

**IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG HIGH COURT, PRETORIA)**

**Case No:**

In the application between:

**THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

**APPLICANT**

and

**FANA HLONGWANE**

**RESPONDENT**

In re: application for a preservation order in terms of section 38(1) of the Prevention of Organised Crime Act 121 of 1998 in respect of the funds in bank account number 30.450.767.7 held at Banque Pasche (Liechtenstein) S.A., Vaduz

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**AFFIDAVIT**

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I, the undersigned,

**KARLA SUSANNE SALLER**

do hereby make oath and state as follows:

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- 1 I am a female attorney admitted and enrolled as such in the Western Cape High Court.  
I am currently in the employ of the Asset Forfeiture Unit, Cape Town.
- 2 For completeness' sake I pause to add that I have applied for my removal from the roll of attorneys and admission onto the roll of advocates, which application is set down for hearing on 5 March 2010.
- 3 The facts deposed to herein are derived both from the documentation at my disposal and from my personal knowledge unless I state to the contrary or the context indicates otherwise. These facts are, to the best of my knowledge and belief, both true and correct.
- 4 I have lived in Germany for a total of nine years and in South Africa for a total of nineteen years. I am fluent in both English and German.
- 5 I matriculated from the German School in Cape Town (Deutsche Schule Kapstadt, referred to as **DSK**) with German as first language.
- 6 I also obtained the German school-leaving certificate, the Abitur, from the DSK after an additional year of schooling. The language of instruction for all subjects during the Abitur year was German.
- 7 I have been awarded the B.A degree, the LL.B degree and the LL.M degree by the University of Cape Town. The medium of instruction in all my courses was English.
- 8 I am not an expert in Liechtenstein law.
- 9 I have been requested by the Applicant to peruse a bundle of documents (the majority of which are in German) received in two lever arch files from the Prosecution Agency of Liechtenstein under cover of Waybill 213 892 050 CH (**the Liechtenstein documents**) and to compile an index of the documents contained therein, including a

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brief description of the nature and content of the respective documents (**the index**). I have paginated the bundle of Liechtenstein documents in the order they were received.

- 10 I have been further requested by the Applicant to discuss the content of the Liechtenstein documents insofar as they are relevant to the Applicant's application for preservation of the assets held with the Banque Pasche, account number 30.450.767.7, in the name of the Gamari Trust (**the Banque Pasche account**).
- 11 I pause to mention that it appears from the various orders by the Liechtenstein Landgericht (**Landgericht**) and other documents contained in the Liechtenstein documents relating to the Banque Pasche account that the Banque Pasche was originally the Bank Wegelin (Liechtenstein) AG (**Bank Wegelin**), and it then became the Swissfirst (Liechtenstein) AG (**Swissfirst**), before becoming the Banque Pasche. At the time that the Landgericht first ordered the restraint of assets in the Banque Pasche account on 14 September 2006, they were held with Swissfirst. The account number has remained the same throughout.
- 12 I have been further requested to supplement, with information flowing from the Liechtenstein documents, the relevant portions of the affidavit by Gary Daniel Murphy (**Murphy**) of the Serious Fraud Office of the United Kingdom (**SFO**) deposed to on 9 October 2008, relating to the SFO's investigation into allegations of bribery and corruption by the company BAE Systems plc. (**BAE**). A copy of Murphy's affidavit, without annexures so as not to unduly burden these papers, is attached hereto marked annexure "**KSS1**". Murphy's affidavit including the full set of annexures comprises a lever arch file, which will be made available to the Court at the hearing of this matter.
- 13 The index of the Liechtenstein documents is attached hereto marked "**KSS2**". I confirm that to the best of my knowledge and belief the information contained therein is

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an accurate description of the nature and contents of the documents contained in the Liechtenstein documents. Page numbers in the index refer to the pagination of the bundle.

- 14 The majority of the Liechtenstein documents are in German, some of the documents are in English and German, and a number of the documents have annexures in both languages. Time constraints have forced the Applicant to approach the Court without certified translations of all the Liechtenstein documents it relies upon, although the majority have been translated. The index indicates which documents have been translated.
- 15 The Liechtenstein documents are provided in a bundle filed herewith, with copies of the certified translations inserted ahead of the original document. In the case of formulaic documents, such as bank statements and flow charts, a glossary of translated words has been inserted ahead of the relevant document.
- 16 In this affidavit, I rely on the content of the original German documents. However, page numbers on the certified translations in the top right hand corner correspond to the page numbers of the Liechtenstein documents as referred to herein.
- 17 In what follows I shall adopt the following approach:
- 18 Firstly and by way of introduction, I discuss witness statements made to the Landgericht in the context of requests for mutual legal assistance to Liechtenstein by the SFO, apparently under case reference 11 R.S 2007.56. It appears from the filing references on the statements that they were later incorporated into the record of the criminal investigation by the Liechtenstein prosecutors against Alexander Roberts (**Roberts**), Fana Hlongwane (referred to herein as **the Respondent**) and others under case reference 11 U.R. 2006.284 (**the Liechtenstein case**).

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- 19 While not in chronological order, these statements provide a comprehensive insight into the contractual matrix and payment structures set up to deal with the consultancy contracts of the British company BAE Systems Plc (BAE).
- 20 As appears from the transcripts of such statements, they were made pursuant to the Liechtenstein Criminal Code. The witness is compelled to provide information on threat of a fine or imprisonment. In each instance the respective witnesses were cautioned to tell the truth, not to withhold information and to answer to the best of his abilities and conscience. The witnesses were further cautioned to answer in a way that they could swear to, should it be required. The statements were not given under oath, however.
- 21 I then turn to discuss other items contained in the Liechtenstein documents that are pertinent to these proceedings, in roughly chronological order. In doing so I pay particular attention to the structure of money transfers among persons and legal entities implicated in this application for preservation.
- 22 I finally briefly supplement relevant sections of Murphy's affidavit based on the information flowing from the Liechtenstein documents.
- 23 Unless otherwise stated, page references in this affidavit refer to pages of the original bundle of the Liechtenstein documents and correspond to the index.

