the Constitution as well as to her right to personal privacy at common law under Section 14 of the Constitution.

The purpose of the letter was not to debate the merits, but Nkobi Holdings' conduct was wrongful inasmuch as it had exploited, for commercial gain, the name and ideals of Mr Nkobi, a leading figure in the struggle for the overthrow of apartheid in South Africa and a prominent and leading member of the ANC. It was mentioned that by acting in the manner it had, Nkobi Holdings wrongfully infringed Mrs Nkobi's rights referred to above and humiliated and injured the memory of Mr Nkobi, Mrs Nkobi and the Nkobi family;

- Mrs Nkobi would be prepared to accept a monthly allowance of R10 000 inflation linked; and
- She required payment of her legal costs incurred in connection with the matter, although the costs would have been computed at the time of the settlement. Wolfson advised Nkobi

⁶² Refer to 09 0031-090033 (80 08238B/C and 80 08239 Box 122)

Holdings that he had consulted with the members of the Nkobi family and briefed Advocate Du Toit and Advocate Bhana.

Wolberg also mentioned that although counsel had already prepared draft particulars, Mrs Nkobi had held over the proceedings in view of the negotiations and subject to meaningful negotiations continuing and the matter being resolved without undue delay.

On 8 August 2000 Shaik wrote to Msimang thanking him for the meeting held at Msimang's office on that day⁶³. He informed Msimang that he believed that they solid progress had been achieved in resolving the Nkobi family dispute with the Nkobi group. Shaik mentioned that it was of significant value for all of them to address their conscience towards their late friend Thomas Nkobi. Shaik re-iterated that there was never enough they could have done to exalt Mr Nkobi's memory and his contribution.

Shaik stated that he had hoped that their effort had helped in bringing some meaning to Mr Nkobi's life and their past relationship with him. He also thanked Msimang for his sincere effort in that regard.

Shaik informed Msimang that the financial arrangements for Mrs Nkobi would be confirmed in a separate communication. The letter was signed by Isaacs on behalf of Shaik.

According to a letter dated 5 September 2000 Jordaan & Wolberg informed de Broglio Wolfson about a meeting held with Mrs Nkobi and other members of the Nkobi family in August 2000⁶⁴. Owing to the sensitive nature of the matter, representatives of the ANC had intervened and the Treasurer General had made an offer in settlement of the dispute between the parties namely:

- Nkobi Holdings was requested to pay Mrs Nkobi's indebtedness to the ANC of approximately R140 000;
- Nkobi Holdings would pay Mrs Nkobi a monthly allowance of R7 500 during her lifetime;
- 5% shares in Nkobi Holdings would be allotted to a trust to be formed by Jordaan & Wolberg. From the previous correspondence, it had been suggested that Nkobi Holdings would be entitled to appoint trustees to the trust, but on reconsideration of the position, Mrs Nkobi saw no reason why Nkobi Holdings should have any right to appoint trustees and if

⁶³ Refer to 09 0034 (80 08231 Box 122)

⁶⁴ Refer to 09 0035-09 0038 (80 08218 to BE Box 122)

Nkobi Holdings disagreed it should motivate its reasons. The trust should be given a preference share allocation in the company to be listed;

- Mrs Nkobi would have the right to appoint a representative to the Board of Directors of Nkobi Holdings and later to the Board of the listed company;
- Nkobi Holdings would fund all costs required for Ndlela Nkobi's stay and education at Columbia University in New York; and
- Nkobi Holdings would provide Mrs Nkobi with two air tickets to visit her children abroad.

Nkobi Holdings were requested to confirm the accord so that Jordaan & Wolberg could prepare a formal agreement. It was indicated that Nkobi Holdings had benefited substantially from the Nkobi family name and proposed that on a basis of fairness, a cash payment had to be made to Mrs Nkobi in compensation for the benefit derived. It was suggested that an amount of R100 000 be paid to her.

In a letter dated 6 September 2000 from de Broglio Wolfson to Nkobi Holdings for the attention of Shaik, Wolfson forwarded a copy of the fax received from Jordaan & Wolberg outlining the basis of the settlement proposed by the Treasurer General of the ANC⁶⁵. Wolfson also mentioned that he did not feel at all generous and suggested that Jordaan was chancing his arm in seeking extras on the deal that was under discussion at the time.

Wolfson advised Shaik to be aware of the fact that all the discussions and correspondence thus far was without prejudice and had been in no way constituted any admission of liability, nor could Nkobi Holdings be bound by anything on the table thus far.

According to a fax dated 8 September 2000 to de Broglio Wolfson, Isaacs instructed Wolfson to cease all negotiations regarding the Nkobi family matter until further notice⁶⁶. Isaacs stated that he had been requested by Shaik to give them the instructions.

According to a faxed document dated 13 September 2000 from de Broglio Wolfson to Jordaan & Wolberg, Wolfson replied to the offer made by the Treasurer General towards resolving the dispute between the Nkobi family and Nkobi Holdings⁶⁷.

⁶⁵ Refer to 09 0039 (80 08218A Box 122)

⁶⁶ Refer to 09 0040 (80 08229 Box 122)

⁶⁷ Refer to 09 0041 (80 08228 Box 122)

Wolfson stated that they had been instructed to cease any further negotiations. The terms would be as follows:

- Shaik intended to pay a monthly amount of R7 500 into Mrs Nkobi's mortgage bond account until such time as she was deceased or the property in which she resided was sold;
- It was specifically recorded that:

The payment was not subject to negotiations;

The payment was in no way intended to be construed as an admission that any legal liability existed on Nkobi Holdings' part, but was merely the exercise of Shaik's goodwill and perceived moral obligation to Mr Nkobi; and

Should Mrs Nkobi institute any action of any kind against Nkobi Holdings or related entities or people, the monthly payment would cease.

According to a letter from Shaik on Nkobi Holdings letterhead, dated 20 September 2000, to Msimang, he raised some concerns regarding the contents of a letter he had received from Mrs Nkobi's legal advisor, which he considered very disturbing on several fronts⁶⁸.

Shaik pointed out that he was concerned by the law firm flouting the matter by referring to "*representatives of the African National Congress have intervened*". He further stated that several members of the ANC had been concerned with the well being of Mrs Nkobi and had been in dialogue with Shaik in their personal capacities with the intention of resolving Mrs Nkobi's financial difficulties.

Shaik further stated that he had been central to the intention to resolve Mrs Nkobi's financial difficulties. The commitment stemmed from a promise he made to his late friend and comrade Thomas Nkobi in Durban. Shaik stated that despite several attempts by him, in concert with other senior comrades, in the past and then with Msimang, the matter in his view seemed to have grown uglier and more unpalatable to the company after every communication received from Mrs Nkobi's legal advisors.

Shaik mentioned that the basis of the undertaking reached on 8 August 2000, in the offices of Msimang, were as follows:

⁶⁸

Refer to 09 0042-09 0043 (80 08222/3 Box 122)

- An amount of R7 500 was to be paid to the Nkobi Family Trust, and that Nkobi Holdings act as one of the several trustees required to manage the obligation effectively;
- A further amount of R2 500 to be paid to the Nkobi Family Trust, in lieu of any bond payment on Mrs Nkobi's home;
- Two international air tickets to visit her children; and
- A 5% equity stake in the Nkobi group with Board representation by an immediate family member.

Shaik further stated that a letter from Jordaan & Wolberg dated 5 September 2000, "*...exposed the position of Mrs Nkobi and other members of her family that eroded his goodwill and intentions and has put him in a position of extreme discomfort and suspicion of their true intention of his businesses*". He remained hopeful that an amicable settlement would be reached in their lifetime.

According to a letter from the office of the Treasurer General of the ANC dated 22 September 2000 to Shaik, Msimang stated that he was surprised that Mrs Nkobi had decided to go back to her attorneys without his knowledge⁶⁹. He mentioned that he was still waiting to hear from her on two matters, which he had insisted, they as a family should agree upon, before he could go back to Shaik in order to finalise the agreement. He was going to immediately write to her to withdraw the services of her legal advisors and allow the matter to be settled through his office. Msimang was equally hopeful that an amicable settlement could be reached without the involvement of legal practitioners.

On 18 October 2000 Msimang, as the Treasurer General of the ANC, wrote to Shaik informing him of a meeting he had with Mrs Nkobi and her family. They had been apologetic about mentioning his discussion with Shaik, to their attorney⁷⁰. He had a fresh undertaking from the family that they would allow his office to conclude the matter in the best interests of all concerned.

Msimang stated that in terms of his notes regarding the meeting he had held with Shaik, the Nkobi family had agreed to the following:

⁶⁹ Refer to 09 0044 (80 08204 Box 122)

⁷⁰ Refer to 09 0045-09 0046 (80 08202B to 80 08203 Box 122)

- That the trust be established to administer the affairs of Mrs Nkobi and her family and the proposed names of the trustees were herself, George Moeng, George Chaane and Ian Jordaan and there was no objection to Shaik's name being included in the list of trustees;
- 5% shareholding by the trust in Nkobi Holdings and it was proposed that one of Mrs Nkobi's daughters, Ms Thutho Sbongile Nkobi, represent the family on the Board of Nkobi Holdings;
- That the outstanding bond on the property at the time of her late husband's death amounted to R527 777.68. The ANC had loaned her R114 000 towards the bond and Msimang had been informed that the difference had been received from other sources and that the ANC is expecting a refund;
- Msimang and Shaik had agreed that the monthly allowance to Mrs Nkobi would be the sum of R7 500 and the family had requested that the allowance be linked to the inflation rate annually;
- That Mrs Nkobi be granted two international air tickets every year to travel either to London or New York to visit her children, to be effective as and when the deed of trust was registered; and
- The family had mentioned the problem of the son, Ndlela, who was studying in the United States of America and that he be assisted to the extent of USD 4 124.58 per term ending in May 2001.

Msimang expressed his happiness that the agreement would certainly preserve the memory of the late comrade Thomas Nkobi who had served the ANC as one of its outstanding Treasurers Generals. He stated that he would make a formal report to the National Executive once the agreement had been signed. He mentioned that he would, in the meantime, ask comrade George Chaane to attend to the formulation, with Shaik, of the trust deed as well as the agreement.

On 18 October 2000 Shaik wrote to Moodley from Ditz⁷¹ forwarding to him the latest communication he had received from Treasurer General Msimang. Shaik indicated that the deal was off, "*F..... Jordaan & Wolberg. Nkobi family can do what they can do*".

⁷¹ Refer to 09 0047 (80 08202A Box 122)

We identified a payment from Kobitech to Mrs Nkobi of R10 000 on 21 December 2000⁷². This was accounted for as a “*Loan other*” in the records of Kobifin⁷³.

According to a fax cover sheet dated 16 January 2001, from Gering of DS&T Taxation Services to Shaik, Gering discussed the finalisation of the Nkobi family matter⁷⁴. Gering also stated that he thought that it was appropriate to dictate to him the issues that could be included, with some modification by Nkobi Holdings, into a memorandum to the “*correct*” authorities at the ANC:

- It was decided and agreed that the Nkobi family would receive R7 500 from the Nkobi group for the lifetime of Mrs Nkobi. To ensure tax effectiveness of the transaction for all parties, it was proposed that the payment would be by way of compulsory redeemable cumulative preference shares on the basis that the coupon of the preference shares would yield R7 500 per month;
- A draft deed of trust had been prepared and once the proposal had been finalised and accepted then the necessary change to the shareholding structure of the Nkobi group to facilitate the introduction of the of such preference shares would be implemented; and
- It was not considered prudent that such steps be taken until the matter had been finalised.

According to a covering letter from Ditz, dated 18 January 2001, to Shaik, Moodley delivered the draft deed of trust to Shaik for comment⁷⁵. He suggested that a copy of the draft deed of trust be sent to Gering, from DS&T, for his input. He indicated that he had not included Jordaan as trustee and that Nkobi Holdings was the ultimate beneficiary of the trust upon termination.

On 25 January 2001 Jordaan & Wolberg informed de Broglie Wolfson that they had been mandated to investigate the contents of an article that had been published in the Mail & Guardian, dated 19 January 2001, headed “*Evidence of ANC’s arms link*”⁷⁶.

Jordaan & Wolberg had been advised by their client that the article contained a number of false statements regarding Mrs Nkobi, the Nkobi family and the late TT Nkobi and that their client had instructed them to investigate the factual allegations in the article. They presumed had been communicated to the Mail & Guardian by Shaik.

⁷² Refer to 09 0048-09 0049 (80 07342 Box 116), 006687 File 15)

⁷³ Refer to 09 0050 (80 07451 Box 116)

⁷⁴ Refer to 09 0051-09 0052 (80 08195/6 Box 122)

⁷⁵ Refer to 09 0053-09 0068 (80 08205A and 80 08184A-N Box 122)

⁷⁶ Refer to 09 0069-09 0070 (80 02998 Box 94)

Jordaan & Wolberg requested de Broglio Wolfson to urgently take instructions from Shaik on the following:

- Whether the statement that Nkobi family held 5% of the shares in Nkobi Holding was true;
- If true, in whose name were the shares registered and when were they registered; and
- If the shares were registered in the name of the trust, could Shaik furnish them with a copy of the trust or the full name of the trust or the number thereof to enable them to obtain a copy from the Master's office.

Jordaan & Wolberg indicated that Mrs Nkobi and the Nkobi family had been pressurised to make a statement to the Mail & Guardian.

On 8 February 2001 Shaik deposited an amount of R7 500 into the bank account of the ANC and then faxed through a copy of the deposit slip to Msimang. It was indicated on the document that the deposit was in respect of payment to Mrs Nkobi for January 2001⁷⁷.

On 14 February 2001 Msimang wrote to Shaik referring to the deposit for an amount of R7 500 for the benefit of Mrs Nkobi for January 2001⁷⁸. Msimang indicated that he was unable to deal with the matter until the trust deed had been signed and completed. He reminded Shaik that he had requested sight of the proposed trust deed before a meeting was convened for signing of the trust deed. He had still not received the draft yet. Msimang then indicated that he had been compelled to return to Shaik the sum of R7 500 in a form of a cheque.

On 19 February 2001 Shaik wrote to Gering of DS&T, reminding him of outstanding matters. One of the matters outstanding was the Nkobi Trust deed which had been outstanding since May 2000⁷⁹. Shaik informed Gering that he was under extreme pressure from “*CMRDE Treasurer General Msimang*” amongst others to bring the matter to an end. He further indicated that the negative publicity associated with the matter was also unhelpful as it potentially eroded their success on several bids in the public sector.

On 19 February 2001 Wolfson faxed a draft copy of an agreement between Mrs Nkobi and Nkobi Holdings and a draft copy of The Nkobi Family Trust Deed to Shaik⁸⁰.

According to a letter, dated 10 July 2001, from Jordaan & Wolberg to Shaik, Jordaan informed Shaik to the correspondence between themselves and his legal representatives since January

⁷⁷ Refer to 09 0071-090072 (80 08209-10 Box 122)

⁷⁸ Refer to 09 0073 (80 08191 Box 122)

⁷⁹ Refer to 09 0074 (86 1797 Box 71)

⁸⁰ Refer to 09 0075-09 0094 (80 08197A-S and 80 08198 Box 122)

1999⁸¹. He indicated that it had resulted in Mrs Nkobi having meetings with the Treasurer General of the ANC because she had been asked by some members of the movement to liaise with the Treasurer General instead of Shaik.

Jordaan indicated that during a meeting held on 1 June 2001 Mrs Nkobi had been informed by Motlanthe and Msimang that the ANC did not feel that Shaik was serious in honouring his commitments and that she should proceed against him. Jordaan stated that Mrs Nkobi was giving Shaik a deadline of two weeks within which to respond to her demand.

Jordaan indicated that during February 2001, Mrs Nkobi had been given a copy of a draft agreement and a copy of a draft trust deed which had been sent by Shaik to Msimang. Jordaan indicated that the proposed agreement was between Mrs Nkobi and Nkobi Holdings and purported to bestow certain benefits upon Mrs Nkobi and her family through the medium of a trust. Jordaan indicated that the terms of the agreement and the trust were unacceptable to Mrs Nkobi and they had proposed that Shaik should hold a meeting with Jordaan to endeavour to reach agreement.

According to Jordaan, Mrs Nkobi's contention was that Shaik had wrongfully and unlawfully capitalised on the reputation and good name on the late TT Nkobi and persisted in using Mrs Nkobi's family name in the furtherance of the business of Nkobi Holdings and various subsidiaries without compensating her.

Jordaan indicated that since she had first heard of Nkobi Holdings, Mrs Nkobi had made her disapproval known and various offers were made to her, including offering 5% shares in Nkobi Holdings. Jordaan mentioned that the offers had been made by Shaik and "...*high ranking officials (Joe Modise) of the ANC*". Jordaan further mentioned that Shaik had advised the Mail & Guardian newspaper and E-TV, that 5% of the shares in Nkobi Holdings were held by Nkobi family since 1996.

Jordaan mentioned that Mrs Nkobi required the transfer of 5% of the shares in Nkobi Holdings as well as in any other company which was capitalising upon Mrs Nkobi's family name or any abbreviation or derivative thereof, which was not a subsidiary of Nkobi Holdings, together with a payment of the sum of R1 000 000 for the aforesaid companies' use and benefit of Mrs Nkobi's family name.

There are no documents indicating the end of the negotiations or that agreements reached had been implemented with Mrs Nkobi at our disposal.

⁸¹ Refer to 09 0095-09 0096 (80 08186/7 Box 122)

10 Jacob Zuma, associated persons and entities

10.1 Background

The details that are reflected in this part of the report provide background based on the information that we were able to gather regarding Zuma, the persons associated with him as well as entities associated with him. We are mindful of the fact that this may only be a synopsis and that there may still exist material facts to which we are not privy to.

We obtained Zuma's biography from the internet and it is stated that the source thereof is the Presidency and that it was last updated on 12 July 2001 this was used only for background purposes, and we do not base any of our conclusions on the information contained therein. It was stated that Zuma was born on 12 April 1942 in Nkandla, KwaZulu-Natal. He left South Africa in 1975 for the next 12 years, based first in Swaziland and then Mozambique.

In January 1987, Zuma was forced to leave Mozambique after considerable pressure on the Mozambican government by the PW Botha regime. He then moved to Lusaka, where he was appointed Head of Underground Structures and thereafter Chief of the Intelligence Department.

The ANC was un-banned in February 1990, and Zuma was one of the first ANC leaders to return to South Africa to begin the process of negotiations, and was instrumental in organising the Groote Schuur Minute between the FW De Klerk regime and the ANC regarding the return of exiles and the release of prisoners.

In 1990, at the first Regional Congress of the ANC in KwaZulu-Natal, Zuma was elected Chairperson of the Southern Natal region and took the leading role in fighting violence in the region, which resulted in a number of Peace Accords involving the ANC and IFP. In 1991, at the first ANC National conference held in South Africa, he was elected the Deputy Secretary General of the organisation.

In January 1994, Zuma was nominated as the ANC candidate for the Premiership of the KZN province. After the democratic elections in South Africa in 1994, Zuma was appointed member of the Executive Committee (MEC) of Economic Affairs and Tourism of the KZN Provincial Government.

Zuma is a patron of the KZN RDP Bursary Fund, which is linked to the RDP section of the Department of Economic Affairs and Tourism. He established this bursary fund using funds that

each cabinet member of the KZN province was given to use on any project of their choice. The bursary fund focuses on primary school children in rural areas but has, from 1999, started assisting students at tertiary institutions. In 2001 there were in excess of 1 000 pupils being assisted at primary level and 10 at tertiary institutions.

In December 1994, Zuma was elected National Chairperson of the ANC and Chairperson of the ANC in KZN and he was re-elected to the latter position in 1996. In December 1997, Zuma was elected Deputy President of the ANC. In October 1998 he was honoured with the Nelson Mandela Award for Outstanding Leadership in Washington DC USA. In 1999 he was appointed as the Deputy President of South Africa until 14 June 2005, when he was dismissed.

10.2 Marriages

It appears as if Zuma has been married on more than one occasion. His respective marriages are discussed hereunder.

10.2.1 Nkosazana Clarice Zuma

In March 1998, NC Zuma filed for a divorce against Zuma in the High Court of South Africa Transvaal Provincial Division⁸². The particulars of the claim in the divorce matter reflect that they were married in Community of Property on 2 April 1982 in Mbabane, Swaziland. There are four children born from the marriage, namely:

- Nkosazana Bonganini, born on 11 February 1982;
- Gugulethu, born on 3 October 1984;
- Nokuthula Nomaqhawe, born on 2 May 1986; and
- Thuthukile Nomonde, born on 18 April 1989.

The final order of the divorce was granted by Honorable Mr Justice Els on 12 June 1998 in Pretoria and the settlement was made in favour NC Zuma.

⁸² Refer to 10 0001-10 0003 (BS1 020942-4 File 100)

10.2.2 Late Kate Zuma

We are not in possession of documentation detailing when Kate and Zuma were married. According to a spreadsheet obtained from Nkobi Holdings reflecting the distribution of Zuma's income to three spouses in 1999 Kate is indicated as being one of them⁸³. It was reflected that she was paid an amount of R18 000.

We are in possession of the undated Sacred Heart College information sheet pupil data which reflects that Kate Zuma was the mother of Duduzile, Duduzani and Phumzile⁸⁴. According to O'Niel's letter to ABSA, recommending a review relating to Zuma's position regarding the ABSA group, he stated that Zuma's personal financial position improved as a result of an inheritance received after the sudden death of Kate Zuma in 2000⁸⁵.

We are not in possession of documentation with information detailing the exact date when Kate Zuma died or the quantum of any alleged inheritance.

10.2.3 Gertrude Zuma

We are not in possession of documentation detailing when Gertrude and Zuma were married. According to a spreadsheet obtained from Nkobi Holdings reflecting the distribution of Zuma's income to three spouses in 1999 Gertrude is indicated as being one of them⁸⁶. It was indicated that she was paid R1 200. We are not in possession of documentation providing more information regarding this marriage.

10.2.4 Catarina Zuma

We are in possession of an affidavit made by Zuma in 1998, wherein he stated that he was married to Catarina Zuma in Mozambique on 28 September 1984 and they were married out of community of property. It appears as if the affidavit was signed by Zuma, but there is no proof that it was signed in the presence of a Commissioner of Oaths⁸⁷. We are not in possession of documentation providing more information regarding this marriage.

⁸³ Refer to 10 0004 (80 04486 Box 99)

⁸⁴ Refer to 10 0005 (TLS 1 Docket file 314)

⁸⁵ Refer to 10 0006 (99 0367)

⁸⁶ Refer to 10 0007 (80 04486 Box 99)

⁸⁷ Refer to 10 0008 (80 00029 Box 79)

10.3 Zuma's dependants

We are in possession of documents reflecting the payment of fees to various schools and universities for Zuma's children. Zuma's known dependants are listed below:

Name	Identity number/date of birth
Muziwoxolo Edward Zuma	REDACTED
Duduzani Zuma	REDACTED
Duduzile Zuma	REDACTED
Nkosazana Bonginini (Msholozzi) Zuma	REDACTED
Gugulethu Zuma	REDACTED
Nokuthula Nonaqhawe Zuma	REDACTED
Phumzile Zuma	REDACTED
Thuthukile Nomonde Zuma	REDACTED
Nhlakanipho Zuma	REDACTED
Mxolisi Zuma	Unknown
Sadi Zuma	Unknown
Vusi Zuma	Unknown
Jabulile Zuma	Unknown
Siyabonga Zuma	Unknown

We are not in possession of documentation indicating the names of Zuma's dependants; it is possible that the list above may be incomplete. We were unable to locate the date of birth of Mxolisi, Sadi, Vusi, Jabulile and Siyabonga from the documents that we have in our possession.

10.4 The Zuma Family Trust

We are in possession of a draft copy of the Zuma Family Trust deed drafted by Ditz⁸⁸. It was stated that Shaik was the donor to the Trust and the beneficiaries were Zuma, his spouses and descendants who are alive at the termination of the Trust.

The first trustees of the trust were Shaik and Zuma. It was stated that the donor (Shaik) donated to the first trustee an amount of R100 and that the donation would immediately vest in the first trustee. The object of the trust was to acquire property for investment purposes and to invest in all types of businesses, whether in partnership or by acquisition of shares in a private or public company or otherwise for the benefit of the beneficiaries.

It was stated that out of income of the trust, or the capital, if the income is insufficient, the trustees shall pay and make provisions for all the costs, charges and tax incurred by them on behalf of the trust. With regard to income, the trustees shall have the rights in their discretion, from time to time to vest and pay to the beneficiaries or any of them or apply on their behalf the whole or any part of the net income of the trust, in which event such amounts shall accrue to the beneficiaries.

The trust shall terminate upon the fiftieth anniversary of the date upon which it was established provided that the trustees by unanimous decision may in their sole discretion anticipate or postpone the termination date of the trust.

We are not in possession of a signed copy of the Trust Deed. We are not in possession of other documents relating to the operations of the trust.

A schedule of fees for September 1999 received from Ditz indicates that Ditz charged the Nkobi group R3 420 for work relating to the Zuma Family Trust⁸⁹. The fees were paid by Kobitech on 7 September 1999⁹⁰.

On 15 August 2001, Kögl wrote a memorandum to Doreen (Zuma's Executive assistant) requesting the names and identity numbers of all the children for the "*J Zuma Children Trust*"⁹¹. Kögl indicated that he was referred to her for this information. It is unclear who referred Kögl to her.

⁸⁸ Refer to 10 0009-10 0024 (83 304531 to 83 304546 Box 202)

⁸⁹ Refer to 10 0025-10 0028 (71891-4 Box 63)

⁹⁰ Refer to 10 0029 (006590 File 15)

⁹¹ Refer to 10 0030 (107 000584 Box Z276)

10.5 The Jacob Zuma Bursary Trust Fund

10.5.1 Establishment of the trust

According to an undated document, labelled “*Press statement*”, on the launch of the Jacob Zuma Bursary Fund, this Trust was formed on 10 June 1997 by Zuma while he was still the Minister of Economic Affairs and Tourism in KwaZulu-Natal⁹². The aim of the Trust is to assist students who have been admitted to tertiary institutions and cannot pursue with studies due to financial constraints.

It was stated in the document that the Trust was established from an allocation of R500 000 in total, that was made available to all members of the KwaZulu-Natal Cabinet in terms of a resolution taken by the RDP co-ordinating committee under the auspices of the Director General, Professor OEHM Nxumalo. ABSA Bank was appointed to manage and administer the Trust funds and R Harbour, Dr Dhlomo, Madlala, Ms Main, Mathews, Ms Mdhlahla, Dr Mdlalose, Ngobese, O’Hagan and Dr Zungu were appointed as the Trustees to assist with the selection process and the raising of funds.

According to a letter that explains the history of the Jacob Zuma Education Trust, an amount of R650 000 was allocated to each minister of the KwaZulu-Natal Cabinet out of the Discretionary fund⁹³. Zuma held several meetings with the stakeholders (Amakhosi from four tribal communities and principals) who came from four tribal authority areas, namely, KwaMagwaza, KwaKhanyile, KwaNxamalala and KwaShange. The four tribal authorities fall under Inkandla and Eshowe regional authorities and it was agreed that they would be used as pilot areas. It was stated that in the year 2000, the Trust had held two fund raisings, the first one in Johannesburg whereby an amount of R300 000 was raised and the second in Durban, where R250 000 was pledged towards the Trust. It was further mentioned that Mandela had donated an amount of R1 000 000 to the Trust⁹⁴.

On 2 June 1997 the Jacob Zuma Bursary Trust fund invited Vahed of AM Moola Group to the launch of the Jacob Zuma Bursary Trust Fund on 10 June 1997.

On 5 November 1999 Zuma wrote to “*Sheik*” (sic) giving him the history of the Trust, when it was formed, how much money had been raised since 1994 and how these funds had been

⁹² Refer to 10 0031-10 0032 (80 07849B/50 Box 119)

⁹³ Refer to 10 0033-10 0036 (107 000603/5/6)

⁹⁴ Refer to paragraph 12.2.18

utilised⁹⁵. The letter refers to the Trust as the KwaZulu-Natal RDP Education Trust, and Zuma asked Shaik to assist and promised to keep Shaik informed on the status of the Trust. Zuma also stated that he would like to keep Shaik's name in the Trust's database as a special member of the growing family of concerned Africans.

Zuma also stated that the trustees had taken a decision to focus their work on rural KwaZulu-Natal and to use Nkandla as a pilot. As per the letterhead of the KZN RDP Trust, the board of trustees included Zuma, Moll, and Pretorius (ABSA Trust).

On 21 February 2000 Dichabe wrote to Doreen informing her that, following the meeting held on 15 February 2000, Zuma required the information below⁹⁶:

- “*Shabir Sheik*”, “*amount sought R200 000.00*”;
- “*Vivian Reddy*”, “*amount sought R100 000.00*”. It was stated that Reddy's secretary indicated that their letter had been passed on to their sponsorship department at Edison Power. The manager of that department then informed Dichabe that they had exhausted their budget for that financial year and therefore could not help the Trust;
- “*Eugene Jackson*”, “*amount requested is R200 000.00*”.

On 17 October 2000 Bennemeer from ABSA Trust, wrote to Schreiber, the manager at ABSA Durban City Branch, forwarding to him a copy of a cheque in favour of NR Mandela endorsed to Zuma⁹⁷. He informed Schreiber that the cheque needed to be paid into Zuma's cheque account number *REDACTED* held at the Durban City Branch and also confirmed that ABSA Trust would be responsible for any problems arising from the request.

We are in possession of an ABSA deposit slip dated 17 October 2000 whereby an amount of R2 000 000 was deposited into Zuma's bank account number *REDACTED*⁹⁸. On the same date Zuma issued cheque number 272 for an amount of R1 0000 000 to the Jacob Zuma Education Trust⁹⁹. The relevance and context of this payment to Zuma is more fully discussed elsewhere in this report¹⁰⁰.

⁹⁵ Refer to 10 0037-10 0038 (80 11130/1 Box 134)

⁹⁶ Refer to 10 0039 (107 000588 Box Z276)

⁹⁷ Refer to 10 0040 (990466 Box 000XXX)

⁹⁸ Refer to 10 0041 (990470 Box 00XX)

⁹⁹ Refer to 10 0042-10 0044 (80 04355B, 004506 file 1)

¹⁰⁰ Refer to paragraph 18.2.18

10.5.2 Malini (Pty) Limited

The company was incorporated as Longforgen (Pty) Limited on 16 October 2000¹⁰¹ with an authorised share capital of 1000 ordinary shares of R1 per share¹⁰². The company's registration number is 2000/026266/07. The company's name was changed to Malini on 12 December 2000¹⁰³.

The company's main objective was that of an operator for the Gaming Board. On 16 October 2000, DS&T were appointed as external Auditors of Malini¹⁰⁴.

Beverley Margaret Pickles was appointed as a director of Malini on 6 October 2000 and resigned on 10 October 2000. Shaik and Gama were appointed as directors on 10 November 2000¹⁰⁵. On 30 June 2004 Gama resigned as a director of the company¹⁰⁶.

Schedules reflecting the shareholding of Malini indicate the following¹⁰⁷:

Company	Percentage holding
Nkobi Investments	45%
Procon	15%
Fischer & Associates	15%
Everest Systems	5%
Management company	10%
JZ Educational Trust	5%
Womenco	5%

¹⁰¹ Refer to 10 0045 (1 02454 File)

¹⁰² Refer to 10 0048 (1 02458 File)

¹⁰³ Refer to 10 0050/51 (1 02453/55 File)

¹⁰⁴ Refer to 10 0054 (100 004141 Box Z025)

¹⁰⁵ Refer to 10 0052 (100 004139 Box Z025)

¹⁰⁶ Refer to 10 0052/58 (100 004138/9 Box Z025)

¹⁰⁷ Refer to 10 0059 (80 05552A Box 106)

We are in possession of an undated handwritten letter to Zandile Mdhlahla confirming the Jacob Zuma Education Trust Fund as an equity participant in their bid submission to the National Gaming Board under the consortium Malini (Pty) Limited¹⁰⁸. It was indicated that 10% shareholding had been allocated to the Jacob Zuma Education Trust Fund. It was also stated that as a condition to the tender bid, it was necessary to furnish the names of individuals acting as trustees to the Jacob Zuma Education Trust.

On 28 March 2001 Mdhlahla wrote to Shaik regarding a fax dated 26 March 2001 she had received from him, regarding the participation of the Jacob Zuma RDP Education Trust in the tender for the Central Electronic Monitoring System¹⁰⁹. She stated that she could never agree to or confirm the inclusion of the Jacob Zuma RDP Education Trust in the submission to the National Gambling Board under the Malini consortium.

Mdhlahla informed Shaik that such decision would require the approval of the Jacob Zuma RDP Education Trust and she was therefore referring the proposal to the Trustees for discussion. Once the Trustees had taken a decision on whether to participate in the bid or not, she would be in a position to inform Shaik of the outcome.

We searched for the fax from Shaik to Mdhlahla dated 26 March 2001 in the documents in our possession but were unable to locate it.

We are in possession of an account history of the Malini DS&T call account (number *REDACTED*) at BOE Corporate Bank for the period from 26 April 2001 to 23 July 2001¹¹⁰. It appears that the account was opened on 26 April 2001 when an amount of R250 000 was deposited into the account. The description of the deposit was the “*DS&T Trust Account*”.

On 7 May 2001 a cheque withdrawal for an amount of R108 000 was made in favour of Kobitech¹¹¹. On 11 May 2001 a further cheque withdrawal for an amount of R102 000 was made in favour of Kobitech¹¹². On 19 June 2001, a cheque withdrawal for an amount of R15 000¹¹³

¹⁰⁸ Refer to 10 0060 (80 05552A# Box 106)

¹⁰⁹ Refer to 10 0061 (80 12601 Box 136)

¹¹⁰ Refer to 10 0062 (AAP1 Box 311)

¹¹¹ Refer to 10 0063 (006712 File 15)

¹¹² Refer to 10 0064 (006713 File 15)

¹¹³ Refer to 10 0065 (006722 File 15)

was made in favour of Kobitech and on the same date another withdrawal for an amount of R25 000¹¹⁴ was made in favour of Shaik.

During the period from 26 April 2001 to 23 July 2001, interest earned on the investment amounted to R1 241.53 and a cheque withdrawal of the whole amount was made in favour of Kobitech and the account was closed.

All the abovementioned cheque withdrawals were agreed to the deposits made into Kobitech's and Shaik's bank accounts on the same dates the withdrawals were made. Therefore Kobitech received an amount of R226 241.53 and Shaik R25 000 from the original deposit of R250 000 made to the abovementioned account.

We could not identify any further activities of the entity for the period under review and conclude that apart from the transactions noted above the entity did not trade.

10.6 Directorships and possible shareholding

We identified the following memberships, directorships and possible shares held by Zuma (excluding those that are associated with properties and which are fully discussed elsewhere in this report):

10.6.1 Amaqhawe Wase Africa Petroleum CC (registration number 2005/126985/23)

The entity was registered on 7 September 2005, the date Zuma and the other members were appointed¹¹⁵. The other members are:

Colin Cyprian Sokhela (ID REDACTED);

Mbali SihleZungu (ID REDACTED); and

Collet Ndlovu (ID REDACTED).

The nature of the business of the entity could not be confirmed.

10.6.2 National Pride Trading 259 (Pty) Limited (registration number 2005/016396/07)

The company was registered on 20 May 2005. Zuma was appointed as the sole director on 15 July 2005 after the previous director, Monica RipepiJacob resigned¹¹⁶.

¹¹⁴ Refer to 10 0066 (012130 File 35)

¹¹⁵ Refer to Background search

¹¹⁶ Refer to Background search

The shareholder(s) of the company is unknown at the date of this report.

The nature of the business of the company was indicated as retail trade.

11 Payments made to and on behalf of Zuma

11.1 Background

The accounting records and documentation at our disposal reflect various payments made over a protracted period to and on behalf of Zuma by Shaik and the Nkobi group. These are reflected in the records of the Nkobi group and in documentation reflecting personal payments made by Shaik. The “*Nkobi group*”, in the context of this section of the report, refers to the group that are directly and indirectly associated with Nkobi Holdings and/or Shaik. We also applied our knowledge of Zuma, his family relationships as well as associated relationships¹¹⁷ in order to identify payments made to and on behalf of Zuma.

We used various sources in order to identify payments made to and on behalf of Zuma. These include:

Detailed cashflow analyses performed by us on each of the bank accounts identified as being of or associated with the Nkobi group, Shaik and Zuma;

General ledger information reflected in the accounting records of the Nkobi group companies and companies associated with the Nkobi group;

Summaries (usually computer generated summaries) reflecting payments that were ostensibly made to and on behalf of Zuma;

Cashflow projections reflecting payments that were made to on behalf of Zuma;

Invoices and account statements reflecting amounts that were ostensibly owed by Zuma in his personal capacity and by his family members. These were reconciled to the payments made;

Payments identified by Isaacs as having been made to and on behalf of Zuma; and

Any other information in electronic format or hard copy format, reflecting details of transactions that were ostensibly made, involving Zuma.

We recorded the information identified through the processes noted above in a spreadsheet which is attached hereto as Annexure A¹¹⁸. Reference is made in Annexure H supporting documentation and/or evidence to substantiate these transactions. It is evident from the analysis

¹¹⁷ Refer to paragraph 10

¹¹⁸ Refer to Annexure A

that various combinations of transactions took place that resulted in payments being effected by various entities associated with the Nkobi group and Shaik for and on behalf of Zuma.

Considering the total amount of payments made in relation to the position of the Nkobi group, as well as that of Shaik, it is evident that the cumulative payments made to and on behalf of Zuma would have had a fundamental effect on the position of the entities as reported in the Annual Financial Statements of the Nkobi group entities and on the daily cashflow position of the entities and Shaik. As discussed elsewhere in this report, a correlation exists between the payments made to and on behalf of Zuma and the financial position of Shaik and the Nkobi group¹¹⁹.

11.2 Total payments

A total of 783 payments were identified, amounting to R4 072 499.85. It is evident from the analysis that the first payment in the amount of R3 500 was made by Clegton Investments on 25 October 1995¹²⁰. Shortly thereafter, the involvement of Zuma in the business activities of the Nkobi group became more visible¹²¹. This was also shortly after Shaik had been informed by Stofile that the intended business with the ANC would not be pursued by the ANC, which marked the establishment of the Nkobi group¹²². This payment was followed by another payment during the 1997 financial year of R2 500¹²³. Thereafter the payments increased during financial years, from 8 payments in the amount of R44 500 made during 1997 to 181 payments made in the amount of R528 624.38 during 2005. These payments made to and on behalf of Zuma, by the Nkobi group and Shaik, can be summarised, per financial year ending February as follows:

Year	Number of payments during year	Total amount R	Cumulative amount R
1996	1	3 500.00	3 500.00
1997	8	44 500.00	48 000.00
1998	39	262 476.40	310 476.40

¹¹⁹ Refer to paragraph 20.8

¹²⁰ Refer to Annexure A

¹²¹ Refer to paragraph 17

¹²² Refer to paragraph 8.4

¹²³ Refer to Annexure A

Year	Number of payments during year	Total amount R	Cumulative amount R
1999	40	174 014.69	484 491.09
2000	44	181 648.12	666 139.21
2001	61	549 475.73	1 215 614.94
2002	73	590 694.98	1 806 309.92
2003	138	470 304.41	2 276 614.33
2004	167	502 889.87	2 779 514.20
2005	181	528 624.38	3 308 128.58
2006	31	764 371.27	4 072 499.85
	783	4 072 499.85	

As stated elsewhere in this report, the frequency and the aggregated amounts of the payments made to and on behalf of Zuma had a direct correlation to the increase in the overdraft of the Nkobi group and as a consequence placed the Nkobi group and Shaik under pressure in terms of funding¹²⁴.

The increasing trend in the number of payments can also be illustrated by reference to payments made per calendar year ending December, as follows:

Year	Number of payments during year	Total amount R	Cumulative amount R
December 1995	1	3 500.00	3 500.00
December 1996	4	22 500.00	26 000.00
December 1997	36	245 932.22	271 932.22
December 1998	35	169 029.48	440 961.70
December 1999	51	210 903.65	651 865.35
December 2000	56	283 738.23	935 603.58
December 2001	67	779 645.20	1 715 248.78

¹²⁴

Refer to paragraph 21.7

Year	Number of payments during year	Total amount R	Cumulative amount R
December 2002	130	512 656.22	2 227 905.00
December 2003	166	490 402.67	2 718 307.67
December 2004	176	534 858.82	3 253 166.49
December 2005	61	819 333.36	4 072 499.85
	783	4 072 499.85	

11.3 Sources of payments

It is evident that various sources effected the payments made. The bulk of the payments were made from bank accounts in the names of companies forming part of the Nkobi group, and the residual payments were made by Shaik himself.

The source of payments made can be summarised as follows:

Description	Number of payments	Amount R
Cash	5	2 660.00
Chartley Investments	3	21 000.00
Clegton Investments	3	28 500.00
Kobifin	27	178 532.22
Kobitech	503	2 279 040.23
Kobitech Transport Systems	41	120 367.36
Nkobi group/Shaik	46	170 280.71
Nkobi Holdings	10	26 831.14
Pro Con Africa	21	97 026.10
Proconsult	7	21 944.18

Description	Number of payments	Amount R
Shaik	116	1 123 318.41
Payment iro Michigan Investments	1	3 000.00
Total	783	4 072 499.85

We stated in a preceding paragraph that Shaik was only able to fund 13% of the payments made. The indicated amount of R1 123 318.41 may appear to contradict that statement as it appears to be more than what we indicated in the preceding conclusion. The amount of R1 123 318.41 is an amount that was funded from the accounts of Shaik, but due to the fact that he did not have the means in short term funding availability, reimbursed to him from the accounts of the Nkobi group, hence the discrepancy.

We could not determine any particular pattern emerging from the source of the payments made. It is evident that, as a result of the cashflow pressures experienced by the Nkobi group and Shaik, payments were generally made from bank accounts where available resources were located, either from cash on hand or through the utilisation of overdraft facilities.

The transactions reflected as Nkobi group and/or Shaik, amounting to R178 810.21 in the table above, are those where evidence other than bank records were obtained that payments were made, but we could not identify the bank account from which those payments were made. The same applies to the payment in the amount of R3 000 reflected as a payment in respect of Michigan Investments.

11.4 Beneficiaries of payments

The information in support of the payments made to and/or on behalf of Zuma identifies the beneficiaries. The beneficiaries can broadly be classified as:

Family expenditure, with the following sub-classifications:

Education of dependants;

Day-to-day housekeeping expenses; and

Other payments relating to Zuma's dependants.

Personal expenditure, with the following sub-classification:

Bond payments;

Car rental;

Cash;

Payments relating to Development Africa;

Medical expenses;

Transport (taxi's);

Travel and accommodation;

Payments associated with vehicle expenses;

Vehicle financing;

Payments made for the purchase of a motor vehicle;

Rent; and

Other personal expenses.

Michigan Investments expenditure in the amount of R3 000, where the beneficiary could not be identified, and therefore no classification was made.

The table below reflects the classification of payments in the categories as described in the preceding paragraphs:

Classification	Sub-classification	Amount R
Family	Education	513 097.63
Family	Housekeeping	122 546.48
Family	Other	249 699.56
Total family related payments		885 343.67
Personal	Bond	57 000.00

Classification	Sub-classification	Amount R
Personal	Car rental	6 037.34
Personal	Cash	884 500.00
Personal	Development Africa	900 000.00
Personal	Medical	13 511.44
Personal	Transport	41 995.42
Personal	Travel and accommodation	133 961.76
Personal	Vehicle associated expenses	57 160.23
Personal	Vehicle finance	373 922.35
Personal	Vehicle purchased	57 000.00
Personal	Rent	142 500.00
Personal	Other	516 567.64
Total personal related payments		3 184 156.18
Michigan Investments	Not categorised	3 000.00
Total payments for and on behalf of Zuma		4 072 499.85

From the above table it is evident that the majority of the payments made to and on behalf of Zuma were made in respect of personal expenditure. For payments relating to Zuma's family, the majority of payments were made in favour of educational institutions attended by Zuma's dependants.

The value of payments made in respect of educational institutions and housekeeping reflects an increasing trend, with total payments of R513 097.63 and R122 546.48 respectively, up to June 2006.

Cash payments to Zuma increased annually from R10 000 during 2002, to payments amounting to R181 800 during 2005. Cash payments during the first four months in 2006 amounted to R305 500.

The amount of R3 000 is reflected as a payment in respect of Michigan Investments, due to the fact that the payment was reflected as a loan to Michigan Investment in the accounting records of Clegton Investments. This payment was subsequently included in the development cost write off as discussed in other sections of the report.

11.5 Accounting treatment for payments to and on behalf of Zuma

11.5.1 Background

Accounting data was obtained for entities within the Nkobi group of entities. The accounting treatment of the payments to and on behalf of Zuma was identified, recorded and analysed¹²⁵.

Shaik had a separate set of accounting records for financial years ending 28 February 2003 to 28 February 2006, in which payments made by Shaik, himself, were identified. These payments and the corresponding accounting treatment were also analysed and collated by us¹²⁶.

11.5.2 Accounting in the financial records of the paying account holder

The paying account holder (first book of entry) of the identified payments to and on behalf of Zuma can be summarised as follows:

Paying account holder	Amount R
Chartley Investments	26 000.00
Clegton Investments	80 000.00
Kobifin	2 499 971.74
Kobitech Transport Systems	125 967.36
Pro Con Africa	74 575.49
Proconsult	18 444.18

¹²⁵ Refer to paragraph 21.7

¹²⁶ Refer to Annexure B

Shaik	1 026 946.41
Unknown	220 594.67
Total	4 072 499.85

The payments classified as unknown represent payments for which no initial accounting entries (first book of entry) could be identified in the accounting records at our disposal, or only the accounting entries subsequent to the first book of entry could be identified. Payments made by Shaik prior to 2003 were included in the amount of R1 026 949.41 despite the fact that accounting records were only available for financial years prior to 2003. This allocation was done based on other available sources of information confirming that these payments had been effected by Shaik.

11.5.3 Final accounting for payments

Subsequent to the first book of entry as described in the above paragraphs, a series of accounting entries were identified in the accounting records of the various relevant entities and were reflected on our schedule.

The final debit entries were recorded in the financial accounting records of the following entities:

Final debit records	Amount R
Chartley Investments	5 000.00
Clegton Investments	171 500.00
Kobifin	2 635 164.18
Nkobi Holdings	22 881.54
Pro Con Africa	5 040.00
Proconsult	400.00
Shaik	1 022 816.41
Unknown	209 697.72
Total	4 072 499.85

The debit records reflected as unknown, amounting to R209 697.72 in the table above, are those where evidence was obtained that payments were made on the strength of the other categories of information used, but we could not identify the final debit accounts in the accounting records.

It is evident that the largest portion of the payments was accounted for in the records of Kobifin. These payments were either capitalised in the form of loan accounts, or recorded as expenses. Payments in respect of Zuma's vehicle finance arrangements were recorded as instalment sales and were reflected accordingly.

The final debit entries can be classified in the following categories:

Classification	Amount R
Development costs written off – not reversed	214 632.50
Development Costs reversed – to loan accounts	68 818.66
Expensed	128 720.73
Instalment Sale	231 129.16
Loan accounts – exclusive of devdevelopment cost reversal	2 865 958.71

Classification	Amount R
Suspense account	5 661.00
Unknown	551 240.01
Value Added Tax	6 339.08
Total	4 072 499.85

The payments classified as unknown in the above table, represent payments for which:

Accounting records were not available (for example payments made by Shaik during periods prior to 2003);

Final debit entry could not be identified as a result of batch processing of transactions; or

Transactions were not recorded in the accounting records (for example. car valet expenses).

11.6 Development cost write off

During the 1999 financial year an amount of R1 282 027.63 was written off against the development cost account in the books of Kobifin. The amount of R1 282 027.63 was then transferred, in total, to the Non-Distributable-Reserves account in Kobifin's accounting records. This Non-Distributable-Reserve account was initially created as a result of a "*sale of valuation rights*" of the Prodiba Project¹²⁷. The other side of this revaluation was a debit entry to the Kobi-IT Loan account.

The effect of this series of transactions was to write off development expenses, apparently incurred on the Prodiba Project, against a Non-Distributable-Reserve.

The total amount of R1 282 027.63 was debited to the development cost expense account with the corresponding credits being passed against loan accounts as detailed below:

"*Clegton Investments Loan Account*" was credited with an amount of R198 167.40;

"*Floryn Investments Loan Account*" was credited with an amount of R347 159.50; and

"*Shaik Loan Account*" was credited with an amount of R736 700.73.

¹²⁷

Refer to paragraph 20

Identified payments to or on behalf of Zuma in the amount of R283 451.16 were included in these balances written off as development cost¹²⁸.

According to documentation available, the amounts included in the subsequent reversal of the development cost can be allocated to the loan accounts originally applied in the initial write off of development cost¹²⁹.

Account description	Amount written off R	Identified payments written off R	Amount reversed R	Identified payments reversed R
<i>“Clegton Investments Loan Account”</i>	198 167.40	207 167.98	35 667.98	35 667.98
<i>“Floryn Investments Loan Account”</i>	347 159.50	53 132.50	184 954.60	10 000.00
<i>“Shaik Loan Account”</i>	736 700.73	23 150.68	736 700.73	23 150.68
Total	1 282 027.63	283 451.16	957 323.31	68 818.66

In respect of the Clegton loan account, identified payments in the amount of R207 167.98 exceeded the net amount written off amounting to R198 167.40, by R9 000.58. This is as a result of credit balances in the Clegton loan account, which were taken into account when the write off occurred.

Only R68 818.66 of the payments identified to and on behalf of Zuma, originally included in the write off in the amount of R283 451.16, formed part of the reversal. The residual identified payments in the amount of R214 632.50 were not included in the reversal of the development cost.

An unexplained difference in the amount of R7 545.12 exists between the supporting documentation provided for the reversal of the development cost, as set out in the above table, and the total of the journal entries accounting for the development cost reversal in the amount of R964 868.43.

The reversal in the amount of R968 868.84 was processed *via* two batches of accounting entries, namely R711 050.43 and R253 818.00 respectively. The first batch of journals processed to account for the reversal was as follows:

¹²⁸ Refer to Annexure C

¹²⁹ Refer to 11 3098-13 3110 (93 007 – 93 0019)

Debit 0584/000 Loan Account - Floryn Investments

R 30 000.00

Debit 0590/000 Loan Account - Shaik

R567 265.54

Debit 0606/000 Loan Account - Zuma

R113 784.89

Credit 0998/000 Contra Account for general journal

R711 050.43

Debit 0998/000 Contra Account for general journal

R711 050.43

Credit 0520/000 Retained Income/(Accumulated Loss)

R711 050.43

Debit 0520/000 Retained Income/(Accumulated Loss)

R711 050.43

Credit 0998/000 Contra Account for general journal

R711 050.43

Debit 0998/000 Contra Account for general journal

R711 050.43

Credit 0530/000 Non Distributable Reserve

R711 050.43

The effect of the abovementioned entries was a reversal of a total amount of R711 050.43 from the Non Distributable Reserve to the loan accounts of Floryn Investments R30 000 (the amount “owing” by Mlaba), Shaik R567 265.54 and Zuma R113 784.89, thereby increasing (restating) the balances owing by the respective entity and parties.

The second batch of journals processed to account for the reversal was as follows:

Debit 0590/000 Loan Account - S. Shaik

R253 818.00

Credit	0999/000	Opening Balance/Suspense Account
R253 818.00		
Debit	0999/000	Opening Balance/Suspense Account
R253 818.00		
Credit	0998/000	Contra Account for general journal
R253 818.00		
Debit	0998/000	Contra Account for general journal
R253 818.00		
Credit	0520/000	Retained Income/ (Accumulated Loss)
R253 818.00		
Debit	0520/000	Retained Income/ (Accumulated Loss)
R253 818.00		
Credit	0998/000	Contra Account for general journal
R253 818.00		
Debit	0998/000	Contra Account for general journal
R253 818.00		
<i>Credit</i>	<i>0530/000</i>	<i>Non Distributable Reserve</i>
	<i>R253 818.00</i>	

The effect of the abovementioned entries was a reversal of a total amount of R253 818 from the Non Distributable Reserve to the loan account of Shaik thereby increasing (restating) the balance owing by Shaik.

The combined effect of the above journals was that the account 0530/000 - Non distributable Reserve was credited with an amount of R964 868.43, and the debit entries were processed against the following accounts:

0590/000	Loan Account - Shaik	R821 083.54
0584/000	Loan Account - Floryn Investments (Pty) Limited	R30 000.00
0606/000	Loan Account - J Zuma	R113 784.89

The debit against account “0606/000 - Loan Account - J Zuma” in the amount of R113 784.89 is made up of the following amounts:

Institution	Amount R	Comments
Sacred Heart	9 070.00	Part of initial Clegton loan write-off
Holy Family	8 115.92	Part of initial Clegton loan write-off
Sacred Heart	10 019.98	Part of initial Clegton loan write-off
Holy Family	8 462.08	Part of initial Clegton loan write-off
Ditz Incorporated	15 000.00	Part of initial Shaik loan write-off
Casanova	10 000.00	Part of initial Shaik loan write-off
Smith & Lowness	53 116.91	Part of initial Shaik loan write-off

The amounts that formed part of the initial Shaik loan account write off were not included on the payments schedule, despite the fact that these amounts had been allocated to Zuma’s loan account as part of the reversal. Sources of information available did not reflect that these amounts were related to payments made to and on behalf of Zuma.

11.7 Value added tax

Instances were noted where debit entries were made to the account styled “0950/000: Vat/Tax Control account” in the accounting records of Kobifinin respect of Value Added Tax (“VAT”) on payments made to and on behalf of Zuma.

These entries can be summarised as follows:

Date	Receiving account holder/for the benefit of	Amount R
3 April 1998	Ditz Incorporated	644.74
15 April 1998	IA Kajee	122.56
30 June 1998	Ditz Incorporated	27.67
23 October 1998	IA Kajee	317.82
23 June 1999	IA Kajee	246.00

Date	Receiving account holder/for the benefit of	Amount R
20 August 1999	National Airways Corporation Durban	1 743.86
7 September 1999	Ditz Incorporated	420.00
30 September 1999	Durban South Motors	1 039.94
8 May 2000	Hyundai Springfield Park	401.75
2 November 2001	Kenfield Motors	703.07
17 September 2002	Turners (N Khan)	64.26
19 September 2002	Turners Travel	60.79
19 September 2002	Avis	253.52
19 September 2002	Turners Travel	204.10
30 September 2002	Turners Travel	89.00
Total		6 339.08

These debit entries to the VAT control account indicate that input VAT might have been claimed on certain payments made to and on behalf of Zuma. In terms of legislation, claims in respect of input VAT are limited to those amounts relating to expenses incurred in the production of income.

11.8 Transfer of loan accounts

The analysis of journal entries processed to account for the payments to and on behalf of Zuma reflected that an account styled “0606/000: *Loan Account - J Zuma*” existed in the financial records of Kobifin. This account first appeared in the financial records for the 2002 financial year and subsequent periods.

On financial year end, a journal entry was processed in order to transfer the balance of the account “0606/000: *Loan Account - Zuma*” to an account styled “0590/000: *Loan Account - S. Shaik*”. In the beginning of the subsequent financial year, these journal entries were reversed, and balances were transferred back to account “0606/000: *Loan Account - Zuma*”.

The transfers as described above were repeated annually up to the financial year ending 28 February 2005. For the 2005 financial year, the initial transfer to account “0606/000: *Loan*

Account - Zuma” occurred at the beginning of the year. This balance, along with payments made to and on behalf of Zuma, during the 2005 financial year, remained in the account and no transfers or re-allocations occurred at year end.

It was noted that the following general ledger accounts were *inter alia* also transferred to account “0590/000: *Loan Account - S. Shaik*” at year end, but were transferred back in the beginning of the subsequent financial year:

“0553/000 : *Floryn - Fixed Deposit*”;

“0567/000 : *Loan Account - Port Shepstone Property*”;

“0591/000 : *Loan Account – Other*”;

“0592/000 : *Loan Granted – S. Shaik*”;

“0798/000 : *Floryn 1*”; and

“0799/000 : *Floryn 2*”.

From the above information, it is evident that from the perspective of the Nkobi group, payments made to and on behalf of Zuma were regarded as loans from the group of companies to Shaik in his personal capacity. In turn, a revolving loan agreement ostensibly existed between Shaik and Zuma. The details of this agreement are set out elsewhere in this report¹³⁰.

12 Financial position of Zuma

12.1 Introduction

It is apparent from the detailed work carried out and dealt with in this report that Zuma experienced financial difficulty from as early as January 1995, when he was issued a letter of demand from his banker with regards to repayments on a mortgage bond that was in arrears.

A general pattern emerges from the analysis of the financial position of Zuma indicating that debts were incurred at times when, as is evident from the subsequent repayment history, he could not settle the debts with the means at his disposal. There were times when not even the first payment due cleared the bank. As a consequence, Zuma's financial position deteriorated over time to such an extent that legal proceedings were instituted for the recovery of such debts.

Shaik involved himself in dealing with the financial affairs of Zuma over time. He presented himself on numerous occasions to various institutions as the "*financial advisor*" of Zuma and, as a consequence, the institutions communicated directly with Shaik in order to resolve the financial position of Zuma. Zuma's financial position did not improve during the time when Shaik acted as his financial advisor.

Zuma, in his personal capacity, did not have access to sufficient funds derived from his position, as an official employed by the South African Government, to fund his expenses and liabilities and as a consequence had to rely on funds from external sources such as borrowing from financial institutions, Shaik, the Nkobi group and other parties. This necessitated, *inter alia*, the Nkobi group, Shaik and other entities, related to the Nkobi group, settling debts and other personal expenses for and on behalf of Zuma in excess of R4 million during the period October 1995 to June 2006.

12.2 Cashflow – an overview

A review of the bank accounts of Zuma indicates that Zuma was in a cash starved position from at least the end of 1995. By the end of 1996, Zuma's Nedbank cheque account was in overdraft to the extent of R72 941.37 and his Standard Bank cheque account was in overdraft to the extent of R106 596.99.

When Zuma opened his cheque account at ABSA in September 1998, Zuma's Nedbank cheque account was in overdraft of R56 016.24 and his Standard Bank cheque account was in overdraft of R103 929.82.

Documentation obtained from Nkobi indicates that in 1999 Zuma's monthly salary amounted to R29 100 and his expenses, totalling R27 820, consisted of the following¹³¹:

“Gertrude” - R1 200;

“Skosozana” - R7 000;

“Kate” - R18 000; and

“Personal - J Zuma” - R1 620.

A note titled, “Income required to discharge other commitments”, reflects an amount of R36 926.67. A spreadsheet titled¹³², “Zuma & Children expenditures” also indicates that Zuma's total monthly income in 1999 amounted to R29 100. In addition to the expenses listed above, the expenses for Zuma's children and interest on overdraft are also included. The total expenses are indicated as R66 026.67 per month. The expenditure that had to be funded from supplementary income was therefore R36 926.67 per month.

On 31 December 2000 the sum of the balances of Zuma's known bank accounts were in overdraft of R227 868.47. The negative cashflow situation continued, in that on 31 December 2004 the sum of the balances of Zuma's known bank accounts were in overdraft of R421 247.83.

The negative cashflow situation was rectified by a R1 000 000 cheque from Mandela that was deposited into Zuma's ABSA cheque account on 23 June 2005.

12.3 Assets and liabilities

The financial position of any person is affected by his/her net asset position. The net asset position is determined by the total value of assets owned by the individual in excess of his/her liabilities. When a person's assets exceed the liabilities, a net asset position is reflected. The contrary position would be a net liability position, which indicates possible insolvency.

Assets would include items that are acquired and financed on a long-term basis by using cash or finance available. Assets of individuals generally comprise motor vehicles, investments in

¹³¹ Refer to 12 0001 to 12 0003 (80 04484 to 80 04486 Box 99)

¹³² Refer to 12 0004 (CD5 FIL503 Zuma children expenditure)

companies, properties, savings and household effects. Zuma was not in a position to acquire any of his assets by means of lump sum cash payments from a personal point of view. Liabilities, as in the case of Zuma, comprised of overdraft facilities and liabilities of a longer-term nature, such as loans provided against bonds registered over properties and vehicle finance. It appears that Zuma also obtained financing from other sources. Depending on the nature of this financing it may or may not comprise a liability.

Zuma had various bank accounts from which part of his lifestyle was funded. He mainly utilised credit card facilities and current accounts into which his monthly salary was deposited and against which payments were made on a day-to-day basis.

We identified various statements of assets and liabilities for Zuma, ostensibly drafted by Shaik and presented to the bank. Due to the potential consequences it is unlikely that Zuma and/or Shaik understated the value of Zuma's assets. Where it was possible, we utilised the value of certain assets as indicated on these statements of assets and liabilities of Zuma. It is so that there may be assets and liabilities that were not identified by us due to the fact that it was held through nominees and other individuals that were not disclosed. This will naturally affect our findings, should any further information lead to the discovery of any further assets and liabilities. As Shaik claimed to have been Zuma's financial adviser, it is improbable that undisclosed assets exist, especially from a local point of view. Shaik carried a general power of attorney for Zuma locally¹³³.

Based on the information at our disposal, Zuma's financial position at the end of each calendar year, up to 30 June 2006, was as follows (including any amounts, capital plus interest accrued, that may have been owing to Shaik and/or Nkobi, should these be regarded as "*loans*")¹³⁴:

Year	Total assets R	Total liabilities R	Net assets/(liabilities) R
1995	868 942.26	(808 757.12)	60 185.14
1996	1 042 199.41	(1 047 612.71)	(5 413.30)
1997	1 429 766.23	(1 670 909.89)	(241 143.66)

¹³³ Refer also paragraph 16.2

¹³⁴ Refer to Annexure D

Year	Total assets R	Total liabilities R	Net assets/(liabilities) R
1998	1 777 128.37	(1 916 993.26)	(139 864.89)
1999	2 045 643.67	(2 294 307.73)	(248 664.06)
2000	2 653 058.94	(3 512 152.74)	(859 093.80)
2001	2 346 681.63	(5 316 079.13)	(2 969 397.50)
2002	3 128 781.33	(6 428 837.76)	(3 300 056.43)
2003	3 516 408.36	(7 762 019.77)	(4 245 611.41)
2004	6 685 464.70	(8 497 195.68)	(1 811 730.98)
2005	2 569 140.55	(10 030 634.69)	(7 461 494.14)
2006	5 404 193.34	(10 067 901.57)	(4 663 708.23)

We have dealt with the assets and liabilities that made up the balances reflected above in the paragraphs that follow. Generally the financial position of Zuma deteriorated over time, mainly as a result of the fact the shortage in daily funding required to fund his lifestyle as well as those who were associated with him, including his immediate family and other individuals requiring financial assistance. Zuma's cash requirements, by far exceeded his ability to fund such requirements from his salary as an employee of the South African Government. The predicament that Zuma found himself in from the early years did not result in reduced spending on his part. Shaik, as the claimed "*financial advisor*", also did not reduce it. In fact Shaik funded the shortfall (except for some special instances where other individuals, such as Mandela assisted. These were, however, once off instances and not continuous as in the case with Shaik). Spending continued despite that fact that Zuma experienced material shortfalls from his own resources, namely his salary earned from the South African Government.

The detailed discussion of Zuma's assets and liabilities below should be read together with the annexure prepared by us¹³⁵.

¹³⁵

Refer to paragraph 12.2.1 – 12.2.23

12.3.1 602 Stretten Bay, 11 St Andrews Street, Durban

Zuma and NC Zuma applied for a home loan at Standard Bank for erf 147, section 64, Stretten Bay on 8 February 1992¹³⁶. The purchase price of the property was R180 000 and a loan of R150 000 was granted on 2 March 1992¹³⁷.

The home loan application indicated that the monthly instalments were to be drawn from NC Zuma's account number *REDACTED*. A review of the bond account (account number *REDACTED*) revealed that from January 2002, the account was serviced by NC Zuma from her Standard Bank cheque account (account number *REDACTED*). Between the period December 1995 and June 1997, we identified 19 debit orders against Zuma's Standard Bank account for the benefit of this bond account. Eleven of these debit orders were returned as unpaid.

In terms of the "Final order of Divorce", dated 12 June 1998, Zuma forfeited his right, title and interest in this property to NC Zuma¹³⁸. Documentation obtained from ABSA, indicates that there were three properties registered in Zuma's name, but these they have been passed to Zuma's ex-wife (NC Zuma) as part of a divorce settlement¹³⁹. The properties indicated were Stretten Bay and Saratoga Gardens. The third property was not specifically reflected, but could be the property registered in the name of Michigan Investments discussed below.

Shaik advised Zuma not to transfer the properties into NC Zuma's name in order to evade the transfer duties payable¹⁴⁰. Shaik also indicated that although the properties, Stretten Bay and Saratoga Gardens, were registered in Zuma's name, Zuma was not responsible for servicing the bonds¹⁴¹.

On 30 July 2005 the outstanding balance of the bond account was R107 636.71¹⁴² and on 31 May 2006 the balance was R98 387.65¹⁴³.

The value of the property was included in the calculation of the assets of Zuma, although it appears that Zuma gave ownership of the property to his ex-wife NC Zuma. The property is reflected at the cost price of the property due to the fact that we do not have information

¹³⁶ Refer to 12 0005-6(183 000642-3)

¹³⁷ Refer to 12 0007, 12 0008 (80 00535 Box 80), 108 000042 Box Z162)

¹³⁸ Refer to 12 009-120011 (990463-5 Box 00XX)

¹³⁹ Refer to 12 0012-22 specifically 12 0020 and 120022 (990356-66 specifically 990364 and 990366 Box 00XX)

¹⁴⁰ Refer to 12 0023(120 005450 Box Z105)

¹⁴¹ Refer to 12 0024 (108 000042 Box Z162)

¹⁴² Refer to 12 0025 (183 000635)

¹⁴³ Refer to 12 0026-12 0028(Summons 273/06 File 223)

regarding the market value of the property. It should also be noted that Zuma's statements of assets and liabilities, as presented to ABSA, did not reflect this property as an asset.

12.3.2 506 and 507 Saratoga Gardens, 11 Saratoga Avenue, Berea

A bond from Permanent Bank, account number *REDACTED*, in the name of Zuma and his then wife, NC Zuma, was registered on 18 November 1994 over erf 54, portions 34 and 35, Saratoga Gardens, for an amount of R80 000, which was the purchase price of the property¹⁴⁴. The monthly instalment amounted to R1 570 and was paid from Zuma's Standard Bank cheque account (number *REDACTED*).

According to the bank's records, a first letter of demand was issued on 31 January 1995¹⁴⁵. This was approximately two and a half months following the date of registration of the bond. Further letters of demand and reminders were issued between February 1995 and May 1995¹⁴⁶.

On 1 June 1995 a summons was issued. It appears that no legal action followed as several more letters of demand and reminders were issued. On 8 April 1997 Permanent Bank sent another letter to Zuma and his wife, NC Zuma, demanding payment of outstanding instalments of R2 163.91 per month. The outstanding balance on the bond then amounted to R75 430.31¹⁴⁷. On 22 October 1997 another summons was issued¹⁴⁸.

On 5 May 1999 a letter of demand was issued, stating that the amount in arrears was R40 549.27¹⁴⁹. At this stage the outstanding balance was R110 907.85 indicating that approximately 20 instalments had not been paid and that the bond repayments had ceased during November 1997, which may be an indication of Zuma's inability to service his outstanding debts with his then earnings from the South African Government.

On 21 May 1999 a deposit of R40 000 was made into Zuma's Nedbank account (number *REDACTED*)¹⁵⁰. On 24 May 1999 R40 000 was transferred from that account to Zuma's bond account at Permanent Bank to reduce the outstanding balance to R70 907.85¹⁵¹. A schedule of

¹⁴⁴ Refer to 12 0029, 12 0030 and 120031 (BS1 013356 File 78 (100001/2), 120 005450 Box Z105), 121 000062 Box Z274)

¹⁴⁵ Refer to 12 0032(018556 File 169 (100002))

¹⁴⁶ Refer to 12 0033-35 (121 000040-42 Box Z274))

¹⁴⁷ Refer to 12 0036 (80 00293 Box 80)

¹⁴⁸ Refer to 12 0037 (018558 File 169)

¹⁴⁹ Refer to 12 0038 (018560 File 169)

¹⁵⁰ Refer to 12 0039(BS1 013456 (100005/6) File 78)

¹⁵¹ Refer to 12 0040(018562 File 169)

payments identified on Kógl's computer reflects a payment of R40 000 on 21 May 1999. The supporting documentation obtained from the bank indicates that, on 21 May 1999, Kógl instructed Investec Securities to pay R40 000 from account *REDACTED* into the Nedbank account of Zuma¹⁵².

On 4 April 2000 a letter of demand was again issued by Permanent Bank, stating that an amount of R12 801.58 was in arrears¹⁵³. On the same date, R50 000 was deposited into the account¹⁵⁴ and this was matched to a payment of R50 000 on the same date from Cay Nominees'¹⁵⁵ current account at Nedbank (account number *REDACTED*)¹⁵⁶. The deposit reduced the outstanding balance to R27 408.38.

On 19 July 2000 a deposit of R28 400.24 reduced the outstanding balance to zero¹⁵⁷. The source of this deposit is unknown.

It is thus evident that Zuma defaulted for the first time in January 1995. Other than the initial debit order instalments, the bond was eventually settled by a number of lump sum payments. The lump sum payments can be summarised as follows:

21 May 1997 – R40 000 payment from Zuma's Nedbank current account – Source of original deposit is Cay Nominees;

4 April 2000 – R50 000 payment that was ostensibly made by Cay Nominees. We could not establish the source of the funds provided by Cay Nominees; and

19 July 2000 – R28 400.24 – Source unknown, balance reduced to zero.

Zuma indicated in his 1999 declaration of Parliamentary members' interest that he was the sole member of "*Saratoga Investments CC*"¹⁵⁸. We could not identify such an entity.

As mentioned previously, it appears that Zuma gave ownership of this property to his ex-wife NC Zuma as part of the divorce settlement. Zuma's statements of assets and liabilities, as presented to ABSA, did not include this property.

¹⁵² Refer to 12 0041/120042 (222 000102/105)

¹⁵³ Refer to 12 0043 (018565 File 169)

¹⁵⁴ Refer to 12 0044 (BS1 013354 File 78)

¹⁵⁵ Refer to paragraph 12.2.22

¹⁵⁶ Refer to 12 0045(BS1 016550 File 90)

¹⁵⁷ Refer to 12 0046 (018565 File 169)

¹⁵⁸ Refer to 12 0047-12 0058(107000377-107000388 Box Z276)

We included the property in the calculation of Zuma's assets and liabilities due to the fact that the property was still registered in Zuma's name. The value of the property is reflected at cost due to the fact that we do not have any information regarding the market value.

12.3.3 605 Killarney Wilds, 6 7th Street, Killarney

Zuma applied for a home loan of R360 000 at Standard Bank on 4 May 1995¹⁵⁹.

On 15 May 1995 Standard Bank informed Zuma that a home loan of R400 000 had been granted to him for the purchase of section 37, Killarney Wilds, through Michigan Investments¹⁶⁰. The purchase price of the property was R426 500¹⁶¹. Zuma became the sole member of Michigan Investments on 13 October 1995 after one WAGL Warden, ceased to be a member¹⁶². Warden also gave power of attorney to Zuma and/or Kögl in order to register a bond over this property¹⁶³.

At the time of this acquisition, Zuma had a liability towards Permanent Bank for Saratoga Gardens¹⁶⁴.

On 31 May 1995 attorney Nathan BK Luen informed Zuma, *via* Kögl, that attorneys Bowman Gilfillan Hayman & Godfrey would attend to the registration of a bond taken out by Michigan Investments¹⁶⁵.

On 27 November 1995 Standard Bank informed Zuma that the home loan had been registered on 15 November 1995¹⁶⁶.

On 21 May 1997, Standard Bank informed Shaik that Zuma's bond account was in arrears to the extent of R6 743.12¹⁶⁷.

On 15 September 1997 Standard Bank again informed Zuma that the bond account was in arrears of R29 043.12 and that Standard Bank's attorneys had been instructed to take the necessary legal action¹⁶⁸.

¹⁵⁹ Refer to 12 0059 (BS1 010444 File 48)

¹⁶⁰ Refer to 12 0060 (BS1 010446 File 48)

¹⁶¹ Refer to 12 0061 (BS1 010444 File 48)

¹⁶² Refer to 12 0062 (BS1 010467 File 48)

¹⁶³ Refer to 12 0063 (BS1 010465 File 48)

¹⁶⁴ Refer to paragraph 12.2.2

¹⁶⁵ Refer to 12 0064 (80 00237 Box 79)

¹⁶⁶ Refer to 12 0065 (BS1 010445 File 48)

¹⁶⁷ Refer to 12 0066 (80 00550 Box 80)

¹⁶⁸ Refer to 12 0067 (108 000251 Box Z163)

On 5 November 1997 Goodrickes, the attorneys for Standard Bank, informed Ditz that the bank required proof of the grant of a bond by New Republic Bank¹⁶⁹.

On 19 November 1997 the High Court issued a writ for the sum of R443 618.52 plus interest with regards to the property belonging to Michigan Investments, namely unit 605 Killarney Wilds, Killarney. The Sheriff executed the writ on 25 November 1997. Standard Bank therefore proceeded to protect its interest by obtaining the order in their favour on the back of various attempts to resolve the issue prior to taking legal action¹⁷⁰. The application for a bond from New Republic Bank was in process and on 21 November 1997, New Republic Bank informed Ditz attorneys that a home loan for Michigan Investments, in the amount of R450 000 had been approved¹⁷¹.

On 3 December 1997 a notice of sale in execution was issued in accordance with a High Court judgement against Michigan Investments¹⁷².

On 5 February 1998 Ditz advised Standard Bank that they had been instructed to propose the following settlement in respect of the outstanding bond for Michigan Investments¹⁷³:

Standard Bank consent to the registration of the mortgage bond by New Republic Bank and the settlement of R450 000 of the outstanding bond; and

The remaining portion be settled by means of an immediate payment of R5 000 followed by seven post-dated cheques of R5 000 each, commencing on 15 March 1998 and thereafter monthly.

On 10 February 1998 Ditz asked Shaik for two series of cheques, relating to the settlement of Zuma's overdraft and the arrear payments on the Michigan Investments bond as requested by Standard Bank's attorneys, Goodrickes¹⁷⁴. On 18 February 1998 Ditz sent a series of six post-dated cheques of R7 500 each to Goodrickes¹⁷⁵ and a further series of eight post-dated cheques in respect of the settlement agreement made¹⁷⁶.

¹⁶⁹ Refer to 12 0068(80 00436 Box 80)

¹⁷⁰ Refer to 12 0069-12 0070 (8000446-8000447)

¹⁷¹ Refer to 12 0071 (80 00539 Box 80)

¹⁷² Refer to 12 0072-12 0073 (80 00143/7 Box 80)

¹⁷³ Refer to 12 0074 (80 00416 Box 80)

¹⁷⁴ Refer to 12 0076 (80 00542 Box 80)

¹⁷⁵ Refer to 12 0077 (80 00433 Box 80)

¹⁷⁶ Refer to 12 0078(80 00432Box 80)

New Republic Bank requested Shaik to arrange for the letter from Ditz confirming the withdrawal of Standard Bank's judgement against Michigan Investments on 18 February 1998¹⁷⁷. Ditz advised New Republic Bank on 19 February 1998 had they had been advised that Goodrickes had been instructed to abandon the judgement against Michigan Investments CC¹⁷⁸.

We identified eight cheques for R5 000 each, issued from Zuma's Nedbank cheque account (number *REDACTED*) for the credit of the Michigan Investments bond account. An analysis of the bank statements revealed the following:

Cheques 168, 169, 170, 171 and 172 cleared through the bank account on 19 February, 16 March, 16 April, 15 May and 17 June 1998 respectively¹⁷⁹. These cheques were cleared after Zuma's monthly salary of approximately R19 200 was deposited each month;

Cheque 173 was cleared through the bank account on 16 July 1998 but was returned as unpaid on 18 July 1998¹⁸⁰. The balance of the account at this stage was overdrawn by R75 250.40; and

Cheques 174 and 175 were cleared through the bank account on 17 August and 17 September 1998 respectively.

It is evident that, although eight cheques were issued, only seven were honoured.

After the deposit on 17 September 1998 into the Michigan Investments bond account, the balance outstanding amounted to R514 193.67. Thereafter, no deposits were made into the account until 16 June 1999, at which date, the outstanding balance on the bond amounted to R604 748.50¹⁸¹.

On 17 June 1999 a deposit of R50 000 was made into the bond account. The supporting documentation provided by the bank indicated that a cheque from Investec Securities had been deposited¹⁸². The cheque was issued against Cay Nominees' Investec Securities account *REDACTED* on instruction from Kōgl¹⁸³. Kōgl was the sole director and shareholder of Cay Nominees¹⁸⁴.

¹⁷⁷ Refer to 12 0079 (80 00543 Box 80)

¹⁷⁸ Refer to 12 0080 (80 00429 Box 80)

¹⁷⁹ Refer to 12 0081-12 0085 -(BS1 013479-BS1 013483)

¹⁸⁰ Refer to 12 0086 (BS1 013484 File 78)

¹⁸¹ Refer to 12 0087-12 0088B (BSI007088-007090)

¹⁸² Refer to 12 0089 (BS1 010462 File 48)

¹⁸³ Refer to 12 0090 (BS1 010461 File 48)

¹⁸⁴ Refer to 12 0091 (BS1 010464 File 48)

Shaik provided a statement of assets and liabilities for Zuma to ABSA on 20 September 1999¹⁸⁵. The statement reflected that the Killarney property then was valued at R550 000.

No further deposits were made into the bond account until 22 August 2001, when the outstanding balance was R606 871.87¹⁸⁶.

On 23 August 2001 a deposit of R600 000 was made into the bond account¹⁸⁷. The supporting documentation, provided by the bank, indicates that a Nedbank cheque was deposited¹⁸⁸. A review of the bank statements of Cay Nominees' Nedbank call account (number *REDACTED*) indicated that a R600 000 cheque withdrawal was made on 23 August 2001¹⁸⁹. A review of the bank accounts of Cay Nominees revealed that the source of the R600 000 was from a foreign deposit of R1 191 390.12¹⁹⁰.

On 7 September 2001 Shaik again provided ABSA with a statement of assets and liabilities for Zuma¹⁹¹. The statement still reflected the Killarney property at R550 000.

On 15 October 2001 a deposit of R6 000 was made into the bond account. The bank statements of Cay Nominees' Nedbank current account (number *REDACTED*) reflected a transfer to Michigan Investments CC¹⁹². The outstanding balance at this stage was R191 738.45¹⁹³. No deposits have been made since 15 October 2001.

A statement of assets and liabilities for Zuma, dated 31 July 2002, reflects the value of the Killarney property as R550 000¹⁹⁴. A statement, dated 30 April 2003, reflects the value of the property as R750 000¹⁹⁵.

On 23 August 2003 Standard Bank informed Zuma about a new interest rate and that the amount outstanding on the bond was R295 958.89¹⁹⁶.

On 6 April 2005 Standard Bank surrendered Zuma's Liberty Life policy to reduce the outstanding balance of R359 924.38 by R159 936.48¹⁹⁷. The remaining balance of R199 987.90 was written off as a bad debt¹⁹⁸.

¹⁸⁵ Refer to 12 0092 (99 0407 Box 00XX)
¹⁸⁶ Refer to 12 0093 (BS1 007094 File 48)
¹⁸⁷ Refer to 12 0094(BS1 010459 File 48)
¹⁸⁸ Refer to 12 0095 (BS1 010460 File 48)
¹⁸⁹ Refer to 12 0096 (015345 File 39)
¹⁹⁰ Refer to paragraph 12.2.22
¹⁹¹ Refer to 12 0097(80 00288 Box 80)
¹⁹² Refer to 12 0098 (015331 File 39)
¹⁹³ Refer to 12 0099 (BSI007094 File 48)
¹⁹⁴ Refer to 12 0098 (108 000143 Box Z162)
¹⁹⁵ Refer to 12 0101(108 003975 Box Z175)
¹⁹⁶ Refer to 12 0102 (105 000437 Box Z184_ZRH_A1)

Zuma declared his interest in Michigan Investments in his 1999 and 2003 disclosure of Parliamentary members' interests¹⁹⁹.

The value of the property was reflected in Zuma's assets at cost until 1999, when the value of the property was indicated at market value.

12.3.4 Nkandla Traditional Village

Background

An entity styled: "*Tasker & Schumann Architects*" was requested to draft construction drawings for the Nkandla development. In a letter dated 3 February 2000, Tasker thanked Fakude-Nkuna for approaching them to propose for the Nkandla project²⁰⁰.

The village was developed in a rural area of KwaZulu-Natal by an entity styled Ethekeini Industrial Plumbing and Supplies CC that traded as Eric's Industrial Plumbing²⁰¹. The sole member of the entity is Eric Malengret.

The development took place at a final cost of R1 340 000, including freehold land, which Zuma occupied by permission obtained from the Nxamalala Tribal Authority.

Zuma did not have the funds to finally settle the amount due on the development and, as a result, had to rely on the registration of a bond on the property to fund a substantial part of the development. The balance of the development was funded from donations and loans received from third parties totalling R140 000, an unknown source of cash of R50 000, funds transferred from Kobitech amounting to R250 000 [these funds originated from the service provider agreement that Kobifin ostensibly had with Thomson-CSF International Africa(Mauritius)] and the proceeds of a bond subsequently registered on the property in the amount of R900 000. The amount of R250 000 was transferred to the account of Development Africa, allegedly a Trust of which Reddy was a trustee. Reddy assisted Zuma in obtaining the bond and continued to service the bond payments, as Zuma did not have the funds to do so.

In summary, the funding of the development was sourced as follows:

Source of funds	Amount R
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¹⁹⁷ Refer to 12 010314/15, 12 0106(220 000263/5/7, 221 000123)

¹⁹⁸ Refer to 12 0107/8(220 000271/2)

¹⁹⁹ Refer to 12 0109, 12 0110-120115 (107 000491 (Box Z276), 108 003964-108 003969 Box Z175)

²⁰⁰ Refer to 12 0116(PIT 4 (Tasker's affidavit)

²⁰¹ Refer to 12 0117-12 0122 (Kreditinform)

Donations/loans ex Bohlabela Wheels and Fakude	140 000.00
Unknown – cash	50 000.00
Thomson-CSF Africa Limited (Mauritius)	250 000.00
Proceeds of the bond	900 000.00
Total funding	R1 340 000.00

We deal in the paragraphs that follow with the events and transactions surrounding the Nkandla development by Zuma.

Design and cost estimate

We are in possession of a site plan that resembles that of a traditional village. The plan is styled “*Proposed New Traditional Village at Inkadla (sic) Kwazulu Natal*” and is dated March 2000²⁰².

Eric’s Industrial Plumbing, in a document that resembles a quotation addressed to Zuma and dated 19 July 2000, refers to plans and the site layout upon which a “*tender*” was prepared²⁰³. The tender amount was R2 428 360 (excluding VAT) and the estimated time for completion was noted as six months. In this document it was stipulated that the payment terms were to be based on a contract evaluation every two weeks with 10% retention until contract completion. The retention of 10% was to be reduced to 2.5% for a maintenance period of six months following completion.

We understand that:

Eric’s Industrial Plumbing was the only party requested to tender for the development;

The tender was amended from R2 428 360 to an amount of R1 340 000, which was allegedly accepted;

There is no written approval for the amended amount by Zuma; and

The development commenced during July 2000.

It is clear from a record, which resembles an extract of transactions, covering the period 20 July 2000 to 30 March 2001 that the project commenced one day after the tender was submitted to

²⁰² Refer to 12 0123 (EM1 308)

²⁰³ Refer to 12 0124-12 0125(EM2 308)

Zuma²⁰⁴. The extracts were drafted by hand in a Croxley Counter Book and marked “JZ”, which refers to Zuma, and the extract represents transactions that were entered into by Eric on behalf of Zuma, during the course of the project.

Receipt of funds for the development

The records of Eric’s Industrial Plumbing were not organised in such a manner that would assist in the identification of project expenditure and related project entries, such as progress payments and the raising of debtors. Consequently, a review was performed on the records of Eric’s Industrial Plumbing in order to identify the relevant transactions and attempt to reconstruct the project account, for the development, from an accounting point of view.

The same principle was applied in the identification of possible receipts of progress payments made against the project. Various sources were used in order to perform this exercise so as to provide a complete reflection of the transactions, considering the manner in which the accounting of transactions was conducted.

Direct deposits into Eric’s Industrial Plumbing’s account

Deposit - 14 August 2000

On 14 August 2000 one “KR Zuma” ostensibly deposited an amount of R100 000 in the bank account of Eric’s Industrial Plumbing²⁰⁵. The contact telephone number of KR Zuma was reflected. The deposit comprised three different amounts, namely in the form of cheques:

R30 000 ex Bohlabela Wheels (Middelburg);

R60 000 ex Bohlabela Wheels (032 89 2075); and

R10 000 ex Fakude P.Z.N.

The deposit cleared the bank account of Eric’s Industrial Plumbing on the same day and was reflected in the accounting records against receipt number 111, under the name of N Ngubane.

Deposit - 4 October 2000

On 4 October 2000 KR Zuma made another cheque deposit into the bank account of Eric’s Industrial Plumbing. The amount of the deposit was R40 000 and the details reflected in the deposit slip indicate that the drawer’s name was Bohlabela Wheels²⁰⁶. This transaction was accounted for in the records of Eric’s Industrial Plumbing as a repayment of a loan in the

²⁰⁴ Refer to 12 0126-12 0135(EM10 308)

²⁰⁵ Refer to 12 0136 (015502 File 41)

²⁰⁶ Refer to 12 0137(015504 File 41)

account “*Members loan Account – Long term*” account 550/003²⁰⁷ and cleared the bank account on the same day. The bank account reflects “*Nelspruit*” as details against the deposit²⁰⁸.

Deposit 18 October 2000

On 18 October 2000 a person by the name of “*Sew*” made a deposit of R50 000 in cash notes into the bank account of Eric’s Industrial Plumbing²⁰⁹. N Ngubane’s name is noted on the deposit slip. The deposit cleared the bank on the same day²¹⁰. As in the case with the previous deposit, this amount was allocated to the “*Members loan Account – Long term*” account 550/003 in Eric’s Industrial Plumbing’s ledger²¹¹.

Bohlabela Wheels was incorporated on 22 January 1998 and commenced trading on 1 July 1999. According to the auditor of Bohlabela Wheels, the main shareholder of the company was Nora Fakude-Nkuna.

As indicated above, Bohlabela Wheels made the following payments to Eric’s Industrial Plumbing:

Two cheque payments of R30 000 (cheque 100021) and R60 000 (cheque 100839²¹²) respectively on 14 August 2000; and

A cheque payment of R40 000 (cheque 100962²¹³) on 4 October 2000.

We understand that, when the auditor, Nico Brink Chartered Accountants (SA), identified the payments, no one at the company, including Fakude-Nkuna, could explain the nature of the payments. The payments were therefore allocated to the loan account of Fakude-Nkuna²¹⁴. A fax, dated 6 September 2001, was sent by Richard Hofmann, of Nico Brink Chartered Accountants, to Malengret, enquiring as to the nature of the two payments to the entity. Nico Brink indicated that no reply was ever received.

Nico Brink indicated that Fakude-Nkuna queried the debits to her loan account and later indicated that the payments were business related. The general manager of Bohlabela Wheels, Christo Willemse, faxed two invoices, totalling R100 000, ostensibly from Eric’s Industrial

²⁰⁷ Refer to 12 0138(EM7Docket file 308)

²⁰⁸ Refer to 12 0139 (015600 File 41)

²⁰⁹ Refer to 12 0140(015507 File 41)

²¹⁰ Refer to 12 0141(015607 File 41)

²¹¹ Refer to 12 0142 (EM7 (110023) Docket file 308)

²¹² Refer to 12 0143 (NB1 Statement file 0006)

²¹³ Refer to 12 0144 (NB1 Statement file 0006)

²¹⁴ Refer to 12 0147-12 0150

Plumbing, to the auditor on 6 September 2001²¹⁵. The invoices indicated that the payments were made for “*Steelworks*”, namely additions and alterations to the buildings of the company.

A review of the Pastel accounting records of Bohlabela Wheels, for the year ending 28 February 2001, revealed the following²¹⁶:

Cheques 100839 and 100962 were accounted for in the cashbook as “*Land & Buildings – Eric’s Industrial-Improvements*”. The “*Land & Buildings*” account was debited with R52 631.58 and R35 087.72 respectively, the VAT account was debited with R7 368.42 and R4 912.28 respectively, and the Standard Bank ledger account was credited with R60 000 and R40 000 respectively. It must be noted that the invoices, ostensibly from Eric’s Industrial Plumbing, reflected neither VAT amounts nor a VAT number;

The debits to Land & Buildings, namely R52 631.58 and R35 087.72 respectively, were transferred out of the account and the loan account of Fakude-Nkuna was debited;

An amount of R30 000, with reference to cheque 1000021, was credited to the loan account of Bohlabela Wheels – Middelburg and debited to the loan account of Fakude-Nkuna; and

The debits against the loan account of Fakude-Nkuna, namely, R52 631.58, R35 087.72 and R30 000 respectively, were transferred out of the account and the Goodwill/Intangible Assets account was debited with R117 719.00²¹⁷.

In the financial statements for the year ended 28 February 2001, an amount of R117 719.30 was recorded as improvements to leasehold property²¹⁸.

It is therefore clear that the payments to Eric’s Industrial Plumbing were not treated as a loan or as donations.

Instructions to discontinue

On 19 October 2000 Shaik confirmed, as discussed the previous day, in a letter to Malengret, to stop with immediate effect any construction or development on the Zuma residence²¹⁹. This letter is not on letterhead and was addressed to Eric’s Industrial Plumbing. Shaik signed the

²¹⁵ Refer to 12 0145-12 0146 (NB4 and NB5 Statement file 0006)

²¹⁶ Refer to 120148-120149 (accounting entries NB2 and NB3 Statement file 0006)

²¹⁷ Refer to 12 0147-12 0151 (110034)

²¹⁸ Refer to 12 0152-12 0164 (NB6 Statement file 0006)

²¹⁹ Refer to 12 0065 (EM12 Docket file 308)

letter in the capacity of “*Advisor to the Deputy President*”. It was also confirmed that Malengret would have at least three persons remaining on site for the protection of the property.

The instruction to discontinue with the development came one day after R900 000 was transferred from Zuma’s ABSA current account to the account of Floryn Investments. The instruction to transfer the funds came from Shaik²²⁰.

The total expenditure on the Nkandla Project, incurred to the date of this instruction, amounted to R226 863.38.

Registration of a bond

Initiation

Havemann, in her capacity as regional co-ordinator of FNB Home Loans, Metro Sales, issued an internal e-mail on 6 March 2002 providing guidelines regarding the requirements for the registration of a bond for Zuma²²¹. The e-mail does not stipulate any amount but deals with the basic requirements. The e-mail opened with a paragraph that ended with the words “*I am sure that the powers that be will assist us where we need to bend the rules a little*”. She was however not negotiable on the issue of a form of a deed or certificate of right due to the fact that the property formed part of Tribal Land.

It was also stated in the e-mail that Reddy could assist with the details required “*if he is Mr Zuma’s financial advisor*”. In a handwritten note on the hard copy of the e-mail at our disposal, the cellular phone number of Malengret was *inter alia* noted.

It is clear from the documentation at our disposal that the property development was completed approximately a year before the date of this e-mail. This agrees with the extracts of expenses relative to the development.

In a handwritten note, which appears to be a record of a discussion between Malengret and Havemann, the following was noted,*inter alia*,and recorded in cryptic form²²²:

“*The ‘house’ was built and completed a year ago*”;

“*Waiting for his money*”;

²²⁰ Refer to paragraph 12.2.18

²²¹ Refer to 12 0166 (IH1 Docket file 309)

²²² Refer to 12 0167(IH2 Docket file 309)

“Reddy a wealthy businessman handles the financial affairs of Zuma”; and

“Reddy to stand surety”.

Amount due at the time of application for the home loan

Background

We are not in possession of a detailed calculation or estimate, reflecting the amount that would be required by Zuma in order to finance the outstanding debt owing to Eric’s Industrial Plumbing. However, through a reconstruction of the events that took place, and giving consideration to the timing of such events, it is possible to determine the factors that contributed to the calculation of the amount applied for, namely, R650 000 and the amount that was eventually approved and advanced, namely, R900 000.

Contract price

It is evident from the information at our disposal that Eric’s Industrial Plumbing developed the property for an amount of R1 340 000. Zuma and/or a representative ostensibly accepted this amount at the time when the negotiations took place during July 2000.

Repayments in the form of donations and personal contribution

There are various payments that were reflected in the records of Eric’s Industrial Plumbing as having been received from Zuma or on behalf of Zuma. These payments total R190 000 and the payments were made during the period 14 August 2000 to 18 October 2000.

We are able to confirm that R140 000 of the R190 000 was made by Bohlabela Wheels and Fakude, one of the owners of Bohlabela Wheels. We understand that evidence will be led in Court that the funds were advanced by Bohlabela Wheels and Fakude to Eric’s Industrial Plumbing in settlement of payments due on the Nkandla Development. The manner in which the transactions were dealt with in the records of Bohlabela Wheels is an indication that there was no intention to recover the amounts from Zuma. It would therefore be concluded that the funds were advanced as a donation and that the payments can be regarded as payments made on behalf of Zuma to Eric’s Industrial Plumbing.

The balance of the R50 000 was a deposit made in cash. We were not able to determine the origin of the funds and have regarded the deposit as a donation.

Repayments via Development Africa

We could not locate any evidence detailing the purpose for the existence of Development Africa. We are aware of the fact that Reddy allegedly was a trustee (one of an alleged three) of the trust, which is known as Development Africa, and that he acknowledged this fact. We also understand that evidence in this regard will be presented at Court.

We are in possession of an Acknowledgement of Debt, ostensibly signed by Malengret on 3 November 2000²²³. It is acknowledged in this document that Malengret owed Reddy an amount of R50 000, that was repayable on demand with interest thereon at the ruling prime rate from the 3 November 2000. It is thus clear that Reddy advanced funds to Malengret on or about the 3 November 2000.

We understand that Reddy acknowledged the fact that funds had been advanced to Malengret on or about that day and that the funds were repayable by Malengret. We understand that Reddy indicated that the funds had been advanced to Malengret as a result of cashflow problems that Malengret experienced due to the development for Zuma and due to Zuma's tardiness in reimbursing him for work completed.

It is also clear from the records that originated from Eric's Industrial Plumbing that he had already spent approximately R250 000 on the development²²⁴. Therefore, the donations noted above, together with the advance from Reddy, would have placed Malengret and Eric's Industrial Plumbing in a cash neutral situation as regards the Nkandla Development. Reddy was aware of the development under construction by Eric's Industrial Plumbing on behalf of Zuma.

A Nedbank cheque account (number *REDACTED*) in the name of "*Development Africa*" was opened on 7 November 2000 with Reddy as the only signatory²²⁵. The first transaction that appears on the bank statement is a deposit of R1 000 000 on 6 December 2000. The description on the bank statement is "*Deposit JG Zuma Pretoria*". On Zuma's ABSA account (number *REDACTED*), the transaction appears as "*Cheque 287*". The balance on the latter account was in overdraft by R52 657.42 prior to the bank processing the cheque. The details of this transaction are provided below.

²²³ Refer to 12 0168-12 0169(VR1 Box 309)

²²⁴ Refer to 12 0170 (EM10 Docketfile 308)

²²⁵ Refer to 12 0171-12 0172 (100195 to 100196) VR6,7 Docketfile 309)

On 6 December 2000 Zuma issued a personal cheque, drawn in favour of Development Africa²²⁶ for an amount of R1 000 000. Considering the total amount (net of payments already made to date) that would be due on the Nkandla Development, this cheque would have covered a substantial amount that would have been due, once the project was completed. It is evident from the records of Eric's Industrial Plumbing that the development was completed on or about 30 March 2001²²⁷, some three months after the date of this cheque. It is clear from the bank statements of the personal account of Zuma, on which the cheque was drawn²²⁸, that there were insufficient funds in the account²²⁹. Shaik personally instructed the bank to stop payment of the cheque on 7 December 2000²³⁰ and the bank proceeded to reverse the transaction.

On 16 February 2001 Kobitech received a transfer into their ABSA cheque account (number *REDACTED*) in the amount of R249 725 from Thomson-CSF International Africa (Mauritius)²³¹. This amount is net of charges amounting to R275. This transfer was the first payment in terms of the Service Provider Agreement between Kobifin and Thomson-CSF.

On 28 February 2001 cheque 1329 for R250 000, drawn on the account of Kobitech's, account number *REDACTED*, was cleared to the cheque account of Development Africa. The following cheques, in favour of Development Africa, were also issued:

R250 000 – cheque 1330;

R250 000 – cheque 1331; and

R250 000 – cheque 1332.

On 19 April 2001 a letter, from Nkobi Holdings, signed by R Lechman, was sent to ABSA Business Centre to stop cheques 1330, 1331 and 1332, each for R250 000 in favour of Development Africa²³².

On 5 September 2001 cheque 319, for R125 000 drawn on Shaik's account, account number *REDACTED*, was deposited into the cheque account of Development Africa and on 17 September 2001 a further cheque, number 320, for R125 000 was also deposited into the cheque account of Development Africa. Shaik therefore paid R250 000 to Development Africa. This was refunded to Shaik by Kobitech.

²²⁶ Refer to 12 0173(BS1 020929 (110058) File 100)

²²⁷ Refer to 12 0174 (110016 EM10 Docketfile 308)

²²⁸ Refer to 12 0175 (BS1 020189 File 98)

²²⁹ Refer also to paragraph 9, dealing with the funds received from Mr Mandela

²³⁰ Refer to 12 0177(BS1 007705 File 53)

²³¹ Refer to 12 0178-12 0179(017265 File 164, 006503 File 15))

²³² Refer to 12 0180(80 13789 Box 139)

Final analysis of the amount of the bond applied for

Based on the above and the manner in which the transactions were effected, it became necessary to view the transactions between Development Africa and Eric's Industrial Plumbing in order to reconcile the amount that was due to Eric's Industrial Plumbing and in particular on the Nkandla Development. This was necessary due to the fact that Eric's records were not reliable for purposes of determining the amount due, hence the reconstructed figures.

An analysis of the transactions, described in the aforementioned paragraphs in relation to the amount due to Eric's Industrial Plumbing for the Nkandla Development, indicates the following:

Date	Description	Funded from	Amount R	Balance due R
July 2000	Agreed amount	-	1 340 000.00	1 340 000.00
14 August 2000	Donation/loan	Bohlabela Wheels	(100 000.00)	1 240 000.00
4 October 2000	Donation/loan	Bohlabela Wheels	(40 000.00)	1 200 000.00
8 October 2000	Unknown	Cash	(50 000.00)	1 150 000.00

The table above contains the amounts that were reflected in Eric's Industrial Plumbing record that could be linked by us to the Nkandla project. It is however evident from the information at our disposal that the application for the bond on the property was for an amount of R650 000. Eric's Industrial Plumbing was not involved in the process of application for the bond. Zuma was assisted by Reddy in the application that was, even at that point, being regarded by the bank as possibly Zuma's advisor.

There are no records at our disposal indicating the basis for the reduced amount, however, if the funds, that had already been paid over to the Development Africa's bank account, of R500 000 are accounted for, against the outstanding balance determined above, an outstanding balance of R650 000 is derived.

Date	Description	Funded from	Amount R	Balance due R
14 October 2000	Balance	-	1 150 000.00	1 150 000.00
28 February 2001	Kobitech	Thomson- CSF	(250 000.00)	900 000.00
September 2001	Shaik	Kobitech	(250 000.00)	650 000.00

It is concluded that the amount of the original application could have been derived through a similar reconciliation as reflected above.

Permission to occupy and endorsements

On 21 August 2002 Zuma was granted permission to occupy land in extent of 2 500 square meters in the ward, Nxamalala Tribal Authority, district of Nkandla for residential purposes²³³. The tribal authority demarcated the land on 16 August 2002²³⁴.

On 23 August 2002 Zuma was granted permission to occupy land in extent of 37 500 square meters in the ward Nhlola, district of Nkandla for agricultural purposes²³⁵. The tribal authority demarcated the land on 16 August 2002²³⁶. The permissions were issued under the KwaZulu Land Affairs Regulations 1994.

The rights, title and interest in both properties were ceded to FirstRand Bank Limited on 19 October 2002 in Durban²³⁷. The Head: Traditional and Local Government Affairs noted the endorsements on 9 December 2002 and notified the conveyer on the same day²³⁸.

Application for a home loan

A FNB property valuation statement indicates that the property was valued at R650 000 on 8 April 2002²³⁹.

In an “*Application for a Home Loan*”, dated 7 June 2002, Zuma applied for a home loan in the amount of R650 000. The “*purchase price*” was noted as R850 000²⁴⁰. The person indicated as having accepted responsibility to pay the monthly instalments, was noted as “*V Reddy*”, account *REDACTED* at Nedbank. We understand that Reddy assisted Zuma with the arranging of the loan.

On 22 August 2002 Franke & Associates wrote to Havemann requesting her to advise when the payment would be received. A letter, also dated 22 August 2002, accompanied this document to Reddy wherein it was *inter alia* requested that Reddy provide an authority for FNB to make a

²³³ Refer to 12 0181(EM11 p13 Docket file 308)
²³⁴ Refer to 12 0182 (EM11 p15 Docket file 308)
²³⁵ Refer to 12 0183 (EM11 p18 Docket file 308)
²³⁶ Refer to 12 0184 (EM11 p20 Docket file 308)
²³⁷ Refer to 12 0185 (EM11 Docket file 308)
²³⁸ Refer to 12 0186(EM11 p14 Docket file 308)
²³⁹ Refer to 12 0187(015970 File 42)
²⁴⁰ Refer to 12 0188(IH9 Docket file 309)

payment to Malengret in the sum of R1.15 million²⁴¹. At that stage Development Africa was already in possession of R250 000 that originated from Thomson-CSF International Africa (Mauritius) as well as the funds received from Shaik in the same amount. It would thus appear that Franke & Associates were not aware of the funds already in possession of Development Africa at the time.

On 2 October 2002 Luke Jooste advised Havemann by e-mail that the approval for Zuma's bond had been adjusted to R900 000²⁴².

Zuma signed a Deed of Indemnity in favour of Reddy on 19 October 2002²⁴³. In this document, Zuma indemnified Reddy and held Reddy harmless against any loss or damage or claim as a result of the indebtedness of Zuma to the bank in terms of the Suretyship signed by Reddy.

On 18 November 2002 Reddy signed a Suretyship in favour of First National Bank, binding himself unto and in favour of First National Bank as surety for Zuma. The amount recoverable from Reddy was limited to R400 000²⁴⁴.

FNB Home Loans, on 12 December 2002, confirmed to Reddy that the bond over the property had been registered in the amount of R900 000. The home loan account number at FNB was noted as *REDACTED*. The date of registration was noted as 9 December 2002 and the loan was repayable over a period of 240 months at a rate of R12 117.11 per month with effect from 25 January 2003²⁴⁵. It was noted in the confirmation that the debit order would be raised against Reddy's cheque account number *REDACTED*, maintained at Nedbank. It was also noted, in the confirmation, that the property was to be insured for the replacement value of the buildings.

We are in possession of a document from SA Eagle, titled "*New Business*"²⁴⁶. The document reflects details of insurance cover over a period of approximately one month, namely, 8 November 2002 to 30 November 2002 and the sum insured is noted at R747 500

The first debit order to service the FNB bond account (account number *REDACTED*) was debited against Reddy's account on 25 January 2003 for an amount of R12 117.11²⁴⁷.

²⁴¹ Refer to 12 0189 (IH5 Docket file 309)

²⁴² Refer to 12 0190 (IH7 Docket file 309)

²⁴³ Refer to 12 0191-120199 (VR2 Docket file 309)

²⁴⁴ Refer to 12 0200-12 0202 (VR1 Docket file 309)

²⁴⁵ Refer to 12 0203 (IH10 Docket file 309)

²⁴⁶ Refer to 12 0204-12 0206 (VR5 p10 Docket file 309)

Reddy serviced the bond account until 25 May 2005. Since 25 June 2005, the bond has been serviced by Zuma from his ABSA cheque account (account number *REDACTED*)²⁴⁸. Therefore, the total instalments paid by Reddy amounted to R274 110.96²⁴⁹.

On 16 April 2005 the outstanding balance of the bond account was R875 626.84²⁵⁰ and on 8 April 2006, the balance was R854 229.93²⁵¹.

The value of the property is reflected at a market value of R650 000 as determined by FNB in April 2002. The value of the property and outstanding liability was not reflected on the statements of assets and liabilities presented to the banks²⁵². It is possible that it was excluded because the liability exceeded the value of the property and would therefore have had a negative impact on the net asset position of Zuma.

12.3.5 Household effects

Zuma's statements of assets and liabilities reflected the following values for household effects:

22 September 1999	-	R150 000 ²⁵³
31 August 2001	-	R150 000 ²⁵⁴
31 July 2002	-	R180 000 ²⁵⁵
30 April 2003	-	R180 000 ²⁵⁶

We included the household effects at these values in Zuma's assets.

12.3.6 Mercedes-Benz E320, registration ND 225 331

On 13 June 1997 a 1997 Mercedes-Benz E320 was registered in Zuma's name as the owner and First National Bank as the Titleholder²⁵⁷. Financing of the purchase was made by way of a lease signed for an amount of R305 000.

²⁴⁷ Refer to 12 0207-12 0208(015916 File 42, 176 000068)

²⁴⁸ Refer to 12 0209(171 000432)

²⁴⁹ Refer to Annexures K, L and M

²⁵⁰ Refer to 12 0210(176 000088)

²⁵¹ Refer to 12 0211(Summons 272/06 File 223)

²⁵² Refer to 12 0212-12 0213(108 000002-3 Box Z162)

²⁵³ Refer to 12 0214(990407 Box 00XX)

²⁵⁴ Refer to 12 0215(80 00288 Box 80)

²⁵⁵ Refer to 12 0216 (108 000004 Box Z162)

²⁵⁶ Refer to 12 0217(108 003975 Box Z175)

²⁵⁷ Refer to 12 0218(BS1 01340 File 78)

The first debit order instalment in respect of the lease that went off Zuma's Nedbank cheque account (number *REDACTED*), for R8 024.85 on 28 July 1997, was returned by the bank on 1 August 1997 as an unpaid item due to insufficient funds²⁵⁸. Thereafter, the payments in terms of the lease agreement, were made by Zuma until 26 January 1999, when cheque 135, for R10 000, cleared through Kobitech's ABSA cheque account (number *REDACTED*) was utilised. This cheque was deposited into Zuma's Wesbank account (number *REDACTED*)²⁵⁹.

