

NDPP V FANA HLONGWANE

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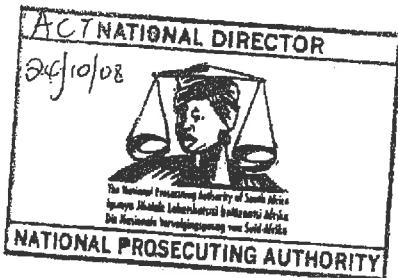
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FÖRSTENTUM LIECHTENSTEIN
FÜRSTLICHES
LANDGERICHT

Court of Justice of the Principality of Liechtenstein



Please always quote the case number

11 UR.2006.284

ON 85

Acting National Director
National Prosecuting
Authority of South Africa
P.O. Box 752
ZA-0001 Pretoria/South Africa

OFFICE OF THE HEAD	2006 - 10 - 24	DIRECOTRATE OF SPECIAL OPERATIONS
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By fax: 0027 / 12 845 71 30
(original to follow by post)

Vaduz, 6 October 2008/HAKE

International legal assistance in criminal proceedings

Criminal proceedings against Fana Hlongwane et al. on account of suspected money laundering pursuant to Article 165 (1), (2) and (3) of Liechtenstein Criminal Code (StGB)

Request for information on the subject-matter and status of proceedings, and on interrogation of the suspect Fana Hlongwane

Dear Sir/Madam,

Via an application from the Office of the Liechtenstein public prosecutor, criminal proceedings are in progress at the Court of Justice of the Principality of Liechtenstein in Vaduz against Fana Hlongwane et al., d.o.b. 5 March 1959, South African citizen, resident at 128 Cambeboo Road, Fourways Garden, Johannesburg, South Africa, on account of suspected money laundering pursuant to Article 165 (1) (2) and (3) of Liechtenstein Criminal Code (copy of the applicable law is attached).

In terms of the investigation, it is suspected that frozen assets belonging to Fana Hlongwane in the Principality of Liechtenstein are linked with active and passive bribery and corruption by the company operating as BAE Systems PLC ("BAE"), using a system of international representatives. In concrete terms, it must be assumed that the circumstances under suspicion are as follows:

BAE maintains a network of representatives (or "advisers" as BAE prefers to call them) to support the marketing of its products. BAE has a department by the name of "Head Quarters Marketing" (HQ Marketing), which coordinates all the

agreements and contracts with representatives employed by BAE.

On 19 January 2004, the Guardian broadsheet contacted the Serious Fraud Office in London ("SFO") and presented them with information, which implied that BAE were making illegal payments via a company with its registered office in the British Virgin Islands by the name of Red Diamond Trading Ltd ("Red Diamond").

Investigations by the SFO produced the fact that BAE was not sending amounts of money to representatives abroad directly through HQ Marketing, but was making payments of this kind through foreign front companies. One of these front companies is Red Diamond. BAE demands that representatives enter into contractual agreements either with BAE or Red Diamond. The representatives themselves tend to operate through front companies and seldom appear personally.

Within the context of its investigations the SFO procured details about the account of Red Diamond at Lloyds Bank. Lloyds TSB expressed its concern with regard to money laundering, since the bank had not been informed about who Red Diamond was represented by. BAE later confirmed that it was the beneficiary of Red Diamond. BAE has online banking at Lloyds through which payments can be transferred direct to Red Diamond (by means of a computer controlled by BAE), and from there they can be transferred abroad. Automatic [credit] transfers ensue from BAE accounts to Red Diamond, and from there abroad. This results in the fact that only a minimum amount of bank data remains at the bank. Furthermore, clearly the only purpose for these transfers within the British banking system was to conceal BAE's involvement in foreign transfers.

Material made available to the SFO by the Foreign Corrupt Practices Act (FCPA) division of the U.S. Department of Justice confirms the existence of "open" and "concealed" agreements between BAE and its advisers, as well as the origin of Red Diamond. Clearly BAE, through Sir Richard Evans, decided during the second half of the 1990s to conceal the payment system from its "hidden" advisers. After different options had been considered in this respect, BAE decided that the least transparent system consisted of setting up a foreign organisation as a front. The material disclosed also contains details on the setting up of Novelbright Ltd. The purpose of this company was exclusively to store abroad filed material relating to representatives.

Furthermore, it was used for meetings with representatives. The documents submitted to the FCPA reveal that the company allegedly had a registered rented office next to Lloyds Bank in Geneva, and in this respect the alarm system was allegedly linked with that of Lloyds.

The documentation makes it clear that the main aim of BAE from start to finish consisted of proceeding as surreptitiously as possible and of making the system as non-transparent as possible. The primary target consisted in particular of making the infiltration of an investigator as difficult as possible. The SFO served an Order on BAE, requesting it to disclose material on its marketing representatives. BAE has so far partially interpreted this Order, but in a way which excludes disclosure of the documents kept in Switzerland.

Points of reference to South Africa ensue as follows:

In 1999, BAE concluded a contract in accordance with the South African Defence Programme to supply 52 Hawk Training Aircraft and Saab Gripen Fighter Aircraft to the government of South Africa. Other foreign arms manufacturers also received contracts emanating from this Programme.

Internal parliamentary inquiries and later investigations by the Office of the Auditor General produced the fact that there was bribery and corruption linked with the BAE contract. The report particularly emphasized the role of the amounts made available for "side projects". The former had been earmarked for the internal social and infrastructural development of Trusts (Schattenfirmen) connected with Shamin ("Chippy") Sheik, the ANC Chairman of the Parliamentary Procurement Committee.

In May 2001, investigators in South Africa started an Inquiry into claims that there was a link between the contract and the financing of Cabinet Ministers' foreign trips by BAE. It was publicly asserted that Chippy Sheik had moreover received jewellery as presents from BAE. Schabir Sheik too, the brother of Chippy Sheik, was recently sentenced to 15 years' imprisonment after prosecution by the South African authorities on account of bribery by the French arms manufacturer Thomson CSF. This case includes an accusation against Jacob Zuma, the former Vice President of South Africa, which is being dealt with at a judicial hearing.

In 2003, BAE confirmed that its representative in South Africa was a company by the name of Osprey Aviation (Osprey). A BAE spokesperson confirmed in a South African newspaper that Osprey had been appointed in 1994 as an "external advisory organisation" to support legal tendering and commercial processes. The full extent of the amounts pouring into Osprey has not been confirmed. Richard Charter, the now deceased head of Osprey, was also chairman of South African BAE Systems Holdings (South Africa), an affiliated company of BAE.

Other accusations in South Africa relate to a donation of approx. GBP 500,000.00 to "The Airborne Trust" in March 1998. This Trust was founded in 1995 to support former ANC veterans of the MK Military Veterans Association (MKMVA). Its chairman was also Richard Charter. Significantly, the now deceased Joe Modise, the Defence Minister for South Africa at the time, was a founder member of the Trust and a member of the steering committee of the MKMVA, and received from the Airborne Trust at least a one-off payment to enable him to make a trip to the United Kingdom. Furthermore, this payment ensued just one month before Modise personally intervened in the procurement process, in order to change the conditions of the tender in a way that would ultimately lead to BAE being awarded the contract. These changes in tendering excluded price as being the relevant factor in the awarding of the contract. The BAE tender was substantially higher than the tenders from the competition.

In 2005, Charter (together with Chippy Sheik) was suspected of corruption in the National Assembly of South Africa by Patricia De Lille, the leader of the Independent Democratic Party. She furthermore requested an independent inquiry into the matter of why the South African Government paid USD 17 million over the market price for the Hawk machines.

The payments to representatives in connection with the South African BAE Contract began in May 1999 through Red Diamond, and amounted to GBP 81 million at the end of 2004. Since the introduction of British law in December 2001 to combat terrorism and criminality, and protect safety, around GBP 38 million has been paid to South African representatives from a Red Diamond account. Some of these payments were made at Swiss banks in Geneva:

A company by the name of Arstow Commercial Corporation ("Arstow") was paid through Red Diamond and received more than GBP 20 million between May 1999 and December 2004. In this connection more than GBP 9 million was paid into accounts at different banks in the Principality of Liechtenstein. In Documents subsequently received from the SFO in this respect concern payments with regard to the Hawk and Gripen Contract.

A company by the name of Kayswell Services Ltd. (Kayswell) received payments of more than GBP 37 million through Red Diamond between December 2000 and September 2005. It emerges from documents disclosed by BAE that Kayswell was founded in 1994 and signed an advisory agreement with BAE with regard to the Hawk Contract in the same year; furthermore, the Gripen Contract was added later. In 2000, the advisory agreement with Kayswell was transferred by BAE to Red Diamond, and in 2005, the agreement was terminated, whereby Kayswell received more than GBP 19 million in compensation.

The documents disclosed by BAE show evidence of a certain Jules Pelissier as the contact at Kayswell. However, the file also contains correspondence from Pelissier on headed paper from another company by the name of Aviation Consultancy Services Ltd. (ACS). According to a UNO report, John Bredenkamp (born in 1940 in South Africa, is, however, a citizen of Zimbabwe) is connected with Aviation Consultancy Services. Bredenkamp is domiciled in the United Kingdom, and in 2002 was the 33rd richest person in Great Britain. The same UNO report describes him as a key figure in the arms trade and as a man who earned millions with the illegal exploitation of natural treasures in the Congo, and with the negotiation of sales of military equipment from BAE to the country through ACS. Furthermore, the report lists claims (which are disputed both by BAE and Bredenkamp) that BAE, with the involvement of ACS, infringed EU sanctions by selling spare parts for Hawk fighter planes to Zimbabwe in 2002.

Approx. GBP 6.5 million of the amounts paid to Kayswell were transferred through Red Diamond into an account at LGT Bank in Liechtenstein AG, Vaduz.

It must be assumed that the public accusations with regard to the corrupt relations and the misuse of power between BAE representatives and persons of high standing within the ANC Government, in conjunction with the extent of payments and their relevance to the successful signing of contracts, is not

compatible with legitimate commercial transactions and requires a more thorough investigation.

There are convincing accusations – whether as a result of the relevance to the payments or the sheer amount of commission payments – that funds flowing through BAE, or rather HQ Marketing and Red Diamond, are being used for the purposes of bribery and corruption. Furthermore, the entire system is operated under a shroud of secrecy, so that the suspicion with regard to the purpose of these payments is justified.

Various different companies have been/ are being managed at Liechtenstein Trust company Tremaco Trust Enterprise reg., for the suspect Fana Hlongwane and the other suspect Alexander Roberts. Alexander Roberts pretended to be the financial beneficiary of Arstow towards the foregoing Trust company. Fana Hlongwane appears as the financial beneficiary of the companies Westunity Business Limited, Meltec Foundation and Gamary Trust reg. Westunity Business Limited was funded by the above-mentioned Arstow. In this connection Arstow, as already mentioned, received assets from Red Diamond. Payments were subsequently made in turn by Westunity Business Limited to the Meltec Foundation and, after its liquidation, to its successor Gamary Trust reg. During the course of these criminal proceedings, assets belonging to the Gamari Trust held by Bank Pasche (Liechtenstein) S.A., Vaduz, have been frozen. They amounted to over GBP 400,000.00. It has furthermore become known that the suspect Hlongwane was allegedly an adviser to the former South African Defence Minister Joe Modise, and at the same time was allegedly an adviser to the Airbus Company.

As a result of the suspicion under investigation, assets held at Swisspartners Versicherung AG, Vaduz amounting to over EUR 3 million, of which Fana Hlongwane is the financial beneficiary, have been frozen. Currently, it must be assumed that the foregoing frozen assets at Swisspartners Versicherung AG originate from an account in the name of Preordain Holdings Ltd., Panama at Bank Credit Agricole, Geneva, Switzerland. Preordain Holdings Ltd is a holding company of the suspect Hlongwane.

It ensues from the investigation proceedings at SFO that according to information from the suspect Roberts, "at some point during the course of activities with South Africa, it was agreed between Roberts and BAE that around two-thirds of the commission to which Roberts was entitled would be transferred at the appropriate time from the Arstow account to accounts, which are controlled by Mr Hlongwane". According to Roberts, this was

remuneration for "balancing work" performed by Hlongwane in the wake of activities in South Africa.

With reference to the above, I now therefore courteously submit the following

REQUEST

that you inform the Court of Justice of the Principality of Liechtenstein whether criminal proceedings are pending at the National Prosecuting Authority of South Africa against Fana Hlongwane, in connection with his advisory activity for BAE and Airbus, and in the affirmative, what is the subject-matter of these proceedings and what stage have the proceedings reached?

Furthermore, you are kindly requested for information in terms of what was Fana Hlongwane's function in connection with the supply of fighter aircraft from BAE and, if applicable, the Airbus to the South African Government, whether he actually was an adviser at the time to the now deceased South African Defence Minister Joe Modise, whether there are indications that Fana Hlongwane abused his official power and actively intervened in the procurement processes, so that BAE and Airbus were awarded the contracts, and whether Fana Hlongwane was publicly a civil servant of the Republic of South Africa and/or was working as an officer of a company in the public sector.

Finally, you are kindly requested to interrogate Fana Hlongwane as a suspect on the circumstances outlined above.

At the outset, please ask the suspect about his personal circumstances and generally specify the criminal offence of which he is suspected. Then please draw his attention to the fact that it is left to his own discretion to make a statement. If he refuses to make a statement, please point out to him that this will not delay the investigation, but it could result in him being deprived of his defence rights. Prior to the interrogation, please hand the suspect in addition the enclosed leaflet entitled "Rights and duties in criminal proceedings" and record the fact that it has been received.