**Witness statement by Guido Meier**

- 24 Guido Meier (**Meier**) is an attorney admitted to practice in Liechtenstein, and at all relevant times has been employed by the Allgemeines Treuehand Unternehmen in Liechtenstein (**ATU Liechtenstein**), a company that specialises in the formation and/or administration of legal entities.
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- 25 ATU Liechtenstein has acted on behalf of BAE and Red Diamond (BVI) (**Red Diamond**) since or around 1998 until 2007.
- 26 On 28 October 2008 Meier was compelled by the Landgericht to answer questions (**Meier's statement**) in respect of services rendered to BAE in or around 1998 and 1999 regarding the founding of Red Diamond and two other companies, Poseidon Trading Investments Ltd (**Poseidon**) and Novelmight Ltd (**Novelmight**), for the purpose of contracting with consultants of BAE, and facilitating payment of these consultants.
- 27 Meier's statement is item 13 of the index.
- 28 Regarding the setting up and administration of Red Diamond, Meier confirms the following in his statement (Meier's statement, pages 146 to 149, 152):
- 28.1 BAE approached ATU Liechtenstein in 1996 with the request to provide a Liechtenstein holding company to hold the shares of an off-shore company through which BAE intended to handle its consultancy contracts.
- 28.2 BAE did not want to hold the shares in such a company.
- 28.3 Meier advised that unless he was given insight into the contracts governing BAE's relationship with its consultants and more detailed information regarding its operations, he would not be in a position to provide the directors for such a company. Since BAE was not prepared to disclose this information, BAE was to provide the directors to serve on the board of the company to be set up.

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- 28.4 In terms of Liechtenstein law it was not possible to incorporate a company in Liechtenstein whose directors were merely representatives of BAE, and accordingly the company was incorporated in the British Virgin Islands.
- 28.5 Red Diamond's shares were held by a subsidiary of ATU Liechtenstein, namely the ATU General Trust (BVI) (**ATU General Trust**). Although Red Diamond was formally represented by the ATU General Trust, factually it was administered by its board of directors who had been provided by BAE, namely Hugh Dickinson (**Dickinson**), Philip Riley (**Riley**) and Jeremy Woding.
- 28.6 ATU Liechtenstein also provided holding companies for two other existing companies related to BAE's consultancy contracts, namely Textra Holding Est. for Poseidon and Medalo Holding Est. for Novelmight. Meier was advised by BAE that Poseidon held certain consultancy contracts for BAE and Novelmight rented business premises. BAE did not want to appear as shareholder of either of these companies.
- 28.7 ATU Liechtenstein and ATU General Trust were not involved in the practical running of any of these companies.
- 28.8 Meier confirms that Poseidon was de-registered in 2005, Red Diamond was de-registered on 30 May 2007 and Novelmight was de-registered on 31 January 2007. According to Meier, de-registration occurred because on the one hand the underlying contracts were coming to an end and, on the other hand, he agitated to end the business relationship with BAE out of concern about the nature of BAE's business and the opaque nature of the transactions he, Meier, was instructed to facilitate.
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- 28.9 Meier was instructed to address all accounts to the relevant entity, but to forward the account to BAE's Dickinson or Riley for payment.
- 28.10 Meier dealt with Dickinson, Riley, Chris Wood (**Wood**) and Julia Aldridge (**Aldridge**) in his interactions with BAE.
- 29 Regarding the business of Red Diamond, Meier confirms the following in his statement (Meier's statement, pages 150 to 152, 155, and 157):
- 29.1 In Meier's opinion the reason for setting up Red Diamond was solely to process payments for BAE's consultancy contracts without BAE being a direct contracting party.
- 29.2 Meier has not had sight of the consultancy contracts.
- 29.3 Since Red Diamond was governed by its own board of directors, Meier did not make enquiries into its business.
- 29.4 In Meier's opinion the purpose of the consultancy contracts processed through Red Diamond was to ensure that agreements in respect of BAE's business were concluded.

#### **Interrogation of Johannes Matt**

- 30 Johannes Matt (**Matt**) is CEO and managing director of Tremaco Trust Reg. (**Tremaco**), a company that specialises in the formation and/or administration of other legal entities.
- 31 Matt, on behalf of Tremaco, has been involved in the running of many of the companies relevant to this case. This includes the following legal entities attributed to

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the Respondent and Roberts, in respect of which Matt has confirmed acting as director, trustee, administrator and/or authorised representative:

- 31.1 Arstow Commercial Corporation (**Arstow**), a company incorporated in the British Virgin Islands in or around 1998 for the sole purpose of contracting with BAE (and later Red Diamond, as discussed in greater detail below) in respect of commission payments for the sale of BAE's products, and whose sole shareholder and beneficial owner was Roberts until Arstow's de-registration on 24 December 2002;
- 31.2 Westunity Business Ltd. (**Westunity**), a company incorporated in the British Virgin Islands in January 1999 for the sole purpose of contracting with Arstow for the provision of the Respondent's services, and whose sole shareholder was the Respondent and/or entities controlled by the Respondent until Westunity's de-registration on 16 June 2004;
- 31.3 Meltec Foundation (**Meltec**), a foundation established in Liechtenstein that was the sole shareholder of Westunity's shares until Meltec's liquidation on 30 April 2004 and whose beneficial owner was the Respondent;
- 31.4 The Gamari Trust (**The Gamari Trust**), a Liechtenstein trust whose beneficial owner is the Respondent and which was established to be the successor to Meltec and to whom all Meltec's assets were transferred upon the latter's dissolution in 2004;
- 31.5 Commercial International Corporation Ltd (**CIC**), a company incorporated in Jersey whose beneficial owner was the Respondent until the company's de-registration on 3 July 2003;