On 26 March 1999 Muiznieks sent a memorandum to Shaik stating that Wesbank required payment for Zuma's car²⁶⁰. The memorandum indicated that Zuma was four months in arrears to the extent of R33 000. It was also stated in the memorandum that ABSA would be refinancing the vehicle. It appears however, that Wesbank had indicated that ABSA would not be considering refinancing as the account was in arrears.

On 21 April 1999 cheque 249 for R8 000 was cleared through Kobitech's ABSA cheque account (number *REDACTED*). This was deposited into Zuma's Wesbank account (number *REDACTED*)²⁶¹.

On 7 May 1999 cheque 279 for R8 000 was cleared through Kobitech's ABSA cheque account (number *REDACTED*). This was deposited into Zuma's W e s b a n k a c c o u n t (n u m b e r *REDACTED*)²⁶².

On 25 June 1999 cheque 356 for R8 000 was cleared through Kobitech's ABSA cheque account (number *REDACTED*). This was deposited into Zuma's W e s b a n k a c c o u n t (n u m b e r *REDACTED*)²⁶³.

Zuma's statement of assets and liabilities on 20 September 1999 reflect the value of this vehicle as R300 000²⁶⁴. The purchase price of the vehicle was R305 000.

On 29 September 1999 Wesbank informed Isaacs that the amount outstanding on Zuma's account was R299 168.55 and that the arrears amounted to R46 618.89²⁶⁵. On this same date

²⁵⁸ Refer to 12 0219(BS1 013443 File 78)

²⁵⁹ Refer to 12 0220-12 0221(BS1 013427 and 006546 File 78 and File 15 respectively)

²⁶⁰ Refer to 12 0222 (80 00590 Box 80)

²⁶¹ Refer to 12 0223-12 0224(BS1 013427 and 006554 File 78 and File 15 respectively)

²⁶² Refer to 12 0225-12 0226 (BS1 013427 and 006556 File 78 and File 15 respectively)

²⁶³ Refer to 12 0227-120228 (BS1 013427 and 006568 File 78 and File 15 respectively)

²⁶⁴ Refer to 12 0229 (990407 Box 00XX)

²⁶⁵ Refer to 12 0230(80 00591 Box 80)

R16 000 was transferred from Kobitech's ABSA cheque account (number *REDACTED*) to Zuma's Wesbank account (number *REDACTED*)²⁶⁶.

Therefore, in total, Kobitech paid R50 000 to Wesbank in favour of Zuma's account.

On 14 March 2000 a deposit of R239 633.74 was made into Zuma's Wesbank account. This reduced the outstanding balance to R25 546.04. The supporting documentation received from the bank indicated that a Bankfin/Trust Bank cheque was deposited into the account²⁶⁷. An instalment sale agreement was signed, in terms whereof Zuma agreed to sell the motor vehicle to Kobifin which in turn refinanced the car with Bankfin²⁶⁸. Shaik, on behalf of Zuma, signed the agreement. Although Bankfin ostensibly settled the instalment sale account with Wesbank, a balance of R71 777.58 remained outstanding on the account²⁶⁹. It was also noted on the statement of account that the conduct of the account was "bad"²⁷⁰.

A receipt for R140.01 for petrol purchased at "Durban Renault" on 20 April 2000, reflecting the registration number of a vehicle, namely, "ND 225-331"²⁷¹. A handwritten note on the receipt reads "P Gama Petrol for visitor". It is unclear whether this refers to Zuma. It should however be noted that this receipt was dated after the date of the purchase of the vehicle by Kobifin. It also appears that Gama claimed the expense back from the company.

On 19 June 2001 Shaik sent a memorandum to Isaacs and Moeem Goolam regarding a speeding fine incurred by a Mercedes-Benz, registration number ND225 331²⁷². Shaik stated that this was not good for his record and instructed Isaacs and Goolam to forward him the proof of payment before 6 July 2001. It is therefore inferred that Shaik or the Nkobi companies would have paid for the traffic fine.

An invoice from Durban Central Panel Beaters, dated 26 September 2002, in respect of this vehicle, was addressed to "Vice President" and the contact person was indicated as "Minister Zuma"²⁷³. An invoice from Natal Motor Industries Durban, dated 30 April 2004, also in respect of this vehicle, was addressed to "Mr SS Zuma"²⁷⁴.

²⁶⁶ Refer to 12 0231 (006596 File 15)

²⁶⁷ Refer to 12 0232(017719 File 166)

²⁶⁸ Refer to 12 0233 (80 12569 Box 136)

²⁶⁹ Refer to 12 0234(019071 File 170)

²⁷⁰ Refer to 12 0235(019068 File 170)

²⁷¹ Refer to Annexure A (Payment number 138)

²⁷² Refer to 12 0236-12 0237(80 08633AO and 80 08633APBox 127)

²⁷³ Refer to 12 0238(120 004419 Box Z092)

²⁷⁴ Refer to 12 0239 (100 015421 Box Z077)

It therefore appears that Zuma was still benefiting from the usage of this vehicle after 14 March 2000.

The value of the vehicle is reflected in the assets of Zuma at the cost price until 1999, when the value was indicated as R300 000 in Zuma's statement of assets and liabilities. This value could be overstated due to the fact that the cost price was R305 000 in 1997.

We do not have information regarding the current owner of this vehicle.

12.3.7 Mercedes-Benz E230, registration number ND 226 354

On 14 April 1998 Zuma purchased a 1998 Mercedes-Benz E230. This vehicle was financed through an instalment sale agreement with Mercedes-Benz Finance (Pty) Limited for an amount of R243 855²⁷⁵. The vehicle was registered in the name of Zuma on 17 April 1998.

Zuma serviced the account by means of debit orders from his Nedbank cheque account (number *REDACTED*). The first debit order cleared through the account on 4 June 1998 and was returned by the bank as unpaid on 5 June 1998. The debit orders for June 1998, May 1999, October to December 1999, September to November 2000, March 2001 and May to August 2001 were also returned by the bank as unpaid.

On 15 October 1998 Mercedes-Benz Finance (Pty) Limited informed Zuma that the account was in arrears of R14 087.28. The balance outstanding was indicated as R363 606.06²⁷⁶.

On 25 November 1998 Zuma received a letter from Coetzer & Partners indicating that they were acting for Mercedes Benz Finance²⁷⁷. The letter referred to the "Notice" that was sent to Zuma on 16 October 1998 regarding the breach of the sale agreement²⁷⁸. The letter furthermore indicated that "*Legal proceedings are now being instituted against you for the recovery of our client's goods...*".

On 16 January 1999 Zuma was in an accident with this vehicle in Rosebank, Johannesburg and completed an accident claim form on 15 February 1999²⁷⁹. On 24 February 1999 the insurance company, Mercedes-Benz Insurance, advised Zuma that his policy had been cancelled on 10 July 1998 due to unpaid debit orders and that his claim could not be entertained²⁸⁰. Durban Central Panel Beaters repaired the car for an amount of R20 520 (including VAT)²⁸¹. A note on

²⁷⁵ Refer to 12 0240(AE000003, Statement file 01, p290)

²⁷⁶ Refer to 12 0241-12 0242 (80 00132 Box 79, 105 000480 Box Z185)

²⁷⁷ Refer to 12 0243 (105 000482 Box Z185)

²⁷⁸ Refer to 12 0244-12 0256 (105 000469 - 481 Box Z185)

²⁷⁹ Refer to 12 0257(80 00112 Box 79)

²⁸⁰ Refer to 12 0258(80 00133 Box 79)

²⁸¹ Refer to 12 0259(80 00121 Box 79)

the invoice of Durban Central Panel Beaters indicates that the vehicle was referred to as Zuma's wife's car. Shaik paid this invoice by means of four cheques of R5 130 each, dated 22 April 1999, 15 May 1999, 15 June 1999 and 15 July 1999 respectively²⁸².

On 12 February 1999 Mercedes-Benz Finance (Pty) Limited provided Kōgl with the details of their bank account²⁸³. This was followed by a faxed letter from Kōgl to B Kloppers of Mercedes-Benz Finance (Pty) Limited, dated 14 February 1999, indicating on the fax that he had also sent a copy to C Kopke of Mercedes-Benz South Africa. The letter referred to the settlement of Zuma's account and Kōgl's dissatisfaction with the fact that a summons had been delivered to Mrs K Zuma's home on 11 February 1999²⁸⁴.

On 18 February 1999 B Kloppers confirmed with Kōgl that, as per their telephone conversation, Mercedes-Benz Finance (Pty) Limited would withdraw legal action against Zuma but that Zuma would have to pay R37 533.95, comprising the arrears on the account. He would also have to sign a restructured contract²⁸⁵.

On 4 March 1999 and on 8 March 1999, two deposits of R20 000 each were made into the account²⁸⁶. It appears that these deposits were made by Cay Nominees from its Investec Securities account²⁸⁷.

On 26 April 1999 a restructured funding agreement for an amount of R239 566.33 was signed by Zuma, whereby a monthly debit order of R7 033.09 would be debited against Zuma's ABSA cheque account (number *REDACTED*)²⁸⁸.

Zuma's statement of assets and liabilities, dated 20 September 1999, did not reflect this vehicle as an asset²⁸⁹.

On 4 June 2001 A Ohmstedt of DaimlerChrysler Financial Services (Pty) Limited informed Kōgl that Zuma's account was in arrears of R44 730.77 and that the settlement amount was R191 668.31²⁹⁰. It was also mentioned that the wholesale value of this vehicle was R161 800.

²⁸² Refer to 12 0260 (80 00120 Box 79, Annexure A)

²⁸³ Refer to 12 0261 (Docket File 318)

²⁸⁴ Refer to 12 0262-12 0264 (Statement file 01)

²⁸⁵ Refer to 12 0264 (Statement file 01)

²⁸⁶ Refer to 12 0265 (Docket File 318)

²⁸⁷ Refer to (CSFS_103_2005/data/exoirt/00000FTR/-Q0000FTR/JKLoomanalysis F1087833, paragraph 12.2.22)

²⁸⁸ Refer to 12 0266-12 0267 (Statement file 01)

²⁸⁹ Refer to 12 0268(990407 (Box 00XX)

²⁹⁰ Refer to 12 0269(Statement file 01)

On 14 August 2001 Zuma was informed that the settlement amount was R182 894.59. Kögl was informed of this. It was followed by a deposit on 15 August 2001 by Kögl amounting to R183 000 into the account²⁹¹. This deposit was matched to a cheque withdrawal made from Cay Nominees' Nedbank account (number *REDACTED*)²⁹², settling Zuma's account in full.

Zuma's statement of assets and liabilities on 31 August 2001 reflect the value of a Mercedes Benz as R380 000. Based on the information at our disposal, this vehicle was the only Mercedes Benz then owned by Zuma.

The value of this vehicle was reflected on Zuma's statement of assets and liabilities as R450 000 on 31 July 2002²⁹³ and 30 April 2003²⁹⁴.

The value of the vehicle is reflected in Zuma's assets at the cost price until 2001, when DaimlerChrysler Financial Services (Pty) Limited indicated that the vehicle had a value of R161 800. This is also the value used until 30 June 2006.

We understand that, as at 30 May 2006, Zuma was still the registered owner of this vehicle.

12.3.8 Mitsubishi Pajero 3.5 GLS, registration LRK980GP

On 28 May 2001 a lease contract for a Mitsubishi Pajero 3.5 GLS was entered into between Wesbank and Zuma²⁹⁵. The lease was signed for an amount of R275 257.86. It is not clear as to the reasons and the background against which this agreement was entered into, as this transaction was entered into shortly after the previous finance agreement had been ostensibly closed and Wesbank had indicated that the conduct of that account was "*bad*".

Zuma's statement of assets and liabilities on 31 August 2001 reflect the value of this vehicle as R335 000²⁹⁶.

On 15 August 2001 Kögl requested Zuma to provide him with the details of the Pajero "*for the trust*"²⁹⁷. It appears that this referred to the "*J Zuma Children Trust*". On 21 August 2001 Shaik provided Zuma with the details of the Pajero²⁹⁸.

²⁹¹ Refer to 12 0270-12 0271(Statement file 01, Q1 Docket file 318 (p515))

²⁹² Refer to 12 0272 (015345 File 39)

²⁹³ Refer to 12 0273(108 000143 Box Z162)

²⁹⁴ Refer to 12 0274(108 003975 Box Z175)

²⁹⁵ Refer to 12 0275 (BS1 013432 (100097) File 78)

²⁹⁶ Refer to 12 0276 (80 00288 Box 00XX)

²⁹⁷ Refer to 12 0277(107 000584 Box Z276)

²⁹⁸ Refer to 12 0278(107 000044 Box Z275)

The Wesbank account was not serviced by a debit order. However, on 7 December 2001, a cheque deposit of R25 000 was made into the account²⁹⁹. We could not establish the source of this deposit. Wesbank reversed this deposit on 28 December 2001. We could not establish the reasons for the reversal. The balance outstanding on the account then amounted to R374 915.70³⁰⁰. This included the total finance charges that would have been recovered over the period of the lease.

On 19 December 2001 a debit order payment of R2 500 was made. Wesbank also reversed this on 24 January 2002.

On 21 February 2002 a cheque deposit of R47 259 was made into the account. The deposit slip indicates that a Kobitech cheque was deposited³⁰¹. The deposit reduced the balance to R339 025.02 and was the only payment that reduced the balance since its inception, until 16 December 2003.

Zuma's statement of assets and liabilities on 30 April 2003 reflect the value of a "Toyota 4x4" as R425 000³⁰². We could not find any proof of such a vehicle being owned by Zuma. It is possible that the statement incorrectly reflected the Pajero as a "Toyota 4x4".

The balance outstanding on 16 December 2003 amounted to R355 543.22, of which R129 835.25 was in arrears³⁰³.

Between the period 8 December 2003 and 12 October 2004 Zuma deposited R110 000 into the Wesbank account³⁰⁴. This was in terms of an arrangement between Wesbank and Zuma³⁰⁵.

On 6 July 2005 a R281 000 cheque, drawn on J Mahomed Attorneys Trust account, was deposited into the Wesbank account³⁰⁶. We understand that J Mahomed was Zuma's legal advisor. The outstanding balance on 20 July 2005 was R7 660.19.

A review of the J Mahomed Attorneys Trust account revealed that a deposit of R300 000 was made into the account on 30 June 2005³⁰⁷. The reference on the bank statement is "*Interbank credit transfer/1469084961...*" Supporting documentation from the bank indicates that the funds

²⁹⁹ Refer to 12 0279 (BS1 013433 File 78)

³⁰⁰ Refer to 12 0279 (BS1 013433 File 78)

³⁰¹ Refer to 12 0280(019087File 170)

³⁰² Refer to 12 0281(108 003975 Box Z175)

³⁰³ Refer to 12 0282 (019082 File 170)

³⁰⁴ Refer to 12 0283(192 000001)

³⁰⁵ Refer to 12 0284 (105 000405 Box Z184_A)

³⁰⁶ Refer to 12 0285, 120286 (192 000002, 104 000418 Box Z182)

³⁰⁷ Refer to 12 0287 (217 000053)

originated from the account of South to South Consultants (Pty) Limited³⁰⁸. It appears that Julekha Mahomed is the sole director of this company³⁰⁹. A review of the bank statements for the company indicates the following deposits during the period 1 May 2005 to 30 July 2005:

A deposit of R115 140 on 4 May 2005 with the reference “*DEP FERROMAN*”;

A deposit of R115 140 on 1 June 2005 with the reference “*DEP F.PATEL*”; and

A deposit of R115 140 on 5 July 2005 with the reference “*DEP FERROMAN*”.

A payment of R4 789.16 with reference “*Ferrostaalrental*” was made on 5 May 2005 and a payment of R16 953.40 with reference “*Rental Cradock Heights (Pty)*” was made on 19 May 2005 from the account of South to South Consultants. The address of MAN Ferrostaal is indicated as “*Cradock Heights*” in Rosebank³¹⁰. It therefore appears that there is a link between South to South Consultants and MAN Ferrostaal.

Ferrostaal was listed as one of the companies that would benefit from the Industrial Participation (IP) of the submarine programme of the Arms Deal³¹¹.

We understand that, as at 29 July 2005, this vehicle was still registered in the name of the late KM Zuma.

The value of the vehicle is reflected in the assets of Zuma at the cost price.

12.3.9 Toyota Tazz 130, registration CA 12879

On 10 September 2002 Zuma entered into a credit agreement with Bankfin (account number *REDACTED*) for the acquisition of a Toyota Tazz to the value of R70 446.42³¹².

The first debit order of R1 730.13 went of against Zuma’s ABSA cheque account on 1 October 2002³¹³

On 30 September 2003 and 28 October 2004 Kobitech paid the licensing fees for the Tazz to the value of R186.00 and R342.65 respectively³¹⁴.

Shaik paid two traffic fines in respect of the Tazz to the value of R800 on 18 February 2003 and Kobitech also paid two fines in respect of the Tazz to the value of R400 on 9 June 2003³¹⁵.

³⁰⁸ Refer to 12 0288 (summons 220/06 File 223)

³⁰⁹ Refer to 12 0289-12 0294 (Background report)

³¹⁰ Refer to 12 0295-12 0301(Background report)

³¹¹ Refer to 12 0302-12 0317(56 56000283-56000298 Box 293 specifically 291)

³¹² Refer to 12 0318(108 000560 Box Z164)

³¹³ Refer to 12 0319(108 000556 Box 2164)

³¹⁴ Refer to Annexure A(payment number 491, 684)

It appears that the Tazz was insured under the Nkobi portfolio at a rate of R393.80 per month³¹⁶.

On 13 January 2006 the outstanding balance was R29 627.29³¹⁷.

The statement of assets and liabilities of Zuma did not reflect the value of this vehicle³¹⁸. We included the value of the vehicle in the assets of Zuma at the cost price.

We understand that, as at 30 May 2006, this vehicle was registered in the name of Zuma.

12.3.10 Nedbank

Zuma opened a cheque account, account number *REDACTED*, at Nedbank on 21 August 1996³¹⁹. Another cheque account, account number *REDACTED*, was opened on 20 May 1998³²⁰.

On 11 November 1996 Shaik wrote to Basil Krishnan of Nedbank to request a meeting with him³²¹. It appears that Shaik was dissatisfied with the lack of communication from Nedbank and the he was going to inform Zuma of this. It is not clear why Shaik wanted to meet with Nedbank.

In a letter to Standard Bank, dated 5 August 1997, Shaik indicated that Zuma was waiting for his relationship manager at Nedbank to transfer the bond account of Michigan Investments from Standard Bank to Nedbank³²². It is clear that this did not materialise as the bond account remained with Standard Bank until it was written off in April 2005.

On 17 June 1998 Shaik, in his capacity as “*Special Advisor*” wrote to Sharon Harrison of Nedbank regarding a proposal to regularise the accounts of Zuma³²³. Zuma’s cheque account (account number *REDACTED*) had an overdraft balance of R68 449.45 at this stage. Shaik stated that Zuma was expected to receive funds within 10 days which would have extinguished his overdraft balance. A review of the account confirmed that the expected funds did not come

³¹⁵ Refer to Annexure A(payment number 442)

³¹⁶ Refer to 12 0320(100 004813 Box Z029)

³¹⁷ Refer to 12 0321(221 000028)

³¹⁸ Refer to 12 0322(108 003975 Box Z175)

³¹⁹ Refer to 12 0323(018572, File 169, p45)

³²⁰ Refer to 12 0324(BS1 013582, File 78, p241)

³²¹ Refer to 12 0325(80 00380 Box 79)

³²² Refer to 12 0326(80 04202 Box 98)

³²³ Refer to 12 0327(80 00250 Box 79)

into this account. Two days after the letter from Shaik to Nedbank, Nedbank applied the funds in Zuma's investment account to reduce the overdraft balance of R89 632.01 by R35 594.14³²⁴.

Notes made on the bank's system reflect, *inter alia*, the following³²⁵:

4 August 1998: "*Min Zuma said to contact Mr Ayoob...Phoned he told me to contact Mohamed Saloogee...Apparently he knows the whole story – Min Zuma said Ayoob was meant to pay him some money by now*";

14 December 1999: "*Vivian Reddy now taken control of clients finances*";

31 October 2000: "*Hardcore overdraft*"; and

16 February 2001: "*Excess 27 days: High = 102 420 Limit = 50 000*".

On 25 August 1998 a fax, signed by Zuma, was sent to Nedbank to confirm that Zuma had authorised Shaik to request and accept information regarding Zuma's accounts on Zuma's behalf³²⁶. Zuma stated that he was in a process of restructuring his financial affairs in order to satisfy his obligations to the bank. A similar fax was sent to Standard Bank on the same day in which Zuma confirmed that Ismail Ayob could act on his behalf to redeem the financial obligations of his accounts³²⁷.

An undated document reflecting Zuma's obligations to various banks indicates that attempts were made to resolve Zuma's financial problems by negotiating full and final settlements with the banks³²⁸.

On 19 June 2001 Nedbank informed Shaik that the balance of Zuma's current account (number *REDACTED*) was in overdraft of R109 221.02³²⁹. The bank also indicated that the Mercedes-Benz Finance and American Express debit orders had been returned on numerous occasions due to lack of funds.

On 2 January 2002 MJ Leeming from Nedcor wrote to Shaik with regards to Zuma's overdraft of R121 168.40³³⁰. Shaik was requested to assist with arranging the settlement of the overdraft.

On 18 June 2002 MJ Leeming wrote to Zuma and stated that the bank had attempted to settle the overdraft on Zuma's account for more than one year and that the bank was disappointed that

³²⁴ Refer to 12 0328(BS1 013451 File 78)

³²⁵ Refer to 12 0329-12 0330(1 03012-3 File 101, p171-2)

³²⁶ Refer to 12 0331 (80 00257 Box 79)

³²⁷ Refer to 12 0332 (80 00263 Box 79)

³²⁸ Refer to 12 0333 (80 00260 Box 79)

³²⁹ Refer to 12 0334 (80 08930 Box 129)

³³⁰ Refer to 12 0335(107 00050 Box Z275)

Zuma had not responded to their communications³³¹. The outstanding balance was noted as being R130 514.

On 11 November 2004 TA Boardman, the Chief Executive of Nedcor, wrote to Zuma regarding the overdraft of R213 612.45³³². Boardman referred to the number of unsuccessful attempts of his colleagues to meet with Zuma and/or his financial advisor. Boardman invited Zuma to call him in order to discuss the issue.

The account had an overdraft balance of R259 291.51 on 27 June 2005³³³. At that stage the monthly interest charged on the overdraft was in excess of R4 000.

On 13 December 2005 the overdraft balance was R280 732.51³³⁴. This was reduced to zero after R284 093.61 was transferred from account 9154339200 and interest of R3 361.10 was charged. The account holder of this account is unknown at the date of this report.

12.3.11 Standard Bank

Zuma had a cheque account and credit card facility at Standard Bank. The cheque account, account *REDACTED*, was opened on 18 October 1994³³⁵.

The credit card facility was serviced from Zuma's cheque account and therefore did not exceed the limit provided by the bank. Zuma stopped using the credit card during March 1997 and the account was closed in June 2004.

A review of the cheque account (account number *REDACTED*) revealed that the account had exceeded its overdraft limit from January 1996. By 31 December 1996 the account was in overdraft of R106 596.99.

On 10 February 1997 Standard Bank wrote to Shaik with regards to Zuma's accounts. It is apparent from the letter that Shaik and the bank held a meeting on 7 February 1997³³⁶. The bank confirmed that:

³³¹ Refer to 12 0336 (108 001768 Box Z169)
³³² Refer to 12 0337(107 000580 Box Z276)
³³³ Refer to 12 0338(180 000021)
³³⁴ Refer to 12 0339(Summons 176/06 File 223)
³³⁵ Refer to 12 0340 (017428, File 165, p331)
³³⁶ Refer to 12 0341-120342 (80 00546 and 80 00547 Box 80)

Shaik had provided the bank with three post dated cheques for R10 000 each, dated 28 February 1997, 25 March 1997 and 25 April 1997 respectively for the credit of Zuma's home loan account which was approximately R30 000 in arrears;

Shaik provided the bank with four post dated cheques for R5 000 each, dated 25 February 1997, 25 March 1997, 25 April 1997 and 25 May 1997 respectively for the credit of Zuma's personal account;

A limit of R110 000 would be placed on Zuma's personal account;

Zuma redirect his salary from Nedbank to Standard Bank;

A flat in Albert Street be sold to reduce Zuma's monthly commitment; and

Debit orders for R4 000 and R1 000 in favour of AQ Holdings would be cancelled.

An analysis of the bank statements of the bond account revealed the following:

Cheques 6 and 7, for R10 000 each, were cleared through Shaik's Nedbank cheque account (number *REDACTED*) on 28 February 1997 and 25 March 1997 respectively³³⁷. Michigan Investments' bond account reflects the two deposits on the same dates³³⁸. The balance of Shaik's bank account was in overdraft of R116 451.35 on 28 February 1997 and R131 519.75 on 25 March 1997; and

Cheque 147, for R20 000, was cleared through Clegton Investments' Nedbank cheque account (number *REDACTED*) on 5 April 1997³³⁹. Michigan Investments' bond account reflects the deposit on the same date³⁴⁰. Clegton Investments account was in overdraft of R18 876.34 at this stage.

An analysis of the bank statements of Zuma's current account revealed the following:

Cheques 9 and 10, for R5 000 each, were cleared through Shaik's Nedbank cheque account (number *REDACTED*) on 28 February 1997 and 25 March 1997 respectively³⁴¹. Zuma's account reflects the two deposits on the same dates³⁴². The balance of Shaik's account was in overdraft to the extent of R121 451.35 on 28 February 1997 and R136 519.75 on 25 March 1997; and

³³⁷ Refer to 12 0343 (012291 File 35)

³³⁸ Refer to 12 0344-12 0345(BS1 007085 and BS1 007086 File 48)

³³⁹ Refer to 12 0346(011799 File 33)

³⁴⁰ Refer to 12 0347(BS1 007086 (100021) File 48)

³⁴¹ Refer to 12 0348 (012291 File 35)

³⁴² Refer to 12 0349-12 0350(BS1 013519 and BS1 013522 File 78)

Cheque 48, for R10 000, was cleared through Shaik's Standard Bank cheque account (number *REDACTED*) on 14 May 1997³⁴³. The cheque was returned on 15 May 1997 due to alterations to the payee that had not been signed by Shaik. Zuma's account reflects the deposit and reversal on the same dates³⁴⁴.

On 21 May 1997 Standard Bank informed Shaik that Zuma's bond account was in arrears by R6 743.12 and that the overdraft of R113 834 reflected a position of R18 834 in excess of the limit³⁴⁵. The authorised limit then amounted to R95 000. The bank also indicated that Zuma's salary was still not being deposited into his current account. At that time, Zuma's net salary, paid into his Nedbank account, was approximately R17 000 per month. The bank also mentioned that, although they appreciated Shaik's efforts and deposits from his personal resources, the bank could not allow the situation to continue.

On 23 June 1997 Standard Bank stated in a letter to Zuma that his current account had been conducted irregularly since November 1996 and demanded payment of R120 319.75³⁴⁶. The bank also informed Zuma that they had cancelled his MasterCard facility and requested him to return the card to the bank.

The bank also informed Shaik of its letter to Zuma dated 23 June 1997³⁴⁷. It is evident from a subsequent letter from the bank to Shaik, that Shaik had had a meeting with the bank at his offices on 23 July 1997, where he issued 12 post-dated cheques for R10 000 each towards paying Zuma's overdraft³⁴⁸.

It is evident that the cheques were not cleared by the bank. A summons, dated 28 August 1997, was issued by the Registrar of the Supreme Court whereby Zuma was informed that Standard Bank had instituted action against him for the payment of his R118 842.69 overdraft³⁴⁹.

Shaik intervened in order to assist Zuma with the abovementioned judgement against him and, as a consequence, Zuma applied for a bond with New Republic Bank in order to settle his debt with Standard Bank. On 5 November 1997 Goodrickes, the attorneys for Standard Bank, informed Ditz that the bank required proof of the grant of a bond by New Republic Bank and that Standard Bank required a monthly instalment of R10 000 payable on the 15th day of every month of which the first instalment was due on 15 November 1997³⁵⁰. Ditz replied on the same

³⁴³ Refer to 12 0351(BS1 010587 File 53)

³⁴⁴ Refer to 12 0352(BS1 013525 File 78)

³⁴⁵ Refer to 12 0353(80 00550 Box 80)

³⁴⁶ Refer to 12 0354 (80 00548 Box 80)

³⁴⁷ Refer to 12 0355(80 00551 Box 80)

³⁴⁸ Refer to 12 0356(80 00552 Box 80)

³⁴⁹ Refer to 12 0357(108 000246 Box Z163)

³⁵⁰ Refer to 12 0358(80 00436 Box 80)

day to Goodrickes, stating that they had been instructed that their client, Zuma, was not able to effect payment of R10 000, but could pay only R500, as their client would also have to service the bond of Michigan Investments CC³⁵¹.

On 7 November 1997 Ditz confirmed to Shaik that Ditz had made a typing error in their fax to Goodrickes and that the amount proposed was R5 000 per month and not R500 per month. Ditz informed Shaik that, according to Goodrickes, Zuma had made offers to settle the overdraft with instalments of R10 000 per month and that Zuma had issued post-dated cheques in accordance with this offer.

The post dated cheques were however not met and a stop payment was placed on them³⁵². Standard Bank insisted on settlement as soon as possible, or R50 000 from the New Republic Bank bond and monthly instalments of R10 000, commencing immediately.

Cheques deposited into Zuma's Standard Bank cheque account (number *REDACTED*) have been identified. An analysis of the bank statement for this account revealed the following:

On 25 October 1997 a deposit of R10 000 was made into the account. The description on the bank statement is: "*Special Instruction*"³⁵³. On 25 October 1997 cheque 123, for R10 000, cleared through Kobifin's Nedbank account (number *REDACTED*)³⁵⁴. This cheque was returned unpaid on 27 October 1997 and is reflected in Zuma's account. The deposit was returned on 28 October 1997³⁵⁵. At the time of this payment the balance of Kobifin's account was in overdraft to the extent of R467 858.31 and Zuma's account was in overdraft of R110 891.20; and

Cheque deposits of R10 000 each were made into Zuma's account on 27 November 1997, 14 January 1998 and 27 January 1998³⁵⁶. These deposits were matched to cheques 122, 121, and 120, which cleared through Kobifin's Nedbank account (number *REDACTED*) on the same dates as mentioned above³⁵⁷. On 28 January 1998 Kobifin's account reflect a returned item of R10 000³⁵⁸. It appears to be cheque number 120 which was returned. Zuma's account reflects an unpaid item of R10 000 on 30 January 1998³⁵⁹. At the time when cheque

³⁵¹ Refer to 12 0359 (80 00438 Box 80)

³⁵² Refer to 12 0360(80 00439 Box 80)

³⁵³ Refer to 12 0361(BS1 013535File 78)

³⁵⁴ Refer to 12 0362(BS1 007831 File 54)

³⁵⁵ Refer to 12 0363(BS1 013535 File 78)

³⁵⁶ Refer to 12 0364(BS1 013536 File 78)

³⁵⁷ Refer to 12 0365-12 0367(BS1 007832, BS1 007833 and BS1 007834 File 54)

³⁵⁸ Refer to 12 0368(BS1 007834 File 54)

³⁵⁹ Refer to 12 0369(80 00522 Box 80)

120 cleared through Kobifin's bank account, an overdraft balance of R741 834.97³⁶⁰ was reflected and Zuma's bank account was in overdraft to the extent of R98 934.69.

Kobifin honoured the offers for settlement by Zuma and/or Shaik on his behalf, as indicated by Goodrickes. Zuma's cash position at this stage did not allow him to service the debt at Standard Bank. It is also clear that Kobifin did not have the resources available to honour the cheques issued³⁶¹.

On 2 February 1998 Ditz reminded Shaik that the series of post-dated cheques of R7 500 each, of which the source is not known, in settlement of Zuma's overdraft at Standard Bank, and the settlement of the excess on the bond, were still outstanding³⁶².

The six cheques of R7 500 each, for Zuma's overdraft, were identified as having been issued from Zuma's Nedbank cheque account (number *REDACTED*). An analysis of the bank statements revealed the following:

Cheque 162 cleared through the bank account on 2 March 1998³⁶³. The balance of the account at this stage was overdrawn by R76 307.11. On 24 February 1998 a deposit of R14 000 was made into the account. This appears to be from an investment account;

Cheque 163 cleared through the bank account on 31 March 1998³⁶⁴. The balance of the account at this stage was overdrawn by R80 663.86. The cheque was returned as unpaid on 2 April 1998. The cheque cleared again on 9 April 1998 but was returned unpaid again on 14 April 1998. The balance of the account at this stage was an overdraft of R83 024.99;

Cheque 164 cleared through the bank account on 30 April 1998³⁶⁵. The balance of the account at this stage was overdrawn by R84 423.23. The cheque was returned as unpaid on 4 May 1998;

Cheque 165 cleared through the bank account on 1 June 1998³⁶⁶. The balance of the account at this stage was overdrawn by R80 877.72;

³⁶⁰ Refer to 12 0370(BS1 007834 File 54)

³⁶¹ Refer to paragraph 21.7

³⁶² Refer to 12 0371(80 00541Box 80)

³⁶³ Refer to 12 372(BS1 013479 File 78)

³⁶⁴ Refer to 12 0373(BS1 013481 File 78)

³⁶⁵ Refer to 12 0374 (BS1 013482 File 78)

³⁶⁶ Refer to 12 0375 (BS1 013483 File 78)

Cheque 166 cleared through the bank account on 30 June 1998³⁶⁷. The balance of the account at this stage was overdrawn by R70 637.78. The latter two cheques cleared due to a R9 341.29 transfer on 18 June 1998 into the account from Zuma's second Nedbank cheque account (number *REDACTED*) and a deposit of R35 594.14 on 19 June 1998, which appears to be from two Nedbank investment accounts³⁶⁸; and

Cheque 167 cleared through the bank account on 31 July 1998³⁶⁹. The balance of the account at this stage was overdrawn by R79 494.58. The cheque was returned as unpaid on 3 August 1998.

It is therefore clear that, although six cheques were issued, only three were honoured.

The outstanding balance of the overdraft amounted to R128 301.18 on 22 October 2002³⁷⁰. The account has been inactive since then. No interest had been accrued and there are no indications that Standard Bank continued to pursue recovering the outstanding amount³⁷¹.

12.3.12 ABSA

Zuma became a client of ABSA in September 1998. In a memorandum from Raymond O'Neil, relationship manager at ABSA Business Centre, to Gavin Clark, dated 4 September 1998, O'Neil indicated that Shaik had referred Zuma to ABSA to open an account³⁷².

O'Neil also stated that *"Mr Shaik used to be the Deputy Treasurer of the ANC, before his appointment as CEO of Nkobi Holdings. He has since also taken over the responsibility of Minister Zuma's financial affairs and is referred to us being Minister Zuma's economic advisor"*.

O'Neil referred to the *"...considerable debt..."* Zuma had with Standard Bank and Nedbank and that Standard Bank had taken legal action against Zuma in November 1997 due to his bond that was in arrears. It was also stated that Zuma had explained that he accepted responsibility for his debts, but that *"...his bank balance was the last item on his mind, with more important matters, regarding the country and the province to focus on. It is therefore that he has appointed an advisor to take care of his finances in his absence"*.

The memorandum furthermore referred to the fact that Zuma had been disciplined by Mandela and the treasurer of the ANC. We understand that the treasurer at that stage was Mendi

³⁶⁷ Refer to 12 0376 (BS1 013484 File 78)

³⁶⁸ Refer to 12 0377(BS1 013483 File 78)

³⁶⁹ Refer to 12 0378 (BS1 013485 File 78)

³⁷⁰ Refer to 12 0379 (017427 File 165, 182 000275)

³⁷¹ Refer to 12 0380-12 0381(Summons 273/06 File 223)

³⁷² Refer to 12 0382-12 0383(990436-7, Box 00XX, p451)

Msimang. It was also stated that Mandela “... (*this info to be handled strictly confidential*)” had agreed to settle Zuma’s debts. “*The source of the payment could not be disclosed to us at this stage. The amount to be paid will be ± R1, 5 million.*”

The memorandum also referred to the fact that Zuma was second in-line on the ANC’s leadership list and that it was likely that Zuma would be elected as the deputy president of the country after the 1999 elections.

O’Neil also stated that the decision to open an account for Zuma would not be a credit decision, but more a political decision.

The memorandum ended with the words “*We recommend the opening of Unique package account for Minister Zuma, based on his strategic positioning and importance to the group.*”

Zuma’s monthly salary for September, October and November 1998 was still being paid into his cheque account at Nedbank. Zuma’s December 1998 salary of R19 588.52 was the first salary that was deposited into his ABSA current account. By then, the ABSA account was in overdraft by R34 051.66³⁷³.

On 26 August 1999 ABSA informed Shaik that Zuma’s current account (number *REDACTED*) was R16 409 in excess of the overdraft limit and that the credit card account was R4 795 over its limit³⁷⁴.

On 21 October 1999 Shaik requested ABSA to adjust Zuma’s credit facilities to R70 000 for the overdraft on the current account and R10 000 for the credit card account³⁷⁵.

On 17 July 2000 Shaik informed ABSA that Zuma was waiting for funds from the sale of a property owned by Zuma’s wife in Mozambique³⁷⁶. We could not establish when the funds were transferred and what the source of such funds comprised of. Shaik apologised for the delay in the transfer of the property and “...*the transfer of the funds from London*”. At that stage Zuma’s current account was in overdraft of R94 718.04.

On 25 July 2000 ABSA informed Zuma, *via* Shaik, that the balance of his ABSA cheque account (number *REDACTED*) was in overdraft of R105 786, while the limit was only R70 000³⁷⁷. ABSA also indicated that the conduct of Zuma’s account was unacceptable.

³⁷³ Refer to 12 0384 (BS1 020081 File 98, p194)

³⁷⁴ Refer to 12 0385 (8004451 Box 99)

³⁷⁵ Refer to 12 0386 (80 04457 Box 99)

³⁷⁶ Refer to 12 0387 (80 04576 Box 100)

³⁷⁷ Refer to 12 0388 (80 04305 Box 99)

The account was only regularised on 17 October 2000, after a cheque deposit of R2 000 000 was received from Mandela³⁷⁸. A cheque for R1 000 000 cleared through the account on the same date and a R900 000 transfer was made on 18 October 2000 to the account of Floryn Investments³⁷⁹. After these transfers, the balance on the account amounted to R1 716.39 credit³⁸⁰.

Zuma and Shaik were officially accepted as ABSA Private Bank clients on 23 May 2001³⁸¹. It is noted from ABSA documentation that this was a political decision. In an e-mail from Ian MacLeod to John Dwyer on 24 May 2001, MacLeod indicated that Zuma could not meet his personal financial commitments from his salary and that Zuma had no other known guaranteed sources of income³⁸².

On 28 May 2001 ABSA Private Bank informed Zuma and Shaik that the balance of Zuma's ABSA cheque account (number *REDACTED*) was in overdraft to the extent of R80 906.35, while the limit was only R70 000³⁸³. ABSA also indicated that Zuma's account exceeded the overdraft limit the day after his May salary was deposited.

A document forming part of the assessment of Zuma's financial position by ABSA reflects that O'Neil had indicated that Zuma had a net asset position of R1 337 842 at 31 August 2001 and that the "...vast improvement in Zuma's financial position is primarily as a result of an inheritance after the sudden death of his wife – Kate Zuma during 2000"³⁸⁴. Based on our assessment, Zuma had a net liability of R2 969 397.50 at the end of 2001. In addition, we could not identify what Zuma inherited from Kate Zuma.

On 7 September 2001 Isaacs sent a fax to ABSA in Durban for the attention of "Nilia". The covering letter referred to, *inter alia*, the statement of assets and liabilities of Zuma at 31 August 2001³⁸⁵. The statement of assets and liabilities, signed by Shaik, reflected a net asset position of R1 337 842, income of R30 481 and expenses of R29 750 per month³⁸⁶. We analysed this statement of assets and liabilities and considered it in the compilation of a restated balance sheet

³⁷⁸ Refer to paragraph 12.2.18

³⁷⁹ Refer to paragraph 12.2.18

³⁸⁰ Refer to 12 0389(BS1 020183 File 98)

³⁸¹ Refer to 12 0390(990142 Box 0)

³⁸² Refer to 12 0391(990445 Box 0)

³⁸³ Refer to 12 0392(80 04429Box 99)

³⁸⁴ Refer to 12 0393 (990367 Box 00XX)

³⁸⁵ Refer to 12 0394(80 00287 Box 80)

³⁸⁶ Refer to 12 0395(80 00288 Box 80)

compiled by us for purposes of this report.³⁸⁷ It appears that the statement contained a number of inaccuracies and did not represent the true financial position at 31 August 2001. We have assumed the assets to be fairly stated.

Without elaborating on the inaccuracies, the following items were identified as having been omitted:

Exclusion of the Nedbank overdraft of R114 431.19;

Outstanding balance on the finance for the Mitsubishi Pajero finance agreement with Wesbank, amounting to R380 803.60;

Exclusion of the Standard Bank overdraft of R113 241.49;

Amount owing to Standard Bank as regards the Michigan Investment CC transaction of R195 557.25; and

The statement of assets and liabilities does not make any reference to any possible liability that may be applicable as a consequence of payments made to and/or on behalf of Zuma by the Nkobi group and Shaik. This would only have been necessary if the amounts had been advanced as loans. Shaik personally signed the statement of assets and liabilities as “Advisor” in the name of Zuma. Nevertheless, should the amounts paid to and/or on behalf of Zuma be considered as a liability, repayable by him, the total amount, identified by us as having been paid on his behalf, amounted to R990 579.41. This excludes any interest that may be applicable and only includes payments made.

A note by WL Warman of ABSA on 20 September 2001 reflects “*The conduct leaves much to be desired but we have little option but to live with this client in view of his position*”³⁸⁸.

Certain Acknowledgements of Debt by Zuma are in our possession. These are not dated. The headers however indicate that they could relate to 5 February 1998, when Zuma ostensibly acknowledged debt amounting to a total of R340 000, owing to Shaik³⁸⁹. It is evident from our analysis that Zuma did not repay this debt, which was not defined, and that Shaik excluded at least this amount from the statement of assets and liabilities, presented to ABSA. This indicates that the Acknowledgement of Debt did not exist at the time and/or that the debt may not have

³⁸⁷ Refer to paragraph 12

³⁸⁸ Refer to 12 0396 (990351 Box 00XX)

³⁸⁹ Refer to 12 0397-12 0402 (80 00018 to 80 00023 Box 79)

been in existence at the time when the statement of assets and liabilities was presented to ABSA.

In summary, based on the facts at our disposal, it is our opinion that the liabilities of Zuma have been materially understated, at least by an amount of R804 033.53 and by a maximum of at least R1 794 612.94, should the payments made by the Nkobi group and/or Shaik be regarded as a loan. This would have had the effect of decreasing the net asset position to at least R533 808.47, or a net deficit position of R456 770.94 respectively. It is thus concluded that the presentation of a net asset position of Zuma to ABSA by Shaik, on behalf of Zuma as “*Advisor*”, was incorrect.

On 7 April 2003 AG Madgwick from ABSA Business Centre informed Zuma by letter that the overdraft balance on his cheque account was R194 450.88, while his overdraft limit was only R100 000³⁹⁰.

On 19 May 2003 Shaik provided ABSA with a schedule of Zuma’s assets and liabilities as at 30 April 2003³⁹¹. The schedule indicated a net asset position of R2 317 937. A review of the schedule revealed the following:

On 30 April 2003 the outstanding balance of the bond of the Killarney home was R261 945.84³⁹²;

The Mercedes-Benz registered in Zuma’s name at that stage was an E230, registration number ND 226 354. The vehicle was acquired on 14 April 1998 for R243 855³⁹³. The value of R450 000 as reflected was overstated;

We could not find any proof of ownership of a “*Toyota 4x4*”. Zuma was however the owner of a Mitsubishi Pajero which was acquired on 28 May 2001 for R275 157³⁹⁴. The outstanding balance of the lease account was R369 883.21 on 30 April 2003³⁹⁵;

Zuma’s cheque account at Nedbank had an overdraft balance of R162 800.13 on 30 April 2003³⁹⁶;

³⁹⁰ Refer to 12 0403(108 000321 Box Z164)

³⁹¹ Refer to 12 0404(108 000003 Box Z162)

³⁹² Refer to 12 0405(192 000058)

³⁹³ Refer to paragraph 12.2.7

³⁹⁴ Refer to paragraph 12.2.8

³⁹⁵ Refer to 12 0406(192 000000)

³⁹⁶ Refer to 12 0407(180 000016)

Zuma's cheque account at Standard Bank had an overdraft balance of R128 301.18 on 30 April 2003³⁹⁷;

The bond account at FNB for the Nkandla Traditional Village had an outstanding balance of R902 986.03 on 30 April 2003³⁹⁸. The bond account was serviced by Reddy at that stage;

On 30 April 2003 Zuma owed R23 717.97 on his ABSA credit card³⁹⁹;

It is therefore evident that the schedule of assets and liabilities provided to ABSA was not accurate. The assets were overstated by at least R355 988 and the liabilities were understated by at least R1 849 632. The liabilities also excluded the value of the payments Shaik and/or the Nkobi group had made to and on behalf of Zuma at this stage as well as any interest thereon.

On 11 July 2005 Shaik wrote a letter to Philip Greef of ABSA Business Centre to thank him for the meeting they had had that day⁴⁰⁰. Shaik indicated that as a result of the judgment in his criminal trial, he had decided, in consultation with Zuma, to resign from his position as Zuma's financial advisor. Shaik requested ABSA to remove Zuma's accounts from Nkobi's Cash Focus System and to cancel the power of attorney.

On 13 July 2005 ABSA confirmed Zuma's instruction to cancel the general power of attorney in favour of Shaik⁴⁰¹. On this date the balance on the account was R1 041 659.08⁴⁰².

A review of Zuma's ABSA cheque account bank statements revealed the following:

The last salary payment was received on 15 June 2005 in the amount of R46 392.52⁴⁰³;

On 23 June 2005 a cheque for R1 000 000, drawn on Mandela's Nedbank cheque account, was deposited into Zuma's account⁴⁰⁴. A review of Mandela's account indicated that the funds originated from Mandela's call account (account number *REDACTED*)⁴⁰⁵. It is not clear whether this payment was a loan or donation to Zuma;

³⁹⁷ Refer to 12 0408(182 000223)

³⁹⁸ Refer to 12 0409(176 000074)

³⁹⁹ Refer to 12 0410(017971 File 167)

⁴⁰⁰ Refer to 12 0411(108 000306 Box Z164)

⁴⁰¹ Refer to 12 0412(100 010575 Box Z054)

⁴⁰² Refer to 12 0413(171 000438)

⁴⁰³ Refer to 12 0414(171 000432)

⁴⁰⁴ Refer to 12 0415-12 0418(171 000432, Summons 504/05 File 223)

⁴⁰⁵ Refer to 12 0419 (Summons 504/05 File 223)

On 30 August 2005, R1 003 741.69 was deposited into Zuma's ABSA cheque account. This related to the lump sum payment from Zuma's pension⁴⁰⁶;

Zuma received the following funds from Mahlangu Nkomo & Associates' trust account:

R46 000 on 2 November 2005⁴⁰⁷;

R47 000 on 1 December 2005⁴⁰⁸;

R46 000 on 28 March 2006⁴⁰⁹; and

R46 000 on 25 May 2006⁴¹⁰.

Except for the other deposits mentioned above, the deposits from Mahlangu Nkomo & Associates were the only deposits received in Zuma's ABSA cheque account since his last salary. The nature and source of these payments are unknown at the date of this report.

The balance on the account on 31 May 2006 was R760 495.90⁴¹¹.

12.3.13 Southern Life

A letter to Southern Life, dated 6 November 1996, requested the surrender of policy number 28186650 on the life of Zuma⁴¹². It appears that this policy was written out during August 1994 and that it would have matured in 2004⁴¹³.

On 13 November 1996 Southern Life replied to Zuma urging him to reconsider his decision to surrender the policy as the estimated maturity value would have been R756 135 in 2004. The letter stated that the surrender value at that stage was only R37 112⁴¹⁴. On 17 December 1996 Southern Life informed Zuma, *via* Nkobi Holdings, that a cheque in the amount of R38 563.16 had been issued⁴¹⁵. The cheque from Southern Life to Zuma for R38 563.16 was deposited into Proconsult's account 1355130360 at Nedbank on 7 January 1997⁴¹⁶. The Proconsult account indicated an overdraft balance of R228 015.19 on the day before the deposit was made.

⁴⁰⁶ Refer to paragraph 12.2.14

⁴⁰⁷ Refer to 12 0420-120421 (218 000177, summons 314/06 File 223)

⁴⁰⁸ Refer to 12 0422-12 0425(218 000180, summons 185/06, 314/06 File 223)

⁴⁰⁹ Refer to 12 0426-12 0429 (218 000187, summons 185/06, 314/06 File 223)

⁴¹⁰ Refer to 12 0430-120432(summons 274/06, 314/06 File 223)

⁴¹¹ Refer to 12 0432(summons 274/06 File 223)

⁴¹² Refer to 12 0433(80 00383 Box 80

⁴¹³ Refer to 12 0434 (80 00374 and 80 00373 Box 80)

⁴¹⁴ Refer to 12 0435(80 00373 Box 80)

⁴¹⁵ Refer to 12 0437 (80 00376 Box 80)

⁴¹⁶ Refer to 12 0438

On 20 December 1996 Southern Life notified Zuma that the debit order for policy 2811623 of R3 085.88 had been returned, due to insufficient funds⁴¹⁷. On 25 April 1997 Southern Life notified Zuma, *via* Nkobi Holdings, that the outstanding debt on policy 2811623 amounted to R13 238.96 and that the policy would lapse on 1 July 1997⁴¹⁸. On 9 March 1998 Southern Life again notified Zuma, *via* Nkobi Holdings, that the outstanding premium on policy 2811623 was R35 197.18 and that the policy would lapse on 1 June 1998⁴¹⁹.

12.3.14 Pension Fund

On 5 January 1999 NBC Consultants informed Zuma regarding “*the build-up of fund credits*” of the Political Office-Bearers Pension Fund⁴²⁰. The schedule that was attached to the letter indicates the monthly fund credit. By October 1998 the fund credit was R541 522.28.

Zuma’s statement of assets and liabilities on 30 April 2003 reflects the value of Zuma’s pension as R700 000⁴²¹.

On 16 August 2005 Sanlam received an application on behalf of Zuma for an investment of R3 868 306.57 in a preservation fund⁴²². The application form indicated that the date of withdrawal from the transferring fund (Political Office-Bearers Pension Fund) was 14 June 2005 and that the pensionable service to date of withdrawal was 22 years. A note in the advice record stated that the client, Zuma, had to transfer his pension benefits to a preservation fund in order to make a withdrawal of more than one third⁴²³.

The R3 868 306.57 was deposited into the preservation fund on 19 August 2005⁴²⁴. The investment confirmation indicated that R3 789 855.70 was invested on 22 August 2005 for portfolio number 1662162⁴²⁵.

On 26 August 2005 Zuma requested a withdrawal of R1 643 000 from his investment account⁴²⁶. On 30 August 2005 R1 003 741.69 was deposited into Zuma’s ABSA cheque account⁴²⁷. The difference of R639 258.31 related to tax which had to be deducted⁴²⁸.

⁴¹⁷ Refer to 12 0439(80 00377Box 80)

⁴¹⁸ Refer to 12 0440(80 00390Box 80)

⁴¹⁹ Refer to 12 0441(80 00384 Box 80)

⁴²⁰ Refer to 12 0442-12 0443(108 000265-6 Box Z163)

⁴²¹ Refer to 12 0444(108 003975 Box Z175)

⁴²² Refer to 12 0445(222 000042)

⁴²³ Refer to 12 0446(222 000056)

⁴²⁴ Refer to 12 0447(222 000069)

⁴²⁵ Refer to 12 0448-12 0450(222 000071-3)

The value of Zuma's pension fund was reflected in his assets for 2004 at the value of the pension fund in 2005 due to a lack of information.

12.3.15 Payments from Shaik and the Nkobi group to and on behalf of Zuma

The amount of the liability towards Shaik and the Nkobi group is reflected in the liabilities of Zuma after taking into account the following:

All the payments from Shaik and the Nkobi group as reflected in an Annexure⁴²⁹;

All the payments from and on behalf of Zuma to Shaik and Nkobi companies are reflected in an Annexure⁴³⁰;

Refunds received by Nkobi companies from third parties to whom payments were made for and on behalf of Zuma⁴³¹; and

Interest on the cumulative effect of the abovementioned payments to and from Zuma. The interest has been calculated based on the terms and conditions of the loan agreement between Shaik and Zuma dated 16 May 1999. Therefore, the interest rate applied is prime rate plus 2%. The interest is calculated on a daily balance, capitalised monthly, and is only taken into account from the date of the loan agreement.

12.3.16 Mallington Place

On 25 July 1996 a person by the name of I Shaik informed Desai Jadwat Incorporated that the rentals due by Zuma in respect of 191 Mallington Place for May 1996 to July 1996 were outstanding. This amounted to R7 500. I Shaik also requested post-dated cheques of R2 500 each for the rentals for August 1996 to December 1996⁴³².

A sub-lease agreement was entered into between Tracy Brown and Nkobi Holdings on 26 August 1996 for the rental of apartment 191 Malington Place, Durban until 31 August 1997 at a rental of R3 500 per month⁴³³.

⁴²⁶ Refer to 12 0451(222 000086)

⁴²⁷ Refer to 12 0452(222 000087)

⁴²⁸ Refer to 12 0453-12 0454(222 000084-5)

⁴²⁹ Refer to Annexure A

⁴³⁰ Refer to Annexure E

⁴³¹ Refer to Annexure E

⁴³² Refer to 12 0455(80 00162Box 79)

⁴³³ Refer to 12 0456(80 11897 Box 135)

On 18 June 1997 Brown informed Shaik that for the past eight months she had been struggling to obtain the cheque for the rent on the due date⁴³⁴. She indicated that the rent for May 1997 was paid on 2 June 1997. She also indicated that Shaik was in breach of the agreement because he did not inform her that “*a Mr Jacob Zuma*” was staying in the apartment.

Another lease agreement was entered into between Tracy Brown and Nkobi Holdings for the period 1 September 1997 to 31 August 1998 at a rental of R3 500 per month⁴³⁵.

On 23 December 1997 Brown informed Shaik that, without paying the rent, Shaik’s tenant, Zuma, was staying in the apartment illegally⁴³⁶. According to Brown, Zuma moved out of the apartment during July 1999⁴³⁷.

On 16 August 1999 Fletchers Removals were requested by Nkobi Holdings to transport the furniture from Malington Place to Empangeni on 18 August 1999⁴³⁸ and on the same day Nkobi Holdings informed Brown that they would purchase various furniture items for an amount of R1 500⁴³⁹. Brown indicated that the furniture was removed, but the amount owed was never paid. She also indicated that repairs at a cost of R6 049 were also never paid⁴⁴⁰.

On 18 August 1999 Martyn Surman confirmed with Shaik that Shaik would pay R1 500 for the furniture and R1 300 for the transportation of it, including Zuma’s personal effects, to Empangeni⁴⁴¹.

We identified payments to the value of R142 500 with regards to the rent for Malington Place for Zuma.

12.3.17 AQ Holdings

An undated letter to Zuma from Abdool Qadir Mangerah indicates that Zuma owed an amount of R150 205 to AQ Holdings and that payment should be made into AQ Holdings’ Standard

⁴³⁴ Refer to 12 0457(80 11873 Box 135)

⁴³⁵ Refer to 12 0458(80 11818 Box 135)

⁴³⁶ Refer to 12 0459(80 11847 Box 135)

⁴³⁷ Refer to 12 0460(80 11834 Box 135)

⁴³⁸ Refer to 12 0461(80 11817 Box 135)

⁴³⁹ Refer to 12 0462(80 02080 Box 86)

⁴⁴⁰ Refer to 12 0463(80 02087 Box 86)

⁴⁴¹ Refer to 12 0464(80 11815 Box 135)

Bank account (number *REDACTED*)⁴⁴². The letter indicated that the amount due at the end of 1995 was R126 000. The dates of the payments ranged from 12 August 1994 until 30 November 1996. We could not establish the reasons for this debt.

A review of Zuma's Standard Bank cheque account (number *REDACTED*) indicates that, from 29 January 1996, a monthly debit order of R1 000 was debited against the account for the benefit of "A Holdings". From 27 February 1996 another monthly debit order for R4 003.50 was debited against the account for the benefit of "AQ Holdings". From 27 June 1996 this changed to R4 000. The bank returned the debit orders for July 1996 to February 1997 as unpaid. The balance of the debit orders cleared the account until the end of February 1997.

On 27 March 1997 Shaik informed Mangerah that he had sent post-dated cheques, aggregating R150 000 as payment on behalf of Zuma for the amounts owed⁴⁴³. These cheques were issued from Clegton Investments' Nedbank account (number *REDACTED*) and signed by Shaik⁴⁴⁴. We identified nine cheques of R5 000 each, one cheque of R15 000 and twelve cheques of R7 500 each, totalling R150 000⁴⁴⁵.

On 9 September 1998 Sham and Meer Attorneys informed Ditz Incorporated that the "JZ/AQ Holdings/Clegton Investments" matter was becoming pressing and that Mangerah wanted to proceed with the issue of a summons, or an application for sequestration. The letter indicated that the amount outstanding was R86 500⁴⁴⁶. This indicated that R63 500 of the R150 000 had been paid. Ditz informed Shaik of this on 10 September 1998⁴⁴⁷. On 14 September 1998, Sham and Meer informed Ditz that the matter needed to be resolved by 18 September 1998⁴⁴⁸.

On 28 September 1998 Sham and Meer informed Ditz that Mangerah would continue with the application for sequestration if the matter was not resolved by 1 October 1998⁴⁴⁹. Ditz replied by stating that they had been instructed to respond that their client was prepared to pay R2 500 per month⁴⁵⁰.

⁴⁴² Refer to 12 0465(80 00065 Box 79)

⁴⁴³ Refer to 12 0466 (80 00069 Box 79)

⁴⁴⁴ Refer to 12 0467-12 04670 (8000066/38/72 Box 79)

⁴⁴⁵ Refer to 12 0468-120470

⁴⁴⁶ Refer to 12 0472(80 00064 Box 79)

⁴⁴⁷ Refer to 12 0473 (8004551)

⁴⁴⁸ Refer to 12 0474 (8000062 Box 79)

⁴⁴⁹ Refer to 12 0475 (8000058 Box 79)

⁴⁵⁰ Refer to 12 0476 (8000059 Box 79)

On 7 October 1998 Sham and Meer sent an acknowledgement of debt to Ditz for Zuma to sign⁴⁵¹. The acknowledgement of debt indicated that Zuma owed AQ Holdings R86 500 in respect of monies lent and advanced to him and that he undertook to pay instalments of R2 500 per month, commencing on 15 October 1998. The acknowledgement of debt also indicated that it was Zuma's intention to increase the payments if his financial circumstances permitted it.

On 9 November 1998 Sham and Meer informed Ditz that they had persuaded Mr Mangerah that it was not necessary for Zuma to sign an acknowledgement of debt and that the payments would be in accordance with their agreement⁴⁵². On 11 November 1998, Ditz thanked Sham and Meer for their assistance and indicated that December instalment would be sent in due course⁴⁵³.

On 23 February 1999 Sham and Meer sent a reconciliation of Zuma's account to Ditz⁴⁵⁴. From the reconciliation it is evident that eight cheques of R7 500 each were returned unpaid. The reconciliation reflects payments made, aggregating R92 500. A total of R82 500 of the payments made could be identified as funds from Kobifin's Nedbank cheque account (number *REDACTED*).

On 3 March 1999 Ditz sent a deposit slip for R5 000 to Sham and Meer, evidencing payment for the months of February and March 1999⁴⁵⁵.

On 12 August 1999 Sham and Meer enquired whether Zuma could not increase his payments in view of his new circumstances⁴⁵⁶. This appears to refer to the fact that Zuma became Deputy President of South Africa. On 23 August 1999 Ditz informed Shaik that R5 000 was required to pay the next instalment⁴⁵⁷. A letter, dated 26 November 1999, from Sham and Meer, informed Ditz that their client was agitated and that payment should be expedited⁴⁵⁸.

Again on 18 January 2000 Sham and Meer informed Ditz that the payments for October, November, December and January were outstanding and that their client was dissatisfied⁴⁵⁹. This was followed by a letter on 26 May 2000 from Sham and Meer confirming the balance outstanding as R49 205⁴⁶⁰.

451 Refer to 12 0477-12 0479 (80 00054 to 80 00056 Box 79)

452 Refer to 12 0480(80 00075 Box 79)

453 Refer to 12 0481(80 00074 Box 79)

454 Refer to 12 0482(80 00051 page 4 Box 79)

455 Refer to 12 0483 (8000052 Box 79)

456 Refer to 12 0484 (8000048 Box 79)

457 Refer to 12 0485 (8000047 Box 79)

458 Refer to 12 0486 (8000050 Box 79)

459 Refer to 12 0487 (8000042 Box 79)

460 Refer to 12 0488(80 00046 Box 79)

On 9 November 2000 Sham and Meer informed Ditz that the outstanding balance was R24 205⁴⁶¹. On 15 December 2000 R5 000 was transferred from Zuma's account to Ditz's trust account for payment of AQ Holdings⁴⁶². After this payment, the amount outstanding was R19 205.

We could not locate any evidence of the final settlement of the amount outstanding.

12.3.18 Development Africa

On 2 October 2000 account number *REDACTED*, in the name of NR Mandela, was opened with Nedbank⁴⁶³. On the same date R500 000 was transferred from this account to Nedbank account number *REDACTED*, also in the name of NR Mandela. A further R2 000 000 was transferred from account *REDACTED* to Nedbank's own cheque account number *REDACTED*⁴⁶⁴. On 2 October 2000 a Nedbank cheque for R2 000 000, made out to NR Mandela, was issued from the latter account. The reverse side of the cheque was signed by Mandela and endorsed: "*Pay the account of Jacob Zuma*"⁴⁶⁵.

On 5 January 2001 a cheque for US\$200 000 (R1 486 040) was deposited into Mandela's account number *REDACTED*. The source of these funds is not known. On the same date the R1 486 040 was transferred from the latter account to account number *REDACTED*⁴⁶⁶. Before this transfer, the latter account had had an overdraft balance of R2 505 136.99. On 5 April 2001 a cheque for US\$300 000 (R2 412 270) was deposited into account number *REDACTED*. The source of these funds is not known. After this deposit, the balance of the latter account was R1 393 142.89 and this amount was transferred to Ismail Ayob and Partners' Nedbank account number *REDACTED* on 26 April 2001⁴⁶⁷.

On 17 October 2000 the Nedbank cheque was deposited into Zuma's ABSA cheque account number *REDACTED*⁴⁶⁸. On this date, cheque number 272 from Zuma's account number *REDACTED*, in favour of Jacob Zuma Education Trust for R1 000 000, was deposited into the ABSA account of the KwaZulu-Natal RDP Education Trust account number

⁴⁶¹ Refer to 12 0489 (108 000207 Box Z163)

⁴⁶² Refer to 12 0490-12 0491(108 000205/209 Box Z163)

⁴⁶³ Refer to 12 0492 (018826 File 169)

⁴⁶⁴ Refer to 12 0493(018827 File 169)

⁴⁶⁵ Refer to 12 0494-12 0495(018837 and 018838File 169)

⁴⁶⁶ Refer to 12 0496 (018826 File 169)

⁴⁶⁷ Refer to 12 0497(220 000314)

⁴⁶⁸ Refer to 12 0498 (BS1 020101 File 98)

*REDACTED*⁴⁶⁹. On 25 October 2000 R1 000 000 was transferred from the latter account to an ABSA trust account⁴⁷⁰.

We understand that the remaining R1 000 000 of the R2 000 000 received by Zuma from Mandela, was meant to be paid to Development Africa.

On 18 October 2000 Shaik instructed ABSA Bank Durban per facsimile transmission to transfer R900 000 from Zuma's ABSA account number *REDACTED* into a one month fixed deposit account in the name of Floryn Investments⁴⁷¹. The amount was transferred from Zuma's account to Floryn Investments' ABSA fixed deposit account number *REDACTED* on the same day⁴⁷².

On 3 November 2000 R300 000 was transferred from the fixed deposit account to Kobitech ABSA account number *REDACTED*. Before this transfer, the balance of the Kobitech account was in overdraft of R763 535.67⁴⁷³. This deposit was recorded in the accounting records of Kobifin as a loan from Floryn Investments to Kobitech.

On 10 November 2000 a cheque for R42 500 was drawn on Floryn Investments' fixed deposit account and issued to Ditz Inc. This payment was recorded in the accounting records of Kobifin as a loan from Floryn Investments. On 17 November 2000 R563 634.24 was transferred to Floryn Investments' ABSA cheque account number *REDACTED*⁴⁷⁴. The sum of the transfers, from the fixed deposit account, therefore amounts to R900 000 plus R6 134.24 interest.

On 20 November 2000 an amount of R100 000 was transferred from Floryn Investments' ABSA cheque account to Kobitech's, account number *REDACTED*⁴⁷⁵. Before this transfer, the balance of Kobitech's account was in overdraft of R777 265.95⁴⁷⁶. This payment was recorded in the accounting records of Kobifin as a loan from Floryn Investments to Kobitech.

On 20 November 2000 R146 820 was transferred to Kobitech Transport Systems' account number REDACTED⁴⁷⁷. This account was opened on the same date and no payments were made from this account until 22 September 2003. This payment was recorded in the accounting records of Kobifin as a loan from Floryn Investments. On 16 October 2003 a R300 000 internet transfer was made into this account from account number REDACTED⁴⁷⁸. The latter account is

⁴⁶⁹ Refer to 12 0499-12 0500, 12 0501 (80 04355B Box 99 and 004506 File 1)

⁴⁷⁰ Refer to 12 0501 (004506 File 1)

⁴⁷¹ Refer to 12 0502(80 04458 Box 99)

⁴⁷² Refer to 12 0503, 12 0504 (BS1 020101 File 98 and 017320 File 128)

⁴⁷³ Refer to 12 0505(006490 File 15)

⁴⁷⁴ Refer to 12 0506 (017322 File 128)

⁴⁷⁵ Refer to 12 0507 (017322 File 128)

⁴⁷⁶ Refer to 12 0508(006491 File 15)

⁴⁷⁷ Refer to 12 0509(016578 File 44)

⁴⁷⁸ Refer to 12 0510(173 000252)

the ABSA account of Nkobi Intertoll Consortium⁴⁷⁹. Up to 22 June 2005, only interest accrued on the balance of this account.

On 30 November 2000 R318 131 was transferred from Floryn Investments' account number *REDACTED* to Kobitech's account number *REDACTED*. Before this transfer, the account of Kobitech was in overdraft of R250 546.02⁴⁸⁰. The sum of the transfers from the Floryn Investments cheque account amounts to R563 634.24 plus R1 316.76 interest.

It is therefore clear that Kobitech and Kobitech Transport Systems utilised the amount of R900 000, transferred from Zuma to Floryn Investments, to reduce overdrawn bank balances by R718 131 (R300 000 plus R100 000 plus R318 131) and as an investment of R146 820.

It appears that Shaik regarded the R718 131 as a repayment from Zuma. A document styled: "*Account – Deputy President Jacob Zuma with Schabir Shaik*" indicates the R718 131 as a receipt and consequently a reduction in the value of the payments made to Zuma⁴⁸¹. The document reflects *inter alia* the following:

- "*Loan to 30/06/1998*" of R350 000;
- "*Total payments*" of R579 971.98;
- "*Total receipts*" of R718 131; and
- "*Credit balance*" of R138 159.02.

The last payment reflected on the abovementioned document is dated 26 October 2001. According to our calculations, the value of the payments to and on behalf of Zuma at that point was R1 675 722.88⁴⁸².

Documentation indicates that Shaik regarded the R900 000 transfer, as well as the interest that was earned on the funds (R7 451), from Zuma to Floryn Investments, as a repayment⁴⁸³. The document is not dated, but includes payments up to 30 May 2002 to the value of R771 802.52. The repayments are reflected as R945 104.86 and are made up of the R900 000 plus interest of R7 451 and an amount of R37 653.86 from Southern Life⁴⁸⁴. Our calculations indicate that the payments to and on behalf Zuma totalled R1 939 785.91 on 30 May 2002⁴⁸⁵.

⁴⁷⁹ Refer to 12 0511 (80 13682 Box 138)

⁴⁸⁰ Refer to 12 0512(006493 File 15)

⁴⁸¹ Refer to 12 0513(120 005147 Box Z099)

⁴⁸² Refer to Annexure A

⁴⁸³ Refer to 12 0514-12 0516(120 005171-3 Box Z099)

⁴⁸⁴ Refer to paragraph 12.2.13

⁴⁸⁵ Refer to Annexure A

Zuma still owed Development Africa R1 000 000, due to the fact that Shaik utilised R900 000 of the R1 000 000 meant for Development Africa and Zuma retained R100 000 in his account.

On 6 December 2000 Zuma issued a personal cheque, drawn in favour of Development Africa for an amount of R1 000 000⁴⁸⁶. It is clear from the bank statements of the cheque account of Zuma, on which the cheque was drawn, that there were no funds available in the account⁴⁸⁷. Shaik personally instructed the bank to stop payment of the cheque on 7 December 2000 and the bank proceeded to reverse the transaction⁴⁸⁸.

On 8 December 2000 Shaik wrote to Thomson-CSF International Africa Limited on a Kobifin letterhead⁴⁸⁹. Shaik noted in this letter that “*Herewith **Application Form** for the Service Provider agreement as discussed. Kindly expedite our **arrangementas** soon as possible, as matters are becoming extremely urgent with my client*”. In terms of the service provider agreement, two payments of R250 000 each had to be paid. An additional two payments of R250 000 were added by hand. The first payment was due before the end of December 2000.

On 16 February 2001 Kobitech received a transfer into their ABSA cheque account (number *REDACTED*) in the amount of R249 725 from Thomson-CSF International Africa (Mauritius)⁴⁹⁰. This amount is net of charges amounting to R275. Therefore, the amount transferred from Mauritius was R250 000.

Following the stopped payment by Shaik on the cheque issued by Zuma to Development Africa, Kobitech issued four cheques to Development Africa. On 28 February 2001, cheque 1329 for R250 000, drawn on the account of Kobitech’s account number *REDACTED*, was cleared to the cheque account of Development Africa⁴⁹¹. An additional three cheques for R250 000 each were also issued. The accounting records of Kobifin indicate that the payment to Development Africa was recorded as a reduction of the loan from Floryn Investments.

On 19 April 2001 a letter from Nkobi Holdings, signed by R Lechman, was sent to ABSA Business Centre to stop cheques 1330, 1331 and 1332, each for R250 000 in favour of Development Africa⁴⁹².

⁴⁸⁶ Refer to 12 0517(BS1 020929 (110058) File 100)

⁴⁸⁷ Refer to 12 0518(BS1 020189 (110059) File 98)

⁴⁸⁸ Refer to 12 0519(BS1 007705 (110060) File 53)

⁴⁸⁹ Refer to 12 0520-120537(80 13209 to 80 13226 Box 138)

⁴⁹⁰ Refer to 12 0538(017265 (110080) File 164)

⁴⁹¹ Refer to 12 0539, 12 0540(006703 File 15, BS1 012081 File 72)

⁴⁹² Refer to 12 0541(80 13789 Box 139)

On 5 September 2001 cheque 319 for R125 000 drawn on Shaik's account number *REDACTED* was deposited into the cheque account of Development Africa⁴⁹³. On 17 September 2001 cheque number 320, also drawn on Shaik's account, for R125 000 was deposited into the cheque account of Development Africa⁴⁹⁴.

Kobitech provided the abovementioned funds that Shaik paid to Development Africa, in that on 4 September 2001, cheque 1849, for R175 000, drawn on the account of Kobitech, account number *REDACTED*, was deposited into Shaik's ABSA cheque account. On this date, the balance on the Kobitech account was overdrawn by R1 667 233.91. On 19 September 2001, cheques 1863, 1864, 1865, 1866 and 1867, each for R25 000 drawn on the account of Kobitech, were deposited into the account of Shaik. These deposits reduced the overdraft of the account of Shaik to R37 887.47 and increased the overdraft of Kobitech to R1 491 960.51⁴⁹⁵. The abovementioned payments from Kobitech to Shaik were recorded in the accounting records of Kobifin as loans to Shaik and a reduction of the loan from Floryn Investments.

On 23 June 2005 a Kobitech cheque for R400 000 was issued in favour of Development Africa⁴⁹⁶. The cheque cleared the bank account on 24 June 2005⁴⁹⁷. This payment was recorded in the accounting records of Kobifin as a reduction of the loan from Floryn Investments.

On 27 June 2005 Development Africa issued a cheque for R400 000 to ICC Durban⁴⁹⁸. This cheque was deposited on 28 June 2005. Documentation provided by ICC Durban indicates that the payment of R400 000 was towards the expenses for the contract with King Goodwill Zwelithini for the wedding of "*Seshi and Nombuso*" held at ICC Durban⁴⁹⁹.

Therefore, the payments made by Shaik and Kobitech to Development Africa total R900 000. We regarded these payments to Development Africa as a settlement of Zuma's debt towards Development Africa, and therefore a payment to and on behalf of Zuma, due to the fact that Shaik regarded the R900 000 from Zuma to Floryn Investments as a repayment of Zuma's debts towards Shaik and/or the Nkobi group.

⁴⁹³ Refer to 12 0542-12 0543(220 000426-7)

⁴⁹⁴ Refer to 12 0544-12 0545(220 000428-9)

⁴⁹⁵ Refer to 12 0546-12 0551 (014994 File 58, BSI02096-99 File 72, 006747 File 15)

⁴⁹⁶ Refer to 12 0552-12 0553(100 010574 Box Z054)

⁴⁹⁷ Refer to 12 0554-120555(172 000430, 178 000127)

⁴⁹⁸ Refer to 12 0556(221 000044)

⁴⁹⁹ Refer to 12 0557-12 0559(document from ICC File 223)

We regarded the interest earned on the R900 000 (R7 451) by Floryn Investments and the Nkobi group as an amount owed to Zuma by Shaik or the Nkobi group.

It is not clear whether Zuma paid the outstanding R100 000 to Development Africa.

12.3.19 Eric Malengret

The agreed contract price for the Nkandla development was R1 340 000. Malengret received payments from outside sources totalling R190 000 and R900 000 from the proceeds of the bond obtained by Zuma. Therefore, Zuma still owed R250 000 to Malengret.

We are in possession of a copy of an Acknowledgement of Indebtedness signed on 22 February 2003⁵⁰⁰. In this document Zuma, as debtor, acknowledges that he owes Malengret, as creditor, an amount of R250 000. The fax header of the copy at our disposal reflects the date of 25 February 2003.

Paragraph 2 of the document indicates that Zuma had to pay interest at a rate of 15.5% per annum. Although paragraph 18 of the document provides for security, it appears that this section was not completed in terms of this agreement.

In summary, Zuma acknowledged that he owed Malengret an amount of R250 000 by reason of work done and materials supplied for the development of a Traditional Village at Nkandla situated near Eshowe in KwaZulu-Natal. The document stipulates that Malengret was instructed to construct and attend to the setting up of the infrastructure and incidentals on the allotted properties. The properties are described in the acknowledgement as land to the extent of 2 500 square meters and 37 500 square meters for residential and agricultural purposes respectively.

Zuma agreed to repay the debt to Malengret in monthly instalments of R10 000 before the first of each month, commencing 7 March 2003.

On 11 March 2003 Zuma issued cheque 784 in favour of Malengret for R10 000⁵⁰¹. The cheque was deposited on 17 March 2003⁵⁰². Zuma's cheque account had an overdraft balance of R165 809.68 at that stage. No further payments were identified until 12 July 2004.

On 12 July 2004 Zuma issued cheque 979 in favour of Malengret for R120 000⁵⁰³. The cheque was deposited on the same day⁵⁰⁴. A review of the bank account of Zuma revealed that a

⁵⁰⁰ Refer to 12 0560-12 05606(EM13 Docket file 309)

⁵⁰¹ Refer to 12 0567-12 0568(108 004178 Box Z175)

⁵⁰² Refer to 12 0569(017932 File 167)

R120 000 ACB credit transfer was made into the account of Zuma on 12 July 2004. Zuma's account had an overdraft balance of R160 948.79 before this transfer. The information from ABSA revealed that the funds originated from J Mahomed Attorneys Trust account at Standard Bank⁵⁰⁵. We understand that Mahomed acted as the legal advisor of Zuma. The source of the funds is unknown.

On 12 August 2004 Zuma issued cheque 992 in favour of Malengret for R30 000⁵⁰⁶. The cheque was deposited on the same day⁵⁰⁷. A review of the bank account of Zuma revealed that two ACB credits, totalling R30 000, were transferred into the account of Zuma on 12 August 2004. Zuma's account had an overdraft balance of R194 092.09 before these transfers. The information from ABSA revealed that R20 000 originated from J Mahomed Attorneys Trust account at Standard Bank⁵⁰⁸ and that R10 000 originated from J Mahomed Attorneys Business account at Standard Bank⁵⁰⁹. The sources of the funds are unknown.

Based on the above, Zuma paid R160 000 of the R250 000 debt to Malengret, of which R150 000 was provided from outside sources. The outstanding debt on 30 June 2006 is therefore R90 000, plus interest of R109 826.27⁵¹⁰. We could not identify any other payments from Zuma to Malengret at the date of this report.

12.3.20 Nora Fakude-Nkuna of Bohlabela Wheels

Payments to Nkandla's architect

An entity styled: "*Tasker & Schumann Architects*" was requested to propose to draft construction drawings for the Nkandla Development. In a letter dated 3 February 2000, Tasker thanked Fakude-Nkuna for approaching them to propose for the Nkandla Development⁵¹¹. The letter reflected the costs for the different stages. The total cost for stages A and B was reflected as R30 000 (R34 200 including VAT).

On 2 March 2000 the architects issued an invoice for R34 200 to Bohlabela Wheels.

⁵⁰³ Refer to 12 0570-12 0571 (108 004375 Box Z175)
⁵⁰⁴ Refer to 12 0572(171 000410)
⁵⁰⁵ Refer to 12 0573-12 0574(221 000053, 217 000024)
⁵⁰⁶ Refer to 12 0575- 12 0576(108 004364 Box Z175)
⁵⁰⁷ Refer to 12 0577(171 000412)
⁵⁰⁸ Refer to 12 0578-12 0579(221 000054, 217 000027)
⁵⁰⁹ Refer to 12 0580-12 0581(221 000055, 217 000031)
⁵¹⁰ Refer to AnnexuresG and H
⁵¹¹ Refer to 12 0582(PIT 4 (Tasker's affidavit)

It appears that one of the allegations the Registrar of Members' interest informed Zuma about on 4 September 2003, was that Zuma received a donation from Fakude-Nkuna⁵¹². Zuma replied on 14 September 2003 that he was not aware of the payment of R34 200 by Fakude-Nkuna and that it was an arrangement between Fakude-Nkuna and Zuma's nephew, KR Zuma⁵¹³. In a handwritten fax to Makatini, dated 13 September 2003, KR Zuma stated that the payment of R34 200 was paid by Fakude on his request⁵¹⁴. KR Zuma further indicated that he and Fakude had reached the understanding without the knowledge of Zuma and that he was liable for the said amount. A typed, unsigned affidavit by KR Zuma, dated 25 November 2003, reflects the same information⁵¹⁵.

Payments to the developer of Nkandla

Bohlabela Wheels made the following payments to Eric's Industrial Plumbing:

R30 000 (cheque 100021) and R60 000 (cheque 100839) on 14 August 2000⁵¹⁶. Included in the deposit of the above cheques was a personal cheque from Fakude for R10 000; and

R40 000 (cheque 100962) on 4 October 2000⁵¹⁷.

Therefore, R130 000 was received by Eric's Industrial Plumbing from Bohlabela Wheels and R10 000 was received from Fakude-Nkuna.

According to the auditor of Bohlabela Wheels, Nico Brink of Nico Brink Chartered Accountants (SA), no one at the company, including Fakude-Nkuna, could explain the nature of the payments. The payments were therefore allocated to the loan account of Fakude-Nkuna⁵¹⁸. A fax, dated 6 September 2001, was sent by Richard Hofmann, of Nico Brink Chartered Accountants, to Malengret of Eric's Industrial Plumbing, enquiring as to the nature of the two payments to the entity. Nico Brink indicated that no reply was ever received.

Nico Brink indicated that Fakude-Nkuna queried the debits to her loan account and later indicated that the payments were business related. The general manager of Bohlabela Wheels, Christo Willemse, faxed two invoices, totaling R100 000, ostensibly from Eric's Industrial

⁵¹² Refer to 12 0583-12 0586(115 000195/233-5 Box Z237)

⁵¹³ Refer to 12 0587(115 000195 Box Z237)

⁵¹⁴ Refer to 12 0588(115 000194 Box Z237)

⁵¹⁵ Refer to 12 0589-12 0590(115 000223-4 Box Z237)

⁵¹⁶ Refer to 12 0591-12 0592 (NB1 Statement file 0006, 015502 (110017)

⁵¹⁷ Refer to 12 0593-12 0594 (NB1 Statement file 0006, 015504 (110018)

⁵¹⁸ Refer to 12 0595 (SR) (Nico Brink PFM 10/11)

Plumbing, to the auditor on 6 September 2001⁵¹⁹. The invoices indicated that the payments were made for “*Steelworks*”, namely, additions and alterations to the buildings of the company.

A review of the Pastel accounting records of Bohlabela Wheels, for the year ending 28 February 2001, revealed the following⁵²⁰:

Cheques 100839 and 100962 were accounted for in the cashbook as “*Land & Buildings – Eric’s Industrial-Improvements*”. The Land & Buildings account was debited with R52 631.58 and R35 087.72 respectively, the VAT account was debited with R7 368.42 and R4 912.28 respectively, and the Standard Bank ledger account was credited with R60 000 and R40 000 respectively. It must be noted that the invoices, ostensibly from Eric’s, reflected neither VAT amounts nor a VAT number;

The debits to Land & Buildings, ie R52 631.58 and R35 087.72 respectively, were transferred out of the account and the loan account of Fakude-Nkuna was debited;

An amount of R30 000, with reference to cheque 1000021, was credited to the loan account of Bohlabela Wheels – Middelburg and debited to the loan account of Fakude-Nkuna; and

The debits against the loan account of Fakude-Nkuna, ie R52 631.58, R35 087.72 and R30 000 respectively, were transferred out of the account and the Goodwill/Intangible Assets account was debited with the total, namely R117 719.30⁵²¹.

In the financial statements of Bohlabela Wheels for the year ended 28 February 2001, an amount of R117 719.30 was recorded as improvements to leasehold property⁵²².

It is therefore clear that the payments to Eric’s Industrial Plumbing were not treated as a loan or as donations in the accounting records of Bohlabela Wheels.

In the reply of Zuma to the Registrar of Members’ interest, Zuma indicated that there was a verbal agreement between him and Fakude and that it was not an interest free loan. Zuma referred to a letter from Makatini to Fakude in which Makatini confirmed that the interest rate on the loan would be at prime as discussed telephonically on 28 February 2001⁵²³.

⁵¹⁹ Refer to 12 0596-120597(NB4 and NB5 Statement file 0006)

⁵²⁰ Refer to 12 0598-12 05601 (accounting entries NB2 and NB3 Statement file 0006)

⁵²¹ Refer to 12 0602 ()

⁵²² Refer to 12 0603-12 0614(NB6 Statement file 0006)

⁵²³ Refer to 12 0615(115 000236 Box Z237)

If the payments to Eric's Industrial Plumbing from Bohlabela Wheels and Fakude-Nkuna are regarded as loans, the amount repayable by Zuma at 30 June 2006 would have been R300 380.36⁵²⁴. It should be noted that the total interest exceeded the total amount borrowed on 29 October 2005 when the total amount owed was R279 937.61.

We could not identify any proof of repayments by Zuma to Fakude-Nkuna and/or Bohlabela Wheels.

12.3.21 Vivian Reddy

Reddy accepted the responsibility for servicing the bond payments in terms of the R900 000 bond that was provided to Zuma for the Nkandla Development⁵²⁵.

The Nedbank cheque account of Reddy, account number * R E D A C T E D *, was analysed and payments of the instalments due on the aforementioned bond were identified. It is clear from the analysis that Reddy commenced servicing the bond payments on behalf of Zuma with effect from 25 January 2003⁵²⁶.

Reddy continued to service the bond until 25 May 2005⁵²⁷. The value of the payments up to that point in time was R274 110.96⁵²⁸.

Zuma received a fax from the Office of the Registrar of Members' interest on 4 September 2003 regarding an alleged breach of the Code of Conduct for Members of Parliament⁵²⁹. It appears that the fax consisted of 21 pages. We are in possession of pages 1, 3, 4, 5 and 6. One of the allegations was that Zuma received an interest free loan from Reddy for the Nkandla bond. In a faxed letter to F Mahomed, the Registrar of Members' interest, dated 14 September 2003, Zuma stated that the loan from Reddy was not interest free and that an agreement existed which was attached to the fax⁵³⁰. It appears that the fax consisted of 21 pages and we are in possession of pages 1 to 5 only. We could not locate the loan agreement referred to in the abovementioned fax.

⁵²⁴ Refer to Annexure J

⁵²⁵ Refer to 12 0616 (176 000068)

⁵²⁶ Refer to 12 0617-12 0622 (015916 File 42, BS1 007007-11 File 46)

⁵²⁷ Refer to 12 0623(178 000029)

⁵²⁸ Refer to Annexure K

⁵²⁹ Refer to 12 0624-12 0626 and 12 0627-12 0628(115 000218-220 and 229/228 Box Z237)

⁵³⁰ Refer to 12 0629-12 0632(115 000195/233-5 Box Z237)

We identified a schedule styled: “*Instalment loan @ 9% calculated at 3 June 2005*”⁵³¹. The schedule contains information that corresponds with the bond payments Reddy made towards servicing Zuma’s bond for Nkandla⁵³². According to this schedule, Zuma owed Reddy R103 250.06 on 25 May 2005. Our calculations indicate that, based on an interest rate of 9%, Zuma owed Reddy R123 745.09 on 25 May 2005⁵³³. It should be noted that the prime interest rate was 17% on 25 January 2003, the date when Reddy paid the first instalment on the bond.

On 30 October 2004 Zuma issued cheque 1011 in favour of Reddy for R164 500 from his ABSA account⁵³⁴. The cheque was deposited into Reddy’s Nedbank account on 3 November 2004⁵³⁵. The bank returned the cheque as unpaid on 4 November 2004⁵³⁶. Zuma’s cheque account had an overdraft balance of R163 170.09 before cheque 1011 was presented to the bank.

Zuma also issued the following cheques in favour of Reddy:

Cheque number	Date on cheque	Date deposited	Amount R
1039	20 October 2004	19 March 2005 ⁵³⁷	60 000
1040	20 November 2004	19 March 2005 ⁵³⁸	20 000
1042	14 April 2005	25 April 2005 ⁵³⁹	20 000
1043	14 March 2005	29 March 2005 ⁵⁴⁰	20 000
1044	14 February 2005	29 March 2005 ⁵⁴¹	20 000
1045	14 January 2005	29 March 2005 ⁵⁴²	20 000
1046	14 December 2005	29 March 2005 ⁵⁴³	20 000
Total			180 000

⁵³¹ Refer to 12 0633(114 000001 Box Z236_G)

⁵³² Refer to Annexure K

⁵³³ Refer to Annexures K, L and M

⁵³⁴ Refer to 12 0634-12 0635(221 000066)

⁵³⁵ Refer to 12 0636(178 000022)

⁵³⁶ Refer to 12 0637-12 0638(171 000418 and 178 000022)

⁵³⁷ Refer to 12 0639-12 0640(108 004473 Box Z175)

⁵³⁸ Refer to 12 0641-12 0642(108 004472 Box Z175)

⁵³⁹ Refer to 12 0643-12 0644(108 004470 Box Z175)

⁵⁴⁰ Refer to 12 0645-12 0646(108 004469 Box Z175)

⁵⁴¹ Refer to 12 0647-12 0648(108 004468 Box Z175)

⁵⁴² Refer to 12 0649-12 0650(108 004467 Box Z175)

⁵⁴³ Refer to 12 0651-12 0652(108 004466 Box Z175)

The abovementioned cheques were back-dated, because the cheques before cheque 1039 were dated after cheque 1039 and presented to the bank before cheque 1039.

A review of Zuma's cheque account revealed that the following deposits and payments were *inter alia* made into and from his account before the abovementioned cheques cleared his bank account:

R180 000 deposit on 26 February 2005 with the reference "*Khulubuse*"⁵⁴⁴. Before this deposit, Zuma's account indicated an overdraft balance of R91 704.74. The deposit slip indicates that a cheque in the name of KC Zuma was deposited⁵⁴⁵. We understand that the cheque was drawn on the account of Khulubuse Clive Zuma. We could not determine the nature of the deposit. After this deposit, Zuma's cheque account had a positive balance for the first time since it was opened in September 1998, if the two days in October 2000, when Mandela's R2 000 000 was deposited are excluded. It should be noted that the total amount paid to Reddy was R180 000;

Zuma's salary of R46 392.52 deposited on 15 March 2005;

R217 560 deposit on 15 March 2005 with the reference "*Foreign notes*"⁵⁴⁶. The information from the bank revealed that US\$37 000 were deposited into Zuma's account⁵⁴⁷. In ABSA's request for authorisation from Exchange Control to purchase the foreign bank notes it is mentioned that Zuma had a property in Mozambique⁵⁴⁸, which had been rented by "*Mr Taminho*"⁵⁴⁹. The request stated that the rent was in arrears and Zuma had appointed Mthembu & Mahomed Attorneys Inc. to recover the outstanding amount. Included in the documentation from the bank, was a "*Forex Deal Receipt*". The receipt indicated that Zuma owed US\$100 to ABSA due to the fact that one of the US\$100 notes was counterfeit⁵⁵⁰;

On 18 March 2005 R200 000 was transferred from Zuma's account to Kobiprop account and R100 000 was transferred to Shaik's account⁵⁵¹. The reference on the bank statement is "*Loan repay to S Shaik*". It appears that the payments were effected from a cash focus

⁵⁴⁴ Refer to 12 0653(171 000424)

⁵⁴⁵ Refer to 12 0654(222 000114)

⁵⁴⁶ Refer to 12 0655(171 000426)

⁵⁴⁷ Refer to 12 0656(220 000205)

⁵⁴⁸ Refer also paragraph 12.3.12

⁵⁴⁹ Refer to 12 0657(220 000203)

⁵⁵⁰ Refer to 12 0658-12 0659(220 000206/209)

⁵⁵¹ Refer to 12 0660-12 0662(171 000426, 174 000242, 210 000136)

system as used by the Nkobi group. On 22 March 2005 Shaik transferred R300 000 back to Zuma's account⁵⁵²;

It is therefore clear that Zuma received R397 560 (R180 000 plus R217 560) from outside sources before 19 March 2005, the date the first cheque to Reddy cleared Zuma's account. These deposits created a positive balance on Zuma's cheque account and made it possible for the bank to honour the cheques issued by Zuma to Reddy.

Based on the information at our disposal, Zuma owed Reddy R137 341.48 on 30 June 2006 including interest calculated at a rate of 9%⁵⁵³. The amount owed by Zuma to Reddy on 30 June 2006 includes interest, calculated at prime rates, was R151 466.91⁵⁵⁴. The banks did not provide credit to Zuma below the prime interest rate. Zuma therefore received a benefit of at least R14 125.43.

12.3.22 Cay Nominees

We identified payments to the value of R1 075 090.80 from Cay Nominees to and on behalf of Zuma⁵⁵⁵. Kögl is the sole director and shareholder of Cay Nominees. Zuma and Kögl regarded a R600 000 payment towards Michigan Investments as a loan. It is unclear whether the remainder of the payments were regarded as loans or donations.

Payments for Michigan Investments

During an analysis of the Zuma's home loan for the Killarney Wilds property, registered in the name of Michigan Investments, a deposit of R50 000 on 17 June 1999⁵⁵⁶ and a deposit of R600 000 on 23 August 2001⁵⁵⁷ were identified.

The supporting documentation for the R50 000 deposit indicates that the funds were transferred from Cay Nominees' Investec Securities account (account *REDACTED*) on request of

Kögl⁵⁵⁸
The supporting documentation for the R600 000 deposit indicates that a Nedbank cheque drawn on Cay Nominees' call account was deposited into the home loan account of

⁵⁵² Refer to 12 0663-12 0664(171 000426, 174 000242)

⁵⁵³ Refer to Annexure K, L and M

⁵⁵⁴ Refer to Annexure K, L and M

⁵⁵⁵ Refer to Annexure N, O, P, Q

⁵⁵⁶ Refer to 12 0665(BS1 007091 File 48)

⁵⁵⁷ Refer to 12 0666(BS1 007094 File 48)

⁵⁵⁸ Refer to 12 0667, 12 0668(BS1 010461 File 48, BS1 016685 File 90)

Michigan Investments⁵⁵⁹. Kögl is the sole director and shareholder of Cay Nominees. A subsequent analysis of Cay Nominees' call account was performed to establish the source of the funds.

On 6 August 2001 R1 191 390.12 was transferred by swift into to the Nedbank bank account of Cay Nominees, account number *REDACTED*. The funds of US\$145 199.40 (US\$145 232.74 less US\$33.34 costs) originated from Berwin Leighton Paisner Client's account at Barclays Bank (United Kingdom)⁵⁶⁰. We understand that Berwin Leighton Paisner is a London-based law firm with an office in Paris and an association with the Paris law firm UGGC.

An analysis of the abovementioned bank account of Cay Nominees and the subsequent transfers revealed the following:

The average daily balance of this account for the period 31 July 1998 to 29 February 2000 was R149.25⁵⁶¹;

On 7 March 2000 R580 000 was deposited into this account. The supporting documentation indicates that these funds originated from an entity styled "*Faboos Investment Holdings*". The funds were partially transferred out in three transfers of R145 000 each and a R50 000 transferred on 4 April 2000⁵⁶². The latter transfer was matched to a deposit into JG and NC Zuma's home loan account at Permanent Bank on 4 April 2000⁵⁶³. The first transfer of R145 000, on 31 March 2000, reflects the reference "*T/T to S/B Sandton P Maduna*". The other two transfers of R145 000 each on 10 May 2000 appear to have been transferred to two Investec Securities accounts held in the name of Cay Nominees⁵⁶⁴. On 10 May 2000, after these transfers, the balance on Cay Nominees' account was R82 309.20;

The average daily balance of this account for the period 10 May 2000 to 6 August 2001 was R2 941⁵⁶⁵;

Before the transfer from Berwin Leighton Paisner, the account had a balance of R481.92⁵⁶⁶;

⁵⁵⁹ Refer to 12 0669, 12 0670 (015345 File 39, BS1 010453 File 48)

⁵⁶⁰ Refer to 12 0671(BS1 010458 File 48)

⁵⁶¹ Refer to 12 0672-12 0677(BS1 016545-550 File 90)

⁵⁶² Refer to 12 0678(BS1 016550 File 90)

⁵⁶³ Refer to 12 0679(BS1 013354 File 78)

⁵⁶⁴ Refer to paragraph 12.2.22

⁵⁶⁵ Refer to 12 0680-12 0685(BS1 016550-555 File 90)

⁵⁶⁶ Refer to 12 0686(BS1 016555 File 90)

After the R1 191 390.12 was transferred into the account, seven transfers totaling R24 497.30 were effected on 6 and 8 August 2001. These included *inter alia* a transfer of R2 500 to “A Kögl”, a transfer of R10 000 to “S Welz”, a transfer of R3 000 to African Renaissance Holdings’ account number *REDACTED* and a transfer of R5 000 to an unknown FNB credit card account⁵⁶⁷;

On 8 August 2001 R1 100 000 was transferred from this account to African Renaissance Holdings’ call account number 03 *REDACTED* 00034. Kögl is a director of African Renaissance and Cay Nominees is a shareholder. The R1 100 000 earned R1 250.68 interest until 14 August 2001, when the R1 100 000 and the interest were transferred and the account closed. The funds were then transferred to Cay Nominees’ call account number 03 *REDACTED* 001⁵⁶⁸;

On 15 August 2001 a Nedbank bank cheque in favour of FNB for R183 000 was issued from Cay Nominees’ call account number 03 *REDACTED* 001 and deposited at FNB in DaimlerChrysler’s account with the reference number 271008104. This reference number refers to the account of JG Zuma for the Mercedes

Benz E230 registered in his name⁵⁶⁹. On 17 August 2001 R900 000 was transferred from Cay Nominees’ call account number 03 *REDACTED* 001 to Cay Nominees’ call account number 03 *REDACTED* 002. On 22 August 2001 the R900 000 was transferred back to Cay Nominees’ call account number 03 *REDACTED* 001 with interest of R1 047.95⁵⁷⁰. It appears that this transfer was done on instruction from Kögl;

On 23 August 2001 a Nedbank bank cheque in favour Michigan Investments for R600 000 was drawn on Cay Nominees’ call account number 03 *REDACTED* 001 and was deposited at Standard Bank into the account of Michigan Investments⁵⁷¹;

After this cheque, the balance on Cay Nominees’ call account number 03 *REDACTED* 001 was R296 630.14. This balance was transferred over a period of three months to Kögl and

⁵⁶⁷ Refer to 12 0687(BS1 016550 File 90)

⁵⁶⁸ Refer to 12 0688-12 0689(BS1 016550 File 90), BS1 016488 (KPMG file 90)

⁵⁶⁹ Refer to 12 0690-12 0695(BS1 016589 File 90), Q1, R1 (Docket file 318, p515, 519), BS1 016605-7 File 90)

⁵⁷⁰ Refer to 12 0696-12 0698(BS1 016589/608/613 File 90)

⁵⁷¹ Refer to 12 0699-12 0701(BS1 007094/BS1 010459-60 File 48)

various other accounts associated with Kögl, including AJKO Properties, Sasekani, Cay Financial Services and African Renaissance Holdings⁵⁷²; and

On 15 October 2001 a further R6 000 was transferred from Cay Nominees' bank account number *REDACTED* to Michigan Investments' account⁵⁷³.

Kögl was *subpoenaed* Directorate of Special Operations on 10 May 2002 to provide information with regards to the R50 000 and R600 000 deposited into Michigan Investments' account on 17 June 1999 and 23 August 2001 respectively. Kögl subsequently provided a draft affidavit.

In a letter from Adv. Gerda Ferreira (then of the Directorate of Special Operations), dated 18 June 2002, Kögl was requested to provide more detail and information regarding "*the fees earned*".

Kögl signed a final affidavit on 15 June 2002 in response to the *subpoena* dated 10 May 2002⁵⁷⁴. The following was stated by Kögl in the affidavit:

He assisted Zuma, as his client, in Zuma's acquisition of unit 601 Killarney Wilds in the name of Michigan Investments;

On 17 June 1999 R50 000 was transferred from Cay Nominees' Investec Securities account number *REDACTED* to Michigan Investments. The funds were raised through the sale of JSE listed shares⁵⁷⁵;

On 28 August 2001 R600 000 was transferred to Michigan Investments' bond account on Kögl instruction⁵⁷⁶;

Approximately three weeks later, a further R6 000 was transferred to Michigan Investments' bond account⁵⁷⁷;

The R606 000 was acquired as a result of fee payments made to the company in respect of services rendered to various clients⁵⁷⁸;

⁵⁷² Refer to 12 0702-120704(BS1 016589-91 (File 90)

⁵⁷³ Refer to 12 0705 (BS1 016556 (File 90)

⁵⁷⁴ Refer to 12 0706-12 0734(Statement file 02, p4-32)

⁵⁷⁵ Refer to 12 0735("B" Statement file 02, p30)

⁵⁷⁶ Refer to 12 0736 ("C" Statement file 02, p31. The payment was made on 23 August 2001. Refer to paragraph 12.2.3)

⁵⁷⁷ The payment was made on 15 October 2001. Refer to paragraph 12.2.3

⁵⁷⁸ Refer to paragraph 12.2.3

The above amounts were transferred to Michigan Investments' bond account in terms of a loan arrangement with Zuma. Arrangements would have been made with regards to the repayment of the amounts;

A certification by Greenwoods Chartered Accountants dated 22 July 2002 indicated the following accounting entries for the R600 000⁵⁷⁹:

Debit: Loan account JZ	R600 000
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Credit: Michigan Investments	R600 000
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Kögl was again *subpoenaed* on 17 October 2003 to provide documentation in respect of Cay Nominees, which included cashbooks, journals, trial balance, income statement and balance sheet.

Kögl again responded by affidavit on 5 March 2004⁵⁸⁰. In this affidavit, Kögl stated the following:

Cay Nominees accepts funds from various clients for purposes of investing the funds in listed and unlisted shares and other instruments. These investments are made in the name of Cay Nominees which acts as the nominee of its clients. Separate portfolios, approximately 30, are kept for the various clients at Investec Securities. There are three portfolios that belong to Cay Nominees, including "*Cay Nominees Account 3*";

None of the other transactions reflected in the call account of Cay Nominees related to Michigan Investments or Zuma;

The R1 100 000 transferred to the call account of Cay Nominees originated from an investment holding company domiciled on the Arabian Peninsula (an Emirates state) and the funds were paid to a client for whom the company was acting. The deposit of these funds into the call account was commissioned by a London based bank on behalf of a large firm of solicitors which acted for the party which made the payment to my client;

The R183 000 transferred from the call account of Cay Nominees related to a third party payment to a finance house as instructed by a client, who was not Zuma;

⁵⁷⁹ Refer to 12 0737("D" Statement file 02, p32)
⁵⁸⁰ Refer to 12 0738-12 0778(Statement file 02, p34-74)

On 17 August 2001 R900 000 was transferred from the call account of Cay Nominees to an Investec account which related to the portfolio of another client;

On 21 August 2001 R18 000 was transferred from the call account of Cay Nominees as payment to a third party as instructed by a client;

On 22 August 2001 there was a withdrawal by means of cheque 418 for R5 000. This related to a payment to FNB as instructed by a client;

The R600 000 was paid as a loan to Zuma;

The sale of shares held by Cay Nominees in the Investec “*account 3*” generated the necessary funds to enable the company to lend Zuma the R600 000.

Our investigations revealed the following:

The R183 000 transferred from the call account of Cay Nominees on 15 August 2001, was deposited into a FNB account of DaimlerChrysler Finance for the account of Zuma;

The R900 000 was transferred from the call account of Cay Nominees (account number *REDACTED*) to another call account of Cay Nominees (account number *REDACTED*);

The R18 000 was transferred from the call account of Cay Nominees to the current account of AJKO Properties (account *REDACTED*), a company of which the J & A Kőgl Children’s Trust is a shareholder and Kőgl is a director;

The payment of R5 000 to FNB was recorded against the loan account of Kőgl in the books of Cay Nominees. The beneficiary account of this payment is unknown;

The financial statements of Cay Nominees for 28 February 2002 do not reflect a loan to Zuma;

On 27 July 2001 the Investec Securities “*account 3*” reflected the following investments⁵⁸¹:

Share	Quantity	Price (c/share)	Value (Rand)
Alexander Forbes	60	1 505	903.00
Anglo American	10	10 660	1 066.00

⁵⁸¹

Refer to 12 0779(“JK24” Statement file 02, p68)

Share	Quantity	Price (c/share)	Value (Rand)
Dimension Data	20	1 560	312.00
Pick ‘n Pay Stores	82	1 090	893.80
Richemont Securities	10	1 970	197.00
Total value of shares			3 371.80
Cash balance			3 997.47
Total value			7 369.27

On 31 August 2001 the Investec Securities “account 3” reflected the following investments⁵⁸²:

⁵⁸² Refer to 12 0780(“JK25” (Statement file 02, p69))

Share	Quantity	Price (c/share)	Value (Rand)
Alexander Forbes	60	1 560	936.00
Anglo American	10	12 160	1 216.00
Barloworld	50	5 830	2 915.00
Dimension Data	20	1 400	280.00
Pick 'n Pay Stores	90	1 090	981.00
Richemont Securities	10	2 050	205.00
Total value of shares			6 533.00
Cash balance			1 898.21
Total value			8 431.21

Therefore, there were no shares held to the value of R600 000.00 in the Investec Securities account 3.

An analysis of the accounting records of Cay Nominees revealed the following⁵⁸³:

The R1 191 390.12 transferred from the UK was recorded in the books of Cay Nominees on 8 June 2001 against account “540/999 : *Share Holders/Directors/Members Loans SUNDRY LOAN*”:

Debit: Bank R1 191 390.12

Credit: Sundry Loan R1 191 390.12

The transfer of the R1 100 000 to the call account of African Renaissance was accounted for in the books of Cay Nominees with the following entries:

Debit: Call account R1 100 000.00

Debit: Various accounts R90 218.22

Credit: Bank R1 190 218.22

The various accounts debited include bank charges, loan account JK, loan account Cay Finance, AJKO Properties, Cay Investment Holdings, J & A Kőgl Children’s Trust, Khula Nominees and Sundry loan.

⁵⁸³

Refer to 12 0781-12 0794

The transfer of R1 100 000 from African Renaissance's call account to Cay Nominees' call account 1 was recorded on 14 August 2001 as follows:

Debit: Call account 1	R1 100 000.00
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Credit: Call account	R1 100 000.00
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Interest of R1 250.68 was also transferred from African Renaissance's account to Cay Nominees account.