In particular, the suspect should be asked to comment on the questions already raised above concerning his work for BAE and the Government of South Africa.

Furthermore, kindly ask the suspect whether he was or is the financial beneficiary of Meltec Foundation, Gamari Trust reg., Westunity Business Limited, and an insurance at Swisspartners Versicherung AG, 9490 Vaduz. In the affirmative, he should state in detail, where the assets of the foregoing companies/ insurance company originate. In this connection, with regard to the insurance, the suspect should indicate where and why the assets originate at the outset from Preordain Holdings Ltd. Kindly ask the witness to name witnesses/ evidence that backs up his information. Furthermore, please ask the suspect to explain what Alexander Roberts means by "balancing work" in the above sense, and why or for what activities he (the suspect) received commission amounts transferred by BAE/Arstow. Finally, please ask the suspect, whether he is willing to appear at the Court of Justice of Liechtenstein and give a testimony.

If you have any further questions, please do not hesitate to contact me at any time.

Tel.: +423 236 63 04
Fax: +423 236 65 69
E-mail: martin.nigg@lg.li.v.li).

In the event that you are not the party responsible for providing the international legal assistance requested, I kindly ask you to forward this letter to the competent authority.

Please accept my sincere thanks in anticipation for the provision of legal assistance in this matter.

Yours sincerely,

Court of Justice of Liechtenstein

Martin Nigg
Judge at the Court of Justice of Liechtenstein

Enclosures:

Art. 165 (1) to (3) StGB
Leaflet: "Rights and duties in criminal proceedings"

9

Article 165
Money laundering

- 1) Any person who conceals or disguises the origin of assets emanating from a crime, an offence under Articles 278, 278d or 304 to 308, an offence under Article 23 (1) and (2) of the Federal Act governing the Residence and Establishment of Foreign Citizens, or an offence under the Narcotic Drugs Act, in particular by making false statements in legal transactions as to the source or real nature of these assets, the ownership or other rights in them, the powers of disposition over them, their transfer or in respect of where they are located, shall be sentenced to a term of imprisonment of up to three years or to pay a fine of up to 360 daily rates.
- 2) Any person who acquires or takes possession of assets emanating from a crime, an offence under Articles 278, 278d or 304 to 308, an offence under Article 23 (1) and (2) of the Federal Act governing the Residence and Establishment of Foreign Citizens, or an offence under the Narcotic Drugs Act, whether merely to hold these assets in safekeeping, to invest or to manage them, who converts, exploits or transfers such assets to a third party, shall be sentenced to a term of imprisonment of up to two years or to pay a fine of up to 360 daily rates.
- 3) Any person who commits an offence pursuant to the above 1) or 2) relating to a value exceeding 75,000 Swiss francs or as a member of a gang, which has joined together for the purpose of repeated money laundering, shall be sentenced to a term of imprisonment of between six months and five years.

RIGHTS AND OBLIGATIONS IN CRIMINAL PROCEEDINGS
Leaflet for suspects and defendants in criminal proceedings

Attorney: Suspects and defendants involved in criminal proceedings have the right to make use of an attorney during the entire proceedings (refer to Articles 24 et al of the Code of Criminal Procedure [StPO]).

The attorney or other persons are not permitted to be present during the examination before the judge (Art. 145 of StPO).

Obligation to be represented by an attorney: During the key hearing in a criminal court, the defendant must be represented by an attorney. This applies also for the duration of any custody imposed pending trial (Art. 26 (3) StPO).

If no attorney is appointed before the start of the key hearing or at the time of the imposing of any custody pending trial, the court will then appoint *ex officio* an attorney for the defendant at the defendant's cost.

There is no obligation to be represented by an attorney during the final hearing before the individual judge, or in the court of lay assessor.

Legal Aid Attorney: If the suspect / defendant is not in a position to bear the defence costs without negatively affecting the payments necessary to maintain a simple lifestyle for himself and his family (his duty being to provide for them), and if the suspect/ defendant applies to the court, the court must then order that the suspect/ defendant is assigned an attorney and does not have to bear the costs of this attorney, if and insofar as this is necessary in the interests of the administration of justice, and notably in the interests of an appropriate defence (Art. 26 (2) StPO).

Refusal of testimony: It is at the suspect's / defendant's own discretion as to whether they comment or not on the matter. Any statement made can be used by the defence, but can also be used against them as evidence.

A summons by the court, despite the intention to refuse to give a testimony, must nevertheless be complied with, otherwise a [warrant] to appear will be served by Liechtenstein National Police; refusal to give testimony will be recorded at the time of the examination.

Inspection of the files: Inspection at court of the criminal file and the requesting of copies is at the suspect's / defendant's own discretion. The right to inspect the file can, however, be restricted by the examining judge for investigative and tactical reasons (refer to Art. 30 (2) StPO).

Right of appeal: Suspects / defendants are given the respective information concerning right of appeal orally or in writing at the time the court passes judgement.

The most fundamental appeal within the framework of preliminary judicial investigations, however, is the legal remedy of appeal; all judicial decisions, judgements and rulings, which are not convictions can be challenged, unless they are legitimate exceptions, by means of the legal remedy of appeal to the Court of Appeal of Liechtenstein on account of unlawfulness or unreasonableness. An appeal can be lodged by any individuals who are entitled to lodge an appeal, or whose rights are rejected by a judgement or ruling, or whose obligations arise. The legal remedy of appeal must be lodged with the examining judge within 14 days following notification or service (refer to Articles 238 et al of StPO).

Juvenile criminal cases: In juvenile criminal cases – i.e. criminal proceedings against individuals who at the time of the first judicial prosecution proceedings had not yet reached the end of their eighteenth year of age, and criminal proceedings which fall due at court two years at the latest after reaching the end of their eighteenth year of age, on account of a juvenile crime, the suspect / defendant is entitled to call in his legal representative as a person in a position of trust for the examination, unless the latter is involved in the investigation proceedings himself in some form or other (Art. 22 "JGG" in conjunction with Art. 115 (2) sentence 2 of StPO).

The legal representative is legally entitled to participate in the examination proceedings and hence it is imperative that he is informed. He can also assert the claim against the will of the juvenile, or appoint an attorney for the latter.

During investigation proceedings on account of crimes, the suspect / defendant must be represented by an attorney by the time of the final hearing at the latest; if deemed necessary, an attorney must be appointed ex officio.



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FÜRSTENTUM LIECHTENSTEIN

FÜRSTLICHES
LANDGERICHT

Aktenzeichen bitte immer anführen

11 UR.2006.284

ON 85

Acting National Director
 National Prosecuting
 Authority of South Africa
 P.O. Box 752
 ZA-0001 Pretoria/South Africa

vorab per Fax: 0027/12 845 71 30

Vaduz, 06. Oktober 2008 /HAKE

Internationale Rechtshilfe in Strafsachen

**Strafverfahren gegen Fana Hlongwane u.a. wegen des Verdachtes
 der Geldwäscherei nach § 165 Abs 1, 2 und 3 StGB**

**Ersuchen um Mitteilung zum Gegenstand und Stand eines
 Verfahrens und um Vernehmung des Verdächtigen Fana
 Hlongwane**

Sehr geehrte Damen und Herren

Über Antrag der Liechtensteinischen Staatsanwaltschaft wird beim Fürstlichen Landgericht in Vaduz ein Strafverfahren unter anderem gegen Fana Hlongwane, geboren am 05. März 1959, südafrikanischer Staatsangehöriger, wohnhaft Cambebeoo Road, Fourways Garden 128, Johannesburg, Südafrika, wegen des Verdachtes der Geldwäscherei nach § 165 Abs 1, 2 und 3 des liechtensteinischen Strafgesetzbuches (Kopie der Gesetzesbestimmung beiliegend) geführt.

Gegenständlich besteht der Verdacht, dass im Fürstentum Liechtenstein gesperrte Vermögenswerte des Fana Hlongwane im Zusammenhang mit aktiver und passiver Bestechung durch die Gesellschaft BAE Systems PLC („BAE“) mittels eines internationalen Vertretersystems stehen. Konkret ist von folgendem Verdächtigensachverhalt auszugehen:

BAE unterhält ein Netz von Vertretern (von BAE vorzugsweise als „Berater“ bezeichnet), zur Unterstützung der Vermarktung seiner Produkte. Bei BAE besteht eine Abteilung namens „Head Quarters Marketing“ (HQ Marketing), die

sämtliche Vereinbarungen und Verträge mit von BAE beschäftigten Vertretern koordiniert.

Am 19. Januar 2004 wandte sich die Tageszeitung The Guardian an den Serious Fraud Office in London („SFO“) und unterbreitete Informationen, die nahe gelegten, dass BAE über eine auf den British Virgin Islands ansässige Gesellschaft namens Red Diamond Trading Ltd („Red Diamond“) illegale Zahlungen leistete.

Die Ermittlungen des SFO haben ergeben, dass BAE keine Geldbeträge unmittelbar über HQ Marketing an Vertreter ins Ausland übermittelt, sondern solche Zahlungen über ausländische Strohfirmen erledigt. Eine dieser Strohfirmen ist Red Diamond. BAE verlangt, dass Vertreter vertragliche Vereinbarungen entweder mit BAE oder mit Red Diamond eingehen. Die Vertreter selbst tendieren dazu, über Strohfirmen zu operieren und treten nur selten persönlich in Erscheinung.

Im Rahmen seiner Ermittlungen hat das SFO Einzelheiten über das Konto von Red Diamond bei der Lloyds Bank erlangt. Lloyds TSB äußerte Bedenken wegen Geldwäscherei, da der Bank nicht mitgeteilt worden war, von wem Red Diamond repräsentiert wurde. BAE bestätigte später, der nutznleßerische Eigentümer von Red Diamond zu sein. BAE unterhält eine Online-Einrichtung bei Lloyds, über die Zahlungen mittels eines von BAE kontrollierten Computers direkt an Red Diamond und von dort aus ins Ausland überwiesen werden können. Automatisierte Überweisungen erfolgen von BAE-Konten an Red Diamond und von dort ins Ausland. Dies mit dem Ergebnis, dass nur ein Mindestmaß an Bankinformationen bei der Bank verbleibt. Des Weiteren bestand der einzige Zweck dieser Überweisungen innerhalb des britischen Banksystems offenbar darin, die Beteiligung von BAE an Auslandsüberweisungen zu verschleiern.

Material, welches dem SFO von der Abteilung FCPA des US-Justizministeriums zur Verfügung gestellt wurde, bestätigt die Existenz von „offenen“ und „verdeckten“ Vereinbarungen zwischen BAE und seinen Beratern sowie die Entstehung von Red Diamond. Offenbar beschloss BAE in der zweiten Hälfte der 1990-er Jahre über Sir Richard Evans, das Zahlungssystem an seine „verdeckten“ Berater zu verschleiern. Nachdem diesbezüglich verschiedene Optionen erwägt wurden, entschied BAE, dass das am wenigsten transparente System in der Einrichtung einer ausländischen Körperschaft als Stroh firma besteht. Das offen gelegte Material enthält auch Einzelheiten über die Einrichtung der Novelmight Ltd. Diese Gesellschaft hatte ausschliesslich den Zweck, Aktenmaterial, welches die Vertreter betraf, im Ausland zu lagern.

Darüber hinaus wurde sie für Treffen mit Vertretern genutzt. Die vor der FCPA vorgelegten Dokumente offenbaren, dass die Gesellschaft in einem gemieteten Büro neben der Lloyds Bank in Genf angesiedelt werden sollte, wobei die Alarmanlage mit der von Lloyds verbunden werden sollte.

Die Dokumentation verdeutlicht, dass das Hauptziel von BAE von Anfang bis Ende darin bestand, so heimlich wie möglich vorzugehen und das System möglichst undurchsichtig zu gestalten. Das primäre Ziel bestand insbesondere darin, die Einschleusung eines Ermittlers so schwierig wie möglich zu gestalten. Das SFO hat BAE eine Verfügung mit der Aufforderung zur Offenlegung der Materialien über seine Marketingvertreter zugestellt. Bisher hat BAE diese Verfügung einseitig in einer Weise ausgelegt, welche die Offenlegung der in der Schweiz verwahrten Dokumente ausschließt.

Zu Südafrika ergeben sich folgende Bezugspunkte:

1999 schloss BAE einen Vertrag gemäß dem südafrikanischen Verteidigungsprogramm zur Lieferung von 52 Hawk-Ausbildungsflugzeugen und Saab-Gripen-Kampfflugzeugen an die Regierung von Südafrika. Andere ausländische Waffenhersteller erhielten ebenfalls Aufträge aus diesem Programm.

Interne parlamentarische Untersuchungen und spätere Ermittlungen seitens des Rechnungshofs (Office of the Auditor General) ergaben, dass es im Zusammenhang mit dem BAE-Vertrag zu Bestechungen kam. Der Bericht hob insbesondere die Rolle der für „Nebenprojekte“ verfügbar gemachten Befräge hervor, die für die interne soziale und infrastrukturelle Entwicklung der mit Shamin („Chippy“) Sheik, dem ANC-Vorsitzenden des Parlamentarischen Beschaffungskomitees, im Zusammenhang stehenden Schattenfirmen vorgemerkt waren.