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- 32 Matt has also confirmed (Matt's second statement, page 128) having a long-standing business relationship with Dr Hugh Thurston (**Thurston**) that goes back to the mid-1980s and continued at least until the time of Matt's statement on 27 October 2008. Thurston has acted as authorised representative of both the Respondent and Roberts in dealings underlying the facts of this application.
- 33 On 27 September 2007 (**Matt's first statement**), on 2 October 2007 (**Matt's second statement**) and on 27 October 2008 (**Matt's third statement**), Matt was compelled by the Landgericht to answer questions relating to his services rendered to the persons and/or entities set out at paragraphs 31.1 to **Error! Reference source not found.** above.
- 34 Matt's first, second and third statements are items 11, 12 and 14 respectively of the index. Matt provides answers in response to questions that appear to have been made available to him beforehand. Sometimes the questions relate to specific documents. These documents are attached to Matt's first and second statements, but not to Matt's third statement.
- 35 Regarding BAE's consultancy contracts, Matt confirms the following in his statements:
- 35.1 In 1998 and 1999, Matt dealt with Dickinson and Aldridge of BAE, the latter was introduced as an executive of HQ Marketing Services (Matt's second statement, pages 134 and 135).
- 35.2 As discussed in more detail below, Dickinson was present at the meeting in October 1998 when Thurston, Matt and Roberts discussed and agreed to found Arstow for the purpose of contracting with BAE.
- 35.3 When BAE was substituted with Red Diamond, Matt insisted on meeting with Dickinson personally, which occurred in April 1999 in London. Dickinson

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confirmed that Red Diamond was a subsidiary of BAE and that he, Dickinson, was a director of Red Diamond (Matt's second statement, page 134).

35.4 Matt was at all times of the opinion that, contractual arrangements notwithstanding, the substantive agreement remained with BAE (Matt's second statement, page 134).

36 Regarding the business of Arstow, Matt confirms the following in his statements:

36.1 Arstow was incorporated in October 1998 for the sole purpose of contracting with BAE for the rendering of services by Roberts to BAE, relating to the delivery of aircraft to the South African government. Arstow was intended to be a payment vehicle (Matt's second statement, pages 128 and 129).

36.2 On 6 October 1998 Thurston addressed a telefax, in English, to Matt, setting out the requirements for the new company. Among other things, he confirms that "[i]nward payments to the account of Arstow will be solely from and on instruction from British Aerospace...". The telefaxed letter is attached to Matt's first statement, pages 89 and 90.

36.3 On 23 October 1998 Matt, Thurston, Roberts and Matt met in Zurich, and Thurston and Roberts instructed Matt to found the said company. Dickinson was also present at the meeting. Matt was instructed to sign a commission contract between BAE and Arstow on behalf of the latter, which he did (Matt's first statement, pages 67 and 68, Matt's second statement pages 128 to 130).

36.4 The commission contract between BAE and Arstow was kept with Rene Merkt & Associates (**Rene Merkt**) in Geneva (Matt's first statement, page 68). A letter by Rene Merkt confirming among other things that its offices were in possession of two signed envelopes endorsed by or on behalf of both parties

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and that it would permit inspection of the respective envelope only upon written authorisation of the relevant party, is attached to Matt's first statement at page 86.

- 36.5 As agreed at the meeting Matt, Thurston and Roberts were authorised representatives of Arstow and held signatory powers over Arstow's accounts, two out of three signing (Matt's first statement, page 68; Matt's second statement page 129). The resolution by Arstow to this effect and the resulting power of attorney, in English, are attached to Matt's first statement on pages 82 and 83. The bilingual founding and/or administration contract in respect of Arstow signed with Tremaco is attached to Matt's first statement at pages 72 to 74.
- 36.6 Matt further confirms that Roberts was later removed as authorised representative in July 2000, in Matt's opinion due to ill health (Matt's second statement, page 129). The resolution by Arstow to this effect and the resulting power of attorney granted to Matt and Thurston, in English, are attached to Matt's first statement at pages 76 and 77.
- 36.7 According to Matt, however, Arstow was run at all times in accordance with Robert's instructions and according to Matt, Roberts was the beneficial owner of Arstow's accounts (Matt's second statement, pages 128 and 130).
- 36.8 Arstow initially banked with the Verwaltungs- und Privatbank AG (**VP Bank**) until the bank terminated the relationship. Matt was told that this was due to the nature of Arstow's business and its connection to BAE. The account was thereafter moved to the Bank Wegelin which later became Swissfirst (Matt's second statement, page 130). I pause to note that at the time of Matt's statements Swissfirst had not yet become Banque Pasche.