On 15 August 2001 cheque 413 for R183 000 was recorded against the investment bank account as a loan to Kögl. This was the funds deposited into the DaimlerChrysler account for Zuma's Mercedes Benz E230 and was recorded as follows:

Debit: Loan account JK	R183 000.00
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Credit: Call account 1	R183 000.00
------------------------	-------------

The R900 000 transfer to call account 2 was recorded in the books of Cay Nominees on 17 August 2001:

Debit: Call account 2	R900 000.00
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Credit: Call account 1	R900 000.00
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The R900 000 plus interest of R1 047.95 was transferred back to Call account 1 on 22 August 2001;

On 23 August 2001 Kögl's loan account (account "0540/010 : *Share Holders/Directors/Members Loans Loan a/c JK*") was debited and Call account 1 (account "0842/000 : 03/*REDACTED*/00001") was credited with cheque 417 for R600 000:

Debit: Loan account JK	R600 000.00
------------------------	-------------

Credit: Call account 1	R600 000.00
------------------------	-------------

On 15 October 2001 a further R6 000 was transferred to Michigan Investments. This was also recorded against Kögl's loan account:

Debit: Loan account JK	R6 000.00
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Credit: Investment 001 account	R6 000.00
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On 12 December 2001 journal 12080 was processed whereby account "0710/005 : *Investments Share Disposal account*" was credited and account "0820/030 : *Sundry Customers Loan account – JZ*" was debited:

Debit: Loan account JZ	R600 000.00
------------------------	-------------

Credit: Investment disposal R600 000.00

On 28 February 2002 the balance of Kögl's loan account was a debit of R926 411.23, which included the R183 000, R600 000 and R6 000. The balance was cleared by a transfer from the sundry loan account, account "0540/999 : *Share Holders/ Directors/ Members Loans SUNDRY LOAN*" and various other loan accounts:

Debit: Sundry loan	R1 188 390.12
Debit: Loan account CAY FIN	R40 442.71
Credit: Loan account JK	R926 411.23
Credit: Loan account AJKO Props	R286 947.88
Credit: Loan account Cay Investment	R7 029.59
Credit: Loan J&A Kögl Children Trust	R5 684.78
Credit: Loan account AJKO Ventures	R1 218.96
Credit: Loan account Khula Nominees	R1 540.39

The annual financial statements of Cay Nominees for 28 February 2002 reflected the following items⁵⁸⁴:

Balance Sheet

Loans receivable	R5 515.00
Bank balance	R29.00
Capital and reserves	R984.00
Accounts payable	R4 560.00

Income statement

The income statement reflects investment income of R5 136 and operating expenses of R5 152.

It is therefore clear the company did not have assets exceeding R600 000, nor did it earn fees of that amount and it did not reflect a loan to Zuma as stated by Kögl in his affidavits.

It appears that there are numerous contradictions between the affidavits, bank information, accounting records and financial statements.

⁵⁸⁴

Refer to 12 0795-12 0805 (112 013181 Box Z154)

The funds from Berwin Leighton Paisner were the only substantial funds received in the bank accounts of Cay Nominees and African Renaissance. Cay Nominees did not have any other assets or funds from which it could lend R600 000 to Zuma.

The accounting records of Cay Nominees also indicate that the funds from Berwin Leighton Paisner were the only substantial funds received by Cay Nominees and these were utilised to clear various loan accounts in the books of Cay Nominees, including the loan account of Kögl, which consisted of the R183 000 payment to DaimlerChrysler for Zuma's Mercedes Benz E230 and the R600 000 and R6 000 payments for Michigan Investments.

Kögl's affidavits do not address the source of the R1 191 390.12. Kögl's first affidavit only refers the source of the R606 000 and in his second affidavit, Kögl stated that the R1 100 000 originated from "*a company on the Arabian Peninsula*".

The statements contained in Kögl's second affidavit do not correspond with the information at our disposal with regards to the R183 000, R18 000, R900 000, R600 000 and the R6 000.

The audited financial statements of Cay Nominees do not reflect the financial position of the company as it was recorded in the books of Cay Nominees, as the financial statements do not reflect a loan to Zuma.

In Zuma's reply to the Registrar of Members' Interest letter regarding the allegations of non-disclosure of benefits, Zuma indicted that the funds from Cay Nominees were not interest free loans and that an agreement existed which had been attached to the letter⁵⁸⁵. We could not identify any loan agreement between Zuma and Cay Nominees.

In the report by the Public Protector on an investigation of an alleged breach of the Executive Ethics Code by Zuma, dated 6 October 2003⁵⁸⁶ and accepted by Mbeki on 14 October 2003⁵⁸⁷, it is stated in paragraph 7.4.3 that "*Mr Zuma's liability in regards to the loan was declared in the confidential part of the Register. From the declarations it is clear that his liability includes interest on the loan*".

Zuma's Register of Members' Interest for 2003 does not reflect the loan from Cay Nominees⁵⁸⁸.

⁵⁸⁵ Refer to 12 0806-12 0809(115 000195/216/214/215 Box Z237)

⁵⁸⁶ Refer to 12 0810-120826(115 000197-213, specifically 115 000212 Box Z237)

⁵⁸⁷ Refer to 12 0827(115 000196 Box Z237)

⁵⁸⁸ Refer to 12 0828-120833(108 003964-3969 Box Z175)

According to the auditors of Cay Nominees, Greenwoods Inc., the R600 000 was not a loan to Zuma and was paid from a share portfolio trading account at Investec Securities held in the name of Cay Nominees on behalf of Zuma.

If the R600 000 from Cay Nominees is regarded as a loan to Zuma, and interest is calculated at the prime interest rate, Zuma owed Cay Nominees R1 118 772.05 on 30 June 2006⁵⁸⁹.

Other payments from Cay Nominees to or on behalf of Zuma

A schedule styled “JK LOAN ANALYSIS” was identified from the data on the hard drive of computer 103⁵⁹⁰. We understand that this computer was situated at the offices of Kögl. The schedule consists of three sheets, ie “DRAFT I”, “Sheet 2” and “Sheet 3”.

The first two sheets contain data which appears to be data regarding loans receivable in terms of payments to various individuals. “Sheet 3” contains no data. A review of the data on the first two sheets revealed payments with the reference “JZ” to the value of R294 090.80⁵⁹¹. It should be noted that our review identified payments that appeared on both sheets and these duplicates were not included in our calculation.

The following payments with the reference “JZ” could be matched to documentation at our disposal:

- R40 000 on 5 May 1995 to “SEEF PROPS”. Zuma applied for a bond for the Killarney Wilds property on 4 May 1995⁵⁹². The sale agreement for the property was signed on 29 May 1995⁵⁹³. Paragraph 5.1 of the sale agreement stipulated that a deposit of R40 000 had to be paid by Zuma to the agents “Seeff” on or before the date of signature of the sale agreement. The possibility that the R40 000, reflected on Kögl’s schedule, relates to the deposit, which had to be paid by Zuma to Seeff, cannot be excluded;
- R20 000 on 22 February 1999 and 5 March 1999 to “MERCEDES FINANCE”. On 18 February 1999, Mercedes Benz informed Kögl that Zuma’s account for the Mercedes Benz E230 was in arrears of R37 533.95 and that it had to be paid by 22 February 1999⁵⁹⁴. The accounting records of DaimlerChrysler reflect a direct deposit on 4 March

⁵⁸⁹ Refer to Annexure P

⁵⁹⁰ Refer to 12 0834-12 0837 (Schedule on S:\Results\CSFS-103-2005\Data\Export_00000FTK_Q0000FTK\JK LOAN ANALYSIS[108783])

⁵⁹¹ Refer to Annexure N)

⁵⁹² Refer to paragraph 12.2.3

⁵⁹³ Refer to 12 0838-12 0859(“A” Statement file 02, p8-29)

⁵⁹⁴ Refer to 12 0860 (“J” (Docket file 318, p505))

1999 of R20 000 and a direct deposit on 8 March 1999 of R20 000⁵⁹⁵. The schedule also refers to “*Cay Nom 3 (*REDACTED*)*”. We identified a document styled “*Cay Nominees 3 (Pty) Ltd Analysis of Investec share account *REDACTED* February 2000*”⁵⁹⁶. The fourth entry from the top refers to “*Mercedes Benz Finance*” and appears to be classified as a “*Personal Loan*” of “*JK*”. Another document styled “*AJKO CAY*” reflects both the payments of R20 000 as payments to Mercedes Benz Finance⁵⁹⁷. A statement from the trading account of Cay Nominees’ account 3 reflects the R20 000 paid on 5 March 1999⁵⁹⁸;

- R40 000 on 21 May 1999 to “*JG Zuma*”. The payment on 21 May 1999 was matched to a deposit into Zuma’s Nedbank cheque account on 21 May 1999⁵⁹⁹. The supporting documentation reflects that Kögl instructed the bank to effect the transfer⁶⁰⁰. On 24 May 1999 R40 000 was transferred from Zuma’s Nedbank cheque account to Zuma and NC Zuma’s Permanent Bank home loan account⁶⁰¹;
- R40 000 on 9 June 1999 to “*JG Zuma*”. The payment was matched to a deposit into Zuma’s Nedbank cheque account on 9 June 1999⁶⁰². The supporting documentation reflects that Kögl instructed the bank to effect the transfer⁶⁰³;
- R50 000 on 17 June 1999 to “*MICHIGAN INVESTMENTS*”. The supporting documentation for the R50 000 deposit indicated that the funds were transferred from Cay Nominees’ Investec Securities account (account *REDACTED*) on request of Kögl⁶⁰⁴;
- R21 090.80 on 21 July 1999 to “*HAASBROOK & BOEZAART*”. The document styled “*Cay Nominees 3 (Pty) Ltd Analysis of Investec share account *REDACTED* February 2000*” reflects the payment on page 4 of the document⁶⁰⁵. It appears that the payment was classified as “*Legal JZ*”;

⁵⁹⁵ Refer to 12 0861 (“K” (Docket file 318, p506))

⁵⁹⁶ Refer to 12 0862 (112 007886 Box Z145)

⁵⁹⁷ Refer to 12 0863 (112 011490 Box Z150)

⁵⁹⁸ Refer to 12 0864 (125 000047 Box Z332)

⁵⁹⁹ Refer to 12 0865 (BS1 013456 (KPMG file 78))

⁶⁰⁰ Refer to 12 0866-120868(222 000102, 220 000415-6)

⁶⁰¹ Refer to 12 0869(018562 (KPMG file 169))

⁶⁰² Refer to 12 0870 (BS1 013456 (KPMG file 78))

⁶⁰³ Refer to 12 0871-120873(222 000103, 220 000421-422)

⁶⁰⁴ Refer to 12 0874-12 0875 (BS1 010461 File 48, BS1 016685 File 90)

⁶⁰⁵ Refer to 12 0876-120877(112 007889 Box Z145), 125 000063 Box Z332)

- R5 000 on 27 July 2001 to “*MERCEDES BENZ FIN*”. The accounting records of DaimlerChrysler reflect a direct deposit of R5 000 into the account of Zuma on 27 July 2001⁶⁰⁶.

It is therefore clear that we could match R236 090.80 (80%) of the payments on the schedule.

If the other payments, namely, the payments other than the R600 000, from Cay Nominees are regarded as loans. Zuma owed Cay Nominees an additional R1 210 031.34 on 30 June 2006⁶⁰⁷. It should however be noted that the total interest exceeded the capital on 3 April 2004, when the total amount owed was R950 396.02.

Therefore, Zuma owed Cay Nominees R2 068 896.23 on 30 June 2006.

If the other payments from Cay Nominees to Zuma were not regarded as loans they should be treated as donations and would constitute a benefit to Zuma.

Payments from Cay Nominees to Masekela and Mabusele Investments

We understand that Kögl managed funds on behalf of various government officials and/or politicians, including Masekela and Zuma, through his company Cay Nominees.

Masekela ostensibly indicated to Thetard in early 1999 that “...*for ethical reasons, being Ambassador in Paris until 1998, it was not possible for her to be in a direct business relationship with a French Company, which in turn explains her association with J Koegl*”. Masekela wished to “...*wait for the next elections (2nd June 99) and the constitution of the new Government before defining precisely the terms and conditions of our co-operation*”⁶⁰⁸.

Cay Nominees is listed as one of the shareholders of African Renaissance Holdings (ARH)⁶⁰⁹. It appears that the company was incorporated in 1994 as an “*empowerment investment holding company*” with *inter alia* Kögl and Masekela as “*Founder Shareholders*”⁶¹⁰. A document regarding the profile of the company indicates that the company was incorporated as a consequence of the request by returning political leadership from exile in 1993, to “...*create a commercial vehicle with the singular objective – to be at the vanguard of the economic transformation and empowerment of black South African*”.

⁶⁰⁶ Refer to 12 0878 (Docket file 316, p203)

⁶⁰⁷ Refer to Annexure Q

⁶⁰⁸ Refer to 12 0879-12 0880(7801188 Box 229, T0005 p17)

⁶⁰⁹ Refer to 12 0881-12 0883 (112 006732 Box Z139)

⁶¹⁰ Refer to 12 0884-12 0891(124 002245-9/2260-2 Box Z329)

One of the other shareholders of ARH is Mabusele Investments. A background search on Mabusele Investments indicated that the company was incorporated in 1998 and Masekela is a director of the company⁶¹¹. There were occasions when Kögl represented Mabusele Investments at ARH meetings⁶¹².

A schedule styled “ARH Dividends declared” reflects that R115 000 was paid to Mabusele Investments on 23 September 2004 and R118 000 was paid on 21 October 2004⁶¹³.

It appears that an investment portfolio account at Investec Securities is held by Cay Nominees on behalf of Masekela⁶¹⁴.

The general ledger of Cay Nominees for 2005 reflects payments to Masekela and Mabusele Investments to the amount of R778 200⁶¹⁵.

It is therefore evident that Masekela had a direct business relationship with Kögl and/or companies associated with Kögl.

12.3.23 Investec Securities

During our analysis of the payments from Cay Nominees, we identified the following deposits and transfers in the Nedbank account of Cay Nominees, account number *REDACTED*⁶¹⁶:

Date	Description	Amount R
23 September 2004	“African (ARH Div *REDACTED*TM)	15 000.00
23 September 2004	“African (ARH Div *REDACTED*AP)	15 000.00
23 September 2004	“African (ARH Div *REDACTED*MM)	5 000.00
23 September 2004	“African (ARH Div *REDACTED*JZ)	15 000.00
Total		R460 000.00

⁶¹¹ Refer to (Background search)

⁶¹² Refer to 12 0892 (112 013014 Box Z153)

⁶¹³ Refer to 12 0893-12 0895(112 005374 Box Z133), 210 000375/80)

⁶¹⁴ Refer to 12 0896(112 013948 Box Z157)

⁶¹⁵ Refer to Annexure Y

⁶¹⁶ Refer to 12 0897 (178 00158)

The supporting documentation obtained from the bank indicated that the above mentioned deposits originated from the Nedbank account of African Renaissance Holdings (ARH), account number REDACTED⁶¹⁷. The bank statement of ARH reflects the following references:

- “CAY NO 3 (ARH DIV *REDACTED* TM)”;
- “CAY NO 4 (ARH DIV *REDACTED* AP)”;
- “CAY NO 5 (ARH DIV *REDACTED* MM)”;
- “CAY NO 7 (ARH DIV *REDACTED* JZ)”.

The R460 000 deposited into the account of Cay Nominees was transferred out on 27 September 2004 to an Investec Securities account at Standard Bank, account number

REDACTED⁶¹⁸. A review of the Investec Securities accounts held in the name of Cay Nominees, namely, account 3 (account number *REDACTED*), account 4 (account number *REDACTED*), account 5 (account number *REDACTED*) and account 7 (account number *REDACTED*) revealed the following:

R115 000 was deposited into the capital account of account 3 on 28 September 2004⁶¹⁹. The deposit increased the balance of the account to R113 515.05. This balance was transferred to the “*Iam Money Market*” on 29 September 2004;

R115 000 was deposited into the capital account of account 4 on 28 September 2004⁶²⁰. The R115 000 was then transferred to the “*Iam Money Market*” on 29 September 2004;

R115 000 was deposited into the capital account of account 5 on 28 September 2004⁶²¹. The R115 000 was then transferred to the “*Iam Money Market*” on 29 September 2004; and

R115 000 was deposited into the capital account of account 7 on 28 September 2004⁶²². The R115 000 was then utilised to acquire JSE listed shares to the value of R101 812.05 on 1 October 2004.

A further analysis of the bank account of Cay Nominees also revealed the following deposits⁶²³:

⁶¹⁷ Refer to 12 0898(220 000332)
⁶¹⁸ Refer to 12 0899-12 08900(220 000335, 214 000050)
⁶¹⁹ Refer to 12 0901 (207 000020)
⁶²⁰ Refer to 12 0902(218 000096)
⁶²¹ Refer to 12 0903(207 000059)
⁶²² Refer to 12 0904(218 000018)
⁶²³ Refer to 12 0905(178 000154)

Date	Description	Amount R
27 October 2004	<i>“Ex ARH Div TM /REDACTED”</i>	118 000.00
27 October 2004	<i>“Ex ARH Div AP /*REDACTED*”</i>	118 000.00
27 October 2004	<i>“Ex ARH Div JZ /REDACTED”</i>	118 000.00
Total		R354 000.00

A review of the Nedbank account of African Renaissance Holdings (ARH), account number *REDACTED*, revealed that the abovementioned deposits originated from ARH ⁶²⁴. The references on the bank statement of ARH read as follows:

- *“To Cay Nom 3 TM /*REDACTED*”*;
- *“To Cay Nom 4 AP /*REDACTED*”*; and
- *“To Cay Nom 7 J2 /*REDACTED*”*.

The R354 000 deposited into the account of Cay Nominees was transferred out on 28 October 2004 to an Investec Securities account at Standard Bank, account number

REDACTED⁶²⁵

A review of the Investec Securities accounts held in the name of Cay Nominees, namely account 3 (account number *REDACTED*), account 4 (account number *REDACTED*) and account 7 (account number *REDACTED*) revealed the following:

- R118 000 was deposited into the capital account of account 3 on 29 October 2004⁶²⁶. The funds were then transferred to the *“Iam Money Market”* on 29 September 2004;
- R118 000 was deposited into the capital account of account 4 on 29 October 2004⁶²⁷. The funds were then transferred to the *“Iam Money Market”* on 29 October 2004;
- R118 000 was deposited into the capital account of account 7 on 29 October 2004⁶²⁸. The deposit increased the balance on the capital account to R131 187.95. The funds were then utilised to acquire various JSE listed shares to the value of R129 952.27;

⁶²⁴ Refer to 12 0906(210 000382)

⁶²⁵ Refer to 12 0907-120908(178 000154, 214 000129)

⁶²⁶ Refer to 12 0909 (207 000018)

⁶²⁷ Refer to 12 0910(218 000100)

⁶²⁸ Refer to 12 0911 (218 000022)

The references on the bank statements of ARH and Cay Nominees for the transfer of R115 000 from ARH to Cay Nominees into Investec Securities account 7 (account number *REDACTED*) contain the letters “JZ”. The auditors of Cay Nominees, Greenwoods Inc., indicated that Cay Nominees held share portfolios on behalf of Zuma and other individuals at Investec Securities. The possibility that Cay Nominees account 7 (account number *REDACTED*) was held on behalf of Zuma can therefore not be excluded.

A review of the statements of Investec Securities account (number *REDACTED*) revealed that the deposit of R115 000 on 28 September 2004 was the first significant movement on the account since 29 April 2003, the date from which we were provided with statements. We did however identify an earlier reference to this account in the bank statements of Cay Nominees’ account (number *REDACTED*). The reference was reflected against a R145 000 transfer on 10 May 2000⁶²⁹. We also identified a reference to account number *REDACTED* in a schedule of transactions for “AJKO”⁶³⁰. The schedule reflected transfers from “*REDACTED*” of R55 000 on 27 October 1998 and R10 000 on 3 November 1998.

On 30 December 2005 account *REDACTED* reflected balances of R45 864.59 in the capital account and R4 778.04 in the income account⁶³¹. The account also consisted of various JSE listed shares to the value of R287 029.70⁶³². The total value of the portfolio was therefore R337 672.33. It is not clear whether these shares and cash are held by Cay Nominees on behalf of Zuma.

⁶²⁹ Refer to 12 0912 (BS1 016550 File 90 and paragraph 12.2.22

⁶³⁰ Refer to 12 0913(112 011485 Box Z150)

⁶³¹ Refer to 12 0914 (218 000059)

⁶³² Refer to 12 0915-12 0916(218 000057-8, Annexure R)

13 Acknowledgement of debts

13.1 Acknowledgement – Ayob

A letter from Ditz to Ayob dated 7 September 1998 indicates that Ditz was instructed by Zuma that Shaik would provide Ayob with Zuma's income and expenditure and proposals to repay the loan from Ayob's client⁶³³. We understand that Ayob acted for Mandela.

The letter furthermore reflected Zuma's outstanding debts with regards to:

The bond for Michigan Investments;

Standard Bank overdraft (R105 717.61);

Nedbank overdraft (R66 500);

The lease for Zuma's Mercedes-Benz E320;

The bond for Saratoga Gardens; and

A personal loan from "*The Pitszu Trust*" (R200 000)

We understand that the debt towards "*The Pitszu Trust*" related to funds that Zuma owed to Shaik.

A draft trust deed entered into between Essop Soobader, Shaik, Riaz Shaik (assumed to be Riaz [Mo] Shaik) and Anunthan Moodley reflects Shaik and his wife as the beneficiaries⁶³⁴.

Another trust deed for "Pitzu Trust" was identified. Shaik was indicated as the donor and his wife was indicated as the trustee⁶³⁵.

It is not clear whether these were two different trusts.

A letter dated 14 October 1999 from Muiznieks to Stocks Leisure indicates that an account in the name of Pitzu was held at "*Babubung Shareblock*" (assumed to be Bakubung Shareblock)⁶³⁶. It appears that an account of R46 909.06 was settled with eight post dated cheques.

⁶³³ Refer to 13 0001-13 0003 (80 00277-9 Box 79)

⁶³⁴ Refer to 13 0004-13 0020 (80 08116A-117 Box 121)

⁶³⁵ Refer to 13 0021-13 0038 (AAA5-22 (Court file 7))

⁶³⁶ Refer to 13 0039 (80 12064 Box 135 p258)

A letter from DS&T on 9 September 2004 requests the trustees of the Pitzu Trust to confirm that the trust, at 28 February 2004, did not have any assets, bank accounts, investments, sureties and did not receive any donations⁶³⁷.

13.2 Acknowledgements – Shaik

We identified an undated schedule which could refer to an acknowledgement of debt in the amount of R294 563.82⁶³⁸. This schedule reflects the dates, descriptions and amounts of various payments made to Zuma during what appears to be the period between 3 April 1998 and 9 February 1999. A handwritten note on the document refers to an acknowledgement of debt.

According to the analysis of payments the total payments made between 3 April 1998 and 9 February 1999 amounted to R153 065.30. Total cumulative payments made to and on behalf of Zuma up to 9 February 1999 amounted to R467 041.70.

Zuma ostensibly acknowledged that he owed Shaik R200 000 by signing an Acknowledgement of Debt⁶³⁹. A second acknowledgement was signed for an amount of R140 000⁶⁴⁰. The acknowledgements indicate that the balances will not carry any interest and that outstanding amounts will be paid in full on demand of Shaik. The acknowledgements are not dated⁶⁴¹, however the date appearing in the header of the documents indicates that it could have been prepared and or printed on 5 February 1998.

A document entitled, “*MINISTER ZUMA – MICHIGAN INVESTMENTS*” reflects the dates, descriptions and amounts of various payments made⁶⁴². The undated document reflects the total value as R335 197.92. A handwritten note on the document refers to an acknowledgement of debt.

Another document with the same heading also reflects the dates, descriptions and amounts of various payments made⁶⁴³. This document reflects the total value as R526 205.53.

We could not establish the accuracy of the information reflected in the documents.

⁶³⁷ Refer to 13 0040 (100 013458 Box Z071_2))
⁶³⁸ Refer to 13 0041 (80 00026 Box 79, P48 Court file 3)
⁶³⁹ Refer to 13 0044-13 0046 (80 00018 Box 79)
⁶⁴⁰ Refer to 13 0047-13 0049 (80 00020 Box 79)
⁶⁴¹ Refer to paragraph 13
⁶⁴² Refer to 13 0042 (80 00209 Box 79)
⁶⁴³ Refer to 13 0043 (80 08183 Box 121)

14 Zuma's register of members' interests

We identified copies of Zuma's register of members' interest for 1999 and 2003.

14.1 Register for 1999

It appears that the register was faxed from Shaik to the Presidency on 30 September 1999⁶⁴⁴. Shaik states in the fax "*Please find attached completed documents as requested*". It is not clear whether Shaik completed the register. The register was signed by Zuma and dated 15 September 1999.

Nothing was disclosed in the public disclosure section of the register. The confidential section reflected the membership of Kate Zuma in Tugela Travel CC, Zuma's memberships in Michigan Investments and Saratoga Investments. No shares, directorships, gifts, benefits, donations and retainers were disclosed.

14.2 Register for 2003

An unsigned and undated copy of Zuma's 2003 register reflects various items listed as gifts and hospitalities in the public disclosure section⁶⁴⁵. None of these refer to Shaik or Thomson-CSF. The Nkandla traditional village is also declared in this section as land and property.

The confidential section reflects a bursary for Duduzani Zuma from SKB Engineering as sponsorships for immediate family. Zuma's membership in Michigan Investments is declared as land and property. No other declarations are listed in the register.

⁶⁴⁴ Refer to 14 0001-14 0013 (107 000376-388 Box Z276_00413))

⁶⁴⁵ Refer to 14 0014-14 0019 (108 03964-9 Box Z175_HA15))

15 **Revolving loan agreement**

The author of this report was provided with a copy of a loan agreement between Shaik and Zuma, dated 16 May 1999⁶⁴⁶. We evaluated the loan agreement and for purposes of this report when calculating the amount “owing” to Shaik and considered the terms and conditions of this agreement. It is evident that the agreement was entered into well into the period of Shaik and/or the Nkobi group making payments to and on behalf of Zuma. Hence, our calculation of interest due is only based on the period from the date when the agreement was ostensibly entered into⁶⁴⁷. This provides for the most conservative calculation of the amount that could possibly be owed by Zuma to Shaik should it be found that the amounts paid were indeed paid as a loan. Our general observations are:

- The loan agreement was entered into well into the process of Shaik and or the Nkobi group having commenced making payments to and/or on behalf of Zuma;
- Shaik only regarded the amounts as loans after he had been charged in the High Court;
- The loan amount including interest by far exceeded the total facility provided by the loan agreement;
- We were not able to identify any extensions on the so-called loan agreement; and
- Shaik did not call on any of the conditions of repayment. We could not locate any documents at the date of this report indicating that Zuma repaid the loan despite the fact that the period of the loan had already lapsed.

In terms of the agreement, Shaik undertook to advance a revolving loan to Zuma, not exceeding an amount of R2 000 000. It is stated that the amount of R2 000 000 is inclusive of any existing debt or acknowledgement of debt which has not been paid up to the date of signing the loan agreement.

The agreed period of the loan was 5 years from the date of signature of the agreement, covering the period between 16 May 1999 and 16 May 2004. Interest was to be levied at the relevant prime interest rate plus two percent.

⁶⁴⁶ Refer to 15 0001-15 0002 (P46-7)

⁶⁴⁷ Refer to Annexure F

Conditions are stipulated where under the full amount owing in terms of the loan agreement will immediately become payable, these being:

Should Zuma fail to make the payment due to Shaik at the end of the agreed loan period;

Should Zuma apply for an administration order in respect of his estate in terms of the relevant legislation;

Should Zuma apply for the surrender of his estate as insolvent; and/or

In the event of Zuma's death.

It is further stated that Zuma will be responsible for legal costs and collection commission, should Shaik instruct attorneys to recover any capital or interest as a result of any breach of the terms and conditions of the agreement.

16 Shaik as advisor to Zuma

16.1 Introduction

There are numerous instances that we have identified where Shaik indicated that he had acted as advisor to Zuma in various capacities. Shaik carried a General Power of Attorney for Zuma but, apart from that, we were not able to identify any document indicating the formalisation of the relationship.

Shaik used the fact that he was advisor to Zuma, not only where it appears he was acting in an official capacity, but also in instances where Shaik used it in a business capacity, in some form or the other, communicating his relationship in order to capitalise from a business perspective. We could not find any evidence indicating that Zuma prevented Shaik from doing so in fact there are instances, as is evident in the preceding paragraphs and those that follow instances where Zuma, assisted Shaik in his business endeavours. From the documentation at our disposal it is also evident that in various ways Zuma participated in Shaik's business activities and in some instances were in possession of documents indicating Shaik's assumed position.

This section deals with those instances where Shaik expressly stated to third parties that he was in some form or other, an advisor to Zuma. It will be evident that this assisted Shaik in many ways in that the commercial banks perceived him as influential. Third parties, including the commercial banks, also saw the potential in a relationship with him. The relationship was used and communicated as part of the "capabilities" of the Nkobi group and bolstering the *Curriculum Vitae* of Shaik.

Documentation available reflects that Shaik made frequent use of the title of being an "*advisor*" to Zuma⁶⁴⁸. This practice of using the "*advisor*" title occurred in correspondence to third parties from as early as 1995, in fact soon after the establishment of the Nkobi group and the letter that Stofile wrote to Shaik regarding his earlier activities for and/on behalf of the ANC. This is also the period when Zuma's name was mentioned in public and associated with the business activities of the Nkobi group were concerned.

⁶⁴⁸

Refer to Annexure S

16.2 Power of Attorney

A General Power of Attorney, dated 13 March 2000, was signed by Zuma whereby he appointed Shaik to be his representative and agent for managing and transacting Zuma's business in South Africa⁶⁴⁹. The power of attorney also included, *inter alia*, the following authorities:

To adjust and settle all accounts, debts, claims, demands and disputes;

To open and operate any account with a financial institution, to overdraw such accounts and draw, sign and endorse cheques;

To buy or sell moveable and immoveable property;

To suffer judgment against Zuma in any action, suits, claims and demands;

To make application in Zuma's name for shares in any company; and

To appear in person or by proxy at shareholders meetings of companies in which Zuma held shares.

This power of attorney was faxed to Raymond O'Neil at ABSA on 13 March 2000⁶⁵⁰.

In a letter to Zuma on 24 May 2001, ABSA again acknowledged the general power of attorney in favour of Shaik⁶⁵¹.

The fact that Shaik acted as the financial advisor of Zuma and held a general power of attorney was reflected in ABSA Private Bank documentation regarding Shaik's credit facility, dated 27 July 2001, under the heading "*Integrity and stability*"⁶⁵².

The general power of attorney was cancelled by Shaik on 11 July 2005⁶⁵³. ABSA acknowledged the cancellation on 13 July 2005⁶⁵⁴.

16.3 References - Shaik as advisor to Zuma

Shaik used the following titles with regards to his relationship with Zuma in correspondence with others⁶⁵⁵:

⁶⁴⁹ Refer to 16 0285-16 0288 (80 08653 – 654C Box 127)

⁶⁵⁰ Refer to 16 0289-16 0292 (990449-52 Box 00XX)

⁶⁵¹ Refer to 16 0293 (80 08341 Box 123)

⁶⁵² Refer to 16 0294-16 0299 (990210-5, specifically 990213 Box 00XX)

⁶⁵³ Refer to 16 0300 (100 004346 Box Z026)

⁶⁵⁴ Refer to 16 0301 (100 010575 Box Z054)

“ <i>Special Economic Advisor</i> ”	- 8 instances between 1995 and 2000;
“ <i>Financial Advisor</i> ”	- 138 instances between 1999 and 2005;
“ <i>Personal Advisor</i> ”	- 2 instances during August 2001;
“ <i>Special Advisor</i> ”	- 16 instances between 1998 and 2001;

Two instances were noted where Shaik referred to himself as Zuma’s “*advisor*”. These documents were letters from Shaik to New Republic Bank dated 3 November 1997 and to ABSA dated 17 April 2000.

Reference was made to Shaik as Zuma’s “*economic advisor*” on four occasions during the period 1995 to 1999.

An ABSA Commercial Bank Credit minute dated 20 September 2001 contains a note referring to Shaik as “*Economic adviser to Deputy President JG Zuma*”. It is also noted in the credit minute that “*Excesses are always rectified as promised via salary credits, reimbursements or transfers made by his financial adviser, Mr S Shaik*”⁶⁵⁶.

Two instances were noted where Shaik combined more than one title on a single document⁶⁵⁷.

The correspondence and documentation were, *inter alia*, addressed and from to the following individuals and/or institutions⁶⁵⁸:

Banks and financial institutions, including:

- ABSA;
- Nedbank;
- Rand Merchant Bank;
- Saambou Bank;
- Wesbank; and
- Momentum Life.

A letter to Shaik from Pearl Valley Golf Estate & Spa;

⁶⁵⁵ Refer to Annexure S
⁶⁵⁶ Refer to 16 0100 (99 0367 Box OOOX)
⁶⁵⁷ Refer to Annexure S
⁶⁵⁸ Refer to Annexure S

A proposal to WITS University for the provision of services;
 Auditors (DS&T);
 British Consulate;
 Department of Trade and Industry;
 Doctors and medical institutions;
 Educational institutions in respect of Zuma's dependants;
 E-mail from Colin Isaacs to Henry Richardson regarding a meeting in America with Shaik on 9 July 1999;
 Mendi Msimang (Treasurer General of the ANC);
 SARS;
 Shaik's *Curriculum Vitae* included in Nkobi Holdings company profile documentation;
 The Presidency;
 Thomson-CSF;
 University of Witwatersrand; and
 Documentation not addressed to a specific individual or institution (eg *Curriculum Vitae* and letter addressed "*to whom it may concern*").

Moynot and Thomson-CSF were informed of Shaik's position as "*Special Economic Advisor to Minister Jacob Zuma as Minister of Economics and Tourism*" in a letter dated 6 October 1995 regarding the shareholders agreement between Nkobi Holdings and Thomson-CSF⁶⁵⁹. This is the relationship that eventually translated into Nkobi Investments having an indirect share in ADS (the entity that was awarded the contract for the Combat Suites as part of the wider Corvette programme).

In the letter from Nkobi Holdings to Rand Merchant Bank dated 7 February 2000 regarding a reservation at the Lost City at Sun City, it is mentioned that "...*in addition to Mr Shaik being the Executive Chairman & CEO of this Group, he is also the special Advisor to Deputy President Jacob Zuma – in the circumstances I shall be most grateful if you will kindly ensure that Mr Shaik's accommodation is well positioned on the front elevation of the hotel*"⁶⁶⁰.

⁶⁵⁹ Refer to 16 0302- 16 0305 (80 20694-7, specifically 80 20697 Box 143)
⁶⁶⁰ Refer to 16 0306 (80 02105 Box 86)

A letter to Momentum Life dated 1 March 2000 indicates that ABSA and Shaik considered taking out key-man insurance on Shaik's life⁶⁶¹. The letter referred to Shaik's details, which included a reference to being the "*Special Economic Advisor to the Deputy President, Mr Jacob Zuma*" and a reference to the international travels with Zuma as "*Minister of Economic Affairs*". It was stated in the letter that "*With his extensive qualifications, business acumen and vast network of contacts in the business and political arena's, both locally and internationally, he is critical to the process of securing new projects...*"

In a letter to SARS, dated 28 January 2002, Shaik indicated that he represented Zuma "...in the capacity of formally appointed Financial Advisor"⁶⁶². Shaik also referred to himself as "...formally appointed Financial Advisor" in a letter dated 18 March 2002 to the KwaZulu-Natal Provincial Administration⁶⁶³. We could not identify any documentation indicating that Zuma formally appointed Shaik as his financial advisor or that Shaik received any remuneration for being Zuma's "*formally appointed Financial Advisor*".

In a letter dated 10 April 2001 from Pearl Valley Golf Estate & Spa addressed to Shaik as "*Special Advisor to the Deputy President*", Shaik was thanked for offering to assist in securing Zuma as their guest of honour at the launch of the Pearl Valley Golf Estate & Spa⁶⁶⁴.

Further to Zuma's participation in some of the action arranged by Shaik and/or the Nkobi group, we identified instances where Shaik referred to himself as Zuma's advisor in documentation, which was addressed to Zuma or were in the possession or control of Zuma. These include:

A statement of Zuma's assets and liabilities dated 31 July 2002 found at Zuma's office at the Union Buildings⁶⁶⁵;

A letter from Shaik to the office of Zuma dated 1 October 2002⁶⁶⁶;

A letter from Nedcor to Zuma dated 11 November 2004 in which the Chief Executive indicated that there had been several unsuccessful attempts to meet with Zuma and his financial advisor⁶⁶⁷;

A fax from Shaik to Zuma's office dated 5 April 2004⁶⁶⁸; and

⁶⁶¹ Refer to 16 0307-16 0308 (BS1 010663-4 File 53)

⁶⁶² Refer to 16 0309 (120 005146 Box Z099)

⁶⁶³ Refer to 16 0310 (120 006328 Box Z108)

⁶⁶⁴ Refer to 16 0311 (80 08300B Box 123)

⁶⁶⁵ Refer to 16 0312 (107 000013 Box Z275)

⁶⁶⁶ Refer to 16 0313 (107 000056 Box Z275)

⁶⁶⁷ Refer to 16 0314 (107 000580 Box Z276)

A letter, dated 25 July 2000, from ABSA addressed to Zuma, in which reference was made regarding previous meetings with Shaik, Zuma's personal financial advisor⁶⁶⁹.

⁶⁶⁸ Refer to 16 0315 (107 000440 Box Z276)
⁶⁶⁹ Refer to 16 0316 (990473 Box 00XX)

17 Zuma and early business opportunities of the Nkobi group

We were not able to establish the exact date when the first activities and operations of the Nkobi group commenced. However, based on the facts at our disposal it, appears that transpired, that Shaik continued to pursue business opportunities with the same businessmen he had met in Malaysia. The opportunities that were referred to in the period prior to 9 May 1995, the date when he was informed,*inter alia*, that⁶⁷⁰:

“The initiative of the late Cde TT Nkobi for which he proposed you to head would not be pursued or authorised”; and

“My communication with you on behalf of the ANC should come to an end, including imminent programmes or plans”,

are not all known to us, however it is clear that he continued under the name of Nkobi Holdings.

The early business carried out by Nkobi Holdings is reflected,*inter alia*, in the documents discussed below.

We noted elsewhere in the report⁶⁷¹ that the letter dated 9 May 1995 essentially had three versions. The first page of the letter (third version) is not relevant to this paragraph; however, the continuation of the letter appears to be a part of a report or document that was created either as a briefing document or a plan of action⁶⁷². We could not locate the first page of the document. On page 2 of the document it continues “UEC’s (now known as ADS⁶⁷³) capabilities in this field is (sic) certainly one of the best in the country and is considered very highly within the defence industry. UEC has recently been to Pakistan to visit the navy and is expecting a senior person of the navy to visit UEC within the next two weeks.

The owners of the company are the Altech Group whose Exec. Chairman Dr. Bill Venter and the rest of his executive board are extremely racially biased against black South Africans which includes (sic) Indians and Coloureds.” Under the point “Special note” as regards the abovementioned the following is noted: “Schabir to discuss this project Vula with MR Khan on the above technical capabilities of UEC.”

Attached to the document discussed above was a programme of Shaik’s and other person’s activities for the period that commenced on Monday 22 May 1995 and ended 26 May 1995.

⁶⁷⁰ Refer paragraph 8.3

⁶⁷¹ Refer paragraph 8.4

⁶⁷² Refer to 17 0001-17 0005 (80 11667 to 80 11671 Box 135)

⁶⁷³ Refer paragraph 18

A letter, which is not dated, signed, nor placed on a letterhead, is addressed to Zuma but printed with the same font style as the previous letter (and appears to have been prepared by Shaik)⁶⁷⁴. It is drafted in the name of Makhtar. However it appears as if Makhtar was an Executive Director of one of the entities forming part of Renong. In this letter, Zuma is informed that the group, led by the Executive Chairman, Dato Samsuddin Abu Hassan was particularly interested in the Point Development project⁶⁷⁵, the proposed new international airport at La Mercy and hotel sites “*having the distinct advantage of acquiring a casino and gaming licence*”. It is stated that Shaik and the late Treasurer-General, Thomas Nkobi, were both helpful and supportive of their (presumably Renong’s) investment drive in South Africa.

The purpose of the letter was to invite the new Treasurer-General (presumably to be Stofile), Shaik and Zuma to Malaysia in order to explore “...*meaningful investment and mutually beneficial opportunities in KwaZulu-Natal*”.

The incomplete nature of the letter indicates that it is possible that it might not have been sent. Indications are, however, that the intended visit did take place as on 8 August 1995 Shaik wrote to the South African High Commissioner in Malaysia, Ms M Mohale, to thank her “...*for the assistance and guidance during the trip with Zuma*”⁶⁷⁶.

Shaik informed Mohale that Nkobi Holdings “...*has acquired a major interest in share ownership’s in defence related companies in South Africa*”. He also mentioned that he understood the Malaysians to be “...*very keen in obtaining these technologies for their defence capabilities...*”⁶⁷⁷ Shaik requested more meetings with officials in the defence industry during August 1995. He indicated that the Nkobi group’s financial director, Thulani Mthethwa, would accompany him during the planned visit. He also indicated that he heard from “*Com. JZ*” that Khumalo was in Malaysia at the time of the letter and that he, Khumalo, was meeting with Renong or one of its subsidiaries. Thulani Mthetwa was a 2.5% shareholder and director of Nkobi Holdings. We could not confirm that he was indeed the financial director of the group, as alleged.

On 8 August 1995 Shaik wrote to the Deputy Minister of Defence in Malaysia⁶⁷⁸. In this letter he thanked the minister for having met with them. He also indicated in the letter that Nkobi

⁶⁷⁴ Refer to 17 0006-17 0007(80 11642 to 80 11643 Box 135)

⁶⁷⁵ Refer paragraph 19.2.4

⁶⁷⁶ Refer to 17 0008-17 0010(80 11596 to 80 11598 Box 134)

⁶⁷⁷ Refer to 17 0011(80 11596 Box 134)

⁶⁷⁸ Refer to 17 0012-17 0013(80 11594 and 80 11595 Box 134)

Holdings purchased majority shareholdings in South African companies involved in the following defence related technologies:

Aeronautical Engineering – the control and design systems to fit into the MIG's, Rooivalk attack helicopter, missile guiding technologies etc;

Naval defence systems – command and control systems for maritime naval ships, simulations, communication systems, radar, sonar and microwave technologies; and

Other defence related matters.

The Nkobi group then comprised a group of companies with very limited operations and investments in a number of entities, most of which were and are dormant. It is for this reason that it can be concluded that the contents of the letter as addressed to the Deputy Minister of Defence in Malaysia did not accurately reflect the group's position at the time.

We were not able to determine or confirm that any one of the Nkobi group was the “majority” shareholder in any one of the companies that directly or indirectly had an interest in operations as described above. However, on 6 August 1995 Shaik received a letter from Moynot indicating that Thomson-CSF had agreed to let Nkobi take up a share of 30% to 35% in the company they were going to acquire in South Africa and that Thomson-CSF would be ready to consider that Malaysian investors also take up a share in the company. The letter confirmed saying that the company would enter into agreements with Altech/UEC, Plessey, Reutech and ATE, etc⁶⁷⁹.

The Nkobi group positioned itself in the Arms industry from at least 1995 when Shaik and various individuals visited Malaysia to *inter aliam* meet with the Deputy Minister of Defence of Malaysia. Documentation indicates that Zuma accompanied Shaik on a visit to Malaysia during July/August 1995.

It was during this period, on 26 October 1995, when Zuma received the first payment from the Nkobi group or Shaik.

⁶⁷⁹

Refer to paragraph 19.2.1

18 The Combat Suites

18.1 Introduction

This section is a summary of the main events and facts described in paragraphs 12.2 onwards.

18.1.1 Background

There were a number of processes in place that resulted in the South African Government contracting with various parties for the supply and delivery of various classes of military and defence equipment. The process commenced prior to 1994 and was instituted mainly to upgrade the then military capabilities on various fronts and is commonly referred to as “*The Arms Deal*”. One of the categories of equipment that formed part of the process was the acquisition, by the SA Navy, of Corvettes used as attack vessels. There were various parties (so-called countries) that participated in the sourcing of the best and most suitable supplier. One of the countries was Germany, whose bid was driven by a consortium referred to as the GFC (German Frigate Consortium), which was eventually awarded the contract to build and deliver the Corvettes. The consortium concept is not unfamiliar as the Corvette, as it is known, comprised various elements ranging from shipbuilding to fitting the specified and required combat system. It was in the sharing of the contract that involved the design, building and fitting of the Combat Suite that Shaik and the Nkobi group showed a keen interest and eventually shared indirectly through Thomson-CSF in ADS. The involvement of Thomson-CSF in the GFC will be dealt with below.

18.1.2 Informal process

Indications are that it was known at an early stage, even before the award and adjudication process (the formal process) was completed, that ADS would be awarded the contract for the supply of the combat system. This knowledge was carried by a select group of persons who all attempted to participate, participated or formed part of the process, both in the formal process as well as the surrounding (informal) processes that took place.

The formal process for the complete adjudication of a transaction of this nature should be based on the premise of sound business principles, namely for the adjudication by fair, solid and tested business principles, ensuring that each of the candidates are evaluated on equal grounds in order to find the most suitable supplier. Exchange of information and communication with potential suppliers is formal and independent and should occur on a fair and equitable basis to provide all participants a fair chance of success. This process does not require the intervention of factors such as informal meetings and exchange of information on an informal basis, which, without the need for elaboration, nullifies the effect of a formal process. An informal process is counterproductive and results in the application of business practices that are open to manipulation and abuse.

The transactions in question were material in value and potential profits for each of the components were high, not only for the countries involved, but also the individual supplier companies. This latter aspect is one of the factors that spurred the formation of informal processes.

The certainty of the appointment of ADS as the preferred supplier for the Combat Suite was not known to all potential suppliers, but only a select few individuals. This not only resulted in an unfair advantage over those who did not have the knowledge, but also allowed individuals and entities to position themselves so as to ensure a sharing in the proceeds and returns on the contract.

It is also fact that all of the individuals did not become aware of the same amount of information at the same time, but due to their associations with individuals forming part of the formal process were allowed access to such information to a greater or lesser extent. One key issue that ADS, being a local South African entity with skills and expertise in the market, and its potential partner(s) had to attend to was the finalisation of its Black Economic Empowerment participation in order to be finally awarded the contract. It is clear from the actions of certain individuals as well as the perceptions of particularly Thomson (who partnered ADS) and ADS, that it did not require only a correct split of share capital in ADS, but also that the Black Economic Empowerment partner(s) selected had to be the correct Black Economic Empowerment partner(s).

The selection of the correct Black Economic Empowerment partner was *inter alia* determined by its political connectivity. This is a concept that featured constantly in the selection of the correct Black Economic Empowerment partner(s) by Thomson and ADS. This appears to have been the perception of Thomson and is also supported by the actions and words of Shaik, meetings with politicians, including Zuma, and was echoed by Chippy Shaik, the brother of Shaik who was chairing SOFCOM, which formed a critical component of the formal process.

18.1.3 Parties competing for selection as partner in ADS

There were various parties that attempted to involve themselves as the selected Black Economic Empowerment partner of ADS. Each drove its own process within the political environment jointly and/or individually, each with its own agenda(s) and various forms of political support. These were:

Khoza, through an entity styled CNI;

Surtee;

Shaik, through the Nkobi group; and

Moloi, through an entity styled FBS.

18.1.4 Contextualisation of the Nkobi group in the Arms Deal

Mention is made to a code name "*the tailor*" in the documents and correspondence forming part of the corporate entity of Thomson-CSF. For various reasons, as well as the fact that in one or two instances reference is made to Surtee as "*the tailor*" we have assumed that he was that person.

The Nkobi group focussed its efforts in this area and saw it as a business opportunity since 1994, the period preceding the establishment of the Nkobi group, when Shaik was still acting on behalf of the ANC and immediately thereafter when the Nkobi group was established, following the letter from Stofile informing Shaik that the ANC did not support his strategy and efforts that were in place.

During 1995 Shaik actively commenced setting up the business of the Nkobi group and it is also during this time that his close association with Zuma became more visible. This is borne out by

documents at our disposal. It is also when the first payments to and on behalf of Zuma, from Shaik and/or companies associated with the Nkobi group commenced. The payments to and on behalf of Zuma gradually built up over time to such an extent that it can be concluded that Zuma had a material if not a fundamental impact on the cashflow and operations of the Nkobi group and Shaik as the main shareholder.

The effect that Zuma had on the Nkobi group was not only by way of Nkobi group having to fund most of the payments, but also in receiving the advantages from its and/or Shaik's association with Zuma. Shaik used the name of Zuma on various occasions and documents indicate that Zuma intervened and or attempted to intervene (directly or indirectly) in transactions at the time when he (Zuma) was a MEC in the KwaZulu-Natal provincial government, Deputy President of the ANC and eventually Deputy President of South Africa.

This provided an advantage to Shaik and/or the Nkobi group over its competitors. Success was not always achieved in the attempted transactions however impact was created through Zuma's visible support of Shaik on numerous occasions. One of the occasions was Shaik's continued endeavours to participate in the Arms Deal.

The above was not the only factor that determined Shaik's eventual participation in the Arms Deal, as there were various other factors that could have and did have an effect on the eventual entry of Shaik into the Arms Deal. These factors mainly resulted in a delay of his participation, but not an exclusion from the Arms Deal, which was a substantial if not critical transaction that was required by Shaik and the Nkobi in order to succeed as a businessman and business in general to prosper. Indications are that Zuma played a role, assisting Shaik and the Nkobi group to reverse their initial exclusion. Once he was excluded, he critically needed to have such exclusion reversed, in order to succeed.

18.1.5 The informal process, its role-players and the search for the correct Black Economic Empowerment partner in ADS

We did not analyse the formal process that was in place. There were individuals, however, that formed part of the formal process that assisted in the creation of an informal environment. This made it possible for *inter alia* Shaik and the Nkobi group to participate indirectly in the capital

and returns of ADS. This was primarily through the contract for the supply of the Combat Suite as part of the GFC.

Minutes of meetings, correspondence, notes of meetings, internal memoranda and other documentary support provide the basis for the conclusion that various individuals directly and or indirectly participated, knowingly and/or otherwise, in the informal process and the eventual indirect stake of the Nkobi group in the capital of ADS. The main role-players or perceived role-players, other than those who were in the race to be considered as the Black Economic Empowerment partner, were:

Mbeki;

Zuma; and

Chippy Shaik.

Thomson appeared to believe that Mbeki and Zuma were influential decision-makers in the process of adjudicating the overall contracts and that their support on especially the selection of the correct Black Economic Empowerment partner(s) was critical. This was ostensibly supported by the views expressed and recorded in minutes of a meeting that Thomson had with Chippy Shaik at a critical stage in the formal adjudication process.

Mbeki was one of the Deputy Presidents briefed on the South African arms acquisition programme that took place in the early part of 1995. (Mbeki was also eventually the Chairman of the AAC that took the final decision for the recommendation of preferred suppliers in the programme, subsequently ratified during the latter part of 1998). His *de facto* position as well as *ad hoc* reports from third parties at least created the impression with Thomson that he was the most influential decision-maker in the process.

This was supported by the perception that as a result of his intervention, the German bid was brought back into the fold after not having been short-listed in the first place. We have not found any evidence of any actual intervention by Mbeki in this regard and express no opinion thereon.

Mbeki also provided early signals that the Corvette programme would go ahead despite indications at the time that certain parts of the arms acquisition programme would not continue.

Thomson was under the impression at the time that Khoza, who was the early contender as a Black Economic Empowerment partner, was a friend of Mbeki. This resulted in the perception of Moynot (and the corporate entity of Thomson) that it was important for Thomson to meet with Mbeki and possibly Zuma.

Shaik negotiated an agreement with Thomson and responded to a draft agreement that was tabled. The agreement was fairly general and dealt with planned activities of the two parties in the South African context.

The events that transpired indicate that, despite the existence of this contract or a negotiated amendment, Shaik was not assured of his or the Nkobi group's participation in the Arms Deal until late in the process.

However, Shaik indicated in his reply to the draft agreement, on the section dealing with the restraint on the parties not to engage in competitive activity, that he wanted to be excluded as he was soon to be acting as special advisor to government or its Parastatal in the defence sector. Shaik however, indicated this as a benefit. He also indicated in the same context that he was also acting as "*Special Economic Advisor*" to Zuma.

Thomson agreed to Nkobi taking up a 30% to 35% share in a South African company to be set up. The intention of the company was to enter into agreements with local South African companies in the arms industry. The parties also considered allowing Malaysian investors to participate in the capital, and this is why Shaik travelled to Malaysia – communicating his intentions in this regard. Indications are that Shaik was accompanied by Zuma to Malaysia on at least one business visit.

Shaik introduced Peter Watt of Altron to Zuma in 1996 and termed the meeting "*on common grounds*". Thereafter a period passed during which it appears that Shaik positioned himself with Thomson and various officials in the South African Government. It appears that Thomson knew about Shaik's relationship with other influential persons in the South African Government, evidently by the fact that approximately six months after the meeting between Zuma and Peter Watt, Thomson forwarded a letter to Shaik on the privatisation of Thomson. Maharaj, Zuma (the only MEC), Kasrils and Modise were also cited as recipients of the letter.

Mention was made of Khoza, who eventually appeared as a potential Black Economic Empowerment partner. It was at this early stage, namely late November 1997, when Thomson met with Surtee who then gave the assurance that ADS would be awarded the “*combat system*”. We could not find any substantiation for the assurance that Surtee provided to Thomson, other than the events that subsequently transpired. Surtee apparently saw the opportunity to “*make some money*” as is reflected in notes maintained by Thomson.

Negotiations with Khoza and/or CNI as a Black Economic Empowerment partner of ADS progressed to the extent that a Voting Pool Agreement was drafted. This was handed to Surtee by Thomson, and is one of the reasons that caused us to conclude that Surtee either acted on behalf of Khoza and/or CNI or at least knew of Khoza’s and/or CNI’s potential involvement. No mention was then made of Shaik as a potential Black Economic Empowerment partner in ADS, despite the effort he had already made in this regard. The actions of Thomson meant that Shaik would not have been involved in ADS, directly or indirectly.

Shaik wrote to Thomson (Perrier) and indicated that Zuma was extremely concerned with the conduct of the Thomson group operating in South Africa, as well as allegations regarding Mbeki. The allegations relating to Mbeki could not be identified. As to the Thomson group’s conduct in South Africa, the inference can be drawn that Shaik referred to the fact that he had been excluded by Thomson as a potential Black Economic Empowerment partner. Indications are that Shaik did not only forward this letter to Perrier but also Mbeki and Zuma. Lending support to this contention was internal correspondence amongst officials of Thomson, when they were alerted to problems that Shaik could create, although Khoza indicated that he could control the negative lobbying of Shaik with Mbeki, Zuma and the Department of Defence. It appears that Khoza saw his contribution as being rewarded by an increase in the potential shareholding, from an initially discussed 20% to 30% of ADS.

Shaik in the meantime, corresponded with Thomson regarding a meeting with Zuma that could not take place apparently due to the ill health of Perrier at the time, and indicated that he, Shaik had been reminded by Zuma to request Perrier to meet Zuma in order to resolve a matter that had been outstanding for some time. Indications from the documentation at our disposal indicate are that the matter referred to by Shaik was his participation in the capital of ADS and/or the inclusion of CNI as noted above. It appears Shaik was opposed to the inclusion of CNI and Shaik was also concerned about Nkobi’s participation in Prodiba.

We have already noted our conclusion that Surtee was associated with Khoza, or at least had knowledge of Khoza's involvement as a potential shareholder in ADS. This is also the time when Thomson's formed the perception and/or confirmed that Surtee was "*close to Mandela*". At the same time, various meetings were set up or took place with high ranking officials. A meeting between high ranking officials of Thomson (Ranque), Mandela and Surtee and "*perhaps one or two ministers*" was regarded as important. A meeting with Mbeki was also planned and attempts were also made to arrange a meeting between Perrier and Zuma. The possibility of such meetings was furthermore confirmed, approximately a month later, when the travel programme of Ranque and Perrier indicated that meetings would take place with Khoza, Bill Venter, Mandela, Mbeki, Zuma and Shaik. Other than a note in the diary of Thetard, indicating that Ranque possibly met Mandela, we could not identify confirmation of these meetings.

It appears however, that the meeting with Mbeki did not take place at least until some months later, after the preferred bidders had been announced. This is supported by evidence of further attempts by Thomson to meet with Mbeki as well as an ostensible report from the "*Ministry*" in Paris that Mbeki was "*...ill disposed towards Thomson-CSF*" with the words "*...fight with Zuma and Shaik on inclusion of new partners in ADS*" and "*Mbeki not friendly with the tailor*" and "*Perrier must meet Mbeki to find out who would be a good partner*".

Thomson therefore did not meet with Mbeki and were not in a more certain position as to who would be the correct Black Economic Empowerment partner. Khoza, through CNI, was in the process of negotiation and Shaik continued his efforts, but was not included in that negotiation process. Thomson was of the view that a meeting with Mbeki would be required to find out who would be the correct Black Economic Empowerment partner.

Confusion was created by the impression that Mbeki was not friendly with Surtee (with a possible effect on Khoza and/or CNI) and that Mbeki allegedly had a fight with Zuma and Shaik regarding the inclusion of new partners in ADS.

This was followed by a period when Thomson again attempted to meet with Mbeki, either through Khoza (which doesn't appear to have realised) or through their direct contact again it appears, apparently with no success.

Shortly before the meeting discussed below, Moynot indicated in an ADS Board meeting that he had been given an indication by Chippy Shaik that ADS would participate in the Combat Suite. Mention was even made that it may also involve the submarine Combat Suite as well. This does not mean, however, that the search for the correct Black Economic Empowerment partner discontinued.

Thomson was still not certain as to the selection of a Black Economic Empowerment partner until 2 July 1998 when Thomson ostensibly met with Zuma and Shaik in London. This was also the last day when SOFCOM, chaired by Chippy Shaik, met for the compilation of its preferred suppliers list to be presented to the AASB and the AAC, the latter being chaired by Mbeki. Approximately a week thereafter, Chippy Shaik met with Thomson and, as noted by Thomson, spoke freely about the London meeting. The meeting of 2 July 1998 marked a period that resulted in the admission of Shaik in the Capital of ADS (indirectly).

The essence of the meeting between Thomson and Chippy Shaik revolved around a confirmation of the correct Black Empowerment partner and it was during this meeting that Chippy Shaik ostensibly warned Thomson regarding Surtee. He is noted as saying that Surtee had no “*political connections*” apart from Mandela, who was going to be replaced within a year by Mbeki and that Zuma would be part of the cabinet. From the involvement of Surtee it appears that this statement affected Khoza’s potential inclusion or exclusion from ADS and that Chippy Shaik regarded Mbeki and Zuma as more important with regards to the selection of the correct Black Economic Empowerment partner.

The respect for Zuma and his position is borne out by the contents of a note forming part of the Thomson set of documents where it was noted that Zuma was a “*rising man*” and the “*Zuma problem*” must be resolved. This note was made shortly after the abovementioned meeting with Chippy Shaik and the meeting with Shaik and Zuma in London. This was followed by a note indicating that the final decision had not been taken, presumably regarding the preferred supplier status of ADS and that if Thomson could give its guarantee it would make a significant difference. The note closed with an entry indicating that FBS, of which Moloi was in charge, was associated with the consortium and that he was “*very good pals with*” Chippy Shaik.

This marked the beginning of the entry of FBS as a direct Black Economic Empowerment partner into the ADS capital and its returns from a documentary support point of view. The guarantee referred to can be a guarantee regarding the status and contents of its Black Economic Empowerment partner(s) or most likely the guarantee regarding the performance of ADS in the agreement namely assuring the ADS risk. FBS were already in possession of a signed agreement that marked its association with the GFC. This agreement was signed and dated some weeks before the note made by Thomson in its records.

Thereafter, a period of uncertainty regarding the selection of the correct Black Economic Empowerment partner remained as it was still not settled, despite the meeting with Zuma in London. Thomson still attempted to meet with Mbeki and from a meeting with Chippy Shaik it transpired that he had spoken to Zuma and Zuma to Mbeki. It was alleged that Mbeki was not “happy” being the reason for him not wanting to meet with Perrier (Thomson). This could not be confirmed in any other documents at our disposal, nor the claimed meeting between Zuma and Mbeki; however, this at least confirms that Mbeki had still not met with Thomson.

Shortly after the abovementioned meeting with Chippy Shaik, the AAC (chaired by Mbeki) made a recommendation to the Ministerial Committee as to the selected preferred suppliers. Thomson was still not in a position to conclusively say that the correct Black Economic Empowerment partner had been identified. This is confirmed by the fact that Surtee promised to meet with Mbeki on the issue. This proposed meeting by Surtee could not be confirmed through any further documents. It appears that the meeting planned by Surtee did not take place.

Thomson noted the contents of a draft financial package regarding FBS and Nkobi. This package excluded CNI as a potential Black Economic Empowerment partner and only dealt with FBS’ and Nkobi’s involvement namely FBS, through a direct shareholding, and Nkobi, through an indirect shareholding in ADS via Thomson-CSF. (Nkobi needed holding its shares indirectly, as was borne out by documentation in the subsequent period that “*political relationships*” made the strategy necessary in order to avoid speculation).

Contrary to the planned meeting between Surtee and Mbeki noted above, Thomson in fact met with Shaik and Zuma on 18 November 1998. During this meeting it was discussed and resolved that Nkobi Investments would obtain 20% of the then 50% shareholding in ADS, indirectly through Thomson-CSF. This effectively placed Nkobi Investments as an indirect shareholder of

ADS and Shaik and the Nkobi group in a position to share in the contract that ADS later received as part of the Arms Deal. This meeting took place on the same day the Cabinet took the final decision on the preferred suppliers for the Corvette programme.

Mbeki attended the African Summit in Paris approximately one week after the final decision had been taken by the Cabinet and it appears that this may be the first time that Mbeki met with Thomson. A note, that appears to be a briefing note, prepared by Denis to Ranque, Perrier and Thetard regarding the meeting with Mbeki, refers to the fact that Thomson, some six months before, had had “*private access*” to Mbeki, when CNI had been submitted as the Black Economic Empowerment partner of ADS. Since then CNI ostensibly had declined the offer. The private access to Mbeki referred to cannot be assumed to be a one-on-one meeting between Mbeki and Thomson, as the documentation at our disposal indicates the contrary in that Thomson, during the period six months before, was desperately seeking an appointment with Mbeki. We have no indication that a meeting did take place during this period. It is possible that the private access referred to was through a person associated with the process of seeking the correct Black Economic Empowerment partner and that the perception was created that such access had been granted.

Clarification was requested from Mbeki, during the meeting in Paris, that, considering the ostensible decline of the offer to CNI, an offer would be made to FBS and, if FBS were not the correct partner, who would be the best partner in ADS. No mention was made in the briefing note of the intended inclusion of Shaik and/or the Nkobi group which had occurred a week prior to the compilation of the briefing note mentioned above.

Indications are that the meeting with Mbeki did take place, as approximately two weeks after the planned meeting in Paris, Thomson handed a letter to Mbeki through Masekela, where Mbeki was thanked for the meeting during his visit to France. Again, no mention was made of the fact that Shaik and/or the Nkobi group were already considered as an indirect shareholder through Thomson-CSF in ADS. Mention was made that Thomson was discussing, with FBS, the implementation of a “*Black empowerment policy*”.

Indications are that Thomson, at least on one occasion thereafter, attempted to meet again with Mbeki on the issue of the selection of the correct Black Economic Empowerment partner in ADS. Whether the meeting took place could not be confirmed, however, some confirmation of such a meeting is found in the itinerary of De Bollardiere, who planned to meet with Chippy

Shaik, Mbeki, Masekela and Naidoo, in the early part of February 1999. This was followed by a report prepared by Thomson, indicating that Shaik and Zuma were ready to go to Paris to give full account of all the projects. We could not find any document indicating that the planned meeting(s) with Mbeki, Chippy Shaik, Masekela and Naidoo were linked to the alleged intended visit of Shaik and Zuma to Paris other than the short time period that expired between the two events.

18.1.6 Nkobi group shareholding in Thomson

Prior to the formation of the Nkobi group, Shaik focused his efforts on the business development of the ANC. He travelled with the late TT Nkobi to Malaysia and was presented with an opportunity to set up structures and engage in business ventures that would assist the ANC to strengthen its position from a financial point of view. The idea was to guide investments within the context of the RDP through structures to develop joint initiatives. The structures were required to be outside the ANC. It was reported by the late TT Nkobi to Mandela (in his capacity as President of the ANC) that the nature of the relationship would necessitate all matters relating to the ventures being dealt with sensitively and confidentially. The structures were envisaged during the latter part of 1994 and some weeks prior to the late TT Nkobi passing away. The envisaged plans were ostensibly held on 9 May 1995 when Stofile wrote to Shaik, indicating that the “...initiative of the late Cde TT Nkobi which he proposed you to head would not be pursued or authorised.”

This event marked the establishment of the Nkobi group and it was also during this period that Zuma travelled with Shaik to Malaysia. Shaik informed the South African High Commissioner in Malaysia, Mohale, that Nkobi Holdings had acquired a major share ownership in defence related companies in South Africa. A similar message was also conveyed to the Deputy Minister of Defence in Malaysia by Shaik.

It was also during this time that Shaik was involved in discussions with ATE, another company involved in the Defence industry in South Africa, and that a person by the name of “Pierre” had managed to set up a meeting with Bill Venter and that a meeting with Zuma had been confirmed for 6 September 1995. The possibility cannot be excluded that the Pierre referred to in this context is Moynot from Thomson, especially in the light of the negotiations that were ongoing between Shaik and Thomson at the time.

At approximately the same time, Shaik managed to negotiate acquiring a shareholding in Thomson. The discussions at the time revolved around Shaik taking up a shareholding in a South African company to be set up. Consideration was also given to allowing Malaysian investors to participate in the shareholding of the company that was to be established in South Africa. The intention was that Thomson would lend Nkobi the initial capital required and it would have been the objective of the newly established company to enter into agreements with local South African companies in the arms industry.

This established the basis for co-operation in South Africa with a possible extension into Malaysia. The transaction that was contemplated was subject to the satisfactory negotiation and delivery, by both parties, of definitive agreements that were to be in place within a relatively short period of time, namely a period of five weeks.

Then followed the drafting of the first known draft shareholders agreement between Thomson and Nkobi. Negotiations took place on the shareholding split, with Nkobi receiving 43%, Thomson 51% and others the balance. Shaik responded to the draft agreement and indicated that he could not be subject to restraint on the basis that he would be acting as an advisor to the government or its Parastatal in the defence sector. He particularly saw this as a benefit and also indicated as one of the reasons for him not being restrained, that he was acting as “*Special Economic Advisor*” to Zuma.

Shareholding in Thomson-CSF Holding (SA)

Thomson-CSF Holding (SA) was established on 21 May 1996 and, followed the signing of the Shareholders Agreement between Thomson-CSF (France), Nkobi Investments and Gestilac the following day. This preceded a meeting that was ostensibly held between Peter Watt and Shaik that was termed a meeting “*on common grounds*”. It appears that Zuma was also present during the meeting or at least that a meeting between Zuma and Peter Watt took place at more or less the same time. The shares were issued on 27 July 1996 to Nkobi Investments – 10%, Thomson-CSF (France) – 85% and Gestilac – 5%.

Shareholding in Thomson-CSF

Approximately one month after the establishment of Thomson-CSF Holding (SA), Thomson-CSF was incorporated on 16 July 1996, followed by the signing of the Shareholders’ Agreement

a day thereafter. The shares to Thomson-CSF Holding (SA) – 70% and Nkobi Investments – 30%, were issued respectively on 1 August 1996.

18.1.7 Shareholding in ADS

The establishment of Thomson-CSF Holding (SA) and Thomson-CSF occurred on the back of the negotiations between Thomson and representatives of the Altech group for the acquisition of a share in ADS. The establishment of the aforementioned companies created Thomson the presence in South Africa. This did not automatically lead to a presence in the arms industry by Thomson in South Africa as the companies were merely two shells with very little assets and no trading capability. It was only later during the process of adjudication and consideration in the Arms Deal, that the interest of Thomson in the South African arms industry was agreed to be transferred to the South African company, Thomson-CSF.

The interest of Thomson in the arms industry in South Africa was primarily through an acquired shareholding of ADS, initially 50% and at a later stage 100%, through Thomson-CSF (France). The latter is an entity in which Shaik and/or Nkobi group had no interest. The acquisition of 50% of the shareholding in ADS by Thomson-CSF (France) could have become known to Shaik before a Thomson-CSF Holding (SA) and Thomson-CSF shareholders and directors meeting on 9 June 1998 when Moynot formally announced the acquisition. Shaik even noted in the meeting that “...*the local company is a shell and questions must raise*”.

This left Shaik in a position where he was marginalised from the shareholding in a local South African defence industry entity, one that he identified and ostensibly introduced to Thomson in the early years, as far back as September 1995. A period followed when Shaik was notably unhappy, as evidenced through a range of meetings with various individuals, correspondence and notes on discussions made by individuals in the process.

The marginalisation of Shaik and/or Nkobi as a director indirect shareholder in ADS occurred at the time when Altech and Thomson were searching for the correct Black Economic Empowerment partner.

Both parties realised, rightly or wrongly, that the selection of the Black Economic Empowerment Partner would be essential. Not only must a Black Economic Empowerment Partner be selected, but this must be a politically correct or favoured Black Economic Empowerment Partner.

This followed a series of discussions with Surtee, Shaik, Khoza and Chippy Shaik, if not others too. There was also the perception promoted by these individuals that Mbeki and Zuma shared these views that the correct of favoured Black Economic Empowerment Partner(s) must be chosen. The perception that was promoted went even further. This was that the selection of the correct Black Economic Empowerment partner would have an impact on whether or not the Combat Suite would be adjudicated to ADS, as part of the consortium that would be contracted to deliver the Corvettes. It might even be that it would affect the choice of the prime contractor as such.

Indications are that insofar as Mbeki was concerned, these may only have been perceptions. There are various examples indicating that Thomson attempted to meet with Mbeki. Their lack of success is borne out by documents and notes indicating that meetings did not materialise. The only indication of a meeting that took place between Mbeki and Thomson was after the Corvette contract had been adjudicated and when it was intended to rectify Shaik's marginalisation in the shareholding of ADS. This meeting apparently took place late in 1998 during a visit of by Mbeki to France.

However, the actions of Zuma, in the period leading up to the inclusion of Shaik as an indirect shareholder in ADS, which rescued the Nkobi group from its marginalisation is evidenced by the documents, that Zuma was more involved. Such involvement went further than a mere perception of his influence.

Indications are that Thomson was in discussion with CNI (with Khoza in the forefront). This was discovered by Shaik by March 1998 when he wrote to Thomson indicating that Zuma was "*extremely concerned*" about the conduct of Thomson and included comments regarding Mbeki. This letter is placed in context by the perception in the minds of Thomson that Khoza would be able to deal with negative lobbying with Mbeki and Zuma. Shaik and/or Nkobi's marginalisation was compounded by the fact Shaik also realised that the shareholding in ADS was acquired through Thomson-CSF (France) and not Thomson-CSF. This occurred prior to when SOFCOM, chaired by Chippy Shaik, met to evaluate the offers. It left Shaik with a very short window period to be rescued from his marginalised position.

The results of SOFCOM were presented to the AASB on 8 July 1998 and to the AAC on 13 July 1998. The recommendations for the preferred bidders were then approved by the AAC

on 21 August 1998 and approved at a Ministerial briefing on 31 August 1998. Chippy Shaik presented the findings of SOFCOM at the Ministerial briefing, which was chaired by Mbeki.

A meeting took place in London between, *inter alia*, Shaik, Zuma (then Minister of Economic Affairs and Tourism for KwaZulu-Natal and Deputy President of the ANC) and Thomson (represented by Perrier).

The London meeting was furthermore confirmed by a meeting that ostensibly took place between Chippy Shaik and Thetard (on behalf of Thomson), approximately one week thereafter. Thetard indicated that Chippy Shaik had been aware of the London meeting and as noted, *“His position is both simple and clear: if we stand with the partners and various friends suit him, he will make things easier and, should the opposite occur, he will make them difficult...”* Surtee’s role and political connectivity was described as to connectivity, with Mandela, only and he would be replaced by Mbeki in the short term. Zuma’s role in the future was reiterated by Chippy Shaik. The remarks ostensibly made by Chippy Shaik enhanced the momentum that was created by the London meeting for the admission of the Nkobi group in the shareholding of ADS, albeit eventually indirectly and the exclusion of CNI (Khoza) from the direct shareholding and eventually the admission of FBS as a direct shareholder in ADS.

A period of uncertainty continued until 18 November 1998, the date when the Cabinet took a final decision on the preferred suppliers for the Corvette programme. This is the same date that Shaik, Moynot, Thetard, Perrier, Moodley and Zuma met.

At the time, Thomson-CSF (France) was still the 50% shareholder in ADS, leaving the Nkobi group and/or Shaik still in a marginalised position. It was during this meeting when it was formally agreed that Thomson-CSF (France) would sell not less than 20% of its shareholding in ADS to Nkobi Investments through Thomson-CSF. This would yield an effective shareholding of 10% in ADS. The balance of the shareholding in ADS was considered for acquisition, but the acquisition would occur through Thomson-CSF (France). Although the mathematics of this statement is contradictory, it appears that during that meeting it was agreed that Nkobi Investments would acquire an effective indirect shareholding in ADS of 10%. This is equivalent to that offered to FBS. This meeting effectively marked the end of the marginalised position of the Nkobi group. It should however be noted that Thomson-CSF (France) could not transfer its 50% shareholding in ADS to Thomson-CSF without the consent of Altech. We understand that Altech did not approve the request of Thomson-CSF (France).

The measures that were put in place in order to give effect to the agreement that was reached in principle during the 18 November 1998 meeting were manifested in a series of meetings, agreements, share transfers and changes in the composition of the board of directors of ADS.

This commenced on 1 December 1998 when it was agreed that:

Thomson-CSF (France) would transfer its 50% plus 1 share in ADS to Thomson-CSF;

Nkobi Investments would sell its 10% shareholding in Thomson-CSF Holding (SA) to Thomson-CSF (France); and

Thomson-CSF shareholding would be restructured in order to provide for Nkobi Investments' with a 20% shareholding.

These adjustments effectively provided Nkobi Investments with a 10% indirect shareholding in ADS, which was equal to the 10% direct shareholding in ADS, sourced from Altech. This was to have been offered to a Black Empowerment Group. The Black Empowerment Group with the direct shareholding turned out to be FBS.

The remaining 50% of the shareholding in ADS held by Altech was finally offered to Thomson-CSF (France) on 16 February 1999. The formalisation of the agreement took place at the closing meeting on 19 February 1999. This meant that Thomson-CSF (France) would be a 100% shareholder of ADS and considering the effects of the agreement already reached with Nkobi Investments, an indirect shareholding of 20% by Nkobi Investments in ADS. We understand that it was only after Thomson-CSF (France) acquired 100% of the ADS shares, that they were able to transfer the shareholding in ADS to their South African company, Thomson-CSF.

The final effect of a series of agreements that was negotiated between the parties resulted in the shareholding split of ADS as follows:

- FBS – direct shareholding of 20%;
- Thomson-CSF – direct shareholding of 80%; and
- Nkobi Investments through Thomson-CSF – 20% indirect shareholding (25% of the 80% held by Thomson-CSF).

The marginalised position that Shaik and/or the Nkobi group had faced was finally restored to an effective shareholding in ADS, amounting to 20%. This placed the Nkobi group in a

favourable position in that, as from that date, it effectively shared in the capital and potential results of an entity that was awarded a contract as subcontractor in the Corvette programme. It will be evident from the financial analyses performed on the Nkobi group that the group found itself in a dire financial position and that this investment would have had a material impact on the success of the group.

Despite the position that the Nkobi group had found itself in, it and/or Shaik made payments to and/or behalf of Zuma amounting to R558 262.06 (up to the end of June 1999). Shaik was only able to personally fund R57 770 of the payments made due to his own financial constraints at the time. While the amounts are relatively immaterial considering the potential value of the share in ADS as well as a future sharing in potential dividends, in the context of the financial position of Shaik and the Nkobi group, the payments were material and affected the solvency and liquidity of the entities. The same applied to Zuma who received the funds that enabled him to sustain a lifestyle beyond his means.

18.1.8 Financial benefits for the Nkobi group

The effect of the admission of Nkobi Investments, indirectly, to the share capital of ADS, had a fundamental impact on the financial position of the Nkobi group. This was the single largest and most meaningful investment that the Nkobi group carried at the time. There was potential for capital growth through the spread in work flowing from the work that ADS was required to conduct in order to fulfil its contractual obligations on the Corvette programme. In addition there was the potential for dividends from the results of ADS through Thomson-CSF. On the other hand, Nkobi Investments was required to fund part of the capital that Thomson-CSF required to invest in ADS. This amount was financed through a loan from Thomson-CSF International Africa (Mauritius) amounting to R7 464 000, which would have been repaid with interest, using the future dividends.

Nkobi Investments received dividends in the years that followed up until 31 December 2004 (This was not final as operations continued beyond this date with the possibility of future dividends), amounting to R12 797 331. All of the dividends received, up to this date, were used to fulfil Nkobi Investments' obligations towards repaying the loan from Thomson-CSF International Africa (Mauritius) and capitalised interest.

The value of the shareholding that Nkobi Investments indirectly held through Thomson-CSF increased to a value R21 018 000 as reflected in a share valuation performed in June 2005 by the curator appointed in the asset forfeiture matter relating to Shaik, after his conviction.

18.1.9 Events post readmission to capital of Thomson

The “*French encrypted fax*”, dated 17 March 2000, refers to the following meetings:

A meeting between Thetard and Shaik in Durban on 30 September 1999;

A meeting between Thetard and Perrier in Paris on 10 November 1999; and

A meeting between Shaik, Zuma and Thetard on 11 March 2000.

The abovementioned meetings were confirmed by various other corroborating documents, such as faxes, diaries and agreements.

The fax reflects that the two main objectives of the “*effort*” were:

“*Thomson-CSF’s protection during the current investigation (SITRON)*”; and

“*JZ’s permanent support for future projects*”.

The SA Navy, Thomson-CSF and ADS referred to the Corvette programme as “*Project SITRON*”. ADS were the supplier of the combat systems for the Corvettes.

The “*current investigation*” could refer to the following:

On 21 September 1999, Patricia de Lille’s motions regarding the arms deal were tabled in Parliament;

The Minister of Defence approved the Auditor General’s audit of the Arms Deal on 28 September 1999;

Patricia de Lille released a press statement on 30 November 1999 in which she stated that she had handed documentation regarding allegations of corruption to the Heath Investigation Unit for further investigation and for application to Mbeki to sign a proclamation; and

Media reports on 12 January 2000 indicated that the Heath Investigation Unit was studying the documentation and that a decision regarding further action would be made later that month.

The fax also referred to a payment of R500 000 per year until the first dividends of ADS were paid. A service provider agreement, dated 1 January 2001, between Kobifin and Thomson-CSF

International Africa (Mauritius) indicates that two payments of R250 000 each had to be paid to Kobifin before the end of December 2000 and on 28 February 2001.

On 16 February 2001 Thomson-CSF International Africa (Mauritius) paid R250 000 to Kobitech. These funds were paid to Development Africa on 28 February 2001 to settle Zuma's debt of R1 000 000 to Development Africa.

The first dividends of ADS were paid on 30 September 2001 and Nkobi Investments received R1 731 400 (20%) of the R8 657 000 dividends declared by ADS.

Sue Delique informed the auditors of Thomson-CSF about her knowledge of, *inter alia*, a bribe of "...±R500 000..." to "...a senior South African official...". Thetard allegedly explained to the auditors that it was common for individuals to approach him for monies which could be regarded as bribes and that he had requested authorisation from Paris to meet these requests. Delaying tactics were applied to retain the support of the individuals requesting the bribe.

18.2 Background to the Arms Deal

The South African government entered into negotiations with preferred bidders to supply military equipment to South Africa in 1997. The total cost of the acquisition was initially projected to be R29.9 billion and consisted of six programmes, namely:

Corvettes;

Submarines;

Light Utility Helicopters;

Maritime Helicopters;

Lead in Fighter Trainers; and

Advanced Light Fighter Aircraft.

The total contract cost of the Corvettes programme was approximately R6 billion. This is the programme in which the Thomson group, *via* ADS, participated as part of the GFC (German Frigate Consortium). ADS formed part of the GFC and was selected as the supplier of the combat systems for the Corvettes. The Department of Defence referred to the Corvette programme as project SITRON⁶⁸⁰ and it was later renamed "SAN PC"⁶⁸¹.

⁶⁸⁰ Refer to 18 0402-18 0405 (7800973-4 Box 229, 7500075379-80 Box 48)

⁶⁸¹ Refer to 18 0406-18 0410(8003229-233, specifically 8003230 Box 95)

18.3 Background to the formal tender process

We are in possession of a document styled “*Joint Investigation Report into the Strategic Defence Procurement Packages*” (“joint report”) compiled by the Public Protector of South Africa, the Auditor-General of South Africa and the National Prosecuting Authority of South Africa⁶⁸².

In order to place the findings in our report regarding financial issues in the context of the events that transpired, we refer to the findings of the joint report hereunder. It is not our intention to provide a summary of the findings made or the objectives served in the joint report. This background paragraph reflects the references to the findings of the joint report that we deemed relevant for purposes of sketching the background to our findings.

We understand that during May 1996, the late Modise presented the White Paper on National Defence for South Africa to Parliament and that it received strong support from all the political parties whereafter it was approved by Parliament. Various countries approached the Department of Defence during the selection process with offers to enter into arrangements to procure military equipment. The acquisition process then followed.

Requests for Information (RFI's) were allegedly forwarded to the embassies of nine countries during September 1997 to March 1998. This process was followed to identify the parties that could have potentially supplied the required weapons systems. We understand that suppliers from eleven countries responded (unsolicited proposals were received from three countries) and in total thirty-seven responses were received for seven products.

The selection of potential suppliers was made from the list of parties that responded to the RFI. The selection was based on the evaluations of the bids as performed by SOFCOM⁶⁸³. Thereafter a shortlist was compiled and the recommendations were made to the AASB, (The Armaments Acquisition Steering Board), which was the board chaired by the Secretary of Defence. The AASB allegedly made recommendations to the AAC, (The Armaments Acquisition Council, which was the council chaired by the Minister of Defence that, *inter alia*, has the Deputy

⁶⁸² Refer to 18 0001-18 0401 (Joint Investigations Report)

⁶⁸³ Refer to 18 0411-18 0416 (Box Z20-25)

Minister of Defence, the Chief of the South African Defence Force and the Chief Executive Officer of Armscor [Armaments Corporation of South Africa] as members).

The results of the evaluation of the bids by SOFCOM were presented to the AASB on 8 July 1998 and to the AAC on 13 July 1998⁶⁸⁴.

The process was managed and co-ordinated up to the final recommendation to the Ministers' Committee, by a Management Committee that was seemingly constituted in March 1997. Apparently the committee originally consisted of members of the Department of Defence and Armscor. This was expanded over time to include members of the Departments of Trade and Industry, Finance and Public Enterprises.

The Management Committee was allegedly replaced in April 1998 by a “...*more formal inter-departmental committee*...” namely the Strategic Offers Committee (SOFCOM). Chippy Shaik was *inter alia* a member of SOFCOM, as representative of the Department of Defence and also fulfilled the function as co-chair.

A process was then followed, during March and May 1998, whereby “...*best and final offers for the supply of the equipment*...” were solicited from the short listed suppliers. The evaluation process allegedly commenced during the period May 1998 to July 1998. Recommendations on preferred suppliers were then again made to the AASB and the AAC, after which the AAC submitted a recommendation to the Cabinet Committee responsible for the acquisition. This committee allegedly consisted of the Ministers of Finance, Trade and Industry, Public Enterprises and Defence and was chaired by the then Deputy President, Mbeki.

Thereafter, Chippy Shaik presented the findings of SOFCOM at a ministerial briefing to the full Cabinet on 31 August 1998. The recommendations for the preferred bidders, as approved by the AAC, were supported and approved by the members present at the Ministerial briefing to the full Cabinet⁶⁸⁵.

We understand that the Cabinet decision regarding the preferred suppliers was made on 18 November 1998. The preferred bidder for the Corvettes was the GFC.

18.4 Sequence of events

In order to explain the involvement of the Thomson group, Nkobi group and various other entities and individuals' in the Corvette programme, we deem it necessary to provide an analysis of the events that took place in date sequence.

⁶⁸⁵ Refer to 18 0434-18 0437 (Box Z43-46)

18.4.1 The Thomson-CSF group of companies

The Thomson group comprises of a number of entities that are registered *inter alia* in France, South Africa and Mauritius. We do not have access to the records reflecting the full structure of the group. However, insofar as it concerns this report, we have dealt with the relevant entities. We provide a simplified background on each of the entities referred to in the rest of this section of the report. This will assist in understanding the context within which events that transpired took place.

18.4.1.1 Thomson-CSF (France)

This is the ultimate holding company of all the Thomson-CSF companies in the world⁶⁸⁶. By November 1996, 42% of the shares of the company were publicly held⁶⁸⁷. It appears that the remainder of the shares were held by the French Government and that the company was in a process of being privatised.

In March 1998 the company acquired 50% plus 1 share in ADS from Altech and in February 1999 it acquired the other 50% from Altech. The shareholding in ADS was transferred to Thomson-CSF International (France) and in September 1999, 80% was sold to Thomson-CSF and 20% was sold to FBS.

The company's name was changed to Thales (France) on 6 December 2000⁶⁸⁸.

18.4.1.2 Thomson-CSF International (France)

The company is wholly owned by Thomson-CSF (France) and was the holding company of the South African registered company of the Thomson group, namely Thomson-CSF Holding (SA).

With effect from 4 April 2001, the company's name was changed to Thales International (France).

18.4.1.3 Thomson-CSF International Africa (Mauritius)

The company is wholly owned by Thomson-CSF (Turkey) and its ultimate holding company is Thomson-CSF (France). The company became the holding company of Thomson-CSF Holding

⁶⁸⁶ Refer to 18 0438-18 0439(78000366/8 Box 273)

⁶⁸⁷ Refer to 18 0440 (040067) (80 02972)

⁶⁸⁸ Refer to 18 0441-18 0540(7690625 Box 223, 8800435-478800470 (D327_1 Box 173, T0001 p154-210)

(SA) on 4 April 2001. The company's name was changed to Thales International Africa (Mauritius).

18.4.1.4 Thomson-CSF SA (Incorporated in France)

The company was registered in South Africa on 21 May 1992 as a company incorporated in France. It appears that the company was deregistered on 27 March 1997.

18.4.1.5 Thomson-CSF Holding (SA)

The company was registered in South Africa on 21 May 1996. The shareholders were Thomson-CSF (France) (85%), Nkobi Investments (10%) and Gestilac SA (5%). In July 1999, the shares of the company were sold to Thomson-CSF International (France) and then transferred to Thomson-CSF International Africa (Mauritius) on 4 April 2001.

The company originally owned 70% of the shares of Thomson-CSF. After an increase in the share capital of Thomson-CSF and the issue of additional shares in September 1999, Thomson-CSF Holding (SA)'s shareholding increased to 75%. The remainder of the shares were held by Nkobi Investments.

The company's name was changed to Thint Holding (SA) on 23 October 2003.

18.4.1.6 Thomson-CSF

The company was registered on 16 July 1996. The shareholders were Thomson-CSF Holding (SA) (70%) and Nkobi Investments (30%). After an increase in the share capital of Thomson-CSF and the issue of additional shares in September 1999, Thomson-CSF Holding (SA)'s shareholding increased to 75% and Nkobi Investments' shareholding decreased to 25%.

The company became the majority shareholder in ADS (80%) in September 1999 with FBS owning the other 20%.

The company's name was changed to Thint, on 19 August 2003.

18.4.2 African Defence Systems (ADS)

Thomson-CSF's involvement in the Corvettes programme, via the GFC, was hosted in an entity styled ADS.

The company was incorporated on 4 July 1967 as SA Electric Motor Manufacturing with an authorised share capital of 200 ordinary shares at a nominal value of R2 per share⁶⁸⁹. One hundred shares were issued to Manuel Esteves Costa and 100 shares were issued to Harold James Patmore⁶⁹⁰.

On 10 June 1980 Costa and Patmore transferred 80 shares each in ADS to Trivetts-UEC and on 30 December 1980 they transferred 20 shares each to Trivetts-UEC⁶⁹¹. The name of the company was then changed to UEC Projects on 22 July 1985⁶⁹².

UEC Projects was divisionalised in 1987 and sold to Altech in 1991⁶⁹³.

UEC's name was changed to Altech Defence Systems on 18 September 1995⁶⁹⁴ and again changed to African Defence Systems on 25 June 1998, after Thomson-CSF (France) bought 50% plus 1 share from Altech.

18.4.3 Thomson's initial presence in South Africa

It was noted in a letter from Arthur Anderson to Thetard on 20 July 1998, that "...*Thomson-CSF (France)*..." had been present in South Africa since 1992⁶⁹⁵. In this letter it is also mentioned that Thetard had agreed to obtain information regarding general activities in South Africa between 1992 and 1996 and, in particular, business deals between April and May 1994 and May 1996.

A letter, dated 22 October 1993, addressed to "*Mr Joe Modise, Commander in chief, Umkonto we Sizwe*", and signed by Moynot, as vice president of "*Thomson-CSF S.A.*" confirms the presence of the Thomson group in South Africa⁶⁹⁶. This letter requested a meeting to present the company's activities and main projects in South Africa, namely "...*the equipment of possible future warships for the South African Navy*".

⁶⁸⁹ Refer to 18 0542 (040436 Miscellaneous Hortors)

⁶⁹⁰ Refer to 18 0546 (040440 Miscellaneous Hortors)

⁶⁹¹ Refer to 18 0546-18 0547 (040440 to 040441 Miscellaneous Hortors)

⁶⁹² Refer to 18 0565(09541 (File 26 p5))

⁶⁹³ Refer to 18 0566(109 001983 Box Z189)

⁶⁹⁴ Refer to 18 0567 (7500074305 Box 46)

⁶⁹⁵ Refer to 18 0568-18 0571 (7691218-7691221 Box 225)

⁶⁹⁶ Refer to 18 0572 (78 05120 (020002) Box 233)

18.4.4 Early relationship between Shaik and Altech

We understand that Shaik approached Peter Watt of Altron during 1993/1994. An entry in the black notebook, which appears to have been written by Shaik between January 1995 and March 1995, reflects the following⁶⁹⁷:

“Altech’s pos

- 1) Corvette R200m, Contracts local + Citroen (sic), Spanish order/Augusta sub-marines, R140m + R38 spares*
- 2) Co. disillusioned with Altech – very English background*
- 3) Two key technical persons – 17/8-10 yrs involvement with Altech/UEC*
- 4) UEC – two people of which 200 are technical*
- 5) Key people in UEC 60”*

It therefore appears that Shaik had knowledge of the earlier Corvette programme and ADS (formally UEC) as far back as March 1995.

18.4.5 Period leading to the establishment of the Thomson companies in South Africa

A fax from Theo Honiball⁶⁹⁸, a retired SA Navy Commodore and a director of MDA, to Moynot on 14 March 1994, indicates that Thomson-CSF wanted to enter into a formal agreement with MDA⁶⁹⁹.

On 18 July 1994 Moynot received a letter from Honiball regarding a “*Status Report*” on the SA Navy project, including the Corvette programme⁷⁰⁰. This report dealt with the earlier programme engaged into by the SA Navy. It will be evident from the contents of this section of our report that there were two distinct programmes engaged into by the South African Government for the acquisition of the Corvettes. The one replaced the other. The letter indicated that the report was in accordance with the agreement between MDA and Thomson-CSF.

The Honiball report indicated that the SA Navy’s project team for the Corvette programme was going to discuss the final proposals of the European shipyards, namely Bazan (Spain), DCN

⁶⁹⁷ Refer to 18 0573 (80 03966 Box 97)

⁶⁹⁸ Refer to 18 0574 (7806413 Box 232)

⁶⁹⁹ Refer to 18 0575 (7807431 Box 231)

⁷⁰⁰ Refer to 18 0576-18 0579 (7807427-30 Box 231)

(France), Yarrow (UK), Svendborg (Denmark) and Blohm + Voss (Germany). The Navy's preference, in order, was:

France;

Spain;

Denmark;

UK; and

Germany.

This report concerns the earlier process regarding the Corvette programme and the acquisition thereof. This took place prior to and up to 1994. The subsequent process, which is discussed in our report, commenced on 23 September 1997, when the RFI's were sent out to interested parties.

It was furthermore mentioned in the Honiball report that (namely referring to the first, pre-1994 process):

"...the Germans are outsiders in the competition. Whatever the Navy's preferences, the final decision will without doubt be a political decision";

The Chief of the SANDF was alleged to have said that *"...the final selection of the new corvette will be made in October this year"*. The date for final selection was therefore October 1994;

The following companies, *inter alia*, were preparing proposals for systems for the Corvettes:

Delcon - Electronic warfare

UEC - Combat system and ASW sonar

Teklogic - Training simulators

Logtek - Logistics

Xcel - Logistics

Dorbyl - Construction.

From the above it is evident that it was envisaged that UEC would supply the combat systems for the Corvettes as they were the only party proposing for the combat systems, albeit in the

earlier process that lead to the formal process described above. UEC was a division of Altech at that stage and was renamed ADS in 1995.

A note in French reflecting the date “12/9/94” indicates *inter alia* the following⁷⁰¹:

“Dinner - speech in front of J Modise

2 corvettes imminent!...and

- corvette bids: evaluation currently on-going!”

Another report from MDA on the Corvette programme dated 4 May 1995⁷⁰² indicated an announcement was expected that Bazan (Spain) had been awarded the contract to build the ships. It was stated in the report that Mandela and the two vice-presidents (De Klerk and Mbeki) had been briefed by the Chief of the Navy on 11 April (assumed to be 1995). The report dealt with, *inter alia*, the following:

Bazan’s counter trade proposals included installing UEC equipment in Spain’s new submarines;

“The Navy’s corvette project has become a political football and there is a great deal of opposition to the project’s costs amongst politicians. The Naidoo and Yengeni’s oppose the project and Kasrils doesn’t really know what he is talking about”; and

“In spite of Bazan’s optimism, the Navy’s corvette programme still has many risks to face. The contest is not over until the contract is signed, and at the moment the project is dominated by politics and not by sailors”.

A handwritten note, assumed to be Moynot’s, dated 26 June 1995, reflects the following note: “...JV/UEC or NEWCO, assignment to be accomplished as soon as possible”⁷⁰³. This note could refer to the formation of a joint venture with UEC or the formation of a new company to house UEC. In March 1998 Thomson and Altech formed a joint venture with ADS, formerly known as UEC.

The early activities of Thomson-CSF are also confirmed by a fax dated 6 August 1995 from Moynot to Shaik captioned “Cooperation between Thomson-CSF and Nkobi”⁷⁰⁴. In the fax cover to the letter, Moynot refers to an attached letter confirming the discussions they had

⁷⁰¹ Refer to 18 0580-18 0581(7807426 Box 231)

⁷⁰² Refer to 18 0582-18 0585(7807420A-22 Box 231)

⁷⁰³ Refer to 18 0586-18 0587(7807419 Box 231, T0003 p308)

⁷⁰⁴ Refer to 18 0588(78 07948 Box 284)

previously held. Moynot also indicated that he needed Shaik's agreement to go to Paris with him for a meeting with Thomson-CSF's chairman and CEO, Gomez. It is noted that this was the second time Moynot had announced Shaik's visit to Paris and that a cancellation would have created a negative perception.

In the letter that Moynot referred to in his fax of 6 August 1995, he confirmed *inter alia* that⁷⁰⁵:

The Thomson-group had agreed to "Nkobi" taking a share of 30% to 35% in a company which Thomson intended setting-up in South Africa and that the Thomson-group would consider allowing Malaysian investors to also take a share in the company;

The Thomson-group would lend Nkobi the initial capital requirement; and

Thomson-CSF would enter into agreements with "Altech/UEC, Plessey, Reutech, and ATE etc".

Moynot concluded the letter by stating that, "*I would suggest that we go together to Thomson-CSF Paris head office to finalize our agreement and from there to Malaysia. As per our today's telephone conversation, we could fly to Paris on Tuesday night*".

Nkobi Holdings was registered in February 1995 and did not have any technical competencies and was not financially strong. It is therefore concluded that the Thomson group took the abovementioned position for reasons other than those mentioned. One of the reasons was Shaik and the Nkobi group's Black Economic Empowerment status.

The above letter was followed up with an agreement letter from Thomson-CSF (France) to Nkobi Holdings, dated 10 August 1995, setting out the basis of the co-operation process of Thomson-CSF with Nkobi Holdings in South Africa, "...with possible extension to Malaysia"⁷⁰⁶. The basis of the co-operation was the following:

The establishment of a company in South Africa with Shaik taking a significant equity stake in the company and the possible shareholding of Malaysian partners;

The object of the company to be established "...would be primarily to participate in a number of civilian and military projects that are due to be implemented in the Republic of South Africa..." This would "...induce the company to enter into cooperation or joint venture

⁷⁰⁵ Refer to 18 0589-18 0590(78 07949 Box 284)

⁷⁰⁶ Refer to 18 0591-18 0592(7807950-7807952 Box 284)

agreements with existing South African companies or to acquire equity interests in such companies...”

The company’s name “...*would reflect the link with the two main shareholders, ie Thomson-CSF and Nkobi...*”

The existence and content of the letter had to be treated as strictly confidential; and

The transactions contemplated in the letter “...*are subject to the satisfactory negotiation, execution and delivery by both parties of all necessary detailed and definitive agreements providing for the legal and financial terms of such transactions, which we foresee to take place within 5 weeks...*”

Shaik agreed to the terms of the letter by countersigning it with Perrier.

In a letter to Pizano of ATE, on 29 August 1995, Shaik thanked Pizano for everything he was doing for Nkobi Holdings and in paragraph 5 of the letter indicated the following⁷⁰⁷: “...*Thomson-CSF – Pierre (assumed to be Moynot) has secured a meeting with Bill Venter for the 5th August at 11:00pm. I am not sure whether I am going to be part of that meeting...*” Paragraph 6 reflects that Shaik confirmed “...*the meeting with JZ...*” for 5 September 1995.

It is evident that Shaik was aware of the fact that Thomson would have had a meeting with Altech. He was, however, uncertain as to whether he would be included in the meeting. It is evident in the paragraphs that follow that Shaik was excluded from the discussions with Altech regarding the acquisition of ADS. He only became aware of the fact, some three years later, that Thomson-CSF (France) had acquired 50% of the shareholding in ADS. The reason for meeting then with Zuma is not clear. This coincides with the time that Shaik received the letter from Stofile indicating that the plans he and Nkobi made for the ANC would not be pursued by the ANC. It was also the same time that Zuma commenced accompanying Shaik in his business activities of the newly established Nkobi group.

It should be borne in mind that at this time Thomson’s interest was in the tendering for the Corvette programme through the French bid and, should the bid have gone to the French consortium, it would have meant sharing in the larger project. It will become evident that the Corvette program was ultimately awarded to the GFC, an opposing bidder to the French.

⁷⁰⁷ Refer to 18 0593-18 0594 (80 11605-6 Box 134)

However, part of the bid was the inclusion of the Combat Suite, which was eventually awarded to ADS. Therefore, Thomson focussed their efforts on two fronts namely the acquisition of ADS, which was a potential Combat Suite supplier with whoever were to be awarded the Corvette programme, and their involvement in the overall French bid for the main contract. This contextualises the contact with Altech as well as their constant interest in the wider Corvette programme.

An MDA report, prepared for Thomson, on the Corvette programme, dated 11 September 1995,⁷⁰⁸ indicates *inter alia* that:

The Corvette programme had been put aside while the new “...*White Paper for Defence*...” was being prepared;

Denmark and the Germans were “...*exerting the most pressure on the government to buy their ships...*”

“The politicians were divided on the choice of ship and my guess is that it is because of the rumours one hears about “consultancy fees” being offered. The rumours that I have heard are that DK have offered Joe Modise 10% of the contract (10% of nothing is 0); Bazan has offered him 2.5% and Yarrow has already given Joe Modise a new Landrover Discovery!...”

“Bazan no longer seems to be the favourite...”

The Navy did not like Denmark’s and the UK’s ships;

“Politically I estimate that the Danes are the candidate most likely to succeed...”

“The Germans, French, and Danes have criticised the selection process and because of this, the tender will soon be re-opened and all candidates will have a chance to make a new bid again...”

“We don’t yet know what the Germans are proposing but they are applying a great deal of pressure. Toni Yengeni apparently backs the Germans...”

“The speculation is that Joe Modise will soon retire (as soon as the tender has been awarded!), Toni Yengeni wants to be Minister of Defense and Ronnie Kasrils also wants promotion to Minister...”; and

⁷⁰⁸ Refer to 18 0595-18 0596 (7807417-8 Box 231)

It is not clear who “Mr O.” referred to.

Shaik also responded on the content of certain clauses of the draft shareholders agreement. One of the responses related to clause 14.2.1, which states “...*each of the Parties will not, in any of the years of the restraint period, be interested or engaged directly or indirectly in any capacity (including trustee, proprietor, shareholder, consultant, adviser or financier) in any firm, partnership, company, undertaking or enterprise directly or indirectly engaged interested in a competitive activity in the territory...*”. Shaik’s response to this was “...*I would have to be exempted from this clause for the following reason, that I may be required to be an advisor to government or its parastatal in the defence sector in the not too distant future. This could be of benefit to KobiThom. Currently I am the Special Economic Advisor to Minister Jacob Zuma as Minister of Economic and Tourism...*” Shaik reminded Thomson that he had connectivity and relationships which could benefit the joint venture between Nkobi Holdings and Thomson and should therefore not being restrained from commencing and maintaining such relationships.

Another MDA report dated 14 October 1995 indicates that the USA had offered the Navy four ships free of charge and that Bazan had had a meeting with Yengeni, the Chairman of the Parliamentary Defence Committee⁷¹². “*Yengeni indicated that a decision to proceed with the project will be taken soon*”. This report was faxed to *inter alia* Pujol, De Bollardiere and Bussiere of Thomson.

On 22 November 1995 Fatima Paruk-Gilbert sent a fax to Perrier to inform him that Shaik was in Paris and that “...*he would appreciate a meeting with yourself/Mr Bollardiere to discuss issues of mutual interest...*”

A MDA report on 28 November 1995 indicates that the Corvette programme had been “*temporarily shelved*”⁷¹³. The report mentioned that:

“...*the SA Navy also seems to have painted itself into a corner in the tender and RFP (request for proposals) process by finally selecting two designs from Bazan and Yarrow which are only designs and are not available as off-the-shelf proven ships, while two proven ships, the French Floreal and Danish Thetis have been rejected because they do not fully meet the Navy’s planners’ requirements...*”;

⁷¹² Refer to 18 0632-18 0639(7807409-416 Box 231)

⁷¹³ Refer to 18 0640-18 0642 (7807406-8 Box 231)

“...and newly-designed surface vessel combat systems (SURVECS) produced by Altech Defence Systems will be fitted to the new ships...”; and

“...The Navy’s project has been postponed. Ostensibly waiting for the new Defence White Paper and then the Defence Review which will only be available in 1996...”

It is evident that, already in 1995 it was decided that the Combat Suite would be supplied by ADS and that this report to Thomson gave an indication that the French proposition for the Corvettes was not favoured by the SA Navy.

The report from MDA on 1 March 1996 indicated the following⁷¹⁴:

“The Navy had 136 million rands (\$37 million) allocated on their budget for the year 1 April 1995 to 31 March 1996 for their new corvette project. The project was not approved by parliament but the decision was postponed until a “later date...”

“The Navy’s attitude is that the final decision will be a political decision and the Navy is waiting for the politicians to decide which country’s ship the Navy must buy...”

“In the political arena many rumours (which follow) are circulating. The foreign suppliers have identified political personalities who they think are the most influential and have been cultivating them. It is thought that the Vice-President Thabo Mbeki is the most influential decision-maker. This is probably based on the fact that a German shipyard was allowed to tender after the original tender date had closed, because Thabo Mbeki promised them the opportunity to tender while he was on his visit to Germany. Toni Yengeni is another favourite. I will not mention anything about the rumoured benefits that these people have already received or have been promised – but I suppose that is good business! Then there is also the ANC’s (majority party) loyalty to countries who supported them in the past. Spain is not one of them. Neither is Britain...” and

“Meanwhile, part of the 1995 corvette budget has been allocated to the surface vessel combat system development which has been separated from the corvette project. Whatever the future holds, it is reasoned that the new combat system will be installed in whichever ship is eventually decided upon...”

The abovementioned report confirmed to Thomson that the French bid was further removed as the potential party that would supply the Corvettes to the SA Navy and that the Combat Suite

⁷¹⁴ Refer to 18 0643-18 0645 (7807403-5 Box 231)

had been separated from the main bid, resulting in a certain understanding that the Combat Suite had already been decided upon. The selected shipyard will be required to install the Combat Suite. It is assumed that the Combat Suite referred to was the solution presented by ADS and that following from this report, and as is borne by the subsequent events that took place, the selection process as determined by the formal process had the objective of selecting a shipyard to contract on the Corvette programme. ADS would then be the nominated Combat Suite supplier to the selected shipyard. The reports however, did not provide absolute assurance to Thomson.

An Exchange for Proprietary Information and Non-disclosure Agreement was signed between Altech and Thomson-CSF (France) on 2 February 1996⁷¹⁵. In terms of the agreement Thomson-CSF (France) and Altech planned to form a joint venture. Thomson-CSF (France) would acquire shares from Altech in Altech's military business which would be transferred to a new company to be named Altech Defence Systems. It must be noted that this agreement was signed with Thomson-CSF (France) and not a South African Thomson company.

The MDA report, dated 16 May 1996, reflected the following information regarding the Corvette programme⁷¹⁶:

"....it is expected that the Navy (ARMSCOR) will re-open the tenders. It is expected that the SAN will only invite selected shipyards to tender, and not go through the whole process as they did in the first round by inviting every possible shipyard to tender – said to be in excess of 20. It is expected that the shipyards that will be invited to tender will be Bazan, Yarrow, DCNI, a German consortium consisting of Thyssen, HDW, Blohm + Voss and Russia has also been mentioned...Bazan won the last tender by being the lowest, and were very unhappy when the project was shelved...The Germans only entered the race after the vice-president Thabo Mbeki, went to Germany and promised them that they would be reconsidered..."

The abovementioned report was faxed by Moynot to various Thomson representatives⁷¹⁷.

⁷¹⁵ Refer to 18 0646-18 0652(7808881-7 Box 230)

⁷¹⁶ Refer to 18 0653-18 0655(7807400-2 Box 231)

⁷¹⁷ Refer to 18 0656-18 0659(7807394-6 Box 231)

18.4.6 The establishment of the Thomson-CSF companies in South Africa and the period leading to the acquisition of shares in ADS

Thomson-CSF Holding (SA) was incorporated on 21 May 1996⁷¹⁸. The Thomson-CSF Holding (SA) Shareholders' Agreement between Thomson-CSF (France), Nkobi Investments and Gestilac was signed the following day⁷¹⁹. At the first shareholders meeting on 27 May 1996, Shaik, Moynot, Denis, De Mont-Marin and Pujol were appointed as the first directors of the company⁷²⁰. The minutes of the meeting indicate that Sono seconded the decision to appoint them as the directors. A note in a diary obtained from Nkobi's premises reflects the meeting with Thomson-CSF as having been in Pretoria⁷²¹.