Im Mai 2001 begannen Ermittler in Südafrika mit der Untersuchung von Behauptungen, dass eine Verbindung zwischen dem Vertrag und der Finanzierung der Auslandsreisen von Kabinettsmitgliedern durch BAE bestand. Es wurde öffentlich behauptet, dass Chippy Sheik darüber hinaus von BAE Schmuckgeschenke erhalten hat. Auch Schabir Sheik, der Bruder von Chippy Sheik, wurde nach einer von den südafrikanischen Behörden angestrengten Strafverfolgung wegen Bestechung durch den französischen Waffenhersteller Thomson-CSF, kürzlich zu einer 15-jährigen Freiheitsstrafe verurteilt. Dieser Fall umfasst eine zur gerichtlichen Verhandlung anstehende Anschuldigung gegen Jacob Zuma, den ehemaligen stellvertretenden Präsidenten von Südafrika.

Im Jahr 2003 bestätigte BAE, dass es sich bei ihrem Vertreter in Südafrika um eine Gesellschaft namens Osprey Aviation (Osprey) handelte. Ein BAE-Sprecher bestätigte einer südafrikanischen Tageszeitung gegenüber, dass Osprey im Jahr 1994 als „externe Beratungskörperschaft“ zur Unterstützung von gesetzlichen, Ausschreibungs- und kommerziellen Verfahren engagiert wurde. Die Höhe der an Osprey geflossenen Beträge wurde nicht bestätigt. Richard Charter, der mittlerweile verstorbene Leiter von Osprey, war außerdem Vorsitzender der südafrikanischen BAE Systems Holdings (South Africa), einer Tochtergesellschaft von BAE.

Weitere Anschuldigungen in Südafrika betreffen eine Schenkung von ungefähr GBP 500'000.00 an den „The Airborne Trust“ im März 1998. Dieser Trust wurde 1995 zur Unterstützung ehemaliger ANC-Veteranen der MK Military Veterans Association (MKMVA) gegründet. Sein Vorsitzender war ebenfalls Richard Charter. Bezeichnenderweise war der mittlerweile verstorbene Joe Modise, damals Verteidigungsminister von Südafrika, Gründungsmitglied des Trusts und Mitglied des Lenkungskomitees der MKMVA und erhielt seitens des Airborne Trusts zumindest eine einmalige Zahlung, um ihm eine Reise in das Vereinigte Königreich zu ermöglichen. Außerdem erfolgte diese Zahlung nur einen Monat, bevor Modise persönlich in das Beschaffungsverfahren eingriff, um die Ausschreibungsbedingungen in einer Weise zu ändern, die letztlich dazu führten, dass BAE den Auftrag erhielt. Diese Änderungen des Ausschreibungsverfahrens schlossen den Preis als einschlägigen Faktor beim Zuschlag des Vertrags aus. Das BAE-Angebot lag beträchtlich höher als die Konkurrenzangebote.

Im Jahr 2005 wurde Charter (zusammen mit Chippy Sheik) in der Nationalversammlung von Südafrika von Patricia De Lille, der Vorsitzenden der Unabhängigen Demokratischen Partei, der Korruption verdächtigt. Sie forderte außerdem eine unabhängige Untersuchung der Frage, warum die südafrikanische Regierung USD 17 Mio. über dem Marktpreis für die Hawk-Maschinen gezahlt hatte.

Die Zahlungen an Vertreter in Zusammenhang mit dem südafrikanischen BAE-Vertrag begannen im Mai 1999 über Red Diamond und beliefen sich Ende 2004 auf GBP 81 Mio. Seit der Einführung des britischen Gesetzes zur Bekämpfung von Terrorismus und Kriminalität und zum Schutz der Sicherheit vom Dezember 2001 wurden rund GBP 38 Mio. von einem Konto von Red Diamond an südafrikanische Vertreter gezahlt. Einige dieser Zahlungen erfolgten an Schweizer Banken in Genf:

Einer Gesellschaft namens Arstow Commercial Corporation („Arstow“) wurde über Red Diamond bezahlt und erhielt zwischen Mai 1999 und Dezember 2004 mehr als GBP 20 Mio. Mehr als GBP 9 Mio. wurden dabei auf Konten bei verschiedenen Banken im Fürstentum Liechtenstein einbezahlt. Dokumenten des SFO zur Folge ging es dabei um Zahlungen bezüglich des Hawk- sowie des Gripenvertrages.

Eine Gesellschaft namens Kayswell Services Ltd. („Kayswell“) hat zwischen Dezember 2000 und September 2005 über Red Diamond Zahlungen von mehr als GBP 37 Mio. erhalten. Aus Dokumenten die vom BAE offen gelegt wurden, geht hervor, dass Kayswell 1994 gegründet wurde und im selben Jahr eine Beratervereinbarung mit BAE bezüglich des Hawk-Vertrages abschloss, zudem der Gripenvertrag später hinzugefügt wurde. Im Jahr 2000 wurde die Beratervereinbarung mit Kayswell von BAE auf Red Diamond übertragen und im Jahr 2005 wurde die Vereinbarung beendet, wobei Kayswell mehr als GBP 19 Mio. als Abfindung erhielt.

Die von BAE offen gelegten Dokumente weisen einen gewissen Jules Pelissier als Kontaktperson bei Kayswell aus. Die Akte enthält jedoch auch Korrespondenz von Pelissier auf dem Briefpapier einer anderen Gesellschaft namens Aviation Consultancy Services Ltd. (ACS). Einem UNO-Bericht zufolge steht John Bredenkamp (1940 in Südafrika geboren, jedoch Staatsbürger von Zimbabwe) in Verbindung mit Aviation Consultancy Services. Bredenkamp ist im Vereinigten Königreich ansässig und befand sich im Jahr 2002 auf Platz Nr. 33 der reichsten Personen in Großbritannien. Derselbe UNO-Bericht beschreibt ihn als Schlüsselfigur im Waffenhandel und als einen Mann, der Millionen mit der gesetzwidrigen Ausbeutung von Naturschätzen im Kongo und über ACS mit der Vermittlung von Verkäufen von militärischem Gerät von BAE an das Land verdient hat. Außerdem stellt der Bericht Behauptungen auf (die sowohl von BAE als auch von Bredenkamp bestritten werden), dass BAE unter Beteiligung von ACS durch den Verkauf von Ersatzteilen für Hawk-Kampfflugzeuge an Zimbabwe im Jahr 2002 gegen EU-Sanktionen verstoßen hat.

Ungefähr GBP 6.5 Mio. der an Kayswell gezahlten Beträge wurde über Red Diamond auf ein Konto bei der LGT Bank in Liechtenstein AG, Vaduz, überwiesen.

Es ist zu vermuten, dass die öffentlichen Anschuldigungen betreffend die korrupten Beziehungen und des Machtmisbrauchs zwischen BAE-Vertretern und hoch stehenden Persönlichkeiten innerhalb der ANC-Regierung im Verein mit dem Umfang der Zahlungen und ihrer Zeitnähe zum erfolgreichen Abschluss

der Verträge, nicht im Einklang mit legitimen kommerziellen Transaktionen stehen und eine genauere Untersuchung erforderlich.

Es liegen - sei es aufgrund der Zeitnähe zu den Zahlungen oder der schieren Höhe der Provisionszahlungen - glaubwürdige Anschuldigungen vor, dass Mittel, die über BAE bzw. HQ Marketing und Red Diamond fließen, für Bestechungszwecke verwendet werden. Außerdem wird das gesamte System unter Geheimhaltung betrieben, so dass der Verdacht bezüglich des tatsächlichen Verwendungszwecks dieser Zahlungen berechtigt ist.

Bei der liechtensteinischen Treuhandgesellschaft Tremaco Treuunternehmen reg. wurden/ werden für den Verdächtigen Fana Hlongwane und den weiteren Verdächtigen Alexander Roberts verschiedene Gesellschaften verwaltet. Alexander Roberts gab sich gegenüber der genannten Treuhandgesellschaft als wirtschaftlich Berechtigter der Arstow aus. Fana Hlongwane scheint als wirtschaftlich Berechtigter bei den Gesellschaften Westunity Business Limited, Meltec Foundation und Gamary Trust reg. auf. Die Westunity Business Ltd. wurde über die oben genannte Arstow gespiesen, wobei Arstow wie bereits gesagt von der Red Diamond Vermögenswerte erhielt. Bei der Westunity Business Ltd. wurden in der Folge wiederum Zahlungen an die Meltec Foundation bzw. nach deren Liquidation an deren Nachfolger Gamary Trust reg. ausgeführt. Im gegenständlichen Strafverfahren wurden die Vermögenswerte des Gamary Trust bei der Banque Pasche (Liechtenstein) S.A., Vaduz, im Umfang von über GBP 400'000.00 gesperrt. Weiters wurde bekannt, dass der Verdächtige Hlongwane Berater des früheren südafrikanischen Verteidigungsministers Joe Modise gewesen sein soll und gleichzeitig die Firma Airbus beraten haben soll.

Aufgrund des gegensätzlichen Verdachtes wurden auch Vermögenswerte, an welchen Fana Hlongwane wirtschaftlich berechtigt ist, bei der Swisspartners Versicherung AG, Vaduz, im Umfang von über EUR 3 Mio. gesperrt. Derzeit ist davon auszugehen, dass die genannten gesperrten Vermögenswerte bei der Swisspartners Versicherung AG von einem Konto lautend auf Preordin Holdings Ltd., Panama, bei der Bank Credit Agricole, Genf/Schweiz, stammt. Bei der Preordin Holdings Ltd. handle es sich um eine Holdinggesellschaft des Verdächtigen Hlongwane.

Aus dem Verfahren beim SFO ergibt sich, dass nach den Angaben des Verdächtigen Roberts „irgendwann im Laufe der Aktivitäten mit Südafrika zwischen Roberts und BAE vereinbart wurde, dass etwa zwei Drittel der Roberts zustehenden Provisionen zu gegebener Zeit vom Konto Arstow an Konten überwiesen würden, die von Herrn Hlongwane kontrolliert werden“. Laut

Robert's war dies eine Vergütung der „Ausgleichsarbeiten“, die von Hlongwane im Zuge der Aktivitäten in Südafrika geleistet worden waren.

Bezugnehmend auf die obigen Ausführungen ergeht nunmehr das höfliche

ERSUCHEN,

dem Fürstlichen Landgericht mitzuteilen, ob bei der National Prosecuting Authority of South Africa gegen Fana Hlongwane im Zusammenhang mit seiner Beratungstätigkeit für BAE und Airbus ein Strafverfahren anhängig ist und bejahendenfalls mitzuteilen, was der Gegenstand des dortigen Verfahrens ist und in welchem Stadium sich das Verfahren befindet.

Weiters werden Sie um Mitteilung dahingehend ersucht in welcher Funktion Fana Hlongwane im Zusammenhang mit der Lieferung von Kampfflugzeugen von BAE und allenfalls Airbus an die südafrikanische Regierung tätig und befasst war, ob er damals tatsächlich Berater des damaligen mittlerweile verstorbenen südafrikanischen Verteidigungsministers Joe Modise war, ob es Anzeichen dafür gibt, dass Fana Hlongwane amtsmissbräuchlich in den Beschaffungsprozesse aktiv eingegriffen hat, sodass BAE und Airbus die Aufträge zugesprochen erhielten und ob Fana Hlongwane damals öffentlich Beamter der Republik Südafrika bzw. als leitender Angestellter eines öffentlichen Unternehmens tätig war.

Schliesslich werden Sie ersucht, Fana Hlongwane als Verdächtigen zum oben dargestellten Sachverhalt zu vernehmen.

Eingangs möge der Verdächtige zu seine persönlichen Verhältnissen befragt werden und ihm die strafbare Handlung, wegen der er verdächtigt wird, allgemein bezeichnet werden. Anschliessend soll darauf aufmerksam gemacht werden, dass es ihm freisteht eine Aussage zu machen. Im Falle der Verweigerung der Aussage soll er darauf hingewiesen werden, dass die Untersuchung dadurch aber nicht gehemmt werde und dass er sich dadurch seiner Verteidigungsrechte berauben könne. Vor der Vernehmung möge dem Verdächtigen zusätzlich das beiliegende Merkblatt „Rechte und Pflichten im Strafverfahren“ ausgehändigt und der Erhalt protokolliert werden.

Insbesondere möge der Verdächtige zu den oben bereits aufgeworfenen Fragen zu seiner Tätigkeit für BAE und die Regierung von Südafrika Stellung nehmen.

Weiters wolle der Verdächtige gefragt werden, ob er wirtschaftlich Berechtigter der Mettec Foundation, des Gamary Trust reg., der Westunity Business Ltd. und einer Versicherung bei der Swisspartners Versicherung AG, 9490 Vaduz, war/Ist. Bejahendefalls wolle er detailliert aufzeigen, woher die Vermögenswerte der genannten Gesellschaften/Versicherung genau stammen, wobei bezüglich der Versicherung der Verdächtige angeben wolle, woher und wofür ursprünglich die Vermögenswerte bei der Preordain Holdings Ltd. stammen. Der Zeuge wolle Zeugen/Beweismittel nennen, welche seine Angaben stützen. Weiters wolle der Verdächtige erklären, was Alexander Roberts mit „Ausgleichsarbeiten“ im obigen Sinne meint und warum bzw. für welche Tätigkeiten er (der Verdächtige) von BAE/Arstow Provisionsbeträge überwiesen erhielt. Schliesslich wolle der Verdächtige gefragt werden, ob er bereit ist, für eine Aussage vor dem Fürstlichen Landgericht in Vaduz zu erscheinen.