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- 36.9 The directors of Arstow were two persons in the British Virgin Islands who did not take part in the practical running of the company (Matt's second statement, page 129)
- 36.10 In April 1999 Dickinson, Thurston and Matt had a meeting to discuss the cancellation of the contract between BAE and Arstow dated 23 October 1998 (discussed at paragraph 36.3 above) and the conclusion of a similar agreement between Red Diamond and Arstow. (Matt's first statement, page 68)
- 36.11 Matt's file note of the meeting on 14 April 1999 is attached to his first statement at page 91. The file note reflects that during the meeting Matt was authorised to sign the contract on behalf of Arstow. The file note further reflects that the purpose of the contract was the payment of commission for services rendered by Roberts to Red Diamond in respect of the delivery of aircraft to the South African government, and that the contract was to run until July 2000.
- 36.12 Matt confirms that, as agreed at the meeting, the new contract was concluded with Matt signing on behalf of Arstow and further confirms that pursuant thereto an amount of approximately GBP 9.9 million was transferred to Arstow's accounts with Liechtenstein banks in the period May 1999 to 15 July 2001 (Matt's first statement, page 68).
- 36.13 Matt confirms that all discussions and negotiations regarding the services to be rendered in terms of the contract were held solely between Roberts and BAE. He, Matt, has not seen any documentation and is not in possession of any information regarding the services rendered by Roberts in respect of

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these payments (Matt's first statement, page 68; Matt's second statement, page 136).

36.14 Matt specifically discusses two commission payments of GBP 2 913 161,50 each, made on 5 and 15 June 2001 by Red Diamond to Arstow's accounts with Bank Wegelin. He confirms that these amounts were transferred out of Arstow's accounts as follows (Matt's second statement, page 130):

36.14.1 On 15 June 2001 an amount of GBP 598 000,00 was transferred an account with a Hong Kong bank with account number 0027651181 held by the Hong Kong company Shun Hing (**Shun Hing**). Matt confirms that this payment was made pursuant to the contract between Arstow and Westunity.

36.14.2 On 25 June 2001 an amount of GBP 2 million was transferred to Westunity's account with the Bank Wegelin.

36.14.3 On 30 July 2001 an amount of GBP 1 455 000,00 was transferred to Westunity's account with the Bank Wegelin.

36.14.4 On 8 August 2001 and again on 17 August 2001 amounts of GBP 121 500,00 each were transferred to McDonald at an account in Geneva.

36.14.5 The remainder of the funds were transferred to the Prominvest Foundation (**Prominvest**) and Roberts. Matt recalls one specific payment on 24 September 2001 to Prominvest in an amount of GBP 1 million.

- 36.15 On 16 December 2002 Matt received instructions from Thurston and Roberts to attend to the immediate dissolution of Arstow due to the underlying business coming to an end. Arstow was de-registered on 24 December 2002 (Matt's third statement, page 187 and 188).
- 37 As discussed at paragraph 36.14.1 above, payment of GBP 598 000,00 on 5 June 2001 from Arstow to Shun Hing was made pursuant to the commission contract between Arstow and Westunity. In his third statement, at pages 166 to 167 and 185, Matt elaborates on this transaction as follows:
- 37.1 Matt confirms being told by the Respondent and his representatives that the Respondent is the beneficial owner of Shun Hing and uses the company to finance property in South Africa.
- 37.2 The reason for the transfer given to Matt was that the Respondent urgently required money to finance his house in Johannesburg.
- 38 Regarding the business of Westunity, Matt confirms the following in his statements:
- 38.1 On 4 January 1999 Westunity was incorporated in the British Virgin Islands, and was dissolved on 16 June 2004 on the Respondent's instructions (Matt's second statement, page 133).
- 38.2 Westunity's certificates of incorporation and dissolution are attached to Matt's first statement, pages 102 and 96 respectively. The bilingual founding and/or administration contract in respect of Westunity which the Respondent signed with Tremaco on 18 January 2009 is attached to Matt's first statement, pages 72 to 74. As appears from a certificate of good standing in respect of Westunity dated 29 May 2001, attached to Matt's first statement at page 99,

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Matt was the sole director of the company, which he confirms (Matt's second statement, page 132)

- 38.3 According to Matt, Thurston had signatory powers over Westunity and represented the Respondent. This arrangement lasted until 28 August 2001 when it was cancelled by the Respondent, ostensibly because the business between Arstow and Westunity had come to an end (Matt's first statement, page 69; Matt's second statement, page 132; Matt's third statement, page 185).
- 38.4 The sole shareholder of Westunity was initially the Respondent, then Meltec, which was established for this purpose (Matt's second statement, pages 132 and 133).
- 38.5 Meltec's assets were later transferred to the Gamari Trust. Matt administered both these entities and confirms that they are attributable to the Respondent. (Matt's second statement, pages 132 and 133, Matt's third statement, page 162)
- 38.6 The sole purpose of Westunity was to contract with Arstow for the provision of the Respondent's services (Matt's second statement, page 131; Matt's third statement, page 163).
- 38.7 On 2 September 1999 Arstow and Westunity as well as Westunity and the Respondent entered into identical commission contracts which are attached, in English, to Matt's first statement, pages 117 and 121 respectively.
- 38.7.1 In terms of the contract between Westunity and the Respondent, the latter agreed to use his best efforts to promote the reputation and

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sale of unspecified products of Westunity in consideration for commission in an unspecified amount in all countries.

38.7.2 In terms of the contract between Arstow and Westunity, the latter agreed to provide the services of the Respondent as discussed immediately above, to act for Westunity in promoting the reputation and sale of unspecified products of Arstow in consideration for commission in an unspecified amount in all countries.

38.8 In Matt's opinion, the rate of commission paid by Arstow to Westunity was negotiated by Thurston, the Respondent and Roberts (Matt's third statement, page 162).

38.9 Matt further confirms that the "product" that is the subject of the contract consisted of the Respondent's advice to Roberts on Arstow's business with Red Diamond (Matt's third statement, page 164).