In a letter from Shaik to Peter Watt on 4 June 1996, Shaik thanked Peter Watt "...for the meeting held on "common grounds" last week and for a challenging game of golf". Shaik continued stating that "...I hope the meeting with Minister Jacob Zuma was beneficial and we should maintain this contact"⁷²². Shaik arranged for another game of golf with Watt on 21 August 1996⁷²³.

In a diary that appears to be Shaik's, a note on 25 June 1996 for 27 June 1996 reflects "*Paris: Modise supper Thomson-CSF*"⁷²⁴. A note on 24 October 1996, in the same diary, indicates, "...meeting with CSF Executives in Paris"⁷²⁵.

Thomson-CSF (France) and Thomson-CSF Holding (SA) signed a contract on 1 July 1996 in terms of which Thomson-CSF (France) entrusted Thomson-CSF Holding (SA) to perform market surveys in South Africa for the promotion of Thomson-CSF (France) products. The contract stipulated that Thomson-CSF Holding (SA) would receive a maximum of R1 050 000 during the period of the contract namely 1 July 1996 to 31 March 1997⁷²⁶.

⁷¹⁸ Refer to 18 0660 (7691325 Box 225)

⁷¹⁹ Refer to 18 0661-18 0703(71262-304 Box 60)

⁷²⁰ Refer to 18 0704-18 0706 (76 91260-2 Box 225)

⁷²¹ Refer to 18 0707(80 06218I Box 112)

⁷²² Refer to 18 0708(80 12485 Box 136)

⁷²³ Refer to 18 0709(80 12489 Box 136)

⁷²⁴ Refer to 18 0710 (80 06218Q Box 112)

⁷²⁵ Refer to 18 0711(80 06218AZ Box 112)

⁷²⁶ Refer to 18 0712-18 0715(76 91173-6 Box 225)

Thomson-CSF was incorporated on 16 July 1996 and the Shareholders' Agreement was signed by Moynot and Shaik on 17 July 1996⁷²⁷.

On 13 August 1996 Moynot sent a fax to his French colleagues regarding an article in "*Business Day of 13/8/96*"⁷²⁸. Moynot stated that the article indicated that Mbeki had said during his opening of Parliament speech, that the Government had decided to go ahead with the military programmes and "...in particular, with the corvette programme". The article actually referred to Mbeki's opening of the second consultative conference of the defence review in Parliament on 12 August 1996. Moynot also mentioned in the aforementioned fax that "*All indicators seem to me to be in place now for us to go ahead with Bill Venter. On this subject, I met with Peter Watt, Bill's deputy, last week, who explained to me that, taking into account the potential problems that they fear they have with Alcatel, they would prefer to know who is to be chosen to purchase Thomson, prior to continuing with our discussions*". The above could refer to the negotiations with Altech regarding the formation of a joint venture in ADS. The problems with regard to Alcatel that were referred to are not evident in the documents at our disposal. It does not appear that the alleged problems had a direct effect on the negotiations that followed as they were not raised again.

The minutes of a meeting of the directors and shareholders of Thomson-CSF Holding (SA) on 22 November 1996 indicated *inter alia* that⁷²⁹:

Thomson-CSF was registered and that the shareholders were required to pay for their shares, namely, Thomson-CSF Holding (SA) R70 000 and Nkobi Investments R30 000;

Shaik had raised the following queries as to whether:

The criteria for entry into contracts and involvement in business ventures had been defined;

The company had an overall business plan;

Active marketing had been conducted; and

Operations in the rest of Africa were to be conducted through the local company or directly from France.

⁷²⁷ Refer to 18 0716-18 0756(71221-61 Box 60)

⁷²⁸ Refer to 18 0717-180764 (7806311-4 Box 232, 7806312/4 Translation file 5, p97/99)

⁷²⁹ Refer to 18 0765-18 0776 (76 91276-82 Box 225, 80 20394-8 Box 143)

Moynot responded to the queries by stating that “...the criteria for business contracts/involvements had still to be decided by the Board but that there would be a 40% or 50% shareholding by the company in UEC via ADS”.

Shaik then stated that “The establishment of criteria for company contracts is of major importance and, since Nkobi led the acquisition of UEC, they must be kept informed at all times and be consulted prior to any approach to ADS”. The minutes indicate that Moynot had agreed to this. It is possible that Shaik, in his statement “Nkobi led the acquisition of UEC...” meant that he gave the idea and information to Thomson-CSF to acquire ADS (previously UEC).

Shaik required that “It be recorded that he is unhappy and dissatisfied with the fact that insufficient thought has been given to marketing and that no overall marketing/business plans have been formalised since Nkobi wishes to proceed with active marketing that he requires the matter to be rectified as soon as possible”.

Shaik also stated that “...the efforts of the French visitors are inadequate because they know neither the local people nor the enterprises to approach and the company needs to conduct its marketing in a specialised community”.

Shaik then pointed out that “Nkobi has a strategic interest in the defence industry but does not have an exclusive contract with Thomson-CSF and that it is essential to “beef up” the local Thomson-CSF or Nkobi will have to take stock of its position and reconsider its involvements”. The “strategic interest” referred to by Shaik could not be identified. The Nkobi group’s operations at that time were limited to a number of opportunities, most of which did not materialise. What can be inferred from this statement is that Shaik positioned himself strategically in the defence industry as a business venture for the Nkobi group. This is also reflected in the events that transpired whereby Shaik and the Nkobi group focused on obtaining an interest in the defence industry. This eventually materialised when Shaik was admitted to the equity, indirectly, of ADS after having been excluded from it by Thomson.

It will be evident from the review of the Annual Financial Statements of the Nkobi group that the eventual investment in ADS (indirectly through Thomson-CSF) formed a material part (if not fundamental) of its eventual investment portfolio⁷³⁰. It is also clear that Shaik

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Refer to paragraph 2.1.6

was not happy with the involvement (or the lack thereof) of Thomson in South Africa and as a result even threatened reconsidering the position of Nkobi.

It is assumed that the comments by Shaik, in the Directors' and Shareholders' meeting of 22 November 1996, regarding the lack of presence of Thomson in South Africa, prompted Perrier to write the letter, dated 20 November 1996, on the privatisation of "*Thomson-CSF*". The letter was faxed to Shaik on 2 December 1996, by Moynot⁷³¹. Moynot indicated that he had also sent a copy of the letter to the following persons:

Minister Modise (Minister of Defence);

Minister Maharaj (Minister of Transport);

Minister Zuma (Minister of Economic Affairs – KwaZulu-Natal and National Chairperson of the ANC); and

Deputy Minister Kasrils (Deputy Minister of Defence).

Zuma was the only provincial minister who allegedly received this letter.

Indications are that Thomson proceeded to negotiate with Altech for the acquisition of a share in ADS without the knowledge of Shaik as opposed to the agreement reached during the meeting of Directors and Shareholders on 22 November 1996, referred to above. The events that transpired, as well as the content of the communication between Thomson and Altech confirms the exclusion of Shaik, which eventually left him in a marginalised position as regards the shareholding (or sharing in ADS). A letter from Moynot to Craig Venter, dated 22 January 1997, indicates that Moynot and Craig Venter had a meeting on 17 January 1997 and that Moynot wanted them to continue their negotiations⁷³². Moynot also indicated that he was ready to organise a visit for Craig Venter to the Thomson head office in Paris.

At the same time, whilst Thomson positioned itself to acquire a shareholding in ADS (which only involved the Combat Suites for the Corvettes) the Thomson focus was also on the wider Corvette programme. On 2 February 1997 Moynot received a letter from Honiball of MDA⁷³³. Honiball had drawn attention to Moynot's remark to him, on 9 February 1997, that "*...the Navy has declared me "persona non grata"(PNG) for a paper that was published by the Institute for*

⁷³¹ Refer to 18 0777-18 0778 (80 02971-2 Box 88)

⁷³² Refer to (CSFS_113_2005/Export/-00000FTK/013[40156].doc)

⁷³³ Refer to 18 0780-18 0782(7807386-8 Box 231)

Defence Policy, is cause for concern". The paper referred to by could not be located but attached to the communication from Honiball we identified a "*Status Report – SA Navy Corvette Project*". The report indicates *inter alia* that:

The Corvette programme "*was shelved*" by politicians until the "*Defence Review*" document had been completed;

Modise had insisted that the "*document*" had to be ready by November 1997;

"Yarrow (UK), DCNI (France), Bazan (Spain), a German consortium and perhaps a Russian shipyard..." were expected to be invited to tender;

"The Germans entered the competition after the Vice President, Thabo Mbeki visited Germany during 1995"; and

"Meanwhile the budget for the continued development of the surface ship combat system has been approved and this project continues independent of the corvette programme. ADS (formerly UEC Projects Pty Ltd) is the main contractor for the combat system".

This again confirmed the fact that ADS had already been selected as the contractor to supply the Combat Suits for the Corvettes. Indications are also, as opposed to earlier reports, that the French bid was once again a possibility. This is also confirmed by the visit from the French Ministry of Defence, led by Durieux, a special representative of the Minister of Defence, from 28 May 1997 to 30 May 1997, referred to below.

A meeting between Nkobi Holdings and Altech was planned for 14 February 1997⁷³⁴. It is not clear whether this meeting took place as we could not identify any document indicating the outcome of such a meeting.

A report styled "*REPORT ON THE MISSION TO SOUTH AFRICA LED BY MR BRUNO DURIEUX*", dated 11 June 1997, indicated that a mission from the French Ministry of Defence, led by Durieux, a special representative of the Minister of Defence, visited South Africa from 28 May to 30 May 1997 in order to hand over and submit "*...a package deal for partnership in the field of defence*"⁷³⁵. It appears that this was done to propose a rival, more attractive, package deal than the British deal proposed to the South African Government in early 1997. Paragraph 4 of the report states that "*On recommendation of the French ambassador in Pretoria, it was*

⁷³⁴ Refer to 18 0783-18 0785 (80 12486-8 Box 136)

⁷³⁵ Refer to 18 0786-18 0802(7804936-43 (Translation file 2 p201, Box 218)

decided to give the delivery of the bid a political dimension by entrusting Mr Bruno Durieux, the bearer of a letter from the President of the Republic to President Mandela, with the mission of placing that bid within a wider context of long-term cooperation". Annexure 2, to the report, reflects the names of "VIPs met with". These include, inter alia, Gerwel (Director of the Office of President Mandela), Modise, Kasrils, Erwin and Yengeni.

A report, dated 12 June 1997, from De Bollardiere to Moynot and various others, regarding the "Mission of Mr B Durieux to the RSA", reflects that⁷³⁶ *"The SAN showed interest in the presentation of the Corvettes project, and in particular as far as Thomson-CSF is concerned, the proposals concerning:*

Radars

Sonars

Tavitac..."

In paragraph 5 of the abovementioned report, it is stated that *"A meeting between AMRSCOR and Thomson-CSF on 20 June at our stand at Le Bourget should provide details of the reaction of the RSA"*.

The above is an indication that the French bid attempted to position itself, from a political point of view, prior to receiving the official RFI on the Corvette programme, which were sent out on 23 September 1997⁷³⁷. The attempt was not led by Thomson as it appears to be a French Government delegation that led visit.

The French continued with their bid in an effort to participate in the wider Corvette programme. Thomson continued its negotiations and efforts to acquire a shareholding in ADS, which was, according to information at their disposal, the chosen party for the supply of the Combat Suite, regardless of the chosen shipyard. This is supported by the fact that a joint general meeting of the directors and shareholders of Thomson-CSF Holding (SA) and Thomson-CSF, on 25 August 1997, considered the possibility of an investment of R50 million by Thomson-CSF in ADS, a division of Altech⁷³⁸. With reference to the Altech proposal, Shaik stipulated that Nkobi Investments had to be part of the decision-making process, even though Nkobi Investments might not have been as technologically advanced as Thomson-CSF. Shaik expressed his

⁷³⁶ Refer to 18 0803-18 0808(7804888-9 Box 218, Translation file 2 p108)

⁷³⁷ Refer to 18 0809-18 0910(Box Z13 Court file 4, 7804848 Box 218)

⁷³⁸ Refer to 18 0811-18 0816(DJ 000012-17 040026-31 Box 37)

reservations with regards to Nkobi's financing of its portion of the investment and said that he needed to know that Nkobi had financial back-up from France. Shaik admitted that the Nkobi group did not have technical skills and were not in a strong financial position. This is also reflected in the review of the annual Financial Statements performed by us⁷³⁹. The Nkobi group was in its embryonic stage and was technically insolvent at the time.

In a letter to Shaik, dated 22 September 1997, Moynot announced that an agreement in principle had been reached with Altech regarding the sale of 50% of its ADS business to Thomson-CSF⁷⁴⁰. Moynot enquired whether Shaik's share of R1.488 million held through Thomson-CSF Holding(SA) and R6.375 million held directly (in Thomson-CSF) would be available by 15 December 1997. These amounts are proportional to the Nkobi group's shareholding relative to the total proposed acquisition price. It is up to then that Shaik featured as the partner of Thomson-CSF in ADS albeit, as it was structured, indirectly through shareholding in the local Thomson companies.

The events that transpired indicate that, despite the abovementioned offer to Shaik and Shaik's belief that he (the Nkobi group) would have been an indirect partner in ADS, this was not a *fait accompli*. Shaik, had embarked on a number of tactics, including calling on the alleged intervention of Zuma, to assist in this regard. Up to this point no mention was made of the requirement of a Black Economic Empowerment partner in ADS. What became relevant in the period that follows was not only the selection of a Black Economic Empowerment partner but rather the correct Black Economic Empowerment partner (one that was acceptable and regarded as the chosen one from a political point of view).

One day after the announcement to Shaik that agreement had been reached in principle by Thomson to acquire a shareholding of 50% plus one share in ADS, Moynot stated in an encrypted fax on 23 September 1997⁷⁴¹ to Denis and De Bollardiere that "*In a day or two, a letter signed by J Modise, addressed to Mr Durieux is going to arrive at the French Embassy. It requests firm prices for the following:*

Corvettes

Submarines

⁷³⁹ Refer to paragraph 21.6

⁷⁴⁰ Refer to 18 0817 (D 83300405Box 177)

⁷⁴¹ Refer to 18 0818-18 0821(7804855-6 p101, T0002, 7804855-6 Box 218)

Helicopters – to replace the Alouettes

Light trainer fighters

Main battle tanks

The bids must be handed in on 31/10 at 11:00 in a sealed envelope and must mention the specifications of the products in the bid, the financing programmes and details of the offset programmes”. Moynot continued that “...it is becoming urgent for us to decide about the joint bid with DCN under the ADS label, because the latter must be submitted on the same date if possible. I have been told here that to make such a bid acceptable, our bid should be enlarged to include the other principal players in the local industry – Reutech for the radar equipment and Grinaker for communications equipment – so that the bid is definitely seen as a South African bid”. Moynot concluded by stating that “...further to my fax addressed to JP Perrier, of which you have a copy, as regards the question he asked me last Wednesday: Youssuf Surtee does in fact appear to be closer to Mandela than my previous fax could suggest. It is through him that Bouygues obtained the motorway concession for the Maputo corridor. He plays the role of a factotum to the President and apparently handles the matters involving special financing including at the party level. He was the one who arranged the financing for the purchase of the President’s new house by Anton Rupert (Rembrandt group). He is however, quite accessible and assiduously courted, among others by the Germans. He seems to have a problem with the British to whom he has closed the door”.

The “previous fax” referred to by Moynot, could not be identified amongst the documentation translated. It is evident from the abovementioned fax that Thomson had identified Surtee as a person that had access to Mandela. The relevance of Surtee and Mandela is evident in the paragraphs that follow.

The abovementioned carried the same date as the date the Minister of Defence sent RFI letters to eight embassies regarding the Government’s procurement programmes, which included the Corvette programme. The closing date for responses was 31 October 1997⁷⁴².

⁷⁴²

Refer to 18 0822-18 0825 (7804848 Box 218), 7804846 p98, T0002)

18.4.7 The formalisation of the acquisition of shareholding in ADS and the initial involvement of CNI

Following the agreement in principle between Thomson and ADS as announced by Moynot, a period commenced when, as it transpired, the status of Shaik (the Nkobi group) as partner in ADS (albeit indirectly) was uncertain. This period marked discussions with various individuals and organisations with regards to the selection of a correct Black Economic Empowerment partner. Negotiations commenced with CNI, represented by Khoza, Surtee, Chippy Shaik and Shaik. It appears that perceptions emanating from these individuals placed Thomson in the position where Thomson was uncertain as to who would be the best partner. A further complication was that the selection of the most suitable partner was not only the function of Thomson (as potential shareholder) in ADS, but also Altech as a current shareholder.

A letter from De Bollardiere to Moynot, dated 21 October 1997, reflects the arrival and departure dates of Perrier, Denis and De Bollardiere, as 28 October 1997 and 29 October 1997 respectively. The letter also included the names of persons with whom they wanted to meet. These included *inter alia* Bill Venter, Khoza and Shaik⁷⁴³. The meeting with Shaik was requested to be organised for 28 October 1997. It appears that Khoza could have been a candidate for the Black Economic Empowerment partner of ADS as reflected in the events that transpired. It was also mentioned that “...*No other contacts are possible with people in the government: we are waiting a response to our contact on the spot (I will keep you informed as soon as we have feedback). As soon as uncertainties on any political meetings are cleaned up, we will see whether we can meet the Ambassador or any other VIPs*”. The “...*contact on the spot*” is not known.

Moynot requested “*R Khoza*” on 21 October 1997 to meet with himself, Perrier, Denis and De Bollardiere on 29 October 1997 to discuss “...*our possible future cooperation*”⁷⁴⁴. On the same date, Moynot informed Denis and De Bollardiere that the meeting with Bill Venter had been arranged for 28 October 1997 at 13:00 in his offices⁷⁴⁵. It was indicated that Craig Venter would also be present. Moynot furthermore mentioned that he had requested Khoza to meet with them on 29 October 1997 and “...*with regard to R Khoza, I have heard from D Triegaardt (who left Nkobi because he was never paid) that in the past few months he has become a fast rising businessman, that he has recently taken some big contracts, that he is a friend of Matthew*

⁷⁴³ Refer to 18 0826-18 0827 (7812011 Box 264)

⁷⁴⁴ Refer to 18 0828 (7812008 Box 264)

⁷⁴⁵ Refer to 18 0829-180830 (7812006 Box 264)

Phosa and certainly of the Deputy President because he is a staunch Africanist just like the latter. With regard to Schabir, I suggest that we see him last. What do you think?"

On 21 November 1997, Shaik informed Moynot that⁷⁴⁶ "...I am still waiting from you the offer made by Mr Perrier some three weeks ago. In terms of that discussion we were to finalise our respective positions on this matter and conclude accordingly in Paris towards the end of November. I sincerely hope that you are attempting to finalise this issue and thus for the delay in doing so is not an indication of the commitments made some three weeks ago by your peers and or yourself, and I urge you not to place me in a position in which I would act contrary to our agreed understanding in order to protect my interests". Shaik's reference to the "offer made by Mr Perrier some three weeks ago" appears to refer to the meeting that was planned to be held on 28 October 1997. It is not clear what "offer" was made. However, it is assumed that the offer referred to by Shaik was the acquisition, or at least participation in the acquisition, of shareholding in ADS. The reference to an offer some three weeks ago is an indication that the meeting between Thomson and Shaik, as proposed in the fax of Moynot, dated 21 October 1997, did take place between Shaik and Thomson.

In a Thomson-CSF fax by Moynot, also dated 21 November 1997⁷⁴⁷, captioned "*BLACK PROJECT – INDUSTRIAL PARTICIPATION PROGRAMME*" he indicated that "...it seems that the decision-making system regarding offsets within the scope of project *BLACK* is made of three acting parties, each of them having a blocking power and none of them the capacity to decide on his/her own". The three parties were listed as:

"Presidency and Black power: Black Empowerment,

ARMSCOR: minimum rule of 50% defence offsets,

DTI: minimum rule of 30% commercial offsets."

The fax mentioned a "*Business Training Centre*" project in Soweto which was initiated by Thomson-CSF. The fax was concluded by stating that "*President Nelson Mandela will be there on 30/11/97 and Pierre Moynot will be in a position to confirm to him the support of Thomson-CSF regarding this project confirming that we are taking into account the Black Empowerment in the historical heart of the black community*".

⁷⁴⁶

Refer to 18 0831-18 0832(7807697 Box 284), 80 02962 Box 88)

⁷⁴⁷

Refer to 18 0833-18 0835(7802763 (Translation file 2 p74-5, Box 288)

On 25 November 1997 Moynot received a fax with details of the French bid and offsets⁷⁴⁸. The document, dated 21 November 1997, reflects the background to the “*French package deal*” and indicates that the “...*success is fundamental to the positioning of the French arms industry in this country and in Southern Africa. The package deal has become one of the elements of French policy in relation to South Africa*”. The late Modise indicated, in a meeting with the French Ambassador, that the French bid did not involve enough black business. It can be accepted that reference to the French bid in this instance was the bid for the wider Corvette programme by the French⁷⁴⁹.

A fax dated 28 November 1997 indicates that Moynot informed Denis and De Bollardiere that he had met with the “*tailleur*” that afternoon⁷⁵⁰. This alleged meeting took place one month after the closing date of the supply tender for the Corvette programme and ten days before the short list of preferred suppliers was announced. Moynot indicated that the “*tailleur*” confirmed that there was hostility towards “*DCN*” and that “*DCN*” could possibly not be on the short list. DCN was the French shipyard bidding for the Corvette programme. It was also mentioned in the fax that the person with whom he allegedly met could not see why he (the “*tailleur*”) should not try to make some money, since the only important thing for him was to see that Thomsons be awarded the combat system *via* ADS and the “*sensors*” directly.

The “*tailleur*” repeated that he had obtained assurance from the then Deputy President (Mbeki) Thomson would be awarded the combat system and the “*sensors*”. Moynot again said that the “*tailleur*” appeared to be sure that the combat system would automatically go to ADS. It appears that the “*tailleur*” referred to Surtee. It was furthermore mentioned that “...*our friend is certainly reliable and I believe that if we wish, if not to sell corvettes, then at least to secure the combat system and the sensors, a visit by JPP to the Deputy President should be arranged as soon as possible and should be used as an opportunity for him to meet with Jacob Zuma*”. The fax was ended by stating “*I handed him the draft of the voting pool agreement and on Monday I must see Khoza with him in this regards*”.

⁷⁴⁸ Refer to 18 0841-18 0849 (7804951-5 Box 218, T0002 p136-144)

⁷⁴⁹ Refer to 18 0850-18 0851(7803045 p73, T0005)

⁷⁵⁰ Refer to 18 0852-18 0856 (7804841-2 Box 218, T0002 p95-97)

We identified a fax from Gide, to various Thomson officials on 6 June 1998, regarding an “ADS – Voting agreement”⁷⁵¹. It appears that a “*secret voting agreement*” between Thomson and CNI was planned. All indications are from the facts that followed that CNI was, envisaged as a direct partner in ADS and with an agreement in principle that Thomsons were able to acquire 50% plus one share in ADS from Altech this would have meant both parties (Thomson and Altech) sacrificing an equal share in ADS for the entry of CNI. This would have left both Thomson and Altech having equal voting powers in ADS. A secret voting agreement between Thomson and CNI would have placed the Thomson representation in the stronger position.

This, as in previous instances, provided more assurance to Thomson that the French bid might possibly not be successful in the wider Corvette programme, but that ADS would be awarded the Combat Suite. This was in line with earlier reports received by Thomson that ADS would be awarded the Combat Suite, regardless of the adjudication of the wider Corvette programme. The Deputy President of South Africa at the time was Mbeki, who would also have been the chair of the Ministers’ Committee that eventually took the final decision and made the final recommendation to the Cabinet. Based on Moynot’s fax of 28 November 1997, it is clear that Moynot regarded it important that Perrier should visit Mbeki and possibly Zuma with regards to the combat system.

On 1 December 1997 Moynot received a fax from De Bollardiere requesting Moynot to ask the “*taylor*” (sic) to make an urgent appointment for Gentgen with someone high in Finance to clarify the financial aspect of the offer and to assess the “...*drawbacks in leaning on gold*”⁷⁵². It is evident that at that, consideration was given to structure the financing of the arms acquisition with gold. Reference to the offer, in the context of this report, was in the wider context of the French bid through DCN. Thomson was part of the French bid for the wider Corvette programme, which was finally adjudicated during the latter part of 1998.

A fax from Bussiere to various Thomson officials on 8 December 1997, regarding a visit of the “*Frigate SURCOUF*” to Cape Town, reflected *inter alia* the following⁷⁵³:

⁷⁵¹ Refer to 18 0857-18 0861 (7801324-5 Box 229, T0005 p449-451)

⁷⁵² Refer to 18 0862-18 0863 (7811958 T0002)

⁷⁵³ Refer to 18 0864-18 0869(7806170-2 Box 232, T0005 p47-51)

“Nevertheless, our current situation as regards ADS has embarrassed us. The announcement of Thomson-CSF’s taking a majority stake in ADS has been awaited by all those that support us as well as those that are opposed to our initiatives...” The “current situation” was not clear, however, in the wider context of the events that transpired. The “current situation” referred to could refer to the length of time that the negotiations with Altech took. Thomson had agreed in principle that the acquisition had taken place but Thomson were not in a position to formally announce such acquisition;

The SA Navy had already expressed its “hull” preference to the Ministry of Defence, namely GEC Marine, Blohm + Voss, Bazan and DCN;

The Cabinet decision was expected at the end of January 1998; and

The lengthy negotiations between Thomson and Altech were negatively perceived by the Navy and Armscor.

In a fax from De Bollardiere to Moynot on 16 December 1997 it is mentioned that the shortlist (for the wider Corvette programme) would only be announced at the end of January 1998 because it seemed that the Navy had rejected the Armscor shortlist and had asked the late Modise to be the arbitrator⁷⁵⁴. The fax reflects that Great Britain, France and Germany were on the shortlist for the Corvettes. On 17 December 1997 the French authorities were informed by Armscor that their bid had been short-listed⁷⁵⁵. It is from this short-list that the preferred bidders were selected.

In a fax from Moynot to Colyn Levin of Altech on 18 December 1997 Moynot indicated that⁷⁵⁶ *“There are (sic) more and more gossips going around that our deal is cancelled. I feel this should have been triggered by the fact that we have had to cancel the appointment already made with the “important clients”...I am fully aware that the finalisation of all documents takes time and that we have to get the final blessing of both our corporates, however I strongly feel that we are advanced enough to start making preliminary announcements in order to stop this deplorable situation. Should Altech/Altron agree to do so it shall also be very important that, in such announcement, we underline that we have already agreed to introduce a third partner – a black empowerment company – with a stake of not less than 20%...It is then also of prime importance that it is made clear to the customers that we would end-up with a minority in the company”*.

⁷⁵⁴ Refer to 18 0870-18 0873(7811950-1 Box 264, T0002 p282)

⁷⁵⁵ Refer to 18 0874-18 0875 (7804956 p145, T0002)

⁷⁵⁶ Refer to (CSFS_189_2005/Export/-00000FTK/-00000FTK/Fax347[6236].doc)

From the above it is evident that Thomson wanted to inform their “customers” (assumed to be the Department of Defence and SA Navy) that Thomson was going to have a minority shareholding in ADS, namely 40%, and that there would be a Black Economic Empowerment Partner with a 20% shareholding. At this stage ADS was still wholly owned by Altech and no decision regarding the Black Economic Empowerment Partner in ADS had been taken. Shaik was on the periphery as a possible indirect partner (although undisclosed) and negotiations were ongoing between Thomson and CNI (with discussions on a secret voting agreement that had the potential to dilute the shareholding of Altech).

On the same date Moynot informed Denis and De Bollardiere that “*As foreseen, Thabo Mbeki and Jacob Zuma have been elected unanimously President and Dy President of the ANC yesterday*”⁷⁵⁷.

In slides for a presentation that emanated from the Thomson group, dated 5 and 6 January 1998, it was noted that ADS lacked experience in conducting major programmes and the government had encouraged it to establish links with a major international company⁷⁵⁸. Thomson-CSF’s acquisition of ADS would make it possible to respond to these demands and would ensure a strong position in all future naval programmes⁷⁵⁹. In phase one of the ADS acquisition, Thomson-CSF would acquire 50% plus one share and in phase two, 20% shareholding would be sold to a black partner in response to the government’s demand for Black Economic Empowerment. It was noted that the black partner had already been approached⁷⁶⁰.

The Requests for Offers (RFO) were sent to the companies short-listed on 13 February 1998 with the closing date being 11 to 13 May 1998⁷⁶¹.

In a letter from Shaik to Moynot, dated 26 February 1998⁷⁶², regarding a “*put option agreement*” and funding of Prodiba (which is not relevant to this part of the report but places the comments of Shaik in context), Shaik concluded that “*Finally, do you expect me to be co-operative on the Defence acquisition of the Altech – ADS deal, when I am subjected to such unnecessary frustration?*”. It is not clear what co-operation Shaik had to give or could give regarding the Altech/ADS deal.

Negotiations between Thomson and Altech on the agreement reached in principle, that Thomson could acquire 50% plus one share in ADS from Altech, were finally formalised when

⁷⁵⁷ Refer to 18 0877-18 0878(7811949 (Box 264, Translation file 2 p281)

⁷⁵⁸ Refer to 18 0879-18 0880(7803129 p106, T0005)

⁷⁵⁹ Refer to 18 0881-18 0882(7803130 p107, T0005)

⁷⁶⁰ Refer to 18 0883-18 0884(7803132 p109, T0005)

⁷⁶¹ Refer to 18 0885(Box Z13)

⁷⁶² Refer to 18 0886-18 0887(80 02764-5 Box 88)

on 27 February 1998, the share capital of ADS was restructured and a further 39 800 shares were issued to Altech, which resulted in Altech owning 40 000 shares. The authorised share capital of ADS was also increased by 39 960 000 ordinary shares, reflecting a total of 40 million shares⁷⁶³.

The Sale of Shares Agreement, Sale of Business Agreement and Shareholders Agreement between Altech and Thomson-CSF (France) were signed on 3 March 1998⁷⁶⁴. In terms of paragraphs 3 and 4 of the Sale of Shares Agreement, 13 960 000 new ADS shares were issued, of which 6 959 999 were issued to Altech and 7 000 001 were issued to Thomson-CSF (France). In terms of paragraph 8 of the Sale of Shares Agreement, the purchase price was R21 250 000 for Thomson-CSF (France)'s 50% plus 1 share in ADS. Thereafter on 14 April 1998, Altech was issued 6 959 999 shares, leaving it with a total of 6 999 999 shares and Thomson-CSF (France) with 7 000 001 shares⁷⁶⁵. At this point, Altech owned 50% minus 1 share of the issued share capital and Thomson-CSF (France) 50% plus 1 share. On 24 April 1998 Altech and Thomson-CSF (France) signed an amended Sale of Shares Agreement in terms of which the purchase price for the 50% plus 1 share in ADS was reduced by 25% to R15 937 500. The value of ADS then was therefore R31 875 000⁷⁶⁶.

In the Shareholders Agreement between Altech and Thomson-CSF (France) it was recorded that ISIS (Pty) Limited was an affiliate of Altech and was conducting defence business. It was agreed that ADS would purchase the ISIS business for R22 644 000⁷⁶⁷. According to appendix A7 to the Shareholders Agreement, ISIS was a Systems Integrator and Software Developer and had supplied all the systems in use by the South African Air Force⁷⁶⁸.

This formalised agreement between Thomson-CSF (France) and Altech, for the sale and acquisition of 50% plus one share in ADS, left Shaik in a marginalised position. Nkobi Investments was the shareholder in Thomson-CSF Holding (SA) and Thomson-CSF, had no interest in Thomson-CSF (France) which had acquired the interest in ADS from Altech.

⁷⁶³ Refer to 18 0888-18 0899(040435-446 M7, Misc Hortors)

⁷⁶⁴ Refer to 18 0900-18 1044(75 00074106-168 Box 46, 75 00074222-302 Box 46)

⁷⁶⁵ Refer to 18 1045(040442 (M7, Misc Hortors)

⁷⁶⁶ Refer to 18 1046-18 1051(75 00074655-660 Box 47)

⁷⁶⁷ Refer to 18 1052-18 1053(7500074268-9 Box 46)

⁷⁶⁸ Refer to 18 1054-18 1058(7500074364-8 Box 46)

18.4.8 The continued search for the correct Black Economic Empowerment partner for ADS

The acquisition of the shareholding by Thomson-CSF (France) in ADS marked the commencement of the period when the search for a correct Black Economic Empowerment partner became the topic of correspondence and meetings. Discussions took place with CNI as a potential partner and Thomson even considered a secret voting agreement with CNI prior to the formalisation of the acquisition of the shareholding by Thomson-CSF (France).

Shaik (the Nkobi group and in particular Nkobi Investments) had been marginalised. This required him to seek intervention, particularly by Zuma, as will be evident. Discussions were also held with Surtee, who had no direct interest (based on the documentation at our disposal), as a Black Economic Empowerment partner. A series of meetings that took place (as reflected by minutes), various notes made on discussions held and there was correspondence between various parties. All of these reflect the frantic quest for intervention.

A letter from Shaik to Perrier dated 4 March 1998 indicates that Shaik was “*frustrated*” with the fact that the Prodiba “*put option agreement*” had still not be concluded⁷⁶⁹. This letter is similar to the one already referred to above. Shaik also mentioned that

“Yet you expect from me total and timeous co-operation on the ADS deal when the Prodiba deal has cost me so much frustration and financial embarrassment. I think you expect too much from me and I have now reached my level of saturation”. Shaik continued to say that he would “...do everything in his power to be obstructive, as I would have very little to lose, as much of my reputation you would have tarnished anyway, from a Prodiba perspective”. Shaik then urged Perrier to conclude on the Prodiba matters, despite the advice from his attorneys as “I don’t believe they have a clue, to what the real issues are (as agreed by ourselves last November in Johannesburg), and I am prepared to challenge this position if I am put to the test”.

Undated handwritten notes indicate that a meeting with the late Modise and the “*tailor*” had been planned⁷⁷⁰. On the same notes, it is indicated that Maharaj is the “*tailor’s pal*”.

On 9 March 1998 Moynot wrote to Kasrils, as the Deputy Minister of Defence, to announce that Thomson-CSF had concluded a deal with Altech regarding ADS⁷⁷¹. Moynot stated that “*The*

⁷⁶⁹ Refer to 18 1059-18 1062(80 02795-6, 7811054-5 Box 244)

⁷⁷⁰ Refer to 18 1063-18 1064(7802788 p78, T0002)

final structure will be: 40% Altech, 20% black empowerment company, 40% Thomson-CSF. We have already started discussing with a black empowerment company, CNI, whose Chairman is Mr Reuel Khoza, and we expect to finalise the second step within two to three weeks". It appears that Altech was not aware of this letter.

Thomson-CSF and Altech issued a press release regarding the joint venture on 12 March 1998⁷⁷². The press release mentioned that both parties intended to sell 10% of the shares to a Black Economic Empowerment partner. The name of the Black Economic Empowerment partner was not mentioned.

Amidst the discussions and disclosures regarding the newly established partnership between Altech and Thomson in the form of ADS, the participation in the wider Corvette programme continued. On 16 March 1998, Duncan Hiles from ADS (head of naval division) sent a fax to Moynot regarding the meeting that had been held with Blohm + Voss on 9 March 1998⁷⁷³. The fax indicated that Blohm + Voss had requested a letter and workshare document from ADS. It was also mentioned that ADS had been approached by the other bidders on the short list, namely DCN, Bazan and GEC.

In a letter dated 17 March 1998 Shaik informed Perrier that⁷⁷⁴ *"In my recent discussion with the Honourable Minister Jacob Zuma Vice President of the African National Congress (ANC), he is extremely concerned with the conduct of the Thomson-CSF group operating in South Africa, and in particular the allegations made to me by yourself and other representatives of your group attributed to our Honourable President Thabo Mbeki, with regards to our South African business affairs"*. Shaik then indicated that Zuma had requested an urgent meeting with Perrier in Durban to address these concerns. The letter indicated that it had been copied to Mbeki and Zuma. It therefore appears that Shaik wanted Mbeki to know that Zuma was requesting a meeting with Perrier. Perrier replied to Shaik's letter on 18 March 1998, as is evident from Shaik's letter dated 25 March 1998.

On 24 March 1998 Moynot indicated to Craig Venter that Ranque and Perrier would be in South Africa on 25 and 26 April 1998 and that he and Bill Venter should meet with them⁷⁷⁵.

⁷⁷¹ Refer to 18 1065-18 1066(109 002026/7 Box Z189)

⁷⁷² Refer to 18 1067-18 1071 (7803107-10 Box 234)

⁷⁷³ Refer to 18 1072(109 0002066 Box Z189)

⁷⁷⁴ Refer to 18 1073(80 02789/930213 Box 88/Switzerland 02)

⁷⁷⁵ Refer to 18 1074(109 002029 Box Z189)

On 25 March 1998 Shaik acknowledged Perrier's letter dated 18 March 1998 as well as Perrier's intended visit to South Africa at the end of April 1998⁷⁷⁶. The letter again indicated that it had been copied to Mbeki and Zuma. It therefore appears that Shaik ostensibly wanted Mbeki to know that he was arranging a meeting with Perrier. Zuma was at this Stage MEC of Economic Affairs and Tourism in the Kwa-Zulu Natal Province as well as the Deputy President of the ANC, whereas Mbeki was the Deputy President of South Africa and also the chairman of the AAC.

A fax from Colyn Levin of Altech to Werksmans on 25 March 1998 indicated that it had come to the attention of Altech that Thomson-CSF Holding (SA) had sent a letter to the Ministry of Defence⁷⁷⁷. Altech indicated a belief that the letter was in breach of the Shareholders Agreement of ADS and believed further that the letter could have compromised the future of ADS, as it could have lead to a reduction in future business and possibly a claim of damages.

Altech indicated that they had to be part of the negotiation process with any black empowerment group and that the mention of CNI was presumptuous and had not been approved by Altech. The fax stated further that Thomson-CSF had an equity relationship with Nkobi Holdings and that Thomson may have previously indicated to Nkobi that Nkobi could potentially participate in ADS. It was mentioned that Nkobi could dispute any black empowerment deal that did not include them and that this might have a negative effect on the future of ADS. It was then emphasised that *"Altech has never been part of any discussions with Nkobi nor with CNI. We were never present nor did we agree to any venture and that we take strong exception to any statements made or discussions held prior or after our JV"*.

In a fax from Moynot to Craig Venter, dated 25 March 1998, Moynot agreed that it was a mistake to mention CNI as the black empowerment company⁷⁷⁸.

We identified a fax dated 31 March 1998 from Gentgen to various Thomson representatives⁷⁷⁹. In the fax it is mentioned that the French Ambassador met with the late Modise, the then Minister of Defence, who said that:

The priorities of the tender were corvettes, helicopters, sub-marines and tanks;

⁷⁷⁶ Refer to 18 1075(80 02788 Box 88)

⁷⁷⁷ Refer to 18 1076-18 1077(Documentobtained from Altech)

⁷⁷⁸ Refer to 18 1078(109 0002026 Box Z189)

⁷⁷⁹ Refer to 18 1079-18 1080(7803045 p73, T0005)

The tenders had been delayed until after the summer; and

The French bid did not involve enough black business.

The bid referred to is the bid by the French in the wider Corvette programme.

Moynot informed Denis, De Bollardiere and Thetard regarding Ranque's visit on 26 and 27 April 1998⁷⁸⁰. Moynot indicated that *"The most important appointment will take place on Sunday the 26th, and I am still not sure at what time. The Taylor told me that N Mandela would be there, of course, and perhaps one or two Ministers. I am trying to convince him to get the Minister of Defence also. At the moment he does not seem to think that Thabo will be there. I shall therefore see if we could meet him. The problem is that priority goes to Mandela, and that as long as Yussuf cannot confirm the place and the time, it is a bit difficult to organize an appointment with Thabo. For JPP, I am trying to organize a meeting with J Zuma on the Monday. If I can't obtain anything via Shabir – who definitely have (sic) the sulks – I shall call him directly"*.

A fax from De Bollardiere to Moynot dated 27 March 1998 indicates that⁷⁸¹ *"We have just called Mr Reuel Khoza/CNI to alert him to the problems that S Shaikh(sic) might create for us"*.

It appears from this conversation that:

R Khoza confirms his ability to control the "negative lobbying" of S Shaikh (sic) with T Mbeki, J Zuma and the DoD". It therefore appears that Shaik was "lobbying" with Mbeki, Zuma and the Department of Defence or at least it was foreseen that Shaik would conduct such activity, as seen in the letters of 17 March 1998 and 25 March 1998 to Mbeki and Zuma. Khoza indicated that he could "control" this "lobbying". The "lobbying" was "negative" for Thomson because it meant that they possibly had an incorrect Black Economic Empowerment Partner in ADS and that this could be negative in terms of the award of future contracts;

"That he firmly associates such action on his part with CNI's shareholding in ADS being increased from 20 to 30%; the shareholding of TH.CSF and Altech would then drop from 50 to 35%". It therefore appears that Khoza indicated that he would control the situation and in return requested additional shares in ADS;

⁷⁸⁰ Refer to 18 1081-18 1082 (7811860 Box 264, T0002 p269)

⁷⁸¹ Refer to 18 1083-18 1084 (109 001981 Box Z189)

“That he would like to meet C Venter as soon as possible and advise Mr R Khoza, as well as ourselves?”

A note at the bottom of the fax reflects the following: “NB: The Tailor has been advised of the situation by R Khoza”. Khoza therefore informed the “tailor” who was the person close to Mandela.

The “...problems that S Shaikh might create for us” are assumed to stem from the statements Shaik made in his fax of 4 March 1998 to Perrier and the fax of 17 March 1998. In the fax of 4 March 1998 Shaik threatened to be obstructive with regards to the ADS deal and, in the fax of 17 March 1998, Shaik indicated that Zuma was concerned regarding the conduct of Thomson. Shaik threatened Thomson that he would not be co-operative regarding the ADS deal (assumed to be the award of the combat systems).

A fax from De Bollardiere to Thetard on 31 March 1998 indicates that meetings were planned between Ranque, Perrier, Bill Venter, “Head of State” (assumed to be Mandela) and with Zuma and Shaik in Durban⁷⁸². We could not confirm that such meetings took place.

On 1 April 1998 Moynot resigned as Executive Chairman of Thomson-CSF Holding (SA) and as Managing Director of Thomson-CSF. Thetard was appointed in Moynot’s place⁷⁸³.

Thetard’s diary indicates that a meeting with “le tailleur” was planned for 3 April 1998⁷⁸⁴. The French translated documents contain notes regarding a meeting that took place with the “tailleur” on 3 April 1998⁷⁸⁵. The notes are captioned “Business Card Deal” and that an official claim had to be raised. We are aware of a claim that was raised against the Department of Transport, by Prodiba, for foreign exchange losses suffered on the Supply and Delivery of the Drivers Licence contract. Thomson-CSF Holdings (SA) was a one third shareholder of Prodiba and it is expected that the issue would have been discussed and considered by them. This is not the subject matter relevant to this part of the report. However, the notes dealt further with the following relevant matters:

⁷⁸² Refer to 18 1085-18 1086(7811836 Box 264, T0002 p265)
⁷⁸³ Refer to 18 1087(7801327 Box 249)
⁷⁸⁴ Refer to 18 1088(7800356 Box 274)
⁷⁸⁵ Refer to 18 1089-18 1090(7800444 Box 274), T0005 p424)

The second heading in the translated note of 3 April 1998 is “Visit to the bank”. (This should be “Visit to Ranque”.) “The appointment with Mandela is confirmed for 26/4. An appointment with Thabo Mbeki as well as Jo Modise should be requested in writing”;

The third heading in the note is “*The Shabir Shaik deal*”. It is noted that the “*tailor*” was ensuring that that deal would grow. It is not clear what this deal was;

The fourth heading in the note is “*Unkind remarks to Thomson*”. The note indicates that the French Secret Service had given the information to the authorities that Thomson was dealing with the “*tailor*”; and

The fifth heading in the note is “*Corvette Deal*”. It is stated that the solution with regards to the Black Economic Empowerment of ADS was well appreciated by the government. It can be assumed that the reference to government was to the South African government, with Mandela as President. It is not clear what the solution was, because the problem regarding the Black Economic Empowerment Partner of ADS continued until at least July 1998. However, at this stage, CNI was considered by Thomson-CSF (France) to be appropriate direct Black Economic Empowerment Partner with Nkobi as a possible member partner.

A further note, reflecting the names, titles and cell phone numbers of various government and/or ANC officials followed the abovementioned notes.

On 6 April 1998 Thetard and Moynot signed a letter requesting Mbeki to meet Ranque and Perrier on 25 or 26 April 1998⁷⁸⁶. Again we have been unable to confirm that this meeting took place, however events that transpired and the continued efforts by Thomson to meet with Mbeki is an indication that such a meeting did not take place until late in 1998, after the adjudication of the preferred bidders for the wider Corvette programme.

A fax from Thetard to Perrier, Denis and De Bollardiere, dated 20 April 1998 included the travel programme of Ranque and Perrier⁷⁸⁷. The programme reflects the meetings on 25, 26 and 27 April 1998 with Khoza, Bill Venter, Mandela, Mbeki, the late Modise, Zuma and Shaik. Thetard’s diary reflects the note “*Ranque/Mandela*” on 26 April 1998⁷⁸⁸. Again we have been

⁷⁸⁶ Refer to 18 1091 (7811832 Box 264)

⁷⁸⁷ Refer to 18 1092-18 1096(7811842-4 Box 264, T0002 p266-7)

⁷⁸⁸ Refer to 18 1097(7800362 Box 274)

unable to confirm that such meetings took place. It appears from the documentation at our disposal that the planned meetings with Zuma and Mbeki did not take place at the time.

The GFC submitted their bid for the Corvette programme on 11 May 1998⁷⁸⁹. The closing date for the RFO's was 13 May 1998. The GFC was a consortium formed by Blohm + Voss, Howaldtswerke-Deutsche Werf and Thyssen Rheinstahl Technik. In the GFC's bid it was proposed that the various companies, including ADS, would form the "*South African Patrol Corvette Consortium (SAPCC)*" in order to act as "*Vessel Contractor*". The SAPCC therefore consisted of the GFC and ADS. It was furthermore mentioned that ADS would undertake the development, design and production of the "*Combat Suite*" and its integration in South Africa. ADS were therefore part of the GFC bid which eventually successful with the award of the contract in the wider Corvette programme.

A letter from Shaik to Perrier on 13 May 1998 regarding "*Your visit to South Africa, Meeting – Minister Jacob Zuma*" indicates that Perrier was ill and unable to travel to meet Zuma⁷⁹⁰. Shaik stated that "*I was today reminded by the Minister Jacob Zuma to request from you, your intended travel to South Africa as previously planned, to resolve a matter outstanding for sometime now*". This meeting eventually took place on 2 July 1998 in London, which will be discussed later in this report.

In a fax from De Bollardiere to Thetard on 14 May 1998, dated the following subjects were covered⁷⁹¹:

"SS – JPP could meet SS when he goes to Southern Africa (and also JZ); in Durban on the 29.6, can you ask them to make the appointments and let us know;

NOTA – Prior to this meeting, the pb related to NKOB's joining/admission into Prodiba should be solved, in order to avoid the discussions disrupted by "atmospherics". (One of our objectives is to get SS out of Holding, and the question could be tackled on that occasion;

RK – One could also use that opportunity to organise a meeting between JPP and Reuel K, to make things move forward on this side;

⁷⁸⁹ Refer to 18 1098-18 1101(P102-5)

⁷⁹⁰ Refer to 18 1102 (80 03028 Box 94)

⁷⁹¹ Refer to 18 1103-18 1105 (7811790 Box 264, T0002 p239)

Tailleur – The idea of receiving him in Paris within the next few days has been accepted. Can you confirm this to him and ask him what dates he has in mind? We shall see if it is possible to organize a meeting with president/chairman Ranque on that occasion”.

On 15 May 1998 De Bollardiere informed Thetard that, at a meeting with Shaik, Shaik had agreed to meet with Perrier in Durban on 29 June 1998 and that Shaik had contacted Zuma⁷⁹². It is evident that Thomson attempted to meet with Zuma and Mbeki on various occasions. Thomson required obtaining confirmation that the correct Black Empowerment Partner was selected for ADS. Hence their attempts to confirm and set up meetings with the parties mentioned.

Handwritten notes on the bottom of the fax indicate that the appointment with Shaik on 29 June 1998 had to be cancelled. This meeting took place subsequently on 2 July 1998 in London.

Thetard’s diary indicates that a meeting with Surtee was planned for 13 May 1998⁷⁹³. We have been unable to confirm that the planned meeting did take place.

18.4.9 Confirmation regarding the Black Economic Empowerment status of the Nkobi group

Thomson and Altech had signed the shareholders agreement in ADS. Negotiations had progressed to an advanced stage with CNI and the inclusion of Shaik, as an indirect shareholder in the capital of ADS, was by no means a certainty. Meanwhile, Thomson-CSF (France) had agreed with Altech to acquire the shareholding in ADS. This meant that Shaik was marginalised from the shareholding in ADS and consequently from sharing in the potential allocation of a portion of the Corvette programme. The allocation of the contract for the Combat Suites in the Corvette programme had not yet been confirmed but that Thomson had reason to believe it would occur based on reports received from various individuals. The chances of ADS being awarded the contract were also believed to depend on its choice of the correct Black Economic Empowerment Partner.

Similarly, Thomson had received reports from various individuals that the French bid for the wider Corvette programme was not acceptable, although this was not yet confirmed; it was regarded as almost certain. This was also confirmed by the fact that, despite the efforts of

⁷⁹² Refer to 18 1106-18 1107 (7801326 Box 229, T0005 p31)

⁷⁹³ Refer to 18 1108 (7800367 Box 274)

Thomson as part of the DCN bid (French) it became involved in the GFC bid (Germans). This would have ensured that Thomson at least shared in some way in the wider Corvette programme. The paragraphs that follow describe the period where Thomson continued to seek advice and confirmation that the correct Black Economic Empowerment partner had been selected. This included confirmation that Shaik and/or the Nkobi group would also suit that profile. The negotiations continued with CNI and, as in prior periods, various meetings were held and/or attempted to be held with influential individuals that Thomson considered being in the position to provide the confirmations required.

Thetard's diary indicates that a meeting with Surtee was planned for 22 May 1998⁷⁹⁴, which appears to have taken place on that day as on 22 May 1998 Thetard sent a fax to Denis and De Bollardiere informing them that he had a meeting with the "Tailor" on that day⁷⁹⁵. Thetard indicated that:

"The "Tailor" will be going to Marseilles on 12 June 1998 for the France/South Africa match and will make use of this opportunity to go to Paris to meet JP Perrier (date and time to be specified).

He strongly emphasised the fact that R Khoza and himself wanted to get back to the ADS capital as soon as possible. Therefore, as far as possible, he wants R Khoza to be present during his meeting with JP Perrier in Paris (he also wants me to be present).

He advises us to invite R Khoza (at our expense) to the France/South Africa match at Marseilles. (This visit would have taken place during the soccer world cup finals in France during 1998)

As far as the corvette tender is concerned, he has given me the opinion of the Minister of Defence, J Modise, on the tenders that they have received:

The Germans are technically good, have a good deal in terms of offsets and are proposing a reasonable price;

The Spanish are the cheapest, but their offset deal is not terribly good;

⁷⁹⁴ Refer to 18 1109(7800370 Box 274)

⁷⁹⁵ Refer to 18 1110-18 1113(7808998 Box 228)

The French are technically good, are offering a good deal in terms of offsets, but are the most expensive.

They will have to choose one of these three tenders:

The official announcement of the choice would be made at the end of July or beginning August 1998.

“The Taylor” will inform us of the best strategy to use for Thomson as soon as he has a better idea of the respective chances of the various proposals that are being considered.

For the time being he is asking us not to undertake any particular lobbying efforts at the highest level”.

The above note on the meeting that took place between Surtee and Thetard confirmed the fact that Surtee and Khoza were together and that they were keen to be part of the capital in ADS. Surtee provided, as in previous meetings some insights on the allocation that would have taken place in the wider Corvette programme.

The process of negotiations with CNI continued as is evidenced by the fax that we identified from Gide to various Thomson officials dated 3 June 1998 regarding “ADS – Voting agreement”⁷⁹⁶. It was stated in the fax that “...the negotiation for the inclusion of CNI in the capital of the JV should soon be occurring, because of the intervention in the closing of the agreement with ADS”. We were not able to locate such an agreement however. The effect of such an agreement has already been dealt with in this report. We could not establish who intervened or the nature of the intervention that resulted in the closing of the agreement with ADS. It is assumed that it was the intervention that which caused the continuation for the inclusion of CNI in the capital of the JV (ADS).

Gide’s fax dated 3 June 1998 furthermore indicates the following:

“In this context and in a preliminary way, it is foreseen to conclude a secret voting agreement between TH and CNI having the objective of aligning the vote of CNI with TH’s vote (on agreeing that CNI would maintain its liberty on a list of decisions affecting its heritage)”;

⁷⁹⁶

Refer to 18 1114-18 1118 (7801324-5 Box 229, T0005 p449-451)

CNI demanded indemnity from Thomson in case the price of their shares was undervalued due to the restrictions resulting from the voting agreement;

If the demand of CNI could not be resolved, “...*intervention by a higher authority seems necessary, in order to obtain satisfaction with the situation*”;

“...*in its relations with CNI, TH should remain very careful*”.

At this stage Thomson-CSF (France) had 50% plus 1 share in ADS and Altech had 50% less 1 share in ADS, and in terms of paragraph 2.3 of the Shareholders Agreement between ADS, Thomson-CSF (France) and Altech both intended to sell 10% of their shares to a black empowerment company⁷⁹⁷.

A written note, the author of which we could not establish, indicates that on 9 June 1998 the following information was obtained from the “*Ministry*” in Paris⁷⁹⁸:

“*Mr Thabo Mbeki thought to be ill disposed towards Thomson-CSF: reasons:*

Fight with S Shaik/Zuma on the inclusion of new partners in ADS;

Thabo Mbeki is not friendly with the tailor (tailor = Mandela)

JPP must meet Thabo Mbeki in person (without any intermediaries) to find out who would be a good partner for TH-CSF”.

At this stage the only partners or potential partners in ADS were Altech, which was effectively a 50% shareholder, and Thomson-CSF (France), the other shareholder. CNI was a party that was considered to be included as a Black Economic Empowerment Partner. Shaik and/or the Nkobi group held shares in Thomson-CSF Holding (SA) and Thomson-CSF. In addition, Shaik was strenuously attempting to persuade Thomson to include Nkobi.

The fight with Zuma and Shaik (**if the information is accurate**) that is referred to, can refer to a fight as to whether or not CNI should be the partner or that another partner had been chosen by Mbeki, with whom Shaik and Zuma did not agree.

⁷⁹⁷ Refer to 18 1119(7500074251 Box 46)

⁷⁹⁸ Refer to 18 1120-18 1121 (7804041 p133, T0005)

The formal discussion that the acquisition of the shareholding in ADS had occurred through Thomson-CSF (France) took place at a Thomson-CSF Holding (SA) and Thomson-CSF shareholders' and directors' meeting on 9 June 1998, when Thetard mentioned that Thomson-CSF (France) had taken a 50% interest in ADS and that Altech held the other 50%⁷⁹⁹. Thetard indicated that he did not know the reason why it had been decided that Thomson-CSF (France) should hold these shares rather than Thomson-CSF Holding (SA). Shaik expressed his great dissatisfaction and surprise with this and stated that being excluded from the ADS acquisition had prejudiced the shareholders of Thomson-CSF. Shaik indicated that he understood that the South African Thomson-CSF companies were formed for the acquisition of South African defence companies such as Altech. Shaik then indicated "...*Thus the local company is a shell and questions must arise*". Shaik also wanted to know how the position could change without a resolution of the directors of Thomson-CSF and how Thomson-CSF (France) "...*intend addressing the loss of Nkobi's rights in this business*". Shaik indicated that "*Not only is this a legal issue but also an issue of good faith because of his discussion with the members and principals in France*". Shaik concluded by stating that "*If the matter is not satisfactorily resolved Nkobi Investments may have to resort to an interdict to restore its rights and those of the South African Thomson-CSF companies*". Events that transpired indicate that Shaik did not revert to an interdict or legal action as threatened in an effort to rescue himself and Nkobi from this marginalised position.

Thetard's diary indicates that he had planned to meet "*Reuel Khoza*" on 10 June 1998 and on 12 June 1998⁸⁰⁰.

Thetard again requested Mbeki, on 12 June 1998, to meet Perrier on 26, 27 or 28 June 1998⁸⁰¹. Thetard mentioned that Perrier was going to accompany President Chirac on his visit to South Africa.

On the same date Thetard sent a letter to the French Ambassador in Pretoria confirming that Perrier was part of the delegation accompanying President Chirac during his visit to South

⁷⁹⁹ Refer to 18 1122-18 1126 (DJ 000055-9 Box 37)

⁸⁰⁰ Refer to 18 1127-18 1128(7800377-8(Box 274)

⁸⁰¹ Refer to 18 1129A(7811788 Box 264)

Africa⁸⁰². Thetard mentioned that Thomson-CSF was “...heavily involved in the French tender for equipment for modernizing the South African armed forces...On the occasion of his visit, Mr Jean-Paul Perrier would like to meet the Deputy President, Thabo Mbeki. Thank you in anticipation for your assistance in organising this meeting”. It is thus clear that Thomson also resorted to official channels in their efforts to meet with Mbeki. This is furthermore confirmation that even then Mbeki had not met with Thomson despite various attempts on the part of Thomson to do so.

In a fax dated 19 June 1998 from De Bollardiere to Thetard and Denis regarding Perrier’s visit to South Africa⁸⁰³, De Bollardiere requested Thetard that “*The appointment we asked you to make for JP Perrier with TM via RK, must take place on Saturday the 27th or Sunday the 28th of June, in Pretoria if possible, or even in Cape Town*”. A handwritten note on the fax indicates “*Phone to RK on the 19/6/98. R Khoza must “press” for an appointment with T Mbeki. He is keeping us informed*”.

The minutes of an ADS board meeting on 25 June 1998 indicate *inter alia* the following⁸⁰⁴:

The meeting was attended by *inter alia*:

Craig Venter (Chairman);

Moynot; and

Thetard.

That the company’s name be changed to African Defence Systems;

Below the heading, “*Black empowerment shareholding*”, the following was noted:

“*Mr Thetard advised that Thomson was attending to this matter and noted that the black empowerment company associated with ADS needed to be politically correct and the shareholders should be cautious as to which partner was chosen*”. (A handwritten note indicates that the black empowerment company needed to be “*technically, financially and politically correct*”.) *The Chairman* (who was Craig Venter at the time) *noted that both shareholders were responsible for locating a black empowerment partner*

⁸⁰² Refer to 18 1129B-18 1130(7811789 Box 264)

⁸⁰³ Refer to 18 1131-18 1132(7811785-6 Box 264p237, T0002)

⁸⁰⁴ Refer to 18 1133-18 1138(109 001902-7 Box Z189)

and felt that there should be a joint effort in this regard. Mr Thetard advised that there should be a clear understanding as to how the shareholders would proceed and in response thereto, the Chairman suggested that proposals be prepared by each shareholder in respect of correct and prospective partners for consideration and approval..” and then

“Mr Moynot advised that a black empowerment partner was required before the adjudication of the Corvette Project. This was concurred by all.

A discussion in respect of any prior arrangements between Thomson-CSF Southern Africa and Nkobe (sic) and CNI ensued and it was noted that ADS could not afford to be affected by these arrangements. Mr Thetard reported that a high level meeting had been scheduled with Nkobe (sic) in this regard and the Chairman requested that he be advised of the outcome of that meeting and be updated on further developments in regard to CNI”.

The “high level meeting...scheduled with Nkobe (sic)...” mentioned above can only refer to the planned meeting between Perrier, Shaik and Zuma in London that had been scheduled for 29 June 1998 and was eventually moved to 2 July 1998 in London.

Below the heading “Major projects” the following was, *inter alia*, noted:

“It was noted that the Corvette project would proceed. Recommendations were currently with the Minister for submission to Cabinet in July 1998, thereafter, the preferred shipyard would be known so that ADS together with Thomson could pursue the greatest possible slice of the combat system versus the combat suite.

Mr Moynot noted that ADS would be forming a consortium with Reunert, Denel, and Grintek for South Africa’s contribution to the combat suite and ADS would be the leader of this consortium. Mr Trollope suggested utilising a black empowerment partner at the consortium level, which would have a 15% advantage of adjudication of the business...” and furthermore

“It was noted that submarines may also be included in the packages and Mr Moynot assured the directors that, as discussed with Chippy Shaik, ADS would participate in the combat suite”.

Moynot was therefore able to assure the directors that ADS would participate in the combat suite, based on his discussions with Chippy Shaik.

The next ADS board meeting was scheduled for 6 October 1998⁸⁰⁵.

The aforementioned meeting left Thomson with at least two meetings to be held with regard to the then predicament of selecting the correct Black Economic Empowerment Partner. A meeting with Mbeki was still regarded as part of the strategy to be followed, hence another meeting and a meeting with Shaik and Zuma was planned in London.

A fax to Thetard on 25 June 1998, “*confirm the appointment for Saturday, 27 June 1998 at 15h00 at Yusuf’s home in Houghton*”. It is possible that the fax referred to the home of Yussuf Surtee, who is the “*tailor*” and also represented and/or potentially partnered CNI.

The itinerary of Perrier’s visit to Southern Africa indicates that he planned to meet Mbeki on 27 June 1998⁸⁰⁶. We were not able to confirm that this meeting took place. The events that transpired indicate that this meeting, as with previous planned meetings, did not take place.

Handwritten notes on Ditz notepaper reflects the date “*2 July*” and “*CSF JPP/JZ/SS London*”. This is the second of the planned meetings following the Directors’ meeting of ADS on 25 June 1998. An Nkobi Holdings fax, dated 26 June 1998⁸⁰⁷, indicates that the “*venue for the meeting on 2 July 98 at 9:00 am will be at the Athenaeum Hotel Apartments, 116 Piccadilly London*”. Zuma and Shaik attended a meeting with Perrier in London. At that stage, Zuma was the Minister of Economic Affairs and Tourism for KwaZulu-Natal and the Deputy President of the ANC. This meeting effectively marked the “*beginning of the end*” of the marginalised period that Shaik and or the Nkobi group had found itself in. The end result was that the shareholding was rectified by transferring the shareholding in ADS to Thomson-CSF in June 1999. Payments from Shaik and/or the Nkobi group to and of behalf of Zuma totalled R348 699.89 at this stage.

18.4.10 The confirmation of the partners in ADS and the award of the Combat Suite

Amidst the efforts of ADS to find confirmation as to the correctness of the selection of Black Economic Empowerment Partners, the formal process for the adjudication of the wider Corvette programme continued.

This process revolved around the selection and confirmation of the preferred supplier. It had been established, with reasonable assurance, that no matter who was be awarded the wider

⁸⁰⁵ Refer to 18 1139(109 001908 Box Z189)

⁸⁰⁶ Refer to 18 1140-18 1153(7804042-8 Box 263 p363, T0005)

⁸⁰⁷ Refer to 18 1154(7811750 Box 264)

Corvette programme, ADS would be the selected provider of the Combat Suite and that the selected shipyard in the wider Corvette programme would be required to accept ADS as its sub-contractor.

Up to this point Thomson had had to rely on information provided by indirect sources such as Honiball (a retired Commodore of the South African Navy (who was eventually classified as a *Persona Non Grata*), Surtee (who was not directly involved in the formal process and associated with CNI and allegedly with Mandela, who was not perceived to be closely associated with the Arms Deal) and the French Authorities, who allegedly held meetings with officials. There remained a degree of uncertainty in this regard as will be borne out in the facts that follow. The meeting of 2 July 1998 with Zuma however, marked a period when the information regarding the formal process that was followed in the adjudication process of the wider Corvette programme, ostensibly came more from Chippy Shaik, who was chairman of SOFCOM and who had an intimate knowledge of the process. It is assumed that the direct contact with Chippy Shaik was triggered by the 2 July 1998 meeting.

The approach of Thomson towards Shaik and/or the Nkobi group changed during the period subsequent to the meeting that was held on 2 July 1998. During the period leading up to that date, Shaik and/or the Nkobi group had been marginalised from the capital of ADS and at the same time negotiations were still ongoing with CNI (Khoza) as a direct Black Economic Empowerment partner.

The period covered by the next section in this report deals with the process admitting Shaik and/or the Nkobi group into the capital (indirectly) of ADS, as well as the decision regarding the selection of the direct entry of a Black Economic Empowerment partner.

SOFCOM held a meeting on 1 and 2 July 1998⁸⁰⁸. The notes of the meeting indicate at paragraph 26 that, “*The programme cost basis for the evaluation was changed to exclude programme management estimates and to include the combat suite without penalising offerors*”.

On 3 July 1998 Thetard wrote a letter to Chippy Shaik requesting a meeting with him to discuss the activities of the Thomson-CSF group in South Africa⁸⁰⁹.

⁸⁰⁸ Refer to 18 1155-18 1161(Box Z13, Z20-25)

⁸⁰⁹ Refer to 18 1162 (7805374 Box 233)

Thetard's diary indicates that a meeting with "*C Shaikh*" (sic) was planned for 9 July 1998⁸¹⁰. On 9 July 1998 De Bollardiere informed Bussiere and Denis that he and Thetard had had "*....long talks (more than 2 hours) with Mr Chippy Shaikh (sic); these talks were important taking into account what was discussed and the interlocutor's position (Chief of Acquisitions)*". De Bollardiere listed the points that were discussed. These were:

"Mr Shaikh (sic) was aware of our London talks and spoke about them without any restraint. More particularly, he has spontaneously mentioned the name of the "Tailleur" to show us that he had a very good idea about our contacts here.

His position is both simple and clear: if the way we stand with partners and various friends suit him, he will make things easier and, should the opposite occur, he will make them difficult". Chippy Shaik therefore created the impression that, if Thomson chose the correct partners, he could make "*things easier*". At this stage Chippy Shaik was the Secretary - Chief of Acquisitions for the Department of Defence and acted as co-chairman of SOFCOM.

"He is warning us regarding an association with the "Tailleur" who had no political and/or historical legitimacy and whose only connection to N Mandela is insufficient to relay our action here. He suggests to us to think about that would happen in one year (after the elections) and asks us to imagine the weakness of our support". Chippy Shaik therefore indicated that Thomson's support from Mandela was insufficient because of the fact that Mandela would have been replaced by Mbeki the following year and that Surtee would have, as a consequence, no political legitimacy.

*"(Note: he has stated that J Zuma would be a member of the future cabinet). The idea to meet T Mbeki to validate our options (ADS Partner) seems very pertinent to him"*and

"The political timing of the forthcoming year (Mandela's departure, new Parliament, new Ministerial Cabinet) must be compared to the political timing mentioned by Mr Shaikh (sic) as far as the "Defence package deal" is concerned (and therefore the corvettes)".

Chippy Shaik advised Thomson to meet with Mbeki to ensure that Thomson selected the correct Black Economic Empowerment partner in ADS. Considering the remarks made as regards Surtee it is assumed that the advice as regards the selection of the correct Black Empowerment

⁸¹⁰ Refer to 18 1163 (7800386 Box 274)

partner was directed towards the inclusion or exclusion of CNI as a direct partner in ADS and the suitability of Nkobi as indirect partner. This is also reflected in the events that took place subsequent to the meeting with Chippy Shaik. At that stage Thomson had allegedly already met with Zuma and Shaik. It was Shaik's choice to participate indirectly in the capital he considered it "*politically incorrect*" to participate directly. It remained therefore to establish and decide on whether CNI would be the most appropriate partner for selection as a direct partner in ADS and confirmation regarding Nkobi's position. The "*political timing*" of the "*Defence package deal*" referred to by Chippy Shaik, were the various stages of the formal process that were due to take place, namely:

Preferred bidders selected	–	18 November 1998;
Negotiation process	–	Up to December 1999; and
Contract signed	–	3 December 1999.

The negotiation process and final decisions were to be taken when Mandela would no longer be the President. It would therefore appear that Chippy Shaik had recommended that Thomson to meet with Mbeki, regarding the direct correct Black Economic Empowerment partner of ADS and confirmation regarding Nkobi as indirect partner, as Mbeki was expected to be President after Mandela.

De Bollardiere continued by stating *inter alia* that Chippy Shaik had informed them that:

*"...the decision, taken previously, that ADS be the "nominated combat suite supplier", has been cancelled and, as a result, the local system combat suite supplier has not been nominated"*and

*"...the recommendation regarding the construction site (shipyard) will be the determining factor as far as choice is concerned and that he (C Shaikh) will have to be convinced that the chosen combat suite supplier surely fits the required profile"*and

*"...he does not discard the possibility to proceed with the granting of the contract through International Invitations to Tender"*and

“...finally, he is very keen to meet, taken into account the uncertainties mentioned above, one of our specialists for in-depth workshops to guide him, state our position and outline our proposals”.

De Bollardiere concluded that *“...We think that NCS France must speedily contact Mr C Shaikh in consultation with the Delegation”.*

It is evident from the above that Chippy Shaik had threatened Thomson with regards to the selection of the Combat Suite supplier. Based on the information at our disposal, the proposed supplier of the Combat Suite, ADS, was never in fact cancelled as alleged by Chippy Shaik. It therefore appears that Chippy Shaik had mentioned the above to De Bollardiere in order to influence Thomson. This is supported by the fact that SOFCOM had already had the meeting and the recommendations as regards the shipyard for the wider Corvette programme were made one day before the meeting with Chippy Shaik. The reference to the uncertainty regarding the chosen shipyard is also not true. The recommendations of the AASB were made on 8 July 1998⁸¹¹ and those of the AAC on 13 July 1998⁸¹².

A hand written note from Thomson (the author being unknown), dated 17 July 1998, refers to Zuma as *“...the rising man...”* and that *“...one must solve the Zuma pb”*⁸¹³. It also indicates that Perrier did not meet with Chippy Shaik and that *“...one must convince the sites/yards that a consortium is the solution”.*

We identified payments to and on behalf of Zuma by the Nkobi Group, Shaik and entities associated with Nkobi group, amounting to R355 699.89 at that point. It is also evident from the analysis of the personal financial position of Zuma that he was experiencing financial difficulties with the commercial banks and third party financiers⁸¹⁴. Details hereof are set out elsewhere in the report.

A handwritten note, dated 23 July 1998, indicates that the problem regarding the Black Economic Empowerment partner of ADS had still not been settled⁸¹⁵. It was noted that “C.S”(Chippy Shaik) had spoken to Zuma and that Zuma had spoken to “TM” (assumed to be

⁸¹¹ Refer to 18 1164-18 1169(Box Z26-31)

⁸¹² Refer to 18 1170-18 1171 (Box Z34-41)

⁸¹³ Refer to 18 1178-18 1179(7808122p346, T0003)

⁸¹⁴ Refer paragraph 12

⁸¹⁵ Refer to 18 1180-18 1181(7804050 p142, T0005)

Mbeki) and Mandela. The note continued: “*TM has never said that they had to go with someone else. Mandela does not remember having said that CS is not good. The French are trying to get involved in local political problems – TCSF must think things out properly before doing anything. It is TH-CSF that made the mess*”. The note further reflects that “*TM is not happy: this is the reason why TM refused to see Perrier when he was in Paris*”. Again as in previous cases, it appears that despite numerous efforts in the past, Thomson-CSF was not able to meet with Mbeki. It is also noted that the “*trustees*” of the trust “*which is funding Nkobi*” were Zuma and the late Modise and that “*Mandela’s attack was also aimed at them*”.

The note further reflects that “*At no time has CS recommended his brother. The problem is a high level political problem, and it has to be resolved*”. It appears that Chippy Shaik indicated that he had never recommended his brother. He was however, aware of the meeting that took place in London on 2 July 1998 and even confirmed Zuma’s status as an influential person during the meeting that took place on 9 July 1998 with Thetard. A further note was made that a final official decision had not yet been taken and, if “*TH*” (assumed to be Thomson-CSF) could give its “*guarantee*”, it would make a significant difference⁸¹⁶. It is not clear what this “*guarantee*” referred to. However, considering the context of the note and its timing, it is assumed that the guarantee that is referred to was in relation to the selection and confirmation of the correct Black Economic Empowerment Partner(s). The note ends off with “*FBS (Futuristic Business Solutions) Tsepo Maloi boss – is associated with the consortium. Former member of the ANC’s armed wing – very good pals with C Shaik. Purpose: Logistics*”. This was the first time FBS was mentioned as a possible partner in ADS.

A memorandum of understanding for co-operation on the wider Corvette programme was signed between Log-Tek and FBS on 20 March 1998⁸¹⁷. By April 1998 Log-Tek was involved in the SA Naval Patrol Corvette project as the Logistic System Integration Contractor⁸¹⁸. FBS was “*associated with the consortium*” in that a co-operation agreement between Applied Logistic Engineering (Pty) Limited (ALE), a joint venture between FBS and Log-Tek, and Blohm + Voss, acting on behalf of the GFC, was signed on 6 May 1998⁸¹⁹. At this stage, the GFC had been short listed as a preferred supplier. It is evident from the note that Chippy Shaik

⁸¹⁶ Refer to 18 1182-18 1183(7804051 p143, T0005)

⁸¹⁷ Refer to 18 1184(0000073960 Box 70)

⁸¹⁸ Refer to 18 1185(74105 Box 70)

⁸¹⁹ Refer to 18 1186-18 1189(74029-32 Box 70)

had a good relationship with Moloi. FBS eventually became the black empowerment partner with a direct shareholding in ADS of 20% on 22 June 1999 in the place of CNI⁸²⁰.

The introduction of FBS as a possible correct Black Economic Empowerment partner (directly in ADS), as opposed to the indirect shareholding through Thomson-CSF by the Nkobi group, began the featuring of another individual by the name of Kõgl. Indications are that the person referred to be Jurgen Kõgl who was also be referred to in the context of the detailed analysis of assets and liabilities that we were required to perform.

A written note, dated 29 July 1998, suggests that Horwitz, the attorney for Thomson-CSF, was going to obtain some information about “*Koegl*” (assumed to be Kõgl)⁸²¹. Thetard’s diary indicates that a meeting with Horwitz was planned for 29 July 1998⁸²².

Another note, on the same page as the previous note, styled “*P Moynot – 31.7.98*”, reflects the following:

“ARMSCOR would have (or seemingly) recommended German or Spanish yards/sites. ADS would be recommended for Combat (suites) (with South African Consortium)

It seems that Shaik called him, to ask for the participation in ADS to be carried by Thomson-CSF (Pty) (He has 30% in Pty)”.

A fax dated 12 August 1998 reflects that Thetard had informed Denis and De Bollardiere of a meeting held with Kasrils on 5 August 1998⁸²³. Thetard’s diary reflects meetings with Kasrils on 4 and 5 August 1998⁸²⁴. The report on the meeting indicates that Moynot had also been present at this meeting which lasted for “...*nearly an hour*”. The following points were, *inter alia*, mentioned in the report:

“In the first place, we reminded the Minister of the interest held by Thomson-CSF in ADS

⁸²⁰ Refer to 18 1190-18 1196(200_991_C p7-13 Box 173)

⁸²¹ Refer to 18 1197-18 1198(7808123 T0003)

⁸²² Refer to 18 1199 (7800392 Box 274)

⁸²³ Refer to 18 1200-18 1201 (7808987 Box 228)

⁸²⁴ Refer to 18 1202 (7800394 Box 274)

Mr Kasrils confirmed to us that the South African government is giving priority to the “Naval” part of the Arms Package, and also informed to us that this same government is very interested in the “sub-marine” project, in particular because of the offset programme linked to it.

The Minister confided to us that he did not believe in an international call for tenders for the “combat suites” part of the Corvettes...

On 13 August 1998, Thetard had another meeting with Surtee planned⁸²⁵.

Meanwhile, as part of the formal process into the adjudication of the contracts in the wider Corvette programme, the AAC approved the recommendations for the preferred bidders on 21 August 1998⁸²⁶. These recommendations were supported by the members present at the Ministerial briefing that was held on 31 August 1998 and chaired by Mbeki. The GFC had been recommended for final consideration as preferred bidder for the Corvette programme. The minutes of this briefing were signed *inter alia* by Chippy Shaik, Kasrils and the late Modise.

In a fax dated 4 September 1998 from De Bollardiere to Thetard regarding their telephone conversation on 3 September 1998⁸²⁷, De Bollardiere requested Thetard to “...*please keep us informed of the result of any meetings that they have had as soon as possible with the following:*

Koegl

Reuel Khoza

FBS

Yussuf

And A de Waubert on his activity in the area”.

A footnote at the bottom of the page requested Thetard to confirm their meeting with “*Yussuf*” on 9 September 1998. On the same day Thetard informed De Bollardiere that “...*the meeting with the “Taylor” is fixed for 8 September 1998 in London*”⁸²⁸. Thetard’s diary indicates that a meeting with Moloi of FBS was planned for 8 September 1998⁸²⁹. Thetard sent a fax to De

⁸²⁵ Refer to 18 1203 (7800397 Box 274)

⁸²⁶ Refer to 18 1204-18 1207(Box Z43-6, specifically Z44)

⁸²⁷ Refer to 18 1208-18 1209(7804791 Box 218)

⁸²⁸ Refer to 18 1210-18 1211(7804790 Box 218)

⁸²⁹ Refer to 18 1212(7800406 Box 274)

Bollardiere on 7 September 1998 to inform him that “YS” (assumed to be Yussuf Surtee) wanted De Bollardiere to phone him in order to arrange a time and place for the meeting the following day (8 September 1998) in London⁸³⁰.

Thetard also sent a fax to Bussiere, Grimaud and Denis on 7 September 1998 regarding a document he had obtained from “C.S” (assumed to be Chippy Shaik) that day⁸³¹. It appears that the document had been obtained in response to a fax from Bussiere dated 31 August 1998. The two page document that followed this fax appears to be a report from “Chris” to Bussiere regarding “*First Feedback on your inquiry*”. It is possible that this report came from Chris Bennet⁸³². The report indicated that the writer “...had discussions with the people at Armscor and the comments they made are given below...” and

“The first person I visited was Pierre Meiring. He showed me three different ADS proposals for the combat suite architecture...Pierre told me that if they can’t come to an agreement then they will be forced to look wider. From this I got the feeling that ADS has to go into an (sic) discussion with Armscor and the Navy to come up with an acceptable solution to all parties. If not they will have to go international...” and

“...they were worried that the ADS proposal was scrapping all the work that the other suppliers have been doing. As a matter of fact I believe that a lot of the noise comes from the industry who feels that Thomson is encroaching on their business...” and

“What fuelled their worries even more is the fact that Pierre Moynot told certain people that the selected missile was IR and would not do the job...I had a similar discussion with Frits Nortje...” and

“...he is the Armscor combat suite project manager and would certainly have impact on discussions...Just a bit of advice, get Frits on ADS’s side. He is influential...”

It therefore appears that there were concerns in Armscor regarding ADS’s technology and proposal for the Combat Suite and that the concerns were that decisions taken were at the cost of other potential suppliers of the Combat Suite in the wider Corvette programme.

⁸³⁰ Refer to 18 1213-18 1214(7804788 Box 218 T0002 p93)

⁸³¹ Refer to 18 1215- 18 1218 (7808983 -5 Box 228)

⁸³² Refer to (29 January 1997 in this part)

A fax dated 9 September 1998 from De Bollardiere to Thetard and Denis indicates that De Bollardiere and Denis had had a meeting with “YS” (assumed to be Yussuf Surtee)⁸³³. It appears that this was the meeting on 8 September 1998, as referred to in the faxes on 4 and 7 September 1998. It was noted that a “...usual discussion on the package deal (DCN not in a good position...)” was discussed. It was further noted that “YS has promised us a meeting within 2 weeks with TM(assumed to be Mbeki), who should be able to enlighten us on our problem of black empowerment”.

On 30 September 1998 Thetard sent a fax, consisting of 10 pages, to Denis and De Bollardiere⁸³⁴. The fax consisted of a fax from Danie van der Walt of ADS to Thomson-CSF on 29 September 1998, regarding the “Corvette project”. This fax consisted of a “Competitive Analysis” and “background information”. The competitive analysis is dated 2 September 1998 and reflects *inter alia* the following:

“Key elements

Programme: The South African Navy has put out an RFO for 4 Patrol Corvettes. ADS has been nominated as the preferred Combat Systems Integrator and Main Contractor, as well as being the preferred supplier of several of the major subsystems.

Amount: The target price in the Vessel RFO documents for the Combat Suite was R1 470 million.

Competition: BAeSEMA, STN-Atlas, DASA CelsiusTech and HAS are known to be talking to the SA Navy and the shipyards.

Stakes: ADS is currently recognised as the SA Navy’s preferred Combat Systems Integrator. Winning this programme will entrench this position. Losing it would be catastrophic.

Suggested approach: Form a relationship with the major local Defence companies to neutralise their ability to be the local partner of the other foreign competitors. Together

⁸³³ Refer to 18 1219-18 1220(7804786 (T0002 p92))
⁸³⁴ Refer to 18 1221-18 1231(7808970-80 Box 228)

with these companies, submit an unsolicited bid, including performance guarantees, to reassure the shipyards.

Decision criteria (Political support is reflected at 20%)

Situation – Actions

Situation: The formal RFO documents identify ADS as the nominated supplier of the Combat Suite and several of the subsystems. They also indicate that there will be one Vessel level contract for the Corvettes with the contracting body being some form of relationship between the Preferred Shipyard and the Combat Suite Contractor.

Actions: Conclude the “consortium agreement” with local industry. Complete the Combat suite design; Develop a Programme model in conjunction with Thomson NCS and local industry. Prepare an unsolicited offer based on the above actions and submit it to the SA Navy, Armscor and the Shipyards.

Decision making organisation

Armscor and Navy Team consults

Chippy Shaikh(sic) makes the recommendation to the South African Government Cabinet

The South African Government Cabinet decides

To purchase Corvettes;

On successful country;

On successful shipyard;

Proposed contracting model

The vessel contractor would be one of the following shipyards together with ADS:

Blohm & Voss – Germany

Bazan – Spain

GEC-Marine – UK

DCN – France”

The fax continues with a document styled “*South Africa Corvette Programme*”. The document explains the decision-making process and Chippy Shaik as being the person making recommendations to Cabinet, in consultation with Armscor and the SA Navy. The document also reflects that “*As far as the Combat Suite is concerned, the SA Navy and Armscor Programme team is still maintaining that they have imposed the local combat suite and that the preferred shipyard will be constrained to use it*”. This is in contrast to the information Chippy Shaik had given Thomson at that stage when FBS had been approached.

Paragraph 4.2 of the document indicates again that the RFO documents refer to ADS as the “*nominated*” Combat Suite integrator and potential Vessel Contracting partner and because of this, ADS had begun a dialogue with all the shipyards. It is stated that “*...We have made progress with Blohm & Voss and Bazan in determining possible contracting models and workshare arrangements. Our biggest risk is to convince the shipyards that we have the capacity and resources to execute the Combat Suite supply and that we do not represent a risk to the overall Vessel programme.*

In this regard, the presence of Thomson as an “underwriter” is a big advantage. However, we need to handle this factor with sensitivity, because the bigger the perceived role of Thomson, the more difficult it is to defend the principle of a “local” Combat Suite.

As an aid to pursuing both legs of this plan, we have recently signed a MOU with the companies listed in paragraph 2 (Reutech Defence Industries, Grintek Group and Denel Group), plus a local Black empowerment company, Futuristic Business Solutions. The objectives of this MOU are for the companies to work together to prepare an unsolicited proposal, to use as the basis for the negotiations with the preferred shipyard”.

Thetard’s diary indicates that separate meetings with the late Modise and Surtee were planned for 1 October 1998⁸³⁵. We were unable to determine whether the meetings took place or what the outcomes were.

At an ADS board meeting on 6 October 1998 it was decided that Altech would draft a MOU (Memorandum of Understanding) between Altech, Thomson-CSF (France) and FBS⁸³⁶. The inclusion of Thomson-CSF (France) as the contracting party is explained by the fact that Shaik

⁸³⁵ Refer to 18 1232 (7800412 Box 274)

⁸³⁶ Refer to 18 1233 (7808890 Box 230)

was still excluded from the effective shareholding in ADS (indirect), although indications are that Thomson had agreed in principle to restate their position.

A fax from Thetard dated 20 October 1998 to various Thomson officials indicates that a draft NDA (Non-Disclosure Agreement) and a draft MOU regarding the shareholding of FBS in ADS were sent to the various Thomson officials⁸³⁷. The agreements indicate that Altech, Thomson-CSF (France) and ADS intended to enter into negotiations regarding a possible sale by Altech and Thomson to FBS of a 20% equity stake in ADS⁸³⁸. Annexure A to the MOU details FBS's contribution to ADS, which included *inter alia* "...Networking at all levels of Government"⁸³⁹.

Another meeting with "*le Tailleur*" was planned for 22 October 1998⁸⁴⁰. A meeting with Chippy Shaik on 2 November 1998 and a meeting with "*le Tailleur*" on 5 November 1998 are also reflected in Thetard's diary⁸⁴¹. We were unable to confirm whether the meetings took place and if so, what the outcomes were. However, considering the context and timing of the planned meetings, it is assumed that the meetings, or would deal with, the formalisation of the inclusion of the correct Black Empowerment Partner(s) in ADS.

On 9 November 1998 Thetard requested Shaik and Zuma (*via* Shaik) to grant Perrier a meeting during the period 17 to 19 November 1998⁸⁴². Shaik replied on the same date acknowledging Thetard's request and stated that he would check the dates with Zuma and revert to Thetard⁸⁴³.

A fax from Gide to Perrier, and copied *inter alia* to Moynot and Thetard, dated 10 November 1998 regarding the "*ADS Draft financial package*" indicates that the black empowerment partners were FBS and Nkobi⁸⁴⁴. It was mentioned that FBS would have a 15% shareholding in ADS and Nkobi (Investments) would have 30% shareholding in Thomson-CSF, which held 50% of the shares in ADS. Nkobi Investments therefore would have had 15% indirect shareholding in ADS. It was proposed to dilute Nkobi Investments' shareholding in Thomson-CSF in order to prevent a blocking minority vote. In exchange, a "*concession*" would be made at the Thomson-CSF Holding (SA) level. Attention was drawn to "...the future risk (not yet

⁸³⁷ Refer to 18 1234 (7808906 Box 230 T0003 p140)

⁸³⁸ Refer to 18 1236-18 1246 (7808907-17 Box 230)

⁸³⁹ Refer to 18 1247(7808918 Box 230)

⁸⁴⁰ Refer to 18 1248 (7800418 Box 274)

⁸⁴¹ Refer to 18 1249-18 1251 (7800421-2 Box 274)

⁸⁴² Refer to 18 1251 (P64)

⁸⁴³ Refer to 18 1252(P65)

⁸⁴⁴ Refer to 18 1253-18 1257(7808812-4 (Box 230, T0003 p143-4))

established) of a CNI legal step on negotiations “in bad faith”. Similarly, Nkobi has reserved its rights with regard to the non-utilisation of Thomson-CSF (Pty) Ltd for the purchase of ADS at the time of the Thomson-CSF (Pty) Ltd board”.

Thomson was therefore afraid that CNI would take legal action against it for not selecting CNI as the black empowerment partner in ADS. The above signals the end of the relationship with CNI as a potential direct Black Economic Empowerment Partner in ADS and the confirmation of the inclusion of FBS in that role.

Slides for a presentation, dated 10 November 1998, indicates that the German shipyard were the most likely to win the contract for the Corvettes⁸⁴⁵. A remark regarding Thomson’s strategy indicates the following:

“To be present whatever the hull

To create a consortium with the leading local companies in the Defence sector, in order to neutralise their ability to be the local partner of foreign competitors

ADS positions itself as the “main contractor” and integrator of the combat systems which will have been chosen by the South African Navy

To influence the client not to issue an international invitation to bid for Foreign Procured items”.

The abovementioned points indicate how Thomson positioned itself in order to ensure that it was awarded the Combat Suite *via* ADS. They appear to have aligned their approach to comment received from various individuals, including Chippy Shaik, who formed part of the formal adjudication process in the wider Corvette programme.

Another set of slides for a presentation dated “November 1998” reflect *inter alia* the following aspects⁸⁴⁶:

“The OECD Convention is largely inspired by the FCPA legislation in the United States

- Legislation came into effect in 1977*
- The legislation regards as an offence any act of corruption or subornation of a representative of a foreign government made during international commercial transactions*

The OECD Convention

⁸⁴⁵ Refer to 18 1258-18 1263(D416 (Box 174 p22-25, T0004 p46-47))

⁸⁴⁶ Refer to 18 1264-18 1396 (D416 Box 174 p32-133, T0004 p6-36)

..it will be a criminal offence for any person to deliberately offer, promise or grant a financial or other unjustified benefit, directly or through intermediaries, to a foreign public official, for his own gain or the gain of a third party, in order that this official acts or refrains from acting in the performance of official duties, for the purpose of obtaining or retaining a contract or other undue advantage in international business. The same applies to persons who make themselves an accessory to such an act of corruption”.

Signatories to the OECD Convention

- *Germany, France...*

The new organisation of Thomson-CSF as an international player

Objectives

- *Pay less in commissions*

Potential services given by a “service provider”

- *Marketing*
- *Administration and Finance*
- *Technical*
- *Public relations/lobbying*
 - *Perform liason with appropriate government ministries...*
 - *Generally speaking any political lobbying in adequation with the need of the customer and the range of products of the supplier*
- *Other possible services*

Use of joint ventures to remunerate our partners

- *Shareholders of ADS reflected as:*
 - *Thomson-CSF – 50%*
 - *Altech – 35%*
 - *FBS – 15%*
- *Shareholders of Thomson-CSF reflected as:*
 - *Thomson-CSF Holding (SA) – 70%*
 - *Nkobi Investments – 30%*

South Africa/Position at November 1st ‘98

- 3rd partner: “Black Empowerment”
- Looked at FBS
- Proposal: 20% capital (10% ceded by Thomson-CSF and Altech)”

Thetard informed Perrier of his programme, during his visit to South Africa, on 13 November 1998⁸⁴⁷. The programme reflects a meeting with Shaik and Zuma on 18 November 1998 in Durban between 10:35 and 16:00. The programme also reflects that confirmation was awaited for meetings with Chippy Shaik, the late Modise and Moloi of FBS. Thetard’s diary indicates that a meeting with Modise was planned for 17 November 1998⁸⁴⁸.

The Cabinet took the final decision regarding the preferred suppliers on the Corvette Programme on 18 November 1998⁸⁴⁹. This is the same day when various parties within the Thomson group met with Shaik, as dealt with below. Zuma was apparently present at the meeting. Thetard’s diary indicates that a meeting in Durban with “JPP” and “JZ” was planned for 18 November 1998⁸⁵⁰.

We identified written notes of Moodley, from Ditz, of a meeting at “Nkobi with Thomson” on 18 November 1998 regarding the ADS acquisition⁸⁵¹. The notes indicate that the following persons were present at the meeting:

Shaik;

Moynot;

Thetard;

Perrier;

Moodley; and

“JZ”

⁸⁴⁷ Refer to 18 1397-18 1399 (7804727-9 Box 21)

⁸⁴⁸ Refer to 18 1400 (7800425 Box 274)

⁸⁴⁹ Refer to 18 1401-18 1406(Box Z13, 47-51)

⁸⁵⁰ Refer to 18 1407(7800425 Box 274)

⁸⁵¹ Refer to 18 1408(D83301164) Box 182)

In the typed minutes of this meeting, “JZ” was changed to “*MINISTER JZ*”⁸⁵². A similar copy of the minutes was identified in documentation from Nkobi⁸⁵³ and from Thomson-CSF⁸⁵⁴. Ditz faxed a copy of the minutes to Shaik on 20 November 1998 for Shaik to peruse and give his comments⁸⁵⁵. Adjustments to these minutes were made during a meeting on 1 December 1998, which will be dealt with later. No adjustment was made regarding the recordal of who attended the meeting. The minutes of the meeting on 18 November 1998 indicate that the following was discussed and resolved:

Thomson-CSF (France) would sell 20% of its 50% shareholding in ADS to Nkobi Investments through Thomson-CSF. This is equivalent of 10% shareholding in ADS;

The shareholders agreement of Thomson-CSF would be revised;

The share structure of Thomson-CSF would be adjusted to reflect the 10% shareholding of Nkobi Investments in ADS;

Thomson-CSF (France) would prepare a memorandum of understanding, recording the transfer of the ADS shares to Thomson-CSF and Nkobi Investments’ increased share therein;

Nkobi Investments and Thomson-CSF (France) would discuss the acquisition price of the additional shares and Nkobi Investments would arrange for the funding of the acquisition price through the IDC; and

Thomson-CSF may acquire the remaining 50% shareholding in ADS from Altech. The result of that would be that Thomson-CSF (France) would hold 50% of ADS and Thomson-CSF would hold the other 50% in ADS.

The total payments made to and/on behalf of Zuma by Shaik and/or entities controlled by Shaik at this stage amounted to R437 461.70⁸⁵⁶ as at 18 November 1998.

No mention was made at this meeting of the fact that FBS would be a direct shareholder in ADS.

⁸⁵² Refer to 18 1409(D83301165 Box 182)

⁸⁵³ Refer to 18 1410(80 01137B Box 82)

⁸⁵⁴ Refer to 18 1411(7802844)

⁸⁵⁵ Refer to 18 1412-18 1413(80 01137A-B Box 82)

⁸⁵⁶ Refer to Annexure A

A period of uncertainty had prevailed until 18 November 1998 followed the date when the Cabinet took a final decision on the preferred suppliers for the Corvette Programme, which is the same date that Shaik, Moynot, Thetard, Perrier, Moodley and Zuma met. Minutes of the meeting of 18 November 1998 were circulated after which certain changes were recommended. The attendance list remained unchanged.

Prior to this meeting Thomson-CSF (France) was still the 50% shareholder in ADS, leaving the Nkobi group and/or Shaik still in the marginalised position. It was during this meeting that it was agreed that Thomson-CSF (France) would sell not less than 20% of its shareholding in ADS to Nkobi Investments through Thomson-CSF. This is an effective shareholding of 10% in ADS. The balance of the shareholding in ADS was considered to be acquired, but the acquisition would occur through Thomson-CSF (France). Although the mathematics of this statement appears contradicting, it appears during the meeting it was agreed that Nkobi Investments would acquire an effective indirect shareholding in ADS of 10%. This is equivalent to that which was offered to FBS. This meeting effectively marked the readmission of the Nkobi group to the capital of ADS. It should however be noted that Thomson-CSF (France) could not transfer its 50% shareholding in ADS to Thomson-CSF without the consent of Altech. We understand that Altech did not approve the request from Thomson-CSF (France) which appears to have delayed the putting into effect of the resolution taken at this meeting.

The measures that were put in place in order to give effect to the agreement that was reached in principle during the 18 November 1998 meeting were manifest in a series of meetings, agreements, share transfers and changes in the composition of the board of directors of ADS.

Thetard's diary indicates that on 19 November 1998 meetings with *inter alia* the following persons were planned⁸⁵⁷:

Craig Venter;

“*Le Tailleur*”; and

Tony Yengeni.

A meeting with Kasrils was planned for 20 November 1998⁸⁵⁸.

⁸⁵⁷ Refer to 18 1414 (7800426 Box 274)

⁸⁵⁸ Refer to 18 1415 (7800426 Box 274)

On 20 November 1998 Thetard informed *inter alia* De Bollardiere and Denis of the meetings with FBS and Nkobi, as the “*black empowerment*” partners⁸⁵⁹. The proposed plan, subject to Altech’s decision, was described as being the following:

“Altech transfers 10% of the ADS shares to FBS;

Dilution of Nkobi of by up to 20% in Thomson-CSF;

Thomson-CSF carries 50% of ADS”.

It was stated that a Memorandum of Understanding had to be drafted to confirm the plan in writing.

On 24 November 1998 it was announced that Thomson-CSF, via ADS, would supply the Combat Suites for the corvettes⁸⁶⁰.

It seems that following the adjudication of the wider Corvette programme as well as the announcement that ADS would be awarded the Combat Suites in the programme, Thomson still wanted the confirmation, or at least the assurance, from Mbeki that the selection of the Black Economic Empowerment Partners was considered to be correct. Various attempts had been made in this regard and we were unable to find evidence that the planned meetings as requested took place. The fact that Mbeki did not meet with Thomson in this regard is borne out by various follow up letters and notes to that effect.

In a fax dated 27 November 1998 Denis advised Ranque, Perrier and Thetard of a meeting with the Deputy Minister of Defence⁸⁶¹. At that stage Kasrils was the Deputy Minister of Defence. The fax consisted of notes by De Bollardiere regarding the situation in South Africa. The first two pages are styled “*Meeting with Mbeki*”. The notes reflect the following:

“Several times during the apartheid era, THCSF has been able to demonstrate its support to the ANC....

..however the immediate circumstances seem to impose that the meeting be concentrated on the Defence supplies...

⁸⁵⁹ Refer to 18 1416-18 1419 (7808810-1 Box 230, T0003 p141)

⁸⁶⁰ Refer to 18 1420-18 1421(7804920 p123, T0002)

⁸⁶¹ Refer to 18 1422-18 1429 (85 01580-3 Box 172, T0008 p26)

Once, 6 months ago, THINT has had private access to Vice-president T Mbeki and had submitted the name of a partner (the CNI company) to play the “black empowerment” role within ADS and therefore be our political surety; Since the said company declined the offer; we are presently busy to give this role to another company, which is a member of the local consortium, the FBS company, that seems to have received the “blessing” of the ANC.

A network, thought to be empowered by T Mbeki, has very recently told Mr JP Perrier in South Africa that:

- *ADS “has met the requirements” with regard to black empowerment;*
- *We could receive a clear message from the Vice-president on this subject during his Parisvisit”.*

The second page of the notes reflects the following:

“Corvette Combat Suite (THCSF stake: 1.7 billions of Rands)

First, ADS had qualified as being the nominated combat suite supplier of the South African Navy as far as this programme is concerned. Then, our subsidiary decided to create a consortium with the interested local companies for which she has taken the leadership; therefore it is in a position to be the main contractor for this part of the programme with a guarantee from THCSF (NCS France) regarding part of the programmes”.

The heading of the third page of the fax is styled “*Questions to be asked to Mr T Mbeki*”. The following four questions are listed:

- *“Is ADS still the nominated combat suite supplier as was previously announced by the South African Navy?*
- *We have worked out that the Nkobi Group is in a position to participate in our capital at the level of a holding company called Thomson-CSF Holding:*
 - *Is this still a good choice and, in the affirmative*
 - *Is this sufficient to meet the black empowerment requirements? If the answer is no*

- *Is the FBS Company, which is headed by General (ER) Moloi, and that we are putting in a position to participate in the ADS capital, the proper partner? Otherwise, who can tell us towards and on which criteria must we orientate our search?*
- *Is it possible that the RSA means that THCSF and ADS, its South African subsidiary, are considered as potential suppliers of prime importance especially for the corvette and submarine combat suites? This would constitute the proof of the acknowledgement of the efforts made by our Group and greatly facilitate its discussions with the main European manufacturers, which, otherwise may want to favour the local equipment manufacturers”*

The briefing, its contents, as well as the timing do not reconcile with the events that took place. It was agreed before the date of the abovementioned document that FBS and Nkobi group (Nkobi Investments) would be the Black Economic Empowerment Partners. Nevertheless, the document implied that Thomson still required assurance from Mbeki.

Thetard’s diary indicates that a meeting with Shaik in Durban had been planned for 1 December 1998⁸⁶². The minutes of a meeting between Shaik, Thetard, Campioni, Gide, Ramsumer and Moodley, held at Nkobi Holdings on 1 December 1998, indicates that Campioni had placed it on record that Thomson-CSF (France) had taken a “*corporate decision*” to restore Nkobi Investments as a partner in their South African projects. It was also agreed that all South African business would be conducted through Thomson-CSF⁸⁶³.

During the above meeting, the following was proposed:

Thomson-CSF (France) would transfer its 50% plus 1 share shareholding in ADS to Thomson-CSF for value;

Nkobi would transfer its 10% shareholding in Thomson-CSF Holding (SA) to Thomson-CSF (France) for value;

The shareholding of Thomson-CSF would be restructured in order for Nkobi to hold 20% and Thomson-CSF Holding(SA) to hold 80% of the shares;

The value of Nkobi’s 10% shareholding in Thomson-CSF Holding (SA), the value of the ADS interest and the value of the reduction of Nkobi Investments’ shareholding in Thomson-

⁸⁶² Refer to 18 1430(7800430 Box 274)

⁸⁶³ Refer to 18 1431-18 1432(D 83301158-9 Box 182)

CSF, would be calculated and verified by each party. Arrangements would then be made to equalize the situation financially. The “*equalisation*” referred to could be reflected in the premium of R490 000 that Thomson-CSF Holding (SA) paid for the purchase of the 10% shareholding from Nkobi Investments; and

A Memorandum of Understanding would be drawn and the Shareholders’ Agreement for Thomson-CSF would be revised.

The minutes also mention that the minutes of the meeting on 18 November 1998 were distributed and that the following remarks were made:

Paragraph 5 should refer to IDC; and

In paragraph 6, the reference to Thomson-CSF France should read ThomsonCSF (Pty) Limited.

No other adjustments to the minutes were mentioned.

It was also recorded that the acquisition of the remaining 50% shareholding in ADS was a proposal, which might not materialise. We understand that Altech’s Board decided that the defence related activities were a non-core activity of the group and therefore it was intended to sell the remaining 50% shareholding in ADS.

The minutes of the meeting on 1 December 1998 indicate that the end result of the ADS shareholding would be the following⁸⁶⁴:

Thomson-CSF - 50% plus 1;

Altech – 40%; and

Black Empowerment Group – 10%.

Altech would therefore sell 10% of its shareholding to a Black Economic Empowerment partner. This was however contrary to the ADS Shareholders’ Agreement which stated that Thomson-CSF (France) and Altech would each sell 10% of the shares to a Black Economic Empowerment partner. It should also be noted that no mention was made of FBS as the Black Economic Empowerment partner of ADS at this meeting, although draft Memoranda of Understanding had already been communicated.

⁸⁶⁴ Refer to 18 1433(D 83301162 Box 182)

In a letter from De Bollardiere to Mbeki, dated 18 December 1998 De Bollardiere thanked Mbeki for a meeting he had had with Perrier, Denis and himself during Mbeki's previous visit to Paris⁸⁶⁵. It appears that Mbeki attended the African Summit in Paris on 26 November 1998⁸⁶⁶. De Bollardiere indicated that "...we deeply appreciated your advice related to the present situation in South Africa; no doubt that it will help us to increase our visibility and therefore help the development of our operations in your country".

De Bollardiere continued by stating that "We understood through a further discussion with Her Excellency Mrs B Masekela that we could possibly meet with you beginning of 1999 to enter into further details as far as the implementation of the Black empowerment policy of our JV African Defence Systems (ADS) is concerned (*)".

We will very much appreciate such an opportunity and keep in contact with Her Excellency Mrs Masekela if such a meeting can be organised".

The letter was ended with the following:

"Enclosed a resume of Thomson-CSF strategy in Republic of South Africa.(*) We are discussing at the moment with Futuristic Business Solutions (Pty) Ltd (General Moloi)".

The "Enclosed resume" reflected the following:

"The present note explains why the various interests of SAN and RSA Government will be protected through ADS, under the "umbrella" of Thomson-CSF.

GENERAL STRATEGY

Since 1995, Thomson-CSF has defined and implemented a specific industrial strategy for RSA, based on the following concepts:

Addressing the local market as a significant industrial actor, through its joint venture, ADS;

Sharing job creations...

Committing to the contribution of its development...

⁸⁶⁵ Refer to 18 1434-18 1436(7804068-70 Box 263)

⁸⁶⁶ Refer to 18 1437-18 1438(7804920 T0002 p123)

Fulfilling the black empowerment requirements of the RSA Government, by introducing relevant partners into the capital of ADS...

Compensating sales from Europe by supporting domestic exports...

The objective of this strategy is to bring a number of assets to RSA, with a view to the acquisition by RSA of corvettes and submarines...

PRESENT NAVAL PROGRAM

Industrial risk

Thomson-CSF is in a position to bring its industrial guarantee to the RSA naval defence programs. Such guarantee requires:

The granting of the order to supply the combat systems by SAN to ADS

The ability for Thomson-CSF to follow-up and monitor the integration by ADS of the equipment to be purchased directly by the shipyards (HDW and Blohm + Voss)

CONCLUSION

By selecting ADS for the supply of the corvettes and submarines combat systems, SAN will strongly help the future development of this company in terms of high level education and training, employment, and technological capitalisation for the whole country".

The abovementioned resume was also faxed to Surtee on 18 February 1999⁸⁶⁷.

De Bollardiere also wrote a letter to Masekeladated 18 December 1998 to thank her for her audience on 17 December 1998⁸⁶⁸. De Bollardiere stated that he had included a letter, which Masekela was requested to hand to Mbeki. The letter followed the meeting Mbeki had had with Perrier, Denis and De Bollardiere, which had been arranged by Masekela. De Bollardiere indicated that they were planning to visit South Africa in January or February 1999 to obtain Mbeki's reaction and to discuss the black empowerment in ADS with him.

⁸⁶⁷ Refer to 18 1439-18 1441(7804082/4/5 Box 263)

⁸⁶⁸ Refer to 18 1442-18 1443 (7804071 Box 263, T0005 p376)

18.4.11 Formalisation of agreement with Nkobi group

The next series of events required the parties to formalise the agreements reached. Once the agreements were in place the parties gave effect to the agreements through the implementation of various share transfers and provision of finance for the acquisition of the shareholdings.

Draft Heads of Agreement were sent to Shaik on 21 December 1998⁸⁶⁹. This document eventually culminated in the agreement to restructure the local Thomson group.

In a letter to Mbeki dated 15 January 1999 Thetard requested a meeting with Mbeki during 9 to 11 February 1999, the period of De Bollardiere's visit to South Africa⁸⁷⁰. A similar letter to a one Naidoo was dated 18 January 1999⁸⁷¹. Thetard's diary indicated that a meeting with "Koegl" was planned for 18 January 1999⁸⁷².

On 18 January 1999 Ramsumer informed Moodley about the following aspect on the Draft Heads of Agreement which had to be submitted to Thomson-CSF (France)⁸⁷³:

The reduction of Nkobi Investments' shareholding in Thomson-CSF from 30% to 20% had to be affected by placing a fair value on the ADS investment and not the original cost price; and

Nkobi Investments had to be given a three-month period to raise finance for its allocated share of the proposed rights issue. (It appears as if a rights issue was considered by Nkobi in order to obtain funding for the transaction).

Our analysis of the financial position of Nkobi indicates that its position was of such a nature as to be regarded as technically insolvent.