Für allfällige Fragen stehe ich Ihnen jederzeit gerne zur Verfügung:

Tel: +423 / 236 63 04
Fax: +423 / 236 65 69
E-Mail: Martin.Nigg@lg.llv.li

Sollten Sie für die ersuchte internationale Rechtshilfe in Strafsachen nicht zuständig sein, so ersuche ich Sie, dieses Schreiben an die zuständige Behörde weiterzuleiten.

Mit bestem Dank im Voraus für Die Gewährung der Rechtshilfe verbleibe ich

mit vorzüglicher Hochachtung



Martin Nigg
Fürstlicher Landrichter

Beilagen:

§ 165 Abs 1 bis 3 StGB
Merkblatt „Rechte und Pflichten im Strafverfahren“

§ 165
Geldwäscherei

- 1) Wer Vermögensbestandteile, die aus einem Verbrechen, einem Vergehen nach den §§ 278, 278d oder 304 bis 308, einem Vergehen nach Art. 23 Abs. 1 und 2 des Bundesgesetzes über Aufenthalt und Niederlassung der Ausländer oder einem Vergehen nach dem Betäubungsmittelgesetz herrühren, verbirgt oder ihre Herkunft verschleiert, insbesondere indem er im Rechtsverkehr über den Ursprung oder die wahre Beschaffenheit dieser Vermögensbestandteile, das Eigentum oder sonstige Rechte an ihnen, die Verfügungsbefugnisse über sie, ihre Übertragung oder darüber, wo sie sich befinden, falsche Angaben macht, ist mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen.
- 2) Wer Vermögensbestandteile, die aus einem Verbrechen, einem Vergehen nach den §§ 278, 278d oder 304 bis 308, einem Vergehen nach Art. 23 Abs. 1 und 2 des Bundesgesetzes über Aufenthalt und Niederlassung der Ausländer oder einem Vergehen nach dem Betäubungsmittelgesetz eines anderen herrühren, an sich bringt, in Verwahrung nimmt, sei es, um diese Bestandteile lediglich zu verwahren, diese anzulegen oder zu verwalten, solche Vermögensbestandteile umwandelt, verwertet oder einem Dritten überträgt, ist mit Freiheitsstrafe bis zu zwei Jahren oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen.
- 3) Wer die Tat nach Abs. 1 oder 2 in Bezug auf einen 75 000 Franken übersteigenden Wert oder als Mitglied einer kriminellen Vereinigung begeht, die sich zur fortgesetzten Geldwäscherei verbunden hat, ist mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren zu bestrafen.

RECHTE UND PFLICHTEN IM STRAFVERFAHREN

Merkblatt für Verdächtige/Beschuldigte/Angeklagte im Strafverfahren

Verteidiger: Verdächtige/Beschuldigte/Angeklagte im Strafverfahren haben das Recht, sich während des gesamten Verfahrens eines Verteidigers zu bedienen (s. §§ 24 ff. StPO).

Während der Einvernahme vor dem Untersuchungsrichter ist die Anwesenheit des Verteidigers oder weiterer Personen nicht gestattet (§ 145 StPO).

Verteidigerzwang: In der Schlussverhandlung vor dem Kriminalgericht muss der Angeklagte durch einen Verteidiger vertreten sein. Dies gilt ebenso für die Dauer der allfällig verhängten Untersuchungshaft (§ 26 Abs 3 StPO).

Wird vor Beginn der Schlussverhandlung oder anlässlich der Verhängung der Untersuchungshaft kein Verteidiger benannt, so wird durch das Gericht von Amts wegen und auf Kosten des Beschuldigten /Angeklagten ein Verteidiger bestellt.

In der Schlussverhandlung vor dem Einzelrichter oder dem Schöffengericht besteht kein Verteidigerzwang.

Verfahrenshelfer: Ist der Verdächtige/Beschuldigte/Angeklagte ausser Stande, ohne Beeinträchtigung des für ihn und seine Familie, für deren Unterhalt er zu sorgen hat, zu einer einfachen Lebensführung notwendigen Unterhalts die Kosten der Verteidigung zu tragen, so hat das Gericht auf Antrag des Verdächtigen/Beschuldigten/Angeklagten zu beschliessen, dass diesem ein Verteidiger beigegeben wird, dessen Kosten er nicht zu tragen hat, wenn und soweit dies im Interesse der Rechtpflege, vor allem im Interesse einer zweckentsprechenden Verteidigung, erforderlich ist (§ 26 Abs 2 StPO).

Aussageverweigerung: Verdächtigen/Beschuldigten/Angeklagten steht es frei, sich zu äussern oder nicht zur Sache auszusagen. Die getätigte Aussage kann dabei der Verteidigung dienen, aber auch als Beweis gegen sie verwendet werden.

Ladungen des Gerichts ist trotz beabsichtigter Aussageverweigerung dennoch Folge zu leisten, andernfalls die Vorführung durch die Landespolizei erfolgt; die Aussageverweigerung wird anlässlich der Einvernahme zu Protokoll genommen.

Akteneinsicht: Verdächtigen/Beschuldigten/Angeklagten oder deren Verteidiger steht es frei, bei Gericht Einsicht in den Strafakt zu nehmen und Kopien anfertigen zu lassen. Dieses Akteneinsichtsrecht kann jedoch aus ermittlungstaktischen Gründen durch den Untersuchungsrichter eingeschränkt werden (s. § 30 Abs 2 StPO).

Rechtsmittel: Über die bestehenden Rechtsmittelmöglichkeiten werden Verdächtige/Beschuldigte/Angeklagte jeweils anlässlich der Beschlussfassung mündlich oder schriftlich belehrt.

Das wesentlichste Rechtsmittel im Rahmen der gerichtlichen Vorerhebungen bzw. der Untersuchung stellt jedoch die Beschwerde dar: Alle richterlichen Entscheide, Beschlüsse und Verfügungen, die nicht Urteile sind, können, soweit nicht gesetzliche Ausnahmen bestehen, mittels Beschwerde beim Fürstlichen Obergericht wegen Ungezetzlichkeit oder Unangemessenheit angefochten werden. Beschwerde kann von allen Personen erhoben werden, die berechtigt sind, Berufung einzulegen, oder welchen durch einen Beschluss oder eine Verfügung Rechte verweigert werden oder Pflichten entstehen. Die Beschwerde ist binnen 14 Tagen ab Bekanntgabe/Zustellung beim Untersuchungsrichter einzureichen (s. §§ 238 ff StPO).

Jugendstrafsachen: In Jugendstrafsachen – d.h. Strafverfahren gegen Personen, die zur Zeit der ersten gerichtlichen Verfolgungshandlung das achtzehnte Lebensjahr noch nicht vollendet hatten, und Strafverfahren, die spätestens zwei Jahre nach der Vollendung des achtzehnten Lebensjahres wegen einer Jugendstrafftat bei Gericht anfallen – hat der Verdächtige/Beschuldigte/Angeklagte das Recht, seinen gesetzlichen Vertreter zur Einvernahme als Vertrauensperson hinzuzuziehen, sofern dieser nicht selbst in irgendeiner Form in das Verfahren involviert ist (§ 22 JGG in Verbindung mit § 115 Abs 2 zweiter Satz StPO).

Der gesetzliche Vertreter hat einen gesetzlichen Anspruch auf die Teilnahme an den Untersuchungshandlungen und ist daher zwingend zu informieren. Er kann auch gegen den Willen des Jugendlichen den Anspruch durchsetzen oder für diesen einen Verteidiger bestellen.

In Verfahren wegen Verbrechen muss der Verdächtige/Beschuldigte/Angeklagte spätestens anlässlich der Schlussverhandlung durch einen Verteidiger vertreten sein; allenfalls ist ein Verteidiger von Amfs wegen zu bestellen.

Nigg Martin, lic. iur., Landrichter

Von: Elizabeth HF. Le Roux [efhleroux@npa.gov.za]
Gesendet: Dienstag, 4. August 2009 14:17
An: Nigg Martin, lic. iur., Landrichter
Betreff: FW: Letter of Request from Liechtenstein, Fana Hlongwane/BAE

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Dear Mr. Nigg,

Herewith the informal response on your Letter of Request sent to South Africa in October 2008. The delayed response is deeply regretted. The formal response will reach you in due course through the proper diplomatic channels, and although the format will change, the gist of the information will remain unchanged.

Please do not hesitate to make contact with me if there are any further enquiries.

Kindest regards,

Elize le Roux

EHF le ROUX
SENIOR STATE ADVOCATE
GAUTENG
SOUTH AFRICA

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This e-mail and all of its contents are subject to the National Prosecuting Authority of South Africa's disclaimer available at:

www.npa.gov.za/ReadContent458.aspx

22 July 2009

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Kindly receive herewith our response to your Request referenced
11 UR.2006.284 ON 85.

Introductory note:

1. Before I proceed with a response to your Request for assistance, it would be prudent to allude to the fact that this investigation initially resided with the now defunct Directorate of Special Operations ("DSO" - colloquially known as the "Scorpions") under the auspices of the National Prosecuting Authority. In terms of the provisions of the National Prosecuting Amendment Act, 2008 as well as the South African Police Service Amendment Act, 2008 the DSO ceased to exist as of 06 July 2009 (being referred to as the "fixed date").
2. As from the fixed date, all the powers exercised and functions performed by the former DSO are to be exercised and performed by the Directorate for Priority Crime Investigations ("DPCI"), a division of the South African police Service ("SAPS").
3. The DPCI have the legislative mandate to deal with all former DSO investigations, as well as to investigate all future offences that fall within the function and mandate of the DPCI.
4. However, due to the fact that your Request for assistance was directed to the NPA, it is deemed appropriate for me to respond rather than SAPS.
5. I turn now to our response to the various questions contained in your request for international legal assistance:

Inform the Court of Justice of the Principality of Liechtenstein whether criminal proceedings are pending with the National Prosecuting Authority ("NPA") in South Africa against Fana Hlongwane, with reference to his advisory role vis-à-vis BAE and Airbus, and, if so, what is the subject matter as well as the status of these proceedings.

7. Answer:

- a. *In South African law, "criminal proceedings" only commence upon the arrest, summons or indictment of an accused. There are at present no criminal proceedings pending against Fana Hlongwane ("Hlongwane"),*
- b. *It can be confirmed, however, that a criminal investigation is pending in South Africa against, inter alia; Hlongwane, not only regarding his advisory role in relation to BAE, but also regarding the extent of his influence on the outcome of the bidding process whilst he was the personal advisor to the late Minister of Defence (as he was then), Mr. Joe Modise.*
- c. *The subject matter of the investigation can be defined as the investigation into allegations of fraud, corruption, racketeering and/or money-laundering in the period before, during and after the acquisition of armaments by the Department of Defence's Strategic Arms Acquisition Programme (the "Arms Deal"), in respect of negotiations and or contracts concluded regarding the purchase of aircraft.*
- d. *We presently have no pending investigation involving Hlongwane and Airbus. Although I am aware of the purchase of airbus aircraft*

by the South African Air Force, this was a separate transaction which did not form part of the Arms Deal.

- e. As explained in the Introductory Note, this investigation no longer falls under the control of the NPA. At the moment, however, it will be lead by the same investigating officer, S/Supt. Johan du Plooy, but under management of the SAPS. The NPA has been informed that no arrests have yet been made, and that the investigation is still at a fairly early stage.
- f. As such 4 (four) Letters of Request ("LoR") have been directed in November 2008 at the request of the NPA to Switzerland, the United Kingdom, Jersey and, as you maybe aware, the Principality of Liechtenstein. For more detail as to information in our possession you are kindly referred to the detailed discussion in our LoR to Liechtenstein in the name of our Investigating Director (as he then was) Adv. AT Mngwengwe.,
- g. Furthermore, around the same time, a search and seizure operation was carried out on 7 premises, during which several hundred thousand (mostly financial) documents were seized. These documents are now under the control of S/Supt. du Plooy at the SAPS. He is busy with a laborious process of motivating for the appointment of forensic auditors to peruse and analyse these documents, the outcome which might still take quite a few months.

8. Second Question:

Information is requested regarding Hlongwane's function in connection with the supply of fighter aircraft from BAE and, if applicable, the Airbus to the South African Government, as well as

whether he actually was an adviser at the time to the late Mr. Joe Modise. Are there indications that Hlongwane abused his official power and actively intervened in the process, so that BAE and Airbus were awarded contracts? Was Hlongwane publicly(?) a civil servant and/ or was he working as an Officer of a company in the public sector?

9. Answer:

- a. No direct evidence exist at this stage that he influenced the outcome of the bidding process. There is however strong circumstantial evidence to points towards this.
- b. What can be confirmed, however, is that he was particularly close to one of the main decision makers, the then Minister of Defence Mr Joe Modise, at a crucial time of the procurement process. This could have given him access to valuable information pertaining to the bidding process and possibly also enabled him to influence the process. Indications are that he was employed as a Special Advisor to the late Minister from 1994 - January 1999. Investigations to confirm this are ongoing.
- c. Exactly what his function was with regard to the supply of fighter aircraft is vis-à-vis BAE is not clear at this stage. However, the information and evidence at our disposal at present reveal that he received vast sums of money from BAE over several; years following the award of the aircraft contract to BAE, both directly to his local companies and more covertly via certain overseas entities, which were apparently used by BAE for making secret payments. The manner in which the latter payments were made is in itself cause for suspicion and call for further investigation. In particular, whether any of the monies received were paid to any of the persons involved in the decision making process.

d. Although we do not have any evidence under oath stating that a person in the position of Hlongwane at the time, being the advisor to Joe Modise, on a contract-basis, would be considered to be a civil servant, all indications are that in South African law he would in all probability be regarded as a civil servant. What can also be stated is that he also held, and still holds various directorships in various private companies, amongst others DENEL, the biggest arms manufacturer in South Africa. DENEL, although a private company, is wholly owned by the South African government. His directorship dates back from the late 1990's until as recently as about 2 (two) years ago.