38.10 Matt confirms that pursuant to the commission contract between Arstow and Westunity, the former transferred a total of approximately GBP 4.9 million in the period 5 October 1999 to 30 July 2001 (Matt's first statement, page 69)

38.11 Matt also confirms that he has not had sight of any documentation in respect of services rendered by the Respondent to Arstow underlying such payments (Matt's second statement, page 132).

39 Regarding the business of Meltec and the Gamari Trust Matt confirms the following in his statements (Matt's third statement, pages 162, 184, 199):

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- 39.1 Meltec was established as a Liechtenstein foundation, with Matt and Tremaco as trustees, for the purpose of holding Westunity's shares. Meltec was administered by Tremaco.
- 39.2 Matt confirms that the Respondent was the beneficial owner of Meltec.
- 39.3 Meltec was liquidated on 30 April 2004 and its assets were transferred to the newly established Gamari Trust which was intended to be the successor to Meltec.
- 39.4 Matt and Tremaco continue to act as trustees of the Gamari Trust at present.
- 39.5 Matt confirms that the Respondent is the beneficial owner of the Gamari Trust.
- 40 For completeness' sake I draw the Court's attention to a document at pages 60 and 61 of the Liechtenstein documents, in English, entitled "Letter of Intent" where the Respondent sets out his wishes in respect of the manner in which the Gamari Trust is to operate, including that "the principal beneficiaries of the capital and income of the Trust should be the members of the family of Fana Hlongwane."
- 41 On the other hand, in his submissions to the Landgericht on 9 September 2009 (item 28), the Respondent states that he is the sole beneficial owner of the Gamari Trust. This is in line with Matt's statements.
- 42 In respect of the transfer of funds to Gamari Trust referred to at paragraph 39.3 above, I further draw this Court's attention to a letter by the Respondent on 30 January 2004 addressed to Matt, in English, at page 62. The Respondent therein instructs Matt to transfer assets remaining after the dissolution of Westunity and Meltec to himself.

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43 Regarding the business of the CIC (referred to in paragraph 31.5 above), Matt confirms the following in his statements:

43.1 From November 2001 to June 2003 Matt was one of three directors of the CIC, which was de-registered on 3 July 2003 (Matt's third statement, page 162).

43.2 The Respondent was the beneficial owner of the CIC (Matt's third statement, page 162 and 171).

43.3 Matt was told by the Respondent and Thurston that through the CIC the Respondent contracted directly with BAE, and later with Red Diamond. In terms of this agreement, the Respondent provided BAE with advice regarding the South African market (Matt's third statement, pages 171 and 172).

44 I now turn to deal with individual reports, analyses and other documents contained in the Liechtenstein documents that provide further substantiation of the testimony of Meier and Matt. I deal with these documents in broadly chronological order.

**Report of suspicious financial transactions by Tremaco and Swissfirst and the restraint of Gamari's funds held with Swissfirst**

45 On 13 September 2006 the Financial Intelligence Unit of the Principality of Liechtenstein (FIU) notified the Liechtenstein prosecutors that it had received a report of suspicious financial transactions from Tremaco and Swissfirst, dated 5 September 2006 and 11 September 2006 respectively.

46 The FIU notification and annexures thereto are item 55 of the Liechtenstein documents.

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- 47 I pause to add that not all of the annexures referred to in the FIU's notification are included in item 55. Notably, the underlying reports of Tremaco and Swissfirst are not provided. From the FIU's notification it appears that Tremaco's report runs over 187 pages, and the report by Swissfirst runs over 191 pages, which may explain why these reports have been omitted.
- 48 The FIU's notification sets out the information received in the two reports under distinct headings and then proceeds to present its transaction analysis based on the information provided in Tremaco's and Swissfirst's report.

***Tremaco's report of suspicious financial transactions***

- 49 In its report, Tremaco confirms that it acts / has acted for the following persons and entities:
- 49.1 Roberts and entities which Tremaco attributes to him, namely Arstow and Prominvest;
- 49.2 The Respondent and entities which Tremaco attributes to him, namely Westunity, Meltec and the Gamari Trust;
- 49.3 McDonald and entities which Tremaco attributes to him, namely Wyburg and the Fona Foundation.
- 50 According to Tremaco's records, Roberts's assets and those of entities attributed to him originate from a consultancy contract with BAE. Tremaco further states that it appears that a contract was entered into between Roberts and BAE for consultancy services provided by Roberts to BAE for the sale of aircraft to South Africa. This contract is said to have been replaced by a similar contract whereby Red Diamond substituted for BAE, in terms of which Roberts was entitled to receive a commission of

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1.5% of the total value of aircraft delivered. This contract is said to have been destroyed once its purpose was served.

51 Tremaco further describes the Respondent as a local consultant in South Africa. Information and/or documentation in respect of his services are not available to Tremaco.

52 The FIU confirms bank account details for the entities mentioned above as follows:

52.1 Arstow

314.449.019 VP Bank

30.570354\_2.200 Bank Wegelin

30.570354\_2.200 Swissfirst

52.2 Prominvest

30.435676\_0.200 Swissfirst (with a balance of GBP 1 210 008,00 on  
7 September 2006)

52.3 Westunity

316.208.034 VP Bank

30.192944\_1.200 Bank Wegelin

52.4 The Gamari Trust

30.450767\_7.100 Swissfirst (with a balance of GBP 368 939,00 on  
7 September 2006)

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52.5 Meltec

30.484456\_8.100 Swissfirst

52.6 Wyburg

324.929.019 VP Bank

53 The FIU further states that, according to Tremaco, Red Diamond paid a total of GBP 9 872 772,92 to Roberts's Arstow. Of this money, a total of GBP 4 903 000,00 was channelled to the Respondent's Westunity and a further GBP 1 843 000,00 was channelled to McDonald's Wyburg (of which GBP 300 000,00 are described as a loan although no supporting documents are attached).