On 19 January 1999 Ramsumer informed Moodley of an additional adjustment to the draft Heads of Agreement. This related to the first point of his letter from the previous day. The adjustment requested was that if the fair value of the ADS investment was in excess of the original cost, Nkobi Investments' share of the excess, relating to their 10% dilution, had to be

⁸⁶⁹ Refer to 18 1444-18 1445 (D 83301157 and D 83301296 Box 182)

⁸⁷⁰ Refer to 18 1446 (7804074 Box 263)

⁸⁷¹ Refer to 18 1447 (7804075 Box 263)

⁸⁷² Refer to 18 1448 (7800022 Box 274)

⁸⁷³ Refer to 18 1449 (D 83301151 Box 182)

credited towards the amount due by Nkobi Investments for the subscription of its 20% shareholding⁸⁷⁴.

A fax dated 21 January 1999 from Thetard to Masekela indicates that Thetard sent Masekela copies of the letters to Mbeki and Naidoo dated 15 January 1999⁸⁷⁵. Thetard also requested Masekela to inform him when she could meet him and De Bollardiere.

We identified a file with various slides for an ADS presentation, reflecting the date of 28 January 1999⁸⁷⁶.

The slide presentation indicates that it was a presentation regarding “*Project Sitron, Combat Suite for Corvette (4)*”. The prices, contractors and sub-contractors were *inter alia* listed in the presentation.

Written minutes indicate that on 5 February 1999 a meeting was held at “*Nkobi*” between Thomson-CSF, ADS and “*Nkobi*”⁸⁷⁷. The minutes indicate that a new paragraph had to be added, (to the Heads of the Agreement), which stated that Nkobi Investments contended that the shareholding of Thomson-CSF (France) in ADS had to be held in Thomson-CSF, which would provide Nkobi Investments with an indirect shareholding of 16% in ADS.

The 16% shareholding referred to above, could be explained as follows:

At that stage, Nkobi Investments owned 10% of the shares and Gestilac SA owned 5% of the shares, in Thomson-CSF Holding (SA);

Thomson-CSF Holding (SA) would have had an 80% shareholding in Thomson-CSF after the share capital restructuring of Thomson-CSF. Nkobi Investments would have owned 20% of the shares in Thomson-CSF; and

Thomson-CSF owned 50% plus one share shareholding in ADS at that stage.

Therefore, Nkobi Investments’ shareholding in ADS is calculated as follows:

Company	Thomson-CSF Holding (SA)	Thomson-CSF	ADS	Effective
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⁸⁷⁴ Refer to 18 1450 (D 83301149 Box 182)

⁸⁷⁵ Refer to 18 1451(7804073 Box 263)

⁸⁷⁶ Refer to 18 1452-18 1479(D416 Box 174 p1-21, T0004 p38-45)

⁸⁷⁷ Refer to 18 1480(D83 301166 040136 Box 182)

Nkobi Investments	10%	80%	50%	4%
Nkobi Investments	-	20%	50%	10%
Gestilac SA	5%	80%	50%	2%
Total				16%

It is therefore clear that Gestilac SA shareholding was included to derive the 16% indirect shareholding of Nkobi Investments, as referred to in the minutes.

An itinerary of De Bollardiere indicates that he had planned a meeting with Chippy Shaik, Mbeki, Masekela and Naidoo on 10 February 1999⁸⁷⁸. Thetard's diary indicates that the following meetings were planned for 10 February 1999⁸⁷⁹:

- 10:30 - Masekela;
- 12:30 - Mendi Msimang; and
- 14:00 - "C Shaik" (assumed to be Chippy Shaik).

We identified a note in Thetard's 1999 diary with the telephone numbers of the following persons:⁸⁸⁰

- "Jurgen Koegl – (deleted) of the deputy president";
- "Barnard";
- "Motwegi – Technology group";
- "Barabara Masekela";
- "Essop Pahad – Present during the meeting"; and
- "Mendi Msimang – Treasurer of ANC".

According to Thetard's diary, a meeting with "le tailleur" was planned for 15 February 1999⁸⁸¹.

⁸⁷⁸ Refer to 18 1481-18 1482 (7807360 Box 231, T0005 p377)

⁸⁷⁹ Refer to 18 1483 (7800044 Box 274)

⁸⁸⁰ Refer to 18 1484-18 1485(7800003 Box 274)

⁸⁸¹ Refer to 18 1486(7800047 Box 274)

The final Heads of Agreement between Thomson-CSF (France) and Nkobi Investments were signed on 16 February 1999⁸⁸².

In a Thomson-CSF communication dated 17 February 1999, a report was made of meetings in South Africa on 4 and 5 February 1999. It is noted that Shaik informed Thomson-CSF that he and Zuma were ready go to Paris immediately to give full account of all the projects, including the airport project⁸⁸³.

18.4.12 The acquisition of the remaining 50% of ADS shares

On 16 February 1999 Thomson-CSF (France) made an offer to Altech for the remaining 50% of the shares of ADS. This was accepted by Altech on 17 February 1999⁸⁸⁴. On 19 February 1999 the minutes of the closing meeting relating to the sale to Thomson-CSF (France) by Altech of its remaining 50% shareholding in ADS (6 999 999 shares) and its R8 937 500 shareholder loan to ADS, for a total purchase consideration of R18 273 499 was signed⁸⁸⁵. This resulted in Thomson-CSF (France) owning 100% of the issued share capital of ADS, with effect from 19 February 1999. Thomson-CSF (France) was issued with another 17 875 000 shares on 1 June 1999, thus increasing its shareholding to 31 875 000 shares, representing 100% of the issued share capital⁸⁸⁶. Altech issued a press release regarding the sale of its shares on 22 February 1999⁸⁸⁷. It was mentioned in the press release that Moynot had said that Thomson-CSF intended to have black empowerment partners in ADS.

Thetard's diary indicates that he met Chippy Shaik on 18 February 1999 and 19 February 1999, after the closing meeting for the sale of ADS to Thomson-CSF (France)⁸⁸⁸. A meeting with Essop Pahad, Minister in the President's Office, was planned for 23 February 1999⁸⁸⁹.

In the Chairman's report of the Nkobi group for the financial year ended 28 February 1999 it is recorded that Nkobi had acquired ADS one and a half years previously, in consortium with Thomson-CSF⁸⁹⁰. It is also mentioned that the contract, "*valued at R2.6 billion*", for the system integration of the Combat Suites for the corvettes had been awarded to ADS. Nkobi Investments

⁸⁸² Refer to 18 1487-18 1491(80 01000-4 Box 82)

⁸⁸³ Refer to 18 1492-18 1498(7807682-4 p311-5, T0003)

⁸⁸⁴ Refer to 18 1499-18 1501(7808292-4 Box 230)

⁸⁸⁵ Refer to 18 1502-18 1503(109 006096/6125 Z196_A478 p110/106)

⁸⁸⁶ Refer to 18 1504 (040442 M7 Misc Hotors)

⁸⁸⁷ Refer to 18 1505 (109 001855 Z189)

⁸⁸⁸ Refer 18 1506-18 1507 (7800050-1 Box 274)

⁸⁸⁹ Refer to 18 1508 (78000054 Box 274)

⁸⁹⁰ Refer to 18 1509 (80 05464BA Box 89)

obtained their indirect shareholding in ADS through Thomson-CSF during September 1999 and the contract, valued at R450 million, for the provisioning of Combat Suites to the corvettes, was signed during December 1999.

18.4.13 Completion of the transactions with the selected Black Economic Empowerment Partners

On 14 March 1999 Gide and Campioni sent a fax to various Thomson-CSF representatives regarding a visit to South Africa between 10 and 12 March 1999 and also regarding the ADS black empowerment⁸⁹¹. It was mentioned that the purpose of the visit was to negotiate with FBS the terms of the preliminary Heads of Agreement describing the terms and conditions of the entry of FBS, into the capital of ADS. It was indicated that it was envisaged that Thomson-CSF would own the shareholding of ADS and that Nkobi Investments' indirect shareholding in ADS would be increased to 20%. It was also mentioned that "*Nkobi*" wanted "*...to be treated according to the same financial conditions as FBS (See Heads of Agreement signed on 16/2/99)*".

Gide reminded everyone that "*...the conclusions of these partnership agreements with "Empowerment Parties" are very urgent within the framework of the negotiation of corvette and submarine programmes*".

The results of the negotiations were that FBS abandoned its request to have 25% plus 1 share and agreed to limit their direct shareholding to 20%. FBS also accepted the indirect shareholding of Nkobi Investments and it was envisaged that Moloi would be appointed Chairman of ADS. It was noted that, for the first time, favourable conditions for the settlement of the "*Black Empowerment*" requirement had been put in place.

The Heads of Agreement between Thomson-CSF (France) and FBS were signed on 19 March 1999⁸⁹².

On 29 March 1999 Gide sent a fax to various Thomson representatives to report on the meetings during 22 and 25 March 1999 and as well as the meeting with Nkobi Investments⁸⁹³. He stated that FBS wanted to be directly associated in the decisions regarding ADS, and therefore it was decided that at least one of the directors of ADS would be nominated by Nkobi Investments and

⁸⁹¹ Refer to 18 1510-18 1517 (7808775-8 Box 230, T0002 p133)

⁸⁹² Refer to 18 1518-18 1523(7808761-6 Box 230)

⁸⁹³ Refer to 18 1524-18 1526(7801207 p22, T0005)

be a director of Thomson-CSF. It was mentioned that there had been a persistent request by Nkobi Investments to be treated at least equally to FBS. It was therefore decided to consider giving Nkobi Investments a 25% shareholding and not 20% shareholding in Thomson-CSF.

The fax dated 29 March 1999 indicates that Nkobi Investments could not obtain sufficient finance for their participation in the capital increase of Thomson-CSF. A guaranteed scheme of dividends and pledge of shares had to be prepared by the Thomson group to deal with the financing problem.

Gide reminded everybody that it was important that the number of directors of ADS be nine, namely five Thomson-CSF directors nominated by Thomson-CSF Holding (SA), 2 Thomson-CSF directors nominated by Nkobi Investments and 2 directors nominated by FBS. This would have resulted in a situation whereby Thomson-CSF had a majority vote.

It was also agreed at the meeting with Nkobi Investments that Nkobi would be “...*more involved in the preparation of contracts with the South African authorities, especially in the Corvettes project*”.

According to Thetard’s diary, a meeting with Surtee was planned for 8 April 1999⁸⁹⁴.

We identified a note in Thetard’s 1999 diary, which indicates that Masekela telephoned Thetard on 23 April⁸⁹⁵.

In an ADS fax from Moynot dated 11 May 1999 and addressed to the French Embassy in Pretoria⁸⁹⁶, Moynot provided the names of persons to invite to a function “...*to celebrate the corvette contract on Friday 10th*”. It is not clear to which month Moynot referred, however, it is possible that he referred to Friday 10 December 1999, due to the fact that the Corvette contract was signed on Friday, 3 December 1999⁸⁹⁷. Handwritten notes on the second page of the fax reflect the names of various persons, including “*J Zuma*”.

On 17 May 1999 Thetard sent an encrypted fax to Perrier regarding Masekela, Ramaphosa, Mbeki and Kōgl⁸⁹⁸. Thetard indicated that Masekela had joined the “*black business*” group of Ramaphosa and that the latter “...*has been considered to be a rival of Thabo Mbeki for a long*

⁸⁹⁴ Refer to 18 1527 (7800087 Box 274)

⁸⁹⁵ Refer to 18 1528 (7800000 Box 274)

⁸⁹⁶ Refer to 18 1529-18 1532(109 001721-2 Box Z189 F3/4)

⁸⁹⁷ Refer to 18 1533 (Box Z13)

⁸⁹⁸ Refer to 18 1534-18 1535 (7801188 p17, T0005)

period of time". Masekela confirmed that "...*Jurgen Koegl was authorized to handle matters on behalf of Thomson-CSF and that he had all their confidence*".

It appears that Kögl was acting as an agent for Thomson-CSF. It is not clear who "*authorized*" Kögl to handle matters on behalf of Thomson-CSF. Based on the information at our disposal, it appears that Kögl managed funds on behalf of various government officials, including Masekela and Zuma, through his company Cay Nominees.

Masekela also explained that "...*for ethical reasons, being Ambassador in Paris until 1998, it was not possible for her to be in a direct business relationship with a French Company, which in turn explains her association with J Koegl*". Masekela wished to "...*wait for the next elections (2nd June 99) and the constitution of the new Government before defining precisely the terms and conditions of our co-operation*".

It appears that Masekela intended to have a direct business relationship with Thomson, but could not do so for "*ethical reasons*". Masekela therefore had to go *via* Kögl. It is not clear what "*co-operation*" there was between Thomson and Masekela and whether Masekela had an indirect business relationship with Thomson *via* Kögl. Masekela had a direct business relationship with Kögl⁸⁹⁹.

Thetard then mentioned that "*Masekela suggested that I validate the relationship Jurgen Koegl holds at the highest political level, which of course I have accepted (according to my information – originated from "French Intelligence Service" – Since the last months of 1998, J Koegl would not be connected as well as he was before)*". It therefore appears that Kögl had relationships with high level politicians, including the "*highest political level*".

Thetard indicated that a decision had been taken to meet with Ramaphosa in the weeks to follow, in the presence of Masekela. Thetard's diary indicates that a meeting was planned with Kögl and "*Barbara*" (assumed to be Masekela) on 19 October 1999⁹⁰⁰.

Thetard's diary indicates that he planned to have meetings with "*le Tailleur*" (assumed to be Surtee) on 24 May 1999, 27 May 1999 and 7 June 1999⁹⁰¹.

⁸⁹⁹ Refer to paragraph 12.2.22

⁹⁰⁰ Refer to 18 1536 (7800245 Box 274)

⁹⁰¹ Refer to 18 1537-18 1539(7800130, 133 and 142 Box 274)

A letter from a dog training school, identified in Thetard's 1999 diary, reflects that "*Fees for June is due on 26 May*"⁹⁰². A note on the back of the letter reflects "*JK*" and a telephone number that corresponded with the telephone number of "*Jurgen Koegl*" on the note mentioned previously⁹⁰³. The note also indicates:

"Decision generated by German interests;

Collusion preparation to make a decision;

The politicians will follow the technical decision"; and

A note in the margin states "*action to be undertaken at the German yard*".

It is not clear what "*collusion preparation*" had to be undertaken to make a decision which was "*generated by German interests*". The "*German yard*" could refer to the members of the GFC.

Thetard's diary indicates that meetings had been planned with FBS and with Shaik in Durban on 9 June 1999. The agreement for the sale of Gestilac SA shares was signed by Shaik on 9 June 1999⁹⁰⁴. In terms of the agreement, the Gestilac SA shares were sold to Thomson-CSF (France) for an amount of \$1 000 (R6 145) on 26 July 1999⁹⁰⁵.

On 9 June 1999 Thomson-CSF (France) transferred all of its 31 875 000 shares in ADS to Thomson-CSF (International)⁹⁰⁶. With effect from this date, Thomson-CSF (International) owned 100% of ADS share capital, until 15 September 1999, when Thomson-CSF International transferred 25 500 000 shares (80%) to Thomson-CSF and 6 375 000 shares (20%) to FBS Holdings⁹⁰⁷. The register of member share accounts reflected, Thomson-CSF holding 25 500 000 shares (80%) and FBS Holdings holding 6 375 000 shares (20%), in the issued share capital of ADS.

The ADS Sale of Shares Agreement between Thomson-CSF (France) and FBS, was dated 22 June 1999⁹⁰⁸.

⁹⁰² Refer to 18 1540-18 1541 (7800004 Box 274)

⁹⁰³ Refer to 18 1542-18 1543 (7800003 Box 274)

⁹⁰⁴ Refer to 18 1544-18 1547 (80 01040-3 Box 82)

⁹⁰⁵ Refer to 18 1548-18 1551 (8800026-7 p331, T0001)

⁹⁰⁶ Refer to 18 1552(040443 (M7 Misc Hortors)

⁹⁰⁷ Refer to 18 1553(040443 (M7 Misc Hortors)

⁹⁰⁸ Refer to 18 1554-181562 (200_991_C p7 Box 173)

According to Thetard's diary, a meeting with "*C Shaikh*" (assumed to be Chippy Shaik) was planned for 1 July 1999 and a meeting with Surtee on 2 July 1999⁹⁰⁹. Another meeting with "*C Shaikh*" (assumed to be Chippy Shaik) was planned for 5 July 1999 and with Surtee on 9 July 1999⁹¹⁰.

On 27 July 1999 Thomson-CSF International Africa (Mauritius) made a proposal for a loan to Nkobi Investments⁹¹¹. The purpose of the loan was to enable Nkobi Investments to subscribe to the share capital increase of Thomson-CSF. A similar loan was proposed to FBS for the acquisition of the shares of ADS⁹¹².

On the same date Thomson-CSF International (France) bought the 90 Thomson-CSF Holding (SA) shares from Thomson-CSF (France) for R90 701.98⁹¹³.

A Thomson-CSF (France) fax regarding the Corvette programme, "*SITRON*", dated 28 July 1999, indicates that "*...the contract will be signed between RSA and the Corvette Consortium (GFC+ADS+NCS France). The Corvette Consortium Agreement has been signed some weeks ago*".⁹¹⁴

The Frame Agreement between Thomson-CSF (France) and Nkobi Investments for the sale of Thomson-CSF Holding (SA) shares, held by Nkobi Investments, to Thomson-CSF (France) were signed on 30 July 1999. In terms of the agreement Nkobi Investments sold its 10% shareholding in Thomson-CSF Holding (SA) to Thomson-CSF (France) for an amount of R500 000⁹¹⁵. Thomson-CSF (International) paid Nkobi Investments for the sale of Thomson-CSF Holding (SA) shares on 5 October 1999. The funds were transferred into Kobitech's cheque account number *REDACTED*⁹¹⁶. Gestilac SA sold its 5% shareholding in Thomson-CSF Holding (SA) to Thomson-CSF (France) for US\$1 000 on 26 July 1999⁹¹⁷.

The Frame Agreement also referred to the increase of the share capital of Thomson-CSF and the transfer of the 80% ADS shareholding from Thomson-CSF (France) to Thomson-CSF⁹¹⁸. To enable Thomson-CSF to purchase the ADS shares, the share capital in the Thomson group had to be increased by a value of R29 876 000⁹¹⁹. The mechanism used was to increase the share

⁹⁰⁹ Refer to 18 1563-18 1564(7800164/5 Box 274)

⁹¹⁰ Refer to 18 1565-18 1566(7800168 and 172 Box 274)

⁹¹¹ Refer to 18 1567-18 1571(80 00923-7 (040145) Box 82)

⁹¹² Refer to 18 1572-18 1576(200_991_C p2-6 Box 173)

⁹¹³ Refer to 18 1578(8800027 (040172) T0001)

⁹¹⁴ Refer to 18 1579-18 1580(7500075379-80 Box 48)

⁹¹⁵ Refer to 18 1581-18 1583 (80 00920 Box 82)

⁹¹⁶ Refer to 18 1584 (040468 and Annexure F10 page 19)

⁹¹⁷ Refer to 18 1585-18 1586 (040171 8800027)

⁹¹⁸ Refer to 18 1587-18 1591 (80 00913 Box 82)

⁹¹⁹ Refer to 18 1592(76 90652 Box 223)

capital in Thomson-CSF by 29 876 shares and simultaneously issue 22 412 shares to Thomson-CFS Holding (SA) and 7 464 shares to Nkobi Investments. The issuing of the shares took place against the payment of a nominal value of R1 000 per share by both parties.

At the same time, Thomson-CSF Holding (SA) increased its share capital by 22 412 shares and issued them to Thomson-CSF (International). This enabled Thomson-CSF Holding (SA) to acquire the shares issued by Thomson-CSF. The funding raised by Thomson-CSF enabled them to acquire the shares in ADS from Thomson-CSF (France).

The effective shareholding of Nkobi Investments in Thomson-CSF would be 25% and not the 20% as originally planned. The agreement stated that Nkobi Investments' shares in Thomson-CSF Holding (SA) would be bought by Thomson-CSF (France) at "*a fair price*"⁹²⁰.

On 3 August 1999 Ditz informed Shaik that in accordance with Shaik's request to Thomson-CSF (France), the R500 000 for the sale of the Thomson-CSF Holding (SA) shares would not be dealt with as a reduction in the capital amount of the loan⁹²¹.

18.4.14 Loan to Nkobi Investments and the Escrow agreement

Nkobi Investments requested Thomson-CSF (France) to provide a loan to Nkobi Investments in order to pay for their share of the capital increase of Thomson-CSF. The Loan Agreement between Thomson-CSF International Africa (Mauritius) and Nkobi Investments was signed on 4 August 1999⁹²². The loan amounted to R7 464 000 and was provided at an interest rate of prime plus 0.5%. The amount was paid into an account at Société Générale, opened by Thomson-CSF International Africa (Mauritius). Thetard's diary indicates that he planned to be in Durban on 4 August 1999⁹²³.

Interest had to be paid on a six-monthly basis. The first instalments of interest would have been capitalised. The principal amount had to be reimbursed by Nkobi Investments in four equal annual instalments, with the first instalment due 36 months after the signature of the loan agreement referred to above. The security for the loan was, in terms of the Escrow Agreement, the dividends payable from Thomson-CSF and the shares owned by Nkobi Investments pursuant to the share capital increase.

⁹²⁰ Refer to 18 1593(80 01002 Box 82)

⁹²¹ Refer to 18 1594(80 00944 Box 82)

⁹²² Refer to 18 1595-18 1604 (040469 to 040478, 8001354-8001362)

⁹²³ Refer to 18 1605 (7800194 Box 274)

Thomson-CSF (International) transferred 25 500 000 (80%) ADS shares to Thomson-CSF and 6 375 000 (20%) ADS shares to FBS on 15 September 1999⁹²⁴. Thetard's diary indicates that a closing meeting was planned with FBS on 15 September 1999⁹²⁵ and with "*Nkobi*" on 16 September 1999⁹²⁶. The loan agreement between Thomson-CSF International Africa (Mauritius) and FBS was signed on 15 September 1999⁹²⁷.

The following day it was also resolved that Thomson-CSF should purchase 80% of the shareholding in ADS from Thomson-CSF International (France) at a price of R29 874 293⁹²⁸. As a result Thomson-CSF Holding (SA) was issued 22 482 ordinary shares (75%) and Nkobi Investments was issued 7 494 ordinary shares (25%) of Thomson-CSF. Nkobi Investments paid for its share through funding obtained from the Thomson-CSF International Africa (Mauritius).

On 16 September 1999 Gide reported to various Thomson officials regarding the deals with FBS and Nkobi which had taken place during 12 to 16 September 1999⁹²⁹. It is noted that Nkobi demanded that the agreement had to be changed to reflect a new company, styled "*Kobitrade*", in which Nkobi Investments held 100% of the shares. This was rejected by Thomsons⁹³⁰.

An Escrow Agreement was entered into by and between Thomson-CSF International Africa (Mauritius), Nkobi Investments and Société Générale on 30 September 1999⁹³¹.

⁹²⁴ Refer to 18 1606(040443 (M7 Misc Hortors)
⁹²⁵ Refer to 18 1607 (7800215 Box 274)
⁹²⁶ Refer to 18 1607 (7800216 Box 274)
⁹²⁷ Refer to 18 1608-18 1623(109 004434-49 Box Z193)
⁹²⁸ Refer to 18 1624 (78 00554 Box 277)
⁹²⁹ Refer to 18 1625/7/8(7801036 T0003 p431)
⁹³⁰ Refer to 18 1626/9/630(7801037 p12, T0005)
⁹³¹ Refer to 18 631-18 1638 (7801347 to 7801354)

The agreement recorded that all dividends, payable by Thomson-CSF, had to be paid into the bank account opened at Société Générale in the name of Thomson International Africa(Mauritius). Any such dividends would be applied to the payment to Thomson International Africa (Mauritius) of any instalment of the principal amount and interest of the loan, in the eventthat Nkobi Investments did not make such payment on time. Any such dividend would also be kept in the account as long as the principal amount and interest had not been paid to Thomson International Africa (Mauritius).

On the same date the following transfers were ostensibly made to various Thomson-CSF accounts at Société Générale:

R22 412 000 was transferred from Thomson-CSF International Africa (Mauritius) to Thomson-CSF Holding (SA);

R22 412 000 was transferred from Thomson-CSF Holdings (SA) to Thomson-CSF⁹³²;

R7 464 000 was transferred from Thomson-CSF International Africa (Mauritius) to Thomson-CSF (on behalf of Nkobi Investments)⁹³³;

The sum of the two amounts transferred to Thomson-CSF mentioned above, namely R29 876 000, was then transferred from Thomson-CSF to Thomson-CSF International⁹³⁴;

R7 464 000 was transferred from Thomson-CSF International to Thomson-CSF International Africa (Mauritius)⁹³⁵; and

R22 412 000 was transferred from Thomson-CSF International to Thomson-CSF International Africa (Mauritius)⁹³⁶.

On 29 September 1999 Thetard requested the bank to transfer R500 000 the next day into the current account of Thomson-CSF International Africa⁹³⁷. It appears that this was for the purchase price of Nkobi Investments' share in Thomson-CSF Holding (SA).

Thetard's diary indicates that a meeting was planned with Kögl and "Barbara" (assumed to be Masekela) on 19 October 1999⁹³⁸.

⁹³² Refer to 18 1639 (78 01391 Box 221)

⁹³³ Refer to 18 1640(78 01395 Box 221)

⁹³⁴ Refer to 18 1641(78 01427 Box 221)

⁹³⁵ Refer to 18 1642(78 01431 Box 221)

⁹³⁶ Refer to 18 1643(78 01429 Box 221)

⁹³⁷ Refer to 18 1644-18 1645(7800987 T0005)

Thetard's diary indicates that he met Perrier in Paris on 10 November 1999⁹³⁹. The fax from Thetard to De Jomaron on 17 March 2000 also confirms that Thetard had a meeting with Perrier in Paris on 10 November 1999.

On 3 December 1999 the South African Government and a consortium consisting of the GFC and the Thomson Consortium signed the contract for the supply of the Corvettes to the South African Navy⁹⁴⁰.

Thetard's diary indicates that a meeting was planned with Surtee on 7 December 1999⁹⁴¹.

ADS's portion of the contract was R1.3 billion, of which R450 million would have been earned directly by ADS and the balance by sub-contractors⁹⁴². ADS were responsible for the Combat Suite on the Frigate and entered into a memorandum of understanding with the following entities as sub-contractors⁹⁴³:

LIW (a division of Denel (Pty) Limited);

Kentron (a division of Denel (Pty) Limited);

Grintek Avitronics (a division of Grintek Electronics Limited);

Grintek Electronic Systems (a division of Grintek Electronics Limited);

Reunert Defence ESD (Pty) Limited; and

FBS.

Shaik was appointed as a director of ADS on 14 March 2000.

18.5 Request for inquiry into the arms deal and ADS closing meetings

On 9 September 1999 Patricia de Lille gave notice in Parliament for the request of an inquiry into the arms acquisition process⁹⁴⁴. On the same date the Office of the Presidency issued a statement denying the allegations that Zuma had been involved in irregularities regarding the

⁹³⁸ Refer to 18 1646(7800245 Box 274)

⁹³⁹ Refer to 18 1647(7800267 Box 274)

⁹⁴⁰ Refer to 18 1648-18 1719(7800554-629 Box 274, Z4, Z13)

⁹⁴¹ Refer to 18 1720 (7800290 Box 274)

⁹⁴² Refer to 18 1721-18 1724(80 012 (44-48) Box 83)

⁹⁴³ Refer to 18 1725-18 1740(75 00075980, 75 0007995Box 50)

⁹⁴⁴ Refer to 18 1741 (GG19)

arms deal⁹⁴⁵. On 14 September 1999 Thetard faxed a newspaper article regarding De Lille's allegations to Defarges, De Jomaron, Moynot and Perrier⁹⁴⁶.

On 21 September 1999 Patricia de Lille's motions regarding the arms deal were tabled in Parliament⁹⁴⁷.

Thetard confirmed his meeting with Shaik to be held on 30 September 1999 at Shaik's offices in Durban⁹⁴⁸.

The Minister of Defence approved the Auditor General's audit of the arms deal on 28 September 1999⁹⁴⁹.

Thetard's diary and itinerary indicates that he was in Durban on 30 September 1999⁹⁵⁰. A letter dated 1 October 1999 to Thetard from Shaik refers to the meeting that was held the day before, namely 30 September 1999⁹⁵¹. The fax from Thetard to De Jomaron on 17 March 2000 also confirms that Thetard had had a meeting with Shaik in Durban on 30 September 1999⁹⁵². The latter fax indicates that discussions were held regarding Zuma.

In the letter dated 1 October 1999 Shaik indicated that he was available to meet with Perrier in Paris on 22 October 1999.

18.6 The period subsequent to the signing of the Corvettes contract

A meeting between Fakude and the architects of Zuma's Nkandla traditional village development was held on 2 February 2000⁹⁵³.

On 11 February 2000 Shaik sent a letter to Thetard in which he referred to "...our understanding, *Re: Deputy President Jacob Zuma and issues raised.*" Shaik also wanted to know what Thetard's availability was for a meeting⁹⁵⁴.

⁹⁴⁵ Refer to 18 1742-18 1745 (RR54-57)

⁹⁴⁶ Refer to 18 1746-18 1747 (7808335-6 Box 230)

⁹⁴⁷ Refer to 18 1748 (GG21)

⁹⁴⁸ Refer to 18 1749 (80 00875 Box 82)

⁹⁴⁹ Refer to 18 1750(Joint Investigations Report p5)

⁹⁵⁰ Refer to 18 1751-18 1752(7800228 and 88 01091 Box 274 and Box 174)

⁹⁵¹ Refer to 18 1753 (80 00871 Box 82)

⁹⁵² Refer to paragraph 18.4.13

⁹⁵³ Refer to paragraph 12.2.4

⁹⁵⁴ Refer to 18 1754 (7807576 Box 284)

In a fax dated 8 March 2000 Thetard thanked Shaik for confirming the meeting with “JZ” on 10 March 2000⁹⁵⁵. Thetard’s diary indicates that he met Shaik and Zuma on 11 March 2000 in Durban⁹⁵⁶.

18.7 French encrypted fax and start of investigations

In an encrypted fax, dated 17 March 2000, from Thetard to De Jomaron, and copied to Perrier, reference was made to a meeting held with Shaik on 30 September 1999, a meeting with Perrier in Paris on 10 November 1999 and a meeting held with Zuma in Durban on 11 March 2000⁹⁵⁷. It was mentioned that Thetard had asked Shaik to obtain a “*clear confirmation*[from Zuma] *or, at least, an encoded declaration*” in order to validate the request of Shaik at the end of September 1999. Thetard indicated that he had defined a code and that the confirmation had been given in encoded form. The two main objectives of the “*effort*” were:

“*Thomson-CSF’s protection during the current investigation (SITRON)*”; and

“*JZ’s permanent support for future projects*”.

An amount of R500 000 per annum, until the first ADS dividends, was indicated.

In a letter from Shaik to Thetard on 20 March 2000 Shaik expressed his dissatisfaction with the way ADS and Thomson-CSF were being managed⁹⁵⁸.

Shaik stated that: “*You cannot continue believing that this situation will go unnoticed by the other shareholder. It appears that all we are good for in Thomson-CSF (Pty) Limited is to hand out money for donations. All Thomsons needs is for a Black Empowerment partner to land the deal through its connectivity, thereafter we are required to step aside and be at the mercy of Thomson’s poor management of the deal. I together with other influential persons in south Africa are growing tired of this abuse. This kind of business relationship cannot endure much longer*”. It is therefore apparent that Shaik regarded his “*...connectivity...*” as an asset to the affairs of Thomson-CSF. The other official shareholder at the time in Thomson-CSF was Thomson-CSF Holding (SA). It could therefore be inferred that Shaik referred to a third party in this instance, other than Thomson-CSF Holding (SA).

⁹⁵⁵ Refer to 18 1755 (80 06068 Box 109)

⁹⁵⁶ Refer to 18 1756-18 1757 (85 00055 Box 170, D12)

⁹⁵⁷ Refer to 18 1758-18 1760(040186, 040186A Box 306, E25-30)

⁹⁵⁸ Refer to 18 1761(80 07987 Box 120)

In the minutes of a Thomson-CSF shareholders meeting dated 3 April 2000, Shaik stated that he wanted Nkobi to be involved in the conduct and management of the investments of Thomson-CSF, specifically those in ADS⁹⁵⁹. Shaik reminded the meeting that Thomson-CSF (France) came to South Africa with no knowledge of the existence of ADS or of South African military systems in general.

Shaik also reminded everyone at the meeting that “...*decisions will be made in this country on political rather than business interest*”. Shaik confirmed that there had been disputes, but that all of these had been resolved “...*at high political level...*” two years ago with Moynot and other representatives of Thomson-CSF (France). Shaik also said that he and his associates were dissatisfied with the fact that Nkobi was being marginalized managerially due to FBS entering the ADS scenario⁹⁶⁰. Shaik stated that the Nkobi board of directors and his “*associates*” were not happy. It is evident from our report that the acquisition of ADS by Thomson-CSF (France) had been dealt with two years prior to the date of this meeting. It could therefore be concluded that the disputes referred to that had been resolved at high political level revolved around the restructuring of the shareholding in ADS.

During the abovementioned meeting, Shaik acknowledged that “*Nkobi had received financial assistance in the form of loan equity from Thomson-CSF but averred that this was a loan for his providing, through Nkobi, an opening into South Africa for Thomson-CSF*”.

On the matter of the 20% indirect shareholding of Nkobi Investments in ADS, Shaik said at the Thomson-CSF shareholders meeting, held on 3 April 2000 that political relationships made the strategy necessary in order to avoid speculation. It is apparent that the inclusion of Nkobi Investments as an indirect shareholder in ADS *via* Thomson-CSF was intentional. This had given Nkobi Investments the protection of being a shareholder *via* Thomson-CSF in ADS. Effectively, it owned 20% in ADS, which equalled that of the other black empowerment shareholder in ADS, namely FBS.

It is also evident that, on 3 April 2000, Nkobi demanded to become a direct shareholder in ADS and threatened to withdraw from the local Thomson companies if the demand was not met⁹⁶¹. Shaik also expressed his wish to meet with Perrier in Paris on 23 May 2000.

⁹⁵⁹ Refer to 18 1762(76 91622 Box 217)

⁹⁶⁰ Refer to 18 1763-18 1771(78 00560-8 Box 277)

⁹⁶¹ Refer to 18 1772-18 1773 (88 00095 p338, T0001)

On 12 April 2000 Sue Delique informed the auditors of Thomson-CSF, Parker and Read of Arthur Anderson, *inter alia* about her knowledge of a bribe of “±R500 000” to “a senior South African official”⁹⁶². On 11 May 2000 Parker and Read had a meeting with Thetard regarding the allegation of a bribe⁹⁶³. According to the report on the meeting, Thetard “...denied all the charges but did indicate that on many occasions, individuals do approach him for payment of monies which may be deemed to be bribes. At each approach, Alain writes a letter to Thomson Paris informing them of this request and Thomson Paris reply declining authority for the payment. This is, apparently, normal practice in their business; however, in order to retain the support of these individuals, delaying tactics are undertaken for the requested payments. Alain is not in a position to immediately refuse these approaches and does not necessarily want to say no immediately, as this may sour the relationship going forward. This results in the correspondence to Paris who then reply, due to regulations, that payment cannot be made”.

A letter from Shaik to Thetard dated 8 May 2000 indicates that the ADS meetings were planned to be held on 22 and 23 May 2000 in Paris⁹⁶⁴. Shaik also confirmed that a meeting would be held with “...Ian Philips, the advisor to Minister of Public Enterprise, Mr Jeff Radebe regarding certain interests that Thomson-CSF has with the Denel Group of companies”. The letter was concluded with “...Kindly note that I shall also require to meet Mr JP Perrier separately as agreed by ourselves. This is to occur before any of our meetings”.

A similar letter was sent to Moynot on the same date⁹⁶⁵. The meeting between Shaik and Perrier was confirmed by Thetard on 11 May 2000⁹⁶⁶.

In a fax dated 2 June 2000 Thetard informed Perrier that “Nkobi” proposed that the name of Thomson-CSF had to be changed to “Thomson-CSF Kobi Holding (Pty) Limited”⁹⁶⁷. Thetard also confirmed that, at the meeting in Paris on 22 May 2000 between himself, Perrier and Shaik, Shaik had abandoned the idea of any direct shareholding of Nkobi Investments in ADS.

At a meeting between Arrubarena and Shaik on 7 and 8 June 2000, Shaik expressed his dissatisfaction with the fact that dividends from ADS would not allow him to repay the loan the Thomson group had made without him having to pay out some cash⁹⁶⁸. Shaik also realised that

⁹⁶² Refer to 18 1774 (76 90396 Box 224)

⁹⁶³ Refer to 18 1775 (76 90389 Box 224)

⁹⁶⁴ Refer to 18 1776 (7803515 Box 220)

⁹⁶⁵ Refer to 18 1777 (80 01158 Box 83)

⁹⁶⁶ Refer to 18 1778 (7803565 Box 263)

⁹⁶⁷ Refer to 18 1779-18 1781 (78 03453 T0005 p118, D19)

⁹⁶⁸ Refer to 18 1782/85(7803576 Box 263 p123. T0005)

the return on investment of the operation was not good. Shaik requested that Thomson should make a gift to him of the shares that he already held “...in exchange for his political support” in order to grow the business, or consider a deferred repayment of the loan.

During the above meeting Shaik also said that it was unacceptable that FBS had obtained contracts amounting to R12 million, while he (Nkobi group) had obtained nothing. Shaik believed that he was being treated like a pawn and that Moynot was exceeding his authority by contacting rival networks. This allegedly put Shaik in a difficult position with regard to the political authorities of the country. Shaik indicated that Moynot had had meetings with a person of a tendency opposite to his own within the ANC and that it had and would have had repercussions on the business given to ADS⁹⁶⁹. This illustrates Shaik’s opinion of his ability to promote business due to his political connectivity. Shaik threatened to leave the company and said that he would do everything in his power to get Moynot out of the country⁹⁷⁰.

A memo dated 22 June 2000 from Surman to Shaik indicates that “Chris” from the Auditor General’s office requested a list of the directors of Nkobi Holdings as part of the audit in connection with the arms deal⁹⁷¹. A letter from JH Smilgh & Company to the Auditor General dated 22 June 2000 reflected the directors and shareholders of Thomson-CSF Holding (SA) and Thomson-CSF⁹⁷². We were unable to identify the reply from Shaik to the Auditor General regarding the directors of Nkobi Holdings. Start here

On 26 June 2000 Janks, of White & Case, international lawyers in Sandton, sent a fax to Le Bretonnic of Thomson-CSF (France) and Thetard regarding the “...South Africa Structure...”⁹⁷³. The fax mentioned that there would be a Thomson-CSF directors’ meeting and an ADS shareholders’ meeting regarding the relationship between Thomson and its local empowerment partners, Nkobi and FBS. Janks stated that the partners had pointed out that the Thomson group depended heavily on their (the partners’) contributions and connections for access to government contracts and that these contributions would not continue if the concerns of the partners were not taken into account and dealt with seriously.

A fax from Thetard to Le Bretonnic, dated 27 June 2000, indicates *inter alia* that there were “tension and risks” with the relationship between Thomson, FBS and Nkobi Investments⁹⁷⁴.

⁹⁶⁹ Refer to 18 1783/86 (7803577 p124, T0005)

⁹⁷⁰ Refer to 18 1784/87 (7803579 p127, T0005)

⁹⁷¹ Refer to 18 1788 (80 11112 Box 134)

⁹⁷² Refer to 18 1789 (78 00787 Box 272)

⁹⁷³ Refer to 18 1790-18 1792 (78 01665-7 Box 221)

⁹⁷⁴ Refer to 18 1793-18 1796 (7801663-4 Box 221 T0005 p471/459)

A tender, to the value of R2 428 360, for the Nkandla development was submitted on 19 July 2000 and the construction commenced on 20 July 2000⁹⁷⁵. In terms of the tender, payment was required every two weeks and the estimated time for completion was six months.

A letter from Shaik to Thetard, dated 31 August 2000, Shaik indicated that he had difficulty reaching Thetard in order to discuss “...*matters of extreme importance*”⁹⁷⁶. Shaik stated that Thetard had made no attempts to organise shareholders’/directors’ meetings. Shaik then mentioned that “...*I have also raised a very important matter with Mr Jean Paul Perrier which he had sanctioned, for implementation by yourself. This was done during our last meeting in Paris several months ago, and despite my several attempts to raise this issue with you in order to resolve the undertaking; you have continually ignored this concern. You leave me no choice but to seek alternative remedy to this matter, and therefore I wish to put the above matter on record with you*”. Based on the information at our disposal, the last meeting Shaik and Perrier had in Paris, was on 22 May 2000. At this meeting, the direct shareholding of Nkobi Investments in ADS was resolved.

The Auditor General’s special review of the arms procurement process was finalised on 15 September 2000⁹⁷⁷ and then referred to SCOPA on 2 October 2000⁹⁷⁸. On this same date Mandela endorsed a cheque to the value of R2 000 000 to Zuma⁹⁷⁹. This cheque was deposited into Zuma’s cheque account on 17 October 2000.

Malengret sent a letter to Nkobi Holdings on 4 October 2000 to inform them of the total project value of the Nkandla development⁹⁸⁰. The costs to date were reflected as R1 178 819.

A fax from Shaik to Thetard, dated 6 October 2000⁹⁸¹, indicates that Shaik had telephoned Thetard in Mauritius two weeks before and that “...*as I have not heard from you I am therefore forced to write this fax urging you to sit with me to cover important strategic issues. As you would no doubt appreciate, the longer we leave matters of mutual interest to be resolved, the harder or the more difficult they become to be resolved*”. The following “...*matters urgently requiring our attention and decisions on*” were listed:

“1. *Idmatic Claim...*

2. *South African ID Card...*

975 Refer to paragraph 12.2.4
976 Refer to 18 1797 (80 04261 Box 86)
977 Refer to 18 1798(Joint Investigations Report p5)
978 Refer 18 1799(EF1)
979 Refer to paragraph 12.2.18
980 Refer to 18 1800(FF16)
981 Refer to 18 801-18 1802 (RR58-59)

3. *Namibian Drivers Licence...*
4. *Nigerian, ID Card, Drivers Licence Card...*
5. *The Subject matter agreed by ourselves in Pretoria during the Dexsa show over breakfast. My party is now saying that we are reneging on an agreed understanding, this request already having agreed upon by Mr Perrier. I since then communicated this understanding to my party. Several months later no real action. I share the sentiment with my party that he feels let down, this is particularly unpleasing given the positive response from Mr Perrier, consequently as my party proceeded to an advanced stage on a certain sensitive matter which was required to be resolves (sic). This delay is obviously proving to be extremely detrimental and embarrassing for all of us. I therefore urge you to respond timeously on this extremely delicate matter.*
6. *Thomson-CSF (SA) Board Meeting...."*

It appears that Shaik had attended the Africa-Aerospace and Defence 2000 Exhibition on invitation from Thetard and Moynot on 7 September 2000⁹⁸². It is possible that this was the "Dexsa show" Shaik referred to. The previous DEXSA show was held from 16 to 21 November 1998⁹⁸³.

On 13 October 2000 a follow-up fax was sent to Thetard on behalf of Shaik. This fax referred to the fax of 6 October 2000 and suitable dates for a meeting in Mauritius were requested⁹⁸⁴. On 24 October 2000 Shaik confirmed that the meeting in Mauritius would be held on 1 November 2000⁹⁸⁵.

Shaik transferred R900 000. from Zuma's account to Floryn Investments' account on 18 October 2000⁹⁸⁶. Shaik phoned Malengret on the same day and confirmed his instruction to Malengret to stop the Nkandla development on 19 October 2000⁹⁸⁷.

A statement of account from the legal department of the University of Zululand dated 20 October 2000 reflects the following handwritten diagram on the back, which can be interpreted as follows⁹⁸⁸. "*RIm from Paris to Mauritius. From Mauritius to A Moodley Trust a/c and then to Juli's Trust a/c*". Moodley was Nkobi group's attorney and it is possible that "Juli"

⁹⁸² Refer to 18 1803-18 1804(80 01148-9 Box 83)
⁹⁸³ Refer to 18 1805(78027006 (p3) Box 288)
⁹⁸⁴ Refer to 18 1806(80 08648 Box 127)
⁹⁸⁵ Refer to 18 1807(80 08650 Box 127)
⁹⁸⁶ Refer to paragraph 12.2.18
⁹⁸⁷ Refer to paragraph 12.2.4
⁹⁸⁸ Refer to 18 1808(108 001324 Z167)

refers to Julekha, also known as Juli, Mahomed, Zuma's attorney. The author of this diagram is unknown at the date of this report. The diagram indicates a possible method for transferring funds from Paris to South Africa. The paying party and ultimate beneficiary of the funds are unknown at this stage. (We identified another structure for transferring funds, namely the transfer of approximately R1,2 m from a London based attorney's trust account to Cay Nominees (controlled by Jurgen Kögl) account on 6 August 2001. Cay Nominees then transferred R183 000 to Zuma's lease account at Mercedes-Benz Finance on 15 August 2001 and R600 000 to Zuma's bond account in the name of Michigan Investments on 23 August 2001⁹⁸⁹.)

Chabas reported to Perrier and various other Thomson officials on his visit to South Africa on 22 to 28 October 2000⁹⁹⁰. Chabas indicated that Shaik "...brought up his fears relating to the commission of enquiry that had been established (the so-called "big five"). He did not want to be in any way linked to any company that could be involved". The "big five" could refer to the five investigating units, namely the Auditor General, SCOPA, Public Protector, IDSEO and Heath SIU.

SCOPA's 14th report dated 30 October 2000 was tabled and adopted by Parliament on 2 November 2000⁹⁹¹. The report recommended a meeting between the Auditor General, SCOPA, Public Protector, IDSEO and Heath SIU.

Shaik confirmed by fax to Thetard on 3 November 2000 that the meeting in Mauritius would be held on 8 November 2000⁹⁹².

A preparatory investigation by the Directorate of Special Operations was instituted on 6 November 2000⁹⁹³.

We identified the handwritten minutes of the meeting that was held on 8 November 2000⁹⁹⁴. It appears from page one of the minutes that "*Negative press – Thom/ADS*" was one of the matters on the agenda. These appear to be the minutes of a meeting that was held in Mauritius between Shaik and Thomson representatives. We understand that Bianca Singh was also present for a part of the meeting during which she took the minutes. These minutes may be those generated by her during the meeting.

⁹⁸⁹ Refer to paragraphs 12.2.22 and 12.2.3

⁹⁹⁰ Refer to 18 1809 18 1816(8800764, 765-7 Box 246, Box 174, D415 p20-23)

⁹⁹¹ Refer to 18 1817 (EE2)

⁹⁹² Refer to 18 1818(80 08657 Box 127)

⁹⁹³ Refer to 18 1819 (Joint Investigations Report p31)

⁹⁹⁴ Refer to 18 1820-18 1850 (80 10498-503 Box 132)

"SS

- *Auditors Acc*
- *Chippy was under fire*
- *Mr Woods – former Couvett – IFP*
- *Charged – Creating – destabilising ANC/IFP*
- *INKATHA GATE – MOE SHAIK under covered it*

Point

- *Sitting on the Board*
- *26 – 45 million - not happening*
- *go to finance minister*

- *Tender Board – So fickle*

18.8 The service provider agreement and continuing of investigations

On 6 December 2000 the Auditor General informed Gavin Woods of SCOPA of the approved audit plan for the forensic audit of the arms deal⁹⁹⁶.

Zuma still owed Development Africa R1 000 000 due to the fact that Shaik had utilised R900 000 of the R1 000 000 meant for Development Africa, and Zuma had retained R100 000 was utilised to settle Zuma's overdraft.

A cheque dated 6 December 2000, drawn in favour of Development Africa for an amount of R1 000 000 was signed by Zuma⁹⁹⁷. It is clear from the bank statements of the cheque account of Zuma, on which the cheque was drawn, that Zuma did not have sufficient funds or facilities

995 Refer to 18 1831-18 1842(O38-43)

996 Refer to 18 1843 (EE10).

997 Refer to 18 1844(BS1 020929 File 100

to honour a cheque for R1 000 000⁹⁹⁸. Shaik personally instructed the bank to stop payment of the cheque on 7 December 2000 and the bank proceeded to reverse the transaction⁹⁹⁹. It appears that Zuma was unaware that Shaik had transferred the R900 000 from his account.

The application form for the service provider agreement between Thomson-CSF and Kobifin was sent by fax to Thetard on 8 December 2000 together with a covering letter¹⁰⁰⁰, which stated *inter alia*: “...Kindly expedite our arrangement as soon as possible, as matters are becoming extremely urgent with my client”. On the same date, Gavin Woods requested Mbeki to consider including the Special Investigations Unit in the arms deal investigation¹⁰⁰¹.

In terms of the “service provider agreement”, the Service Provider was to identify new investment projects for Thomson in terms of the National Investment Programme of the Government, related to counter investment as well as a corresponding business plan¹⁰⁰². The agreement ostensibly came into force on 1 November 2000 and expired on 1 May 2001.

In terms of paragraph 5.4 of the service provider agreement, Kobifin undertook and warranted that it would not make any offer, promise, donation and gift or benefit whatsoever to a person in authority etc¹⁰⁰³. A handwritten note adjacent to this paragraph reflects the following: “*conflicts with intention*”. We understand that this was written by Shaik.

Paragraph 7 of the agreement reflects the remuneration Thomson-CSF International Africa (Mauritius) would pay Kobifin, namely R500 000 in two instalments, R250 000 before the end of December 2000 and R250 000 on 28 February 2001. In the contract document, two additional payments of R250 000 were added by hand underneath the typed references to payments of R250 000¹⁰⁰⁴.

It appears that the Service Provider Agreement between Thomson-CSF International Africa (Mauritius) and Kobifin was dated 1 January 2001.

A letter, dated 11 December 2000 from Shaik to Thetard states that Shaik had faxed the service provider agreement to Mauritius on 8 December 2000. Shaik mentioned that his office was closing on 15 December 2000 and “*I assure (sic) the service arrangement payment to occur*”

⁹⁹⁸ Refer to 18 1845 (BS1 020189 File 98)

⁹⁹⁹ Refer to 18 1846 (BS1 007705 File 53)

¹⁰⁰⁰ Refer to 18 1847-18 1850 (80 13209-227 Box 138, 80 02182 Box 87, O37 (Court file 2)

¹⁰⁰¹ Refer to 18 1853 (EE15)

¹⁰⁰² Refer to 18 1863(80 13216 to 80 13226 Box 138)

¹⁰⁰³ Refer to 18 1864(O25)

¹⁰⁰⁴ Refer to 18 1865-18 1866 (80 13222 Box 138)

*before the 15th December 2000 so that I could give effect to its intended purpose before we close*¹⁰⁰⁵. Thetard then requested Shaik to send the original service provider agreement via courier to him.

An ADS newsletter dated “*issue 2/2000*” contains a message from Moynot in which he mentioned that “*...the first goal we set ourselves after the formation of ADS was to secure the Corvette Programme, viewing this project as the lifesaver for the company. We have achieved that goal*”¹⁰⁰⁶.

On 18 January 2001 Adv Khan and Adv Lubbe informed Mr P Maduna, the Minister of Justice, that a preparatory criminal investigation in terms of the NPA Act was warranted and justified¹⁰⁰⁷. On the same date, the President, the Ministers involved in the approval of the arms procurement, the Auditor General, the National Director and the Public Protector met to discuss the availability of the documentation¹⁰⁰⁸.

In a letter to Gavin Woods, Chairman of SCOPA, dated 19 January 2001, Zuma, in his capacity as Leader of Government Business,¹⁰⁰⁹ indicated that he was sending the letter with the authorisation of Mbeki. Zuma referred to the “*Government Statement of the Defence Acquisition*”, dated 12 January 2001, and the letter from the Minister of Justice to Mbeki on the issue of the “*Heath Unit*”. Zuma stated that these documents indicated that “*...the Government contests the conclusions arrived at by the Auditor General and SCOPA*”. Zuma also stated *inter alia* that “*should you have any evidence indicating possible criminal misconduct on the part of any of the individuals and corporations I have mentioned, you should hand it over to the Police Service*”. Zuma concluded the letter by indicating that “*copies of the letter will be sent to*” the Speaker, SCOPA members, investigative units, Chairpersons of committees, the principal contracting companies, foreign governments and the media. Zuma named the prime contractors as *inter alia*: Blohm + Voss, Thomson-CSF, Ferrostaal, Thyssen Nordseewerke and British Aerospace. It should be noted that Thomson-CSF was not a prime contractor.

¹⁰⁰⁵ Refer to 18 1867-18 1887 (85 01597 Box 172)

¹⁰⁰⁶ Refer to 18 1869 (80 11066 Box 134)

¹⁰⁰⁷ Refer to 18 1870(JJ2)

¹⁰⁰⁸ Refer to 18 1871 (Joint Investigations Report p10)

¹⁰⁰⁹ Refer to 18 1872-18 1883 (EE18-29 (Extra exhibit p15-26)

On 29 January 2001 the Speaker, FN Ginwala, responded to Zuma's letter that had been sent to Gavin Woods, to clarify some of the issues raised by Zuma¹⁰¹⁰. The Speaker's letter indicated *inter alia* that the role of the Leader of Government Business was to improve the communication between the Executive and Legislature.

Zuma thanked the Speaker for her letter on 31 January 2001 and indicated that "...if the second report of SCOPA to Parliament responded to these questions, that will assist the National Assembly in its earnest search for the truth in this matter"¹⁰¹¹. We are not aware of a second report by SCOPA.

The final version of the Service Provider Agreement indicates that the first payment of R250 000 was due on 31 January 2001¹⁰¹².

We identified an amount of R249 725 deposited into Kobitech's ABSA account number *REDACTED* on 16 February 2001¹⁰¹³. This amount is net of bank charges amounting to R275. The funds were transferred from Thomson-CSF International Africa (Mauritius).

A Thomson-CSF International Africa (Mauritius) invoice, dated 18 May 2001, indicates that R250 000 was paid to Kobifin for lobbying fees¹⁰¹⁴. A handwritten note indicates that the exchange rate was R6.8157 for Euro 1. According to information obtained from FNB, the interbank exchange rate on 16 February 2001 was R7.1215 to the Euro¹⁰¹⁵. Based on this, it appears that this invoice refers to the payment of R250 000 made to Kobitech on 16 February 2001.

In a report dated 27 February 2001 Chabas reported to Roger and Perrier regarding his visit to South Africa on 19 to 21 February 2001¹⁰¹⁶. Chabas indicated that Shaik accepted the proposal to settle the loan repayments by means of the dividends from ADS. Shaik wanted to know from what date dividends, over and above loan repayments, would be paid. Shaik was "...concerned about being able to help those who had helped him".

¹⁰¹⁰ Refer to 18 1884-18 1888 (EE30-34)

¹⁰¹¹ Refer to 18 1889-18 1890 (EE35-6)

¹⁰¹² Refer to 18 1891 (P19)

¹⁰¹³ Refer to 18 1892-18 1893(017265 File 164, 006503 File 15)

¹⁰¹⁴ Refer to 18 1894-18 1896(85 00265 (Box 170, T0008 p63), 109 011637B Box Z207)

¹⁰¹⁵ Refer to 18 1897-18 1902 (Euro exchange rate schedule)

¹⁰¹⁶ Refer to 18 1903-18 1910(8800745-8 (040480-3) T0004 p50, box 173, D445 p2-5)

The second payment of R250 000 in terms of the service provider agreement was due on 28 February 2001.

Following the stopped payment by Shaik on the cheque issued by Zuma to Development Africa, Kobitech issued four cheques to Development Africa. On 28 February 2001, cheque number 1329 for R250 000, of Kobitech's account number *REDACTED*, was cleared to the cheque account of Development Africa¹⁰¹⁷. An additional three cheques for R250 000 each were also issued.

A letter dated 19 April 2001 from Nkobi Holdings, signed by R Lechman, to ABSA Business Centre requested to be stopped cheque numbers 1330, 1331 and 1332, each for R250 000 in favour of Development Africa¹⁰¹⁸.

In the cashflow projections of Kobitech for May 2001 to November 2001, drafted for ABSA, it was stated that commissions were due from the Thomson group. These would have been paid in four tranches, the second and third being payable during July 2001 and November 2001¹⁰¹⁹. On the cashflow spreadsheet, R250 000 was indicated as "*other income receivable*" during June 2001. This deposit could not be identified in the relevant bank accounts. It therefore appears that the balance of the service provider payments was not made and there were no attempts from the Nkobi group to legally enforce the payment of the amounts due. During the period under review, it appears that Thomson-CSF did not enter into any other investments or contracts as a result of the alleged services to be provided in terms of the abovementioned service provider agreement.

In a fax dated 23 March 2001 Thetard informed Perrier of meetings in South Africa¹⁰²⁰. Thetard indicated that "*As far as President T Mbeki is concerned, my networks inform me that he does not wish to meet, for the time being and taking into account the audit in progress regarding the 1999 arms contracts, managers/bosses of businesses that are affected by the said audit. In stead of the no1 I am trying to organise a meeting with the no2, Jacob Zuma. I shall give more details at a later stage*". The reason for a meeting is unknown and it is not clear whether this meeting took place.

¹⁰¹⁷ Refer to 18 1911-181912(006703 (File 15), BS1 012081 (File 72)

¹⁰¹⁸ Refer to 18 1913(80 13789 (110082) Box 139)

¹⁰¹⁹ Refer to 18 1914-18 1929 (par 18.8 and 80 13864-78 (Box 139)

¹⁰²⁰ Refer to 18 1930-181931(8501585 Box 172 T0008 p31)

During a Thomson-CSF directors and shareholders meeting on 28 March 2001, Thetard stressed that the Thomsons group needed Shaik in KwaZulu-Natal. He said this with reference to other projects such as the La Mercy Airport project. Shaik stated that Thomson had an obligation to look after the people it worked with in South Africa. Thetard then assured Shaik that Thomson defended Shaik on a daily basis¹⁰²¹.

A Kobifin letter ostensibly dated 15 April 2001 indicates that Shaik wanted to inform De Jomaron of potential projects in South Africa worthy of investment in terms of the counter trade offset obligations by “*Thomsons SA (Pty) Ltd*”¹⁰²².

Another Kobifin letter was written to De Jomaron, ostensibly on 16 July 2001, regarding an executive summary of a specific project¹⁰²³. It appears that these letters were written on 23 August 2001 and back-dated, possibly to give the impression that Nkobi had performed their services in terms of the Service Provider Agreement.

In a letter from Ahmed Paruk, of DS&T, to Shaik on 16 May 2001, it was recorded that Nkobi was not the only party proposing for the acquisition of the Manufacturing Division of ADS in Mount Edgecombe¹⁰²⁴. This proposed acquisition was also mentioned in a cashflow projection for May 2001 to November 2001 prepared for ABSA¹⁰²⁵.

In a fax to Moynot dated 17 July 2001 Shaik reminded Moynot of his commitment to respond to Shaik regarding the Mount Edgecombe manufacturing business unit to be outsourced to Shaik’s group¹⁰²⁶. In the fax Shaik placed Moynot on terms that, if he failed to receive correspondence from Moynot, he would withdraw from all structures of ADS and Thomson in addition to “...*throwing in the towel on matters in which I believe will be in the interest of our state*”. It seems that Shaik had suggested that, should Thomson not respond to his complaints, he would withdraw his support to Thomson regarding the relationship between Thomson and the Government of South Africa.

¹⁰²¹ Refer to 18 1932-18 1940 (7803257-65)

¹⁰²² Refer to 18 1941-18 1942 (BJL Annexure 1 Docket file 314)

¹⁰²³ Refer to 18 1943-18 1946(BJL Annexure 2 Docket file 314)

¹⁰²⁴ Refer to 18 1947 (80 08960 Box 129)

¹⁰²⁵ Refer to 18 1948(80 13870 Box 139)

¹⁰²⁶ Refer to 18 1949 (80 08936 Box 129)

In the minutes of a directors' meeting of Thomson-CSF dated 14 June 2001 it is noted that Shaik was dissatisfied due to the fact that Nkobi had had to tender for workshare from ADS¹⁰²⁷. It is also noted that Thetard stated that the shareholders of Thomson-CSF had had to receive their dividends in order to pay their loan instalments and other expenses by the end of September 2001. Thetard then stated that the dividend for the year ending 31 December 2000 had been inadequate for the shareholders to be able to meet their obligations and that ADS would declare an interim dividend for the year ending 31 December 2001 in September 2001.

A notice of a Thomson-CSF shareholders general meeting indicates that Shaik was in Mauritius on 22 August 2001¹⁰²⁸. A fax from Harvey World Travel, dated 15 August 2001, indicates that Shaik, Gama and Isaacs had confirmed flight bookings from Durban to Mauritius on 21 August 2001 and were returning on 28 August 2001¹⁰²⁹.

On 24 August 2001 the NDPP instituted an investigation into the arms deal¹⁰³⁰ and on 9 October 2001, search and seizure operations were conducted by the DSO in Durban, France and Mauritius.

On 25 February 2002 Gavin Woods resigned from SCOPA.

18.9 Subsequent events

On 7 August 2002 Reeves Parsee, external legal advisor to Shaik, drafted a letter to Perrier regarding the fact that consensus had been reached regarding willingness of Thomson-CSF Holding (SA) to purchase Nkobi Investments' shareholding in Thomson-CSF¹⁰³¹. It was noted that an agreement could not be reached regarding the value of the shares. On 19 August 2002 Deneys Reitz Attorneys responded to the letter received by Thomson-CSF Holding (SA) from Reeves Parsee regarding the sale of Nkobi Investments' shareholding in Thomson-CSF¹⁰³². Deneys Reitz Attorneys indicated that the shares could be sold for an amount equal to the outstanding amount of debt Nkobi Investments owed Thomson-CSF International Africa (Mauritius) in terms of the Escrow agreement, plus R7 000 000 in cash.

¹⁰²⁷ Refer to 18 1950-18 1956(80 06001 Box 109, A-G (specifically C))

¹⁰²⁸ Refer to 18 1957 (80 05995 Box 109)

¹⁰²⁹ Refer to 18 1958 (80 08633BF Box 127)

¹⁰³⁰ Refer to 18 1959-18 1961 (RR2-4)

¹⁰³¹ Refer to 18 1962 (100 022582 Box Z113)

¹⁰³² Refer to 18 1963 (100 022608 Box Z113)

It appears that the negotiations were fruitless because, on 8 December 2004, Thomson-CSF Holding (SA) formally offered to acquire the shares of Thomson-CSF from Nkobi Investments¹⁰³³. This was also unsuccessful. A similar offer was made to FBS¹⁰³⁴.

¹⁰³³ Refer to 18 1964 (100 022749 Box Z113)
¹⁰³⁴ Refer to 18 1965 (109 001507 Box Z188)

On 11 September 2003 Shaik sent a copy of Mahomed's passport to Moynot and indicated that Mahomed would accompany him to Paris in her capacity as Zuma's attorney¹⁰³⁵.

18.10 Dividends from ADS

18.10.1 Summary

Based on the information at our disposal, ADS has declared dividends to the value of R63 986 655 up to the year ending 31 December 2004¹⁰³⁶. Therefore, Thomson-CSF received dividends to the value of R51 189 324 (80%), FBS received R12 973 331 (20%). Thomson-CSF Holding (SA) received R38 391 993 (60%) and Nkobi Investments received R12 797 331 (20%).

18.10.2 Events surrounding the dividend declarations and payments

The financial statements of ADS for the year ending 31 December 2000 indicated that a dividend of R8 657 000 was proposed during the year under review¹⁰³⁷. This would have translated into a dividend for Thomson-CSF of R6 925 600. A directors' resolution of Thomson-CSF, dated 18 June 2001 indicated that ADS had declared a dividend of R6 925 600 to Thomson-CSF for the year ended 31 December 2000¹⁰³⁸. The resolution stated further that the dividend would be paid to the shareholders of Thomson-CSF after receipt of the monies from ADS on 30 September 2001. Based on the 25% shareholding of Nkobi Investments in Thomson-CSF, Nkobi Investments' share of the dividends would be R1 731 400.

On 6 September 2001 a Thomson-CSF directors' resolution recorded that ADS had declared an interim dividend of R4 254 164 to Thomson-CSF for the year ending 31 December 2001 and that Thomson-CSF had declared an interim dividend for the same amount¹⁰³⁹. The total dividend declared by ADS amounted to R5 317 705. Nkobi Investments' share of this dividend would have been R1 063 541.

¹⁰³⁵ Refer to 18 1966(108 000154 Box Z163)

¹⁰³⁶ Refer to Annexure T

¹⁰³⁷ Refer to 18 1967-18 1983 (80 08955B-Q Box 129)

¹⁰³⁸ Refer to 18 1984 (86 0219 Box 73)

¹⁰³⁹ Refer to 18 1985 (86 0218 Box 73)

On 6 September 2001 the directors of Thomson-CSF Holding (SA) passed a resolution declaring an interim dividend of R3 190 693 for the year ending 31 December 2001¹⁰⁴⁰. Therefore, Thomson-CSF International Africa (Mauritius) received a dividend of R3 190 693.

A letter from JH Smilgh & Company to ADS on 13 September 2001 indicates that the interim dividend for the year ending 31 December 2001 had been incorrectly calculated¹⁰⁴¹. According to the letter, the interim dividend declared was R6 077 377 and not R5 317 705 as mentioned above. A schedule from Thomson-CSF Holding (SA) also reflects the dividend as R6 077 377¹⁰⁴².

Thetard instructed Nedbank, on 20 September 2001, to transfer R2 794 941 to the Escrow account of Nkobi Investments at Société Générale as per the Escrow agreement signed on 30 September 1999¹⁰⁴³. The agreement states that all dividends payable to Nkobi Investments were to be deposited into the Escrow account as security for the obligations of Nkobi Investments to repay the capital and interest of the R7 464 000 loan¹⁰⁴⁴.

In a fax dated 1 October 2001 Shaik thanked Moynot for facilitating the Nkobi dividends matter with Thales. On the same date Shaik wrote a letter to Thetard stating that he (Shaik) hoped that he would not have to wait a lifetime to see the financial benefits of his earlier hard work in securing ADS¹⁰⁴⁵.

On 6 September 2002 Thomson-CSF declared an interim dividend of R9 600 000 for the year ending 31 December 2002¹⁰⁴⁶ and on 11 September 2002, Thomson-CSF declared a final dividend of R2 496 000 for the year ending 31 December 2001¹⁰⁴⁷.

We were unable to locate the resolutions regarding either the final dividend for the year ending 31 December 2002 or the interim dividend for the year ending 31 December 2003. The financial statements of ADS reflect that a dividend of R11 820 000 was paid in 2003¹⁰⁴⁸.

¹⁰⁴⁰ Refer to 18 1986 (109 004087 Box Z192)

¹⁰⁴¹ Refer to 18 1987 (109 011141 Box Z206)

¹⁰⁴² Refer to 18 1988-18 1989 (109 011148-9 Box Z206)

¹⁰⁴³ Refer to 18 1990 (80 08637 Box 127)

¹⁰⁴⁴ Refer to 18 1991-181999(78 01347 to 78 01354 Box 221 and 80 08635 Box 127)

¹⁰⁴⁵ Refer to 18 2000 (80 08636 Box 127)

¹⁰⁴⁶ Refer to 18 2001 (109 011039 Box Z206)

¹⁰⁴⁷ Refer to 18 2002 (109 025626 Box Z231)

¹⁰⁴⁸ Refer to 18 2003-18 2023 (100 014090-110 Box Z072)

On 7 July 2004 Thomson-CSF received a dividend of R8 396 800 from ADS. (The resolution for this final dividend for the year ending 31 December 2003 was passed on 15 July 2004¹⁰⁴⁹). The resolution reflected that it was a final dividend of ADS, but an interim dividend for Thomson-CSF.

On 5 February 2005 Thomson-CSF received a dividend R7 696 760 from ADS. The resolution for this dividend was passed on 4 February 2005¹⁰⁵⁰.

On 14 December 2005 Thomson-CSF International Africa (Mauritius) confirmed that the total loan repayments as at 29 February 2004, amounted to R5 443 301 and that the balance outstanding was R3 363 086¹⁰⁵¹. Based on the information at our disposal, the total dividends received from Thomson-CSF as at 29 February 2004 amounted to R8 773 941.

18.11 The value of ADS and benefits received

18.11.1 Valuations

On 26 July 2004 Deloitte issued a report on the valuation of the share capital of Thomson-CSF¹⁰⁵². The report indicated that, as at 31 March 2004, the value of ADS would be approximately R106 121 000. Therefore, the value of Thomson-CSF's 80% share in ADS was approximately R85 589 000. This was also the value of Thomson-CSF based on the fact that the company's assets consisted primarily of the investment in ADS. The value of Nkobi Investments' 25% shareholding in Thomson-CSF would have been valued at approximately R18 578 000.

Another valuation of ADS and was performed as at 30 June 2005¹⁰⁵³. Based on this valuation the value of ADS was R124 985 000. Thomson-CSF's was also valued as at 30 June 2005 on R100 885 000. Nkobi Investments' adjusted value of its 25% share in Thomson-CSF was stated at R21 018 000.

It appears from the letter, from the attorney of Thomson-CSF that accompanied the valuation which was prepared by Deloitte and forwarded to the curator of Shaik that they do not accept

¹⁰⁴⁹ Refer to 18 2024 (109 006886 Box Z197)

¹⁰⁵⁰ Refer to 18 2025 (100 014088 Box Z072)

¹⁰⁵¹ Refer to 18 2026 (123 003734 Box Z283)

¹⁰⁵² Refer to 18 2027-18 2054(109 008804-31, specifically 109 008820/2/3 Box Z201)

¹⁰⁵³ Refer to 18 2055-18 2097 (Curator report)

the basis of the valuation nor the calculation. The reasons are not known but could have an effect on the final determination of the value of benefits received by Shaik and/or the Nkobi group.

18.11.2 Benefits received

Based on the valuations as at 31 March 2004 mentioned above, and the dividends received from ADS, the total benefit received by Thomson-CSF from ADS was dividends received, up to the date of the valuation, amounting to R35 095 764¹⁰⁵⁴ plus the value of the shares as at 31 March 2004 of R85 589 000. Therefore the total benefit received by Thomson-CSF was approximately R120 684 764. Similarly, the total benefit received by Nkobi Investments was approximately R27 351 941 (R18 578 000 plus R8 773 941).

Based on the valuation performed in June 2005 the total benefit received by Thomson-CSF amounted to R152 218 324, consisting of the value of the ADS shares of R101 029 000 plus the total dividends received of R51 189 324. The total benefits received by Nkobi Investments was therefore R33 815 331 (R21 018 000 plus R12 797 331).

¹⁰⁵⁴

Refer to Annexure T)

19 Political office-bearers and the Nkobi group

19.1 Introduction

We continue to deal with the instances that we identified where politicians' names and/or Shaik's "connectivity" surfaced in business dealings and transactions that Shaik wanted to engage into.

As with any business a number of transactions are undertaken. These transactions are ultimately recorded in the accounting records of the business, based on the underlying facts and assumptions that support the transactions.

The nature of the business of the Nkobi group essentially revolved around securing business ventures and agreements with parties with whom it partnered or wanted to partner. Securing deals and relationships of this nature occur over time and are based on an understanding between the parties of each other's capabilities, strengths and weaknesses. This mainly revolves around an exchange of information either in a formal or informal manner. A key feature of the information that Shaik exchanged with third parties with whom he wished to do business regarding the Nkobi group and/or him, was his "*political connectivity*". This appears from:

- Statements to that effect;
- Arranging functions for political office-bearers to meet with prospective business partners;
- Arranging meetings between political office-bearers and prospective business partners;
- Corresponding with prospective business partners and mentioning his position as advisor to Zuma in his capacity as the then Minister of Economic Affairs and Tourism in KwaZulu-Natal, as Deputy President to the ANC and ultimately as Deputy President of South Africa;
- Corresponding with other politicians and indicating the support of Zuma for a particular course of action;
- Third parties corresponding with Shaik and requesting to meet with Zuma and/or Zuma to issue letters of support – followed by the proposed action on the part of Zuma;
- Corresponding with third parties and indicating that the correspondence was also forwarded to Zuma in particular; and

- Threatening third parties with his political connectivity, especially using the name of Zuma.

These instances cannot be construed as part of Shaik's assumed responsibility in the capacity as advisor to Zuma as in most of the instances, the correspondence is created on Nkobi group company stationery. The nature of the correspondence indicates that it represented official correspondence from the Nkobi group.

It is evident that at least Shaik considered the association with Zuma and his wider political connectivity as a key driver to the success of the business activities of the Nkobi group. Strategically it provided Shaik and the Nkobi group with the impetus it needed to enter the business environment with success. However, not all attempts were successful.

We could not find any evidence in the documentation at our disposal, of Shaik being advised or requested by Zuma, not to engage into such activities, despite numerous examples indicating his approach. In fact, the involvement of Zuma was more concrete than Shaik merely using his name in correspondence; it also resulted in action on the part of Zuma. In certain instances meetings with Zuma ensued.

This part of the report deals with instances where Shaik applied the abovementioned approach of exploiting political connectivity. Zuma featured in many ways and forms in Shaik's approach, and after having considered the information at our disposal, it can be concluded that it formed a part, if not a material part, of the strategy that Shaik applied in his business dealings. The Nkobi group projected itself as offering potential business partners political connectivity and influence.

It can furthermore be categorised in two main categories, namely:

Those instances whereby the name of Zuma featured with Shaik and/or any of the entities forming part of the Nkobi group in the context of specific business dealings by the Nkobi group; and

Those instances where Shaik communicated to third parties in general that he was closely associated with Zuma as his "*advisor*" in various forms and permutations (these usually occurred on a letterhead, carrying the title of "*advisor*" in some form or the other)¹⁰⁵⁵. These instances were dealt with in a separate paragraph of this report.

In the part that follows, we attempt to analyse those instances as discussed above. It is not the intention to provide a complete breakdown of each relationship in its entirety, firstly due to the

¹⁰⁵⁵

Refer paragraph 16

fact that we may not be in possession of all of the information and secondly there may be some informal communications between the parties to which we did not have access.

19.2 Involvement excluding the Thomson-CSF group and Prodiba

19.2.1 Advanced Technologies & Engineering Co (“ATE”)

On 16 July 1995 a person by the name of Dr. Kriban GN from, Jelma Setia SDN BHD in Malaysia, faxed Shaik and confirmed a meeting with Tan Sri Dato’ Nasruddin B Bahari the Executive Chairman of Airod for 9:30 on Tuesday 18 July. It appears that Shaik was in Malaysia at the time as the fax was directed to a number in Malaysia¹⁰⁵⁶.

We are in possession of a programme that resembles one for Shaik during this abovementioned visit to Malaysia. It appears that the programme was prepared in Malaysia and filed under “*P-VISIT/disk NIK (17/7/95)*” as is evident from the information reflected in the footer part of the document¹⁰⁵⁷. Shaik also made, in apparently his own handwriting, an entry at the bottom of the document indicating that he had met with Airod, Tan Sri Nasruddin on 18 July 1995 between 02h00 and 03h00 that afternoon. Shaik’s programme for the morning of 18 July 1995 indicates that he made a courtesy call at the Deputy Ministry of Defence and met with Sime Darby Berhad of Sime Darby Plantations.

In a letter, dated 29 August 1995, Shaik wrote to Jean-Marc Pizano of ATE. Issues that were addressed in this letter were, *inter alia*¹⁰⁵⁸:

Plessey shares allocated to Nkobi;

Dates for meetings in Kuala Lumpur that had been set with respective key decision makers for the 11th, which we assume refers to 11 September 1995;

A person by the name of “*Pierre*” (assumed to be Moynot) who managed to set up a meeting with Bill Venter for 5 August. This date cannot be correct as the fax is dated subsequent to the intended meeting; and

A meeting with “*JZ*” was confirmed on 5 September 1995 at 18h00.

¹⁰⁵⁶ Refer to 19 0001 (80 11636 Box 135)

¹⁰⁵⁷ Refer to 19 0002(80 11 636 Box 135)

¹⁰⁵⁸ Refer to 19 0003 and 19 004(80 11605 and 80 11606 Box 134)

On 27 September 1995, Shaik wrote to ATE again. The document that appears to be a fax was forwarded to Jean-Marc Pizano¹⁰⁵⁹. Reference is made to a meeting that would have taken place at 15h00 and that he, Shaik, intended focussing on the Point Development project. It was indicated in this letter that the “*other projects*” should be dealt with at another meeting.

A letter from Shaik, addressed to ATE’s Jean-Marc Pizano and dated 18 October 1995 indicates that the structure of Nkobi Holdings was discussed with ATE. This structure also included Plessey Telumat South Africa Limited, in respect of which Nkobi Holdings would obtain 80% shareholding in a new company to be formed and styled “*Kobipol*”¹⁰⁶⁰. The balance of the shares was to be owned by Plessey Telumat South Africa Limited.

Various projects were then envisaged as options for the Nkobi group. Of significance are the notes contained under the heading “*Kobipol*”. In the notes it is stated that Shaik would continue influencing the stoppage of the tender through the “*Fivaz*” (then Commissioner of the South African Police Service) route and that Jean-Marc Pizano would put in place the French Interior Ministry technology experts for the intended/proposed “*Fivaz*” meeting.

From a fax, dated 8 November 1995¹⁰⁶¹, it is apparent that the “*Kobipol*” project involved the handling of police technology equipment in South Africa.

A number of issues were mentioned in a letter dated 27 February 1996. This letter is again addressed to Jean-Marc Pizano and emanated from Shaik¹⁰⁶². The issues noted, were:

Property acquisitions for selected Government tenants;

“*IT new company*” - progressed to shareholders agreement in place. It was indicated that meetings with certain Ministries had taken place and that it was planned to start up on 1 March 1996 (“*USA Company*”). We were not able to identify the company mentioned in the context of this letter;

“*Facilities Management*” – this is noted as with the “*IT new company*” but in turn with a UK based company; and

“*Thompsons*” (sic) agreement – we noted that an agreement was signed in the week preceding the letter and it involved “*2nd phase acquisition of companies*”.

¹⁰⁵⁹ Refer to 19 0005(80 11604 Box 134)

¹⁰⁶⁰ Refer to 19 0006(80 11614-617 Box 134)

¹⁰⁶¹ Refer to 19 0010(80 11608 Box 134)

¹⁰⁶² Refer to 19 0011 (80 11591 Box 134)

The above ventures considered by ATE and Nkobi Holdings did not materialize in the shape and form discussed. This is confirmed in the tone of a letter that was forwarded by Shaik to Jean-Marc Pizano when Shaik wished him well for the year ahead and confirmed that very little was achieved during 1996 between Nkobi Holdings and ATE¹⁰⁶³.

A detailed review of the documentation at our disposal indicates that contact between Shaik and/or the Nkobi group had ceased by January 1997 when Shaik wrote to Jean-Marc Pizano as a reply to a fax from Jean-Marc Pizano conveying wishes for the year ahead. He continued, “*You have come to witness as part of a very selected few, the birth of Nkobi, and helped me to foster the trials and tribulations of its infancy and in more than one way, helped me to strengthen its youth...We may not have spoken as much as we should have in 1996, but I must confess that I missed your hours of councils and look forward to 1997 to sitting with you.*”

19.2.2 Indonesia – South Africa Business Club (Hinias)

Inauguration of the Embassy of the Republic of Indonesia

In a fax that was forwarded to Shaik on 22 March 1996, he was invited by the Embassy of the Republic of Indonesia to a business meeting and luncheon at the CSIR in Pretoria to explore the market potential and possibilities of initiating ties between Indonesia and South Africa. It appears that this event was arranged with Hinias¹⁰⁶⁴.

On 25 March 1996 a similar invitation was forwarded to Shaik for the same event but this time at the Holiday Inn Crowne Plaza, Sandton¹⁰⁶⁵. It appears that this invitation had been preceded by personal invitations, received by Shaik and addressed to Shaik and Zuma, to attend the inauguration of the New Indonesian Embassy Building by HEM Ali Alatas, Minister of Foreign Affairs and the Ambassador Iskandar, on 27 March 1996¹⁰⁶⁶.

Workshop in Indonesia – African Seminar

The South African Ambassador, based in Jakarta, Malaysia, wrote to Shaik on 16 September 1996¹⁰⁶⁷. The letter referred to a letter that Shaik had sent to the Ambassador on the same day

¹⁰⁶³ Refer to 19 0012(80 11573 Box 134)

¹⁰⁶⁴ Refer to 19 0013(80 11033 to 80 11035 Box 133)

¹⁰⁶⁵ Refer to 19 0016 (80 11036 Box 133)

¹⁰⁶⁶ Refer to 19 0017-19 0018(80 11037 to 80 11038A Box 133)

¹⁰⁶⁷ Refer to 19 0019(80 12520 Box 136)

16 September 1996 and noted *“I am delighted to learn that you have indicated that you wish to address the South African seminar which is planned for 4 October 1996, here in Jakarta. I wish to assure you that the South African embassy stands to assist you in any way possible, to ensure that your participation in the seminar proceeds smoothly.*

You mention that you will contact Dr.J. Zuma, to participate in the seminar. Could you please inform us, as soon as possible, as to the outcome of your efforts in this regard...”

On 17 September 1996 it appears that Shaik wrote to the then Ambassador of South Africa in Indonesia, BS Kubeka¹⁰⁶⁸. He referred to a fax dated 16 September 1996 and noted that he had discussed the matter with Zuma and that he, Zuma was delighted to travel to *“...this seminar.”* Shaik mentioned that he looked forward to meeting with the Ambassador on 4 October 1996.

On 23 September 1996 Shaik wrote to Haryano of the Indonesia – South Africa Business Club and confirmed that Zuma would be attending the seminar on 4 October 1996 in Indonesia together with Shaik. This letter was signed and prepared by Fatima Paruk-Gilbert, a so-called personal assistant of Shaik at the time¹⁰⁶⁹.

The Surveyor Indonesia (South Africa) wrote to Shaik on 27 September 1996¹⁰⁷⁰. The purpose was to discuss and prepare for the planned workshop in Jakarta on 4 October 1996. Mention was made that Shaik and Zuma would participate and it was stated *“We highly appreciate the participation of Mr Zuma and yourself at the workshop and therefore Surveyor Indonesia will sponsor the tickets for this purpose.”* The programme attached to the fax discussed above, indicates that Zuma presented on *“South Africa Foreign Trade Policy”* and Shaik presented on *“South African Business Opportunities”*.

Shaik wrote to Thato Shaleh of the Indonesia – South Africa Business Club on 23 December 1996 regarding the visit on 4 October mentioned above. The letter dealt with an ostensible dispute that had arisen as regards the charges and payment for the expenses incurred during this visit. He indicated that *“...as you are aware that I was officially invited by your government in my capacity as Special Economic Advisor to Minister Jacob Zuma, Minister of Economic Affairs and Tourism KwaZulu-Natal, to present a paper at this conference on business opportunities in South Africa and in KwaZulu-Natal in particular.”* He continued to state that he had since discussed the matter with Zuma and that he, Zuma, was also of the opinion that he, Shaik, was not liable for the payment.

¹⁰⁶⁸ Refer to 19 0020(80 12517 Box 136)

¹⁰⁶⁹ Refer to 19 0021(80 07691 Box 98)

¹⁰⁷⁰ Refer to 19 0022-19 0024(80 07693A to 80 07694 Box 98)

19.2.3 PT Surveyor Indonesia

We are in possession of a letter from Surveyor Indonesia dated 8 April 1996 wherein mention is made of the fact that Shaik introduced the author, Auliya Martam, to Zuma as Minister of Economics Affairs & Tourism. According to the letter the meeting took place during a dinner at the Beverly Hills Hotel, and it created the opportunity to discuss and offer their services to Zuma (presumably in his capacity as Minister of Economic Affairs and Tourism in the KwaZulu-Natal provincial government)¹⁰⁷¹. The letter is addressed to Shaik as Executive Chairman of Nkobi Holdings. Mention is made that a representative office would be opened by PT Surveyor Indonesia in Durban from 15 April 1996 onwards. On the same day Faried S Barchia wrote to Zuma and also mentioned the dinner¹⁰⁷². Following this, it was suggested in the letter that a comprehensive proposal was in the process of being prepared regarding “*Pre-shipment Inspection, ie Inspection at Loading Ports covering: Quality, Quantity, Checking of Tariff Classification/Harmonized System, Price Comparison and the Physical Checking of imported goods to South Africa. All this with the objective to protect the interests of the South African Government for the proper implementation of import duties to avoid under-invoicing and to protect your importers against unconformity of specifications agreed upon and to smoothen the flow of goods in your country.*”

It was mentioned that the proposal would be submitted on 15 April 1996.

Haryono Eddyarto wrote to Shaik on 11 April 1996 and dealt with various issues¹⁰⁷³. He asked Shaik “*Will you be following the full schedule of your Minister or do you want me to arrange other meetings?*” He also mentioned that he and Auliya Martam would be visiting South Africa around 22 to 23 April 1996 “*...to finalize the agreement with you (Minister Zuma) regarding the survey company as well as...*” He continued to mention other business propositions.

Shaik wrote to Haryono Eddyarto on 15 April 1996¹⁰⁷⁴ and indicated “*I have been asked to accompany Min Jacob Zuma to Indonesia and as a result I am unable to accompany Minister Mudise (sic), our Defence Minister on this trip. You can understand the importance of this postponement that I instead must accompany the National Chairman of the party...*”

¹⁰⁷¹ Refer to 19 0026(80 07695 Box 98)

¹⁰⁷² Refer to 19 0027-19 0028(80 07696 to 80 07697 Box 98)

¹⁰⁷³ Refer to 19 0029 (80 11032 Box 133)

¹⁰⁷⁴ Refer to 19 0030(80 10971 Box 133)

In a fax dated 15 April 1996 and addressed to Shaik from Haryono Eddyarto, on an official letterhead of Indonesia South Africa Business Club, mention is made of an intended visit of Eddyarto to South Africa and that the main purpose of the visit would be to¹⁰⁷⁵:

Attend to the official opening of the Surveyor General office in Durban on 18 April by the ambassador of Indonesia, Mr Rachadi Iskandar and the Minister of Foreign Affairs. He requested Shaik's assistance "...to have **Minister Zuma** to attend this occasion and also possible your National Minister of Trade & Industry, **Mr Alex Erwin**(sic)...";

In addition Eddyarto requested Shaik to prepare "*The co-operation agreement*" to be signed between the Surveyor Indonesia and Nkobi;

Discuss trading in sugar, "*TSP*", desiccated coconut, coal, etc; and

Meet with someone in New Africa Investment Limited. Mention is made by Eddyarto that he understand that "*Minister Cyril Ramaphosa is the deputy executive chairman*".

We are not in possession of any documents indicating the switch from the initial presentation to Zuma regarding services as proposed in the fax above. It appears that the services were offered to Zuma at the Beverley Hills Hotel on 8 April 1996 and thereafter it was decided that the entity styled Kobisurvey would be included as a party.

A Memorandum of Understanding was prepared between Kobisurvey SA (Pty) Limited and PT Surveyor Indonesia, ostensibly by Anand Moodley of Ditz Incorporated on 17 April 1996¹⁰⁷⁶. We could not locate a completed signed agreement, however in terms of this agreement, Kobisurvey is a company with its activities, *inter alia*, being the "*Providing of Pre Shipment Inspection Services, Technical Inspection Services, Business Information Services and Quality and Environment Management Services to the Public and Private Sectors in South Africa*". It is also stated in the Memorandum of Understanding that it is envisaged that Kobisurvey would be appointed as a Surveyor by the Public and Private Sectors in South Africa. A whole host of services is mentioned in the Memorandum of Understanding that Kobisurvey intended to provide to the Public and Private sectors including:

Collection of import revenue;

Correct classification of goods;

¹⁰⁷⁵

Refer to 19 0031(80 11027 Box 133)

¹⁰⁷⁶

Refer to (Document emailed to SI Isak du Plooy)

Correct invoicing of goods

Elimination of port congestion;

Ensuring correct implementation and enforcement of governmental regulations pertaining to local industry protection;

Smuggling control;

Protection of local industry from unfair competition;

Facilitating of public health safety for foods and beverages, by detection of expiry dates of shelf life and consumption;

Issuing of health certificate services from country of origin or country of supply;

Issue of non-radiation certificates for fresh food, milk and cereals; and

Preventing of imports of restricted chemicals and drugs.

This agreement provided for exclusive co-operation between Kobisurvey and PT Surveyor Indonesia whereby Kobisurvey would procure to be appointed as Surveyor to the Public and Private Sectors to provide the services in South Africa and PT Surveyor Indonesia would provide Kobisurvey with technical and management assistance and training required by Kobisurvey.

As indicated, we could not locate a completed and signed Memorandum of Understanding however the parties indicated as being required to sign the Memorandum of Understanding, are as follows:

Shaik for Kobisurvey – Signed;

HE Rachadi Iskandar – The Ambassador of the Republic of Indonesia as a witness – not signed;

Minister Jacob Zuma – as a witness – not signed; and

Haryono Eddyarto – Chairman of the Indonesia South Africa Club for PT Surveyor Indonesia – not signed.

It is stated in a draft document prepared for the attention of the then Deputy Minister Mlambo-Ngcuka in the Ministry of Trade and Industry that the Memorandum of Understanding was indeed signed and witnessed by the parties noted on 1 April 1996¹⁰⁷⁷. This draft document was

¹⁰⁷⁷ Refer to 19 0028-19 0039 (80 10983 to 80 10984 Box 133)

forwarded to Shaik on 3 May 1996¹⁰⁷⁸ by Haryono Eddyarto, where it was noted “*Please find enclosed draft letter prepared by Bonga Mlambo addressed to the Deputy Minister Phumzile Mlambo-Ngcuka regarding Kobisurvey and Surveyor Indonesia. Please kindly prepare on your letter head and send directly to the Deputy Minister for her further action.*” It is mentioned in this draft letter that Kobisurvey is a subsidiary of Nkobi Holdings. We could not confirm the existence of this entity nor the fact that Nkobi ever had a subsidiary by the name of Kobisurvey.

This was followed by a fax from Haryono Eddyarto, addressed to Shaik and dated 13 May 1996¹⁰⁷⁹. Mention is made of an agreement with Plessey in the form of a sales agreement with sugar and telephone equipment as the counter trade. He continued to request under point 2 of the fax “*As discussed over the telephone, please kindly furnish us with copy of the letter to the Ministry of Trade and Industry (Phumzile Mhlambo Ngcuka)*”

We could not find any evidence that the Memorandum of Understanding, as envisaged above, was implemented. Furthermore, we could not find any evidence that the company Kobisurvey as noted in the Memorandum of Understanding ever operated in that form. A review of the financial information, contained in the Annual Financial Statements and general ledgers of all of the companies did not reveal any revenue generated from the abovementioned sources.

On 23 October 1996 Shaik wrote to the Surveyor Indonesia in person by the name of Adhi Graha¹⁰⁸⁰. He confirmed a meeting with the Surveyor General and other members of the group and also confirmed that a meeting had been arranged with Zuma for 30 October 1996 in Durban for a supper meeting. Furthermore that Nkobi are still trying to secure a meeting with the Minister of Transport.

Shaik wrote to Triegaardt and Sono on 23 October 1996¹⁰⁸¹ and confirmed that the meeting was set up for 30 October 1996 to 1 November 1996 with the Auditor General of Indonesia and Mr Toga of Indonesia Surveyor.

19.2.4 Point Development project

The Point Development was a project through which attempts were made to build and establish a waterfront development in the harbour areas of Durban in KwaZulu-Natal. Indications were that the project carried a value of at least R100 million.

¹⁰⁷⁸ Refer to 19 0040(80 10982 Box 133)

¹⁰⁷⁹ Refer to 19 0041(80 10976 Box 133)

¹⁰⁸⁰ Refer to 19 0042(80 07689 Box 98)

¹⁰⁸¹ Refer to 19 0043(80 10536 Box 132)

We have found evidence that Shaik and the Nkobi group attempted to be involved in the project, unsuccessfully. Shaik made various attempts to enter into a joint venture with the preferred bidder, Renong. This project never materialised for Shaik and/or the Nkobi group and as a consequence did not result in any revenue being generated or any direct investment taking place that improved the balance sheet of the Nkobi group.

Renong is ostensibly a large Malaysian group of entities that owned several hotels in Malaysia and various properties for future development. Renong considered South Africa as an opportunity for investment. Two projects, *inter alia*, were identified as potential areas for investment. These were the Hilton Hotel in Durban and the Point Development in Durban.

Both projects were allegedly identified in the third quarter of 1995. The Point Development was viewed as a potential empowerment project as the Government owned the land, through Transnet, Portnet and the City of Durban.

All indications are that this project was one of the first concrete projects in which the Nkobi group was interested as it was considered an investment opportunity soon after the incorporation of Nkobi Holdings on 27 February 1995.

The involvement or attempted involvement in the project from an Nkobi group point of view was at the instance of the Nkobi group. It is clear that Renong did not invite the Nkobi group to participate in discussions regarding these investment opportunities.

There were various meetings with individuals and officials in Malaysia during the period May 1995 onwards. The purpose of the meetings varied, but essentially revolved around the establishment of business relationships with Malaysians. High-level South African officials, including Zuma, accompanied representatives of the Nkobi group at various points in time. It is possible that we are not in possession of all the documentation reflecting the details of the visits and that not all of the visits and meetings were documented.

On 27 September 1995 Shaik wrote to ATE. The document that appears to be a fax was forwarded to Jean-Marc Pizano¹⁰⁸². Reference is made to a meeting scheduled to take place at 15h00 and that he, Shaik, intended focussing on the Point Development project. It was indicated in this letter that the “*other projects*” should be dealt with at another meeting.

From a letter dated 8 June 1996, from Tan Sri Halim Saad, Executive Chairman of Renong Berhard, it is apparent that Shaik visited Renong during the time immediately prior to the

¹⁰⁸² Refer to 19 0044 (80 11604 Box 134)

letter¹⁰⁸³. The letter is addressed to Zuma. It is stated that Shaik expressed his interest in the Point Development project and requested a 49% shareholding, the balance remaining with Renong. Zuma's attention was drawn to the fact that, as he was aware, "*Renong had earlier committed to Mr Mzi Khumalo to offer the consortium led by him under the name Secprop 60 Investments (Pty) Limited the 49% shareholding*".

Renong were looking for "*judgement*" from Zuma as to the party with whom Renong should partner itself (this form of "intervention" is similar to that required of Zuma at the time when Nkobi Investments was admitted in the capital and returns of one of the most important investments of the Nkobi group, ie 20% shareholding in Thomson-CSF, which had a shareholding in ADS with the Combat Suite contract to the GFC as one of its main sources of revenue¹⁰⁸⁴). The letter indicates that Renong also required assistance from Zuma in getting proposals for the success and progression of the project.

On 10 June 1996, Shaik wrote a letter to Renong Berhad, addressed to its Executive Chairman. A person other than Shaik appears to have signed the letter. In this letter, Renong was thanked for the meeting held with Shaik and Cilliers of Africon. The letter goes further to say that the meeting took place in a manner which could re-instate positive and constructive relationships¹⁰⁸⁵.

Discussion had neither reached the point that a transaction had materialised, nor that a transaction had been confirmed. Shaik confirmed to Renong the Nkobi group's interest and willingness to acquire a 49% stake in the Point Development. It was further confirmed that this stake was to include "*Secprop*" and other meaningful black businesses in the region. He also expressed an interest to increase the stake to 60%, as soon as it is realisable.

Shaik also expressed the Nkobi group's interest in acquiring a 30% stake in the Hilton International Hotel, then under construction in Durban. This never materialised.

Shaik reminded the Executive chairman of a letter to be sent to Zuma by noting "*In conclusion, I wish to remind you of your letter to be sent to Minister Jacob Zuma. I trust that given your written confirmation and our combined commitment hereof, I would be in position thereafter to influence and accelerate the much awaited Point Development.*" The letter sent to Zuma on 8 June 1996, by the Executive chairman of Renong, appears to be the letter referred to above.

Zuma, in his capacity as Minister of Economic affairs and Tourism for the Province of KwaZulu-Natal, wrote to the Executive Chairman of Renong on 31 October 1996¹⁰⁸⁶. The letter

¹⁰⁸³ Refer to 19 0045 (DW5 Statement file 0005)

¹⁰⁸⁴ Refer to paragraph 18

¹⁰⁸⁵ Refer to 19 0046(80 11652 Box 135)

¹⁰⁸⁶ Refer to 19 0047 (80 11664 Box 135)

is captioned “*Point Development project – Durban*”. In this letter, Zuma refers to a letter, dated 8 June 1996, in which it is apparent that Zuma was requested to be of assistance “...*to resolve matters regarding suitable local parties to work with your organisation on the Point Water Front Project and the assistance in accelerating the successful progression of this development project.*”

In this letter, Zuma made mention of his role as both National and Provincial chairperson of the ANC and as a result had been extremely busy ensuring the success of the ANC during the then local government elections in KwaZulu-Natal. Zuma requested Tan Sri to provide the assistance required to ensure the successful development of the “*Point*”. He also indicated that a meeting with a “*very senior*” and “*trusted*” member of the organisation would be an alternative, should the Executive Chairman of Renong not be able to meet with Zuma.

Zuma suggested that the meeting had to take place before 2 October 1996, as he would not have been available towards the end of October. This date cannot be correct as the letter was dated 31 October 1996, which is after the proposed date for the meeting. It can only be assumed that either the letter was incorrectly dated or alternatively that the date of the proposed meeting was after 31 October 1996.

Wilson wrote to Shaik on 19 November 1996 by fax and noted¹⁰⁸⁷ “*I have just returned from a visit to South Africa during which I discussed the Point Development Project with the Honourable Minister of Economic Affairs and Tourism, Mr Jacob Zuma.*

I believe it would be useful if we had a chance to meet and discuss several matters relating to the proposed development. Unfortunately I am unlikely to be back in South Africa before the end of the year and perhaps we could agree to meet in January, if this is suitable to you.”

Shaik wrote to Wilson on 26 November 1996 and referred to a fax dated 19 November 1996 regarding a meeting in South Africa on the Point Development Project¹⁰⁸⁸. Shaik indicated that he had just returned from Europe and apologised for the delay in the reply. Shaik continued “*Indeed, I look forward to your proposed meeting in the New Year, to discuss matters of the Point in particular and also other common interests in the region. The matters at hand, as referred by you was (sic) also raised by Honourable Minister Jacob Zuma with me and therefore I shall look forward with a keen interest in meeting with you.*”

¹⁰⁸⁷

Refer to 19 0048 (80 11653)

¹⁰⁸⁸

Refer to 19 0048(80 11654 Box 135)

Shaik wrote to Wilson on 4 December 1996 and requested “*Kindly acknowledge – our fax dated 26 November 1996 Re: Point Development Meeting – January 1997.*” The letter was signed on behalf of Shaik but issued in his name. It is indicated in the letter that Zuma was also a recipient of the letter¹⁰⁸⁹.

Acknowledgement of receipt of the aforementioned letter was confirmed by returned fax from Wilson on 7 December 1996¹⁰⁹⁰, wherein he indicated that he intended travelling to South Africa towards the end of January 1997. Arrangements for the meeting would have been made at a later date.

On 20 January 1997 Wilson requested a meeting to take place at the end of January 1997 to discuss the Point Development and “*other matters*”¹⁰⁹¹. Wilson proposed in this fax, the dates of 3, 4 or 5 February. Shaik replied to the aforementioned fax on 20 January 1997¹⁰⁹² and indicated that the 3 February 1997 would suit him. On 21 January 1997, Wilson faxed a confirmation to Shaik¹⁰⁹³. He confirmed the meeting to take place on 3 February 1997 at 71 Victoria Embankment, the Nkobi address, at 10.00 on 3 February 1997.

We are in possession of minutes of a meeting that was ostensibly held on 3 February 1997 at Nkobi Holdings¹⁰⁹⁴. The minutes of the meeting reflect that it was attended by Shaik, Anand Moodley, Colin Isaacs, Wilson and Triegaardt. Shaik opened the meeting by apologising for the fact that Zuma was then allegedly in Johannesburg and not available to see Wilson. The meeting was held at Nkobi Holdings.

In essence, the meeting revolved around discussion on the allocation of shareholding in the Point Development project. It is not our intention to provide a complete summary of the discussions that took place during the meeting. The salient features of the discussions that took place are noted in this part of our report. It is however, clear that the meeting was inconclusive and that the points of discussion essentially revolved around the approval of the distribution of a 49% interest in the Point Development project. From the record of the meeting, it is apparent that Zuma was involved in discussions prior to this meeting with representatives of Renong in order to resolve the issue of the distribution of the 49% interest. Wilson stated in the meeting “*In a discussion with Minister Zuma, he expressed concern about the structure of the Point*

1089 Refer to 19 0049(80 11650 Box 135)
1090 Refer to 19 0969 (80 11651 Box 135)
1091 Refer to 19 0050(80 11647)
1092 Refer to 19 0051(80 11649)
1093 Refer to 19 0052(80 11649)
1094 Refer to 19 0053-19 0050 (80 11627 to 80 11634)

Development, in particular the 49% which is the empowerment portion of the project...” It was suggested by Shaik, at the conclusion of the meeting that another meeting was to be set up with Zuma in order to discuss the matter again. In summary, the following was discussed during the meeting held on 3 February 1997:

The minutes record that “(Mr Shaik gave a detailed breakdown as to his involvement in the project explaining the various relationships along the way, his relationship with the late Thomas Nkobi, that Nkobi’s interest were locked in at 20%, how the relationship and interest in Land Works broke down, and how various politically oriented people moved in and out of Nkobi and of the project itself)”;

Shaik provided some background on other projects in which the Nkobi group were then involved in and indicated *inter alia* that they (we assume he referred to the Nkobi group) had a 43% interest in Thompsons (sic) SA. We could not find any evidence that the Nkobi group then had a 43% interest in any of the Thomson-CSF group companies. Nkobi Investments were initially issued 30% of the shares in Thomson-CSF. This was the direct interest that the Nkobi group had at the time. The other shareholder in Thomson-CSF was then an entity styled Thomson-CSF Holding (SA) with the controlling shareholding of 70%. At the same time, 5% of the shares in Thomson-CSF Holding (SA) were issued to a Swiss registered corporation styled Gestilac SA, whose principals are not known. This equates to a combined interest of outside shareholding, both directly and indirectly, in Thomson-CSF of 33.5%. Nkobi Investments were also issued 10% of the share capital in Thomson-CSF Holding (SA), which provided the Nkobi group a 7% indirect holding. The statement made by Shaik in this meeting that the 43% shareholding, alleged to have been vested in Thomson-CSF, could be the maximum of 37%, comprising the¹⁰⁹⁵:

30% direct interest in Thomson-CSF; and

7% indirect interest in Thomson-CSF *via* shareholding in Thomson-CSF Holding (SA).

When one adds the indirect shareholding that Gestilac SA had in Thomson-CSF, a maximum of 40.5% is derived.

When Wilson asked about whether the Malaysians had fulfilled their undertakings three years ago, (this would have been around 1994 when Shaik was still seeking opportunities for the

ANC and prior to the letter of Stofile dated 9 May 1995¹⁰⁹⁶), Shaik responded “*None of them have and that is the fault of the ANC, but none of them put a document in place that captured the spirit of our understanding.*”

Wilson indicated, Renong realised that the success of projects of this nature were dependent on the “*human factor*” and that, as a result, Renong were insistent that approval was granted by Zuma in writing, since “*...he does not know who to trust*”.

Wilson confirmed his understanding that Shaik expressed interest in sharing in some Renong projects in South Africa, in particular the Point Development and the Hilton Hotel development and it was clear from a discussion with Zuma that he, Zuma, was “concerned” about the structure of the Point Development project, in particular the 49% empowerment portion in the project. Wilson indicated that he assured had Zuma that the project was open to all black empowerment companies as well as the IFP and, after a preceding discussion with other members of the Joint Venture, Wilson indicated that the members of the Joint Venture desired to be involved with Nkobi, hence the importance of discussing the matter;

It is recorded that Shaik said *“What was disappointing for me is that, if there were 10 projects, I delivered 6. I once said to Minister Zuma that there are so many other projects we are pursuing in our group which are so much less problematic and asked him if we can’t just let it go. He told me to understand that this is the process to be worked through. I believe it is more proper for you to broker a relationship with ourselves than for me to phone Tutu or Tutu to phone me. Who is Tutu and who is Beka?”*

The expectation from Zuma was to broker a value or percentage split and that Wilson would present it to the Chairman of Renong. Wilson hoped to agree to the value by asking Zuma *“...how much goes to the company from the North and how much does Nkobi take on”*. We were not able to determine the identity of the entity referred to as the *“company from the North”*;

It was also stated by Wilson that it would be imperative to obtain a statement from Zuma to the effect that he was happy with the distribution of the 49% interest in the Point Development. Renong had to remain uninvolved in the 49% interest and they would not move forward in the Point Development until Zuma indicated that he was happy with the distribution of the 49% interest.

Zuma had allegedly indicated that the entity that held the shares in the Point Development was called Vulindlela (Secprop 60 Investments was renamed “Vulindlela”). As regards the distribution of the 49%, Shaik wanted to know whether Vulindlela had made any reference to the handling of investments of the ANC and in this context noted that the ANC’s interest in the Point Development was non-existent because, as he mentioned, Vulindlela and others do not run the ANC. Shaik was of the view that the reason to meet was to establish equity under the instructions of Zuma and he stated that Zuma had never mentioned the name of Vulindlela. Shaik wanted a four-party involvement and indicated that Nkobi did not want to be the majority party as it had other interests. It also did not want to be the minority party;

Wilson was of the view that 70% of the 49% had to be open to the public and that at least half of the 70% had to be offered to the black community. He understood from discussions with Zuma that a portion of the anticipated shareholding had to be reserved for holding in a trust to the benefit of the ANC, hence the requirement to refer back to Zuma for his approval. The 49% shareholding in the Point Development had been allocated to Vulindlela and it was required of Zuma to approve the distribution within that allocated 49%. Wilson's impression was that Shaik implied holding 20% within the 49% allocation. Shaik indicated that he was interested in 20% of the 49%, divided between Nkobi and the "*company in the North*". Shaik also wanted to know how much of the 49% would "*Secprop*" hold and whether Nkobi could participate in the 70% portion of the shareholding of the 49%, which was to be open for public subscription;

Wilson confirmed that Khumalo had no interest in the Point Development project and that there were only four representatives. This might be seen as contrary to the contents of the letter from the Executive Chairman of Renong, dated 8 June 1996 and addressed to Zuma where he noted that Khumalo was involved, Khumalo's involvement could possibly be having knowledge of the structuring of the shareholding. From the information at our disposal, we could not establish who the four representatives referred to are. As regards the land issue on which the development would take place, mention was made during the meeting that they had to leave it up to Zuma who wanted to co-operate with black business and ensure that the IFP was involved. The Chairman of Renong stated that Renong were of the opinion that Renong had "*political obligations*" as regards the Hilton Hotel; and

Shaik enquired whether Wilson would attend a meeting with Zuma. Shaik proposed that "*Bheka*" attend the meeting with Zuma. Wilson indicated that he would want to meet with Zuma to clarify the 49% allocation in the Point Development, but wanted a representative from Vulindlela to be present.