10. Third Question:

Kindly interrogate Hlongwane as a suspect on the facts outlined above.

11. Answer:

- a. Having regard to the fact that our investigation is at such an early stage, and bearing in mind that during communicating with Dr. Robert Wallner (Leitender Staatsanwalt, Liechtenstein) it was indicated that the Liechtenstein authorities might consider transferring their investigation to the South African authorities, it is not considered in the best interest of the South African investigation to approach Hlongwane at this stage as a suspect.
- b. One of the reasons in particular is that the right to self-incrimination is very strongly entrenched in the South African law, and despite the explanation contained in your document of "Rights

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and Obligations in Criminal Proceedings", Hlongwane will in all probability decline to make any statement.

- c. *Although certain mechanisms exist in terms of which he may be compelled to make a statement, this may not later be used as evidence against him at any future criminal proceedings.*
- d. *We are accordingly regrettably unable to assist with this request at the present time.*

KOPIE

Nachfolgend erhalten Sie unsere Antwort auf Ihr Rechtshilfeersuchen mit dem Aktenzeichen **11.UR.205.284 ON 85.**

Einleitende Erläuterungen:

1. Bevor ich auf Ihr Rechtshilfeersuchen eingehe, wäre es sinnvoll, auf die Tatsache hinzuweisen, dass die Ermittlungen ursprünglich von dem mittlerweile nicht mehr bestehenden Direktorat für Sonderoperationen (Directorate of Special Operations/DSO – umgangssprachlich die „Skorpione“ genannt) unter Aufsicht der südafrikanischen Bundesstaatsanwaltschaft (National Prosecuting Authority/NPA) geführt wurden. Gemäss den Bestimmungen des Änderungsgesetzes zur staatlichen Strafverfolgung (National Prosecuting Amendment Act) von 2008 sowie dem Änderungsgesetz zur südafrikanischen Polizei (South African Police Service Amendment Act) von 2008, gibt es das DSO seit 6. Juli 2009 (nachstehend der „Stichtag“ genannt) nicht mehr.
2. Ab dem Stichtag gehen sämtliche Befugnisse und Funktionen, die von dem früheren DSO ausgeübt wurden, auf das Direktorat für Ermittlungen in Strafsachen mit vorrangiger Priorität (Directorate for Priority Crime Investigations/DPCI), einer Abteilung der südafrikanischen Polizei SAPS über.
3. Das DPCI ist gesetzlich ermächtigt, alle früheren Ermittlungen des DSO zu übernehmen und Ermittlungen bei allen künftigen Straftaten aufzunehmen, die in den Aufgaben- und Funktionsbereich des DPCI fallen.
4. Aufgrund der Tatsache, dass Ihr Rechtshilfeersuchen jedoch an die südafrikanische Bundesstaatsanwaltschaft NPA gerichtet war, erschien es mir angemessener, Ihnen anstelle der SAPS selbst zu antworten.
5. Nun möchte ich auf die verschiedenen Fragen in Ihrem internationalen Rechtshilfeersuchen eingehen:

6. Erste Frage:

Bitte teilen Sie dem Fürstlichen Landgericht mit, ob bei der südafrikanischen Bundesanwaltschaft (NPA) ein Strafverfahren gegen Fana Hlongwane im Hinblick auf seine Beratungstätigkeit für BAE und Airbus anhängig ist und falls ja, was der Gegenstand des Verfahrens ist und in welchem Stadium sich das Verfahren befindet.

7. Antwort:

- a. Nach südafrikanischem Recht beginnt ein Strafverfahren erst mit der Verhaftung, der Vorladung oder der Anklage gegen einen Angeklagten. Derzeit ist kein Strafverfahren gegen Fana Hlongwane (nachstehend „Hlongwane“ genannt) anhängig.
- b. Wir können jedoch bestätigen, dass derzeit strafrechtliche Ermittlungen in Südafrika unter anderem gegen Hlongwane nicht nur im Hinblick auf seine Beraterrolle für BAE, aber auch in Bezug auf den Umfang seines Einflusses auf das Ergebnis der Ausschreibung im Rahmen seiner Tätigkeit als persönlicher Berater des verstorbenen Verteidigungsministers Joe Madise durchgeführt werden.
- c. Bei den Ermittlungen geht es um den Vorwurf des Betrugs, der Korruption, krimineller Geschäfte und Machenschaften und/oder der Geldwäsche vor, während und nach dem Kauf von Rüstungswaffen durch das südafrikanische Verteidigungsministerium im Rahmen des Programms zum Kauf strategischer Waffen (nachstehend das „Waffengeschäft“ genannt) und zwar in Bezug auf Verhandlungen und/oder Verträge, die in Zusammenhang mit den Kauf von Flugzeugen geschlossen wurden.
- d. Derzeit gibt es keine laufenden Ermittlungen gegen Hlongwane in Zusammenhang mit Airbus. Auch wenn mir bekannt ist,

dass die südafrikanische Luftwaffe Airbus-Flugzeuge gekauft hat, ging es dabei um ein gesondertes Geschäft, das mit dem vorgenannten Waffengeschäft nichts zu tun hatte.

e. Wie ich in meinen einleitenden Erläuterungen erwähnt hatte, fallen diese Ermittlungen nicht mehr in den Kompetenzbereich der NPA. Derzeit werden diese von dem gleichen Ermittlungsbeamten, Herrn S/Supt. Johan du Plooy, jedoch unter Leitung der SAPS geführt. Die NPA wurde darüber informiert, dass es bislang noch zu keinen Verhaftungen kam und dass sich die Ermittlungen noch in einem relativ frühen Stadium befinden.

f. Daher wurden im November 2008 vier Rechtshilfeersuchen im Auftrag der NPA in die Schweiz, nach Grossbritannien, Jersey und – wie Ihnen bekannt sein dürfte – an das Fürstentum Liechtenstein gestellt. Weitere detaillierte Einzelheiten hinsichtlich der Informationen, über die wir verfügen, entnehmen Sie bitte unserem Rechtshilfeersuchen, das unser damaliger Ermittlungsleiter Adv. AT Mngwengwe an die Behörden in Liechtenstein gestellt hatte.

g. Darüber hinaus fanden etwa zur gleichen Zeit Durchsuchungen und Beschlagnahmen an sieben verschiedenen Orten statt, bei denen mehrere 100.000 Dokumente (zumeist Finanzdokumente) sichergestellt wurden. Diese Dokumente befinden sich derzeit in der Obhut von S/Supt. du Plooy bei der SAPS. Er ist momentan mit der arbeitsintensiven Ernennung forensischer Sachverständigen beschäftigt, die diese Dokumente prüfen und analysieren sollen. Das Ergebnis dieser Untersuchungen wird sicher noch einige Monate auf sich warten lassen.

8. Zweite Frage:

Es werden Informationen über die Funktion von Hlongwane in Zusammenhang mit der Lieferung von Kampfflugzeugen von BAE und gegebenenfalls von Airbus an die südafrikanische Regierung

sowie darüber benötigt, ob Hlongwane damals tatsächlich Berater des verstorbenen Joe Madise war. Gibt es Anzeichen dafür, dass Hlongwane aktiv und amtsmissbräuchlich in den Beschaffungsprozess eingriff, so dass BAE und Airbus die Aufträge erhielten? War Hlongwane öffentlich(?) Beamter bzw. leitender Angestellter eines öffentlichen Unternehmens?

9. Antwort:

- a. Nach derzeitigem Stand gibt es keinen unmittelbaren Beweis dafür, dass er den Ausgang der Ausschreibung beeinflusste. Es gibt jedoch erdrückende Indizienbeweise, die in diese Richtung deuten.
- b. Allerdings können wir bestätigen, dass er in einem ganz besonders engen Verhältnis zu einem der Hauptentscheidungsträger, dem damaligen Verteidigungsminister Joe Madise stand und zwar in einer entscheidenden Phase des Beschaffungsprozesses. Somit könnte er Zugang zu wertvollen Informationen über die Ausschreibung gehabt haben, die ihm die Möglichkeit gegeben haben könnten, Einfluss auf den Prozess zu nehmen. Wir haben Hinweise darauf, dass er von 1994 bis Januar 1999 als Sonderberater des verstorbenen Ministers tätig war. Die entsprechenden Ermittlungen in diese Richtung dauern derzeit noch an.
- c. Derzeit ist noch nicht klar, welche Funktion er genau im Hinblick auf die Lieferung von Kampfflugzeugen gegenüber BAE hatte. Aus den uns derzeit vorliegenden Informationen und Beweisen geht jedoch hervor, dass er einige Jahre lang hohe Summen von BAE erhielt, nachdem BAE den Zuschlag für die Lieferung von Flugzeugen erhalten hatte, und zwar sowohl direkt an seine Gesellschaften vor Ort als auch verdeckt über gewisse Unternehmen in Übersee, die von BAE augenscheinlich für geheime Geldtransaktionen genutzt wurden. Die Art und Weise, wie diese letzten genannten Zahlungen erfolgten, ist an sich schon verdächtig und wird noch Gegenstand weiterer Ermittlungen sein. Insbesondere die Frage, ob Gelder auch an Personen flossen, die am Entscheidungsprozess beteiligt waren.

d. Auch wenn uns keine eidlichen Aussagen dahingehend vorliegen, dass eine Person in der Position von Hlongwane damals als Berater von Joe Madise auf vertraglicher Basis als Beamter angesehen wurde, deutet alles darauf hin, dass er nach südafrikanischem Recht aller Wahrscheinlichkeit nach als Beamter eingestuft würde. Ebenso ist darauf hinzuweisen, dass er Chef verschiedener privater Unternehmen war und immer noch ist, darunter von DENEL, dem grössten Waffenproduzenten in Südafrika. Auch wenn es sich bei DENEL um ein privates Unternehmen handelt, so hält die südafrikanische Regierung dennoch 100 % aller Anteile an diesem Unternehmen. Er leitete dieses Unternehmen seit den späten 1990er Jahren bis vor etwas zwei Jahren.

10. Dritte Frage:

Bitte vernehmen Sie Hlongwane als Verdächtigen im Rahmen des vorgenannten Sachverhalts.

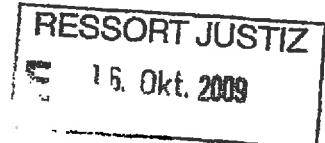
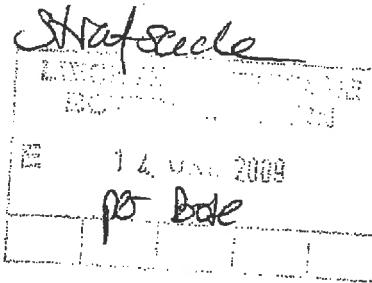
11. Antwort

a. Angesichts dessen, dass sich unsere Ermittlungen noch in einem recht frühen Stadium bewegen und unter Berücksichtigung der Tatsache, dass im Rahmen des Schriftwechsels mit Dr. Robert Wallner (Leitender Staatsanwalt, Liechtenstein) angegeben wurde, das die Liechtensteiner Behörden in Erwägung ziehen könnten, ihre Ermittlungen auf die südafrikanischen Behörden zu übertragen, wird es als nicht im Interesse der Ermittlungen in Südafrika liegend angesehen, Hlongwane gegenwärtig als Verdächtigen zu vernehmen.

b. Einer der Gründe hierfür ist insbesondere, dass das Selbstbelastungsverbot sehr vehement im südafrikanischen Recht verankert ist und trotz der in Ihrem Merkblatt „Rechte“

"und Pflichten im Strafverfahren" genannten Erläuterung wird Hlongwane höchstwahrscheinlich die Aussage verweigern.

- c. Auch wenn es bestimmte Mittel und Wege gibt, ihn zu einer Aussage zu zwingen, kann diese dann im Rahmen eines künftigen Strafverfahrens nicht mehr als Beweismittel verwendet werden.*
- d. Daher bedauern wir, Ihnen in dieser Sache derzeit nicht behilflich sein zu können.*



96/2009

The Embassy of the Republic of South Africa presents its compliments to the Embassy of the Principality of Liechtenstein and has the honour to refer to this Embassy's Note no 12/2009 dated 2 February 2009.

The South African Department of Justice and Constitutional Development have requested this Embassy to retrieve the documents relating to BAE/Hlongwe.

The Embassy would be grateful if the Embassy of the Principality of Liechtenstein could request the competent authorities to return them to this Embassy.

The Embassy of the Republic of South Africa avails itself of this opportunity to renew to the Embassy of the Principality of Liechtenstein the assurance of its highest consideration.



Berne, 14 October 2009

Embassy of the Principality of Liechtenstein
Willadingweg 65
Postfach CH-3000 Berne

" W04 "

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From: Robert.Wallner@sta.llv.li [mailto:Robert.Wallner@sta.llv.li]
Sent: Thursday, October 29, 2009 7:08 PM

To: Elizabeth HF. Le Roux
Cc: Anton LJ. Steynberg; Billy WJ. Downer; jcduplooy@telkomrsa.net; Thomas.Patterer@sta.llv.li
Subject: AW: Hlongwane
Importance: High

Dear Ms. Le Roux

I have now received a copy of the Note dated October 14th 2009 of the SA Embassy in Berne via our Embassy in Bern and our Ministry of Justice.