54 According to Tremaco, a further CHF 150 000,00 was channelled to Thurston and CHF 483 642,00 were channelled to a company Intercontrol, which Tremaco attributes to Thurston. Tremaco describes Thurston among other things as financial advisor to Roberts.

55 Tremaco also refers to South African media reports of 2002 that describe the Respondent as special advisor to the late Minister of Defence. McDonald is described as having been director of regional marketing for British Aerospace in 1995, and being listed as a resigned director of BAE Systems Regional Aircraft Ltd.

***Swissfirst's report of suspicious financial transactions***

56 Swissfirst (which, as discussed above at paragraph 11, later becomes the Banque Pasche) confirms holding the following accounts:

56.1 Arstow

Account number: 30.570354.2

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Opened on: 8 November 2000

Closed on: 19 February 2003

56.2 Prominvest

Account number: 30.435676.0

Opened on: 17 August 2001

Balance: GBP 1 211 967,80

Beneficial owner: Roberts, Alexander

Authorised person: Thurston, Hugh

56.3 Westunity

Account number: 30.192944.1

Opened on: 21 June 2001

Closed on: 23 February 2004

56.4 Meltec

Account number: 30.370635.0

Opened on: 29 June 2001

Closed on: 31 March 2004

56.5 The Gamari Trust

Account number: 30.450767.7

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Opened on: 23 February 2004

Balance: GBP 368 927,63

Beneficial owner: Hlongwane, Fana

- 57 The FIU notes that in the Swissfirst report, mention is made of a contract dated 4 November 1996. Representatives of Swissfirst saw the document at Tremaco's premises. The FIU also notes that the same contract is referred to in a letter from BAE to Primula Investments Limited (**Primula**) dated 10 April 2002, concerning payment of GBP 2,2 million in consideration for consulting services over a period of five years pursuant to a contract dated 4 November 1996. That letter, according to the FIU, was signed by Julia Aldridge.
- 58 Swissfirst also reports a payment on 10 May 2002 from Joll Ltd (**Joll**) to Prominvest.
- 59 According to Swissfirst, the payments referred to above could not be verified. Joll and Primula could not be identified.

### ***Transaction analysis***

- 60 The FIU analysed the source documents made available by Tremaco and Swissfirst and captured the transactions recorded therein in a transaction analysis.
- 61 Based on its analysis the FIU concludes the following:
- 61.1 Payments referred to in paragraphs 53 and 54 above were confirmed.
- 61.2 Payment to Shun Hing reflected in the source documents was attributed to the Respondent.

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- 61.3 The FIU confirmed that a portion of the funds transferred from Red Diamond to Arstow was immediately channelled onwards.
- 62 Based on the above, the FIU requested steps by the Liechtenstein prosecutors to secure assets and evidentiary material.
- 63 On 14 September 2006 the Landgericht granted an order restraining Prominvest's and the Gamari Trust's funds referred to in paragraphs 56.2 and 56.5 above, the only two accounts still active with Swissfirst at the time of the order.
- 64 The order by the Landgericht is item 58 of the index.
- 65 The Landgericht's reasons may be summarised as follows (pages 524 and 525):
- 65.1 Based on the timing and high amounts of commission payments paid by BAE and/or Red Diamond, as set out in requests for mutual legal assistance by the SFO and the investigations of the FIU, the Court finds it likely that the company Red Diamond was used to make payments to foreign officials to ensure that orders were placed with BAE for a price far in excess of the market value of the goods ordered.
- 65.2 Accordingly, the money paid in this manner to Prominvest, Arstow and Westunity is likely to have flowed from corruption, as a prior offence to money laundering. Accordingly, the funds are subject to confiscation as they represent enrichment flowing from an offence.
- 65.3 The amount of money paid to Westunity far exceeds the Gamari Trust's funds and may accordingly be restrained.
- 66 In the same order, the Landgericht also orders the seizure of all documents relating to accounts referred to above at paragraphs 56.1 to 56.5 with Swissfirst.

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- 67 On the same day, the Landgericht makes three additional related orders whereby it:
- 67.1 orders the seizure of documents relating to accounts held by Westunity, Arstow and Wyburg by the VP Bank (item 57);
  - 67.2 orders the seizure of documents relating to the Fona Foundation held at the New Haven Treuhand AG (**New Haven**) (item 59); and
  - 67.3 orders the seizure of documents relating to Prominvest, Gamari Trust, Arstow, Westunity, Meltec, Wyburg, and the Fona Foundation held at Tremaco (item 60).
- 68 On 22 September 2006 Swissfirst addressed a letter to the Landgericht (item 63), confirming its compliance with the order referred to in paragraphs 63 to 66 above, and confirming the balance on the restrained accounts as follows:
- 68.1 Prominvest: GBP 1 203 084,88
  - 68.2 Gamari GBP 369 040,18
- 69 On 29 September 2006 Roberts applied to the Liechtenstein Obergericht (**Obergericht**) for the lifting of the restraint order in respect of the Prominvest's funds. His application is item 65 of the index. I pause to mention that it appears from this order as well as the order dated 14 September 2009 by the Obergericht (item 4) that the Obergericht is a Court of higher instance than the Landgericht.
- 70 In his application, Roberts among other things states the following:
- 70.1 Roberts acknowledges being the beneficial owner of Prominvest and Arstow (page 568).