There are no indications that any of the discussions and meetings held actually led to the Nkobi group acquiring an interest in the Point Development project or the Hilton Hotel in Durban. We could not locate any information and documents relevant to the issue and despite a detailed analysis of the financial information could not identify any revenue and/or shareholding that could relate to the confirmation of a transaction on commercial terms. As a result we conclude that the relationship between the Nkobi group and Renong terminated at approximately 3 February 1997 insofar as the Point Development is concerned.

19.2.5 Ali and Fouad Al-Ghanim group

It is evident from a marketing brochure of the Ali and Fouad Al-Ghanim Group that it comprises a conglomerate of companies, based in Kuwait¹⁰⁹⁷. It has interests in the following main activities:

- Contracting;
- Building and civil engineering;
- Mechanical and electrical engineering;
- Manufacturing;
- Trading and transportation;
- Electronic Engineering;
- Automotive sales and service;
- Investment;
- Hotel ownership;

It also has associated interests in the following areas:

Cement;

Electrical contracting;

Medical centre;

Maintenance with West German assistance in power stations and oil installations;

Water treatment; and

Paper and by-products.

The marketing brochure of the Ali and Fouad Al-Ghanim group indicates that there are two owners namely Ali MT Alghanim and Fouad MT Alghanim (hereinafter referred to as Fouad). The documents at our disposal indicate that Shaik and the Nkobi group particularly had contact with the latter. The contact included correspondence, telephone calls to meetings.

¹⁰⁹⁷ Refer to 19 0061-190081(80 11571A to 80 11571U Box 134)

We are in possession of an unsigned letter from Shaik, dated 12 May 1997¹⁰⁹⁸. This letter appears to be a response from Shaik to a request from Fouad to provide details of the projects and business opportunities in which the Nkobi group are involved. Shaik started the letter with a short introduction and thereafter dealt with his response in two main areas namely the Private sector and the Public sector.

In the background paragraph, Shaik contextualised the Nkobi group and the South African political and economic situation at the time. His views on the political and economic state of the country at the time are condensed in the following statement by him: *“So in spite of having achieved Political success, very little can be said of having achieved to this day Economic Power and therefore the stranglehold is still maintained on our economy and to a greater extent, subjugates the emergence of new and emerging economic groupings from previously marginalised communities in South Africa.*

So out of this political/economic contradiction, companies lie (sic) ourselves considered to be of the previously marginalised and once disenfranchised groupings, seek to emerge having firmly in hone (sic) hand a total grasp and therefore connectivity of the political power base and therefore the unfolding government opportunities/contract, yet the other hand remains shackled to the economic and wealth of the established financial institutions. Thus in real term, in spite of groupings like ourselves having successfully tendered and secured significant contracts, the net result of this worth due to the financial shackling concept, is diluted significantly.”

The letter continues to deal with various projects in which the Nkobi group were then allegedly involved and in some instances overstated the involvement. One example of this is his alleged claim that *“Nkobi has acquired interest in several hotel/leisure resort properties throughout South Africa...”* It will be evident from the financial review on the Nkobi group that this is not true¹⁰⁹⁹.

Also in this letter, under the heading *“Some Interesting Points on Project Financing”*, Shaik stated *“My dear brother Fouad, if there is ever a time for us to merge our common interests in Southern Africa, it would be now, as my Group has become extremely vulnerable to the existing financial power base seeking to optimise their interests, diluting my political connectivity and the goodwill value I bring to the contracts and thereby minimising our returns.”*

¹⁰⁹⁸ Refer to 19 0082-19 0085 (80 11561 to 80 11564 Box 134)
¹⁰⁹⁹ Refer paragraph 21

Shaik closed the letter by stating “*As I serve the Minister of Economic Affairs as his special Economic Advisor and therefore in close consultation with His Excellency Goodwill Zwelutini and a range of National Ministers, I would be able to secure for your private audience a meeting with the above persons so that you could be totally familiar and understand directly from their perspectives such opportunities in our country.*”

Shaik wrote to Fouad on 15 May 1997, again the letter at our disposal is not signed and appears to be in draft form¹¹⁰⁰. This document deals mainly with a project that was generally referred to as Project K-EAST. This is a project that has led to the establishment and/or attempted establishment of an entity styled K-EAST Limited.

We are in possession of a document styled “*TERM SHEET FOR EAST*” dealing with the outlines of a shareholders’ agreement¹¹⁰¹. “*EAST*” is the acronym for Euro African Satellite Telecommunications. A review of the financial affairs of the Nkobi group indicates no sources of revenue from any confirmed interests in this company¹¹⁰². The parties to the intended agreement were Matra Marconi Space UK Limited, Digisat Limited, Nkobi Holdings (Pty) Limited, Mobile Telecommunications Company (K.S.C) and Nera Telecommunications. It is evident that the Ali and Fouad Al-Ghanim group in some form also had an interest in the Project K-East hence the correspondence of Shaik to Fouad.

Shaik was mainly dealing with an issue that was a point of contention amongst the partners of K-East and mentioned “*I do believe I can bring significant value particularly the political connectivity in the African market and therefore to Project K-East. I have more than demonstrated to foreign companies seeking new markets in South and Southern Africa and in particular having demonstrated this with the French companies in the hi-tech and defence industries like Thompsons-CSF (sic) of France.*”

On 20 May 1997, Shaik wrote to Fouad again. We are in possession of an unsigned version of the letter¹¹⁰³ as well as the letter in its draft form¹¹⁰⁴. It appears that the letter in draft is a version subsequent to the letter without any handwritten comments and/or changes. The handwriting on the second document appears to be that of Shaik. We therefore only dealt with and quoted from

¹¹⁰⁰ Refer to 19 0086-19 0088(80 11565 to 80 11567 Box 134)

¹¹⁰¹ Refer to 19 0089-19 0147(D83303088 to D83303146 Box 196)

¹¹⁰² Refer paragraph 21

¹¹⁰³ Refer to 19 0148(80 11560 Box 134)

¹¹⁰⁴ Refer to 19 0149(80 11551 Box 134)

the second document. Both documents are on Nkobi Holdings' letterhead. The contents of the document as a whole were considered to be relevant to this part of the report.

Shaik continued to state in this letter *"Just to confirm my Group's position in adding value to the area of mutual interest in the defense and telecommunications environments. As indicated to you that I am extremely close to the Defense Minister, Mr Joe Modise and to the Deputy Defense(sic) Minister, Mr Ronnie Kassrils as I had served with both these persons during the underground struggle in South Africa. One of my family members, a brother called Shamim Shaik who is part of the Defense (sic) Secretariat and has been recently charged with the responsibility and title of Chief Procurement Director. Therefore any defense related technology or company whether private or government wishing to export its respective technologies to any part of the world requires his approval and processing thereof. He is in a position to inform us of whatever defence technologies we so wish to pursue in South Africa.*

As indicated to you I will be able to arrange at mutual conveniences, meetings with the above mentioned people.

In so far as the company Denel is concerned and even though they are involved with us in one of my Group's subsidiaries, my advice to you is to thread(sic) with this company extremely carefully, but do not believe that there are alternative structures you could be dealing with in South Africa in sourcing your respective procurements. Denel's Chairman and Managing Director is accountable to the Defence Secretariat.

I would be willing to seriously consider other telecommunications projects you have in mind as suggested by you and look forward to a meaningful contribution thereto."

In another letter from Shaik, dated 20 May 1997, he wrote to Fouad¹¹⁰⁵ and dealt with the Project K-EAST¹¹⁰⁶.

On 30 July 1997 Shaik wrote to Fouad again. In this letter Shaik indicated and dealt with some projects that were available at the time. He again dealt with the Project K-EAST¹¹⁰⁷.

A document setting out the itinerary of Shaik reflects that he visited Kuwait on 21 September 1997¹¹⁰⁸.

¹¹⁰⁵ Refer to 19 0150-19 0151(80 11558 to 80 11559 Box 134)

¹¹⁰⁶ Refer to 19 0152-19 0153(80 11558 to 80 11559 Box 134)

¹¹⁰⁷ Refer to 19 0154-19 0155(80 11556 to 80 11557 Box 134)

¹¹⁰⁸ Refer to 19 0156-19 0157 (80 11548 to 80 11549 Box 134)

In a letter from Fouad, to Shaik, dated 15 October 1997, Fouad dealt with “*Projects Financed by Kuwait for Arab Economic Development*” and mentioned their involvement in the Maluti Dam¹¹⁰⁹. Shaik responded to this letter on 16 October 1997 and indicated that he had already left his office for Kuwait. He mentioned several points where he, Shaik, believed that the Nkobi group could assist. Reference is made, in this letter, to resources and capability that were not evident from the review of the operations of Nkobi, particularly at the time¹¹¹⁰. One example is where he mentions under point 1, “*One of my subsidiary companies is one of the largest multi-disciplinary consulting engineering group in the country...*” We could not identify the mentioned entity.

This lead to the signing of a Memorandum of Understanding between Fouad M.T Alghanim & Sons and Nkobi Holdings on 21 October 1997¹¹¹¹. The Memorandum of Agreement was signed by Shaik and Fouad and expresses both parties interest in co-operating with each other on an exclusive basis in promoting their mutual business interests in their respective regions. Construction projects, products and services and technological and industrial projects were identified as the specific fields.

A period followed thereafter in which joint projects were pursued. This is evident from the following letters and faxes corresponding on the mentioned topics:

Date	Essence of correspondence and/or documentation
23 October 1997	Maluti Dam Project and Defence and other matters ¹¹¹²
25 October 1997	Drivers Licence Card Project and Chief of Police Kuwait ¹¹¹³
27 October 1997	Drivers Licence Card Project and Chief of Police Kuwait ¹¹¹⁴
23 December 1997	Project K-East ¹¹¹⁵
23 October 1999	Mention is made of the establishment of Nkobi Bank and the fact that there had been little correspondence between the parties for some time ¹¹¹⁶
26 March 1999	Opportunity to tender for the third Cellular Network in South Africa ¹¹¹⁷
17 March 2000	Informing Fouad that Nkobi was and other local partners had been

¹¹⁰⁹ Refer to 19 0158-19 0159(80 11543 to 80 11544 Box 134)

¹¹¹⁰ Refer to 19 0160-19 0161(80 11541 to 80 11542 Box 134)

¹¹¹¹ Refer to 19 0162-19 0164(80 11523 to 80 11525 Box 134)

¹¹¹² Refer to 19 0165(80 11515 Box 134)

¹¹¹³ Refer to 19 0166(80 11521 Box 134)

¹¹¹⁴ Refer to 19 0167(80 11516 Box 134)

¹¹¹⁵ Refer to 19 0168(80 11517 Box 134)

¹¹¹⁶ Refer to 19 0169(80 11501 Box 134)

¹¹¹⁷ Refer to 19 0170(80 11457 Box 134)

Date	Essence of correspondence and/or documentation
	selected to provide the third cellular network. He went on to state <i>“It’s now more than two years ago that we signed the co-operative agreement on a range of opportunities in both markets. I wish you had taken up this window of opportunity to have teamed up with my Group in South and Southern Africa – by now you would have had firmly established your business presence in our market.”</i>
29 September 2000	Telecoms opportunities in South Africa from Shaik ¹¹¹⁸
4 October 2000	Fouad replied to the fax from Shaik dated 29 September 2000 and noted that it has been handed over to the investment division ¹¹¹⁹
12 December 2000	Forwarding of a Memorandum of Interest addressed to an entity styled South African Shipyards (Pty) Limited as an approved shipbuilder for Kuwait Coast Guards. Shaik indicated in his letter that he had an interest in a company called Southern African Shipyards (Pty) Limited. The company and extent of the operations as described in his reply are not known to us ¹¹²⁰
9 January 2001	Shaik noting in a letter to Fouad that he had travelled to India with the Minister of Transport on India’s various privatisation programmes and that he would be available to meet in February 2001 ¹¹²¹
10 January 2001	Fouad confirmed his intention to travel South Africa again but due to an operation would have to delay his visit ¹¹²²

Shaik wrote to Fouad on 27 October 1999 and referred to a fax from, Fouad, dated 23 October 1999 and noted *“Politically, my close friend and long time political comrade (25 years) has been appointed Deputy President of South Africa. Mr. Jacob Zuma. He has appointed me as his Special Economic Advisor and I am indeed honoured to work with this man who is the second most influential person within the African National Congress (ANC) party. I have been working with this man since 1974 at a political level. I sincerely hope that when you visit South Africa you would have the pleasure to meet with him.*

Both the Deputy President and I shared a long time common economic goal, i.e. to establish an investment bank. We are still pursuing this socio-economic and socio-political objective for critical economic and political reasons. This is surely one of the key issues of a discussion, given a meeting with him....Where do I start, there is just a basketful of viable business ventures. Upon my return I shall keep you abreast of these. However, I am faxing you an airport construction opportunity in Algeria. We are pursuing this venture from South Africa. My

¹¹¹⁸ Refer to 19 0171(80 11505 Box 134)

¹¹¹⁹ Refer to 19 0172(80 11444 Box 134)

¹¹²⁰ Refer to 19 0173-19 0176 (80 11450 to 80 11453 Box 134)

¹¹²¹ Refer to 19 0177-19 0178(80 11446 to 80 11447 Box 134)

¹¹²² Refer to 19 0179(80 11445 Box 134)

*brother, Mo Shaik is currently the Ambassador for South Africa in Algeria. I am hoping to be in war torn Algeria soon to look at some opportunities there, oil, infrastructure etc.”*¹¹²³

On 16 November 1999 Fouad faxed Shaik¹¹²⁴ and thanked him for a message that Shaik had left on 27 October 1999, he continued to state: “...and I am pleased to note your new position as the Special Economic Advisor to the Deputy President of South Africa, Mr. Jacob Zuma. My congratulations on this new assignment...”

From a detailed review of the documents at our disposal it appears from that the contact between Shaik and Fouad came to an ending in the period subsequent to 10 January 2001.

19.2.6 Venson Group PLC

Establishing the business relationship

Grant Scriven visited South Africa during the week 17 to 21 November 1997¹¹²⁵ as is evident from an itinerary for those dates. It is apparent from the document that he had meetings with:

- Nkobi and their legal and accounting advisors to discuss the way forward;
- Zuma for dinner and a “general socio-economic/political briefing”;
- Y Akoo, motor dealer and fleet management company;
- Ndebele, Minister of Transport for KwaZulu-Natal;
- Possible meetings with Mac Maharaj, National Minister of Transport; and
- Possible meetings with Police authorities, Ministry of Public Works and Transport Ministry.

The meetings were arranged by Shaik on behalf of Scriven and the group.

On 23 January 1998 Clive Lawson Smith, the then Group Financial Director of Venson Group PLC wrote to Shaik¹¹²⁶. He indicated that Venson Group PLC was corresponding with the Overseas Development Administration Department in the UK, which department provides financial and other support to qualifying companies. He noted that in order to meet their requirements, Venson Group PLC needed to provide names of persons with whom meetings had been held, thereby underlining the seriousness of their intention and the likelihood of a

¹¹²³ Refer to 19 0180-19 0182 (80 11506 to 80 11508)

¹¹²⁴ Refer to 19 0183(80 11500 Box 134)

¹¹²⁵ Refer to 19 0184-190186 (80 05973 to 80 05975 Box 108)

¹¹²⁶ Refer to 19 0187-190188(80 05979A to 80 05979B Box 108)

successful investment. He attached a list of people and requested Shaik to review same and “...confirm as soon as possible that there are no particular sensitivities with regard to the names, or let me know which should be deleted, if any.” The names mentioned in the accompanying list are:

- Jacob Zuma, Deputy President ANC;
- Mac Maharaj, National Minister of Transport; and
- Sibusiso Ndebele, Minister of Transport, KwaZulu-Natal.

The following names were also listed under the “other”:

- Yunus Akoo, Managing Director Durban South Motors;
- Peter Azzie, Managing Director, Hallmark Group;
- Satish Ramsumer, Director Desai Jadwad; and
- Anand Moodley, Ditz Incorporated.

Grant Scriven wrote to Sir Martin Laing CBE, from John Laing PLC, on 4 February 1998¹¹²⁷. In this letter he indicated that he, Grant Scriven, would be travelling to South Africa and that he would also pursue opportunities for Laing. He continued to state “*We have established a joint venture company with a local black empowerment company called Nkobi who are extremely well connected both commercially and politically. As I mentioned they have been working with Tarmac, but are not happy with their approach or performance in many respects and have asked if I had any suggestions for an alternative.*”

On 11 February 1998 confirmation of a programme for a visit by Grant Scriven in South Africa for the period 16 February 1998 to 19 February 1998¹¹²⁸, was forwarded to Grant Scriven. The following meetings had been arranged:

- Meeting with Nkobi at the Nkobi Head Office – Agreement on programme and discussion and finalization of joint venture, legal document, business plan and operational details; and
- Meeting with Minister Ndebele (Minister of Transport of KwaZulu-Natal) and his directorate for the presentation of the Venson (UK) Model.

¹¹²⁷ Refer to 19 0189(80 05940 Box 108)

¹¹²⁸ Refer to 19 0190(80 05927 Box 108)

The notice by Shaik to Grant Scriven closed by stating “NB: A dinner meeting has been arranged with Minister Jacob Zuma scheduled for one of the evenings. (This is still to be confirmed.)”.

Shaik wrote to Grant Scriven on 14 May 1998, and referred to a meeting with “the Minister”¹¹²⁹. The purpose of the communication was to inform Grant Scriven of the outcome of the meeting and dealt mainly with the proposal process.

A letter, dated 25 October 1999, indicates that Shaik would be visiting the UK and in particular Venson PLC from 30 October 1999¹¹³⁰. It is apparent that Shaik planned this visit and was accompanied by Maharaj. A lunch was planned for 1 November 1999 whereafter Maharaj would have been introduced to senior members of the Venson Group PLC. This was followed by a presentation and discussions and a suggested visit to the Metropolitan Police in order for Maharaj to experience, first hand, Venson at work.

In a memorandum, dated 26 October 1999, from Martyn Surman to Shaik, the travel arrangements and costs of the visit were reflected¹¹³¹. The booking was made at Gentravel and reflected that a total cost of R144 951 would have been spent on this visit. The cost of Maharaj’s ticket was also included in this amount at a value of R20 380.

Martyn Surman confirmed the visit by arranging accommodation through the Venson Group PLC staff on 25 October 1999¹¹³². He confirmed for both himself and Maharaj and had requested to stay in the Athenaeum Hotel from 29 October 1999, departing 2 November 1999. Shaik’s stay was extended on a fax, dated 26 October 1999, to 4 November 1999¹¹³³. Maharaj’s booking for accommodation was not altered. On 26 October 1999, Martyn Surman confirmed the final bookings for Shaik and Maharaj. Maharaj and Shaik arrived on the morning of 31 October 1999 on two separate flights and departed both on 2 November 1999¹¹³⁴.

Telkom

On 1 August 2000 Shaik wrote a letter to Yusuf Surtee by fax. The fax was signed on his behalf by Martyn Surman¹¹³⁵. Shaik made a note on the top right hand corner of the fax “New File”. Mention is made in this fax regarding a Facilities Management contract that was awarded by Telkom to a company, ostensibly outside the normal tender procedures. It continued to promote

¹¹²⁹ Refer to 19 0191(80 05917 Box 108)

¹¹³⁰ Refer to 19 0192-19 0193(80 10967 to 80 10968 Box 133)

¹¹³¹ Refer to 19 0194(80 08660A Box 128)

¹¹³² Refer to 19 0195 (80 10966 Box 133)

¹¹³³ Refer to 19 0196 (80 10965 Box 133)

¹¹³⁴ Refer to 19 0197 (80 10929 Box 133)

¹¹³⁵ Refer to 19 0198-19 0200(80 13663 to 80 13665 Box 138)

the expertise of Nkobi in this field and the fact that they were consultants to Jeff Radebe, the former Public Works Minister, on facilities management companies. The fax also mentions the fact that Nkobi entered into a joint venture relationship with a UK based company known as KobiVenson. The fax continues to state “...*This comes as an absolute surprise and I am pretty sure some funny business is about I take particular note of the involvement of Cyril Ramaphosa and his company in this deal, and the continued enrichment of this individual and his company, potentially strengthening the union investment companies, who are clear political threats in the not so far distant future.*

Sizwe Nxasana, the Chief Executive of Telkom, formally from Durban, a chartered accountant by profession, a non-entity in the political domain and therefore would be quite easily influenced by Cyril Ramaphosa’s aims and objectives, both financial enrichment and political strategy.

Last year, Telkom advertised the outsourcing of their Fleet Management operation, called FastFleet. Notwithstanding the severely onerous financial guarantees required and other severe conditions of tender, we, as KobiVenson, together with our UK partner Venson Group plc., and our combined expertise and resources, we did not even make the shortlist. To say the least, Telkom outsourcing of contracts is operating as an unguided set of missiles, and a law unto themselves. Finally, I am raising this matter as a concerned businessman with the Deputy President, when I meet him over the weekend in Durban.”

Shaik’s diary does not reflect such meeting in Durban. However, the possibility that the meeting did take place cannot be excluded.

South African Police Service

On 11 July 2000 Martyn Surman wrote on behalf of Shaik to Grant Scriven¹¹³⁶ in an information update. The information provided to Grant Scriven revolved around fleet management. He also noted in this fax under point 2 “*On Friday 7th July, I introduced KobiVenson to Mr Yusuf Surtee who has a very special relationship with Mr Jackie Seleby (sic). I hope to inform you of this character.*”

Shaik wrote a letter to Zuma on 5 October 2000, the letter was signed on behalf of Shaik, by Bianca Singh¹¹³⁷. The letter is captioned “*Privatisation, PPP – Motor Vehicle Fleet Management South African Police Services (SAPS)*”. In this letter Zuma is informed as follows:

¹¹³⁶ Refer to 19 0201(80 10287 Box 132)

¹¹³⁷ Refer to 19 0202 (80 10196 Box 132)

“Inline with our Government’s Guidelines on Public Private Partnerships (PPP) I wish to introduce to the Department of SAPS a functional PPP Model and concept to its national motor vehicle fleet...”

The letter continued to provide details on Venson PLC and the services and requested *“As the Chairman of Venson (PLC) Grant Scriven will be in South Africa next week, I would appreciate you communicating to the Minister of Safety & Security on our behalf to secure a meeting with the intention to fully appraise (sic) him accordingly of the Venson PPP UK Model.”*

On 9 October 2000 Shaik wrote to the Ministry of Safety & Security *“C/o Kiddy”*. The letter was signed on his behalf by Bianca Singh¹¹³⁸. In this fax, reference is made to a letter to the *“Deputy President”* in which his office was requested to assist. The letter referred to is discussed above. However in this letter to the Ministry of Safety & Security Shaik requested *“I would sincerely appreciate a meeting with Minister Steve Tshwete to discuss the contents of the attached letter. I will also be accompanied by Mr. Grant Scriven Executive Chairman of Venson UK.”* A handwritten version of this letter, in the apparent handwriting of Shaik, is also on file¹¹³⁹.

An unsigned and incomplete letter, addressed to the late Minister Steve Tshwete, is in our possession. It appears that the author of the letter would have been Grant Scriven. This letter is dated 18 October 2000¹¹⁴⁰. In this letter, the late Tshwete was thanked for the meeting that took place in Cape Town. It continues *“You will be aware of the support our interests has received from Deputy President Zuma and I very much hope we will be able to progress matters in the immediate future.”*

It appears that the abovementioned meeting with the late Tshwete in the letter dated 9 October 2000 did take place as on 20 November 2000 Grant Scriven wrote to Shaik¹¹⁴¹. A draft letter, prepared by Grant Scriven, accompanied the fax. Grant Scriven stated in the fax *“Sorry for the delay but please find attached an outline draft of the letter from Steve Tshwete back to me.”*

There are a couple of points I am not totally sure of and have put these in square brackets for you to check. They include a name in the first paragraph, as I cannot remember it and please confirm the spelling of the Commissioner’s name. Also you need to decide whether or not to

¹¹³⁸ Refer to 19 0203(80 10275 Box 132)

¹¹³⁹ Refer to 19 0204(80 10193 Box 132)

¹¹⁴⁰ Refer to 19 0205(80 08663 Box 128)

¹¹⁴¹ Refer to 19 0206-19 0207(80 10222 to 80 10223 Box 132)

include the paragraph referring to the President and the Deputy President's interest in this matter.

Something along these lines would be useful from my end."

The draft letter that was prepared by Grant Scriven on behalf of the late Tshwete is quoted in full and reads as follows:

"Thank you for coming to see me with Mr Shaik and Mr [?].

Thank you also for explaining the activities of your Group and in particular your work with the Police in the United Kingdom, which you are bringing into South Africa through your jointly owned company, KobiVenson. I was most interested to hear what you are doing for the London Metropolitan Police Service, for whom we have a high regard.

This initiative is very exciting and closely fits with the Government's objectives to modernise the South African Police Service in this crucial area of its operations.

I have discussed your outline proposals with the Commissioner [Mr Jacky Selabie], and with other Cabinet colleagues. [As you know, both the President and Deputy President have also taken a keen interest in this area.]

I would like to confirm that we would welcome any firm proposal you wish to make and that these would be reviewed in a positive light. We would also like to seek an early opportunity to see first-hand your operation in London and we will be liaising with your office in this regard.

I look forward to hearing from you and apologise for the time it has taken to respond but I have been extremely busy on a number of very important initiatives recently."

It appears that this matter was not progressed any further, as on 3 May 2001 a letter from Shaik was faxed to the late Tshwete. In this letter Shaik dealt with the "*Venson Meeting – 2000 Privatization Police Motor Vehicles*" issue. He referred to the fact that a meeting had been arranged through the office of the Deputy President in Cape Town the prior year and in that meeting Shaik recalled that the late Tshwete responded extremely positively to the Venson concept and proposal on the privatisation of police vehicles and the related infrastructure. He then continued "*Despite numerous telephone calls to your offices, by both Mr Scriven from the United Kingdom and myself, as a follow-up to the above meeting, to this date not a single response has been forthcoming from your office.*

I would presume that some basic office courtesy should apply at the least. A simple letter of thanks for having met with the Honourable Minister having taken the time to enlighten him of the global changes taking place in the management of large scale police force moving infrastructure, would have been an acknowledgement. Even a simple “no thank you” response would be better than no response surely. Not to respond at all – despite our several attempts, is both rude and inefficient. Having personally met you at the Robben Island Millennium function and subsequently having taken advice from our Deputy President before approaching your office on this subject clearly seems contrary to the “no response” on this matter from you....Honourable Minister Tshwete, please do not take the above factual comments personally, but rather a constructive criticism of a small transaction in your department going unnoticed and unrecognised...How do we do this? How do we level the economic playing fields? How do we as the previously disadvantaged business sector build our capacities when our attempts to attract foreign and new technology partners are not even recognised by our own Ministers, surely we are doomed from the start, surely our cries cannot go unheard, surely you have a role to play to ensure our growth and development.”¹¹⁴²

On 11 July 2001 Scriven wrote to Shaik by fax and noted in cryptic form “Bear hugs from the DP at the “Party” in front of Cabinet + 2000 great + good of S.A.

Consumption of the Presidents Dinner in front of the Finance Minister and other notables.

Nearly squeezed to death in Dublin Central Station by “Mac The Knife”.

And now Transport + Police Ministers adopting my family!

I think I can safely say I am in!

Lets talk”

The fax also contained a note at the bottom right-hand corner “P.S. Your Ministers are safe with me its Zara we have to watch – hope she doesn’t get Cyrils cellphone number!!”

The financial analyses performed by us indicate that an entity styled KobiVenson was indeed established¹¹⁴³. The company did however not trade as is evident from the Annual Financial Statements. Noticeable is the fact that the early “development costs” were capitalised for some

¹¹⁴² Refer to 19 0208-19 0211(80 02187 to 80 02190)

¹¹⁴³ Refer to paragraph Appendix 3

time whereafter they were written off. These costs included costs incurred that were related to Maharaj.

19.2.7 The Cyprus Development Bank Limited

Shaik received a fax from The Cyprus Development Bank Limited on 8 January 1998¹¹⁴⁴. Reference is made to a partners' "kick-off" meeting that was rescheduled from 24 and 25 February 1998 and referred to a letter from Shaik, dated 8 December 1997.

A person, whose signature is not legible, sent a letter on behalf of Shaik to Andronikou on 13 May 1998¹¹⁴⁵. The letter referred to a possible visit to Cyprus in the first week of June or alternatively to Hamburg where, as Shaik indicated, "*I shall be attending an Investment Conference with several ministers including the Minister of Telecommunication, Finance, Trade & Industry and Economics.*"

This could be an ideal meeting venue for us to lock in strategies together and for me to introduce you to the above ministers, especially the Minister of Telecommunications."

Bianca Singh wrote to Andronikou, on behalf of Shaik, on 11 June 1998 and provided information regarding his travel arrangements¹¹⁴⁶. It appears that Shaik would have travelled to Germany between 21 June 1998 and 24 June 1998, whereafter he could have travelled to London, arriving on 24 June 1998 and departing on 28 June 1998. Bianca Singh suggested "*It would be appreciated if a meeting could be arranged for the signing of the Teaming Agreement in Germany on a suitable date for yourself. Mr Shaik can be contacted on Mr. Moe Shaik's (The Councillor General of South Africa) contact numbers..."*

Andronikou faxed Shaik on 18 June 1998 and indicated that he was looking forward to meeting with Shaik. He proposed that the meeting take place on 26 June 1998¹¹⁴⁷ and also requested Shaik to confirm the venue.

Shaik confirmed a meeting between him and Andronikou to be held on 26 June 1998 at the Canadian Imperial Bank in London¹¹⁴⁸. The venue was noted as CBIC and time as 1:00PM. This was confirmed on 17 June 1998 by Shaik.

¹¹⁴⁴ Refer to 19 0212(80 12837 Box 137)

¹¹⁴⁵ Refer to 19 0213 (80 12841 Box 137)

¹¹⁴⁶ Refer to 19 0214 (80 12840 Box 137)

¹¹⁴⁷ Refer to 19 0215(80 12839 Box 137)

¹¹⁴⁸ Refer to 19 0216(80 12838 Box 137)

On Tuesday 30 June 1998, Andronikou faxed Shaik¹¹⁴⁹. He indicated “*It was (sic) pleasure meeting you and Minister Zuma in London last week, and Mr. Hugg of CIBC. I am looking forward to receiving the signed Agreement urgently.*

As I indicated to you the meeting of partners will take place in Athens NEXT WEEK (8 – 10 July 98).

Please let me know, so I can send you the complete AGENDA, if you can make it.”

This fax not only confirmed that a meeting took place in the previous week but also that Zuma was present during a meeting. The meeting between Andronikou and Shaik revolved around potential business and is most likely to have taken place on 26 June 1998. This meeting, discussing potential business, should be seen in context with another meeting that took place on Thursday 2 July 1998 in London, regarding the business of the Nkobi group. This meeting was again allegedly attended by Shaik and Zuma, but this time with Thomson, at the time of selection of and confirmation that the Nkobi group is a correct Black Economic Empowerment Partner.¹¹⁵⁰

Shaik replied on 3 July 1998 and addressed a fax to Andronikou¹¹⁵¹ wherein he informed him that he had signed the letter on the Cyprus GEO-Mobile Satellite Project. The fax was accompanied by a letter signed by Shaik and addressed to:

- The Cyprus Development Bank;
- Hughes Space and Telecommunications, Los Angeles;
- The Sumitomo Bank Limited, London;
- Alenia Aerospasio – Space Division, Athens;
- TeleDanmark, Denmark; and
- OTE, Athens.

We could not establish from which number the fax was sent but it is evident that Shaik was still in London at the time as evidenced by Shaik passing on his London contact details to Andronikou. The letter that accompanied the abovementioned fax is a confirmation from Shaik that Nkobi Holdings agreed to participate as a new party to the Project Promotion Phase and as

¹¹⁴⁹ Refer to 19 0217(80 12834 Box 137)

¹¹⁵⁰ Refer to paragraph 18.4.9

¹¹⁵¹ Refer to 19 0218-19 0219(80 12831 to 80 12832 Box 137)

a consequence a party to the Teaming Agreement on the Cyprus Geo-Mobile Satellite Project. There are no indications that any concrete business dealings occurred between the Nkobi group and The Cyprus Development Bank subsequent to the signing of the Teaming Agreement.

We could not confirm that any operational revenue was derived from this agreement when the financial position and results of the Nkobi group were reviewed.

19.2.8 Southern Crest Marketing Services

Southern Crest Marketing Services is a name under which a person by the name of Deva Ponnoosami communicated with Shaik. It appears from a fax dated 15 May 1998 that the organisation was based in the United Kingdom¹¹⁵². In this fax Deva Ponnoosami indicated that he wanted to discuss his future strategy with Shaik. It appears that the intended meeting took place on 19 May 1998, as Anand Moodley faxed a draft letter to Shaik referring to “*Thava*” on that date. Attached to this fax was a draft letter, setting out details of an arrangement between Nkobi Holdings and the person, presumably “*Thava*”, on possible business operations, joint ventures and partnerships. Details of the arrangement are noted in the draft letter. This draft letter was essentially converted into a letter from Shaik to Deva Ponnoosami, dated 20 May 1998 in which Deva Ponnoosami was appointed as director of Nkobi International (UK) (Pty) Limited¹¹⁵³. The letter was signed by both Shaik and Deva Ponnoosami.

We could not locate an entity styled Nkobi International (UK) (Pty) Limited nor could we establish whether Deva Ponnoosami was ever appointed as a director of any of the Nkobi group companies. His so-called appointment as director of Nkobi International (UK) (Pty) Limited (at least in South Africa) is therefore not supported by any of the official records of the Nkobi group in our possession. However, as will be evident in the paragraphs that follow, Deva Ponnoosami continued his contact with the Nkobi group.

It appears that Deva Ponnoosami attempted to source business deals for the Nkobi companies in the UK. This is manifested in various pieces of correspondence at our disposal that can be summarised as follows:

On 12 July 1998 Deva Ponnoosami indicated in a fax to Bianca¹¹⁵⁴ at Nkobi Holdings that Bianca Singh needed to remind “*Phambili*”, presumably Phambili Gama, to “...*slot in a reception at the British High Commissioner’s residence on the evening of May 27th...*”

¹¹⁵² Refer to 19 0200 (80 12799 Box 137)

¹¹⁵³ Refer to 19 0221 and 19 0222(80 12733 and 80 12798 Box 137)

¹¹⁵⁴ Refer to 19 0223(80 12765 Box 137)

On 6 August 1998 Deva Ponnoosami visited the Prodiba plant¹¹⁵⁵;

On 31 July 1998 Deva Ponnoosami attended a meeting regarding the feasibility of a hotel complex at Zimbali Golf Estate for Nkobi Holdings¹¹⁵⁶;

A write-up was forwarded to the SA Times on 4 August 1998 from Deva Ponnoosami dealing mainly with the fact that the British Trade Minister, Barbara Roche had hailed the signing of a joint venture agreement between “...a *Durban-based black empowerment group and a specialist British asset management firm as an “important demonstration of positive UK-South African trade relations. The deal between emerging industrial conglomerate Nkobi Holdings and Venson, was signed in Durban this week during a luncheon hosted by Kwa-Zulu-Natal Economic Affairs and Tourism Minister Jacob Zuma, for Roche and her 12-person trade delegation...”* The article continues to deal with details of the parties and in particular mentioned the fact that Nkobi Holdings was then involved in projects to the value of R2.6 billion with a projected turnover of R760 million over the five years from the date of the article. It also mentioned the fact that the company had then been recently awarded a R300 million contract for the production of the SA driving licence cards¹¹⁵⁷;

Deva Ponnoosami was in the process of designing business cards for himself as Director: International Markets under the banner of Nkobi Holdings. This is evident from a fax dated 6 October 1998 and addressed to Shaik¹¹⁵⁸;

Also, on 6 October 1998, Deva Ponnoosami departed from the UK to attend *inter alia* a meeting with Shaik on 9 October 1998¹¹⁵⁹;

A document that resembles an agenda for a meeting between Shaik and Deva Ponnoosami for a meeting to be held on 9 October 1998 is in our possession¹¹⁶⁰. Various points were apparently discussed during this meeting and, included in this document under the heading “12. AOB” (Any Other Business), mention is made of “*JZ Programme*”. The context of mentioning Zuma’s name in the document could be manifested in the following fax from Deva Ponnoosami to Shaik;

¹¹⁵⁵ Refer to 19 0224-19 0225(80 12768 to 80 12769 Box 137)

¹¹⁵⁶ Refer to 19 0226-19 0227(80 12734 to 80 12735 Box 137)

¹¹⁵⁷ Refer to 19 0228-19 0229(80 12766 to 80 12767 Box 137)

¹¹⁵⁸ Refer to 19 0230-19 0232(80 12730 to 80 12732 Box 137)

¹¹⁵⁹ Refer to 19 0233-19 0239(80 12684 to 80 12690 Box 137)

¹¹⁶⁰ Refer to 19 0240-19 0241(80 12749 to 80 12750 Box 137)

On 16 October 1998¹¹⁶¹, Deva Ponnoosami prepared a fax to Shaik, again on various issues.

One of the points mentioned notes *“JZ’s visit is proceeding and I am in discussions with the Africa Centre. Nkobi will be listed as co-facilitators with the Africa Centre. I am hoping that the BR Consul (Debbie Goldthorpe) and the BR Council (Les Phillips) will fund the main costs.”*;

Shaik planned to visit London during 13 to 14 November 1998 as suggested by Deva Ponnoosami and that various issues would have been discussed¹¹⁶². The meetings did not take place as is evident from the follow-up fax to Shaik dated 29 November 1998. In this fax Deva Ponnoosami again discussed feedback on various efforts in place. Mention is made, under the point General Issues, that *“I gathered from the BR Council and Prof Lennon from Glasgow University that the Hotel initiative for Kwa-Zulu relating to the training has been agreed with JZ, I assumed Kobileisure to be the local partner. They were not able to confirm this, suffice to say that a local empowerment company has been identified by the Dept of EA & Tourism. JZ should throw some light.”* Also under the point General Issues, mention is made that *“The Africa Centre have invited me to join their board. Although this is unpaid it could be a useful networking opportunity for us. JZ’s visit to them had to be postponed to possibly Feb due to his schedule”*¹¹⁶³;

A meeting that Deva Ponnoosami had with two individuals by the names of John Kenward and Peter Rodgers of Crest Medicals Limited, regarding an entity styled Megrotex SA, is referred to in a fax from Deva Ponnoosami addressed to the two individuals and dated 11 December 1998¹¹⁶⁴. It appears that the individuals had discussed with Ponnoosami their thoughts on the growth potential of their involvement with Megrotex in Kwa-Zulu Natal. Deva Ponnoosami noted that local knowledge and contacts that he has could be of assistance to Crest Medicals Limited and he suggested an approach. Various names of individuals are noted and as one of the points of suggestion, point 5, he stated *“Discuss your initiatives with Jacob Zuma, Minister of Economic Affairs and Tourism and Dr Zweli Mkize, Minister of Health in Kwa-Zulu Natal to explore the possibility of state or NGO funding for this project.”* He continued to state that *“If 5 above is unsuccessful to explore private sector funding in SA and the UK.”* He continued to note that *“...all personnel referred to above*

¹¹⁶¹ Refer to 19 0242 (80 12752 Box 137)

¹¹⁶² Refer to 19 0243 and 19 0244(80 12770 and 80 12729 Box 137)

¹¹⁶³ Refer to 19 0245-19 0246(80 12720 to 80 12721 Box 137)

¹¹⁶⁴ Refer to 19 0247-19 0248 (80 12708 to 80 12709 Box 137)

are known to me at a personal level.” Deva Ponnoosami proposed a fee of GBP2 500 to assist with the proposed tasks and it appears that he received the funds for doing so;

On 14 January 1999 Bianca Singh signed a letter on behalf of Shaik, addressed to Deva at Southern Marketing Services on Nkobi Holdings letterhead¹¹⁶⁵. It is confirmed in this letter that Shaik had received the letters for Minister Zuma. It is assumed that the letters that are referred to are those dealt with more fully below;

On 4 February 1999 Bianca Singh again signed a letter on behalf of Shaik; this letter is addressed to Deva Ponnoosami at Southern Marketing Services on Nkobi Holdings letterhead¹¹⁶⁶. In this letter, mention is made that Shaik was aware of a medical delegation that was coming to South Africa and that he required details as regards “...*specific involvement of our group.*” Mention is also made of the fact that Shaik had been invited to join Minister Zweli Mkhize and his delegation to the UK from Saturday 6 February 1999 for a range of meetings and presentations and that Shaik, due to the fact that he may still be “*incapacitated*”, may not be able to do so. In that case, Shaik indicated he would request, *inter alia*, Deva Ponnoosami to represent him;

Shaik’s request was followed by a detailed briefing document from Deva Ponnoosami, dated 5 February 1999¹¹⁶⁷. Reference is made to various opportunities, including the one with Crest Medicals noted above;

On 15 February 1999 Martyn Surman wrote to Deva Ponnoosami regarding Eco Tourism Training Facility and Feasibility Study¹¹⁶⁸. This letter is also dealt with elsewhere in this report¹¹⁶⁹;

On 24 February 1999 Bianca Singh, again on behalf of Shaik signed a letter on Nkobi Holdings letterhead¹¹⁷⁰. The letter was addressed to Deva Ponnoosami of Southern African Marketing. The letter requested briefing on two main issues, namely the discussions that Deva Ponnoosami had with a person by the name of Miles Faulkner regarding a joint tender, as well as the discussion that Deva Ponnoosami had with Professor John Lennon. The contents

¹¹⁶⁵ Refer to 19 0249(80 12773 Box 137)

¹¹⁶⁶ Refer to 19 0250 (80 12727 Box 137)

¹¹⁶⁷ Refer to 19 0251-19 0254 (80 12781, 80 12778, 80 12779 and 80 12780 Box 137)

¹¹⁶⁸ Refer to 19 0255(80 10602 Box 133)

¹¹⁶⁹ Refer paragraph 19.2.10

¹¹⁷⁰ Refer to 19 0256 (80 12774 Box 137)

of this letter are dealt with in more detail below. Mention is also made regarding the above letter dated 15 February 1999 from Martyn Surman;

On 25 February 1999 Bianca Singh, on behalf of Shaik, confirmed having received the fax dated 24 February 1999; and

On 4 March 1999 Deva Ponnoosami wrote to Shaik again¹¹⁷¹ and referred to a meeting that he had with Shaik on various issues. He continued to request a further meeting with Shaik on the same day at 4 pm in order to discuss various issues mentioned in the fax. One of the issues is noted under “*D. Progress with Professor Lennon*”.

Contact between Deva Ponnoosami and the Nkobi group decreased to and was limited to feedback on minor issues, to such an extent that on 23 May 1999, Deva Ponnoosami wrote to Shaik and noted “*Please let me know if we still have a working relationship as I need to give the companies I mentioned a feedback on whether Nkobi wishes to consider the various options...*” This was followed by a fax from Deva Ponnoosami to Gama dated 25 July 1999 after a meeting with Gama. It appears from the contents of this fax that no concrete business was discussed¹¹⁷².

19.2.9 Ron Coopersmith

Ron Coopersmith was another person with whom Shaik attempted to partner with and/or who searched for business opportunities on behalf of Shaik.

In an e-mail addressed to the “procon@ion.co.za” address, but for the attention of Shaik and dated 19 October 1998¹¹⁷³. Ron Coopersmith referred to a meeting that Shaik had had with him in Washington. He proceeded to state “...*I want to inform you that Andre did attempt to call the Minister. He left a message with the operator and on the voice mail but the Minister did not call him back. I await your package of information so we can proceed quickly with our initiatives...*” Shaik made a note on the hard copy of this e-mail “*New file Ronald Coopersmith*”.

Ron Coopersmith wrote to Shaik on 6 November 1998 by e-mail to the “procon@ion.co.za” address¹¹⁷⁴ and requested Shaik to confirm his e-mail address. He raised a potential project with

¹¹⁷¹ Refer to 19 0257-19 0258(80 12782 to 80 12783 Box 137)

¹¹⁷² Refer to 12 0259-19 0260(80 12694 to 80 12694 Box 137)

¹¹⁷³ Refer to 19 0261(80 13646 Box 138)

¹¹⁷⁴ Refer to 19 0262-19 0263(80 13642 side Box 138with specific reference to reverse)

a Canadian forestry company and as a result requested Shaik to provide him with material on forestry.

Bianca Singh replied on behalf of Shaik, on 11 November 1998, to the previous e-mail of Ron Coopersmith¹¹⁷⁵. She provided Shaik's personal e-mail address and also indicated "*Kindly be advised that Mr. Shaik is in London until the 18th November 1998.*

In so far as the forestry information and other project details, we are currently compiling this pack and awaiting our offices in Mozambique to furnish additional data as per Mr. Shaik's requests..." We could not establish the whereabouts of the Mozambican offices referred to other than the reference and communication with a certain Veloso. Furthermore it is apparent from minutes of a meeting between, *inter alia*, Shaik, Zuma and Thomson that Shaik was not in London on 18 November 1998 anymore, as the meeting with Thomson occurred in Durban on that date. This latter meeting marked the formal beginning of the "re-introduction" of the Nkobi group in the capital of Thomson-CSF (indirectly ADS, who was awarded the contract for the Combat Suite in the Arms Deal)¹¹⁷⁶.

It appears that the relationship with Ron Coopersmith was similar to the one that Ponnoosami had with the Nkobi group whereby business opportunities were jointly explored.

Colin Isaacs forwarded a fax to Ron Coopersmith on 18 May 1999. The fax is captioned "*Opportunities in South Africa*"¹¹⁷⁷. This fax was a response on behalf of Shaik to earlier faxes and e-mail messages received from Ron Coopersmith. The opportunities dealt with were:

- AIG;
- Pharmaceutical company;
- PreFab Business;
- Engineering company (presumably the company in which Ron Coopersmith's father was involved);
- Forestry company – in this regard Isaacs stated that Shaik had been in contact with Mozambique and that it was necessary to know the type of timber that would be planted and harvested before any decisions could be made; and

¹¹⁷⁵ Refer to 19 0264(80 13645 Box 138)

¹¹⁷⁶ Refer to paragraph 18.4.11

¹¹⁷⁷ Refer to 19 0265-19 0268(80 13537 to 80 13540 Box 138)

- Banking opportunity – the “*Vision of an Nkobi Bank*” was discussed.

The letter discussed above referred to material on Nkobi Bank. In a separate document styled “*Vision of an Nkobi Bank*”, details of the bank are provided. This document was ostensibly attached to the abovementioned letter¹¹⁷⁸. In paragraph 6 of the document the following is mentioned “*This investment bank can also indeed, without a shadow of a doubt, compete for Government/ various Ministry’s budgets as a “deposit taker” and the financial management thereof. Example: The Ministry of Economic Affairs and Tourism, KwaZulu Natal, headed by Minister Jacob Zuma, where we believe we stand an “equal” chance, or aptly put, if all things are equal – because of the empowerment principle pursued by Government – we stand “a better than equal” chance on receiving a Ministry’s deposit. These would be in the order of R800 million (\$134 million US) for a fiscal year.*” This document is dated 7 April 1999 and prepared under the hand of Shaik.

The relationship did not yield any concrete opportunities, especially in the period that followed the abovementioned letter, as on 4 August 1999, Colin Isaacs wrote on behalf of Shaik to Ron Coopersmith¹¹⁷⁹. He opened the letter by stating “*I have discussed with Mr. Shaik the issues raised by you in your telephone call to me yesterday, and he is still very interested in these opportunities. He apologises for having left the US before having discussed these with you, but was called back to South Africa by our Deputy President, Minister Jacob Zuma, to whom Mr. Shaik acts as special adviser.*” Isaacs provided responses by Shaik as regards the various projects in which interest is shown. These were:

- AIG;
- Pharmaceutical company;
- Hotel business;
- Hearing Aid Manufacture; and
- Forestry Company Mozambique.

Ron Coopersmith e-mailed Shaik on 15 October 1999¹¹⁸⁰ and essentially dealt with the issue of compensating Ron Coopersmith for the efforts to introduce potential business to Shaik.

There were various instances where contact was maintained between Ron Coopersmith and representatives of the Nkobi group on potential business transactions. Most of it revolved

¹¹⁷⁸ Refer to 19 0269-19 0270(80 13541 to 80 13542)

¹¹⁷⁹ Refer to 19 0271(80 13536 Box 138)

¹¹⁸⁰ Refer to 19 0272 (80 13578 Box 138)

around the opportunities mentioned above. For purposes of this part of the report we did not deem it necessary to reflect on the opportunities in detail as it appears that none materialised.

19.2.10 Glasgow Caledonian University

The Glasgow Caledonian University was represented by a person by the name of Professor John Lennon. Documents at our disposal indicate that his relationship with Deva Ponnoosami and eventually the Nkobi group stretches back to the latter part of 1998 as in a fax to Shaik dated 29 November 1998 from Deva Ponnoosami mention is made under the point, General Issues, that¹¹⁸¹

“I gathered from the BR Council and Prof Lennon from Glasgow University that the Hotel initiative for Kwa-Zulu relating to the training has been agreed with JZ, I assumed Kobileisure to be the local partner. They were not able to confirm this, suffice to say that a local empowerment company has been identified by the Dept of EA & Tourism. JZ should throw some light.” It is possible that the relationship dates further back, but we are not in possession of any documents indicating such. However, it may also be that Professor Lennon met with Zuma on an occasion prior to the involvement of Deva Ponnoosami. Dealings between the Nkobi group and Deva Ponnoosami are dealt with in a separate paragraph¹¹⁸².

In an e-mail from Ponnoosami to Shaik on 8 January 1999¹¹⁸³, Ponnoosami explained that Professor Lennon was having difficulty “...getting JZ’s signature”. Ponnoosami had suggested to Professor Lennon that he could speed up the process “.... via a colleague (sic) (without mentioning names)”.

We are in possession of a document that was ostensibly faxed from the Glasgow Caledonian University on 13 January 1999¹¹⁸⁴ at 14:17. The document appears to be in two parts ie a typed part and then various amendments and suggestions in writing that appear to be in the handwriting of Deva Ponnoosami. This document with the handwriting was faxed again from a source that is not visible. This document and its contents was the source of two letters written under the name of Zuma. The contents of the suggested amendments, by Deva Ponnoosami, are not fully legible hence this part of the report continues to deal with the letters that were signed.

¹¹⁸¹ Refer to 19 0273-19 0274(80 12770 and 80 12729 Box 137)

¹¹⁸² Refer paragraph 19.2.8

¹¹⁸³ Refer to 19 0275(CD174)

¹¹⁸⁴ Refer to 19 0276-19 0277 (80 10606 and 80 10607 Box 137)

The first letter was addressed to Victoria Clarke of Southern African Development Bank¹¹⁸⁵ and is dated 4 February 1999 on the letterhead of Ministry of Economic Affairs and Tourism KwaZulu-Natal Province. The letter is titled “*Investment Feasibility Study Kwazulu Natal Eco Tourism School*”. Zuma stated “*I write to offer full support to the above proposal prepared by Professor J. John Lennon of Glasgow Caledonian University. I would appreciate if funding could be rapidly progressed in order for this project to commence as soon as possible.*

I am forwarding this letter to you in the event of my earlier communication not been received by yourself”.

The letter was signed by Zuma as Minister of Economic Affairs and Tourism, KwaZulu-Natal Provincial Government. We could not locate the earlier correspondence referred to nor the proposal referred to in this letter.

The second letter from Zuma, dated 4 February 1999, was addressed to Professor John Lennon¹¹⁸⁶. This letter was once again on the letterhead of the Ministry of Economic Affairs and Tourism KwaZulu-Natal Province. Zuma stated “*Since our last meeting I have given this initiative much thought, especially the operational aspects. Kwazulu Natal is a province that has embraced its tourism potential with great relish and we are eager to develop the quality and standards of service as well as diversifying its leisure opportunities. To this end, I feel that a local partner is required to form a joint venture with yourself to bring this initiative to fruition and to assist in understanding the local demands.*

I have had discussions with one such company namely Nkobi Holdings, head-quartered in Durban. They are keen to participate in this venture as it fits with their own leisure plans. I suggested to them to make contact with yourselves directly to speed the process and hopefully together you will both enhance the Kwazulu Natal tourism industry through raising the profile and excellence of the personnel involved in this industry.

As in the case with the previous letter, this letter was once again closed with the phrase “*I am forwarding this letter to you in the event of my earlier communication not been received by yourself.*”

The letter was signed by Zuma as Minister of Economic Affairs and Tourism, KwaZulu-Natal Provincial Government.

¹¹⁸⁵ Refer to 19 0278 (80 10605 Box 133)

¹¹⁸⁶ Refer to 19 0279(80 10608 Box 133)

Also on 4 February 1999, Martyn Surman, Business Development of Nkobi Holdings wrote to Professor John Lennon¹¹⁸⁷. In this letter Surman refers to a letter of Zuma and the fact that Nkobi Holdings was mentioned in the letter. He also indicated “*I have been asked by Mr Schabir Shaik, Executive Chairman & CEO, to affirm our company’s interest in participating with you as a joint venture partner and that he would much appreciate it if you will kindly contact him personally, in order that you can discuss with him how Nkobi Holdings can make a positive contribution to this initiative.*” This letter was also forwarded to Zuma and Shaik and printed on the Nkobi Holdings letterhead.

Professor Lennon replied to the abovementioned letter on 9 February 1999 on the letterhead of the Glasgow Caledonian University addressing Shaik as Executive Chairman & CEO¹¹⁸⁸. In this reply Professor Lennon stated “*I am most keen that we progress discussions on these projects and how we may work together. Please note our local agent in South Africa is Rupert Lorimer who will liaise directly with you as my agent...*” The letter was also forwarded to Martyn Surman and Rupert Lorimer.

The letter of Professor Lennon was responded to by Martyn Surman on 15 February 1999 on an Nkobi Holdings letterhead¹¹⁸⁹. It is evident from the response that Shaik was not happy with the response received from Professor Lennon on 9 February 1999, mainly due to the fact that another local person was nominated as an agent acting on behalf of Professor Lennon. The letter states the following: “*I have to advise you that he finds your response insulting to say the least and that he considers that it lacks the business ethics it deserves.*

He has asked me to refer to all your own attempts and those of your associates, both in an outside of South Africa, which have failed dismally to obtain the letters of support which you desperately required in order for your onward motivation to the respective authorities. It was only after Mr. Shaik’s intervention, having been briefed by Deva Ponnoosami of the predicament you were in, that he agreed to assist this project on the basis of our Group’s participation, as it is synergistic with your own business activities.

Having once obtained the support letters for you he now finds himself marginalised to deal with your so-called agents in South Africa, namely Lorimer Environmental Consultants. Indeed he inquires why Lorimer Environmental Consultants were not able to assist you in the first place?

¹¹⁸⁷ Refer to 198 0280(80 10610 Box 133)

¹¹⁸⁸ Refer to 19 0281(80 10600 Box 133)

¹¹⁸⁹ Refer to 19 0282(80 10601 Box 133)

What we would have expected from you in your reply is the following:

a detailed proposal on the objectives of the proposed study;

proposed work share allocations between Nkobi Holdings and yourselves;

a business plan attached thereto.

Mr Shaik has asked me to advise you that he is prepared to give you three days in order to come back to him, sketching out the issues referred to above, failing which he will go back to Minister Zuma.”

A similar letter along the same lines was written to Deva Ponnoosami on 15 February 1999¹¹⁹⁰. This letter was also prepared on an Nkobi Holdings letterhead wherein he said “*Shabir is very disappointed in the way that, as predicted, UK companies or individuals continue to operate in terms of “connectivity” and/or obtaining suitably qualifying support letters and thereafter marginalising our interests to deal with their local agents, as is the case with Professor Lennon. He finds it “most unacceptable” in so far as Lennon’s matter is concerned.*

He proposes to give Professor Lennon three days to rectify his proposed relationship with this Group. Thereafter, he will move with our connectivity for the right reasons and motivations given, to negate Professor Lennon’s earlier support...”

This letter was followed by another, again to Deva Ponnoosami, dated 24 February 1999 on Nkobi letterhead from Shaik. This letter was signed by Bianca Singh on behalf of Shaik¹¹⁹¹. In this letter under the second point Shaik requested “*Also inform me of your precise discussion with Professor Lennon with regards to my request from him, as he has not yet responded to my letter. I will regard this matter as being, some what serious.*” The letter then continued to state “*I shall be in a meeting with Minister Zuma tomorrow and if I do not receive the information as requested in my letter dated 15th February 99, I shall move to inform Minister Zuma and seek to do whatever is necessary to stop Professor Lennon’s process.*”

Deva Ponnoosami wrote to Shaik in a fax, dated 25 February 1999 indicating that he had spoken with Professor Lennon the previous day and that due to a printer problem he, Deva Ponnoosami could not print a document which we assume was forwarded to him by Professor Lennon¹¹⁹². It appears that Professor Lennon was expecting a response on the document from Deva Ponnoosami in order to reply to Shaik. Mention is made in this fax that “*He is very keen to cooperate and reiterated that no insult was intended. He will be sending you an Email*

¹¹⁹⁰ Refer to 19 0283(80 10602 Box 133)

¹¹⁹¹ Refer to 19 0284(80 12774 Box 138)

¹¹⁹² Refer to 19 0285-19 0286 (80 12776 to 80 12777 Box 138)

explaining the position.” On 25 February 1999, Bianca Singh on behalf of Shaik, confirmed to Deva Ponnoosami that his fax dated 25 February 1999 had been received and that he was looking forward to the e-mail from Professor Lennon¹¹⁹³.

There are no further indications in the records at our disposal that the relationship with Professor Lennon and the Glasgow Caledonian University progressed from this point onwards. It appears in a fax from Deva Ponnoosami, incorrectly dated 4 March 1998 (as the date when it was sent was on 4 March 1999 and the issues mentioned in this fax belong to the period of March 1999) that Shaik and Ponnoosami discussed progress with Professor Lennon at the time¹¹⁹⁴. Details of the discussions are not known to us. The review of the Annual Financial Statements of the Nkobi group also revealed that the entity styled Kobileisure in the context of this paragraph remained dormant for the entire period¹¹⁹⁵.

19.2.11 The Hudson Institute

A person named Bruce Alan Johnson wrote to “*Bianca*” by fax on 21 December 1998¹¹⁹⁶. It appears that he was associated with the Hudson Institute, in Indianapolis, Indiana, USA. He requested Bianca to secure him a copy of a book by Ian Smith, titled “*The Great Betrayal*”. This was followed by a letter from Shaik, signed by Bianca Singh on his behalf and dated 26 January 1999¹¹⁹⁷. In this letter Shaik mentioned certain projects and continued “*If there is anything I can assist you with, in terms of agriculture, kindly advise me accordingly.*”

Minister Jacob Zuma extends his regret in not meeting with you on your last trip and looks forward to your next visit to South Africa”.

The review of the Annual Financial Statements of the Nkobi group did not indicate that any of the Nkobi group obtained revenue from an agricultural source or that the relationship with Bruce Alan Johnson yielded any business transactions or interaction other than that detailed above.

19.2.12 IGT

On 17 February 1999, Shaik wrote to Chettle (again a prospective business partner of Shaik) on an Nkobi Holdings letterhead. The letter was signed on his behalf by Bianca Singh¹¹⁹⁸. Shaik proceeded to state “*Just to inform you that the supper with Minister Zuma and the IGT people,*

¹¹⁹³ Refer to 19 0287 (80 12772 Box 138)

¹¹⁹⁴ Refer to 19 0288-19 0289(80 12782 to 80 12783 Box 138)

¹¹⁹⁵ Refer to paragraph 21

¹¹⁹⁶ Refer to 19 0290 (80 12966 Box 137)

¹¹⁹⁷ Refer to 19 0291(80 12965 Box 137)

¹¹⁹⁸ Refer to 190292 (80 10882 Box 133)

went very well. This company supplies gaming equipment and related technologies to the gaming industry in South Africa, no real fireworks in terms of turnover in South Africa...

On the same day, 17 February 1999, Chettle faxed to Shaik again¹¹⁹⁹. In this fax he dealt with an intended conference call that Shaik would have had with a certain Noah Samara from WorldSpace, the issue of Symbol Technologies (dealt elsewhere in this report¹²⁰⁰) and he thanked Shaik for informing him about the dinner that IGT had had (presumably the one with Zuma referred to above).

The review of the Annual Financial Statements performed by us did not indicate any revenue generated with regards to IGT.

19.2.13 International Business & Development Group

Shaik wrote to Peter Shortt, Chief Executive, International Business & Development Group, c/o Greater London Enterprise Limited, on 28 April 1999¹²⁰¹ under the title “*SME Partnership Programme*”. He referred to a meeting on 18 March 1999 at his offices, following a previous invitation from Geraldine McDermott of the Department of Trade & Industry, UK for Shaik, to travel to London in order to meet with a Peter Thackray and her on 18 February 1999. Shaik indicated that during the meeting, Peter Shortt “...*promised to come back to me with a range of initiatives that could be progressed, but to date I have heard nothing further...*” Geraldine McDermott and Debbie Goldthorpe, Her Majesty’s Consul in Durban, were also copied on this letter.

Peter Shortt communicated with Shaik on 5 May 1999 by fax¹²⁰². The fax is titled “*SME Partnership Programme*”. In this fax, he expressed their keen interest to develop a working relationship and that they were examining some ways in which this could be done. Peter Shortt requested Shaik to provide him with information on “...*the members of your bidding consortium and the class of contracts which they had succeeded in winning.*” Debbie Goldthorpe and Geraldine McDermott were also copied on this fax.

¹¹⁹⁹ Refer to 19 0293-19 0294 (80 10873 to 80 10874 Box 133)

¹²⁰⁰ Refer paragraph 20.7

¹²⁰¹ Refer to 19 0295(80 13534 Box 138)

¹²⁰² Refer to 19 0296(80 13535 Box 138)

On 18 May 1999 Shaik again wrote to Peter Shortt¹²⁰³ and once again copied Debbie Goldthorpe and Geraldine McDermott. Shaik referred to the reply dated 5 May 1999 and indicated “...much of the business information we have in South Africa is confidential, particularly with the non-disclosure agreements in place that we have signed for a range of business interests.

We want to stress that we are seeking a joint venture relationship/s, in which both the British company/ies and Nkobi will both provide appropriate inputs. It will be a profit making company and Nkobi will provide all the necessary business information to the company to make the company a viable one....” and then “...We need to progress towards a position of firming up a joint venture, outlining in clear terms each party’s inputs – we are not able to supply any commercial information prior to this. Unfortunately, we are not sponsored in any way by the South African government and as such we are feel (sic) unable to provide open-ended economic intelligence to UK companies until such time as relationships are established.”

It appears that the letter of Shaik was not responded to by Peter Shortt as on 23 August 1999 Shaik signed another letter in which he referred to the previous correspondence. This letter was addressed to Geraldine McDermott only¹²⁰⁴. In this letter he continued to state “...We have been informed by Debbie Goldthorpe, Her Majesty’s Consul, Durban, that this company has gone ahead with establishing structured relationships with private sector companies in Cape Town and Johannesburg. Are you able to confirm this please?”

He continued to express his dissatisfaction with the lack of response by Peter Shortt and provided some history to the relationship which is in line with that discussed above. He then stated “...May I also point out to you that I was the Special Adviser to Mr Jacob Zuma, formally Minister of Economic Affairs, Province of Kwazulu Natal. He is now the Deputy President of South Africa, in charge of government business and I am continuing in my capacity as Special Adviser to him. Mr Shortt’s lack of response does not display the kind of business etiquette I would expect from a company representing the SME Partnership Programme of the UK DTI, within the context of “Britain means Business” with South Africa.”

¹²⁰³ Refer to 19 0297-19 0298(80 13529 to 80 13530 Box 138)

¹²⁰⁴ Refer to 19 0299(80 13525 Box 138)

19.2.14 Oger Telecom, a branch of Saudi Oger Limited

On 22 May 1999 a person by the name of John H Freel, Manager, Corporate Business Development, sent a fax to Chippy Shaik in Pretoria¹²⁰⁵. The fax was accompanied by a letter from a company that was interested in a project at the Durban International Airport to access the potential attractiveness of private sector involvement in the prospective international airport development and operations project. John H Freel requested Chippy Shaik to arrange for the accompanied questionnaire to be completed.

A copy of the Shareholders Agreement between Oger Telecom, a branch of Saudi Oger Limited and Cellsaf (Pty) Limited, dated 28 May 1999 was in possession of Shaik. This agreement is marked as the sixth draft¹²⁰⁶.

19.2.15 Miles Faulkner

Mention was made of a person by the name of Miles Faulkner in the correspondence with Deva Ponnoosami¹²⁰⁷. It appears that none of the efforts between Miles Faulkner and the Nkobi group were realised. However, on 23 June 1999, Miles Faulkner wrote to Shaik¹²⁰⁸. In this letter he informed Shaik of his then projects that he was engaged in and noted *“I have been busy on a major project with Colebrand along with work for CDR, London Clubs and others. I have however now become a little tired with the owner of Colebrand who, between us, is a little too conservative for my taste.”* He indicated that he was working with offset opportunities at the time and was trying to find an organisation to support him. He continued to state *“I am delighted about your new role and congratulate you warmly, I am sure that a lot of effort went from you into getting JZ there.”*

The contact between Miles Faulkner and Shaik continued for a period thereafter, until approximately August 1999, mainly related to offset opportunities. It appears that none of these materialised.

¹²⁰⁵ Refer to 19 0300-190305(80 12976 to 80 12981 Box 137)

¹²⁰⁶ Refer to 19 0306-19 0353(80 12982 to 80 13029 Box 137)

¹²⁰⁷ Refer paragraph 19.2.8

¹²⁰⁸ Refer to 19 0354(80 11174 Box 134)

19.2.16 Crane (Africa) (Pty) Limited and Roth International LLC

Kent B Crane of Crane (Africa) (Pty) Limited wrote to Shaik on 14 July 1999¹²⁰⁹. The purpose of the letter was to provide Shaik with various contacts that he had in the USA. Under the heading “*Washington DC*”, he indicated under point 1 “*James Roth is a young Democrat lawyer from Seattle who now represents the Republic of Zambia in Washington DC. He worked in the Nixon law firm and was later Legislative Assistant to Representative Cynthia McKinney (D Georgia), who is prominent in the Black Caucus and who has made a name for herself on African matters (with Mr. Roth’s help). I recently met James Roth, but he has already been very helpful to me with my Zambian investments and he is very willing, at my request, to help show you around in Washington, DC. As it is often good for a new President to pick his own team, including lobbyists abroad, you might look at Jamie in that light. Jamie Roth’s numbers are...*”

James Roth of Roth International LLC wrote to Shaik on 23 August 1999¹²¹⁰. This letter served to promote the services that Roth International and what a relationship with a so called Global USA was able to offer. He noted “*Although you left Washington one month ago, the positive energy that was generated by our exchange of ideas has stayed with me. My enthusiasm for working with you, Deputy President Zuma and the Government of South Africa remains strong.*” He then proceeded to market the services that he in particular was able to offer.

James Roth wrote to Jeff Crane of Crane Africa on 15 September 1999¹²¹¹. The topic of the fax is indicated as “*Corporate Council on Africa Mission to South Africa*” (hereinafter referred to as the CCA). He dealt with details on the CCA and indicated that members of the CCA would travel to South Africa to specifically meet with Jeff Crane, his father and Shaik, with the sole objective of developing strategic business partners in South Africa. He requested that Nkobi and Crane participate in the mission. The fax closed by James Roth stated: “*During his visit to the United States I assured Schabir that – in addition to offering effective lobbying services – I could bring potential joint venture partners to Nkobi Holdings. I could consider this to be a good faith effort on my part to follow through on that pledge. I am pleased to extend my services in this capacity to Crane Africa as well.*”

¹²⁰⁹ Refer to 19 0355-19 0356(80 08874 to 80 08875 Box 129)

¹²¹⁰ Refer to 19 0357-19 0359(80 10515 to 80 10517 Box 132)

¹²¹¹ Refer to 19 0360(80 10508 Box 132)

Martyn Surman replied, on behalf of Shaik, to the letter of James Roth, dated 23 August 1999, on 1 October 1999¹²¹². In the fax, enthusiasm for developing a strategy with Jeff Crane was expressed as well as the fact that Shaik was keen to participate in the US Trade Mission.

James Roth replied on 3 October 1999¹²¹³. He confirmed the interest shown and the fact that Nkobi would be invited to the CCA. He indicated that the appropriate names had been provided to Jeff Crane and that CCA staff had contacted Jeff Crane. He confirmed that preparations were underway for Shaik and Jeff Crane to participate in the conference.

James Roth wrote to Shaik again on 5 October 1999¹²¹⁴ and dealt with the CCA as well as opportunities for Nkobi.

Martyn Surman wrote to James Roth on 25 February 2000¹²¹⁵. He communicated regarding a matter in which Enron was involved with a so called black empowerment group styled Worldwide African Holdings. He indicated that *“They are well known to Mr. Shaik – he says that they are of no special note or political connectivity.”*

Surman wrote a memorandum to Shaik, Gama and Isaacs on 25 February 2000¹²¹⁶. In this memorandum he reported to Shaik regarding the Enron involvement in Mozambique which is not relevant to this part of the report. However, he noted that James Roth indicated he was keen to develop a relationship with Nkobi and furthermore *“He spoke with you before regarding the Deputy President, and would like to discuss this further with you.”*

The review of the Annual Financial Statements of the Nkobi group performed by us did not reveal any direct investment or revenue generated as a result of the abovementioned relationship.

19.2.17 Unisys Corporation and John S Kendall

A presentation by Unisys, dated 20 July 1999, indicates that it formed part of the U.S Trade and Development Agency Passport and Identification Orientation Visit on that day¹²¹⁷. The presentation indicates the name of a person namely, John S Kendall (hereinafter referred to as Kendall). He was the Director Public Sector Programs, Unisys Pacific Asia Africa Americas.

¹²¹² Refer to 19 0361(80 10514 Box 132)

¹²¹³ Refer to 19 0362-19 0363(80 10520 to 80 10521 Box 132)

¹²¹⁴ Refer to 19 0364-19 0365(80 10518 to 80 10519 Box 132)

¹²¹⁵ Refer to 19 0366(80 10507 Box 132)

¹²¹⁶ Refer to 19 0367(80 10506 Box 132)

¹²¹⁷ Refer to 19 0368-19 0401(80 13729A to 80 13730 Box 138)

It appears that Shaik also attended the Orientation visits as well as the presentation dated 20 July 1999, on 24 August 1999, Shaik wrote to Kendall¹²¹⁸. He referred to a letter dated 13 August 1999 from Kendall, which we were not able to locate. He also referred the presentation that Shaik had viewed at the premises of the Unisys Corporation. Shaik continued to indicate his enthusiasm to partner with the Unisys Corporation and stated “...*If there is anyway possible for our group to be considered as an equity participant on this consortium, not only as an empowerment entity, but as an engineering business with real business and technical skills to contribute to its success, I would welcome this opportunity to inject the necessary resources, namely, funding, personnel, government lobbying etc. Kindly advise if this is anyway achievable.*

As special advisor to the Deputy President Zuma, I have informed him of my recent visit and the observations with respect to a range of technological solutions to our various government ministries. Deputy President Zuma is indeed charged with the responsibility of ensuring delivery within these ministries and as such my capacity as advisor is central to this process.

There are several initiatives within government requiring unique technological solutions to local problems in South Africa. These solutions will have to be deployed within the current administration who are indeed committed towards delivery. I would welcome the opportunity to meet with you on your intended visit to South Africa and would ensure the appropriate meetings with the Deputy President and other ministries accordingly.”

The review of the Annual Financial Statements of the Nkobi group performed by us did not reveal any direct investment or revenue generated as a result of the abovementioned relationship.

19.2.18 Queen City Properties (Pty) Limited

Dr Ahmed-Sadek Vahed (hereinafter referred to as Vahed and relative of Shaik) wrote to Shaik on 6 August 1999¹²¹⁹. The letter dealt with an income tax appeal matter involving Queen City Properties (Pty) Limited, in the Transvaal Provincial Division that was due to take place during late 1999 or early 2000. Vahed was associated with Queen City Properties (Pty) Limited.

¹²¹⁸

Refer to 19 0402-19 0404(80 13726 to 80 13728 Box 138)

¹²¹⁹

Refer to 19 0405-19 0421(80 0753A to 80 07761 Box 119)

The details of the appeal are not relevant to this section of the report apart from the fact that, as stated in the summary, SARS raised additional taxes amounting to approximately R3 million. However, the letter came with a request from Vahed to Shaik to seek an alternative method of settling the matter. Vahed's concern was the amount of legal fees incurred and to be incurred in time to come, hence his request from Shaik. Under point 6 of the letter Vahed wrote "*Dear Shabir, please seek a private appointment with your personal friend, the Deputy Commissioner Mr Praveen Gordhan with a request that he studies and reviews our tax files and, if persuaded that the SARS have no case, recommend to Mr Willem Coetzee to withdraw the assessment, thus saving both sides ongoing and compounding legal costs. Our consultant Mr Mahomed Randeree is prepared to join you to explain the issues on our behalf seeing that I will be away.*"

Vahed closed the letter by stating "*I leave the matter in your hands to meet with Mr Praveen Gordhan (on a private unofficial basis) and you could possibly enlist the support of Deputy President Jacob Zuma).*"

A draft letter, in which Shaik provided some input, indicates correspondence with Gordhan on this matter¹²²⁰. The letter is dated 17 September 1999. Without considering the full contents of the letter, it is noted that it was addressed to "*Mr Pravin Gorhan, (sic) Acting Commissioner, Lehae La SARS...*" and prepared under the name of Vahed.

Shaik suggested certain amendments to the typed version of the letter, some of which are dealt with in this part of the report. The letter was opened with "*Further to the meeting between Schabir Shaik and yourself I enclose our letter of appeal and other relevant Annexures for your due consideration...*" The letter then continues to provide some background and closed "*We have every confidence that this matter can be resolved to the mutual benefit of both parties...*" and then as suggested by Shaik "*Your reflection on this matter will be deeply appreciated.*"

It is assumed that the draft letter discussed above was forwarded to SARS in some form or other, as on 21 September 1999 an acknowledged receipt of a letter from Vahed, dated 19 September 1999¹²²¹ was received from SARS, with an indication that the matter would be looked into.

¹²²⁰ Refer to 19 0422-19 0423(80 07859 to 80 07860 Box 119)

¹²²¹ Refer to 19 0424(80 07858 Box 119)

The matter was not settled until at least 29 March 2000 when Vahed wrote to Advocate Geert Stevens¹²²². Mention is made of the fact that the matter was still not resolved and an offer was made to Advocate Geert Stevens, at the SARS address, to settle the matter.

On 10 April 2000, Vahed wrote to Shaik and attached the abovementioned fax¹²²³. The purpose of the fax was to request Shaik's assistance again, this time to progress the potential settlement with Gordhan, Vahed noted "*When you speak to ...? ... I suggest that you try your utmost best to persuade him to sanction the proposal at the earliest opportunity, so that this lengthy eight year old matter can come to an end...*" He then dealt with his views on the representatives of SARS and noted "... *Advocates Coetzee, Louw and Maeko agreed with Geert Stevens's idea and gave the impression that they saw this as the best method of compromise provided, of course, the boss (your friend) gave the okay to Geert to proceed and effect the compromise.*"

Vahed wrote a letter on 9 May 2000 to SARS enclosing a cheque of R1 224 199.13¹²²⁴ and stating as part of the letter "*I look forward to you revising my assessment and issuing me with new assessments reversing the capital profit which you had previously treated as revenue profit.*" Although this seemed to be a full and final settlement, it appears from a letter dated 26 June 2000¹²²⁵, addressed to Advocate Geert Stevens from Vahed that a second cheque was forward to SARS for an amount of R415 908.95 for interest. Vahed explained that this amount together with the previous amount paid would be regarded as the full and final settlement with each side carrying its own legal costs.

We could not locate any indication that Gordhan or Zuma intervened as suggested by Vahed; however there are indications that Vahed believed that Shaik would be able to call in the help of the two individuals in order to expedite the matter, which was the end result.

19.2.19 PFI Briefing

Martyn Surman wrote a memorandum to Shaik on 6 September 1999¹²²⁶. The memorandum was captioned "*DeputyPresident Zuma – PFI Briefing*". In this memorandum, Martyn Surman dealt with the fact that a certain Adrian Montigue would be visiting South Africa during the week 21 to 23 September 1999. He was allegedly in charge of the UK Treasury task force on Private

¹²²² Refer to 19 0425-19 0427(80 07847A to 80 07848 Box 119)

¹²²³ Refer to 19 0428 (80 07846 Box 119)

¹²²⁴ Refer to 19 0429-19 0432 (80 07843 to 80 07844C Box 119)

¹²²⁵ Refer to 19 0433-19 0434 (80 07809 to 80 07810 Box 119)

¹²²⁶ Refer to 19 0435 (80 02086 Box 86)

Funding Initiatives (“PFI”) and was considered to be the top UK man on the subject. This memorandum was generated as a result of a telephone call between Debbie Goldthorpe from Her Majesty’s Consul, Durban and Martyn Surman.

Martyn Surman closed the letter by stating “*Debbie has now been tasked with producing an itinerary for his visit and requests confirmation as to whether it would be possible for the Deputy President to meet with him during this period.*”

In a handwritten note, presumably by Martyn Surman, he mentioned “*SS reply:- await decision from Dep. Pres. Zuma.*” We could not find any indication that the mentioned or planned meeting between Zuma and PFI took place and what the reasons were for Her Majesty’s Consul to have requested Shaik to intervene to arrange such a meeting, instead of using the official contacts and channels at their disposal.

19.2.20 SASG

On 29 September 1999 Chettle wrote to Shaik¹²²⁷. Reference was made to a group known as Safe Air Skies Group (SASG) and this entity’s efforts to ensure the adoption, by South Africa, of a Regional Air Traffic Management System. The essence of the system was to provide safer and more efficient air traffic management throughout the COMESA region. Mention is made that the adoption of the system would not oblige the South African Government to meet any set up costs. Chettle provided reasons as to why he believed that the Minister of Transport, as well as the “*Deputy President*”, were not aware of this and requested “*...The SASG want our assistance in bringing this matter to the attention of the Minister of Transportation and the Deputy President. As an initial objective, members of the SASG team will be available in South Africa from 25 to 27 October, and are requesting us to facilitate a meeting with the Minister of Transportation and, if possible, the Deputy President.*”

In return, if they are successful in getting South Africa to join, they have promised us either equity in the project, or participation in the construction that would be required in South Africa. They anticipate that an air control centre costing some \$30-40 million and employing 200 people will have to be built in South Africa.”

He closed the letter by stating “*I think this could be very interesting, and look forward to hearing how your interim discussions with Dullah Omar have gone!*”

¹²²⁷

Refer to 19 0436-19 0439(80 10811 to 80 10813 Box 133)

On 21 January 2000 Chettle faxed Shaik indicating that he was on his way to South Africa and furthermore that SASG “...likes the idea of making a presentation at the Department of Transportation either Thursday, February 10 or Friday, February 11.”

On 11 February 2000 the Department of Transport, Office of the Director-General wrote to Shaik confirming a meeting with SASG for 14 February 2000¹²²⁸.

It appears that the late Dullah Omar did not attend the meeting, due to ill health as on 20 March 2000 Chettle inquired from Surman as to whether Shaik had had any success in obtaining a letter from Dullah Omar, saying “...that he was unable due to ill-health, to see the South African Skies Group, but that he would be pleased to deal with the matter when Mr. Shaik and I bring it to his attention. I think that such a letter would be helpful both to Nkobi’s Interests and to mine.”

The review of the Annual Financial Statements of the Nkobi group performed by us did not reveal any direct investment or revenue generated as a result of the abovementioned relationship.

19.2.21 Wilberforce Institute

Chettle wrote to Shaik on 30 September 1999 regarding the Wilberforce Institute¹²²⁹. Attached to this letter is a letter from Ms Coopersmith. Details of the Wilberforce Institute are provided and he continued to request “I believe it would be a wonderful gesture, and a tribute to the contribution made by the Wilberforce Institute, if the Deputy President could make the acceptance speech on behalf of the South African people. It would be particularly appropriate because he will, as I understand it, be head of the South African Government at the time, since I think President Mbeki will be in Davos, Switzerland. I wonder if I could ask you to broach the subject with him? ...”

He continued asking Shaik if he had given some further thought to Chettle’s, invitation to join the “...Board of the Institute.”

On 5 October 1999 Shaik wrote to Chettle¹²³⁰ and noted “...I will be most delighted to serve on the board as per your recommendation. I have tentatively spoken to Deputy President Zuma and have secured the dates for the re-launching of this institution. We would need to confirm details closer to the time.

¹²²⁸ Refer to 19 0440(80 10803 Box 133)

¹²²⁹ Refer to 19 0441-19 0444 (80 10795 to 80 10798 Box 133)

¹²³⁰ Refer to 19 0445-19 0446 (80 10814 to 80 10815 Box 133)

Kindly have the respective parties or leader of the delegation namely, Mrs. Coopersmith, on some formal letterhead or other, fax details requesting the Deputy President to officiate as guest speaker at this function, this should be done through your kind self directed to me for onward forwarding to the Deputy President”

On 19 October 1999 a letter was forwarded to Shaik by Bishop Cornal G Henning, Sr, Chairman of the Wilberforce Institute Board of Trustees¹²³¹. The letter was addressed to the Office of the Deputy President and continued “*It is with great pleasure, as presiding Bishop of the African Methodist Episcopal Church, that I am making use of the good offices of a Member of the Board of Trustees of the Wilberforce Institute, Mr. Schabir Shaik, to convey our invitation to you to participate in the ground-breaking ceremony for Wilberforce Institute in Evaton, in Gauteng, on 31 January 2000.*”

19.2.22 Freedman, Levy, Kroll & Simonds

It appears from the documentation at our disposal that the relationship between Shaik and Nkobi group and Freeman, Levy, Kroll & Simonds was vested in a person by the name of Chettle. Chettle was associated with the firm and it is evident from a letter dated 7 December 1998, addressed to Ms Tiffany Norwood of WorldSpace Corporation, with whom Shaik signed a Confidentiality Agreement, that Freeman, Levy, Kroll & Simonds were a firm of lawyers¹²³².

As will be evident in the rest of this section, Chettle acted as a type of agent for Shaik and attempted to source business associates and transactions, mainly in the USA.

On 17 December 1998 Chettle wrote to a certain person, by the name of Gordon, by e-mail. The e-mail revolved around the drivers licence contract that Nkobi received¹²³³. The latter is dealt with elsewhere in our report and we do not intend to repeat the correspondence in this regard in this part of the report. It will be evident from our report that there were various instances when Chettle corresponded and met with Shaik and others in regard to the drivers licence contract¹²³⁴.

The signed Confidentiality Agreement, referred to in the e-mail of 7 December 1998, was forwarded to Shaik by Chettle on 14 January 1999¹²³⁵. Chettle was not very complimentary towards WorldSpace in his fax and furthermore did not appear to be positive about the business

¹²³¹ Refer to 19 0447-19 0449(80 10788 to 80 10790 Box 133)

¹²³² Refer to 19 0450(80 10888 Box 133)

¹²³³ Refer to 19 0451-19 0452(80 10887 Box 133)

¹²³⁴ Refer paragraph 20

¹²³⁵ Refer to 19 0453-19 0457(80 10877 to 80 10881 Box 133)

possibilities with the entity. The contents of the Confidentiality Agreement are not dealt with in this report. This marked the first dealings that Chettle had with Shaik and the Nkobi group.

It appears from the documents at our disposal that there were various attempts by Chettle, Shaik and Nkobi to explore business opportunities, none of which appear to have materialised. These documents can be summarised as follows:

Date	Essence of correspondence and/or documentation
5 May 1999	E-mail between Martyn Surman and Chettle regarding Telkom Fleet Management opportunity and Shaik's impending visit to the USA ¹²³⁶
12 May 1999	Fax to Shaik with a letter attached that Chettle wrote to the US Trade and Development Agency regarding Shaik's impending visit to the USA. Chettle specifically referred to the Drivers Licence contract ¹²³⁷
13 May 1999	Fax from Chettle to Shaik with the reply of the US Trade and Development Agency to the above-mentioned letter ¹²³⁸
8 June 1999	Fax from Chettle to Shaik regarding Shaik's visit to the USA and Chettle's own visit to Durban ¹²³⁹
22 June 1999	Fax from Martyn Surman regarding a response by Nkobi on a call for Consultants from the Durban Council with regards to Environmental Planning and Management ¹²⁴⁰
29 June 1999	Shaik informing Chettle that he would be arriving in Washington on 17 July 1999 ¹²⁴¹
2 September 1999	Fax from Chettle to Shaik requesting feedback and complaining about the lack of communication from the staff of Nkobi ¹²⁴²

¹²³⁶ Refer to 19 0458-19 0459(80 10859 to 80 10860 Box 133)
¹²³⁷ Refer to 19 0460-19 0462(80 10829 to 80 10831 Box 133)
¹²³⁸ Refer to 19 0463-19 0465 (80 10826 to 80 10828 Box 133)
¹²³⁹ Refer to 19 0466-19 0468 (80 10850 to 80 10852 Box 133)
¹²⁴⁰ Refer to 19 0469-19 0470 (80 10834 to 80 10835 Box 133)
¹²⁴¹ Refer to 19 0471 (80 10832 Box 133)
¹²⁴² Refer to 19 0472-19 0474 (80 10822 to 80 10824 Box 133)

Date	Essence of correspondence and/or documentation
8 September 1999	Martyn Surman provided the feedback requested above ¹²⁴³
30 September 1999	Chettle wrote to Shaik regarding the Wilberforce Institute, dealt with in this paragraph
5 October 1999	Letter from Shaik to Chettle regarding the Wilberforce institute, dealt with in this paragraph
19 October 1999	Letter from Bishop Cornal G Hening, Chairman of the Wilberforce Institute to Zuma, dealt with in this paragraph
18 January 2000	Fax from Shaik to Chettle regarding Gaming Projects. Shaik required some funding for the minority interest that he had in some of the projects noted ¹²⁴⁴
21 January 2000	Fax from Chettle to Shaik regarding SASG, dealt with in this paragraph
11 February 2000	Confirmation of a meeting with the Department of Transport on 14 February 2000, dealt with in this paragraph
20 March 2000	E-mail from Chettle to Martyn Surman dealing with four topics, namely, Dullah Omar and the cancelled meeting with the “ <i>Skies Group</i> ” (dealt with in this paragraph), an AIDS related topic (dealt with in this paragraph), enquiring regarding a “ <i>Game</i> ” Technology contact that he passed on to Shaik, and, Symbol Technologies (dealt with elsewhere in this report) ¹²⁴⁵
5 April 2000	E-mail from Chettle to Shaik regarding Cell-C ¹²⁴⁶
7 April 2000	Fax from Chettle to Shaik regarding a project in Maputo involving Enron ¹²⁴⁷

¹²⁴³ Refer to 19 0475-19 0476(80 10820 to 80 10821 Box 133)

¹²⁴⁴ Refer to 19 0477-19 0479 (80 10805 to 80 10807 Box 133)

¹²⁴⁵ Refer to paragraph 20.7

¹²⁴⁶ Refer to 19 0480 (80 10810 Box 133)

Date	Essence of correspondence and/or documentation
12 April 2000	Fax from Shaik thanking Chettle for the details on Enron, referred to above ¹²⁴⁸
10 May 2000	E-mail from Chettle to Shaik regarding IGT, defence issues – on two potential contacts and the AIDS project (dealt with in this paragraph) ¹²⁴⁹
17 May 2000	E-mail from Chettle to Shaik regarding the National School of Public Health dealt with in this paragraph
1 June 2000	Fax from Shaik dealing with the AIDS project dealt with in this paragraph
2 November 2000	Letter from Shaik referring to a “deal” that Symbol (SA) lost as a result of a poor response to a point scoring section ¹²⁵⁰
22 November 2000	E-mail from Martyn Surman regarding an opportunity with the Albert Luthuli Hospital ¹²⁵¹
12 December 2000	E-mail from Chettle, dealing with Symbol ¹²⁵²

19.2.23 Aids project

The diary of Shaik for 2000 reflects a note on 31 January 2000¹²⁵³. The note carries the heading “*Re: Discussion with John Chettle*”. The aids project is noted under points 4 and 5 as follows “*Letter of support on Aids Program*” and “*Chettle to come back to SS (illegible) what NKI involvement on US Aids Program*” respectively.

The diary of Shaik reflects that on 8 February 2000 he had a meeting with Zuma¹²⁵⁴. Shaik wrote the names of Chettle and Alan Herman next to the entry in the diary. It appears from the

¹²⁴⁷ Refer to 19 0481-19 0483(80 10808 to 80 10809 Box 133)
¹²⁴⁸ Refer to 19 0484-19 0485(80 10775 to 80 10776 Box 133)
¹²⁴⁹ Refer to 19 0486-19 0487 (80 10758 to 80 10759 Box 133)
¹²⁵⁰ Refer to 19 0488(80 10768 Box 133)
¹²⁵¹ Refer to 19 0489 (80 10766 Box 133)
¹²⁵² Refer to 19 0490-19 0491 (80 10762 to 80 10763 Box 133)
¹²⁵³ Refer to 19 0492 (80 03586 Box 97)
¹²⁵⁴ Refer to 19 0493 (80 03595 Box 97)

draft letter, prepared for Zuma by Chettle and referred to below, that they did attend the meeting with Shaik, as reference is made of the briefing that took place. The same entry was repeated on 9 February 2000¹²⁵⁵.

We are in possession of a draft letter that appears to have been prepared for signature by Zuma. The letter is dated 11 February 2000¹²⁵⁶. Mention is made in an e-mail to Martyn Surman dated 20 March 2000 from Chettle¹²⁵⁷, of a letter that Chettle had requested from Zuma for which he had sent a draft to Shaik. Mention is made that the National School of Public Health intended to visit potential funders for “...*the most comprehensive proposal that has ever been developed in South Africa (or anywhere in Africa for that matter) to deal with AIDS...*” He continued to provide details of the project and stated “...*In view of the Deputy President’s position as Chairperson of the Cabinet Committee on AIDS, the international participation, and rather the unfavourable publicity (including a story in the New York Times yesterday) about the SA Government’s equivocal attitude to AIDS – that 40 percent of the AIDS budget hasn’t even been spent, for example – it is particularly important to get official support, otherwise companies will hesitate to give us funding...Please let me know, if Shabir thinks that I should approach the Deputy President directly on this rather than through him.*”

On 10 May 2000 Chettle sent an e-mail to Nkobi Holdings¹²⁵⁸ where he referred to a letter addressed to Zuma that Chettle had typed in South Africa at the National School of Public Health. We were not able to find a letter to Zuma, but rather a letter that appears to have been typed on Zuma’s behalf. The letter is addressed to Professor Herman, the Dean of the National School of Public Health at Medunsa University. The letter continued “*I should like to thank you and Mr. John H. Chettle for having briefed me on this remarkable work the National School of Public Health is doing to deal with the scourge of AIDS. I was aware, of course, of the Secure the Future AIDS Program...The Government welcomes the initiative, and I wish to express my own support for such an imaginative and comprehensive approach to solving a devastating epidemic.*

Sincerely,

The Hon. Jacob Zuma

¹²⁵⁵

Refer to 19 0494(80 03597 Box 97)

¹²⁵⁶

Refer to 19 0495(80 04104 Box 97)

¹²⁵⁷

Refer to 19 0496(80 10787 Box 133)

¹²⁵⁸

Refer to 19 0497-19 0498(80 10785 to 80 10786 Box 133)

Deputy President

Republic of South Africa”

Chettle sent another e-mail to Shaik on 10 May 2000¹²⁵⁹. Under point 3 of the e-mail he raised the issue again and he notes “*Letter from the Deputy President. I know that the issue of AIDS has become highly politicized, but I hope that our request for a letter of support from the Deputy President for medical research on the AIDS issue, and to train medical personnel to help deal with this matter, does not get caught up in the politics....Could I ask you a straight question, Schabir? Do you think we are going to get a letter of support from the Deputy President? If the answer is no, I will think it a great pity, but I will then not waste either your time or my own.*” Shaik made a note in pencil on the printed e-mail and asked “*Bianca*” to check the Chettle file for the draft letter that Chettle had sent to him.

Shaik replied to the Chettle e-mail on 17 May 2000, and requested Chettle to forward once again the draft letter “*...on the lines that you would be comfortable with so that I could obtain this from the Deputy President, for his secretary seems to have miss place (sic) it.*”

Chettle e-mailed Martyn Surman on 31 May 2000 regarding this topic¹²⁶⁰. He continued to state “*We heard today that Vice President Gore will definitely be presenting the Nelson Mandela Award at the Medunsa dinner on Jun 6. This is, of course, an enormous compliment to Medunsa, and an indication of how seriously the Vice President takes South Africa on the subject of AIDS. I think it is even more important to have the letter and the message from the Deputy President, Is this possible? I fear that we will look very foolish if we don’t have some sign on how seriously the South African government takes it. Please let me know if I should raise this with him directly.*”

On 1 June 2000 Shaik sent a fax to Chettle¹²⁶¹ confirming that he had received his most recent fax and he went on to state “*I am in fact, sitting with the Deputy President tonight and remain confident in obtaining the necessary letter required.*”

On 2 June 2000, Shaik faxed Chettle and indicated that he had tried to call, Chettle “*...during my sitting discussion with the Deputy President in Pretoria.*

¹²⁵⁹ Refer to 19 0499-19 0500 (80 10758 to 80 10759 Box 133)

¹²⁶⁰ Refer to 19 0501 (80 02177)

¹²⁶¹ Refer to 19 0502(80 10777 Box 133)

I am most delighted to inform you that save for some minor adjustments to the letter of the Nelson Mandela Peace Award, the Deputy President has accepted to have these letters signed on his official letterhead. I shall be receiving those letters tomorrow and shall be onwardly (sic) faxing these to you, with the originals couriered to your offices by Monday...” This letter was signed by Martyn Surman, on behalf of Shaik.

The letters were received and forwarded to Chettle by courier. Two letters were signed by Zuma both were dated 2 June 2000 and presented on the letterhead of “*Deputy President*” Republic of South Africa¹²⁶². The letter addressed to Professor Allan A Herman had some minor changes when compared to the letter that was originally drafted and dated 11 February 2000, referred to above. The most significant change was the removal and reference to a briefing that Zuma had had from Chettle and Professor Alan A. Herman.

The second letter was addressed to L. Douglas Wilder: Chairman of the Board of Trustees, Medunsa Trust Inc. Zuma referred to the fact that he had been the recipient of the Nelson Mandela Award for Outstanding Leadership in the previous year and extended his congratulations to the honouree for that year.

19.2.24 United Bank for Africa PLC

Documents at our disposal indicate that Shaik’s contact with the United Bank for Africa PLC commenced during 2000, when he wrote to a person by the name of Hakeem Belo-Osagie, who was the Chairman of United Bank for Africa PLC (hereinafter referred to as Belo-Osagie) on 27 March 2000¹²⁶³. The letter was in response to a letter dated 15 March 2000 from Belo-Osagie in which details of areas of Mutual Collaboration are noted¹²⁶⁴. The letter mentioned a person by the name of Khalid Abdullah Tariq Al-Mansour¹²⁶⁵ (hereinafter referred to as Al-Mansour) and the discussion that had emerged between the parties regarding Shaik’s personal balanced commitment to spiritual and business excellence. The areas for mutual co-operation identified were:

- United Networks Limited and Cell C;
- United Bank for Africa PLC and Nkobi in the development of a proposed bank; and

¹²⁶² Refer to 19 0503-19 0505 (80 02169 to 80 02171 Box 86)

¹²⁶³ Refer to 19 0506 (80 10752 Box 133)

¹²⁶⁴ Refer to 19 0507(80 10737 Box 133)

¹²⁶⁵ Refer also paragraph 19.2.26

- UBA and Nkobi holdings on a residential, commercial and free zone project in Lagos, Nigeria.

On 31 March 2000, Shaik wrote to Belo-Osagie and indicated that he wanted to invite Belo-Osagie to the head office of Nkobi. He also stated that “*Secondly I would like to introduce you to our Deputy President Mr. Jacob Zuma either in Pretoria or at his private residence in Durban during the weekend of the 15th/16th April.*”

This was followed by another letter dated 7 April 2000, signed by Bianca Singh on behalf of Shaik¹²⁶⁶. Shaik confirmed a meeting with Belo-Osagie the following week, in order to discuss “*...mutually beneficial business opportunities...*”. Shaik mentioned that he believed that there could be real opportunities for participation on the 3rd Cellular Network in South Africa. He continued to state “*As a highlight to our proposed meeting and not the focus of, I thought it would be most enjoyable for you to meet our Deputy President of South Africa, Mr. Jacob Zuma. Mr. Zuma is also the Deputy President of the African National Congress.*”

I am given to understand that there is an extremely good political goodwill developing bilateral ties with both our countries and we both need to take advantage of this conduciveness to develop our business relations...”

This letter was responded to on behalf of Belo-Osagie, on 7 April 2000¹²⁶⁷. Mention was made in the response that: “*He is looking forward to his discussions with you and to meeting Mr. Zuma the Deputy President.*” The rest of the document deals with Belo-Osagie’s travel arrangements from which it is apparent that Belo-Osagie would have arrived in South Africa on 10 April 2000 and departed again on 12 April 2000.

The diary of Shaik for 2000 has an entry on 11 April 2000 indicating that he had had supper with Zuma and Belo-Osagie on that day¹²⁶⁸. It appears that the supper took place in Cape Town. The entry for the supper appointment was made by a person other than Shaik. There are three more entries in the diary of Shaik for the days 11 April 2000, 12 April 2000 and 13 April 2000 respectively¹²⁶⁹. The entries were apparently made by Shaik and in cryptic form. However, an analysis of the entries reflects on 11 April 2000 “*Hakiem Nigerian Conf. in T Huis Lock in JZ*” and the entries on 12 and 13 April “*Hakiem Lock in JZ*”. Considering the timing and the context

¹²⁶⁶ Refer to 19 0508-19 0510 (80 10748 to 80 10750 Box 133)

¹²⁶⁷ Refer to 19 0511(80 10746 Box 133)

¹²⁶⁸ Refer to 19 0512 (80 03654 Box 97)

¹²⁶⁹ Refer to 19 0513-19 0515 (80 03654 to 80 03656 Box 97)

in which the entries were made, despite the fact that the name of Belo-Osagie is Hakeem (not Hakiem as Shaik generally referred to him). Therefore one can assume that the entry referred to Belo-Osagie. Furthermore, the entry referred to a meeting confirmed in Tuinhuis Cape Town. It is evident from the entry in the diary on 12 April 2000 that Shaik returned from Cape Town, presumably to Durban.

The meeting was followed by a letter from Belo-Osagie written subsequent to the visit. The letter is dated 14 April 2000 and addressed to Shaik¹²⁷⁰. Belo-Osagie started the letter in the first paragraph with “*It was very gracious of you to arrange a dinner meeting with Deputy President Jacob Zuma and I enjoyed our discussions immensely.*” The letter continued to deal with financing opportunities for Nkobi Holdings.

Shaik responded to Belo-Osagie on 10 May 2000. Again this letter was signed by Bianca Singh on behalf of Shaik¹²⁷¹. Mention was made of a person that Shaik had introduced to Belo-Osagie in Cape Town namely, one Tahir Salie. Shaik indicated that Tahir Salie had contacted Shaik in order to receive assistance in the sale of Crude Oil. Shaik was seeking advice from Belo Osagie in this regard.

The correspondence between the parties and others continued over time and resulted in the negotiation and settlement of agreements. This can be summarised as follows:

Date	Essence of correspondence and/or documentation
11 July 2000	Fax from Shaik, signed by Martyn Surman on his behalf, to United Bank for Africa PLC, confirming a visit of the NEPA delegation (National Electric Power Authority responsible for providing Nigeria with electricity and power requirements) and members of a team with Belo-Osagie ¹²⁷²
13 July 2000	Letter to United Bank for Africa PLC, <i>inter alia</i> , regarding a conference in Mauritius, the fact that the NEPA part of the delegation, had extended their visit to August ¹²⁷³

¹²⁷⁰ Refer to 19 0516 (80 10743 Box 133)

¹²⁷¹ Refer to 19 0517(80 10738 Box 133)

¹²⁷² Refer to 19 0518(80 10678 Box 133)

¹²⁷³ Refer to 19 0519(80 10676 Box 133)

Date	Essence of correspondence and/or documentation
14 July 2000	Letter from United Bank for Africa PLC to Eskom with proposed agenda item for the meeting between NEPA and Eskom ¹²⁷⁴
20 July to 23 July 2000	Program for the intended visit. On 20 July 2000 it was indicated that Belo-Osagie and Al-Mansour had tea with Shaik and “...the Deputy President” from 18:30 to 19:00 ¹²⁷⁵
24 July 2000	Letter from Shaik to Eskom Enterprises thanking them for the time spent with the Nigerian associates on 21 July 2000. Mention is made of an agreement that was in the process of being drafted ¹²⁷⁶
24 July 2000	Draft agreement between TES/Nkobi Holdings Limited (a company which was supposed to be organised and existing under the laws of Nigeria) and Eskom Enterprises Limited, on a whole host of commercial and social purposes ¹²⁷⁷
27 July 2000	Signed Co-operation Agreement between Kobilec (Pty) Limited and Cobbstone Nigeria Limited whereby it was recorded that Gables Mill Nigeria Limited was a company registered in Nigeria with shareholding by Cobbstone – 50.1%, and Kobilec – 49.9%. The agreement mentioned that Cobbstone Nigeria Limited would be utilised by the parties as a Special Purpose Vehicle to enter into a joint venture with Eskom ¹²⁷⁸
28 July 2000	Draft agreement between Gables Mill Nigeria Limited and Eskom Enterprises Limited. It appears that Gables Mill Nigeria Limited was identified as the company which was previously described as TES/Nkobi Holdings Limited ¹²⁷⁹

¹²⁷⁴ Refer to 19-0520-19 0521(80 10720 to 80 10721 Box 133)
¹²⁷⁵ Refer to 19 0522(80 10679 Box 133)
¹²⁷⁶ Refer to 19 0523(80 10723 Box 133)
¹²⁷⁷ Refer to 19 0524-19 0532(80 10711 to 80 10 719 Box 133)
¹²⁷⁸ Refer to 19 0533-19 0539(80 10691 to 80 10697 Box 133)
¹²⁷⁹ Refer to 19 0540-19 0548 (80 10701 to 80 10709 Box 133)

Date	Essence of correspondence and/or documentation
7 August 2000	Letter from Mosengo, Regional Executive Manager West Africa at Eskom Enterprises ¹²⁸⁰
17 August 2000	Letter from Shaik to Eskom Enterprises regarding the venture development with NEPA, Nigeria ¹²⁸¹
27 September 2000	Shaik faxed various articles to Belo-Osagie and highlighted an article on a contract in Nigeria that Vivian Reddy and New Zealand International and Royal Mail were involved in. He noted “ <i>Kindly inform your friends in this ministry (assumed to be the Nigerian Postal Services) to be aware of this person V.Reddy. I will speak to you on this subject.</i> ” ¹²⁸²

An entry in the diary of Shaik for 2000 on 12 September 2000 reflects that Shaik had dinner with Zuma at the Hilton in Durban that evening¹²⁸³.

In a letter from Shaik to Belo-Osagie, dated 18 September 2000¹²⁸⁴, Shaik requested an update from Belo-Osagie on the following: Cell C, LAFICO – Libya trip, Eskom, systems integration for navel (sic) Combat Suites – Nigeria and financial services. Shaik also mentioned, “*I have ascertained that our President Mr. Thabo Mbeki and not the Deputy President Mr JACOB Zuma will be travelling to Nigeria soon. Perhaps we should consider having a signing ceremony with both our company’s and NEPPA signing an Industrial Participation’s Agreement. Agreements should also be signed on other Industrial Project’s.*

What are your thoughts?”

In a letter from Shaik, dated 22 September and addressed to Belo-Osagie, various projects identified as areas of joint co-operation were noted. The projects were identified as having to be considered to be included at the signing ceremony during “*...Mbeki’s presidential visit to Nigeria.*”¹²⁸⁵ We could not establish whether the ceremony did indeed take place.

¹²⁸⁰ Refer to 19 0549-19 0550 (80 10724 and letter attached Box 133)

¹²⁸¹ Refer to 19 0551-190553(80 10729 to 80 10731 Box 133)

¹²⁸² Refer to 19 0554-19 0562 (80 10630 to 80 10638 Box 133)

¹²⁸³ Refer to 19 0563(80 03805 Box 97)

¹²⁸⁴ Refer to 19 0564(80 10644 Box 133)

¹²⁸⁵ Refer to 19 0565(80 10628 Box 133)

19.2.25 Ebrahim Dhai

The *Curriculum Vitae* of Ebrahim Yacub Dhai indicates that he had been employed at the AM Moolla Group for a period of 24 years¹²⁸⁶, whereafter he resigned as the financial director of the group to pursue his own business interests. Thereafter he purchased two petrol service stations and worked with Royal Dutch Shell International. Dhai attached a letter of commendation received from Shell South Africa (Pty) Limited to his *Curriculum Vitae*.

It appears that Shaik and Dhai pursued business interests together during 2000. One of the interests was the acquisition of a Nando's franchise, which was turned down by Nando's South Africa¹²⁸⁷. On 18 May 2000 Dhai sent various items to Shaik. Amongst the items were a shirt and cap "...for the Deputy State President..." He also requested in the accompanying note, under point 4, "...I would appreciate your assistance in facilitating a visit by the Deputy State President to the offices of the chairman and chief executive officer of Shell South Africa (Pty) Ltd. Would a luncheon be feasible..."

19.2.26 Dr Khalid Abdullah Tariq Al-Mansour

Reference is made to a person by the name of Khalid Abdullah Tariq Al-Mansour (referred to as Al-Mansour in this report) in the context of the part of the report dealing with the United Bank for Africa PLC¹²⁸⁸. He was also the person that allegedly accompanied a delegation lead by Belo-Osagie to South Africa in July 2000 and one of three persons that allegedly had tea with Zuma on 20 July 2000.