It reads:

"The embassy of the Republic of South Africa presents its compliments to the Embassy of the Principality of Liechtenstein and has the honour to refer to this Embassy's Note no 12/2009 dated 2 February 2009.

The South African Department of Justice and Constitutional Development have requested this Embassy to retrieve the documents relating to BAE/Hlongwane.

The Embassy would be grateful if the Embassy of the Principality of Liechtenstein could request the competent authorities to return them to this Embassy.

The Embassy of the Republic of South Africa avails itself of this opportunity to renew to the embassy of the Liechtenstein the assurance of its highest consideration.

Berne, 14 October 2009"

Attached to the Note were the original Note and a copy of the DOJ & CD letter of January 15th 2009 (signed by Mandla Lingwati) as well as the request. No new letter from the DOJ&CD was attached.

Judge Nigg - I think rightly- understood the Note in the sense that the original request and cover letter are demanded back. In a letter dated October 23rd 2009 he sent all these documents to our Ministry and asked for them to be forwarded to the SA embassy in Bern. He also asked our Ministry to clarify with the SA authorities whether the request is hereby withdrawn, which I think is the case.

Your request was issued by a judge. However the counterpart for us as the requested country is the SA government, which sent the original letter. If the SA government withdraws the request we are bound by that. It is an internal SA question whether the government has authority to withdraw the request or not.

Please note that my today's draft request will be followed up by the original which will have a large attachment of certified copies of relevant documents. This will be sent through the diplomatic channels via Berne.

Best regards

Robert Wallner

Leitender Staatsanwalt/Prosecutor General

Liechtensteinische Staatsanwaltschaft/Liechtenstein Prosecutors Office

Heiligkreuz 49, Postfach 684

9490 Vaduz

Fürstentum Liechtenstein/Principality of Liechtenstein

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REGIERUNG
DES FÜRSTENTUMS LIECHTENSTEIN
RESSORT JUSTIZ

39

National Director of Public Prosecutions
Elize Le Roux
Directorate of Special Operations
Gauteng
Promat Building
Cnr Cresswell & Morlets str.
Weavind Park
Pretoria
South Africa

Our Reference
11 RS.2008.258
RHS 2008/695

Contact
HO/kaad

Vaduz
November 25th 2009

**Request for mutual legal assistance in the criminal case against HLONGWANE Fana,
ROBERTS Alexander and others**

Dear Ms. Le Roux

The Ministry of Justice of the Principality of Liechtenstein presents its complements to the National Director of Public Prosecutions of South Africa and would like to refer to the previous correspondence in this matter.

We shall be grateful if you will let us know whether you wish to uphold or withdraw your request for mutual legal assistance in the criminal case against Fana Hlongwane and others. We will expect a short response of your competent authority in this case till December 31st 2009.

The Ministry of Justice takes this opportunity of renewing to the National Director of Public Prosecutions of South Africa the assurance of its highest regard.

Mag. Harald Oberdorfer
government officer

Copy - Princely Court (11 RS.2008.258)
 - Prosecution Service, Dr. Robert Wallner



REGIERUNG
DES FÜRSTENTUMS LIECHTENSTEIN
RESSORT JUSTIZ

Botschaft des Fürstentums Liechtenstein
Willadingweg 65
Postfach
3000 Bern 15

Unser Aktenzeichen
11 RS.2008.258
RHS 2008/695

Sachbearbeitung
HO/kaad

Vaduz
3. November 2009

HLONGWANE Fana, ROBERTS Alexander u.a. - Internationale Rechtshilfe in Strafsachen

Das Ressort Justiz des Fürstentums Liechtenstein beehort sich, in Entsprechung der Note 96/2009 der Botschaft der Republik Südafrika in Bern der Botschaft des Fürstentums Liechtenstein das Originalrechtshilfeersuchen des Department of Justice and Constitutional Development der Republik Südafrika zu übermitteln und ersucht, dieses Rechtshilfeersuchen der Botschaft der Republik Südafrika in Bern weiterzuleiten.

Gleichzeitig möge die für dieses Rechtshilfeersuchen zuständige Behörde angefragt werden, ob mit der Retournierung der Original-Unterlagen das gegenständliche Rechtshilfeersuchen als erledigt bzw. als zurück gezogen betrachtet werden könne. Für eine umgehende Antwort wären wir sehr dankbar.

Das Ressort Justiz des Fürstentums Liechtenstein benützt auch diesen Anlass, um die Botschaft des Fürstentums Liechtenstein seiner ausgezeichneten Hochachtung zu versichern.

Mit freundlichen Grüßen

Mag. Harald Oberdorfer
Mitarbeiter der Regierung

Beilage erwähnt
Kopie an - Fürstliches Landgericht (11 RS.2008.258)

'WD 6'

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RÉGIERUNG
DES FÜRSTENTUMS LIECHTENSTEIN
RESSORT JUSTIZ

telefax

If there any problem occur while receiving this fax please contact:

FL-9490 Vaduz

00423/236 6590;

mail: Harald.Oberdorfer@rfl.llv.li

From:

Ministry of Justice of the Principality of
Liechtenstein
Harald Oberdofer
government officer

Date:

February 5th 2010

To:

Embassy of the Republic of South Africa
Mrs. N.D. Malotana

Fax-Number:

031-351 3944

Following Pages:

2

Dear Mrs. Malotana

Enclosed please find the two letters I mentioned in our previous conversation of today. Please inform me at about 15th of February, whether the competent authority of your country will withdraw the request definitely or the request has now to be executed in Liechtenstein.

Thank you very much for your efforts.

Best regards
Harald Oberdorfer



LIECHTENSTEINISCHE
STAATSANWALTSCHAFT
FÜRSTENTUM LIECHTENSTEIN

1/8 'WDT'

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Acting National Director
National Prosecuting Authority of South Africa
P.O. Box 752
ZA-0001 Pretoria/South Africa

Ihr Schreiben	Aktenzeichen	Sachbearbeitung	Vaduz
	03 ST.2006.283	taco	28.10.2009

Request for the takeover of the criminal prosecution of the South African citizen Fana Hlongwane

Dear Sir/Madam,

Criminal proceedings are pending at the Court of Justice of the Principality of Liechtenstein in Vaduz, case number 11 UR 2006.283, against South African citizen

Fana Hlongwane et al.,

d.o.b. 5 March 1959, businessman,

resident at 128 Cambebooo Road, Fourways Garden,

Johannesburg, South Africa,

on account of the suspected crime of money laundering pursuant to Article 165 (1) (2) and (3) of Liechtenstein Criminal Code. A summary of the underlying facts and circumstances to these criminal proceedings is as follows:

As a result of several requests for mutual legal assistance from the British Serious Fraud Office ("SFO"), and subsequent associated investigations in Liechtenstein, it is suspected that frozen assets belonging to Fana Hlongwane in the Principality of Liechtenstein are linked with active and passive bribery and corruption by the company operating as BAE Systems PLC ("BAE"),

using a system of international representatives. In concrete terms, it must be assumed that the circumstances are as follows:

BAE maintains a network of representatives (or "advisers" as BAE prefers to call them) to support the marketing of its products. BAE has a department by the name of "Head Quarters Marketing" (HQ Marketing), which coordinates all the agreements and contracts with representatives employed by BAE.

On 19 January 2004, the *Guardian* broadsheet contacted the Serious Fraud Office in London ("SFO") and presented them with information, which implied that BAE were making illegal payments via a company with its registered office in the British Virgin Islands by the name of Red Diamond Trading Ltd ("Red Diamond").

Investigations by the SFO produced the fact that BAE was not sending amounts of money to representatives abroad directly through HQ Marketing, but was making payments of this kind through foreign front companies. One of these front companies is Red Diamond. BAE demands that representatives enter into contractual agreements either with BAE or Red Diamond. The representatives themselves tend to operate through front companies and seldom appear personally.

Within the context of its investigations the SFO procured details about the account of Red Diamond at Lloyds Bank. Lloyds TSB expressed concern about money laundering, since the bank had not been informed about whom Red Diamond was represented by. BAE later confirmed that it was the "beneficial owner" of Red Diamond. BAE has online banking at Lloyds through which payments can be transferred direct to Red Diamond (by means of a computer controlled by BAE), from where they can be transferred abroad. Automated [credit] transfers ensue from BAE accounts to Red Diamond, and from there abroad. This results in the fact that only a minimum amount of bank data remains at the bank. Furthermore, the only purpose for these transfers within the British banking system was clearly to conceal BAE's involvement in foreign transfers.

Material made available to the SFO by the Foreign Corrupt Practices Act (FCPA) division of the U.S. Department of Justice confirms the existence of "open" and "concealed" agreements between BAE and its advisers, as well as the origin of Red Diamond. Evidently BAE, through Sir Richard Evans, decided during the second half of the 1990s to conceal the payment system to its "hidden" advisers. After different options had been considered in this respect, BAE decided that the least transparent system consisted of setting up a foreign entity as a front. The material disclosed also contains details on the setting up of Novelright Ltd. The purpose of this company was exclusively to store abroad filed material relating to representatives.

Furthermore, it was used for meetings with representatives. The documents submitted to the FCPA reveal that the company allegedly had a registered rented office next to Lloyds Bank in Geneva, though the alarm system was allegedly linked with that of Lloyds.

The documentation makes it clear that the main aim of BAE from start to finish consisted of proceeding as surreptitiously as possible and of making the system as non-transparent as possible. The primary aim consisted in particular of making the infiltration of an investigator as difficult as possible. The SFO served an Order on BAE, requesting it to disclose material on its marketing representatives. BAE has so far partially interpreted this Order, but in a way which excludes disclosure of the documents kept in Switzerland.

Points of reference to South Africa ensue as follows:

Up to 1999, BAE negotiated with the South African Ministry of Defence within the framework of a South African Defence Programme with regard to the supply of 52 Hawk Training Aircraft and Saab Gripen Fighter Aircraft to the government of South Africa. According to the inquiries made by the British SFO, BAE was awarded a part of the contract for 2 million GBP concerning the supply of 24 Hawk Training Aircraft as part of the South African "1999 Arms Procurement Programm". According to the findings of the SFO, the now deceased Joe Modise, who was the Defence Minister for South Africa at the time, personally intervened in the procurement process so that BAE would be awarded the contract, although the BAE tender was significantly higher than the tenders from the competition.

According to information from the British SFO, BAE developed a system with various different agents, who negotiated illegal contracts with South Africa for the purchase of munition. In connection with South Africa, it is also suspected that BAE concealed payments it had received from bribery and corruption transactions by transferring "commission" to its advisers. These sums of money were allegedly then used actively again for bribery and corruption. In documents seized up to now in England they are referred to in this connection as "third-party payments".

Internal parliamentary inquiries and later investigations by the Office of the Auditor General also produced the fact that there was bribery and corruption linked with the BAE contract. The report particularly emphasized the role of the amounts made available for "side projects"; these amounts had been earmarked for the internal social and infrastructural development of Trusts (Schattenfirmen) connected with Shamin ("Chippy") Sheik, the ANC Chairman of the Parliamentary Procurement Committee.

In May 2001, investigators in South Africa started an inquiry into claims that there was a link between the contract and the financing of Cabinet Ministers' foreign trips by BAE. It was publicly asserted that Chippy Sheik had moreover received jewellery as presents from BAE. Schabir Sheik too, the brother of Chippy Sheik, was recently sentenced to 15 years' imprisonment after a criminal prosecution brought by the South African authorities on account of bribery by the French arms manufacturer Thomson CSF. This case includes an accusation against Jacob Zuma, the former Vice President of South Africa, which is being dealt with at a judicial hearing.

In 2003, BAE confirmed that its representative in South Africa was a company by the name of Osprey Aviation ("Osprey"). A BAE spokesperson confirmed in a South African newspaper that Osprey had been appointed in 1994 as an "external advisory entity" to support legal tendering and commercial processes. The full extent of the amounts pouring into Osprey has not been confirmed. Richard Charter, the now deceased head of Osprey, was also chairman of South African BAE Systems Holdings (South Africa), an affiliated company of BAE.

Other accusations in South Africa relate to a donation of approx. GBP 500,000 to "The Airborne Trust" in March 1998. This Trust was founded in 1995 to support former ANC veterans of the MK Military Veterans Association (MKMVA). Its chairman was also Richard Charter. Significantly, the now deceased Joe Modise, the Defence Minister for South Africa at the time, was a founder member of the Trust and a member of the steering committee of the MKMVA, and received from the Airborne Trust at least one one-off payment to enable him to make a trip to the United Kingdom. Furthermore, this payment ensued just one month before Modise personally intervened in the procurement process, in order to change the conditions of the tender in a way that would ultimately lead to BAE being awarded the contract. These changes in tendering excluded price as being the relevant factor in the awarding of the contract. As already stated, the BAE tender was substantially higher than the tenders from the competition.

In 2005, Charter (together with Chippy Sheik) was suspected of corruption in the National Assembly of South Africa by Patricia De Lille, the leader of the Independent Democratic Party. She furthermore requested an independent inquiry into the matter of why the South African Government paid USD 17 million over the market price for the Hawk Training Aircraft.