- 70.2 The reason given for making use of Arstow as payment vehicle is Robert's fight with cancer, which required the establishment of a juristic person in the event that Robert's illness took a turn for the worse. Regarding the use Red Diamond to process payments to Arstow, BAE assured Roberts that Red Diamond was a wholly-owned subsidiary and Roberts saw no reason to second-guess BAE's choice of business structure.
- 70.3 The contract between Red Diamond and Arstow initially envisaged commission payments of 1.5% of the contract volume, which was later reduced to 1% and then to 0.5%. In total, Arstow received GBP 9 872 772,92 as commission payments over the period 5 May 1999 to 15 June 2001.
- 70.4 Arstow in turn required a local subcontractor who had contacts to the new black economic business establishment, particularly local contractors who would be able to provide components and undertake repairs. This was the Respondent, who made use of Westunity for the purpose of contracting with Arstow. In total, Westunity received GBP 4 903 000,00 for this service to Arstow.
- 70.5 An amount of GBP 1 843 000,00 was paid to McDonald's company Wyburg in settlement of an earlier debt by Roberts to McDonald flowing from a previous business deal.
- 70.6 Prominvest received a total of GBP 2 166 756,14 in two transactions, and USD 4 281,45 from Arstow. Arstow has since been liquidated.
- 70.7 Roberts had no control over the manner in which BAE on the one hand, and the Respondent on the other hand, conducted their business. Roberts is of

the opinion that the Respondent provided a valuable service to him, Roberts, and made it possible for it to fulfil Arstow's contract with BAE.

- 70.8 Robert submits that the Landgericht has no evidence of crimes committed by Roberts and accordingly applies to the Obergericht to lift the restraint over Prominvest's assets.
- 70.9 Roberts attaches a number of annexures to his appeal, among them a statement of transfers made by Arstow. At page 588, the statement shows payment of GBP 598 000,00 to "Shun Hing (Westunity)", which is recorded as payment to Westunity.
- 71 On 23 October 2006 the Obergericht handed down judgment in Robert's application, confirming the restraint over the Prominvest's assets. The Obergericht's judgement is based on its findings that (at pages 742 and 743):
- 71.1 that the complex and secretive contractual and payment matrix adopted is sufficiently suspicious to require further detailed investigation;
- 71.2 that Roberts did not sufficiently substantiate his averments in his application; and
- 71.3 that the SFO's request for mutual legal assistance provides sufficient factual evidence to found a reasonable suspicion that the offence of corruption and money laundering has taken place.

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**The first Financial Analysis by the Commercial Crimes Unit of the Regional Police of Liechtenstein**

- 72 The Commercial Crimes Unit of the Regional Police of Liechtenstein (**the CCU**) has undertaken a financial analysis of documents seized in the context of the Liechtenstein case on two occasions: on 23 February 2007 (item 85) and on 23 September 2008 (item 49).
- 73 In both cases the analysis was undertaken by Georges Berger (**Berger**) and Georg Oehry (**Oehry**). From further correspondence contained in the Liechtenstein documents (items 36, 38, and 40) it appears that they have been assigned the financial investigation in the Liechtenstein case. From Berger's signature on email correspondence (item 40), it appears that Berger is a certified accountant while Oehry's signature simply states that he is a member of the CCU.
- 74 On 23 February 2007 the CCU provided a so-called interim financial analysis (**the first CCU analysis**) of accounts attributed to the following entities and persons:
- 74.1 Roberts
  - 74.2 The Respondent
  - 74.3 McDonald
  - 74.4 Julien Pelissier (**Pelissier**)
  - 74.5 Trevor Williams (**Williams**)
  - 74.6 Richard Passaportis (**Passaportis**)
  - 74.7 Walter Hailwax (**Hailwax**)

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- 74.8 Johan Bredenkamp (**Bredenkamp**)
  - 74.9 Kayswell Services Ltd. (**Kayswell**)
  - 74.10 ACS Worldwide SA (**ACS Worldwide**)
  - 74.11 Wyburg
  - 74.12 Meltec
  - 74.13 Westunity
  - 74.14 Gamary Trust (for reasons discussed below it appears that the reference to the "Gamary Trust" in the FIU's report is to the Gamari Trust)
  - 74.15 Arstow
  - 74.16 Prominvest.
- 75 The first CCU analysis is item 85 in the index. There is no final version of this document in the Liechtenstein documents, and from the content of the first CCU analysis it does not appear that the authors of the report expected to receive additional information in the near future, nor are their findings couched in preliminary terms.
- 76 The orders pursuant to which the analysed documents were seized are referred to in paragraphs 66 and 67 above.
- 77 Based on its investigation, the CCU concludes that the financial transactions recorded in the seized documents can be divided into two distinct conglomerates of entities and persons which are both funded by BAE, largely though payments from Red Diamond, but which otherwise operate fairly independently: At the apex of the one conglomerate is Kayswell, and at the apex of the other conglomerate is Arstow.

- 78 In respect of payments made to Kayswell as apex company, the CCU finds that Kayswell received GBP 20 787,18 from BAE directly, GBP 9 243,97 from an entity called Mabor (Pty) Ltd, and a total of GBP 6 467 447,33 from Red Diamond in thirteen transactions.
- 79 Kayswell transferred on the following amounts:
- 79.1 To Bredenkamp a total of GBP 2 656 683,17;
  - 79.2 To Hailwax a total of GBP 375 890,30;
  - 79.3 To Passaportis a total of GBP 313 487,10;
  - 79.4 To Pelissier a total of GBP 469 933,23;
  - 79.5 To Wilmans a total of GBP 454 420,35;
  - 79.6 To Aviation Consultancy Services (UK) Ltd (**ACS UK**) a total of GBP 197 274,74;
  - 79.7 To Maitland Trustees Limited a total of GBP 972 543,82;
  - 79.8 To Zelda International Limited a total of GBP 142 045,45;
  - 79.9 To ACS Worldwide SA a total of GBP 787 994,49.
- 80 In respect of payments to the ACS Worldwide, the CCU states that these were made with payment reference "external expenses" though no invoices substantiating this could be found.
- 81 In respect of payments received by Arstow as apex company, the CCU finds that Arstow received USD 20 000,00 from an anonymous person as well as GBP 9 994 148,40 from Red Diamond in twelve transactions.