In a letter dated 10 July 2000 Al-Mansour made mention of an Aids cure that was developed by an American scientist¹²⁸⁹. He indicated that the scientist had performed tests on mice and monkeys and suggested that he might well have discovered the first breakthrough in this field. Al-Mansour indicated that he had requested the scientist to conduct human trials in South Africa. He also mentioned that Netcare had agreed to host the tests at several of its HIV clinics. Further details on the manner in which the tests would be conducted are provided. He suggested to Shaik, "*Based upon your recommendation I think at this point we should be prepared to brief Vice President Zuma on this noble effort while I am in South Africa this month. In that regard he should consider the following:*

1. *The project may be entitled: "WE CAN 2"*

¹²⁸⁶ Refer to 19 0566-19 0578(80 13661A to 80 13662 Box 138)

¹²⁸⁷ Refer to 19 0579-19 0580(80 13648 to 80 13649 Box 138)

¹²⁸⁸ Refer paragraph 19.2.4

¹²⁸⁹ Refer to 19 0581-19 0582 (80 10665 to 80 10666 Box 133)

2. ...”

and then *“Among other things I am anxious to receive your reaction. Based thereon, I would like for you to arrange the meeting with Vice President Zuma...”*

Shaik responded to the above-mentioned letter on 12 July 2000¹²⁹⁰. He noted, *“It appears that you have more than one “rabbit in your hat”, and I am sure all of them will be as fruitful as our expected intentions.*

I am most anxious, and indeed was pleasantly surprised, to learn of your involvement on the project “We can 2”. This indeed is a remarkable project and the timing cannot be better.”

Shaik provided some of his views on the approach that should be adopted particularly in the light of the then 13th National Aids Conference. He went on to state, *“I shall certainly brief the Deputy President on this development, and at the appropriate time, given its success, raise your audience with him. I note that you would want to meet with the Deputy President and this I would gladly arrange. I also note you require the nomination of several Muslim South African professionals – I have several exceptionally well-qualified persons in mind, most of them currently serving in one way or the other, on the Deputy President’s Aids Council.*

I have been exceptionally busy attending several sessions with the Deputy President at the 13th International Aids Conference.....”

Shaik continued to describe his involvement in the 13th National Aids Conference and proceeded to state *“Of special interest to my group, I will indeed welcome the opportunity to acquire the licence of the technology that will manufacture the necessary medicines/vaccines of the “We can 2/V-Tech”, and in this regard, would be prepared to consider providing the necessary infrastructure, which will include finance, government approvals, qualified human resources etc, etc. I would appreciate your views on this request.”*

Al-Mansour replied to Shaik’s letter on 12 July 2000 in a fax addressed to Shaik¹²⁹¹. In this letter it is stated that Shaik’s recommendations would be adopted as their *“functional blueprint”*. Al-Mansour went on to deal with opportunities that they could control and on the issue of the aids HIV project he noted *“...as well as the HIV/Aids/medicine and testing*

¹²⁹⁰ Refer to 19 0583-19 0585 (80 12909 to 80 12911 Box 137)

¹²⁹¹ Refer to 19 0586-19 0591(80 10651 to 80 10656 Box 133)

technologies, that we can control.” Al-Mansour also made reference to the planned meeting with the United Bank for Africa as well as another opportunity.

From the documents at our disposal we infer that Al-Mansour visited South Africa with Belo-Osagie during the period 20 to 23 July 2000¹²⁹². It is evident that Shaik suggested an afternoon tea with Zuma on 20 July 2000. The tea would have been attended by Shaik, Belo-Osagie and Al-Mansour. From the ensuing documentation and the subsequent correspondence between Shaik and Al-Mansour, it can be deduced that the event did not take place or, if it took place that no mention was made of that fact.

The letter of 12 July 2000 was followed by another letter from Al-Mansour dated 11 August 2000¹²⁹³. He mentioned that the highlight of his visit had been the dinner he had with Shaik and his wife. No mention is made of the fact that he met with Zuma. He deals with the various projects that were considered between the parties, including Belo-Osagie. Mention is made of the following:

Eskom Nigeria/TES;

Oil refinery in South Africa;

World United Bank of Africa;

Desert King (a person or entity that is not known to us and whose involvement with the parties.

It however appears from this letter that he is also involved in the oil industry);

Petronas and Engen;

Cell C;

Offshore Banking and Free Zone; and

HIV and aids.

Under the point HIV/Aids, he continued by indicating, *“The enclosed letter is self explanatory. The next step is to petition the ministry of health to fast track this effort. It might also be advisable to have the first lady’s empowerment group to become involved in this project.”* The enclosures part of the letter from Al-Mansour indicated that a letter from a certain Dr. Laub was enclosed. We assume that the person that Al-Mansour referred to as the developer of the “We Can 2” concept is Dr Laub. We searched the information at our disposal and could not identify

¹²⁹²

Refer paragraph 19.2.4

¹²⁹³

Refer to 19 0592-19 0595 (80 10647 to 80 10650 Box 133)

the mentioned letter or any further reference to this person and the project subsequent to this date.

19.2.27 Her Majesty's Consul

On 7 August 2000 Martyn Surman wrote to David Pearce, from Her Majesty's Consul¹²⁹⁴. It appears that Shaik was invited to a buffet supper on 4 August 2000 but had not attended. This letter was an apology on behalf of Shaik that read as follows: "*Mr Shaik, who I'm sure you are aware, is special advisor to the Deputy President, was called upon at very short notice to be with the Deputy President during Friday afternoon and early evening...*"

19.2.28 Russian potential business

On 1 May 2001, a certain Dr Elena Sadovnikova e-mailed Ron Coopersmith¹²⁹⁵ and mentioned certain possible areas of trade between South Africa and "*StP*" (assumed to be St Petersburg). The Russian possibilities are:

- Mining technologies;
- High technologies in energy;
- Mini power stations;
- Thermal power stations;
- Equipment for gas and oil industry, including sea platform; and
- Shipbuilding.

The areas of interest from a South African perspective are:

- Fruit imports;
- Vine imports;
- Concentrated juices; and
- All kinds of food processing technologies.

She made reference to a possible invitation to be sent to the "...*Governor from a high level?*"

A portion of this e-mail was forwarded to Gama at Nkobi by Ron Coopersmith on 23 May 2001¹²⁹⁶. He commenced by stating "...*Eric has been out of the country for a while and I hope*

¹²⁹⁴ Refer to 19 0596-19 0597(80 05550A to 80 05550B Box 106)

¹²⁹⁵ Refer to 19 0598 (80 12975 Box 137)

¹²⁹⁶ Refer to 19 0599-19 0600 (80 12973 Box 137)

to arrange a conference call with you next week to discuss the grey market...". He mentioned a letter received from the Governor of St Petersburg and mentioned that he, Ron Coopersmith worked closely with the Governor. Furthermore, that the Governor wanted to visit South Africa on a trade delegation and required an invitation from a "...high RSA gov official, not a major. Would Mr. Zuma extend such an invitation and meet with him?"

He furthermore indicated that the lady who sent the e-mail originally was instrumental in the establishment of diplomatic relations between South Africa and Russia. He closed by stating *"Please review this note and tell me if Nkobi has a personal interest in this and, if not, whether you think you might be helpful."*

The abovementioned e-mail was passed on to Shaik who noted on the e-mail *"C/o Gama"*.

19.2.29 Procon Fischer (Pty) Limited

Although this is an entity in which the Nkobi group has an interest, it is therefore not a third party, as is mainly the case with the balance of the entities dealt with in this part of the report. We deemed the manner in which an incident was dealt with by Shaik as relevant to this part of the report.

Procon Fischer is an entity in which Nkobi Investments held a 50% plus one share. An entity styled Fischer Consulting (Pty) Limited held the balance of the shares. Procon Fischer was involved, *inter alia*, in a tender to the Department: Transport Republic of South Africa as will be evident in the balance of this section.

On 28 May 2001 Shaik communicated with the Director General of the Department of Transport, Mr Siphso Msikinya by fax¹²⁹⁷. In the fax Shaik mentioned that he had several unsuccessful attempts to seek an appointment with him. He continued to note *"...I am aware of certain serious malpractices within your department regarding tender adjudications and in my view, requires your urgent attention."* The fax notes that it was also forwarded to Zuma and Dullah Omar, the then National Minister of Transport.

Minutes of a meeting that took place, ostensibly on 31 May 2001¹²⁹⁸, with the National Department of Transport reflect details of various areas that were discussed as well as the relationship that Procon Fischer had with the National Department of Transport. The areas noted were NaTIS and AARTO. It appears from the minutes that Procon Fischer was particularly

¹²⁹⁷ Refer to 19 0601(80 11949 Box 135)

¹²⁹⁸ Refer to 19 0602-19 0603(80 11958 to 80 11959 Box 135)

concerned about the aggression and hostility by certain individuals towards Procon Fischer. The minutes continued to note “*Clear possible misperceptions on Arms Deal, Trafman, LTPS, SUMS. There is (sic) possibly a lot of allegations (misinformation)...*”

On 31 May 2001 at 23h09 a fax was forwarded to Shaik from Sipho Msikinya¹²⁹⁹. He referred to Shaik’s letter on 28 May 2001 and noted that it had raised serious concerns. He noted that the statements were broad and required elaboration. Furthermore “...*You have made me aware of your commercial interests in one of our tenders (NaTIS) with the current contract holder (Fischer and Associates), and I feel that all communications must be above board, at this critical stage of the tender awarding process – tender evaluation. I assure you that your inputs will be kept confidential, and take this opportunity therefore, to reiterate that you respect my earlier request.*” The letter indicates that it was also forwarded to Zuma, the late Dullah Omar and Frank Chikane.

On 1 June 2001 Shaik faxed the late Dullah Omar¹³⁰⁰ and referred to a fax from Sipho Msikinya in response to a letter dated 28 May 2001 from Shaik. Shaik drew the attention of the late Dullah Omar to “*Please note his delayed action, this fax arrived at our offices today after our meeting with you and him yesterday.*”

On 4 June 2001¹³⁰¹ the late Dullah Omar replied by letter to Shaik and acknowledged receipt of the letter of 1 June 2001, as well as a meeting the previous evening. The late Dullah Omar confirmed that Shaik would provide him with a detailed memorandum for consideration.

We are in possession of a memorandum that appears to have been created by Gerrit Fischer of Procon Fischer. The memorandum is dated and marked “*Confidential, Minister of Transport, Mr Dullah Omar*”. Details of claims of alleged hostility by members of the National Department of Transport towards Procon Fischer are provided in the memorandum¹³⁰². The memorandum is dated 31 May 2001. The memorandum also provided a background sketching all of the projects in which the company was involved. The details of which are not relevant to this part of the report.

On 4 June 2001 Gerrit Fischer e-mailed Shaik and indicated that he had handed a sealed envelope “...*with these 2 documents and attachments referred to in the documents to the Minister’s secretary today. He immediately took the envelope to another office and, presumably*

¹²⁹⁹ Refer to 19 0604(80 11 947 Box 135)

¹³⁰⁰ Refer to 19 0605(80 11963 Box 135)

¹³⁰¹ Refer to 19 0606(80 11957 Box 135)

¹³⁰² Refer to 19 0607-19 0614(80 11971 to 80 11978 Box 135)

to get it in the overnight post bag to Cape Town.” The subject of the e-mail was “Submission to the Minister”¹³⁰³.

On 6 June 2001 Gerrit Fischer again e-mailed Shaik¹³⁰⁴. He had confirmed with a certain Sunita that she had received all the pages of the fax and noted *“What is disturbing is the fact that the integrity of the Minister’s support structures (procedures and people?) appears to be compromised and suspect.”* The e-mail again carried the subject *“Submission to the Minister”*

The submission to the late Dullah Omar was replied to on 7 June 2001 by Ntau Letebele, the Parliamentary Officer, in the Ministry: Transport, Republic of South Africa¹³⁰⁵. It is stated *“As indicated to you during your meeting with Minister Omar on Thursday, 31 May, he has never dealt personally with any procurement matters. These have been left entirely in the hands of the department, with the instruction that proper prescripts and fair procedures must be followed and that matters should be handled with the greatest integrity.*

Minister Omar does not wish to get personally involved in the matter raised by you. He is, however, very concerned about the allegation of improprieties and has therefore referred the document to the Director General, who has been asked to respond.

Minister Omar does not see his way clear to simply disqualify one of the tenderers or to exclude it. What needs to be assessed, is whether the procedures has been and remains fair.

It is suggested that the Director General’s response be awaited. On receipt thereof, the Minister will decide whether anything further should or should not be done.

Minister Omar appreciates your having brought the matter to his attention. Notwithstanding the contents of this letter, your company is of course free to take such other action which it considers appropriate.”

19.2.30 Professor Green Thompson

In a fax addressed to Professor Green Thompson from Shaik but not signed, dated 30 May 2001, Shaik made mention of a tender process that was compromised at the Albert Luthuli Hospital¹³⁰⁶.

¹³⁰³ Refer to 19 0615(80 11979 Box 135)

¹³⁰⁴ Refer to 19 0616(80 11956 Box 135)

¹³⁰⁵ Refer to 19 0617-19 0619(80 11951 to 80 1153 Box 135)

¹³⁰⁶ Refer to 19 0620(80 02304 Box 87)

Shaik indicated, *“Your response to my undertaking was that you would contact me in three weeks time with regards to this information. I would strongly urge you not to take this matter lightly as I am of the informed view that the material at hand is of a nature that warrants serious attention. The consequences of which if ignored are beyond my control.”*

It is indicated on the fax that the names of “*Minister of Health, Dr. Zweli Mkhize and Deputy President Jacob Zuma*” were being copied on the fax. It is not clear whether the fax was sent to the persons mentioned. The copy of the fax to hand appears to have had notes added on the style and formatting of the document. Secondly, as already indicated, the fax was not signed.

19.3 Dr ZL Mkhize

19.3.1 Background

Mkhize has been the KwaZulu-Natal Minister of Health since 1994. On 3 November 2004, Mkhize was appointed to the KwaZulu-Natal Ministry of Finance and Economic Development. Mkhize is also the Leader of the Provincial Government Business.

According to the minutes of the directors meeting of Kobilec held on 30 November 1998 Shaik resigned as a director of Kobilec after which Mkhize and Areff were appointed¹³⁰⁷. Mkhize and Areff have each owned 50% of the shares of Kobilec since 30 November 1998¹³⁰⁸.

We identified payments to or on behalf of Mkhize from Shaik and/or Nkobi group to the value of R159 022.41.¹³⁰⁹

We are aware of the fact that the relationship between Shaik and Mkhize stretches further than described in this report. The findings forming part of this section are based on information we were able to extract from the documents obtained during the search and seizure processes. Some of the instances identified may relate to party activities and “*sponsorships*” that Shaik and/or the Nkobi group provided to Mkhize, as it appears that there are instances where funds were specifically intended for purposes other than his personal benefit.

¹³⁰⁷ Refer to 19 0621-19 0625(87 0297 Box 356, 123 001239/43-5 Box Z278)

¹³⁰⁸ Refer to 19 0626(123 001240 Box Z278)

¹³⁰⁹ Refer to Annexure U

19.3.2 Shaik's relationship with Mkhize

Mkhize confirmed receiving a “notebook computer” from Nkobi Holdings on 29 August 1997¹³¹⁰. It was noted that the notebook would have been handed back to Shaik once “alternative arrangements” had been made. It is not clear whether the notebook was handed back.

On 2 June 1998, Mkhize wrote to Shaik requesting financial assistance towards the payment of a deposit for the accommodation of 50 delegates attending the “*Traditional Leaders Conference*”¹³¹¹. Shaik was requested to assist as agreed and he was informed that the costs of transportation and catering for the other 60 delegates would be forwarded to him once finalised. It appears that the letter was signed on behalf of Mkhize by “*Chief Mlaba*”. A quotation obtained from Karos Capital Towers Hotel for 50 delegates was forwarded to Shaik and the costs amounted to R21 600¹³¹².

A schedule of expenses incurred for the “*Contralesa*” conference reflects, *inter alia*, cheque numbers 43 to 49¹³¹³. These cheques numbers refer to cheques drawn on Floryn Investments’ bank account for payment of the expenses¹³¹⁴. It appears that cheque number 46 for R2 200 was returned by the bank¹³¹⁵. On 9 June 1998 Chief Mlaba thanked Shaik for contributing towards the Contralesa Conference and he also stated that the meeting had been a success¹³¹⁶.

On 28 July 1998 Mkhize, in his capacity as Deputy Provincial Chairperson of the ANC in KwaZulu-Natal, wrote to Shaik regarding problems the ANC in KwaZulu-Natal was experiencing due to cheques that had been issued to various creditors¹³¹⁷. It was stated in the letter that the cheques had been post dated for the period from May 1998 to October 1998 and that “*quite a few were referred to the drawer and some of the creditors have taken legal action*”.

Mkhize also mentioned to Shaik that at the end of July cheques to the value of R24 491.74 were supposed to clear the bank account of (presumably that of Floryn Investments) and concerned

¹³¹⁰ Refer to 19 0627(82040133 Box 168)

¹³¹¹ Refer to 19 0628(82 040126 Box 168)

¹³¹² Refer to 19 0629-190630(82 040127 and 82 040121 Box 168)

¹³¹³ Refer to 19 0631(82 040106 Box 168)

¹³¹⁴ Refer to 19 0632-19 0638(82 040109/111/112/115/120/128 Box 168, 017367 (File 128 p86))

¹³¹⁵ Refer to 19 0639(017369 File 128 p88)

¹³¹⁶ Refer to 19 0640(82 040116 Box 168)

¹³¹⁷ Refer to 19 0641-19 0642(82 040095/6 Box 168)

creditors had been promised that the discrepancies were being attended to. He also stated that if the problem was to be alleviated, Shaik would need to ensure that an amount of R50 000 was available by 31 July 1998. Mkhize also made an appeal to Shaik to ensure that the funds were transferred in time. Mkhize requested that bank reconciliation statements be forwarded to him for all the cheques so that the necessary apologies could be made to the creditors involved. The letter was signed on behalf of Mkhize by an official not known to us.

A letter to Shaik from Mkhize, dated 19 May 1999, confirms the contributions Shaik's group made to the "ANC KZN". The letter reflects the contributions as being "*actual disbursements*" amounting to R1 261 595.16 and a "*year end dividend*" amounting to R1 000 000¹³¹⁸.

Shaik and/or the Nkobi group funded the ANC on a number of occasions as noted above. However, the tone of the correspondence between Mkhize and Shaik with regards to the abovementioned indicates that in the instances noted, it was not due to an association with the ANC but rather that the ANC had an interest, in at least, Floryn Investments. The context of Floryn Investments is more fully dealt with elsewhere in this report¹³¹⁹.

19.3.3 Mkhize and business ventures of the Nkobi group

On 21 August 2001 Shaik wrote to Stofile requesting his intercession with Mkhize in persuading Mkhize to accompany Shaik and Goqwana, the Eastern Cape Minister of Health, to Malaysia for a meeting with Pharmaniaga Berhard, a health care company¹³²⁰. Shaik further stated that he was of the view that should Mkhize be unable to travel, they should proceed as scheduled with the Malaysians. Shaik informed Stofile that he had been contacted by the Malaysians regarding the postponement of the planned visit to a later date that was convenient for Mkhize.

Considering the letter that Stofile wrote to Shaik on 9 May 1995 the context of this request from Shaik is not understood.

Shaik stated that he would appreciate it if Stofile could arrange with Goqwana to adjust his diary accordingly so that he could confirm the arrangements. The letter was signed on behalf of Shaik. We are not in possession of the documentation supporting the costs for the visit and we are unable to ascertain who paid the travel expenses of the visit to Malaysia. However, we are in

¹³¹⁸ Refer to 19 0642 (CI4 File 302)

¹³¹⁹ Refer to paragraph 8.2

¹³²⁰ Refer to 19 0644(80 08322A Box 123)

possession of an e-mail dated 6 September 2001 reflecting the flight details for the trip to Malaysia, including that for Mkhize¹³²¹.

A company styled Pharmaniaga SA (Pty) Limited was registered on 16 July 2002 with Kobimed as the shareholder¹³²². The shareholders were later reflected as¹³²³:

- Pharmaniaga Berhard - 33.33%
- CorpAfrica - 33.33%
- Procon Fischer - 33.33%

Gama and Isaacs are reflected as the shareholders of CorpAfrica¹³²⁴. The financial review performed by us indicates that this entity remained dormant for the entire period of its existence.

19.3.4 Vehicle for Mkhize

Areff sent an internal memorandum to Shaik on 17 November 1998 regarding, “*Vehicle for Minister Z Mkhize*”¹³²⁵. He stated that the vehicle was parked in “...*our third floor parking bay, ready for pick-up by the minister*” and that all the requests regarding the registration, licensing, security, tinting of windows, gear lock and insurance had been attended to. It was mentioned that the vehicle was registered in the name of “*Mr M Mabuyakhulu*”. We understand that Mabuyakhulu was the Minister for Economic Development and Tourism of KwaZulu-Natal after Zuma. We could not establish which party or person paid for the vehicle.

19.3.5 Property of Mkhize in Port Shepstone and payments made

Isaacs wrote to O’Neil, on 19 August 1999, relating to the application for a bond on a property in Port Shepstone on behalf of Mkhize¹³²⁶. Isaacs indicated that the letter was written at Shaik’s request.

In the letter he stated that he had had corresponded on numerous occasions with Pat Johnson regarding the matter and also mentioned that in July 1999 she informed him telephonically that

¹³²¹ Refer to 19 0645 (80 06256 Box 112)

¹³²² Refer to 19 0646-19 0647 (100 001616 Box Z009), 123 016387 Box Z319)

¹³²³ Refer to 19 0648 (100 000902 Box Z005)

¹³²⁴ Refer to 19 0649 (123 017020 Box Z322)

¹³²⁵ Refer to 19 0650 (82 040018 Box 168)

¹³²⁶ Refer to 19 0651-19 0652(CI71 (Docketfile 302))

the “...credit department was unhappy about Dr Mkhize’s credit record and were balking at the granting of the bond”.

Isaacs indicated that he had told Pat Johnson that the reason for the negative credit record with FNB was due to the long delay in the processing of the loan by ABSA. He mentioned that he had asked her if the settling of Mkhize’s backlog at the time would have provided a remedy to the situation but she felt that it would not. Instead she mentioned that the bond would have been granted if Kobitech had been prepared to guarantee Kobilec’s bond repayment.

Isaacs mentioned that Johnson had called him during July 1999 to inform him that she had met with Mkhize and that Mkhize had explained to her satisfaction the reason for the backlog.

The credit department however, was still adamant that Kobitech should guarantee the repayments and asked her to prepare documents necessary for signature by Shaik on his return to South Africa at the end of July 1999. Isaacs stated that he did not have any further communication with Johnson on the matter and believed that she could have spoken to Shaik directly and hence Shaik’s request that Isaacs write the letter. It appears that a copy of the letter was forwarded to Shaik and Mkhize.

It appears that a bond was approved by FNB. We identified payments towards the bond totalling R122 328.13. These payments were made by Kobitech, Kobitech Transport Systems, Pro Con Africa and Shaik¹³²⁷.

We are in possession of a copy of the lease agreement between Mkhize and Dr Mashego (Lessor) and Kobus Keyter of the Kapenta Bay Hotel (lessee) for the lease of apartment 45, Auriga, Port Shepstone. Only Keyter and a witness signed the agreement on 21 March 2000¹³²⁸. The monthly rental was reflected as R1 300. It was indicated on the lease agreement that the premises would be occupied by “*staff members only*” and not more than “*two*” other persons.

A fax from Mkhize’s office to Isaacs on 19 July 2000 included a statement of the body corporate of Auriga¹³²⁹. The statement indicates that no payments were received during June 2000 and that interest and penalties had been charged on the outstanding balance. The total amount due was R6 420.41. An “*accounts ledger report*” of the body corporate of Auriga

¹³²⁷ Refer to Annexure U

¹³²⁸ Refer to 19 0653-19 0658(80 02271/2//3/4, 80 02281 Box 87)

¹³²⁹ Refer to 19 0659-19 0660(80 02263-4 Box 87)

indicated that Mkhize was liable for the levy and water charge of unit 45 even before July 1999¹³³⁰. We identified payments to the body corporate totalling R26 205.78. These payments were made by Kobitech, Kobitech Transports Systems and Pro Con Africa¹³³¹.

An invoice from Kapenta Bay Hotel to Nkobi Holdings, dated 10 August 2000, indicated that “...repairs to flat No.45 Auriga, Port Shepstone” were performed¹³³². This was accompanied by a letter addressed to Surman and Isaacs in which Keyter confirmed that he had paid the body corporate of Auriga R3 900 for the rentals of May to July 2000. Keyter also indicated that the rental for August 2000 was held back in *lieu* of the repairs that were performed.

FNB informed J Leslie Smith & Company attorneys that Mkhize’s monthly instalment was R1 897.84 and that the arrears of R42 936.82 on 25 August 2000 were reduced by a payment of R41 038.98. This amount was paid by Kobitech to Ditz on 24 August 2000¹³³³.

On 24 October 2000 Surman wrote to Anne Green of Homenet to remind her that, as agreed on 21 July 2000, Nkobi Holdings, as agents for Mkhize, would be taking over the management of flat 45, Auriga, Port Shepstone¹³³⁴. Surman indicated that since 21 July 2000, all the rental monies had been paid to them.

On 2 November 2000 Ditz informed Nkobi Holdings of a letter Ditz had have received from J Leslie Smith & Company attorneys regarding Mkhize’s indebtedness of R7 591.68 in respect of the bond¹³³⁵. Nkobi Holdings were urged to make the payment immediately, failing which the bank’s attorneys would have to proceed with the foreclosure. Kobitech’s bank account reflects a transfer of R7 591.68 on 2 November 2000 with the reference “ZL and MM Mkhize”¹³³⁶.

Lechman requested Ditz, on 28 November 2000, to indicate the amount that had to be transferred into their trust account each month to facilitate payments into Mkhize’s bond account at FNB¹³³⁷. On the same date Ditz informed Nkobi Holdings that Ditz had disbursed on Nkobi’s behalf an amount of R129.47 to meet the shortfall in the amount due by Mkhize to

¹³³⁰ Refer to 19 0661-19 0662 (80 002268/67 Box 87)

¹³³¹ Refer to Annexure U

¹³³² Refer to 19 0663-19 0664(80 02224/5 Box 87)

¹³³³ Refer to 19 0665(006672 (File 15 p243))

¹³³⁴ Refer to 19 0666 (80 02212 Box 87)

¹³³⁵ Refer to 19 0667(80 13964 Box 140)

¹³³⁶ Refer to 19 0668(006683 File 15)

¹³³⁷ Refer to 19 0669 (80 13962 Box 140)

FNB¹³³⁸. Transfers of R29 640 and R129.47 were made from Kobitech's bank account to Ditz on 29 November 2000¹³³⁹.

Cheque 1190 for R1 898, drawn on the account of Kobitech, was deposited into the account of Ditz on 4 January 2001¹³⁴⁰. This payment was made to Ditz with regards to Mkhize's bond¹³⁴¹. On 10 January 2001 Lechman forwarded Ditz a proof of transfer for an amount of R1 898 into the Ditz Trust account relating to a payment for Mkhize¹³⁴².

On 21 February 2001 cheque 1327 for R1 898, drawn on the account of Kobitech, was deposited¹³⁴³. The reference in Kobifin's cashbook is "*Port Shepstone ZL & MM Mkhize*".

Keyter was informed by Surman on 31 May 2001 to deposit all rental monies into the FNB bond account of Mkhize¹³⁴⁴.

On 2 February 2000 an amount of R5 000 was transferred *via* the cash focus system from Kobitech to Mkhize's bank account¹³⁴⁵. The transaction was accounted for as "*Loan other*" in the accounting records of Kobitech.

19.3.6 Loan account of Mkhize in the records of the Nkobi group

According to Kobifin's trial balance for the year ended 28 February 2001, Mkhize was reflected as a debtor for an amount of R54 454.13¹³⁴⁶.

On 11 December 2001 Moodie requested Shaik to confirm the transactions that had been transferred and debited to his personal loan account, which resulted in Shaik owing Kobifin an amount of R1 375 239.62. The breakdown of Shaik's loan account included payments made by Kobifin on behalf of Mkhize amounting to R54 454.13¹³⁴⁷. The general ledger account in the records of Kobifin styled "*ZL and MM Mkhize*" reflected the following amounts:

Date	Description	Amount R
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-
- ¹³³⁸ Refer to 19 0670(80 13961 Box 140)
¹³³⁹ Refer to 19 0671(80 13960 Box 140)
¹³⁴⁰ Refer to 19 0672(006689 File 15)
¹³⁴¹ Refer to 19 0673-19 0674 (80 13948 Box 140, 80 04570 Box 100)
¹³⁴² Refer to 19 0675-190677(80 13935/6 Box 140, 006689 (File 15)
¹³⁴³ Refer to 19 0678(006699 File 15)
¹³⁴⁴ Refer to 19 0679(80 02206 Box 87)
¹³⁴⁵ Refer to 19 0680(006625 File 15)
¹³⁴⁶ Refer to 19 0682(80 04622 Box 100)
¹³⁴⁷ Refer to 19 0685 (86 1734 Box 77)

11 January 2000	Payment FNB	7 591.68
8 February 2000	Payment	41 038.98
30 November 2000	Ditz	129.47
15 December 2000	Ditz	1 898.00
20 February 2001	Ditz	1 898.00
1 October 2001	Ditz	1 898.00
Total		R54 454.13

19.4 Mac Maharaj

Apart from the instances already noted¹³⁴⁸, we identified that Maharaj and Shaik had a relationship that stretched beyond the instances where Maharaj was mentioned in business and potential business of the Nkobi group. The section that follows, deal with instances where Maharaj benefited and/or potentially benefited from Shaik and or the Nkobi group.

Maharaj was appointed the Minister of Transport on 11 May 1994 and retired from politics in June 1999, when he joined the board of First Rand Bank. He resigned from First Rand Bank on 31 August 2003.

19.4.1 Visit to Orlando USA

On 2 July 1996 Shaik wrote to Mike Elsip, of Brown & Root, to confirm that Maharaj and his family (wife and two children) would arrive in Orlando on 13 July 1996 and were planning to stay there until 17 July 1996 after which they would be departing to Atlanta¹³⁴⁹. He provided Elsip with the flight details and also asked Elsip to assist him in arranging hotel accommodation and transport with a driver for the Maharaj family during their stay in Orlando. The letter was signed on behalf of Shaik by an official unknown to us.

In an undated letter from Shaik to Maharaj, Shaik confirmed the arrangements for Maharaj's departure to the USA including the accommodation confirmation number¹³⁵⁰. It appears that the letter was faxed to the "*Dorchester Hotel*" in London. Shaik also mentioned that "...all

¹³⁴⁸

Refer to paragraphs 19.2.6

¹³⁴⁹

Refer to 19 0686(80 07683 Box 118)

¹³⁵⁰

Refer to 19 0687(80 07904 Box 119)

arrangements have to be prepaid for and a car (Lincoln) and a driver has been arranged and paid for in advance". Shaik stated that *"Brown and Root people, my partner and colleges in South Africa where (sic) expecting you to call them. Kindly advise Dr Anwar Wissa when that would be possible given your more relaxed schedule in the States"*. Shaik ended the letter with *"Special message, I understand that from my warehouse that the expected documents had reached your desk in the UK. Kindly confirm at your soonest. Wish you a happy holiday with your family"*. It is not clear what documents Shaik referred to.

Shaik informed Maharaj that the venue for the meeting over lunch with Brown & Root on 12 September 1996 had changed and that Triegaardt would be accompanying Mr Walt Jackson, the CEO of Brown & Root to Europe and the USA¹³⁵¹.

A fax from Brown & Root to Nkobi Holdings dated 19 September 1996 indicates that an invoice, in the name of Nkobi Holdings, for R15 134.18 relating to *"services provided for Mr M Maharaj"* was attached¹³⁵². The attached invoice indicates that services to the value of \$2 886 were provided. The exchange rate was indicated as R4.60. A printout of the accommodation costs in Orlando, attached to the abovementioned invoice, reflects the payment of the \$2 886 by credit card.

Another fax from Brown & Root, dated 3 October 1996, included an invoice, in the name of Nkobi Holdings, for *"services provided for Mr M Maharaj"* in the amount of R508.67¹³⁵³. The invoice reflects that the amount, \$97, related to the transportation costs of Maharaj during his trip to the USA¹³⁵⁴. The total cost for Maharaj's accommodation and transportation cost were therefore R15 642.85.

The drivers licence tender was awarded to Prodiba on 4 October 1996¹³⁵⁵ and the agreement with the Department of Transport was signed on 28 February 1997¹³⁵⁶.

On 3 March 1997, approximately eight months after the trip to the USA, Maharaj wrote to Shaik to thank him for *"facilitating"* the trip to the USA and also apologised for not communicating with him earlier due to his hectic schedule in Government¹³⁵⁷. Maharaj ostensibly enclosed a

¹³⁵¹ Refer to 19 0688(80 07903 Box 119)

¹³⁵² Refer to 19 0689-19 0693(80 07680A-E Box 118)

¹³⁵³ Refer to 19 0694-19 0695(80 07681-2 Box 118)

¹³⁵⁴ Refer to 19 0696-19 0700(80 07686E-H Box 118)

¹³⁵⁵ Refer to 19 0701-19 0702(7806982 Box 231)

¹³⁵⁶ Refer to 19 0703-19 0705 (7802150 to 7802152)

¹³⁵⁷ Refer to 19 0706 (80 07686A Box 18)

cheque for R15 642.85 being payment for the “*hotel and transportarrangements*” during his USA trip. The letter was not signed by Maharaj. We could not identify a deposit of such funds (or the physical cheque) into the accounts of Shaik or the Nkobi companies at our disposal.

Handwritten notes on the fax of 19 September 1996, indicated that R4 000 was paid on 15 March 1997 and R4 142.25 was paid on 30 March 1997 from Shaik’s Standard Bank account as “*full and final*” payment. It therefore appears that Shaik only paid R8 142.25 of the R15 640.85. Again, we could not identify the trail of physical cashflow.

Shaik’s Standard Bank cheque account statement reflects that cheque numbers 5 and 6 were presented to the bank on 13 March 1997¹³⁵⁸. Cheque number 5 was returned by the bank for being post dated. Cheque number 5 was dated 15 March 1997 and was made out to Mike Elsip¹³⁵⁹. Cheque number 6 was also made out to Mike Elsip and was dated 30 March 1997¹³⁶⁰. Although the cheque was dated 30 March 1997, the bank processed the cheque on 13 March 1997. A note on the back of the cheque reads “*Debit: Proconsult*”.

A review of Shaik’s Standard Bank cheque account indicated that the account was opened with a cheque deposit of R150 000 from “*Kingsgate Clothing*” on 28 February 1997¹³⁶¹. Kingsgate Clothing is part of the AM Moolla Group of which Shaik’s father in law is the Chairman. The cheque from Kingsgate Clothing was returned by the bank as unpaid, but was again deposited on 3 March 1997. Therefore, the payments to Mike Elsip for Maharaj’s accommodation and transportation costs in Orlando were funded by the R150 000 deposit.

19.4.2 Thomson donation to the Mukondeni Community

A letter from, *inter alia*, ST Musia, the Chairman of the Village Council of Mukondeni, on 23 August 1996 to Mandela, requested a donation towards the building of a library and a laboratory at the Mukondeni Village in Limpopo¹³⁶². The administrative secretary of Mandela informed the administrative secretary of Mbeki, on 20 September 1996, that Mandela had directed that the Mukondeni Village’s request be forwarded to them for further attention and finalisation¹³⁶³.

¹³⁵⁸ Refer to 19 070 (80 04248 Box 98)

¹³⁵⁹ Refer to 19 0708-19 0709 (80 11418 Box 98)

¹³⁶⁰ Refer to 19 0710-19 0711 (80 11432 Box 98)

¹³⁶¹ Refer to 19 0712-19 0414 (80 04216, 80 04230, 80 04248 Box 98)

¹³⁶² Refer to 19 0715-19 0718(78 07729- 7732 Box 284)

¹³⁶³ Refer to 19 0719(78 07728 Box 284)

On 31 October 1996 the assistant private secretary in the office of Mbeki issued a memorandum to the private secretaries of all ministers to bring the Mukondeni request to the attention of their ministers¹³⁶⁴. It appears that the Mukondeni Village request was faxed to Thomson-CSF on 11 November 1996. On 12 November 1996 Maharaj made two handwritten notes in the memorandum which read as follows¹³⁶⁵: “*Phoned E Pahad. I take responsibility to get private sector to attend to the library and lab, can he ensure that this project is not overstepping! ie this office to contract....or remove them from his agenda!* ”, and “*Phoned ST Musia and informed him that I will get a private sector company to donate library and lab*”. According to an undated and unsigned letter, Maharaj wrote to Moynot following up on the discussion they had had over the telephone and forwarded to Moynot the request from Musia. Maharaj indicated that he had estimated that the cost of the request could amount to R200 000 and had hoped that Moynot would discuss this with his partner Thomson-CSF Holding (SA) to find an adequate solution¹³⁶⁶.

According to a fax dated 14 November 1996¹³⁶⁷, Moynot forwarded the Mukondeni Village request to Picard and Pujol, and stated that it had been forwarded to him “...*via the President’s and Vice-President’s offices...by the Minister of Transport, Mac Maharaj - who should soon succeed Joe Modise as Minister of Defence*”. Moynot stated that “*I think that that request – a bit of a “forced card”- deserves however our attention and we should see what we can do. The political impact for us as for Minister Mac Maharaj can only be in our favour in the future*”. A handwritten note on the fax reads “*It seems that only the companies that are about to get a contract can be called upon*”. The Drivers Licence contract was awarded on 4 October 1996¹³⁶⁸ and Thomson-CSF was in the process to tender for the Corvette programme of the Government’s arms procurement process¹³⁶⁹.

Moynot also faxed the Mukondeni Village request to Shaik and indicated that “*I have sent one to Paris asking for money*”¹³⁷⁰.

Another copy of the Mukondeni Village request was sent by Moynot to Shaik on 2 September 1997¹³⁷¹. Shaik forwarded this to Maharaj on 4 September 1997 and stated on the fax that “*I await your next response as per discussions hereof*”¹³⁷².

¹³⁶⁴ Refer to 19 0720 (78 07727 Box 284)

¹³⁶⁵ Refer to 19 0720(78 07727 Box 284)

¹³⁶⁶ Refer to 19 0721(78 07726 Box 284)

¹³⁶⁷ Refer to 19 0722-19 0723(78 11892 Box 264, T002 p274)

¹³⁶⁸ Refer to paragraph 20.4

¹³⁶⁹ Refer to paragraph 18

¹³⁷⁰ Refer to 19 0724-19 0731 (7811894-901 Box 264)

¹³⁷¹ Refer to 19 6732-19 0739 (80 02858-65 Box 88)

¹³⁷² Refer to 19 0440-19 0748 (80 07949(b) -957 Box 119)

On 11 September 1997 Moynot informed Maharaj that he was delighted to donate an amount of R230 000 on behalf Thomson/Airsys towards helping a school in the Northern Province¹³⁷³. He further stated that he would appreciate to be part of the committee which would follow up the actual spending of the money donated and would appreciate it if a plaque could be affixed on the spot. The attached cheque for R230 000 was made out in the name of “*M Maharaj*” and was signed by Moynot and Shaik¹³⁷⁴. The cheque was deposited on 12 September 1997¹³⁷⁵.

On 1 February 1998 Musia wrote to Maharaj on behalf of the Mukondeni Village thanking him for the donation Maharaj had organised from Thomson-CSF for an amount of R230 000¹³⁷⁶. He also promised that the donated money would be utilised accordingly and would be fully accounted for. The letter was not signed.

According to a letter on a Ministry of Transport letterhead, Maharaj wrote to Moynot to apologise for the delay in conveying his formal acknowledgement and thanking him for a donation of an amount of R230 000 made by Thompson-CSF Holding (SA) towards the Tshikhuthula School and the Mukondeni Community¹³⁷⁷. It appears that the letter was dated 13 February 1998 and received on 17 February 1998.

19.4.3 Installation of computers at Maharaj residence

We are in possession of an invoice, dated 3 September 1997, from Computers ETC addressed to Shaik for an amount of R39 729¹³⁷⁸, relating to the computer systems that were delivered and installed in Maharaj’s residence.

On 26 November 1997 Computers ETC sent a statement to Shaik summarising outstanding invoices relating to Nkobi Holdings for the period 30 June 1997 to 4 November 1997, for an accumulated amount of R54 104.40 and invoices relating to Proconsult’s outstanding invoices for the period 3 September 1997 to 5 September 1997 for an accumulated amount of R6 743.10¹³⁷⁹.

According to the statement, the expenses incurred on behalf Maharaj amounted to R39 857.90.

The payments to Computer ETC were as follows:

Payment date	Amount
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¹³⁷³ Refer to 19 0749(78 06086 Box 233)
¹³⁷⁴ Refer to 19 0750(109 021243 Box Z224)
¹³⁷⁵ Refer to 19 0751(109 021250 Box Z224)
¹³⁷⁶ Refer to 19 0752(78 06051 Box 233)
¹³⁷⁷ Refer to 19 0753(78 06050 Box 233)
¹³⁷⁸ Refer to 19 0754-19 0755(80 13375-6 Box 138)
¹³⁷⁹ Refer to 19 0756 (80 13337 Box 138)

	R
8 December 1997 ¹³⁸⁰	15 000.00
23 December 1997 ¹³⁸¹	15 000.00
7 January 1998 ¹³⁸²	10 000.00
9 January 1998 ¹³⁸³	20 000.00
14 April 1998 ¹³⁸⁴	957.60
Total	R60 957.60

We noted that the payments on 8 December and 14 April 1998 were made from Pro Con Africa's bank account, and the other payments were made from Proconsult's bank account.

A fax from Computers ETC to Shaik dated 18 May 1998 indicated that an "*Existing setup*" and a "*Proposed setup*" at Maharaj's house were given to Shaik¹³⁸⁵.

On 8 June 1998 Shaik wrote to Rohit regarding the installation at Maharaj's residence. He also forwarded to Rohit the house layout initialled by Maharaj, which reflects the area where the printer had to be installed¹³⁸⁶. It is unclear what the cost of this further installation were and whether Shaik or the Nkobi companies paid for it.

19.4.4 Identity card transaction

We are in possession of the report on the proceedings of the joint general meeting of the directors and shareholders of the Thomson-CSF Holding (SA) and Thomson-CSF, held on 9 June 1998¹³⁸⁷. Under the heading business projects and strategies, Thetard requested Shaik, as a shareholder of Thomson-CSF Holding (SA) to do his best he could to resolve the identity card problem.

The matter was discussed and a suggestion was made that one solution would be to re-approach the tender board so that the Thomson-Denel consortium could be reinstated on the short list of tenders under consideration. It was further suggested that perhaps the modification of the

1380 Refer to 19 0757(BS1 007740 File 54)
1381 Refer to 19 0758 (BS1 007816 File 54)
1382 Refer to 19 0759(BS1 007833 File 54)
1383 Refer to 19 0759(BS1 007833 File 54)
1384 Refer to 19 0760(BS1 007791 File 54)
1385 Refer to 19 0761 (80 07947B Box 119)
1386 Refer to 19 0762 (80 13361 Box 138)
1387 Refer to 19 0763-19 769(78 01319-25 Box 249)

consortium might satisfy the tender board requirements. Shaik undertook to do that and ascertain the tender board requirements.

19.4.5 Payment for import of furniture

An invoice from M&F Shipping (Pty) Limited dated 10 February 1999, and addressed to Flisane Investments a company of which Maharaj's wife is the sole director, indicated that furniture had been imported at a cost of R18 338.09¹³⁸⁸. A note at the top of the invoice indicated that a cheque had been sent on 19 May 1999. Cheque number 62, for R18 338.09, was drawn on Shaik's ABSA cheque account on 31 May 1999¹³⁸⁹. Shaik paid for the import costs of the furniture for Flisane Investments¹³⁹⁰. The bill of entry reflected "*Mac Maharaj C/O Minister of Transport*" as the importer and "*UP Craft Palace, New Delhi, India*" as the supplier¹³⁹¹.

The customs value was indicated as R39 289 and the expected date of arrival was 24 December 1998. It was also indicated that the import permit was "*FREE*".

On 12 January 1999 Maharaj faxed the import documents to M&F Shipping on a Minister of Transport letter and indicated that the furniture had to be cleared and delivered in the name of Flisane Investments¹³⁹².

A letter from ABSA International Business Centre addressed to Maharaj and dated 29 January 1999 indicated that the foreign amount for the import was US\$5 000 with a Rand equivalent of R29 215.85¹³⁹³.

The invoice from UP Crafts Palace in India indicates that "*One White marble top, inlaid with semi precious stones with marble stand*". The total cost was indicated as US\$7 000 with US\$2 000 paid in advance¹³⁹⁴. Maharaj's bank account details are reflected on the invoice. It therefore appears that Maharaj paid for the furniture while Shaik paid for the import costs.

19.4.6 Visit to London with Shaik

On 25 October 1999 Scriven wrote to Shaik setting up the programme for the proposed visit to London by Shaik and Maharaj¹³⁹⁵. He suggested that they would meet on 1 November 1999 at Venson House where he would introduce his senior colleagues to Maharaj and have further

¹³⁸⁸ Refer to 19 0770 (80 07907A Box 119)

¹³⁸⁹ Refer to 19 0771(012802 (File 35)

¹³⁹⁰ Refer to 19 0772 (010348/9 (File 28)

¹³⁹¹ Refer to 19 0774 (80 07907C Box 119)

¹³⁹² Refer to 19 0775 (80 07923 Box 119)

¹³⁹³ Refer to 19 0776 (80 07912 Box 119)

¹³⁹⁴ Refer to 19 0777 (80 07920 Box 119)

¹³⁹⁵ Refer to 19 0778-190780 (80 10967-9 Box 133)

discussions and presentations. Scriven also stated that they could go on a tour of the Metropolitan Police Control facilities where Maharaj could experience first hand Venson at work in the most complex and demanding fleet environment in the world. The letter was concluded with “... and hope that this can be a turning point in our development plans for KobiVenson”.

We are in possession of a document confirming Maharaj’s travel arrangements and it was indicated that Maharaj should collect his ticket from the passenger services at Johannesburg International Airport¹³⁹⁶. A fax to Maharaj dated 26 October 1999, also confirmed his flight details for the visit to London¹³⁹⁷.

Surman sent a memo to Shaik, Gama and Isaacs on 26 October 1999, which reflected the flight details and cost of each person travelling¹³⁹⁸. The flight costs in respect of Maharaj amounted to R20 380. An invoice from Travel & Tour World to Nkobi Holdings dated 28 October 1999 reflects the cost of Maharaj’s airfare as R24 192¹³⁹⁹. The total amount for the airfare amounted to R142 046 and was accounted for in the books of Kobifin as travel and accommodation expenses¹⁴⁰⁰.

On 2 November 1999 Shaik paid the Athenaeum Hotel in London an amount of R9 531.96 with the Nkobi Holdings credit card¹⁴⁰¹. It appears that this was the accommodation cost for Maharaj. Maharaj stayed at the hotel for 3 nights from 30 October 1999 until 1 November 1999 at £240 per night¹⁴⁰².

A schedule reflecting KobiVenson’s costs for the period from May 1998 to October 1998, reflects travelling costs relating to “*Minister Maharaj – Oct 1999*” in the amount of R30 000¹⁴⁰³. According to the schedule, KobiVenson’s expenses were borne equally by Nkobi and Venson, except for Maharaj’s travel expenses which appear to have been borne by Nkobi Holdings only.

19.4.7 Mrs Zarina Maharaj

Zarina Maharaj is the wife of Maharaj. We are in possession of general ledger printouts reflecting the payment of fees to an entity called “*Flisane Investments*” and the description of

¹³⁹⁶ Refer to 19 0781 (80 10907 Box 133)

¹³⁹⁷ Refer to 19 0782(80 06431 Box 113)

¹³⁹⁸ Refer to 19 0783(80 08660A Box 107)

¹³⁹⁹ Refer to 19 0784(80 17014 Box 150)

¹⁴⁰⁰ Refer to 19 0785-19 0786(80 07530R Box 117, 80 17018 Box 150)

¹⁴⁰¹ Refer to 19 0787(005819 File 11)

¹⁴⁰² Refer to 19 0788 (80 05627 Box 107)

¹⁴⁰³ Refer to 19 0789(0000071826 Box 63)

the expense is “*consulting fees*”. Mrs Maharaj is the sole director of Flisane Investments¹⁴⁰⁴. We are not in possession of the invoices from Flisane Investments made out to Nkobi Holdings or any correspondence between Flisane Investments and Nkobi Holdings regarding the alleged consulting work performed.

The payments identified are summarised below:

Date	Payment made by	Amount R
15 December 1997	Kobifin	50 000.00
11 May 1998	Shaik	25 000.00
4 September 1998	Procon Africa	75 000.00
20 November 1998	Procon Africa	25 000.00
13 January 1999	Kobifin	15 000.00
14 October 1999	Kobifin	15 000.00
Total		R205 000.00

On 15 December 1997 cheque number 141 for R50 000 was deposited, but was returned by the bank as unpaid¹⁴⁰⁵. According to the accounting records of Procon Africa for the year ended 28 February 1998, the payment was accounted for against a creditor styled “*Development Engineering Consultants*”¹⁴⁰⁶ and against Shaik’s loan account in the records of Kobifin. The reference is “*Payment SR Maharaj*”, which are the initials of Maharaj.

Cheque number 35 for R25 000, issued from Shaik’s Nedbank cheque account, was deposited on 11 May 1998. A schedule styled “*S Shaik Nedbank cheques*” reflects that cheque number 35 was made out to “*Z Maharaj*” (assumed to be Mrs Maharaj)¹⁴⁰⁷.

The creditors ledger of Procon Africa indicated that on 31 July 1998 the company owed Flisane Investments R100 000. A schedule styled “*Prepaid expenses Jan 99 N3 Pre-tender costs*”

¹⁴⁰⁴ Refer to 19 0790-19 0791(01 0348/9 File 028)

¹⁴⁰⁵ Refer to 19 0792(BS1 007833 File 54)

¹⁴⁰⁶ Refer to 19 0793 (DJ 00 1103 Box 43)

¹⁴⁰⁷ Refer to 19 0794(01 2302 KPMG File 35)

indicates that R100 000 was paid to “*Flisane Investments*” as “*Social facilitation costs*”¹⁴⁰⁸. Another document styled “Proconsult (Pty) Limited Feb-99” reflects the R100 000 as consulting fees paid to Flisane Investments for “*services on social facilitation*”¹⁴⁰⁹.

An entry in the “*Flisane Investments*” creditors ledger account on 4 September 1998 indicates that R75 000 was paid to Flisane Investments¹⁴¹⁰. This payment could not be identified in the bank accounts of the Nkobi group.

On 20 November 1998 an electronic transfer of R25 000 was made from Kobitech’s bank account with the reference “*Transfer to Flisane Investment*”¹⁴¹¹ and allocated to the Flisane Investments account in the creditors ledger of Procon Africa¹⁴¹².

Cheque 610 for R15 000 was drawn on the account of Kobitech on 15 October 1999¹⁴¹³. A schedule of daily cash flows indicates that the cheque was issued to Flisane Investments. The payment was allocated to the Floryn Investments loan account in the records of Kobifin¹⁴¹⁴.

R15 000 was transferred from Kobitech’s account to Shaik’s account on 10 February 2000. The reference on the bank statement is “*Credit Transfer Flisane INV-Nkobi*”¹⁴¹⁵.

On 31 August 2000 Isaacs wrote to Mrs Maharaj confirming the discussion they had regarding a possible acquisition of equity by Nkobi Holdings in her company¹⁴¹⁶. He stated that he was writing on behalf of Shaik and, in order to perform a due diligence, they required the financial statements of her company and the business plan reflecting the forecast for the next three years. Isaacs mentioned that Mrs Maharaj had indicated that the company had only been trading for two months. We identified several payments from Nkobi companies to Flisane Investments in 1998 and 1999, which indicate that it could have been trading at that stage. It is not clear whether Isaacs referred to Flisane Investments as Mrs Maharaj’s company.

19.5 Obed Mlaba

Mlaba was elected Metropolitan Mayor of Durban in July 1996.

¹⁴⁰⁸ Refer to 19 0795(80 06470C (Box 113)

¹⁴⁰⁹ Refer to 19 0796(86 0849 Box 71)

¹⁴¹⁰ Refer to 19 0797(80 01662 Box 85)

¹⁴¹¹ Refer to 19 0798(006531 File 15)

¹⁴¹² Refer to 19 0799(80 01662 Box 85)

¹⁴¹³ Refer to 19 0800(006598 File 15)

¹⁴¹⁴ Refer to (080469 (M11 3482)

¹⁴¹⁵ Refer to 19 0801-19 0802 (006626 File 15, 012098 File 35)

¹⁴¹⁶ Refer to 19 0803 (80 07905 Box 119)

On 24 November 1998 an amount of R30 000 was transferred from Kobitech's bank account¹⁴¹⁷. The reference on the bank statement is "*TRF to TO Mlaba*". The transaction was recorded in the books of Kobifin against the loan account of Floryn Investments.

According to the Kobifin general ledger for the year ended 28 February 1999, the Floryn Investments' loan account in the records of Kobifin amounted to R347 159.50 and was written off to development costs for Prodiba¹⁴¹⁸. The amount written off included the R30 000 that was ostensibly paid to Mlaba.

It is unclear whether this amount was paid to Mlaba as a loan or a donation.

19.6 Joel Sibusiso ("S'bu") Ndebele

Ndebele was appointed as the MEC for Transport in KwaZulu-Natal in 1994, acted as the Deputy Chairperson of the ANC KwaZulu-Natal in 1996, and has been the Chairperson of the ANC in KwaZulu-Natal since 2002. He was then appointed as the Premier of KwaZulu-Natal on 22 April 2004.

On 3 January 1997 cheque number 94 for R12 500 drawn on the account of Nkobi Holdings was paid¹⁴¹⁹. The description on the bank statement reads "*Ndebele JS*" which we understand are the initials and surname of Ndebele¹⁴²⁰. This cheque was first presented to the bank on 7 and 17 December 1996, but was returned by the bank on both occasions¹⁴²¹. The general ledger of Nkobi Holdings reflects that this transaction was first recorded as "*Salaries & Wages*" and then transferred to Clegton Investments' loan account¹⁴²². Ndebele was the Minister of Transport in KwaZulu-Natal at the time when he received the payment from Nkobi Holdings.

In an undated document regarding the activities of the Nkobi group, it was mentioned that "*through an initiative organised and facilitated*" by Ndebele, proposals were well advanced to regularise the taxi industry in KwaZulu-Natal¹⁴²³. KobiVenson was apparently in an advanced stage of discussions with the taxi industry to provide fleet management services.

¹⁴¹⁷ Refer to 19 0804 (80 02476 Box 89)

¹⁴¹⁸ Refer to paragraph 21.4

¹⁴¹⁹ Refer to 19 0806-19 0808 (80 04646H/I Box 101)

¹⁴²⁰ Refer to 19 0809 (80 11440 Box 134)

¹⁴²¹ Refer to 19 0810 (80 04646O Box 101)

¹⁴²² Refer to 19 0811-19 0845 (DJ005511 p71-85 Box 4)

¹⁴²³ Refer to 19 0846-19 0851 (71025-28 Box 57)

In a fax from Venson Plc on 23 January 1998, Shaik was requested to confirm that the list of names of people with whom meetings were held were not too sensitive¹⁴²⁴. The list of names included that of Zuma, Maharaj and Ndebele. A program for Venson Plc's visit to South Africa indicates that meetings were held with Zuma, Maharaj and Ndebele in November 1997¹⁴²⁵.

On 11 February 1998, Shaik sent Scriven an agenda for Scriven's visit to South Africa, which included a meeting with "*Minister S'bu Ndebele (Minister of Transport KwaZulu Natal)*" and his directorate. It appears that the purpose of the meeting was to conduct a presentation of the "*Venson (UK) Model*"¹⁴²⁶.

We identified a letter from ABSA to Ndebele dated 17 December 1998, relating to the transfer of Ndebele's mortgage bond and banking facilities to ABSA. The letter was sent to Nkobi Holdings for the attention of Shaik¹⁴²⁷. We are not in possession of the subsequent communication relating to this matter.

We identified a "*Trust Telephone Corporation*" cell phone application form completed by Ndebele on 23 April 1998 and faxed through by Nkobi on the same day¹⁴²⁸. A handwritten note was made on the form that reads "*file Sbu Ndebele, phoned Mr Shaik who advised that this application is okay*". It is unclear whether Shaik or the Nkobi group paid the cell phone account of Ndebele.

We are in possession of a statement dated 31 December 1998 from Wesbank relating to vehicle finance for Ndebele and a handwritten note was made that reads "*file Sbu Ndebele*"¹⁴²⁹. It is unclear whether Shaik or the Nkobi group made payments towards the lease account.

A quotation dated 12 December 2000 from Harvey Travel to Shaik with regard to airfare and accommodation in Malawi for five days reflected a handwritten note "*Min Sbu*"¹⁴³⁰. It is unclear whether Shaik or the Nkobi group paid for a trip for Ndebele to Malawi.

¹⁴²⁴ Refer to 19 0852-19 0853 (80 05979A-B Box 108)

¹⁴²⁵ Refer to 19 0854 (80 05976 Box 108)

¹⁴²⁶ Refer to 19 0855 (80 05927 Box 108)

¹⁴²⁷ Refer to 19 0856(80 11435 Box 134)

¹⁴²⁸ Refer to 19 0857(80 11443 Box 134)

¹⁴²⁹ Refer to 19 0858(80 11436 Box 134)

¹⁴³⁰ Refer to 19 0859(80 11437 Box 134)

20 Supply and personalisation of Drivers' Licence Cards

20.1 Introduction

The shareholding in Prodiba was issued to Kobitech at a nominal value of R1 000. This represented a third shareholding with two other shareholders having the same number of issued shares. The issuing of the shares was authorised in a meeting of the board of directors of Prodiba on 8 June 1998.

According to the business plan of Prodiba, the shareholding in Prodiba would have entitled Kobitech to a dividend, projected in the business plan of Prodiba as aggregating to R8 167 244.

In terms of the shareholders' agreement, the Nkobi group had to provide finance in the form of a shareholders' loan to Prodiba in order to ensure that the company was properly capitalised. This would ensure Prodiba could perform in terms of the contract with the Department of Transport. Kobitech provided this loan on the strength of a back-to-back loan received from Thomson-CSF Holding (SA), amounting to R9 014 258. This was in line with the estimated capital requirements of Prodiba at the time. The final agreement for the loan from Thomson-CSF Holding (SA) was signed on 22 July 1998. Kobitech was entitled to interest on the loan to Prodiba and had in turn to pay interest on the loan from Thomson-CSF (Southern Africa). Effectively this would not have resulted in any profit accruing to Kobitech on the loan to Prodiba.

The Nkobi group was also allocated a workshare of the agreement that Prodiba had with the Department of Transport. In terms of the business plan at our disposal, the Nkobi group was allocated a workshare of R28 452 640. There is no information at our disposal indicating that this workshare allocation changed. This workshare formed part of the total cost agreed with the Department of Transport of some R263 067 654. The goods and services were to be provided from the Nkobi group on which a profit could have been realised. It is evident from the financial statements of Kobifin that the work, to be provided in terms of the workshare allocation, was performed by Kobifin.

Kobifin and Kobitech are both wholly owned subsidiaries of Nkobi Investments and Kobi IT is a wholly owned subsidiary of Kobitech.

Kobi IT had no operations for the 1999, 2000, 2001, 2002 and 2003 financial years and Kobitech indicated operating results only to the extent of the interest earned on a loan made to Prodiba.

The effect of the transactions relative to the sale of the workshare right can be summarised as follows:

Entity	Amount R
Kobi IT – asset “ <i>Non-current asset</i> ”	3 500 000
Kobi IT – loan from Kobitech	(3 500 000)
Kobitech – loan to Kobi IT	3 500 000
Kobitech – loan from Kobifin	(3 500 000)
Kobifin – loan to Kobitech	3 500 000
Kobifin – Non-Distributable-Reserve	(3 500 000)

The net effect of the abovementioned is the creation of an asset in the books of Kobi IT against a loan via Kobitech with the resultant creation of a Non-Distributable-Reserve in the records of Kobifin. This had the effect of ostensibly inflating the assets of the Nkobi group by R3.5 million.

We concluded that there was no basis for the assertions as reflected and that the transactions, when presented in the annual financial statements, were consequently misstated. The transactions were never reversed and a contrary position was not reflected in the subsequent years.

The revaluation of the investment of Kobitech in Prodiba resulted in the increase of the asset value of Kobitech for the year ended 28 February 1999 by R3 500 000 and a further amount of R5 000 000. Both the revaluations resulted in an increase of the Non-Distributable-Reserves and a substantial increase in the consolidated assets of the Nkobi group. There was no basis for such revaluation and, therefore, the financial results of the company were misrepresented.

The effect of the material increase in the net asset value of the Nkobi group was to increase the net asset value and not present a net deficit, which the Nkobi group would not have experienced

otherwise. There are a number of indications that the performance of the group, and its liquidity and solvency positions, were not only considered by the directors at the time, but also by ABSA in its continued financing of the Nkobi group through an overdraft facility¹⁴³¹.

20.2 The tender process

The tender for the Supply and Personalisation of Driving Licence Cards was issued in September 1995 and was submitted to the Department of Transport on 15 December 1995¹⁴³².

20.3 Establishment of Prodiba

A company styled PSC Computer Bureau (Pty) Limited, registration number 86/05156/07, was incorporated on 22 December 1986¹⁴³³. This company had an authorised share capital of 4 000 ordinary par value shares¹⁴³⁴. A certificate to commence business was issued by the Registrar of Companies on 17 December 1986¹⁴³⁵.

On 23 February 1987 the company changed its name to PS Computer Bureau (Pty) Limited by means of a special resolution¹⁴³⁶. The name was amended and the Registrar of Companies gave notice of the amendment on 2 March 1987¹⁴³⁷. On 10 October 1995 another special resolution was passed whereby the name was changed to Pro Diba (Pty) Limited¹⁴³⁸. The Registrar of companies acknowledged this name change on 12 October 1995¹⁴³⁹. On 12 May 1997 another special resolution was adopted to change the name to Prodiba (Pty) Limited¹⁴⁴⁰. The Registrar of Companies acknowledged this final name change on 13 May 1997¹⁴⁴¹. It is evident from the annual financial statements of Prodiba that the entity described above was not the entity that commenced business in terms of the driver's licence contract and that a second entity with exactly the same name was used for this purpose.

The second entity, which is relevant to this section of the report, is a company that was incorporated on 4 August 1997 as Cumulus Shelf 1 (Pty) Limited¹⁴⁴². The name of the company

¹⁴³¹ Refer to paragraph 21.7
¹⁴³² Refer to 20 001-20 0003 (7806972-3 Box 231 p1-3)
¹⁴³³ Refer to 20 0004 (7810071 Box 219)
¹⁴³⁴ Refer to 20 0005-6 (7810073/4 Box 219)
¹⁴³⁵ Refer to 20 0007-8 (7810069 to 7810070 Box 219)
¹⁴³⁶ Refer to 20 0009 (7810068 Box 219)
¹⁴³⁷ Refer to 20 0010 (7810067 Box 219)
¹⁴³⁸ Refer to 20 0011 (7810066 Box 219)
¹⁴³⁹ Refer to 20 0012 (7810065 Box 219)
¹⁴⁴⁰ Refer to 20 0013 (7810064 Box 219)
¹⁴⁴¹ Refer to 20 0014 (7810063 Box 219)
¹⁴⁴² Refer to 20 0015 (7810973 Box 244)

was changed to Prodiba (Pty) Limited on 29 September 1997¹⁴⁴³. The company was incorporated with an authorised share capital of 4 000 ordinary shares at R1 per share.

We were not able to establish the reasons for the existence of two entities with exactly the same name.

Shaik, Thetard, Gama and Christian Rene Fuchs were appointed as directors on 8 June 1998¹⁴⁴⁴. George Stander was appointed as a director on 1 September 1998, Etienne Marius Lubbe was appointed as a director on 29 April 1999 and Ganelang Zeth Malele was appointed as a director on 30 May 2000.

Desai Jadwat were appointed as the external auditors at incorporation but resigned on 17 February 2000. Fisher Hoffmann Sithole and PriceWaterhouseCoopers were appointed as the joint auditors on 31 March 2000¹⁴⁴⁵.

20.4 Consortium Agreement and Shareholders of Prodiba

A Consortium Agreement was drawn up between Image Database Technologies, Idmatics S.A and Nkobi Holdings on 14 December 1995¹⁴⁴⁶. It was envisaged in this agreement that the parties would collaborate to prepare and submit to the Department of Transport, a tender for the Supply and Personalisation of Driving Licence Cards in South Africa. The tender was submitted the following day. It was mentioned in the agreement that Nkobi would provide the operational manpower for the project. Furthermore, the agreement intended to create and incorporate a Joint Venture if the contract was to be awarded to the parties. The agreement detailed the conditions in terms of which the consortium would be established and would operate if the tender was successful.

It was agreed that the shareholding of the consortium would be split amongst the intended shareholders of the joint venture as follows:

IDT Denel	– 50.1%;
Idmatics	– 24.95%; and
Nkobi Holdings	– 24.95%.

¹⁴⁴³ Refer to 20 0016 (7810974 Box 244)
¹⁴⁴⁴ Refer to 20 0017-18 (102219-20 File 162)
¹⁴⁴⁵ Refer to 20 0019-20 (102218/22 File 162)
¹⁴⁴⁶ Refer to 20 0021-53 (7802112-144 Box 235)

The agreement was subsequently amended to reflect an equal split of 33.33% amongst the parties on or about 3 September 1996¹⁴⁴⁷. The reasons noted in a letter, addressing the issue of the shareholding, were *inter alia* the restructuring of the Biometrics and Card Technology interests that changed to Face Technologies, the revisiting of their participation in black economic empowerment and to enhance alignment with major international role players in South Africa. As a consequence, the capital requirements and contributions were also split equally amongst the parties.

An undated and unsigned letter from the joint venture (Denel, Thomson-CSF and Nkobi Holdings) to Maharaj, indicates that Maharaj was informed that, should the joint venture be awarded the drivers licence contract, the joint venture intended to modify the shareholding as follows¹⁴⁴⁸:

Nkobi Holdings	33.33%
Thomson-CSF (on behalf of its subsidiary, Idmatics)	33.33%; and
Denel Informatics (on behalf of its subsidiary IDT)	33.33%.

The letter was concluded with “*We hope this information will be of interest to you, and remain yours very sincerely*”.

It is evident from the letter above that the consortium regarded it important for Maharaj to be informed about the intended change in shareholding should the consortium be awarded the tender for the drivers licence project.

A notice of the general meeting of directors and shareholders of Thomson-CSF Holding (SA) dated 13 November 1996¹⁴⁴⁹ recorded the agenda points for the meeting to include the following:

The tender to and contract with the South African Government with regard to the production of driving licence documents and/or cards to be issued; and

Investment in the company, Prodiba, with an initial interest therein of 24.95% and possible future increase of such interest to 33.33%.

¹⁴⁴⁷ Refer to 20 0054 (DJ006150 p96 Box 8)

¹⁴⁴⁸ Refer to 20 0055-6 (8002868-9 (Box 88)

¹⁴⁴⁹ Refer to 20 0057 (76 91275 Box 225)

During the directors' and shareholders' meeting of Thomson-CSF Holding (SA) on 22 November 1996¹⁴⁵⁰, the aforementioned items were discussed and considered. It was approved at the meeting that Thomson-CSF Holding (SA) would participate in Prodiba as a one third shareholder. It was indicated that the contract would require an amount of approximately R40 million as finance and as a result each shareholder would have to contribute R13.3 million to capitalise Prodiba. It was indicated that each shareholder would not have to provide the entire R13.3 million at once since the rate of capitalisation would be decided once the business plan was in place and cashflow projections established.

Essentially it was accepted and proposed to continue with the contract, presumably not with Thomson-CSF Holding (SA), but Prodiba. The financing was approved and it was envisaged that it would be provided by way of R3.5 million in share capital and R9.8 million in the form of loan accounts.

The Consortium Agreement was amended on 10 December 1997 when the parties ostensibly signed the agreement¹⁴⁵¹. The agreement was signed by Moynot, on behalf of Thomson, and by Gama, on behalf of Kobitech. This was ratified at the first meeting of the board of directors of Prodiba on 8 June 1998¹⁴⁵². It was also during this meeting that the directors approved the issue of the shares in Prodiba as follows:

999 ordinary shares of R1 each to Face Technologies;

1 000 ordinary shares of R1 each to Kobitech; and

1 000 ordinary shares of R1 each to Thomson-CSF Holding (SA).

It is assumed that the shareholding, originally envisaged to be vested in Nkobi Holdings, was then issued to Kobitech. With this structure the Nkobi group had an effective shareholding in Prodiba of 36.33%. This can be summarised as follows:

Entity holding	Holding	Invested in	Holding in Prodiba	Effective holding in Prodiba by Nkobi group
Nkobi Investments	10%	Thomson-CSF Holding (SA)	33.33%	3.33%

¹⁴⁵⁰ Refer to 20 0058-63 (76 91276 to 76 91281 Box 225)

¹⁴⁵¹ Refer to 20 0064-128 (7802046-110 Box 235)

¹⁴⁵² Refer to 20 0129-130 (DJ004200 and DJ004201 Box 18)

Kobitech	33%	-	33.33%	33.33%
Total	-	-	-	36.33%

The shareholding by Nkobi Investments in Thomson-CSF Holding (SA) was sold on 30 July 1999, which had the effect of decreasing the effective shareholding of the Nkobi group in Prodiba from 36.33% to 33.33%¹⁴⁵³.

20.5 Award of tender by the Department of Transport

In a letter dated 4 October 1996 Image Database Technologies(Face Technologies) was informed by the Department of Transport that its tender had been accepted on the basis of certain non-negotiable conditions¹⁴⁵⁴.

One of the conditions, in the paragraph marked (h) in the letter, advising of the success of the tender, indicates that the rate per card should include the supply and maintenance of 500 card readers or a set of card readers for the duration of the production period, complete with hardware and software to enable verification of the cards at the roadside¹⁴⁵⁵.

The contract amount was R263 067 654. This amount was split between sundry items of R14 122 196 and R248 945 458 for card production costs.

The amount of R14 122 196 excluded a provision for a data capturing facility but included other sundry items.

20.6 Agreement with the Department of Transport

The agreement for the Supply and Personalisation of Driving Licence Cards between the Department of Transport and Face Technologies was signed on 28 February 1997¹⁴⁵⁶. Shaik and Moynot signed the agreement as witnesses. The contract was then transferred to Prodiba on 15 July 1997¹⁴⁵⁷ and was approved by the Department of State Expenditure on 25 November 1997¹⁴⁵⁸.

¹⁴⁵³ Refer to Appendix 3

¹⁴⁵⁴ Refer to 20 0131 (7806982-3 Box 231)

¹⁴⁵⁵ Refer to 20 0131-132 (paragraph 20.7 and 78 06982-3 Box 231)

¹⁴⁵⁶ Refer to 20 0133-135 (7802150-2 Box 235)

¹⁴⁵⁷ Refer to 20 0136-138 (7802395-7 Box 235)

¹⁴⁵⁸ Refer to 20 0139-140 (7802404-5 Box 235)

20.7 Business plan of Prodiba

20.7.1 Estimated contract “value” and “workshare” turnover

It was envisaged in the business plan that the contract value totalled a maximum of R263 067 654 and a minimum of R200 000 000. The initial contract period was 6 years and 5 production years. The budgeted income statements, forming part of the original business plan, reflect a total contract turnover in the amount of R252 946 817 as opposed to the “workshare” turnover schedule, allocated to the various parties totalling R201 918 510. The differences between the amounts cannot be explained. It is assumed that the “workshare” turnover allocation was based on a more conservative estimate. Also contributing to the difference would be the indirect overhead expenses as well as the profit component in Prodiba that would have eventually been distributed as a dividend¹⁴⁵⁹.

The “workshare” turnover, per sub-contractor, can be summarised as follows:

Entity	Amount R
Prodiba	26 710 052
Face	51 956 828
Idmatics	94 798 990
Nkobi	28 452 640
Total	R201 918 510

20.7.2 Estimated profit distribution

It was envisaged in the business plan that the profit distribution would amount to R24 501 733, shared equally amongst the shareholders in amounts of R8 167 244.

20.7.3 Funding

Each of the shareholders was to provide financing for the project, as well as goods and services. The goods and services were to be supplied via sub-contracts signed between Prodiba and the shareholders. Total funding required for the set-up of the contract was estimated at R45 115 498, of which the Industrial Development Corporation was going to provide R18 072 724 for the acquisition of the capital items. The balance of the funding was to be

¹⁴⁵⁹

Refer to 20 0141-159 (7802185-203 Box 235) and DJ006150 Box 8)

provided *via* shareholders' funds, injected during the set-up year as "*Shareholder's Loans*"¹⁴⁶⁰. The total peak shareholders' loan requirement was estimated at R9 014 258 each.

20.7.4 Shareholders' loan to Kobitech

Documentation at our disposal indicates that negotiations for a loan from Thomson-CSF Holding (SA) commenced during the early part of 1998. This happened after a number of failed attempts by Kobitech, in particular, to obtain finance from local banking institutions.

In a fax transmission dated 16 April 1998 from White & Case attorneys, acting on behalf of Thomson-CSF Holding (SA), it is evident that the parties were then considering the second draft amendment of the Joint Venture Agreement entered into on 10 December 1997, as well as the Loan Agreement with its annexures¹⁴⁶¹. The loan agreement is the subject matter of this part of the report.

The amendment in question dealt with a joint venture between Kobitech, Face Technologies, Thomson-CSF Holding (SA) and Prodiba. Details of the changes that led to the final agreement are not dealt with in this report, except where deemed relevant. Various drafts are available, reflecting the history to the final amendment that was signed by the relevant parties¹⁴⁶².

The final loan agreement was formalised on 22 July 1998¹⁴⁶³. The agreement was between Thomson-CSF Holding (SA) (referred to as "Thomson"), Kobitech (referred to as "Kobitech") and Kobifin (referred to as "Kobifin")¹⁴⁶⁴. The salient features of the agreement and its annexures were that:

Thomson was to lend to Kobitech the principal amount of R9 014 258 ("the loan");

The purpose of the loan was to allow Kobitech to meet its cash requirements and in particular to pay a shareholders loan to Prodiba in an amount equal to R9 014 258;

The loan was to have been paid into a "temporary account" opened by Kobitech at Société Générale, Johannesburg branch;

Kobitech was to instruct Société Générale that any funds, paid into that account, would be used to simultaneously make payment to Prodiba;

¹⁴⁶⁰ Refer to 20 0180 (7802190 Box 235)

¹⁴⁶¹ Refer to 20 0181-182 (D83303945 and D83303946 Box 199)

¹⁴⁶² Refer to 20 0183-184 (D83303819-20 Box 199)

¹⁴⁶³ Refer to 20 0185-190 (D83303826 to D83303831 Box 199)

¹⁴⁶⁴ Refer to 20 0191-195 (D 83300099-103 (Box 176)

The loan repayment would be dealt with in terms of the Escrow Agreement, reflected in Annexure A of the agreement. The salient features of Annexure A are dealt with below;

The loan had to be repaid by minimum monthly amounts of R100 000, on the last day of each month;

The minimum repayments were to have commenced either at the end of the eighth month after the coming into force of the agreement on the date upon which Prodiba commenced repaying its loans from the shareholders, whichever was earlier;

The interest rate was to be based on 100% of the prime overdraft lending rate as announced and charged by ABSA;

Mention was also to be made of the loan from Nedbank Limited to Kobifin; and

Dividend income from Prodiba to Kobitech was not subject to the restrictions of the agreement.

Annexure A to the Agreement dealt with the Escrow arrangements. The Shareholders' Loan was defined as the loan made pursuant to the Joint Venture agreement that was entered into on 10 December 1997. Agreed terms on the intended control and handling of the various cashflows intended in the loan agreement, were reflected in the Annexure A.

Annexure B to the Agreement dealt with the cession of debt. The cession of debt was between Thomson-CSF Holding (SA) and Kobifin. The funds advanced to Kobitech by Thomson-CSF Holding (SA) in the amount of R9 014 258 were defined as the "L Debt".

It is also noted in this part of the agreement that Kobifin and Prodiba entered into a subcontract in terms of which Prodiba would, over the lifespan of the sub-contract, pay Kobifin a forecast of R39 million. This was defined as the "S Debt". The salient features of this Annexure B are as follows:

Kobifin recognised the "L Debt" of Kobitech to Thomson;

Prodiba would pay on behalf of Kobitech the portions of debt, relative to the "L Debt" that became payable;

Should Thomson-CSF Holding (SA) not be paid any portion of the "L Debt" by Kobitech, then Prodiba would be entitled to retain any portion of the "S Debt" and pay it directly to Thomson-CSF Holding (SA); and

Kobifin ceded up to 15% of its rights, interest and title in the “S Debt” to Thomson-CSF Holding(SA) as security for the “L Debt”.

Annexure C to the agreement deals with the Voting Terms and required amendments to the articles of Association of Kobitech.

In a letter from Ditz Incorporated, acting on behalf of Nkobi dated 16 May 1998, addressed to Shaik of Nkobi Holdings, as well as an accompanying memorandum, details of the amendments were noted¹⁴⁶⁵. The memorandum deals mainly with suggested amendments relative to the Loan Agreement and its annexures.

In a letter from Prodiba, dated 9 June 1998, and addressed to Thomson Holdings (SA), it was confirmed that, *inter alia*:

In terms of Annexure A, the amounts that had to be repaid by Prodiba to Kobitech arising from the shareholders loan from Kobitech to Prodiba, were to be deposited into an account held for the benefit of Thomson-CSF Holding (SA) with Société Générale and designated in the name of Kobitech; and

In terms of Annexure B, Kobifin had ceded certain of its rights, title and interest in and to the “S Debt”, to Thomson as security for each “L debt”.

We were not able to locate the agreement between Kobifin and Prodiba, dealing with the “S Debt”. It can however be assumed that it relates to the workshare right that the Nkobi group had in the joint venture.

20.8 Card verification devices

Amongst a number of operational requirements the supply of card verification devices was one of the issues dealt with by Prodiba. It was evident from this report that the supply of at least 500 devices was required in terms of the contract with the Department of Transport and that a further number of devices would have to be provided as part of the original contract or through the establishment of a new contract. Various calculations of Prodiba’s exposure were made in this regard in the Prodiba environment as well as the Nkobi environment. The downside in the Prodiba environment would have meant a substantial loss of approximately R100 million, as opposed to the potential new contract if the supply of the card verification devices were to be the subject matter of an additional contract. On the other hand, it is evident that Shaik, also a member of the Prodiba board of directors, saw this as an opportunity to negotiate with the

¹⁴⁶⁵ Refer to 20 0196-197 (D83303885 to D 83303893 Box 199)

potential supplier of the technology to becoming a shareholder in Kobitech. The potential supplier was identified and approved by the Prodiba board of directors as Symbol.

The negotiations never materialised in a transaction and came to a sudden end after a protracted period. Nevertheless, it appears from the manner in which the asset base of the Nkobi group was improved, at the time when it was most vulnerable in terms of its insolvency position, that the transaction, together with the association of the Nkobi group, was used as a mechanism or reason to reflect entries in the records of certain of the Nkobi group. These recorded transactions had the effect of misstating the financial position of the affected companies and consequently the Nkobi group.

We have dealt with the negotiations and dealings regarding Symbol in a separate section of this report¹⁴⁶⁶. The paragraphs that follow provide insight into the considerations and presentations in Prodiba at the time.

On 10 November 1998 Vorster, the bureau manager of Prodiba, wrote a memorandum to George Stander in his capacity as managing director of Prodiba. Reference is made to the fact that the board had decided in October 1998 that Vorster and representatives of the shareholders of Prodiba should try to resolve the outstanding problems regarding the card verification devices¹⁴⁶⁷. We are not in possession of minutes of the board meeting where the decision was apparently taken. It appears that the meeting was not recorded, as the first recorded meeting was held on 8 June 1998¹⁴⁶⁸ and the second recorded meeting was held on 25 November 1998¹⁴⁶⁹. An extract from the tender document Volume 1 page 142 states that “...*the supply and maintenance of 500 card readers or set of card readers for the duration of the production period enabling verification of every integrity feature incorporated on the card.*”¹⁴⁷⁰

It is clear that the Department of Transport insisted that the cost of the devices had been included in the tender price upon which the adjudication took place. Mention is made in this document that the Symbol technology had been assessed to be the only fully portable solution that could suit the requirements.

The board of Prodiba requested Vorster, as a result of various technical problems in addition to the budgetary problems experienced, to solve the problems that were noted in the letter.

The matter of card verification devices was discussed at the second recorded board meeting of Prodiba, held on 25 November 1998, when options for the supply of the devices were

¹⁴⁶⁶ Refer to paragraph 20.7.1

¹⁴⁶⁷ Refer to 20 0205-207 (DJ004028-30 Box 17)

¹⁴⁶⁸ Refer to 20 0208-209 (DJ004200-1 Box 18)

¹⁴⁶⁹ Refer to 20 0210-213 (7807024-6 Box 231)

¹⁴⁷⁰ Refer to 20 0214-216 (7806974-76 Box 231 and 78 06982-3 Box 231)

considered. Mention was made of an interim solution to be considered by the project team to provide the Department of Transport with a negotiated number of card verification devices early in the following year.

The minutes of the third meeting of the board of directors of Prodiba could not be located. Consequently, this report does not consider any decisions that could have been made in relation to the relevant matters at that meeting. However, it is our opinion that had the minutes been located, the contents thereof would not materially affect our findings in relation to the issue at hand.

Vorster, the bureau manager of Prodiba, wrote to the board of directors of Prodiba on 15 February 1999 when the matter of card verification devices was noted¹⁴⁷¹. It was stated that Prodiba had to supply an initial 500 units as a basic solution in terms of the Agreement. In addition to that, Prodiba had to supply additional units at the price fixed in the contract. It was estimated that, at the time, the total number of card verification devices required over a three year period, would be 15 000. Vorster continued to provide different alternatives to solving the issue of the provision of the basic supply namely 500 units, as well as the cost implications thereof. No mention was made at this stage of the Symbol solution, discussed elsewhere in this report. It was estimated that the solutions offered at the time, for the supply of the 500 units, would result in Prodiba having to provide for a loss of R3 300 000. The potential loss per unit for the supply of the additional 15 000 units was estimated at R6 644. The total potential estimated loss amounted to R99 660 000. Vorster stated that the contract price, as agreed with the Department of Transport, for the additional units, after taking escalation into account, was R2 356 per unit. This was measured against an estimated cost, as determined by obtaining quotations at the time when the matter was considered, of R9 000 per unit.

It was stated in the letter, dated 15 February 1999 that the following principles had *inter alia* been agreed with the Department of Transport during a meeting held on 10 February 1999:

The Department of Transport should consider new technology;

The Department of Transport was willing to consider making available additional funds in this regard; and

Prodiba would have to sell these units at cost with no possibility of a mark-up. This is substantiated by the contents of the letter dated 15 February 1999, that “*Where any item*

¹⁴⁷¹ Refer to 20 0223-226 (DJ003697-700 Box 16)

(such as software) is acquired through a shareholder the shareholder must also provide this item at cost”.

After the abovementioned, Vorster was instructed to obtain legal advice on the position. In a letter, addressed to Anand Moodley of Ditz Incorporated, he instructed Moodley to obtain legal advice on the following¹⁴⁷²:

The contractual obligations of Prodiba to supply a portable solution and the Department of Transport’s position regarding possible additional funding;

Whether hardware had to be supplied as described in the tender; and

The position regarding the supply of additional hardware and software for any additional units over and above the initial 500 units at the quoted price.

The abovementioned was addressed in a legal opinion to the effect that Prodiba was obliged to furnish the initial 500 card readers with the characteristics similar to those quoted for and that additional card readers need not be supplied. The legal opinion was dated 18 March 1999¹⁴⁷³.

The matter was again discussed during the fourth meeting of the board of directors of Prodiba, held on 29 April 1999¹⁴⁷⁴. It was noted that the requirements of the Department of Transport, in terms of verification devices, were much more sophisticated than required in the tender. Furthermore, that the “...task team...” had investigated a solution and proposed that the Symbol PPT7500 device be used. It was envisaged that the device would be offered at a price of US\$1 000 for the 500 units to be supplied and US\$1 500 for the additional devices to be supplied by Prodiba. The number of additional units to be supplied by Prodiba was not clear. The agreement with the Department of Transport is also silent on this issue. It would therefore be reasonable to conclude that the additional units to be supplied would not form part of the original tender and agreement. The board of directors approved the acquisition of the Symbol device during this meeting.

It was also approved that Prodiba obtain agreement from the Department of Transport for the proposed device and that the Department of Transport be approached for the extra funding needed, despite the fact that the contract included the supply of 500 units.

¹⁴⁷² Refer to 20 0227-229 (7806971-3 Box 231)

¹⁴⁷³ Refer to 20 0253-264 (DJ003701 to DJ003712 Box 16)

¹⁴⁷⁴ Refer to 20 0265 (7807240 Box 231)

The matter was once again raised during the fifth meeting of the board of directors of Prodiba¹⁴⁷⁵ at which stage Prodiba was ready to present the solution to the Department of Transport. It was also stated in this meeting of the Board of Directors that the prices varied from the original tender amount but the board accepted that, in the worst case scenario Prodiba would have to supply the readers in terms of the Agreement.

The matter was not progressed during the sixth and seventh board meetings of the directors of Prodiba.

During the eighth meeting of the board of directors of Prodiba, held on 2 December 1999¹⁴⁷⁶, cognizance was taken of the prices for the card verification devices. The Symbol verification device was noted as being the cheapest and the preferred solution. The board gave its approval, subject to the approval of the Department of Transport, for the procurement of 500 devices to be proceeded with at a total price of US\$549 000. A shortfall in the provision for the acquisition of the equipment was noted. The approval was granted without an official quotation from Symbol Technologies. No mention was made at this stage of the supply of the additional units.

The matter of the card verification devices was discussed during the ninth meeting of the board of directors of Prodiba, held on 22 May 2000. No material resolutions were noted¹⁴⁷⁷.

It was noted in the minutes of the tenth meeting of the Board of Directors of Prodiba, held on 14 June 2001 that the Department of Transport had accepted that the then specification differed materially from the original specification, but the Department was prepared to pay for a variation. The extent of the payment was not known at that stage. A quoted price of R10 000 per unit from Dev, a potential supplier, had been noted for the card verification device¹⁴⁷⁸.

20.8.1 Negotiations with Symbol Technologies

Unsigned minutes of a meeting with Symbol Technologies, ostensibly held on 18 June 1999, reflect negotiations that took place between Symbol Technologies and Nkobi at the time¹⁴⁷⁹. The minutes reflect that the meeting had been attended by Dover (Symbol), Joffe ("Symbol"), Shaik, Isaacs and John Chettle. The possibility of Nkobi investing in the South African operations of Symbol Technologies was eliminated as an option due to the fact that it was only an operating division of the United States entity incorporated in Delaware. The only option proposed by Symbol Technologies at the time was to form a separate company in which Nkobi would hold

¹⁴⁷⁵ Refer to 20 0270 (DJ003918-925 Box 17)

¹⁴⁷⁶ Refer to 20 0274 (7807202 Box 231)

¹⁴⁷⁷ Refer to 20 0276 (80 08315B Box 123)

¹⁴⁷⁸ Refer to 20 0280 (82040203 Box 168)

¹⁴⁷⁹ Refer to 20 0285 (0000072049 Box 64)

30% or more, with the balance of the shares being held by Symbol Technologies. Shaik was concerned about the respect shown to “Nkobi”, as it appeared to be a window dressing exercise whereby “Nkobi” would provide a black front for the Symbol Technologies operations. The strengths of “Nkobi” in the public sector as opposed to the strengths of Symbol Technologies in the private sector were highlighted.

The contract which “Nkobi” was providing via Prodiba was noted as being worth R150 million over 5 years and was compared with the annual turnover of Symbol Technologies. This ostensibly represented 50% of the Symbol Technologies turnover. The methodology used in the “*partnership*” with Thomson was mentioned and accepted, as an option whereby a new company, based in South Africa, would be forced to take over the assets of Symbol Technologies in South Africa. This new company would then become a fully-fledged subsidiary of Symbol Technologies Africa Incorporated. There are no indications that Nkobi was to be allocated any workshare. Legal opinion provided to the board of directors of Prodiba indicated that the supply of the additional card verification devices fell outside the contract. This had the effect, in the event that the Department of Transport accepted the views expressed in the legal opinion, of a new contract having to be negotiated, and due to the size of the contract, the Department of Transport having to identify a supplier on an open tender basis.

This meeting with Symbol Technologies on 18 June 1999 was after Prodiba had obtained a legal opinion and subsequent to the fourth directors’ meeting of Prodiba on 29 April 1999 where it had been decided that Symbol technology would be offered as a solution to the Department of Transport. It is therefore concluded that Shaik then had knowledge of the legal opinion given and the fact that Symbol technology would be offered to the Department of Transport as the solution. He was also aware of the fact that a large number of additional units would be required by the Department of Transport in order to successfully roll out the implementation of the new drivers licence solution. We could not locate any evidence indicating that Shaik was authorised by the board of directors of Prodiba to negotiate with Symbol Technologies in this regard and furthermore, there are no indications that the board of directors of Prodiba was aware of the fact that Shaik was negotiating with Symbol Technologies in this regard.

The meeting on 18 June 1999 a meeting with Symbol Technologies¹⁴⁸⁰ included representatives of Symbol Technologies and “Nkobi”. The topics of shareholding and the contract worth R150 million were discussed. Isaacs of Nkobi Holdings, with other individuals, were to

structure the company formation based on the Thomson's model and were to provide details of the principles involved to Dover, of Symbol Technologies, for approval by the US shareholders.

At another meeting held on 16 September 1999 between Symbol Technologies and "Nkobi" the matter progressed further. The meeting was provided with an overview of the Prodiba project¹⁴⁸¹. The technology, owned by Symbol Technologies, was identified as the preferred route to follow. As a result, Shaik mentioned that a "tentative" agreement had been reached with Symbol Technologies to work towards the formation of a Newco, into which Symbol Technologies would transfer all its South African operations while Nkobi would "inject" the Prodiba contract. Other options of expanding the Nkobi and Symbol Technologies joint venture were also noted. Shaik mentioned that the South African Government was committed to legislation relating to the advancement for Black Empowerment companies.

Mention was made of the fact that Shaik acted as special advisor to Zuma and, as a result, was aware that the Government was not happy with "Ramaphosa" type businesses, which involved black investors taking a stake in white established companies without meaningful capacity building or skills transfer. It was therefore agreed in principle that the managing director of the new company would be Dover. The appointment of the chairman had yet to be resolved. Nkobi was involved in discussions with ABSA regarding the listing of the group activities. ABSA did not recommend it¹⁴⁸². Shaik identified the Symbol Technologies and Nkobi joint venture listing as an option, but this was not pertinently raised during the meeting with ABSA.

Symbol Technologies' view was to create a structure using Kobitech to consolidate the necessary skills in Kobitech without competing with Symbol Technologies SA.

The meeting with Symbol was followed with a presentation by Shaik of a detailed document reflecting, *inter alia*, the status of Kobitech¹⁴⁸³. This document was prepared as a discussion document and as a result of certain requests and issues raised at the meeting held on 16 September 1999, discussed above. The document prepared contained projected income statements and balance sheets from the year ended 29 February 2000 to 28 February 2008. The purpose of the document was to determine the potential future cash that would be derived from the operations of Kobitech and was based on a material assumption that 40 000 card verification devices (scanners) would be sold during the projected period. The projections were forwarded to DS&T for commentary and it was in the commentary received from DS&T where the author proposed "...we would feel most comfortable with a 25% stake being purchased by yourself".

¹⁴⁸¹ Refer to 20 0287 (0000072051 Box 64)

¹⁴⁸² Refer to 20 0289 (72053 Box 64)

¹⁴⁸³ Refer to 20 0291-298 (0000072041 to 0000072048 Box 64)

The author continued to state that”...*maybe even make a comment at an amount of approximately 2 million US dollars*”.

We could not find any evidence that the contract referred to as a R150 million contract, was a firm contract between Kobitech or Prodiba and the Department of Transport. When the discussion with Symbol took place, Prodiba was faced with the dilemma of supplying 500 card verification devices under its existing contract and it was uncertain as to whether the National Department of Transport would enforce the supply of all of the card verification devices under the conditions of the existing contract. This would have meant, based on the projections of Prodiba, that substantial losses would have been realised by the company.

As a result it can be concluded that the basis of the projections that were ostensibly presented to Symbol Technologies in support of the negotiations for the acquisition of the shares in Kobitech, was founded on uncertainty and speculation.

The negotiations for the purchase of a share in Kobitech by Symbol Technologies continued. This eventually resulted in the drafting and consideration of agreements of sale of the shares. On 3 December 1999 Symbol Technologies wrote to Gama, in his capacity as the managing director of Nkobi Holdings, recording that Symbol Technologies was in the process of drafting a “*Stock purchase Agreement*”. This was for the proposed transaction whereby Symbol Technologies would purchase from “*Nkobi*” a 25% stake in Kobitech¹⁴⁸⁴. In this letter Symbol Technologies requested a preliminary list of items that it wished to review in a due diligence process.

The process continued whereby various meetings took place in the period subsequent to the abovementioned date, namely 3 December 1999, all in an attempt to perform a due diligence that would eventually have resulted in an agreement. We are in possession of a draft agreement, which is not dated and from which we could not identify the author¹⁴⁸⁵. However, this draft agreement recorded that Nkobi Holdings (the seller) would agree to sell 26% of the shares in Kobitech for a price of US\$2 million. It is not clear why Nkobi Holdings was recorded as the seller as the owner of all of the issued shares in Kobitech was Nkobi Investments.

In a letter, undated, but faxed to Shaik in his capacity as Executive Chairman of Nkobi Holdings on 22 August 2000, Dover from Symbol Technologies proposed an agenda for a meeting that

¹⁴⁸⁴ Refer to 20 0299-303 (0000072056-60 Box 64)

¹⁴⁸⁵ Refer to 20 0204-346 (0000071986 to 0000072028 Box 64)

would have taken place on 23 August 2000¹⁴⁸⁶. Issues to be discussed in the meeting, included *inter alia*:

The timing of payments on the injection of capital;

Symbol Technologies' percentage of shares;

Essential requirements of a due diligence; and

The dispersal of capital.

The discussions between Symbol Technologies and “*Nkobi*” came to an end on 31 October 2000 when Dover wrote to Shaik and indicated that the proposal to acquire “*stock holding*” in “*Nkobi*” by Symbol Technologies had been put on hold by the Symbol Technologies board of directors¹⁴⁸⁷.

20.8.2 Presentation to ABSA

At a meeting, ostensibly held on 3 September 1999 between ABSA¹⁴⁸⁸, representatives of “*Nkobi*” and representatives of DS&T, of the relationship with Symbol Technologies was mentioned.

During this meeting and presentation to ABSA it was conveyed that focus in the biometrics industry, specifically under the technology interests of Nkobi, was an area of importance. It was noted that an agreement had been reached with the United States entity styled Symbol Technologies, whereby a new company would be formed and into which Symbol Technologies would reverse its South African operation, and into which “*Nkobi*” would bring a R150 million contract over 5 years through the driving licence project. The new entity and the alleged 50% shareholding by “*Nkobi*” would have been used as a “*catalyst*” for its intended listing on the JSE.

The contract that is referred to allegedly emanated from the initial contract with the Department of Transport for the Supply and Personalisation of Drivers' Licence Cards¹⁴⁸⁹. There was no agreement at the time and the contract of R150 million, referred to, could not be located by us. Considering the circumstances as well as the fact that, during the subsequent years, the Nkobi

¹⁴⁸⁶ Refer to 20 0347 (0000071985 Box 64)

¹⁴⁸⁷ Refer to 20 0348 (80 13725 Box 138)

¹⁴⁸⁸ Refer to 20 0249-352 (000071217 to 0000071220 Box 59)

¹⁴⁸⁹ Refer to 20 0353 (paragraph 20.5 and 0000072041 Box 64)

group did not supply the intended number of card verification devices, we have reason to believe that the contract never existed.

The meeting with ABSA was held at the time when discussions took place at board level in Prodiba, where the issue of the supply of the first 500 devices was considered. It was unclear at that stage whether Prodiba would be in a position to increase the price of the devices and the estimated loss for the supply of the devices was stated at R3 300 000. A further estimated 15 000 devices were to be supplied to the Department of Transport and had Prodiba been forced to supply the devices at the tender prices, after taking into consideration escalation that may have been allowed, Prodiba estimated that the loss would be in the region of R99 660 000.

It has already been noted above that the negotiations with Symbol Technologies were discontinued during October 2000, when Symbol Technologies finally notified “*Nkobi*” that it would not consider continuing with the transaction. At the time, Kobitech was in the process of presenting projected valuations, for purposes of discussion with Symbol Technologies and Symbol Technologies had given an indication to Kobitech, in December 1999, of their intentions to perform a due diligence.

The presentation to ABSA should also be considered against the background when ABSA was reconsidering the facilities granted to the Nkobi group, as the Nkobi group results were not reflecting a favourable position¹⁴⁹⁰.

20.9 The results and financial position of Prodiba

20.9.1 1999 Financial Statements

The Director’s Report in the Prodiba financial statements for the thirteen months ended 31 March 1999 stated that production had only started on 2 March 1998, hence a thirteen-month financial year.

It was envisaged in the original business plan of Prodiba that the company required a fixed asset base amounting to R29 881 571, at the end of March 1999. The audited Financial Statements at this date, reflect a net fixed asset position of R27 903 240¹⁴⁹¹. Funding was required amounting

¹⁴⁹⁰

Refer to paragraph 21

¹⁴⁹¹

Refer to 20 0354 (000000713392-405 Box 60)

to R45 115 498. The financial statements reflect funding amounting to R44 773 581. This was split as follows:

Description	Amount R
IDC Loan Long Term portion	11 202 940
IDC Loan Short Term portion	4 578 240
Shareholder Loan – Face Technologies	9 685 654
Shareholder Loan – Nkobi Holdings	9 636 988
Shareholder Loan – Thompson (sic) SA	9 669 759
Total	R44 773 581

It is therefore clear that the company was capitalised and funded in line with the Business Plan as envisaged when the Business Plan was drafted.

The planned turnover for the period from inception of the business to 31 March 1999, amounts to R50 433 435¹⁴⁹². The cost of sales component, for the same period, amounts to R26 726 325, resulting in a planned gross profit of R23 707 110. Adjusting this amount by the required stock purchases in the business plan, a gross profit percentage of approximately 59% is derived. The financial statements reflect a turnover of R41 559 295 and cost of sales amounting to R16 667 977, indicating a gross margin of 59.8%.

According to the audited financial statements of Prodiba, Prodiba reported a loss for the thirteen-month period of some R1 868 763. It is therefore evident that Prodiba did not perform in line with the business plan, which indicated a dividend declaration at the end of March 1999 of R4 258 759 to shareholders. This would have been split equally, in amountsof R1 419 586 each.

Two of the main reasons for the unplanned underperformance were the additional provision for losses on the card verification devices and the decreased turnover, due to the fixed nature of the contract only being recognised in the future financial periods once the actual sales had been achieved.

¹⁴⁹²

Refer to 20 0369 (DJ006150 Box 8, 7802189 Box 235)

20.9.2 2000 Annual Financial Statements

The 2000 comparative figures in the Income Statement were amended to reflect a net loss after tax amounting to R1 483 765¹⁴⁹³. The only adjustment reflected is the increase in a provision for taxation, amounting to R385 000.

Turnover amounting to R38 918 188 was recognised against the turnover expected in the business plan of R44 997 998. The net profit for the year ended 31 March 2000 was recognised at R1 724, against a net profit recorded in the business plan of some R3 813 461.

According to the business plan it was also planned to distribute the profits realised amounting to R3 813 461, as a dividend in that year. The lack of profitability of Prodiba did not warrant any distribution of dividends at the time.

The over-estimation of the dividend distribution then amounted to R8 072 220, which would have been equally distributed to the shareholders, amounting to R2 690 740 each.

The auditors signed the Annual Financial Statements for the year ended 31 March 2000 on 7 December 2000.

20.9.3 2001 Annual Financial Statements

We are in possession of a set of unsigned Annual Financial Statements of Prodiba for the year ended 31 March 2001¹⁴⁹⁴.

These reflect turnover amounting to R48 219 985¹⁴⁹⁵ and net profit amounting to R6 370 904¹⁴⁹⁶ after provision for taxation. The business plan for Prodiba reflected a turnover of R49 411 028¹⁴⁹⁷ and a net profit after taxation amounting to R5 745 852¹⁴⁹⁸. Dividends planned to be distributed amounted to R594 457¹⁴⁹⁹.

No dividend was recommended and accounted for in the Annual Financial Statements.

¹⁴⁹³ Refer to 20 0371 (7807075 Box 231)
¹⁴⁹⁴ Refer to 20 0396 (7807027 Box 231)
¹⁴⁹⁵ Refer to 20 0402 (7807033)
¹⁴⁹⁶ Refer to 20 0402 (7807033)
¹⁴⁹⁷ Refer to 20 0165
¹⁴⁹⁸ Refer to 20 0165
¹⁴⁹⁹ Refer to 20 0165

The accumulative under declaration of dividends compared to the business plan amounted to R8 666 677, which would have provided for dividends of R2 888 892 in respect of each shareholder.

20.9.4 Conclusion on Prodiba's financial position and trading results

It is evident from the above that Prodiba initially under-performed in relation to the business plan. It is only in the financial year ended 28 March 2001 that the entity traded in line with the planned turnover and exceeded the planned net profit after taxation. This still resulted in a non-declaration of dividends to shareholders.

The value of the shares in Prodiba is linked to the value of the possible future cashflow expected from the investments made. In this instance the value can only be attributed to the cashflow that would have been derived from the dividend declarations. It is therefore concluded that a revaluation of the shareholding in Prodiba would be without basis. Circumstances did not change that would have justified an upward valuation of the investment.

20.10 The creation of non-distributable reserves in the Nkobi group

20.10.1 Kobi IT (Previously Kobitrade)

The Annual Financial Statements of Kobi IT for the year ended 29 February 2000 reflect an amount of R3 500 000¹⁵⁰⁰ recorded under Non-current Assets. The relevant note to the Annual Financial Statements indicates that the workshare right was capitalised and would be amortised over the project life of three years with effect from the 2001 financial year¹⁵⁰¹. The value of the workshare right was reflected at cost.

It was furthermore noted that the directors had forecast the income on the initial workshare right of three years as being in excess of R10 million¹⁵⁰².

The asset was raised against a loan from Kobitech during 1999 that had no fixed date of repayment. The amount of the loan was R3 501 900¹⁵⁰³.

¹⁵⁰⁰ Refer to 21 0787 (78014244)

¹⁵⁰¹ Refer to 21 0788

¹⁵⁰² Refer to 20 0419 (0000072299 to 0000072305 Box 66)

¹⁵⁰³ Refer to 21 0795

No trading activities were reflected in the income statement for the duration of the existence of the entity during the period under review¹⁵⁰⁴.

Under the item Contingent Liabilities, it is noted that the company ceded its workshare to “*Thomson CFS (sic) Holding (Southern Africa)*” to secure facilities granted to a related company. The amount of the facility is reflected as R8 192 394 (R10 540 684 – 1999)¹⁵⁰⁵.

In the directors’ report for the same year it was recorded that the company had acquired the workshare right to provide staff to Prodiba¹⁵⁰⁶. No details of the workshare right are provided. However, it is evident from the manner in which the balance sheet reflects the item that it could only have been acquired from Kobitech.

The Cashflow Statement for the Annual Financial Statements at 29 February 2000 indicates, in the 1999 comparative figures, that a loan had been raised and that the funds had been applied to acquire a fixed asset¹⁵⁰⁷.

The auditors, DS&T, signed the Annual Financial Statements on 31 August 2000¹⁵⁰⁸. The same amounts were reflected in the comparative figures and these amounts remained unchanged in the subsequent financial years relevant to the period covered by this report.

We could not find any basis for the abovementioned entries in the accounting records. No agreements were in place and there is not a clear description of the actual workshare right that was disposed of. It is also evident, from a detailed analysis of the financial statements of Kobi IT for the duration of its existence covered by the report, that this entity remained dormant for the entire period. Should these transactions have been linked to a workshare right in Prodiba, it would have been transacted in the same manner as the balance of the entities that were providing services to Prodiba under the joint venture agreement.

It is therefore concluded that there was no basis for the entries and, as a result, the financial statements of Kobi IT do not represent the true and actual results and position of the entity. The

1504 Refer to 21 0793
1505 Refer to 210796
1506 Refer to 210795
1507 Refer to 210797
1508 Refer to 210792

annual financial statements for the years ended 28 February 1999, 2000, 2001¹⁵⁰⁹, 2002¹⁵¹⁰ and 2003¹⁵¹¹ are consequently misrepresented.

20.10.2 Kobitech

The Annual Financial Statements of Kobitech for the year ended 28 February 1999 reflect, in the balance sheet, under the item “*Investments*”, the loan to Kobi IT¹⁵¹². The total investment amounts to R3 502 000 and was detailed in the supporting note in the following manner:

Shares at cost – R100; and

Loan – R3 501 900¹⁵¹³.

The directors’ report recorded that Kobitech acquired a 100% interest in Kobi IT in that year¹⁵¹⁴.

The asset was raised against a loan from Kobifin in an amount of R3 500 000¹⁵¹⁵. The abovementioned items reflect transactions that were ostensibly entered into during the 1999 financial year. However, it is evident from the Cashflow Statement that these had not been accounted for in the cashflow reconciliation for that year.

It is evident from the review of the financial statements of Kobitech that the company, apart from the item described above, had an asset, which was the advance of the funds to Prodiba against the loan obtained from Thomson-CSF Holding (SA)¹⁵¹⁶.

The only revenue generated by the company was the interest earned on the advance as a shareholders’ loan to Prodiba, which was countered by the interest paid on the amount owing to Thomson-CSF Holding (SA). The loan to Kobi IT, as described above, did not attract any interest.

We are aware of the potential sale of shares in Nkobi Investments to Symbol Technologies. A detailed account of the facts surrounding the potential sale of shares in Kobitech, namely, 26% to Symbol Technologies, has already been provided. This transaction did not materialise. Negotiations for the transaction took place over a number of months, at least from 3 June 1999

1509	Refer to 210784
1510	Refer to 210778
1511	Refer to 210772
1512	Refer to 21 1032 (0000071353)
1513	Refer to 21 1032 (0000071353)
1514	Refer to 21 1028 (0000071351)
1515	Refer to 21 1031 (0000071350)
1516	Refer to paragraph 20.6.4

to October 2000, with a final sales price of US\$2 000 000 presented to Symbol Technologies, being eventually turned down. It is clear from the analysis performed by us that the negotiations and the possibility of the sale of the shares would not have had an effect on the value of the investment in Prodiba. It would therefore be incorrect to increase the value of the investment by Kobitech in Prodiba on the strength of the negotiations with Symbol Technologies¹⁵¹⁷. All indications are that the negotiations commenced during the period subsequent to the 28 February 1999 year-end of Kobitech, the year when the transactions were accounted for.