The payments to representatives in connection with the South African BAE Contract began in May 1999 through Red Diamond, and amounted to GBP 81 million at the end of 2004. Since the introduction of British law in December 2001 to combat terrorism and criminality, and protect safety, around GBP 38 million has been paid to South African representatives from a Red Diamond account. Some of these payments were made at Swiss banks in Geneva:

A company by the name of Arstow Commercial Corporation ("Arstow") was paid through Red Diamond and received more than GBP 20 million between May 1999 and December 2004. In this connection, more than GBP 9 million was paid into accounts at different banks in the Principality of Liechtenstein. Documents subsequently received from the SFO in this respect concern payments with regard to the Hawk and Gripen Contract(s).

Another company by the name of Kayswell Services Ltd. ("Kayswell") received payments of more than GBP 37 million through Red Diamond between December 2000 and September 2005. It emerges from documents disclosed by BAE that Kayswell was formed in 1994 and concluded a consultancy agreement with BAE with regard to the Hawk Contract in the same year; furthermore, the Gripen Contract was added later. In 2000, the consultancy agreement with Kayswell was transferred by BAE to Red Diamond, and in 2005, the agreement was terminated, though Kayswell received more than GBP 19 million in compensation.

The documents disclosed by BAE show evidence of a certain Jules Pelissier as the contact at Kayswell. However, the file also contains correspondence from Pelissier on the headed paper from another company by the name of Aviation Consultancy Services Ltd. (ACS). According to a UN report, John Bredenkamp (born in 1940 in South Africa, but a citizen of Zimbabwe) is connected with Aviation Consultancy Services. Bredenkamp is domiciled in the United Kingdom, and in 2002 was the 33rd richest person in Great Britain. The same UN report describes him as a key figure in the arms trade and as a man who earned millions with the illegal exploitation of natural treasures in the Congo, and with the negotiation of sales of military equipment from BAE to the country through ACS. Furthermore, the report lists claims (which are disputed both by BAE and Bredenkamp) that BAE, with the involvement of ACS, violated EU sanctions by selling spare parts for Hawk Fighter Aircraft to Zimbabwe in 2002.

Approx. GBP 6.5 million of the amounts paid to Kayswell was transferred through Red Diamond into an account at LGT Bank in Liechtenstein AG, Vaduz.

It must be assumed that the public accusations concerning the corrupt relations and the misuse of power between BAE representatives and persons of high standing within the ANC Government, together with the extent of payments and their relevance to the successful signing of contracts, are not compatible with legitimate commercial transactions and require a more thorough investigation.

There are convincing accusations – whether as a result of their relevance in time to the payments or the sheer amount of commission payments – that funds flowing through BAE, or rather through HQ Marketing and Red Diamond, are being used for the purposes of bribery

and corruption. Furthermore, the entire system is operated under a shroud of secrecy, so that the suspicion with regard to the actual purpose of these payments is justified.

On the concrete accusations of crimes concerning Fana Hlongwane in Liechtenstein

From 1994 right to the process phase for the procurement of Fighter Aircraft by the South African Government in 1999, Fana Hlongwane had a particularly close link to the then main decision-maker, Joe Modise, and acted as his personal adviser. In this role he had access within the context of the procurement process to valuable information concerning the tender, which enabled him to influence the decision-making process. On 06.10.2008, a request for mutual legal assistance was issued in this criminal case under investigation to the South African criminal prosecution authorities. It ensues from the response dated 4.8.2009 that criminal investigations against Hlongwane et al are in progress there not only with regard to his adviser role for BAE, but also in relation to the degree of influence on the result of the tender within the context of his work as personal adviser to the deceased Defence Minister Joe Modise. The investigations concern accusations of fraud, corruption, criminal business and machinations and/or money-laundering before, during and after the purchase of armaments by the South African Defence Ministry within the context of a programme for the purchase of strategic weapons. According to South African criminal prosecution authorities, the proceedings are still at a relatively early stage. Searches and seizures have taken place at seven different locations, during the course of which several hundred thousand documents, mostly financial documents, have been secured. The results of evaluations, which have been carried out by forensic experts, will take months. Although there is not direct proof of the fact that Fana Hlongwane influenced the outcome of the tender, there is nevertheless damning indication and evidence, which would point in this direction. It clearly emerges from the information and evidence available that Hlongwane received high sums of money for several years after BAE had been awarded the contract for the supply of aircraft, both directly to his local company as well as concealed via certain companies abroad, which were evidently being used for secret money transactions. Everything points to the fact that according to South African law, Hlongwane was in all probability classed as a civil servant.

But it also ensues from the proceedings in progress at the British SFO that Fana Hlongwane is suspected of a concrete crime in the direction of receipt of bribery and corruption monies and money-laundering, though it is not ruled out that sums of money flowed via Fana Hlongwane and/or his company structures to persons, who were involved in the decision-making process. According to information from the suspect Alexander Roberts, "at some point during the course of activities with South Africa, it was agreed between Roberts and BAE that around two-thirds of the commission to which Roberts was entitled would be transferred at the

appropriate time from the Arstow account to accounts, which are controlled by Mr Hlongwane". According to Roberts, this was remuneration for "balancing work", which Hlongwane had performed in the wake of the activities in South Africa. It has also been ascertained there that Hlongwane at the time was an adviser and close confident of the South African Defence Minister Joe Modise, in the wake of the process by the Republic of South Africa for the procurement of the Hawk Training Aircraft, and at the same time was allegedly an adviser to the Airbus Company.

Various different companies have been/are being managed at the Liechtenstein Trust company Tremaco Treuunternehmen (Trust Enterprise) reg., for the suspect Fana Hlongwane and Alexander Roberts. Alexander Roberts claimed to the foregoing Trust company that he was the financial beneficiary of Arstow. Fana Hlongwane appears as the financial beneficiary of the companies Westunity Business Limited, Meltec Foundation and Gamary Trust reg. Westunity Business Limited was funded by the above-mentioned Arstow, though Arstow, as already mentioned, received assets from Red Diamond. Payments were subsequently made in turn by Westunity Business Limited to the Meltec Foundation and, after its liquidation, to its successor Gamary Trust reg. According to the current state of investigations, there is the strong suspicion with all these financial transactions that they are monies from bribery and corruption in connection with the purchase of Fighter Aircraft by the South African Government. The most recent Decision handed down by the Court of Justice of the Principality of Liechtenstein during criminal proceedings dated 11.9.2009, 11-UR 2006.284-148, was to judicially freeze the assets belonging to the Gamari Trust at Bank Pasche (Liechtenstein) S.A., Vaduz (formerly swissfirst Bank in Liechtenstein AG), In Account Number 30.450767.7 until 14.3.2010, as a result of this suspicion of money laundering. They amount currently to GBP 437,594.00.

As a result of present suspicion, other assets in Liechtenstein of which Fana Hlongwane is the financial beneficiary, i.e. assets held at Swisspartners Versicherung AG, Vaduz, have had a judicial Freezing Order imposed on them. In concrete terms, Swisspartners Versicherung AG have been banned pursuant to §97a (1) line 3 of the Code of Criminal Procedure (StPO) from having control over the assets attributed to Fana Hlongwane, amounting to approximately CHF 3 million in Account Number 151.831.88 at Liechtensteinische Landesbank AG Zurich, though this arrangement by the Court of Justice of the Principality of Liechtenstein ends on 20.5.2010. Currently, it must be assumed that the said frozen assets at Swisspartners Versicherungs AG originate from an account in the name of Preordain Holdings Ltd., Panama at Bank Credit Agricole, Geneva, Switzerland. Preordain Holdings Ltd is allegedly also a holding company of the suspect Hlongwane.

Hence, Fana Hlongwane is strongly suspected of the crime of money-laundering pursuant to § 165 (1), (2) and (3) of the Criminal Code (StGB). Since criminal proceedings against Fana Hlongwane have already been instigated at your authority, and it can be assumed that the criminal proceedings in South Africa against Fana Hlongwane can also be conducted on account of the crimes committed in Liechtenstein in his presence, it is requested that you take into account the facts and circumstances outlined in this request in your criminal investigation and that you also prosecute him in the event that the crimes of which he is suspected are corroborated as a result of these facts and circumstances.

With regard to the assets attributed to Fana Hlongwane in this country at the Banque Pasche and/or Swisspartners Versicherung AG (see page 7 of the takeover request), it is suggested that you arrange for these to be frozen or have a Freezing Order imposed on them by means of a request for mutual legal assistance sent to the Court of Justice of the Principality of Liechtenstein within the framework of the South African criminal proceedings.

* Certified copies of the crucial items from criminal file 11 UR 2008.283 at the Court of Justice of the Principality of Liechtenstein are attached; as are copies of the relevant legal provisions.

I am requesting you to send information on whether the South African criminal prosecution authorities have made the present foregoing facts and circumstances the object of your criminal investigations, also in terms of the crimes committed in Liechtenstein, and whether, in the event that the crimes of which he is suspected are corroborated according to your law, they have prosecuted Fana Hlongwane, also on account of the crimes committed by him in Liechtenstein. Furthermore, at the appropriate time, we request the sending of the Decision when the proceedings are complete.

Yours sincerely,



Dr. Robert Wallner

Chief State Prosecutor

Enclosures mentioned

Processed by:

Public Prosecutor Mag. Thomas Patterer

Tel: +423 236 67 97

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Email: thomas.patterer@sta.liv.li



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Reg No: 2007/015371/21

MNR WILLIE HOFMEYER
BATEBESLAGLEGGING EENHEID
NATIONALE VERVOLGINGSGESAG
VICTORIA & GRIFFITHS MXENG BUILDING
123 WESTLAKE AVENUE
WEAVIND PARK
PRETORIA

20 Januarie 2009

"W08"

50

Ons verw: C Stockenstrom/F2

PER HAND

Geagte Mnr;

I/S: HLONGWANE CONSULTING (PTY) LTD, TSEBE PROPERTIES (PTY) LTD, HLONGWANE AEROSPACE (PTY) LTD en Adv. FANA HLONGWANE

Die bogemelde aangeleentheid verwys. Ons wens hiermee te bevestig dat ons optree namens ons kliënte hierbo vermeld.

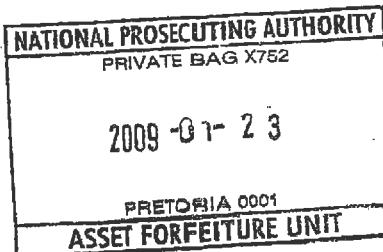
Dit het tot ons aandag gekom dat die Nasionale Vervolgingsgesag moontlik stappe gaan neem om beslag te lê op ons kliënte se bates. Dit is ons instruksies om te bevestig dat ons kliënte bewus is van die Direktoraat Spesiale Operasies (DSO) se ondersoek en dat die DSO 'n volledige bateregister het van ons kliënte se bates.

Dit is verder ons instruksies dat ons kliënte onderneem om nie enige van die bates te vervreem nie en om verder ook te verseker dat die bates onderhou word in die kondisie en toestand wat dit tans is. Daar is dus geen rede om beslag te lê op enige bates nie.

Sou die Nasionale Vervolgingsgesag egter voort gaan om om 'n aansoek te loods vir die beslaglegging van ons kliënte se bates versoek ons u om die hofstukke op ons te beteken sodat ons dienooreenkomsdig ons kliënte kan adviseer en hul belang kan beskerm.

Die uwe,


STOCKENSTRÖM FOUCHÉ INC.



(S)
"WD 9"
51

Asset Forfeiture Unit



The National Prosecuting Authority of South Africa
Igunya Jikelele Labetshutshisi boMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

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Our ref: WH
Your ref: C Stockenstrom/F2

30 January 2009

Stockenström Fouché Inc.
78 Tijger Vallei Office Park
Silverlakes
Pretoria 0002

For attention: Mr Christo Stockenström

By telefax: 086 631 4883

Dear Sir

**Re: Hlongwane Consulting (Pty) Ltd, Tsebe Properties (Pty) Ltd,
Hlongwane Aerospace (Pty) Ltd and Adv. Fana Hlongwane**

We acknowledge receipt of your letter dated 20 January 2009, which was delivered by hand to our offices on 23 January 2009.

We will respond to your letter in due course once we have had the opportunity to consider the contents thereof.

Yours faithfully

**W Hofmeyr
Deputy National Director of Public Prosecutions
Head: Asset Forfeiture Unit**

Justice in our society, so that people can live in freedom and security

Asset Forfeiture Unit


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Deputy National Director of Public Prosecutions
Head: Asset Forfeiture Unit



TX RESULT REPORT

NAME :AAFU
TEL :30128047335
DATE :03.FEB.2009 14:00

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Asset Forfeiture Unit



The National Prosecuting Authority of South Africa
Igonya Jikelele Labetshutshisi baMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

HEAD OFFICE

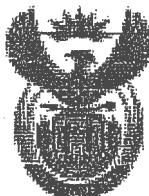
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Our ref: WH
Your ref: C Stockenstrom/F2

4 May 2009

Stockenström Fouché Inc.
78 Tijger Vallei Office Park
Silverlakes
Pretoria 0002

For attention: Mr Christo Stockenström

By telefax: 086 631 4883

Dear Sir

**Re: Hlongwane Consulting (Pty) Ltd, Tsebe Properties (Pty) Ltd,
Hlongwane Aerospace (Pty) Ltd and Adv. Fana Hlongwane**

We refer to your letter dated 20 January 2009 and our reply dated 30 January 2009.

In terms of the provisions of the Prevention of Organised Crime Act, 1998 ("POCA"), an application for the freezing of property may be made *ex parte* and therefore the National Director of Public Prosecutions ("the National Director") is under no obligation to give prior notice any person affected thereby.

It is contrary to the policy and practice of the National Director to confirm or to deny that preservation or restraint proceedings are being considered in connection with any particular case.

Such confirmation or denial generally would undermine the objectives of the asset forfeiture provisions of POCA, particularly at an early stage of a criminal investigation. It would encourage subjects of investigation to engage in fishing expeditions to obtain information from the National Director, and bog the administration of justice down in endless correspondence. It may cover many matters where no action is contemplated at the time, but where further developments in the matter may result in a decision to institute proceedings.

We advise that should a decision indeed be made in the future to institute an application for freezing any property of your clients, the National Director will approach the matter in the normal way. Thus, in such event, consideration will, as normal, be given to issues such as whether or not to proceed *ex parte*, against whom an order should be sought, and the particular form that any freezing order should take.

As with any case, these considerations would be guided by the facts available to the National Director at the appropriate time.

If your clients are of the view that they are in possession of any information or evidence which might influence the National Director in a decision whether action should be taken, they are welcome to supply the National Director with such information. Any information provided should be in the form of evidence under oath, as unsubstantiated claims and allegations cannot be considered by the National Director in exercising his discretion under POCA.

In this regard, your letter refers to an undertaking by your clients not to alienate assets listed in a register of assets held by the Directorate of Special Operations (DSO). Neither the DSO nor the Asset Forfeiture Unit has such a register and therefore the National Director is not in a position to consider the undertaking without further information regarding the assets to which it relates and the exact terms of the undertaking.

The National Director reserves his rights to proceed with the institution of proceedings under POCA against your clients or their property should he be satisfied that there are sufficient grounds for such action. We wish to point out that POCA makes full provision for anyone with a legitimate interest in property to state his or her case to the court. Your clients' rights to protect their interests from any order that may be made under POCA are accordingly safeguarded.

You have our assurance that the Asset Forfeiture Unit makes every attempt to act as fairly and accurately as possible when action is taken in terms of POCA, and that it will do whatever is necessary and required in law to be frank to the court and fair to any party.

In any event, should the National Director decide to proceed *ex parte*, the court will certainly be made aware of this correspondence and any information that you may supply, and it has a discretion to require the National Director to proceed on notice.

Yours faithfully


W Hofmeyr
Deputy National Director of Public Prosecutions
Head: Asset Forfeiture Unit

Asset Forfeiture Unit



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Our ref: WH
Your ref: C Stockenstrom/F2

4 May 2009

Stockenström Fouché Inc.
78 Tiger Valley Office Park
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Pretoria 0002

For attention: Mr Christo Stockenström

By telefax: 086 631 4883

Dear Sir

**Re: Hlongwane Consulting (Pty) Ltd, Tsebe Properties (Pty) Ltd,
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TX RESULT REPORT

NAME :AAFU
TEL :30128047335
DATE :11.MAY.2009 15:28

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Asset Forfeiture Unit



The National Prosecuting Authority of South Africa
Igonya Jikalele Labetsutshishi boMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

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Our ref:
Your ref: C Stockenstrom/F2

11 February 2010

Stockenström Fouché Inc.
78 Tijger Vallei Office Park
Silverlakes
Pretoria
0002

For attention: Mr Christo Stockenström

By telefax: 086 631 4883

Dear Sir

Your client: Mr Fana Hlongwane

1. We refer to your letter dated 20 January 2009 as well as to our response dated 4 May 2009. We assume that you still act for Mr Fana Hlongwane, and request that you immediately indicate to us should this no longer be the case.
2. I record that we have to date not yet received a response to our last letter, and in particular that Mr Hlongwane has not responded to the request to provide the National Prosecuting Authority with information that might impact on its decision whether or not to institute preservation or restraint proceedings in relation to property in which he has an interest.
3. As was indicated in my previous letter, it is not the practice or policy of the NPA to afford persons who will or may be adversely affected by an impending application for a preservation or restraint order an opportunity to make representations to the NPA as to why it should not be launched or why their property should be excluded from the ambit of the application. However, the NDPP is of the view that it would be appropriate to again request Mr Hlongwane to supply the

information referred to in paragraph 2 above in relation to the assets described below.

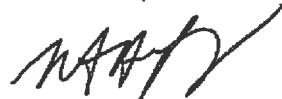
4. As Mr Hlongwane may know, the Lichtenstein authorities have been conducting a criminal investigation in which Mr Hlongwane has been identified a suspect, having allegedly committed the offence of money laundering. The money laundering charges in turn relate to alleged corruption offences pertaining to the purchase by the South African government of lead-in fighter trainer aircraft and advanced light fighter aircraft from a United Kingdom based arms manufacturing company, called BAE Systems Plc ("BAE").
5. The NPA has recently been placed in possession of certain documents from the Lichtenstein authorities. In what follows I refer to these documents as "the Lichtenstein documents".
6. It appears from the Lichtenstein documents that as a result of the criminal investigation, since about September 2006 Lichtenstein courts have made orders which currently have the effect of freezing firstly, the funds in a bank account held in the name of the Gamari Trust, at Bank Pasche (Lichtenstein) S.A. Vaduz in account number 30.450767.7, and secondly the funds in an account with number 151.831.88 held at the Lichtenstein Landesbank AG Zurich by an insurance company Swisspartners Versichuring AG.
7. It further appears from the Lichtenstein documents that Mr Hlongwane is the beneficial owner of the funds. We believe that Mr Hlongwane is aware of the freezing of the funds.
8. We are informed by the Lichtenstein authorities that the current Lichtenstein order freezing the funds of the Gamari Trust account will expire on 14 March 2010 and unless the NPA obtains an order in South Africa preserving or restraining the funds in the account, there will be no legal obstacle to the funds being withdrawn and dissipated or clandestinely moved elsewhere. The order freezing the funds in the Swisspartners Versichuring account will expire on 20 May 2010.
9. The NPA is of the view that there are reasonable grounds to believe that the funds in the Lichtenstein accounts are the proceeds of unlawful activity and/or the instrumentality of corruption and money-laundering related offences.
10. In the circumstances which have now arisen the NPA accordingly intends to applying for an order in terms of section 38 of the Prevention of Organised Crime Act 121 of 1998 ("POCA") preserving the funds in the Lichtenstein accounts, which order, if granted, will be transmitted to the Lichtenstein authorities with a request that it be implemented there.

11. We intend to move the application for a preservation order (and the concomitant application for a letter requesting mutual legal assistance under the International Co-operation in Criminal Matters Act 75 of 1996 ("ICCMA")) on an urgent basis within the next two weeks.
12. When doing so we intend seeking a rule *nisi* operating as an interim preservation order, which will provide Mr Hlongwane with sufficient opportunity to protect his interests.
13. As stated, however, the NDPP believes it appropriate to ask Mr Hlongwane beforehand to provide the NPA with information that might impact on its final decision whether or not to institute the preservation proceedings.
14. Mr Hlongwane's answers to the following questions will assist the NPA in reaching a final decision:
 - a. Does Mr Hlongwane have a direct or indirect interest in the funds in either or both the Lichtenstein accounts?
 - b. If so, what is the nature of that interest?
 - c. If Mr Hlongwane holds a direct or indirect interest in the funds in the accounts, is this interest held personally or through a legal entity? If the latter, provide details of the entity including incorporation details, if applicable, as well as nature and manner in which the interest is exercised through the legal entity.
 - d. If Mr Hlongwane holds any such interest, when did he acquire the interest?
 - e. Who established the entities that are the account holders?
 - f. Did Mr Hlongwane render a service or product that directly or indirectly lead to the payment of funds into those accounts?
 - g. What was the exact nature of the service rendered or goods provided and when did that occur?
 - h. To whom the services or goods rendered?
 - i. Were such services rendered or products provided pursuant to an agreement? If so, please provide details of the contracting parties, the date and place at which the agreements were concluded and the terms thereof.
 - j. By whom was payment or payments made into the account?

- k. On whose instructions were the payments made into the accounts?
- I. If Mr Hlongwane did not render a service or goods but he has an interest in the funds in the two bank accounts referred to above, why were the funds paid into those accounts?
15. Mr Hlongwane is also free to provide any other information or raise any other issue he may wish to bring to our attention.
16. Due to the time constraints under which the intended application is being prepared, we request that Mr Hlongwane, should he wish to do so, respond in writing by close of business on Wednesday 17 February 2010.
17. Apart from any written responses, should he so request, we are also willing to afford your client a personal interview at the NPA Head Office in Pretoria at 11h00 on 19 February 2010, in order that he may clarify or elaborate on his written response and during which he may be asked questions to clarify aspects of his written response or his oral input. He will not be compelled to answer any such questions. The interview will be recorded.
18. We must stress, however, that Mr Hlongwane is not compelled to answer the above questions or provide any other information in response to this letter. Anything Mr Hlongwane says will be with prejudice, i.e. his written response and what he says at the interview may be used against him in future, not only in the intended preservation or forfeiture proceedings, but also in other such proceedings in relation to other assets in which he may be interested, as well as possible criminal proceedings and ancillary proceedings for restraint and confiscation orders. Any responses received from Mr Hlongwane will accordingly not only be made available to the SAPS investigating officer, but also placed before the court to which application will be made for the preservation order should the NPA continue with such application.
19. Further in this regard Mr Hlongwane has previously been placed in possession of the application for search warrants, which were executed in November 2008. The application and supporting affidavit make it clear that Mr Hlongwane is the subject of a criminal investigation into racketeering offences (in terms of section 2 of the POCA), corruption offences (in terms of section 1 of the Corruption Act 94 of 1992, and section 3 of the Prevention and Combating of Corrupt Activities Act 12 of 2004) money laundering offences (in terms of section 4 of POCA) and fraud. At the time the searches were conducted, the criminal investigation was under the aegis of the Directorate of Special Operations within the NPA. That investigation has subsequently been transferred to the South African Police Service, and I confirm that Mr Hlongwane remains a suspect in that investigation.

20. The investigation into Mr Hlongwane also gave rise to applications for the issuing, under section 2(2) of the ICCMA, of four separate but related letters of request to the United Kingdom, Switzerland, Jersey and Lichtenstein.
21. The grounds upon which the preservation application is intended to be made are materially similar to those used in the application for the search warrants and the letters of request.
22. In the final version of any papers that may be presented to court we will mention and attach this letter, as well and the contents of any response he might make. We intend to communicate same to the Lichtenstein authorities too.
23. We look forward to receiving your prompt response to this letter.

Yours faithfully



W Hofmeyr
Deputy National Director of Public Prosecutions
Head: Asset Forfeiture Unit

Asset Forfeiture Unit


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Our ref:
Your ref: C Stockenstrom/F2

11 February 2010

Stockenström Fouché Inc.
78 Tiger Valley Office Park
Silverlakes
Pretoria
0002

For attention: Mr Christo Stockenström

By telefax: 086 631 4883

Dear Sir

Your client: Mr Fana Hlongwane

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NAME :AAFU
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STOCKENSTRÖM FOUCHÉ INC.

Procureurs & Aanvoerwaardigers / Attorneys & Conveyancers

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Reg No: 2007/016871/21

"WD12"
62

ASSET FORFEITURE UNIT

15 FEBRUARY 2010

BY FAX: 012 804 7335

FOR ATTENTION: MR WILLIE HOFMEYR

Dear Mr Hofmyer:

RE: FORFEITURE UNIT // MR. FANA HLONGWANE

With reference to your letter dated the 11th of February 2010 we wish to record the following:

1. Unfortunately writer was in Europe at the time when your letter was received by this office and he only returned from Europe on Friday afternoon the 12th of February 2010.
2. Writer did not have the opportunity as yet to discuss the contents of your letter with client in view of the fact that client is out of town presently and he will only be available for consultation at best by Friday the 19th of February 2010.
3. Our Counsel in this matter, Advocate Olliars SC is also unavailable at present to consult in view of the fact that he is appearing in the SCA on the 16th of February 2010. He will only be available as from Thursday the 18th of February 2010 to consult with us.
4. We, however, wish to request you on an urgent basis to afford us the opportunity to properly respond to your letter and the requests contained in the letter. We undertake to provide you with a proper response by Monday the 22nd of February 2010.

5. We would appreciate it if you will respond on an urgent basis to our request and inform us whether you will afford us the opportunity as requested.

Yours sincerely,

STOCKENSTRÖM FOUCHÉ INC.

Asset Forfeiture Unit



The National Prosecuting Authority of South Africa
Igunya Likafile Labetsutshishi boMzantsi Afrika
Die Nasionale Vervolgingspesig van Suid-Afrika

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Our ref:
Your ref: C Stockenstrom/F2

22 February 2010

Stockenström Fouché Inc.
78 Tijger Valley Office Park
Silverlakes
Pretoria
0002

For attention: Mr Christo Stockenström

By telefax: 086 631 4883

Dear Sir

Your client: Mr Fana Hlongwana

1. We refer to your letter dated 15 February 2010 as faxed to our offices on 17 February 2010.
2. We have noted the content thereof and look forward receiving your substantive reply by close of business today.

Yours faithfully

W Hofmeyr
Deputy National Director of Public Prosecutions
Head: Asset Forfeiture Unit

Justice in our society, so that people can live in freedom and security

Asset Forfeiture Unit


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Deputy National Director of Public Prosecutions
Head: Asset Forfeiture Unit

TX RESULT REPORT

NAME :AAFU
TEL :30128047335
DATE :22.FEB.2010 12:15

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