It is therefore assumed that the items reflected in the balance sheet as described above, relate to the items reflected in the balance sheet of Kobi IT in respect of which we concluded that there was no basis for the recognition of the items and hence a misrepresentation of the financial position of Kobi IT. Consequently, we conclude that the financial statements of Kobitech also misrepresented the position of the company by reflecting the balances as discussed above. These items remained in the balance sheets of Kobitech for the years ended 28 February 1999, 2000¹⁵¹⁸, 2001¹⁵¹⁹, 2002¹⁵²⁰ and 2003¹⁵²¹.

In addition to the above there was a revaluation of the investment in Prodiba, amounting to R3 000 000¹⁵²². This revaluation was reflected against the Non-distributable Reserve. The auditors prepared the entry in the records of Kobitech during the annual audit that was completed in November 1999¹⁵²³. This valuation was increased by another R5 000 000 during the year ended 29 February 2000. This increased the investment in Prodiba, through the revaluation, to R8 500 000, spread over the two years 1999 to 2000.

The Annual Financial Statements for the year ended 29 February 2000 reflect the same position as that reflected as in the 1999 Annual Financial Statements.

Again, as in the prior year, Kobitech did not reflect operating results other than the interest received from Prodiba.

The audit file for the financial year ended 28 February 1999 was reviewed and it is evident that the auditor did not perform any work on the revaluation of the shareholding in Prodiba, or on

¹⁵¹⁷ Refer to paragraph 20.7
¹⁵¹⁸ Refer to 21 1007 (018334)
¹⁵¹⁹ Refer to 21 1007 (018334)
¹⁵²⁰ Refer to 21 0998 (018244)
¹⁵²¹ Refer to 21 0987 (018137)
¹⁵²² Refer to 21 1029 (0000071349)
¹⁵²³ Refer to 20 0426 (0000071381 Box 60)

the loan to Kobi IT. It was stated in the audit file of Kobifin that the inter company loan had been agreed. The auditor of Kobitech was DS&T. The audit file for the financial year ended 29 February 2000 could not be located; hence no investigation could be performed on the audit for that year.

The sale position was reflected in the balance sheets of the subsequent years.

The value of the shares in Prodiba is linked to the value of the possible future cashflow expected from the investments made. In this instance, the value can only be attributed to the cashflow that would have been derived from the dividend declarations. It is therefore concluded that a revaluation of the shareholding in Prodiba by any of the parties on a basis other than with reference to cashflows from dividend declarations was without a valid basis. Circumstances that would have resulted in a different value being placed on the investment did not arise. Consequently, we could not find any basis for the increase in the value of the shares and conclude that the financial position of Kobitech was misrepresented by the increased valuations in the various annual financial statements as at 28 February 1999, 2000, 2001, 2002 and 2003.

20.10.3 Kobifin

A letter from DS&T to Nkobi Holdings, dated 17 January 2000, indicates that at a previous meeting it was decided that Kobifin would sell its workshare right to Kobi IT for R3 500 000¹⁵²⁴. DS&T requested that a sale and purchase agreement be drawn up by an attorney and that the disposal of the Kobifin workshare right be resolved to the terms of the Prodiba shareholders agreement taking precedence over the loan agreement with Thomsons SA, which had restrictions in terms of the disposal of the workshare and the investment.

The annual financial statements of Kobifin for the year ended 29 February 2000 reflect, in the comparative figures of the income statement, an amount of R3 500 000 as “*Capital Surplus on Disposal of Workshare*”¹⁵²⁵. An amount of R1 282 027 was written off against the so-called “*surplus*” in the Income Statement, whereafter the net amount, ie, R2 217 972 was transferred to the Non-Distributable-Reserve. The costs, written off, are dealt with elsewhere in this report¹⁵²⁶.

¹⁵²⁴ Refer to 20 0427-429 (0070853 to 0070855 Box 56)

¹⁵²⁵ Refer to 20 0685 (018428)

¹⁵²⁶ Refer to paragraph 21.4

A memorandum, dated 24 March 2000, from Paruk to Gering indicates that a sale agreement had to be drawn up regarding the disposal of Kobifin's workshare right to Kobi IT¹⁵²⁷. Paruk indicated that he had seen a draft agreement, but not a final copy. Gering also indicated that his biggest problem was whether Kobifin had the right to dispose of the workshare right and whether there were any restrictions in terms of the shareholders agreement.

We could not locate any agreement relating to the sale of the workshare right.

The auditor, DS&T, prepared the entry accounting for the "*Capital Surplus on the Disposal of Workshare*" during the annual audit¹⁵²⁸. This was accounted for against the loan to Kobitech. The only audit work performed on the loan was to agree the amount to the inter company balance¹⁵²⁹. No other audit work seems to have been performed on this item.

The workshare sold is not defined in the Annual Financial Statements, but it is assumed that the amount relates to the items described above.

The income statement for Kobifin reflects revenue in years, 1999 and 2000, as R4 716 163 (1999)¹⁵³⁰ and R5 758 272 (2000)¹⁵³¹. These amounts were agreed to the general ledger that reflects a record of transactions entered into by the company as required by Section 284 of the Companies Act. A summary of the sources of the revenue, reflected in the general ledger, is as follows:

Description	2000 R	1999 R
Prodiba	5 561 355	4 716 163
Trenwick	29 520	-
Sub-contractors	167 397	-
Total	R5 758 272	R4 716 163

It is evident from the above table that Prodiba was the main source of income for Kobifin and that the profitability of the entity for the two financial years 1999 and 2000 was solely

¹⁵²⁷ Refer to 20 0430-431 (86 1086 and 86 1087 Box 71)

¹⁵²⁸ Refer to 20 0432 (0000071783 Box 63)

¹⁵²⁹ Refer to 20 0433 (0000071806 Box 63)

¹⁵³⁰ Refer to 20 0704 (0000071685)

¹⁵³¹ Refer to 20 0685 (018428)

dependant on the performance of the company and the workshare obtained. The net profits for both years amount to R551 395¹⁵³² and R252 988¹⁵³³ respectively.

It is not possible to relate the amount of the Capital Surplus to a specific balance or expense item in the Annual Financial Statements. However, under the item “*Loans Receivable*” a balance of R5 153 916¹⁵³⁴ is reflected for the 1999 financial year and R5 280 402¹⁵³⁵ at 29 February 2000. This included the loan to Kobitech, described above, in the amount of R3 500 000.

The note to the item “*Loans Receivable*” in the balance sheet recorded that the loans were interest-free with no fixed date of repayment.

A review of the audit planning memorandum in the 1999 audit file revealed that the auditor was of the view that “*The Group is due for a bank review, the most favourable position will want to be depicted*”¹⁵³⁶. It was also indicated that the company was the main operating company of the group and that most of the cash movements “*start and end*” in Kobifin¹⁵³⁷. The audit planning memorandum is not dated but was signed off by the audit partner. However, it was indicated that the Annual Financial Statements were required on an urgent basis for the bank. Annual Financial Statements were to be issued at the end of November 1999.

The items described above are based upon the same assertions found in the Annual Financial Statements of Kobi IT and Kobitech. We have already demonstrated why those assertions could not be recognised in the annual Financial Statements of Kobi IT and Kobitech. It thus follows that the assertions in the Annual Financial Statements of Kobifin for the years ended 28 February 1999, 2000, 2001¹⁵³⁸, 2002¹⁵³⁹ and 2003¹⁵⁴⁰ cannot be recognised.

1532 Refer to 20 0704 (0000071685)

1533 Refer to 20 0685 (018428)

1534 Refer to 20 0703 (0000071683)

1535 Refer to 20 0684 (018421)

1536 Refer to 20 0434 (0000071757 Box 63)

1537 Refer to 20 0435 (0000071767 Box 63)

1538 Refer to 20 0681 (018424)

1539 Refer to 20 0666 (018293)

1540 Refer to 20 0651 (018190)

21 The financial position and performance of the Nkobi group

21.1 Introduction

The discovery of any further information as regards the cashflow management of the business would not have a material effect on our findings and conclusions listed in this part of the report.

Cashflow management, is a critical function to a business of this nature. It is a function that should be performed daily. It is evident from the information at our disposal that the group and senior management were required, literally on a daily basis, to attend to the cashflow management. It is evident that the Nkobi group relied mainly on the overdraft facilities of Kobitech during the period covered by this report. Kobitech was regarded as the main source of operating funds for:

The entire group;

Loans made to the directors; and

Other loans and *ad hoc* payments.

It is also evident that the payments made for and on behalf of Zuma had a material impact on the cashflows of the Nkobi group. The graphs drafted from the analysis of the daily transactions indicate that at times Kobitech's overdraft facilities were exceeded by the cumulative amount of payments made by the company for and on behalf of Zuma.

Without the cumulative payments made to Zuma, it can be concluded that the company could have been in a cash positive position for most of the period of existence of the group, if not the entire period. It is thus concluded that the payments made for and on behalf of Zuma had a fundamental impact on the cash flow of the Nkobi group and at times threatened the existence of the business due to the consequent cashflow constraints.

21.2 Generally Accepted Accounting Practice

21.2.1 Introduction

It is not our intention to provide a full account of what is required by Generally Accepted Accounting Practice. However, we deem it necessary to provide a short introduction on the basic requirements. The Nkobi group is not a group of entities with complex accounting issues to be considered, consequently we do not elaborate on requirements which are not applicable.

We are aware of the fact that there were changes in the Accounting Statements subsequent to the period under review. The naming conventions of the Accounting Statements also changed. However, for simplicity and in order to avoid confusion we only referred to the Accounting Statements and terminology used during the period under review. The fact that the Accounting Statements were amended in the period subsequent to this report does not affect the findings and conclusions listed in this part of the report as well as the report as a whole.

Accounting Statements are prepared and issued by the South African Institute of Chartered Accountants. These are generally referred to as Accounting Statements. The purpose of Accounting Statements is to provide guidelines for the preparation and presentation of Annual Financial Statements. This ensures consistency and provides a base for the users of the Annual Financial Statements to properly evaluate the information presented. The statements are revised from time to time and new statements are issued as and when required.

We analysed the Annual Financial Statements of the Nkobi group against the Accounting Statements that were applicable at the time, relevant to the periods covered.

We observed that all of the Annual Financial Statements were prepared on a historical cost basis.

We analysed certain classes of the transactions and the presentation thereof in the Annual Financial Statements of the Nkobi group against that provided for in terms of Generally Accepted Accounting Practice. In order to provide a basic understanding of the terms we include extracts and commentary from the Framework for the Preparation of Financial Statements in the paragraphs that follow.

21.2.2 Framework for the Preparation and Presentation of Financial Statements

The Framework for the Preparation and Presentation of Financial Statements is contained in an Accounting Statement, generally referred to as AC000¹⁵⁴¹. It is stated in the introduction to AC000 that the principle objective is “*To establish and procure the recognition and acceptance of what the Board considers is or should be generally accepted accounting practice.*” The Board referred to is the Board of the International Accounting Standards Committee.

¹⁵⁴¹ Refer to 21 0001-22 (Accounting Statement 000)

AC000 is neither a statement of generally accepted accounting practice nor an accounting guideline, but a framework, which sets out the objectives and concepts that underlie the preparation of financial statements. It has the objective of meeting the common needs for most users. This is because nearly all users make economic decisions, based on information presented in the financial statements.

The users of financial statements include:

Investors;

Employees;

Lenders;

Suppliers and other trade creditors;

Customers;

Government and their agencies; and

The public.

It is generally accepted that it is the primary responsibility of management to prepare and present the financial statements. AC000 goes further and states, *“The reporting of such information, however, is beyond the scope of this framework. Nevertheless, published financial statements are based on the information used by management about the financial position, performance and changes in financial position of the enterprise.”*

21.2.3 Underlying assumptions

There are two Underlying Assumptions namely, the Accrual Basis and Going Concern.

Under the Accrual Basis *“...the effects of the transactions and other events are recognised when they occur (and not as cash or its equivalent is received or paid) and they are recorded in the accounting records and reported in the financial statements of the periods to which they relate.”*

Under the Going Concern Basis, financial statements are normally prepared on the assumption that an enterprise is a going concern and will continue operations for the foreseeable future.

21.2.4 Qualitative characteristics

The qualitative characteristics of financial statements are attributes that make the information provided in the financial statements useful to the users. There are four principal qualitative characteristics and these are:

Understandability

This provides for the information that is reflected in the financial statements to be readily understandable;

Relevance

This provides for information to be relevant to the decision-making process of the users. It has relevance when it would influence the users' decision-making process in order to help them to evaluate the past, present or future events or confirming, or correcting their past evaluations;

Materiality

The relevance of financial information is affected by its nature and materiality. In some cases the nature of the information alone is sufficient to determine its relevance. Information is material when its omission or misstatement could influence the economic decisions of users taken on the basis of the financial statements. It depends on the size of the item or error judged in the particular circumstances of its omission or misstatement;

Reliability

This ensures that the information reflected in the financial statements is reliable. Information is reliable *“when it is free from material error and bias and can be depended upon by the users to represent faithfully that which it either purports to represent or could reasonably be expected to represent”*. The following should be considered when determining whether the information is reliable or not:

- **Faithful representation.** *“To be reliable, information must represent faithfully the transactions and other events it either purports to represent or could reasonably be expected to represent.”*

- **Substance over form.** It is important that transactions are accounted for and presented in accordance with their substance and economic reality and not merely in their legal form. The substance of transactions is not always consistent with its apparent legal or contrived form. The following example is presented in AC000. Where “...an enterprise may dispose of an asset to another party in such a way that the documentation purports to pass legal ownership to that party; nevertheless, agreements may exist that ensure that the enterprise continues to enjoy the future economic benefits embodied in the asset. In such circumstances, the reporting of a sale would not represent faithfully the transaction entered into (if indeed there was a transaction).”
- **Neutrality.** The information should be presented neutrally and free from bias. “Financial statements are not neutral if, by selection or presentation of information, they influence the making of a decision or judgement in order to achieve a predetermined result or outcome.”
- **Prudence.** The parties responsible for the preparation of financial statements “...do, however, have to contend with the uncertainties that inevitably surround many events and circumstances, such as collectability of doubtful receivables, the probable useful life of plant and equipment and the number of warranty claims that may occur.” Prudence is the inclusion of a degree of caution in the exercise of the judgements needed in making the estimates required under the conditions of uncertainty, such that “...assets or income are not overstated and liabilities or expenses are not understated”
- **Completeness.** The financial statements must be complete within the bounds of materiality and cost. “An omission can cause information to be false or misleading and thus unreliable and deficient in terms of its relevance.”

Comparability

This enables users to compare financial statements of an enterprise through time in order to identify trends in its financial position and performance.

21.2.5 Elements of Financial Statements

The financial statements are prepared on the basis of portraying the financial effects of transactions and other events by grouping them into broad classes according to their economic characteristics. The broad classes are termed the financial elements of the financial statements.

AC000 further states, *“The elements directly related to the financial position are the assets, liabilities and equity. The elements directly related to the measurement of performance in the income statement are income and expenses”*.

21.2.5.1 Financial position

The financial position is determined by the combination of the:

Assets;

Liabilities; and

Equity.

Assets are defined as *“...the resource controlled by the enterprise as a result of past events and from which future economic benefits are expected to flow to the enterprise”*.

Liabilities are defined as *“...a present obligation of the enterprise arising from past events, the settlement of which is expected to result in an outflow from the enterprise of resources embodying economic benefits.”*

Equity is defined as the *“...residual interest in the assets of the enterprise after deducting all its liabilities.”*

21.2.5.2 Performance

Profits are used as the measurement of performance. The elements that are directly associated with the measurement of performance are:

Income; and

Expenditure.

Income is defined by AC000 as *“...increases in economic benefits during the accounting period in the form of inflows or enhancements of the assets or decreases of liabilities that result in increases in equity, other than those relating to contributions from equity participants.”*

Expenses are defined in AC000 as *“...decreases in economic benefits during the accounting period in the form of outflows or depletions of assets or incurrences (sic) of liabilities that result in decreases in equity participants.”*

21.2.5.3 Capital Maintenance Adjustments

The revaluation or restatement of assets and liabilities gives rise to increases or decreases in equity.

21.2.6 Recognition of the Elements of Financial Statements

This is the process of incorporating in the balance sheet or the income statement an item that meets the definition of an element of the financial statements. This involves the depiction of the item in words and by the monetary inclusion of the item in the balance sheet or income statement totals.

Items that satisfy the recognition criteria should be recognised, the failure to recognise such items “*...is not rectified by disclosure of the accounting policies used nor by notes or explanatory material.*” An item should be recognised if “*(a) it is probable that any future economic benefit associated with the item will flow to or from the enterprise; and (b) the item has a cost or value that can be measured with reliability*”.

21.3 General observations – Annual Financial Statements

We were requested to and performed a detailed analysis of the Annual Financial Statements of the Nkobi group. A generally accepted method to do so would be an analysis of the Group Annual Financial Statements. Under normal circumstances, this would reflect the group’s performance and financial position for the period under review and consequently also the respective financial position at year end (usually the financial year end).

In the present case, this would not be the most effective method and would furthermore not reflect the positions and results as expected when financial statements are presented, based on the principles of Generally Accepted Accounting Practice. We noted various discrepancies in the application of what is referred to as Generally Accepted Accounting Practice. It is not our intention to deal with each of the deviations as they are not relevant to the current investigation. Relevant to the current investigation is the accurate reflection of the group performance and position as far as this is possible. We were required to analyse the individual Annual Financial Statements in order to determine the actual content as opposed to the disclosed content.

Areas that generally affected the accuracy of what the financial statements purport to be reflecting are:

- Inconsistent classification and disclosure of related party transactions and balances, including the balances and transactions of Shaik. In some cases the balances are disclosed as current assets and/or liabilities and in others, long term liabilities. This affects the ability to not only understand the real content of the underlying assets and liabilities, its recoverability and ownership, but also the ability to accurately determine the solvency and liquidity of the group;
- Failure to reflect related party transactions and balances resulted in the inability to eliminate group related balances on consolidation, namely when a group company, Kobitech, owes a certain amount of money to Kobifin and the liability is reflected in the Annual Financial Statements of Kobitech as a “*Long Term Liability*” (without specifying and identifying the related party) and in the Annual Financial Statements of Kobifin the amount owing to Kobifin is reflected as a “*Current Loan*” or “*Amount Receivable*” under current assets (again without specifying and identifying the related party), the Annual Financial Statements become meaningless. Firstly, one is not in a position to identify related party balances in order to eliminate the same when the two companies are viewed together and, secondly, the liquidity of Kobifin is unduly improved with a consequential improvement of the Kobitech solvency position. This was required in order to manipulate the position of the group as a whole as well as the individual companies in order to reflect an acceptable financial position;
- Inconsistent classification of related party balances in different asset categories as disclosed in the Annual Financial Statements made the comparative figures redundant and meaningless, again affecting the ability to accurately determine the real position of the group as well as its underlying entities;
- There is an instance where “fictitious assets” had been created through a series of transactions against the creation of a “*Non-Distributable-Reserve*”. This provided the opportunity to write-off *inter alia* payments made to and on behalf of Zuma as so-called “*Development Costs*”. This was subsequently rectified and parts of the transactions reversed when the Nkobi group and its auditors were questioned by the NPA during its investigations. This required one of the restatements of the Annual Financial Statements that

occurred in the Nkobi group. The write-off and the creation of the reserve is dealt with elsewhere in this report¹⁵⁴²; and

- Inconsistent consolidation of companies forming part of the group. This means that in some cases, Annual Financial Statements were consolidated, when it had a positive effect on the position and results of a particular year end and in some, when the effect was negative, the Annual Financial Statements had been excluded from the consolidation.

The abovementioned areas of Annual Financial Statement manipulation mainly resulted in the reflection of an apparent improved financial position of a group that generally struggled from a liquidity point of view. This was also reflected in the detailed cashflow analyses that we have performed¹⁵⁴³.

The liquidity of an entity or group of entities is reflected in its ability to settle and realise its short term liabilities and assets. This is a strong indicator for financiers both, long- and short term, in order to determine the risks associated with financing decisions. It was therefore essential for the Nkobi group to reflect “good” sets of Annual Financial Statements. One of the material assets that the Nkobi group had, especially in the latter years of its existence, was the loan account of Shaik ie Shaik owed the group of companies a substantial amount of money, especially towards the end of the period under review. His loan balance was mainly affected by the payments made to and on behalf of Zuma that again, amounted to a substantial amount of money.

It was general practice to allocate, transfer and reflect the amounts paid to and on behalf of Zuma, by Nkobi group companies as part of this loan balance. Generally this would have had an impact on the recoverability of the loans of Shaik, considering that there was a general pattern of non-repayment of such loans from Shaik and or the Nkobi group to and/or on behalf of Zuma.

It is our conclusion that Shaik, particularly in the latter years, did not have the means on his own to fund the payments to Zuma and that the Nkobi group had to fund such payments made. Shaik in essence used the Nkobi group as his alter ego.

The doubtful recoverability of the “loans” (if it could be regarded as a loan) to Zuma and the confusion created in the reflection of the information in the Annual Financial Statements of the Nkobi group is furthermore confirmed by the fact that the Nkobi group at some point viewed

¹⁵⁴² Refer to paragraph 21.4

¹⁵⁴³ Refer to paragraph 21.7

such payments as “*Development Costs*” for the group. If those amounts were loans to Zuma from Shaik, the question arises as to the reasons for the group viewing the same as an asset in the form of “*Development Costs*”, thereby affecting the real nature of such payments and the accounting conclusion is that at least then the amounts paid to and on behalf of Zuma were not loans from Shaik or the Nkobi group but rather expenses incurred in the development of the business.

21.4 General observations – Accounting records

We reviewed the accounting records of the various entities and established that the practice generally applied, was to prepare accounting records reflecting the various source transactions, namely cash payments and receipts, whereafter the auditors were presented with a trial balance. The auditors, throughout the conducting of the audit, would prepare certain adjusting entries. In some instances the adjusting entries were not processed in the accounting records of the entities. This resulted in a situation whereby the closing balances, in the accounting records of the respective entities, did not correspond with the opening balances in the following year. In some instances the accounting records of the entities were not properly closed at year end. It is however clear that there was close liaison between the auditors and the directors of the Nkobi group, and especially with Shaik.

The accounting records that were seized during the official searches conducted by the Investigating Team did not correspond with the audited Annual Financial Statements. We were therefore required to reconstruct the accounting records, using a combination of the latest available accounting records, the auditors’ working papers and the Annual Financial Statements, as our sources, in order to determine, as far as possible the actual entries that should have been processed to reflect the information in the Annual Financial Statements.

21.5 Development cost write off

During the 1999 financial year, an amount of R1 282 027.63 was written off against the development cost account in the books of Kobifin. The amount of R1 282 027.63 was then transferred, in total, to the Non-Distributable-Reserve account in Kobifin’s accounting records. This Non-Distributable-Reserve account was created as a result of a “*sale of workshare rights*”

of the Prodiba Project¹⁵⁴⁴. The other side of this revaluation was a debit entry to the Kobi-IT Loan account.

The effect of this series of transactions was to write-off development expenses, apparently incurred on the Prodiba Project, against a Non-Distributable-Reserve.

The total amount of R1 282 027.63 was debited to the Development expense account with the corresponding credits being passed against several loan accounts as detailed below:

- “*Clegton Investments Loan Account*” was credited with an amount of R198 167.40;
- “*Floryn Investments Loan Account*” was credited with an amount of R347 159.50; and
- “*Shaik Loan Account*” was credited with an amount of R736 700.73.

The Nkobi group then realised substantial losses through its operations and as a consequence had no distributable reserves. The creation of the Non-Distributable Reserve through the sale of a workshare right, as described in this report, created an opportunity whereby the loan accounts of Shaik and other entities could be and were written-off. This could be regarded as a distribution of dividends, which is contrary to the maintenance of capital requirements stipulated in the Companies Act. The way in which the loan accounts were written off as development costs is an indication that there was no intention to recover the items reflected in the respective loan accounts from Shaik and/or the affected entities.

21.6 Reversal of a portion of the Development Costs written-off

Following investigations conducted by the NPA, a series of events took place whereafter a portion of the amount written-off as so-called “Development Costs” was reversed in an attempt to regularize the incorrect and/or manipulative accounting entry.

An office copy of the 2002 financial statements for Kobifin in the 2002 audit file reflects a handwritten note styled: “*Amendments 08/09/03*”¹⁵⁴⁵. It therefore appears that the signed Annual Financial Statements of Kobifin for 2002 were only amended in September 2003 and that the date of signing the financial statements could not have been 1 October 2002 as indicated on the audit report and directors’ report. Archie Findlay prepared the Annual Financial Statements and I Basso checked the alterations. The audit report and directors’ report are both dated 1 October

¹⁵⁴⁴ Refer to paragraph 20.9
¹⁵⁴⁵ Refer to 22 0023 (870655)

2002. The Kobifin company register does not reflect the minutes of any meeting where the 2002 financial statements were tabled, approved and signed.

The above is furthermore supported by the fact that the 2002 consolidated Annual Financial Statements of Nkobi Holdings appearsto have been signed on 27 August 2003¹⁵⁴⁶. Note 24 of these Annual Financial Statements refer to the fundamental error in the Kobifin Annual Financial Statements.

The Kobifin Annual Financial Statements for the year ending 28 February 2002 reflect a note indicating a “*fundamental error*”¹⁵⁴⁷. It appears that Shaik signed the Annual Financial Statements on 1 October 2002.

Note 15 of these Annual Financial Statements indicate that the R964 868 development expenditure for the year ended 28 February 2002 had been re-allocated and that the comparative amounts had been restated. The re-allocation of the R964 868 increased the non-distributable reserve to R3 182 840. In the 1999 financial statements, R1 282 028 development costs had been written-off. Therefore, the re-allocation should have increased the non-distributable reserve to R3 500 000 indicating that only a portion of the original amount written-off was reversed.

In the 2003 financial statements, the non-distributable reserve is reflected as zero and the comparative amount is reflected as R3 500 000¹⁵⁴⁸.

A list of adjusting journal entries and explanations reflects that the R964 868 was determined as follows¹⁵⁴⁹:

Description	Amount R
Loan account – Floryn Investments	30 000.00
Loan account – Shaik	160 000.00
Loan account – Shaik	407 265.54
Loan account – Shaik	253 818.00

¹⁵⁴⁶ Refer to 21 0053 (018209)

¹⁵⁴⁷ Refer to 21 0085 (018200)

¹⁵⁴⁸ Refer to 21 0093 (018087)

¹⁵⁴⁹ Refer to 21 0107 (870721)

Loan account – JZ	35 667.98
Loan account – JZ	78 116.91
Total	964 868.43

The R30 000 allocated to the loan account for Floryn Investments appears to be a transfer made to “*TO Mlaba*” on 24 November 1998¹⁵⁵⁰.

A “*summary of adjustments*”¹⁵⁵¹ indicates that the R964 868.13 was calculated as follows:

Description	Amount R
Shaik – First adjustment	160 000.00
Shaik – First adjustment	78 116.91
Shaik – First adjustment	407 265.54
Shaik – Second adjustment	91 318.28
Sub-total	736 700.73
Clegton Investments – First adjustment	35 667.98
Clegton Investments – Second adjustment	162 499.42
Sub-total	198 167.40
Mlaba	30 000.00
Total	964 868.13

The abovementioned document reflects a date of printing as 23 September 2003.

Payments to or on behalf of Zuma in the amount of R283 451.16 were included in the original balances written-off. According to documentation available, the reversal affected the respective loan accounts as follows:

- “*Clegton Investments Loan Account*”
- “*Floryn Investments Loan Account*”

¹⁵⁵⁰ Refer to 21 0108 (87 0764)

¹⁵⁵¹ Refer to 21 0109 (87 0769)

- “*Shaik Loan Account*”

Only R113 784.89 of the payments identified to and on behalf of Zuma originally included in the write off in the amount of R283 451.16 formed part of the reversal. The balance of R169 666.27 remained as “Development Costs”.

The reversal in the amount of R968 868.84 was processed via two batches of accounting entries in the amount of R711 050.43 and R253 818.00 respectively. The journals processed to account for the reversal were as follows:

<i>Debit</i>	<i>0584/000</i>	<i>Loan Account - Floryn Investments</i>
	<i>R 30 000.00</i>	
<i>Debit</i>	<i>0590/000</i>	<i>Loan Account - Shaik</i>
	<i>R567 265.54</i>	
<i>Debit</i>	<i>0606/000</i>	<i>Loan Account - Zuma</i>
	<i>R113 784.89</i>	
Credit	0998/000	Contra Account for general journal
R711 050.43		
Debit	0998/000	Contra Account for general journal
R711 050.43		
Credit	0520/000	Retained Income/(Accumulated Loss)
R711 050.43		
Debit	0520/000	Retained Income/(Accumulated Loss)
R711 050.43		
Credit	0998/000	Contra Account for general journal
R711 050.43		
Debit	0998/000	Contra Account for general journal
R711 050.43		
<i>Credit</i>	<i>0530/000</i>	<i>Non Distributable Reserve</i>
	<i>R711 050.43</i>	

The effect of the abovementioned entries is a reversal of a total amount of R711 050.43 from the Non Distributable Reserve to the loan accounts of Floryn Investments R30 000.00 (the amount

Debit 0590/000 Loan Account - S. Shaik
R253 818.00

Debit	0999/000	Opening Balance/Suspense Account
R253 818.00		

Debit	0998/000	Contra Account for general journal
R253 818.00		

Debit	0520/000	Retained Income/ (Accumulated Loss)
R253 818.00		

Debit	0998/000	Contra Account for general journal
R253 818.00		

The effect of the abovementioned entries is a reversal of a total amount of R253 818 from the Non Distributable Reserve to the loan account of Shaik's, thereby increasing (restating) the balances owing by Shaik.

21.7 Approach adopted in the review of the Annual Financial Statements

For the reasons noted above, as well as the effect that the anomalies in the disclosures made, and accounting entries discussed, we deemed it necessary to deviate from the conventional method of analysing Annual Financial Statements.

In order to adopt a conservative method, we deemed all of the entities forming the group, as well as related companies, to be part of the Nkobi group. The effects on minority shareholders have been ignored and as a consequence all funding and applications thereof.

Our focus was mainly on the funding part of the balance sheets and then the application thereof. As is evident from the analyses, as well as the paragraph dealing with the cashflow of the Nkobi group, these were two of the main financial drivers.

We were required not only to use the information as disclosed in the Annual Financial Statements, but also to reconstruct and identify balances that have been grouped together as classes of assets and liabilities. The main purpose was to identify related party balances in order to eliminate these for purposes of obtaining a consolidated position. This exercise was completed using information from various sources, namely audit working papers, general ledgers, trial balances and internal notes and analyses compiled by Nkobi, when the respective Annual Financial Statements were prepared.

This exercise also assisted in the identification of understatements/overstatements of the positions during the period under review.

Detailed analyses were prepared for each of the entities and these are attached as Annexures¹⁵⁵². The information obtained from the individual analyses was then consolidated, from which extracts made¹⁵⁵³. The consolidated analyses were adjusted to reflect and eliminate related party transactions as well as to reflect undisclosed assets and liabilities.

The balances were then classified and grouped together in groups that were logical and assisted in the simplification and presentation of the positions as dealt with in this report. As mentioned earlier, we focussed on the funding part and then the application thereof.

Each of the years dealt with below, is for periods ending 28 February as this was the year end for each of the companies forming part of the Nkobi group.

¹⁵⁵² Refer to Annexures V
¹⁵⁵³ Refer to Annexure V

One general observation is that the equity contributions in each of the entities were limited to a nominal contribution, thereby limiting the exposure of the shareholders.

We prepared a set of graphs comprising two for each of the years ie representing the funding in each year and the application thereof.

21.7.1 Review of Annual Financial Statements – 1995 position

This is essentially the year when the Nkobi group was established. The group comprised a number of registered entities with very limited operations. Shaik was the main source of funding during this setup year, in the amount of R409 350.

The balance of the funding was obtained from operations (R14 062), which was the net funding, obtained from operating activities that were understandably limited.

Share capital of R200 and an increase in the overdraft (R43) comprised the balance of the funding that was obtained during 1995. A total of R423 655 of funds that was obtained.

The total funds amounting to R423 655 were applied to:

- Operating capital namely trade debtors etc – R153 591; and
- Fixed asset acquisitions adjusted by accumulated depreciation (non-cash items) – R205 350.

The balance of R64 714 of the funding obtained, mainly from Shaik, remained in the companies at year end.

21.7.2 Review of Annual Financial Statements – 1996 position

The funding for the financial year ending 28 February 1996 was obtained from operating capital (R308 361) and from operating income (R131 276). The group's overdraft increased by R262 and R950 was received from an associate company.

The funds available for application, namely R443 549, were applied to:

Fixed asset acquisitions, adjusted by accumulated depreciation for the year, in the amount of R285 967; and

Funding for Shaik in the amount of R134 421 in payments directly to him or for and/on behalf of Shaik;

The cash available to the group was R23 160.

21.7.3 Review of Annual Financial Statements – 1997 position

During the 1997 financial year the group's overdraft and long term liabilities were the main sources of funding amounting to R1 713 987. Shaik funded the group with amount of R123 669 and operating activities generated funding to the amount of R109 531.

The funds available were applied in acquiring assets, after taking depreciation into account, in the amount of R1 049 666 and investments in the amount of R40 200.

The funds available were also applied in funding the operations of the group in the amount of R826 347. The cash available was R34 075.

21.7.4 Review of Annual Financial Statements – 1998 position

The funding for the group during the 1998 financial year was obtained from the following:

Long term liabilities	- R694 816;
Overdraft	- R209 484;
Operating capital	- R206 493;

The sale of plant and equipment - R402 168; and

Share capital - R100

The funds available were utilised by the following:

Shaik - R225 826;

Operations - R691 062

The acquisition of an associated company - R517 430; and

Investments - R50.

The cash available was R78 692

21.7.5 Review of Annual Financial Statements – 1999 position

Funding during the 1999 financial year was mainly obtained from an associate company (R1 134 942) and operating capital (R2 993 890). The remainder of the funding was provided by shareholders (R1 450) and share capital (R2 000).

The funding obtained was utilised for the following:

The acquisition of assets, after depreciation, in the amount of R1 051 595;

Reducing the overdraft by R505 710;

Reducing the long term liabilities by R480 436;

The operations of the group in the amount of R677 912;

Loans to Shaik (R58 054) and Gama (R65 860); and

Investments in the amount of R500.

The cash available was R1 292 215.

21.7.6 Review of Annual Financial Statements – 2000 position

During the 2002 financial year the income from an associated company (R1 517 106) was the main generator of funding. The sale of investments generated R1 017 164 in funds and cash of R1 467 996 was generated.

The funds generated during the year, namely R4 002 266 were utilised for the following:

Funding the operating capital in the amount of R2 340 206;

Funding the operations in the amount of R598 823;

The provision of loans to Shaik (R398 751) and Gama (R191 413);

Reducing the overdraft by R155 223;

Reducing long term liabilities by R292 592; and

The acquisition of fixed assets in the amount of R21 659.

21.7.7 Review of Annual Financial Statements – 2001 position

The funding required during the 2001 financial year was generated by the following:

Sale of investments	-	R3 773 899;
Overdraft	-	R750 352;
Operations	-	R546 008;
An associate company	-	R275 281;
The sale of plant and equipment	-	R220 042; and
Share capital	-	R100.

The abovementioned funds were utilised to fund operating capital (R3 288 312), loans to Shaik (R1 604 034), loans to Gama (R254 345), loans to Isaacs (R9 100), a reduction in long term liabilities (R190 332) and loans to shareholders (R1 026). The cash available was R218 530.

21.7.8 Review of Annual Financial Statements – 2002 position

During the 2002 financial year funding for the group was generated by the sale of investments (R2 411 851), an increase in overdraft of R1 185 484, income from an associated company, an increase in long term liabilities, a repayment by Gama's of a loan (R485 936) and share capital of R200.

The funding generated was applied to the following:

Loans to Shaik	- R1 927 473;
Operations of the group	- R1 761 735;
The acquisition of assets	- R400 227;
The funding of operating capital	- R360 573; and
Loans to Isaacs	- R150 218.

The cash available was R233 610.

21.7.9 Review of Annual Financial Statements – 2003 position

During the 2003 financial year the group's funding was generated by the following:

Long term liabilities	-	R3 904 689;
Operating capital	-	R2 990 413;
Operations	-	R2 893 850;
Reserves created by investments	-	R1 515 699;
Shareholders funds	-	R1 076; and
Share capital	-	R400.

The funding available was utilised for the following:

The acquisition of fixed property in the amount of R4 963 190 (Shaik's residence);

The acquisition of fixed assets in the amount of R1 832 073;

Loans to Shaik in the amount of R1 508 491;
Loans to Gama in the amount of R1 067 081;
Loans to Isaacs in the amount of R332 582;
A reduction in the overdraft by R1 020 628; and
A reduction in the loan from an associated company by R301 723.
The cash available was R280 526.

21.7.10 Review of Annual Financial Statements – Draft 2004 position

An analysis of the draft financial statements for the year ending 28 February 2004 indicates that the group's funding was obtained from reserves created by investments (R2 141 830), operating capital in the amount of R1 528 614, an increase in overdraft of R1 274 117, the sale of plant and equipment of R76 346, long term liabilities of R274 179 and an increase in loans from an associate company.

The funding available was applied for the following:

Operations of the company	-	R2 493 776;
Loans to Shaik	-	R1 962 748;
Loans to Gama	-	R380 714;
Loans to Isaacs	-	R245 329;
Additions to fixed property	-	R212 974; and

A decrease in share capital of R100.

The cash available was R347 846.

21.8 Daily events in the management of cashflow

21.8.1 Background

We identified documents that resemble daily cashflow sheets. Some of the documents appear to be incomplete. These documents were apparently prepared, on a daily basis, to provide management with the actual cash position *versus* a projected cash position. The cashflow sheets also provided management with details of outstanding creditors. It is evident from the cashflow analyses that management regarded this as an important aspect in the management of the business. The daily cashflow analyses also reflected instances of payments that were made or which had been effected or due in respect of and for Zuma.

It is also evident that cashflow projections were prepared in advance for longer periods based on certain assumptions. Banks also required these for purposes of determining the risks associated with providing overdraft facilities.

We prepared detailed cashflow analyses, from the information we received from the banks, to determine and analyse the daily cash position of the individual companies and as the group. It is evident from the analyses that the group originally obtained finance from Nedbank in the period to July 1998, at which point the group obtained finance from ABSA as well. There was a period where both banks acted as financiers by providing overdraft facilities, not only to the group, but also to Shaik. All of the overdraft facilities that the group had from Nedbank were cleared during June 1999. Subsequent to June 1999, ABSA acted as the principal banker for the group and Shaik.

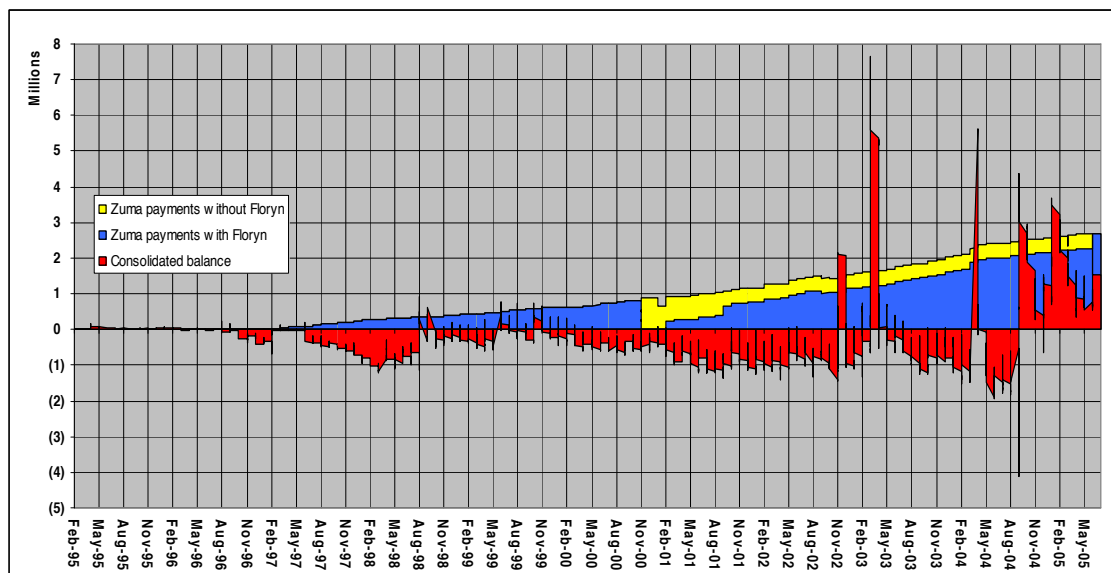
The paragraphs that follow provide factual information regarding the position that the group found itself in during the period when ABSA and Nedbank acted as bankers, namely to June 1999. We are in possession of various letters, memoranda and submissions effected to the said banks.

It is evident from the detailed cashflow analysis, represented in the graph below, and highlighted by the trend line, that the Nkobi group on aggregate entered into a cash negative position towards the middle of 1997. This position continued to deteriorate until the cash position was materially bolstered, in August 1998, by the prepayment of R1 million of future profits received from Prodiba¹⁵⁵⁴. (See peak in the net cash position). The payments from the sale of shares that Nkobi Investments held in Thomson-CSF to Thomson-CSF (France), for an amount of R500 000, and the sale of Kobitec, positively affected the cashflow position of the group by an amount of R700 000. It is evident from the graph that the group came under pressure during the period 1999 to 2001. (The periods where the balances show a material decrease below the zero line).

The group generally experienced a negative cash position for some time, until May 2004 whereafter the general cash position continued to reflect a positive position¹⁵⁵⁵.

There are periods when a net favourable cash balance is shown; those were for short periods whereafter the position deteriorated again.

¹⁵⁵⁴ Refer to paragraph 20
¹⁵⁵⁵ Refer to Annexure W



The general decline in the net cash resources for the group has a direct correlation with the amounts that we identified as having been paid for and on behalf of Zuma. The graph illustrates, it is evident that the cumulative effect of the payments made for and on behalf of Zuma had a fundamental effect on the business. As the cash balances of the Nkobi group decreased, the payments made for and on behalf of Zuma increased. But for the payments to and/or on behalf of Zuma, the group would have remained cash positive. It is thus evident that considering the position in which the group found itself, it did not have sufficient funds to provide the loans to Zuma (if it could be regarded as loans) without extending the cash negative position that endangered the existence of the group and or companies associated with the group. As a consequence the Nkobi group had to increasingly negotiate and defend its position with its bankers until such time as the Nkobi group's position improved through operating revenue obtained from its investments and other business interests.

21.8.2 Internal memoranda, correspondence and representations made

We are in possession of a document styled "*Nkobi group of companies, Application for Overdraft Facilities*"¹⁵⁵⁶. The operating companies mentioned in the document are Proconsult, Kobitech, Pro Con Africa and Chartley Investments, being wholly owned by Nkobi Investments. Information at our disposal indicates that Shaik, amongst others, had owned

¹⁵⁵⁶

Refer to 21 0110-114 and 21 0114 and 21 0115-21 0119 (80 02717 to 80 02721 and 80 02725 to 80 02729 Box 93)

Chartley Investments¹⁵⁵⁷. Chartley Investments is noted in this report as the group's management company, from which all company overheads were paid and which derived its income from management fees charged to the operating companies. Kobifin was excluded from this document. As Kobifin realised substantial losses at the time, and its inclusion in the document as a group company would have had a material impact on the solvency of the Nkobi group, as presented in the document. This would have impacted adversely on any application for facilities from the banking sector¹⁵⁵⁸.

The activities of the operating companies were described in brief in the document, indicating only some of the projects in which the Nkobi group was involved at the time. The total project values were stated without detailing the Nkobi group shares in the respective projects, these being substantially less than the total project value.

The application for overdraft facilities indicates that, up to the end of the 1997 financial year, the group operated through Nkobi Holdings and Pro Con Africa Consultants, indicating that the relevant sets of financial statements were attached. Under the heading "*SA Drivers Licence Contract*", it was *inter alia* mentioned that, as a result of the delayed involvement of Kobitech in the production years, the other shareholders had agreed to prepay R1 million of future profits to Kobitech during the setup year. It appears that Prodiba prepaid R1 million during August 1998, which had a temporary positive effect on the cashflow of the Nkobi group. The proposal to the bank, however, states that the prepayment was to occur towards the end of May 1997.

In a letter dated 5 March 1999 from Desai Jadwat Incorporated¹⁵⁵⁹, addressed to Shaik, a number of issues were raised. Significantly, the auditors noted that the 1998 financial statements of Kobifin, Pro Con Africa and Proconsult had not yet been released due to the fact that the auditors could not finalise the financial statements of the so-called operating companies, as the liabilities exceeded the assets of the companies at 28 February 1998. This meant that up to that point and prior to the release of the annual financial statements, the companies were technically insolvent and should not have continued to trade under insolvent circumstances, since this may have constituted a material irregularity. Such a situation would consequently have required the auditor to qualify his report.

¹⁵⁵⁷ Refer to Appendix 3

¹⁵⁵⁸ Refer to paragraph 21.7

¹⁵⁵⁹ Refer to 21 0120 (80 15995 Box 148)

In respect of the Annual Financial Statements of Proconsult for the year ending 28 February 1998, we noted that the financial statements had been issued and signed by the auditor on 30 November 1998. Shaik had also signed the directors' report on the same day¹⁵⁶⁰. The audit report reflects an unqualified audit opinion of the results and financial position of the company for the year ended 28 February 1998. Furthermore, the shareholders' equity was reflected as a net surplus of R2 603. The reason for the comment by the auditors in their letter dated 5 March 1999, regarding Proconsult is not clear as the company was not in an insolvent position and the financial statements were dated well before the letter from the auditors.

We are in possession of unsigned Annual Financial Statements for Kobifin and signed Annual Financial Statements for Pro Con Africa for the year ending 28 February 1998¹⁵⁶¹. Both these Annual Financial Statements contained notes in the auditors' report.

The note in the Annual Financial Statements of Kobifin reads: *"Without qualifying our audit report, we draw attention to the income statement which indicates that the company incurred a net loss amounting to R1 127 175 for the year ended 28 February 1998"*.

The note in the Annual Financial Statements of Pro Con Africa auditor's report, under the heading *"Going Concern"* is the following: *"Without qualifying our audit opinion we draw attention to the balance sheet which indicates that, after a loan creditor has subordinated its loan to the value of R214 518, the liabilities of the company exceeds its assets by R148 987."* The subordination of the loan was sufficient grounds for the auditor not to qualify his report. It is evident, from the detailed analysis of the audit working papers, as well as the accounting records of Pro Con Africa, that the so-called *"loan creditor"* was Shaik¹⁵⁶².

The auditor further stated in his letter that, in order to avoid an adverse opinion being expressed in the audit report, he would require management accounts for the group as at 30 November 1998 and group projections for the next three years. This would have placed the auditor in a position to determine whether, in the subsequent period, the profitability of the group would be such that the past losses would be recouped. The auditor indicated that, due to the late response by the Nkobi group, in particular Isaacs, as well as errors in the information prepared, a delay was caused in the issuing of the annual financial statements.

In a memorandum to Muiznieks and Isaacs on 8 March 1999 Shaik indicated that he intended to discuss the financial issues at a staff meeting¹⁵⁶³. We are in possession of the minutes of a

¹⁵⁶⁰ Refer to 21 0122-128 (DJ001422 to DJ001428Box 29)

¹⁵⁶¹ Refer to 21 0129-138 and 21 0139-148 (DJ 002482 to DJ002491 Box 23 and DJ 001315 to DJ001320 Box 45)

¹⁵⁶² Refer to 21 0149 (DJ 001031 Box 43)

¹⁵⁶³ Refer to 21 0150 (80 15994 Box 148)

“Financial Meeting” that was ostensibly held on 8 March 1999¹⁵⁶⁴. The meeting was attended by Ramsumer, Isaacs, Muiznieks and Shaik. Various issues were dealt with at the meeting. It is noted under the heading “*Release of February 1998 Financials by DJS*” that the release of the financial statements would be dependent on substantial profits, which were expected in respect of Kobifin.

It was recorded that, in the event of a substantial profit not being achieved, Nkobi Holdings would have had to subordinate the loan due from Kobifin. It was furthermore noted that in the case of Nkobi not being profitable, Nkobi would have a going concern problem and “*The outcome of the overdraft facilities by ABSA on the 9th March 1999 will determine this*”¹⁵⁶⁵.

On 9 March 1999 Muiznieks wrote to O’Neil at ABSA and confirmed the meeting of earlier that day¹⁵⁶⁶. She confirmed that ABSA required the following:

Audited financial statements for:

Pro Con Africa;

Proconsult;

Kobitech;

Nkobi Holdings;

Nkobi Investments; and

Star Corp.

No mention is made of the audited financial statements for the year ended 28 February 1998 of Kobifin. The meeting with ABSA took place one day after the “Financial Meeting”. An analysis of the consolidated accounts for the Nkobi group for the year ended 28 February 1998 indicates that the results of Kobifin were at least partially included in the consolidated accounts. This had the effect of improving the results of the group and, as a result, a net asset position was reflected that indicated the Nkobi group was not in a technically insolvent position¹⁵⁶⁷. Kobifin was, at the time, indebted to Nedbank through its current account by an amount exceeding R400 000.

¹⁵⁶⁴ Refer to 21 0151-153 (80 15991 to 80 15993 Box 148)

¹⁵⁶⁵ Refer to paragraph 13

¹⁵⁶⁶ Refer to 21 0154(80 02730 Box 93)

¹⁵⁶⁷ Refer to paragraph 21.2

Signed management accounts be submitted for the above entities for January 1999;

Signed cashflows for Kobitech be submitted from March 1999 to September 1999;

A letter of comfort to be submitted, stating that the overdraft would be settled before any payments would be made to the “Thomson’s” loan, together with a relevant directors’ resolution. This would appear to be contrary to the terms agreed with Thomson-CSF Holding (SA) whereby advanced a principal amount of R9 014 258 to Kobitech, in terms whereof, Kobifin recognised the debt of Kobitech. That, in the event that Kobitech defaults on payments due in respect of the principal debt, Thomson-CSF Holding (SA) would be paid any amounts due to Kobifin in terms of work provided to Prodiba¹⁵⁶⁸;

Cession of debtors be effected to the bank; and

The personal assets and liabilities of Shaik to be finalised by the auditor.

It was also confirmed that there was mutual understanding that the deadline was “*tight*” to obtain approval for the overdraft facility of R450 000 by the end of March 1999. It was indicated that in the meantime, the facility of R275 000 would be used until the end of March. Muiznieks also undertook to keep ABSA updated as to the repayments that would be effected.

It is assumed that the overdraft facility by Muiznieks referred to was that granted to Kobitech by ABSA, as that was the main account used by the Nkobi group to effect payments at that time. The balance of the overdraft at 9 March 1999 amounted to R352 352.96¹⁵⁶⁹. We identified payments that at that point had been made for and/or on behalf of Zuma¹⁵⁷⁰ amounting to R484 491.09¹⁵⁷¹.

In an internal memorandum to Shaik dated 15 March 1999¹⁵⁷², Muiznieks had dealt with various issues under the heading “*Issues of Concern*”. Muiznieks had indicated the deadline confirmed with the bank but due to a lack of feedback from, *inter alia*, Shaik, she had expressed her concern that the deadline would not be met.

It appears from a further memorandum from Muiznieks, dated 21 April 1999¹⁵⁷³, that representatives of the Nkobi group had at least one meeting with the bank between 9 March

¹⁵⁶⁸ Refer to paragraph 20.6.4

¹⁵⁶⁹ Refer to Annexure W

¹⁵⁷⁰ Refer to paragraph 11

¹⁵⁷¹ Refer to Annexure A

¹⁵⁷² Refer to 21 0156-157 (80 15645 and 80 15646 Box 148)

¹⁵⁷³ Refer to 21 0158, 21 0174-21 0179 (80 02700, 80 02717 to 80 02729 Box 93)

1999 and 17 April 1999. In this memorandum Muiznieks indicated various points of concern regarding the accuracy of, and responsibility for preparation of, the documents for ABSA and noted that some of the figures had been incorrectly stated. It is not clear as to the actual information submitted to ABSA and on what date such submission had been made.

On 11 May 1999¹⁵⁷⁴ Isaacs wrote to Allan Norman of ABSA and indicated that, since the submission to ABSA, two more investment opportunities had presented themselves to Nkobi Holdings. The one project mentioned was the Kosi Bay Hotel Development. This project is not dealt with in this report as from the information at our disposal it is apparent that the involvement of the Nkobi group in the project never materialised during the period covered by this report. Isaacs stated that Nkobi Holdings would require R8.4 million in funding for a 20% stake and undertook to present details of the project and financial projections to ABSA. The second opportunity mentioned was an offer by London's Club to invest in a casino development in Gauteng. This project, as with the previous one, is also not dealt with in this report. Neither of these opportunities materialised and, as a consequence, did not have an effect on the funding of the Nkobi group.

It is evident from the cash focus report, dated 10 May 1999, extracted by the accounts personnel of Nkobi group from the direct online access to the ABSA systems, that the overdraft facility of Kobitech, the main account of the group, amounted to R450 000¹⁵⁷⁵. The cash focus reports are reports generated from the ABSA system and reflect online live information regarding the bank balances at any point in time. It is thus clear that the overdraft facility had been increased from the previous limit of R275 000 to the new limit of R450 000. The Kobitech overdraft, at 10 May 1999, amounted to R384 309.52¹⁵⁷⁶ leaving an available balance on the facility of R65 690.48. Payments made to and on behalf of Zuma to this date amounted to R527 440.74¹⁵⁷⁷.

On 3 June 1999 Shaik wrote to Allan Norman of ABSA Bank¹⁵⁷⁸ and addressed the issue of funding requirements for the Kosi Bay Hotel Development. He indicated that the partners in the resort were awaiting a response. He also indicated that he, Shaik, was awaiting a response from the bank regarding the recapitalisation of the group, based on company documentation submitted. We not have been able to establish which documents had been submitted.

¹⁵⁷⁴ Refer to 21 0180-181 (80 02698 and 80 02699 Box 93)

¹⁵⁷⁵ Refer to 21 0182 (80 01707 Box 85)

¹⁵⁷⁶ Refer to 21 01707 (80 01707 Box 85 and Annexure W)

¹⁵⁷⁷ Refer to Annexure A

¹⁵⁷⁸ Refer to 21 0184 (80 02696 Box 93)

On 7 June 1999¹⁵⁷⁹ Muiznieks forwarded another memorandum to Shaik captioned “*Cashflow Crisis*”. She attached a draft cashflow of the Nkobi group for June 1999 to December 1999 for Shaik to evaluate. The group was faced with a situation where it owed the South African Revenue Service an amount of R776 183.50 and a further amount for, *inter alia*, sundry creditors of R676 249. Included in the amount of sundry creditors was an amount of R450 000 of PAYE estimated to be due in respect of the previous year¹⁵⁸⁰. The forecast at 17 June 1999 indicated an available facility of R323 785.50. Considering the effect of the creditors that had not been paid and/or paid by means of post-dated cheques, it is clear that, although a favourable position was indicated as facility available, the Nkobi group was experiencing a cashflow crisis at the time. The actual cash balance of Kobitech at the time amounted to R5 157.16¹⁵⁸¹

We identified payments made for and on behalf of Zuma of R545 723.06 being up to 15 June 1999¹⁵⁸².

Muiznieks indicated, in the abovementioned memorandum,¹⁵⁸³ that the bank had approved the overdraft facilities up to 30 August 1999 and that the Nkobi group would need to negotiate with “*Raymond*” for an extension of this date. She also indicated that the Nkobi group “...*seriously need to restructure and to obtain operating business and not just investments. If you want to go the investment route which brings in revenue via dividends and not monthly operational income we seriously need to downsize the group.*”

This statement is contrary to the description of the Nkobi group, provided to the banks. It is, however, possible that Muiznieks had an erroneous understanding of the operations of the group as it is evident, that the Nkobi group was providing services, albeit to a limited extent, to some of the projects in which it was involved. It is also clear that the reliance on the Prodiba revenue, in the form of dividends, and the dividends that would become payable via Thomson-CSF as a result of the investment in ADS, were critical for the business of the Nkobi group.

The cash forecast was updated at 24 June 1999 and forwarded by Muiznieks to Gama by fax for his review¹⁵⁸⁴. The forecast projected an overdraft facility available, amounting to R352 290.58. Again, it is apparent from the forecast that a material amount of creditor payments had been delayed, mainly due to the unavailability of cash resources.

¹⁵⁷⁹ Refer to 21 0185-186 (80 15965 to 80 15966 Box 148)
¹⁵⁸⁰ Refer to 21 0187 (80 01673 Box 85)
¹⁵⁸¹ Refer to 21 0188 (80 01672 Box 85 and Annexure W)
¹⁵⁸² Refer to Annexure A
¹⁵⁸³ Refer to 21 0186 (80 15966 Box 227 Box 148)
¹⁵⁸⁴ Refer to 21 0189-192 (80 15921 to 80 15924 Box 148)

The issue of funding for the Kosi Bay Development was again raised during a meeting with ABSA, in particular by Norman. It is evident from a letter, dated 8 July 1999, addressed to Norman, that the Nkobi group were still awaiting an answer from the bank¹⁵⁸⁵. A further need for possible funding was raised regarding financing of the N3TC, where it was claimed that the Nkobi group would be entitled to subscribe to a 12% shareholding that was on offer. The return date for the offer appears to have been 16 July 1999.

Muiznieks wrote to Gama again on 29 July 1999¹⁵⁸⁶. In this memorandum, which is captioned “*Overdraft*”, she made mention of the various factors that had been considered in compiling the forecast. She had excluded the monies due from Thomson-CSF (France) for the sale of the 10% shareholding of Nkobi Investments in Thomson-CSF Holding(SA). The amount indicated was R500 000. Muiznieks indicated that it was imperative that the R500 000 from “*Thomsons*” be received, and that despite such a receipt Nkobi would still be in overdraft at the end of August 1999.

Muiznieks reminded Gama that the overdraft facility expired at the end of August 1999. A net amount available on the overdraft facility of R83 947.36 was expected,¹⁵⁸⁷ after the retention of a material number of creditor payments that were due.

We identified payments amounting to R592 893.37 that had been effected made to or on behalf of Zuma up to 29 July 1999¹⁵⁸⁸.

Shaik once again addressed the issue of the recapitalisation of the Nkobi group in his letter to Norman of ABSA dated 4 August 1999¹⁵⁸⁹. In this letter mention was made of some of the matters raised by Norman in a telephone discussion that they had had earlier that day. He indicated that he was “*heartened*” by certain of the matters but “*saddened*” by others, in particular the issue of Stocks & Stocks and Murray & Roberts. No details were provided. This letter was also sent to Bosman, Clarke and O’Neil as representatives of ABSA.

Shaik’s letter was followed by a draft mandate letter, dated 10 August 1999, dealing with the recapitalisation of Nkobi Holdings, mandating ABSA Corporate Bank to raise at least

¹⁵⁸⁵ Refer to 21 0193 (80 02691 Box 93)
¹⁵⁸⁶ Refer to 21 0194 (80 15840 Box 148)
¹⁵⁸⁷ Refer to 21 1096 (80 15844 Box 148)
¹⁵⁸⁸ Refer to Annexure A
¹⁵⁸⁹ Refer to 21 0197 (80 02690 Box 93)

R50 million¹⁵⁹⁰. There are no indications that the mandate was ever finalised or that ABSA Corporate Bank implemented the terms of the draft mandate.

Muiznieks wrote to Shaik, on 11 August 1999 and advised that the overdraft amounted to R393 744.25¹⁵⁹¹, before accounting for cheques already issued of some R47 459.64, which would have resulted in an overdraft of R441 693.89 (sic). She also indicated that liabilities for the previous month, which had not yet been settled, amounted to R114 686.30. Kobitech was stretched to its limit in the utilisation of the overdraft facilities of R450 000 available to it at that time. From our analysis of payments made to and on behalf of Zuma, it is evident that payments of at least R590 373.37¹⁵⁹² had been made to this date.

It is apparent that there were various attempts, both from the Nkobi group side and ABSA Bank, to meet in the period immediately following the previous meeting. A letter dated 27 August 1999, prepared under the name of Shaik¹⁵⁹³, referred to a letter from ABSA Bank dated 24 August 1999. Reference was made to the Kobitech overdraft facility. Four options were presented to the bank regarding the cash situation. In the last option, which is a forecast to the end of August 2000, Shaik indicated that the company would have been cash positive at the end of September 1999, but that this would be dependent on the timing of the receipt of the funds from “Thomsons”, namely, an amount of R500 000. The arrear creditors, as well as the amount then due to the South African Revenue Service, were not reflected in this forecast.

Notes of a meeting, held with ABSA on 3 September 1999, reflect various aspects of the status of the Nkobi group at the time¹⁵⁹⁴. The meeting had been convened to discuss various funding options for the Nkobi group. It is clear that the group realised that the diversity of operations, in which the group was involved at the time, required a more focused approach to reduce the level of diversification. Shaik indicated that the areas of focus would be:

Technology;

Leisure Industry; and

¹⁵⁹⁰ Refer to 21 0198-202 (80 02685 to 80 02689 Box 93)
¹⁵⁹¹ Refer to 21 0203-204 (80 15825 to 80 15827 Box 148)
¹⁵⁹² Refer to Annexure A
¹⁵⁹³ Refer to 21 0206 (80 02670 Box 93)
¹⁵⁹⁴ Refer to 21 0208 (00000071217 Box 59)

Professional Services.

Technology

It was envisaged that the biometrics industry, specifically under the technology interests of Nkobi, was an area of importance. It was noted that an agreement had been reached with Symbol Technologies in terms whereof a new company would be formed into and which Symbol Technologies would reverse its South African operations, and into which Nkobi would bring a R150 million contract over 5 years through the drivers licence project. The new entity and the alleged 50% shareholding by Nkobi would have been used as a “*catalyst*” for its intended listing.

Mention was also made of “*Toll Technologies*”, which was identified as a limited opportunity, due to slow growth, in respect of private funding initiatives on South African roads.

Nkobi’s involvement together with Thomson-CSF, in the defence sector, through ADS, with the award of a R2 billion contract for the integration of the Combat Suites for the Corvettes, was mentioned as another area in which Nkobi held an interest. It was then envisaged that Nkobi would dispose of this interest due to the limited scope in the defence sector. The position would be evaluated once the contract negotiations and profitability studies had been concluded. The target date for this was set as end October 1999.

Leisure industry

The target market set by the Nkobi group was in unique signature hotels. Mention was made of an agreement that had been concluded with General Hotel Management (Singapore), who allegedly managed the Amman resorts under contract, with the intention of building local capacity in hotel management skills. Resorts that were identified were Kosi Bay, Game Reserves etc.

Professional services

It was envisaged that the “division” would benefit from both the leisure division as well as the privatisation of roads and prisons. Work share in the form of engineering consulting services, hotel management and facilities management would have been obtained on the projects mentioned. This would have allowed Nkobi, to not only act as an investor in the projects, but

also to build capacity in the subsidiary operating companies. The operating companies were not identified in this document.

An area that was identified as an opportunity with potential was in rural electrification projects. It was stated that Eskom had allocated a budget of R800 million, of which R100 million was earmarked for Previously Disadvantaged Individuals. Nkobi were at that stage looking for partners to be involved in this project. Mention was made of Pro Con Africa Consultants, a subsidiary of the Nkobi group.

Funding options

Four areas of potential funding had been identified by ABSA at the time, namely:

Institutional listing, which was not regarded as a recommended route at the time, as listings were limited for small companies;

Private Equity Funds, but the Nkobi group was rated as a group of companies that did not fit the criteria of ABSA at the time, namely low risk and high returns. The return criteria was set at 35% after tax;

Debt funding, which was not recommended by ABSA; and

Funding of individual transactions, where projects would be individually evaluated and funded.

It was indicated that this method would not address the immediate funding requirements.

It is clear from the contents of the abovementioned meeting and discussions reflected in the minutes, that the Nkobi group had, at the time, been involved in a diverse number of opportunities, some of which had been realised in the form of contracts or potential contracts and others that were at an embryonic stage of development. Due to the low level of returns on the current projects against the background of, *inter alia*, a substantial amount of payments made to and on behalf of Zuma, the group found it difficult to source the required funding.

On 16 September 1999 Muiznieks sent a memorandum to Gama and Shaik¹⁵⁹⁵. It appears from the memorandum that the cashflow forecast for September 1999 onwards had been attached to the memorandum. In this memorandum she stated that it “...*indicates a potential overdraft until June 2000 of next year*” and furthermore that “...*the forecast is not good...*” and “...*this will bring us back to our original situation in which the overdraft is with us for a long time.*” The

¹⁵⁹⁵

Refer to 21 0212(80 15795 Box 148)

memorandum had been drafted shortly after the letter from Shaik, dated 27 August 1999 to the bank, in which he had indicated that Kobitech should be out of overdraft by the end of September 1999.

All indications are that ABSA temporarily extended the overdraft for another period, pending the presentation of certain information due on 10 November 1999¹⁵⁹⁶. Muiznieks wrote to Shaik and Gama again. She indicated that the auditor of the Nkobi group “...*should be ready to discuss the final accounts and the consolidation options with you and Paul.*” She also mentioned that the overdraft would expire on 15 November 1999 and that she had spoken to O’Neil, who had indicated that he had given the Nkobi group an extension until the end of December 1999. This extension was dependent, however, on the bank being presented with draft accounts and a 12-month cashflow by the end of November 1999.

Of particular significance was a note by Muiznieks to the effect that the consolidated company “...*is still in an insolvency situation as it was last year. The finalising of these accounts is important and many decisions are going to be required by you, and Paul to ensure a good set of accounts is drawn up. I bring this to your attention, as these accounts are critical for the extension of the overdraft. Colin has informed me that the Symbols deal seems to be going well but it seems likely that it will only take place in Jan 2000...*”

The extension of the overdraft facilities was apparently confirmed by ABSA on 10 November 1999¹⁵⁹⁷, and that the overdraft facility of R450 000 was extended to and would be reviewed on 31 December 1999.

We were not able to locate any documentation indicating that the extension of the overdraft was officially confirmed by ABSA on the strength of presentations from the Nkobi group. It appears however, that the overdraft facility was subsequently extended and increased to an amount of R750 000. This was confirmed by the cash focus report, dated 29 March 2000¹⁵⁹⁸.

¹⁵⁹⁶ Refer to 21 0213-214(80 12163 to 80 12164 Box 135)

¹⁵⁹⁷ Refer to 21 0215-217 (80 02654 to 80 02656 Box 93)

¹⁵⁹⁸ Refer to 21 0218 (80 07287 Box 116)

On 26 June 2000 Isaacs applied for an extension of the overdraft facility with ABSA¹⁵⁹⁹. In this letter application was made for the extension of the facility to R750 000. According to this letter, the facility would have terminated at the end of June 2000. Isaacs also made mention of the Symbol Technologies transaction that had not yet been concluded, as the draft purchase and sale agreement was still being discussed.

As stated above, the transaction was still being considered by Symbol Technologies¹⁶⁰⁰. Furthermore, Isaacs indicated and confirmed that the Nkobi group had sold its interest in Kobitech, for which it was to be paid as follows:

R70 000 at the end of June 2000;

R210 000 at the end of July. (The letter indicates an amount of R2 100 000, which is incorrect as the selling price amounted to R700 000);

R210 000 at the end of September 2000; and

R210 000 at the end of December 2000.

It appears that ABSA decreased the overdraft facility during the period 26 June 2000 and 31 July 2000, as on 31 July 2000 Isaacs wrote to ABSA¹⁶⁰¹ and referred to a discussion that had taken place earlier that day regarding the decrease of the facility from R750 000 to R540 000. He indicated that the proposal of the Nkobi group had been an extension of the facility of R750 000 until 30 September 2000. Thereafter it would decrease to R540 000 until end of October 2000, and then by a further R90 000. No further changes in the level of the overdraft facility took place between 26 June 2000 and 2 May 2001, when ABSA wrote to Kobitech. O'Neil, the ABSA Business Banker, and Madgwick, General Manager, Business Centre – KwaZulu-Natal, signed this letter. The letter indicates that the overdraft balance at that stage was R1 000 131, well over the authorised limit of R750 000¹⁶⁰². Reference was made to various telephone conversations regarding the status of the account and the bank informed Kobitech that the position had become unacceptable. Kobitech was requested to rectify the position within 7 days. It was also requested that no further cheques be issued.

¹⁵⁹⁹ Refer to 21 0219 (80 13769 Box 139)

¹⁶⁰⁰ Refer to paragraph 20.7

¹⁶⁰¹ Refer to 21 0220 (80 13767 Box 139)

¹⁶⁰² Refer to 21 0221 (80 13784 Box 139)

We identified payments made for and on behalf of Zuma¹⁶⁰³ aggregating at least R789 056.19 at this point in time¹⁶⁰⁴.

Lechman, of the Nkobi group, sent a letter on the same day, on an Nkobi Holdings letterhead, to ABSA Business Centre¹⁶⁰⁵. He provided a list of invoices that had been issued from February 2001 to April 2001. It is not clear whether Lechman was aware of the abovementioned restrictive letter from ABSA regarding Kobitech, sent on the same day to Shaik. Lechman sent another letter to ABSA Business Centre on 2 May 2001¹⁶⁰⁶. In this letter he requested the bank to stop payment to the auditors amounting to R25 000.

On 2 May 2001 Shaik wrote to ABSA Business Centre¹⁶⁰⁷. He referred to a telephone discussion that had taken place earlier that day as well as a letter from Nkobi Holdings sent to the bank earlier that day. It is assumed that this was a reference to the Lechman letter discussed above. Shaik indicated that Nkobi had performed an analysis of the account and it had become evident that, for a ten month period, the total debits that cleared the account amounted to R10 249 259.37, compared to the total credits of R9 960 412.56. This would have reflected a net increase in overdraft of R288 846.81. He went further to identify abnormal payments that had been made. These were listed as follows:

R170 000, being the guarantee provided to N3TC for the SOS contract awarded to the Nkobi group;

A net amount of R385 000 paid to the National Gambling Board. Part of this was a refund of probity fees at the request of the Nkobi group, had been paid into the trust account of the auditors. The amount refunded had been R250 000. Shaik pointed out that the funds were in trust and that Nkobi were contesting the award;

The application for a gambling license had been made in the name of an entity styled Malini. This was another project in which the Nkobi group had attempted to become involved. We could not confirm that the entity had been registered but we are aware of the

¹⁶⁰³ Refer to paragraph 11
¹⁶⁰⁴ Refer to Annexure A
¹⁶⁰⁵ Refer to 21 0222 (80 13783 Box 139)
¹⁶⁰⁶ Refer to 21 0223 (8013781 Box 139)
¹⁶⁰⁷ Refer to 21 0224 (80 15469 to 80 15470 Box 147)

fact that the auditors assisted Nkobi group to acquire a shelf company for this purpose¹⁶⁰⁸; and

R400 000, being ten payments of R40 000 each, made to Planet Finance Company, in settlement of a R1 million loan, which the Nkobi group had had with that institution.

Shaik indicated that R420 000 of the abnormal payments were therefore refundable. We are, however, in possession of the Corporate Saver bank account statement into which the R250 000 had been deposited¹⁶⁰⁹. It is evident that the deposit had been made on 26 April 2001 and that the funds had been withdrawn as follows:

7 May 2001 – Kobitech – R108 000;

11 May 2001 – Kobitech – R102 000;

19 June 2001 – Kobitech – R15 000; and

19 June 2001 – S Shaik – R25 000.

We have confirmed that the amounts were transferred back to the account of Kobitech. It is, however, clear that in the case of the first transfer, the account balance again exceeded the limit.

Shaik also indicated that the revenue streams of the Nkobi group increased substantially due to additional projects that had been undertaken and that revenue would increase in the foreseeable future but, due to the time lag between the revenue streams and expenses incurred, the group would require an increase in the overdraft to an amount of R1.2 million. It was suggested by Shaik that the overdraft be reviewed on a six monthly basis.

On 11 June 2001 ABSA wrote to the directors of Kobitech¹⁶¹⁰. In this letter O’Neil of ABSA confirmed the overdraft facility of Kobitech at a level of R1 500 000. It was indicated that the facilities would be reviewed on an annual basis and that a date of 15 October 2001 had been set for the first review. He indicated that the following documents should be submitted to the bank prior to the review date:

The audited Annual Financial Statements of the Company prepared in accordance with Generally Accepted Accounting Practice;

¹⁶⁰⁸ Refer to 21 0226(80 07218 Box 116)

¹⁶⁰⁹ Refer to 21 0227-228 (80 15469 to 80 15470 Box 147)

¹⁶¹⁰ Refer to 21 0229-230 (80 15461 to 80 15462Box 147)

Cashflow projections;

Outstanding debtors age analysis;

Statement of assets and liabilities of the directors; and

Any other information reasonably requested by the bank.

It was also confirmed that the overdraft would be decreased by R300 000 on 31 August 2001 to a total of R1 200 000.

Kobitech was in overdraft at 11 June 2001 to an extent of approximately R600 000 and reflected an overdraft of approximately R540 000 at the end of August 2001¹⁶¹¹. We identified payments made for and on behalf of Zuma totalling R1 266 425.66¹⁶¹² as at 11 June 2001 and R1 348 842.28¹⁶¹³ at the end of August 2001.

We were not able to identify any further communications and records containing material information relative to the cashflow management of the company after June 2001. It would appear that the records obtained by the investigating team do not cover all events that took place in the subsequent periods.

¹⁶¹¹ Refer to Annexure W

¹⁶¹² Refer to Annexure A

¹⁶¹³ Refer to Annexure A

22 Financial position of Shaik

22.1 Introduction

Shaik's own financial position was illiquid and an inability to fund his own lifestyle. Shaik had to rely on the funding ability of the Nkobi group. His tangible assets were all encumbered and did not carry a residual potential for liquid funds. Most of his perceived assets were vested in shares that he held in Star Corp (the Nkobi group), which is reflected at directors' valuation.

Shaik was not in a financial position to fund the payments to and on behalf of Zuma and he had to rely extensively on the assistance and funding ability of the Nkobi group. This ability was created through a range of activities, particularly the commercial bankers, to obtain the required finance. There were also instances where Shaik had to rely on funding from his associates in business to obtain such funding. There are no indications that Shaik attempted to recover such "loans" from Zuma, even as at the date of this report.

Instances occurred where his "loans" to Zuma were understated on his statements of assets and liabilities and income tax returns. The understatement could, *inter alia*, be as a result of:

Insufficient and incomplete record keeping of payments made to and on behalf of Zuma; and/or

Certain payments made to and on behalf of Zuma that could have been deemed as expenses or donations, instead of having been capitalised as a loan to Zuma.

22.2 Assets and liabilities

22.2.1 Periods prior to 28 February 2002

On 9 December 1997 Standard Bank filed a claim against Shaik for an overdue amount of R77 881.55¹⁶¹⁴. Interest on the outstanding amount was to be charged from 25 November 1997, at a rate of 19.25% per year. The claim was signed by Standard Bank's attorney on 3 December 1997.

On 5 May 1998 Goodrickes Attorneys sent a fax to Shaik¹⁶¹⁵, reflecting:

¹⁶¹⁴ Refer to 22 0001-220005 (80 04151-5 Box 98)
¹⁶¹⁵ Refer to 22 0006 (80 04126 Box 98)

“We advise that Standard Bank has informed us that your next instalment has not been met. They have however advised that you have requested settlement figures which they have furnished you with.

Kindly advise by return whether you are in fact going to pay or what you intend doing about the instalment that has not been met.”

Letters were sent from Standard Bank to Shaik, dated 15 May 1998 and 16 September 1998, to remind him that payment on his garage card (account *REDACTED*) was overdue, by R156.00 and R10.03 respectively¹⁶¹⁶.

On 23 October 2000 Blake & Associates wrote to Shaik to inform him that his Standard Bank account would in future be administered by Blake & Associates, and that an amount of R33 776.75 was outstanding¹⁶¹⁷.

On 13 January 2000 ABSA bank sent a letter to Shaik, confirming an overdraft facility of R30 000 and a credit card facility of R30 000¹⁶¹⁸. Shaik signed acknowledgement of receipt of the letter and confirmation of terms and conditions on 18 January 2000. At this stage Shaik's ABSA cheque account (account number *REDACTED*) was overdrawn by R57 828.63¹⁶¹⁹

On 4 July 2000 Standard Bank wrote to Shaik regarding his current account (account number *REDACTED*), which was in overdraft to an amount of R33 776.75, and stated that:

“With reference to the above matter we note that there have been no deposits since May 1998. You were liaising with Anusha Singh from our offices, whereby you advised that you had repaid the debt in full. Anusha Singh requested proof of payment from yourself and to date we have not received same. We have also left numerous messages for you to contact us but to no avail.

*We request you to contact us urgently to discuss repayment arrangements. Should you not do so we will have no alternative but to proceed with legal action.”*¹⁶²⁰

A service agreement was signed between Shaik and ABSA Private Bank 16 March 2001¹⁶²¹. From notes in ABSA files indicate this was a strategic decision because Shaik was the Financial Advisor of Zuma. ABSA Private Bank client acceptance documentation records that: “Mr. Shaik

¹⁶¹⁶ Refer to 22 0007-8 (80 04139 and 80 04139# Box 98)

¹⁶¹⁷ Refer to 22 0009 (80 04150A Box 98)

¹⁶¹⁸ Refer to 22 0010-13 (100 004405-8 Box Box Z0226)

¹⁶¹⁹ Refer to 22 0014 (012096 File 35)

¹⁶²⁰ Refer to 22 0015 (80 04159 Box 98)

¹⁶²¹ Refer to 22 0016-18 (990067-9 Box 0)

holds P.O.A for vice president Jacob Zuma i.t.o all financial matters. Mr Nallie Bosman identified V-P Zuma as a strategic client¹⁶²². Notes made by the credit manager¹⁶²³ indicate that ABSA Private Bank originally declined Shaik as a client, and that he could not recommend approval of the facility, based on:

A high risk rating; and

15 unauthorised excesses of the limit in 12 months.

On 15 May 2001 the bank informed Shaik that his overdraft limit of R30 000 had been approved and that the balance would attract interest at prime plus 5%¹⁶²⁴. The balance of his cheque account (number *REDACTED*) on this date was R37 146.08¹⁶²⁵. A deposit of R28 000, comprising of two Kobitech cheques for R20 000 and R8 000, was made into the account on 16 May 2001. At this stage the Kobitech account (number *REDACTED*) was overdrawn by R1 031 513.94¹⁶²⁶.

A letter dated 4 June 2001 from Gerhard Madgwick at ABSA Business Centre to ABSA Private Bank reflects the following under the heading: “Accounts Zuma & Shaik”¹⁶²⁷

“I gather from your letter that you are concerned about the abovementioned accounts and suggest that you transfer them back to us with immediate effect...”

Shaik’s bank statements reflected the following balances for taxation periods ending on 28 February:

Date	ABSA *REDACTED*	ABSA REDACTED	Nedbank *REDACTED*	Standard Bank REDACTED	Total R
1997	-	-	(121 451.35)	-	(121 451.35)
1998	-	-	(89 307.89)	(72 820.93)	(162 128.82)
1999	(28 106.46)	-	(106.73)	(26 907.43)	(55 120.62)
2000	(33 866.10)	2 024.16	-	(29 580.26)	(61 422.20)

¹⁶²² Refer to 22 0019 (990018 Box 0)

¹⁶²³ Refer to 22 0020-22 and 22 0023 and 22 0024-25 (990019-22 and 23-25 Box 0)

¹⁶²⁴ Refer to 22 0026-27 (990265-6 Box 0)

¹⁶²⁵ Refer to 22 0028 (012127 File 35)

¹⁶²⁶ Refer to 22 0029 (006714 File 15)

¹⁶²⁷ Refer to 22 0030 (990002 Box 0)

2001	(9 903.36)	2 079.62	-	-	(7 823.74)
2002	(23 050.53)	-	-	-	(23 050.53)
2003	20 000.00	-	-	-	20 000.00
2004	5 116.84	-	-	-	5 116.84
2005	28 000.41	-	-	-	28 000.41

On 26 July 2001 Shaik signed a statement of assets and liabilities as at 30 June 2001¹⁶²⁸. This indicated a net asset position of R9 355 245. Assets were reflected as:

Investment in shares in the amount of R8 712 495, comprising of:

Shares in Starcorp	R8 344 995;
Shares in Murray & Roberts Limited	R67 500; and
Shares in Clegton Investments	R300 000.

Motor vehicles in the amount of R300 000;

Household effects in the amount of R300 000; and

Jewellery in the amount of R50 000.

This document does not reflect any amounts due to Shaik by Zuma or any amounts payable by Shaik to group companies.

ABSA credit application documentation, dated 27 July 2001, indicated that Shaik was rated as a high-risk client with no tangible security¹⁶²⁹. It was also noted that Shaik did not meet the criteria to be an ABSA Private Bank client.

A handwritten note by Madgwick, dated 4 March 2002, indicates that Shaik's accounts have been moved from Private Bank back to the ABSA Business Centre¹⁶³⁰.

¹⁶²⁸ Refer to 22 0031 (990225 Box 0)

¹⁶²⁹ Refer to 22 0032-38 (990210-6 Box 0)

¹⁶³⁰ Refer to 22 0039 (990316 Box 0)

22.2.2 Year ended 28 February 2003

We located two statements of assets and liabilities for Shaik relating to the period ending 28 February 2003. There are notable differences between the two statements. The most material difference is the fact that in the one, investments are listed at cost as opposed to the second statement of assets and liabilities, reflecting investments at market value.

The second of the notable differences is the fact that the loan account for Zuma is reflected in the one as amounts to R1 715 433 and in the second R1 059 466. A difference of R655 967 is noted between the two balances.

A review of the financial information for both Shaik and the Nkobi group indicated that the recordkeeping was poor, especially with regards to the so-called Zuma loan account and that that amount reflected as owing by Zuma (per the general ledgers) cannot be relied upon. The discrepancy between the two statements is an indication of the confusion that was created by the recordkeeping. As a consequence neither Shaik nor the Nkobi group could, from the information in the accounting records, determine the exact amount that Zuma owes to Shaik and or the Nkobi group (if it was so that the amounts were to be considered as loans). We deal with the respective statements of assets and liabilities below.

A statement of assets and liabilities for Shaik as at 28 February 2003 reflects a net liability position of R5 312 813¹⁶³¹. Shaik's assets were reflected as:

Investment in shares in the amount of R92 100 comprising of :

Shares in Starcorp	R1 000;
Shares in Murray & Roberts Limited	R90 100; and
Shares in Kobiprop	R1 000.

Household effects in the amount of R390 995;

Jewellery in the amount of R50 000; and

ABSA current account in the amount of R2 000.

Shaik's liabilities are reflected to be R5 847 908, being the net of "*Loan account Kobifin (Pty) Ltd*" of R7 563 341, and "*Loan Receivable JZ Including Interest*" of R1 715 433.

¹⁶³¹ Refer to 22 0040 (123 006306 Box Z289)

Another statement of assets and liabilities for Shaik, reflecting information as at 28 February 2003 and 28 February 2004, indicated a net asset position of R24 528 267 on 28 February 2003 and R23 283 888 on 28 February 2004¹⁶³². In respect of 2003, the following was reflected:

- “*Loan Receivable JZ including interest*” of R1 059 446; and
- Shaik’s loan account from Kobifin of R5 301 786.

In an e-mail sent on 29 June 2005, from Gering to Lechman, Gering commented that: “*I have reviewed the draft 2003 income tax return of Mr Schabir Shaik as prepared by yourself.*

The schedule of assets and liabilities as at 28 February 2003 has been prepared on the basis of their valuation.

Kindly update this schedule as at 28 February 2003 on the basis of the cost of those assets.

*There is no mention in these assets and liabilities of a loan made to Jacob Zuma.”*¹⁶³³

Considering the comments by Gering together with the statement of assets and liabilities discussed above, the existence of a third statement of assets and liabilities cannot be excluded. The statement that Gering reviewed excluded the so-called loan account to Zuma. This is the statement that Shaik intended presenting to SARS.

In a letter from DS&T to Shaik, dated 25 July 2005, Gering again advised that assets and liabilities should have been shown at historical cost¹⁶³⁴. The fact that the statement of assets and liabilities prepared by Shaik, was on the basis of a valuation of assets and liabilities, resulted in the net asset value position as opposed to a net liability position reflected in the prior years. DS&T attached an updated statement of assets and liabilities for 2004.¹⁶³⁵ This statement, based on historical cost, is discussed in subsequent paragraphs in this report.

In Shaik’s personal income tax return for the period 1 March 2002 to 28 February 2003, reference was made to an attached schedule of assets and liabilities section of the return¹⁶³⁶. The attached schedule reflects:

¹⁶³² Refer to 22 0041 (100 009779 Box Z047)

¹⁶³³ Refer to 22 0042 (123 006332 Box Z289)

¹⁶³⁴ Refer to 22 0043-44 (100 009748-9 Box Z047)

¹⁶³⁵ Refer to 22 0045 (100 009750 Box Z047)

¹⁶³⁶ Refer to 22 0046-22 0059 specifically 22 0057 (100 009799-812, specifically 100 009810 Box Z047)

Shares in private companies of R1 100;
Listed financial instruments of R125 100;
Debtors of R1 059 446 (ostensibly the loan to Zuma);
Cash of R20 000;
Furniture of R379 300;
Personal effects of R50 000; and
A loan account liability of R4 833 188¹⁶³⁷.

Shaik's employees tax certificate for the period ended 28 February 2003 reflected income received from Kobifin of R231 896.42¹⁶³⁸. This comprised of a salary amounting to R101 252.87 and the use of a motor vehicle in the amount of R130 643.55.

Total payments made to and on behalf of Zuma up to 28 February 2003 amounted to R2 273 540.81, excluding interest. An undated document entitled "*Schabir Shaik loan account to J Zuma including interest*" (hereafter referred to as the "loan calculation"), reflects amounts due to Shaik by Zuma, based on an applied interest rate of prime plus 2%.¹⁶³⁹ This loan calculation document reflects an amount receivable from Zuma of R898 596.96 excluding interest and R1 059 445.82 including interest. Total payments made to and on behalf of Zuma exceeded the debtors reflected on the statement of assets and liabilities, ostensibly the loan to Zuma excluding interest, by R1 374 943.85.

Shaik's bank statements reflect a balance of R20 000 in account *REDACTED* on 28 February 2003. On 1 March 2003, a debit order for the bond in respect of Kobiprop was processed, debiting Shaik's account with an amount of R40 555.

Shaik had signed a Kobitech shareholders resolution dated 3 September 2002¹⁶⁴⁰. This resolution states that Kobiprop had applied for a loan from ABSA for an amount of R3 000 000 and that Kobitech was to provide an unlimited suretyship to secure this loan.

¹⁶³⁷ Refer to 22 0060 (100 009817 Box Z047)

¹⁶³⁸ Refer to 22 0061 (100 009813 Box Z047)

¹⁶³⁹ Refer to 22 0062 (100 009722 Box Z047)

¹⁶⁴⁰ Refer to 22 0063 (123 005047 Box Z287)

A letter from ABSA confirmed that title deeds for the property situated at 343 Innes Road in Durban were held as security for a Kobiprop facility of R3 100 000, account number *REDACTED*¹⁶⁴¹. It is our understanding that this property is still occupied by Shaik.

22.2.3 Year ended 28 February 2004

On 20 May 2003 Shaik sent a letter to ABSA to request that the debit order details for his platinum card, account *REDACTED*, be changed from his account 4 0 4 8 2 7 1 6 9 7 to Kobitech's current account, number *REDACTED*.¹⁶⁴² At this stage, the Kobitech current account was overdrawn by R1 050 339.82.

DS&T prepared a note, dated 28 October 2003, to confirm that Shaik's monthly drawings from the Nkobi group totalled R150 000 per month¹⁶⁴³.

Shaik's assets and liabilities schedule as at 29 February 2004, ostensibly prepared by DS&T and attached to their letter to Shaik, dated 25 July 2005, reflected the following:

A net liability position of R4 264 588;

A loan account from Shaik to Zuma of R1 715 433; and

A loan from Kobifin to Shaik of R6 549 217¹⁶⁴⁴.

These balances were also included in Shaik's personal income tax return for the period 1 March 2003 to 29 February 2004¹⁶⁴⁵, and income for this period was reflected as R398 763¹⁶⁴⁶.

Shaik's employees' tax certificate reflected income received from Kobifin for the period as R668 763.76¹⁶⁴⁷. This amount differs from the income reported on Shaik's personal income tax return, as a result of his Kobifin salary having been reported as R30 000 instead of R300 000 on his personal income tax return.

Our calculation of total payments made to and on behalf of Zuma reflects payments in the amount of R2 776 430.68 up to 29 February 2004, excluding interest. The loan calculation document reflects an amount of only receivable from Zuma of R1 459 943.22, excluding

¹⁶⁴¹ Refer to 22 0064 (123 009334 Box Z299)

¹⁶⁴² Refer to 22 0065 (100 003629 Box Z022)

¹⁶⁴³ Refer to 22 0066 (100 004368 Box Z026)

¹⁶⁴⁴ Refer to 22 0067 (100 009750 Box Z047)

¹⁶⁴⁵ Refer to 22 0068-81 specifically 22 0079 (100 009729-742, specifically 100 009740 and 9730 Box Z047)

¹⁶⁴⁶ Refer to 22 0068-81 specifically 22 0079 (100 009729-742, specifically 100 009730 Box Z047)

¹⁶⁴⁷ Refer to 22 0082 (100 009760 Box Z047)

interest, and R1 715 433.28 including interest. Therefore, Shaik's assets on the statement of assets and liabilities are understated by R1 316 487.46.

Bank statements reflect that Shaik had an amount of R 5 116.84 in account

* REDACTED * on 29 February 2004.

A meeting was held on 4 November 2003 during which DS&T employees discussed significant matters of the Nkobi group. In respect of the recoverability of directors' loans, the following was *inter alia* minuted¹⁶⁴⁸:

"It was noted that the 3 directors of the group owed Kobifin approximately 6.886 million rands, the bulk comprising S Shaik (5.3 million)..."(with the amounts paid to and on behalf of Zuma forming a material part of this amount). "...While it was acknowledged that Shaik had no available cash, and his only assets were his investment in the Nkobi Group, and his home in Innes Road (purchased for 4.5 million), it was noted that

There was an insurance policy on the life of S Shaik, which would cover the outstanding loan.

S Shaik's share of the distributable reserves of the group would extinguish his loan balance.

TJH explained that it is the intention for the group (ie Nkobi Holdings) to declare dividends, however this cannot be done until the shareholding of the Worker's College in Nkobi Holdings is bought out. Negotiations are currently in progress, but the Worker's College is requesting a selling price that is far in excess of the value that S Shaik is willing to pay. TJH discussed the possibility that he would attempt to assist the negotiations via an appeal to his long time acquaintance, Mr Cassim Jadwatt, who was representing the Worker's College via Desai & Jadwatt.

It was concluded that the loan balance of S Shaik, P Gama & C Isaacs are considered recoverable on the grounds that the imminent dividend declaration by Nkobi Holdings (once the Workers College share is bought out) will extinguish these balances."

The above is a clear reflection of the then corporate thinking. The group never declared any dividends to its outside shareholders. The loan accounts of the directors, and especially Shaik, continued to increase with the consequence that pressure was placed on the Nkobi group. Shaik on the other hand considered payments to Zuma as a loan. This was included in his loan

¹⁶⁴⁸

Refer to 22 0083-85 (123 011547-549 Box Z304)

account owing to the Nkobi group by Shaik. One solution would have been for Shaik to recover the funds from Zuma but this never occurred, apart from a few isolated instances where Zuma paid over funds to Shaik. No mention was made in the abovementioned meeting with DS&T that Shaik had this asset in the form of loan account owing by Zuma, which would cover the amount owing by, Shaik to the Nkobi group. Doubt is therefore cast as to the real nature of the payments made to Zuma as well as, Shaik's intention to ever recover such from Zuma.

Gama and Isaacs were indirect shareholders of Nkobi Holdings, through their shareholding in Clanwest. Nkobi Holdings' annual financial statements reflect distributable reserves of R13 959 036 on 28 February 2003 and R7 929 131 on 28 February 2004. No dividends were declared by Nkobi Holdings during 2003 and 2004.

From the bank statements it is evident that funds were transferred on a regular basis from the ABSA cheque account of Kobiprop (account number *REDACTED*) to Shaik's cheque account (account number *REDACTED*). It appears that these transfers occurred in order to maintain a minimum balance of R2 000 in Shaik's cheque account.

In an e-mail dated 30 April 2003 from Isaacs to the ABSA relationship manager, Jenny Lourenco, reference is made to a meeting that took place to discuss Shaik's bank accounts¹⁶⁴⁹. Isaacs stated *inter alia* that:

- “1. The total facility available to Mr. Shaik is R3 100 000, this being the allowable balance on his bond account and current account combined.
2. The sweeping facility will be cancelled, so that the monthly entries appearing on the bond account will be the monthly interest charge and the monthly debit order payment. Similarly, his current account will reflect only the deposits that are effected and the cheques that Mr. Shaik writes against these deposits...
3. The monthly debit to clear Mr. Shaik's platinum credit card, no *REDACTED* 7019, should go through to the company account, Kobitech (Pty) Ltd., account number *REDACTED*, and not to his current account.
- 4...

5...

6. *The monthly debit order on the bond account will be changed to R42 000 as from 1 June 2003.*"

Jenny Lourenco responded on the same day in an e-mail to Isaacs. She confirmed that Isaacs' communication summarised what had been discussed in their meeting and further stated:

"We need to however make provision for the excess of R21 000 currently on the platinum one account and I await your instruction to proceed or alternatively if you wish to action from your side. The debit order for the amount of R40555 will not be debited on the 1st May however as discussed in the meeting this will not resolve the current issue at hand."

It is therefore evident that Shaik did not have sufficient funds in order to meet the debit order for the bond on the house.

A letter from Shaik to ABSA, dated 7 July 2003 requested that an amount of R42 500 be transferred to Shaik's current account (number *REDACTED*) from the following bank accounts¹⁶⁵⁰:

- Kobitech call account (number *REDACTED*) – R6 000;
- Kobifin call account (number *REDACTED*) – R23 000; and
- Kobitech Transport Systems current account (number *REDACTED*) – R13 500.

Subsequent to the above transfers, these accounts reflected the following balances:

- Kobitech call account (number *REDACTED*) – R1 852.71;
- Kobifin call account (number *REDACTED*) – R1 489.39¹⁶⁵¹; and
- Kobitech Transport Systems current account (number *REDACTED*) – R10 725.98.

¹⁶⁵⁰ Refer to 22 0088 (100 004377 Box Z026)

¹⁶⁵¹ Refer to 22 0089 (000004 File 206)

From June 2003 to January 2004, bond payments of R42 000 were made by transferring funds from the Kobitech call account (account number *REDACTED*) to Shaik's cheque account (account number *REDACTED*), from where it was transferred *via debit order* to Kobiprop account number *REDACTED*. In periods after January 2004 the bond payments increased to R49 500 and funds were transferred directly from the Kobitech call account to the Kobiprop account.

22.2.4 Year ended 28 February 2005

A letter from Absa Business Centre dated 21 September 2004 confirmed that the Kobiprop facility had been increased to R5 100 000¹⁶⁵². According to the facility letter, interest in respect of amounts equal to 80% of the loan related to the value of the property, would be charged at prime interest rate less 2%, and at prime interest rate less 1.5% on other amounts. Interest on excesses would be charged at prime plus 3%.

A statement of assets and liabilities, as at 31 May 2005, reflects the following:

- Net assets of R41 047 729;
- Accounts receivable of R2 507 249, with no indication whether this balance related to Zuma; and
- A loan account from Kobifin of R7 183 499¹⁶⁵³.

The net asset position of R41 047 729 was calculated after taking into account Shaik's shareholding in Starcorp, reflected on the statement as an asset of R44 795 424. This was calculated based on 92% of the shareholders' equity of the group. A letter from DS&T, dated 22 July 2005, was used as confirmation of Shaik's 92% shareholding, as well as the group shareholders' equity of R48 690 678 as at 29 February 2004¹⁶⁵⁴.

Payments made to and on behalf of Zuma up to 31 May 2005 amounted to R3 306 055.06, excluding interest. The loan calculation document reflects an amount receivable from Zuma of R2 428 328.26 excluding interest and R2 507 248.93 including interest. Therefore, payments

¹⁶⁵² Refer to 22 0090-96 (100 004736-742 Box Z027)

¹⁶⁵³ Refer to 22 0097-98 (100 009716-7 Box Z047)

¹⁶⁵⁴ Refer to 22 0099 (100 009718 Box Z047)

made to and on behalf of Zuma exceed the amount reflected on the statement of assets and liabilities by R877 726.80, excluding interest.

Bank statements reflected that Shaik's accounts had had a balance of R 2 80 000 . 41 on 28 February 2005 and R10 255 on 15 May 2005 (account *REDACTED*).

Shaik provided security in the form of suretyships for funding obtained by Nkobi group companies from external institutions.

22.3 Loan agreement

Shaik and Zuma allegedly entered into a revolving loan agreement on 16 May 1999. The contents and particulars of this agreement are discussed elsewhere in this report¹⁶⁵⁵. This agreement did not form part of the original documents that were discovered during a search and seizure operation conducted by the NPA and was presented to the author of this report during the trial in the matter of State vs Schabir Shaik and others.

The interest rate of prime plus 2% as specified in the loan agreement between Shaik and Zuma corresponds to the interest rate applied on the loan calculation document. This loan agreement expired on 16 May 2004, five years after the date it was signed by Shaik and Zuma. It is evident from the facts discussed elsewhere in this report that Shaik never called on the conditions of this agreement to recover such "loans" from Zuma. The balance "owing" by Zuma eventually exceeded the so-called revolving loan of R2 000 000 and the period of the loan, at the time of this report went beyond the original intended period of until 16 May 2004.

22.4 Effect of payments to Zuma on Shaik and the Nkobi group

During the period covered by this report, Shaik had various loan accounts to and from companies within the Nkobi group. With the exception of the annual financial statements of Nkobi Holdings, for years ended 28 February 1997 and 1998, and Nkobi Investments' Annual Financial Statements, for the year ended 28 February 1997, these loan accounts were not disclosed separately, but were instead disclosed as part of shareholders' loans or directors' loans or, as in most cases, as loans receivable with no indication as to who owed the amounts to the affected entities. An analysis of the Annual Financial Statements and audit working papers of

¹⁶⁵⁵

Refer to paragraph 15

the group companies was performed¹⁶⁵⁶, and revealed that the loan accounts relating to Shaik had the following balances:

Date	Amount due to/ (from) Shaik R
28 February 1997	398 598.24
28 February 1998	172 771.79
28 February 1999	114 717.60
28 February 2000	(284 033.00)
28 February 2001	(1 888 067.25)
28 February 2002	(3 815 540.64)
28 February 2003	(5 324 031.39)
28 February 2004	(7 286 779.84)

Audit working papers and annual financial statements were not available for periods subsequent to 28 February 2004.

The relationship between the payments made to and on behalf of Zuma, Shaik's financial position and the funds available to Shaik and the Nkobi group can best be illustrated with reference to the analysis that we performed¹⁶⁵⁷.

On 28 February 1997 payments made to and on behalf of Zuma amounted to R48 000. Zuma had paid an amount of R38 563 to Shaik, leaving a net balance of R9 436.84. It should be noted that on 7 January 1997, when Zuma paid the R38 563, total payments to and on behalf of Zuma amounted to R26 000. The net payment to Zuma for the year of R9 436.84 was funded by Shaik, based on the assumption that Shaik would first utilise his own funds available, before utilising funds from the Nkobi group. At this stage Shaik was in a net overdraft cash position in the amount of R121 451.35. Shaik's net loans to the Nkobi group amounted to R398 598.24. Therefore no funding was required by the Nkobi group in respect of the payments made to and on behalf of Zuma.

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Refer to Annexure V

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Refer to Annexure X

On 28 February 1998 the net payments to Zuma amounted to R271 913.24, after crediting payments from Zuma in the amount of R38 563.16. The movement in net payments to Zuma compared to 1997 amounted to R262 476.40. During the financial year, Shaik's net cash position decreased by an amount of R40 677.47 from an overdraft of R121 451.35 to an overdraft of R162 128.82.

The balance due from group companies to Shaik decreased by R225 826.45 from R398 598.24 in 1997, to R172 771.79 in 1998. Shaik was in a position to fund R40 667.47 through the increase in his overdrawn cash position, and the residual of R206 808.93 through the reduction in his loan to the Nkobi group. Therefore no funding was required by the Nkobi group in respect of payments made to and on behalf of Zuma.

Up to 29 February 1999 net payments to and on behalf of Zuma amounted to R435 927.93, after considering the effect of payments received from Zuma in the amount of R48 563.16. The movement in net payments from 28 February 1998 to 28 February 1999 amounted to R164 014.69. The net loan from Shaik to the Nkobi group decreased by an amount of R58 054.19 (from R172 771.79 on 28 February 1998 to R114 717.60 on 28 February 1999).

Shaik's net cash position improved from an overdraft of R162 182.82 in 1998, to an overdraft position of R55 120.62. Shaik funded a portion of the amount of R58 054.19 from the reduction in his loan account, assuming that available cash on hand was applied to reduce his net cash overdraft position. The shortfall of R105 960.50 was therefore funded by the Nkobi group.

On 28 February 2000 net payments to and on behalf of Zuma amounted to R666 139.21, after considering the effect of payments received from Zuma in the amount of R48 563.16. The net payments for the year amounted to R181 648.12 (movement between 1999 and 2000). Shaik's overdrawn net cash position deteriorated by an amount of R6 301.58 from an overdraft of R55 120.62 on 28 February 1999 to an overdraft of R61 422.20 on 28 February 2000. At this stage the group no longer indicated any amounts due to Shaik, but instead Shaik was indebted to the Nkobi group in amount of R284 033. Shaik's position as a net borrower from the Nkobi group had the effect that, except for cash available, Shaik no longer held an asset which he could utilise in order to fund the payments to and on behalf of Zuma. Shaik only had capacity to fund a portion in the amount of R6 301.58, resulting from the cash released in his overdraft position. Therefore the residual funding requirement of R175 346.54 was obtained from the Nkobi group.

On 28 February 2001 net payments to and on behalf of Zuma amounted to R259 600.78 after considering the effect of payments received from Zuma in the amount of R956 014.16 (this figure includes the R900 000 transferred from the account of Zuma, ostensibly without his knowledge)

by Shaik that originates from Mandela). This resulted in a net payment from Zuma situation in 2001, in the amount of R357 975.27 (movement between 2000 and 2001). The payments received from Zuma during the year exceeded payments made to and on behalf of him, and therefore no funding was required from Shaik or the Nkobi group.

On 28 February 2002 net payments to and on behalf of Zuma amounted to R850 295.76, after considering the effect of payments received from Zuma in the amount of R956 014.16. The net payments for the year amounted to R590 694.98 (movement between 2001 and 2002). Shaik's net cash position decreased by R15 226.79 from an overdraft of R7 823.74 in 2001 to an overdraft of R23 050.53 in 2002. Shaik was indebted to the Nkobi group in an amount of R3 815 540.64. In a similar manner to 2000, Shaik's position of a net borrower from the Nkobi group had the effect that, except for cash available.

Shaik no longer held an asset which he could utilise in order fund the payments to and on behalf of Zuma. Shaik only had capacity to fund a portion in the amount of R15 226.79, resulting from the cash released in his overdraft position. The residual funding requirement of R575 468.19 was obtained from the Nkobi group.

On 28 February 2003 net payments to and on behalf of Zuma amounted to R1 199 000.17, after considering the effect of payments received from Zuma in the amount of R1 077 614.16. The net payments for the year amounted to R348 704.41 (movement between 2002 and 2003). Shaik was indebted to the Nkobi group in an amount of R5 324 031.39. Shaik had a positive net cash position of R20 000, representing an increase of R43 050.53 from 2002. Available cash was applied in correcting the cash overdraft position. Therefore the Nkobi group funded the net payments for the year amounting to R348 704.41.

On 28 February 2004 net payments to and on behalf of Zuma amounted to R1 701 890.04, after considering the effect of payments received from Zuma in the amount of R1 077 614.16. The net payments for the year amounted to R502 889.87 (movement between 2003 and 2004). Shaik's cash position decreased by R14 883.16 from a balance of R20 000 in 2003 to a balance of R5 116.84 in 2004. Shaik was indebted to the Nkobi group in an amount of R7 286 779.84. In similar manner to the years ending 28 February 2000 to 2003, Shaik's position as a net borrower from the Nkobi group had the effect that, except for cash available, Shaik no longer held an asset which he could utilise in order fund the payments to and on behalf of Zuma. Therefore, a portion of R14 883.16 was funded by Shaik through the release of cash and the residual of R488 006.71 was funded by the Nkobi group.

On 28 February 2005 net payments to and on behalf of Zuma amounted to R2 223 714.42 after considering the effect of payments received from Zuma in the amount of R1 084 414.16. The net payments for the year amounted to R521 824.38 (movement between 2004 and 2005). Shaik's net cash position increased to a balance of R28 000.41. As mentioned earlier, audited financial statements of the Nkobi group were not available for financial years subsequent to 28 February 2004. Shaik's net loan from the Nkobi group as at 28 February 2004 in the amount of R7 286 779.84 was applied for subsequent years. Therefore the net payments for the year of amounted to, R521 824.38, were funded by the Nkobi group.

On 28 February 2006 net payments to and on behalf of Zuma amounted to R2 688 085.69 after considering the effect of payments received from Zuma in the amount of R1 384 414.16. The net payments for the year amounted to R464 371.27 (movement between 2005 and 2006). Shaik's net cash position is reflected as R28 000.41, due to the fact that information as at 28 February 2006 was not available. Shaik's net loan from the Nkobi group is reflected as R7 286 779.84, and therefore net payments for the year of R464 371.27 were funded by the Nkobi group.

The total effect up to 28 February 2006 can be summarised as follows:

Total payments to and on behalf of Zuma amounted to R4 072 499.85;

Total payments received from Zuma amounted to R1 384 414.16; and

Net payments to and on behalf of Zuma amounted to R2 688 085.69, of which:

R2 679 682 was funded by the Nkobi group;

R366 378.96 was funded by Shaik; and

R357 975.27 was funded by payments received from Zuma.

Therefore, despite the apparent relationship between Zuma and Shaik, vested in the so-called loan agreement (if it is regarded as a loan agreement), Shaik was only able to fund a maximum of 13% of the funds that were made available to Zuma. The balance had to be funded from the Nkobi group through overdrafts, operating activities and other means by Nkobi group.

KPMG Services (Pty) Limited