82 The CCU attaches two a number of transaction statements from the viewpoint of the respective companies, giving the dates and amounts transferred. The transaction statement relating to flows of money from Red Diamond, from the viewpoint of Arstow, is at page 780 of the Liechtenstein documents.

83 The CCU further confirms that Arstow transferred on the following amounts:

83.1 To McDonald a total of GBP 243 129,00;

83.2 To Thurston a total of GBP 350 127,26 and CHF 150 000,00;

83.3 To Feliu Bufete a total of GBP 1 160 182,16;

83.4 To Prominvest a total of GBP 1 166 746,14 and USD 4 281,45;

83.5 To Shun Hing a total of GBP 589 126,02;

83.6 To Westunity a total of GBP 4 305 000,00;

83.7 To Wyburg a total of GBP 1 600 000,00;

83.8 To four anonymous bank accounts a total of GBP 309 939,85 and CHF 483 642,00.

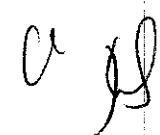
84 The CCU notes that in addition to the above payments, Prominvest also received payment of GBP 1 225 000,00 from a British Virgin Island company Premier Grade Services Ltd, with a handwritten note on the payment advice stating "money from the BAE contract".

85 Furthermore, Prominvest received GBP 1 320 000,00 from the Guernsey company Joll and GBP 490 000,00 from an anonymous source. In respect of these payments, the CCU found a handwritten note and file note dated 2 May 2002 (which are at pages 787

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and 788) stating that the transfers represented payment for consulting services to Primula. Furthermore, from correspondence found by the CCU, it appears that this in turn relates to the BAE contract. Included in the correspondence attached to the first CCU analysis is a letter by Thurston addressed to Matt at pages 789 and 790, in English, where the former confirms that payments by Primula, which is beneficially owned by Roberts, are "covered by a letter from BAE Systems dated 10 April 2002 regarding the total payments due and that the paying agent chosen by BAE Systems will be Joll Limited registered in Guernsey." From the file note (page 788), it appears that the said letter from BAE was signed by Aldridge.

- 86 The CCU confirms that Prominvest is attributable to Roberts.
- 87 In respect of transfers to Shun Hing, the CCU confirms that the documents seized reflect four payments made to Shun Hing: From Arstow directly as set out in paragraph 83.5, as well as two further payments from Westunity in a total amount of GBP 600 006,35, and a payment from ACS Worldwide in an amount of USD 500 000,00.
- 88 A transaction statement relating to flows of money to Shun Hing from the various companies referred to immediately above, giving the date and amount of each transaction, is at page 781 of the Liechtenstein documents.
- 89 The CCU notes that flowing from a file note found at the premises of Westunity, it appears that Shun Hing may be attributed, at least loosely, to the Respondent. The file note referred to is attached to the first CCU analysis, at page 808. It is initialled by "jm" and it appears the signature below the file note is that of Matt. In the file note, "jm" records being told by the Respondent and Paul McDonald that Shun Hing is a company that forwards payments on to the Respondent.
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- 90 In respect of Westunity, the CCU notes that in addition to payments from Arstow, Westunity also received transfers from the CIC in an amount of GBP 237 254,18 as well as CHF 10 000,00 from an anonymous source.
- 91 Westunity also received payments in a total amount of GBP 258 000,00 from Meltec.
- 92 The CCU confirms that Westunity is attributable to the Respondent.
- 93 The CCU also notes the following transfers among others flowing from Westunity:
- 93.1 To Meltec a total of GBP 1 501 180,66 in two transactions;
- 93.2 To the CIC a total of GBP 165 009,38 in three transactions;
- 93.3 To Shun Hing a total of GBP 600 006,35 (compare paragraph 87) in two transactions;
- 93.4 To the Respondent a total of GBP 151 400,98 in 6 transactions.
- 94 In respect of Meltec, the CCU confirms that it only received the two payments from Westunity referred to above at paragraph 93.1. Of these funds it made the following transfers, among others:
- 94.1 To Gamary Trust a total of GBP 438 654,92, CHF 78 914,90 and EUR 104 301,30 in four transactions;
- 94.2 To the Respondent a total of GBP 133 920,49 in six transactions.
- 95 The CCU states that, according to its information, the Gamary Trust is the successor to Meltec, which was de-registered on 30 April 2004 after its assets had been transferred to the Gamary Trust. The CCU further confirms that according to its information the Gamary Trust is attributable to the Respondent.

Handwritten initials or signature.

- 96 Later in the first CCU analysis, the CCU lists the bank accounts of the various entities to which its analysis relates. A comparison of the bank account details given for the Gamary Trust corresponds to bank account details given elsewhere in the Liechtenstein documents for the Gamari Trust. The information provided about the succession to Meltec and the fact that the CCU attributes the Gamary Trust to the Respondent indicate that reference is, in fact, being made to the Gamari Trust. In the circumstances reference to the Gamary Trust in the first CCU analysis must be understood to refer to the Gamari Trust.
- 97 The CCU concludes its first analysis with a number of comments including the following:
- 97.1 The CCU notes that on the basis of documents in its possession it was able to conclusively confirm the flow of money to and among the two conglomerates discussed above.
- 97.2 Since Red Diamond did not bank with Liechtenstein banks and its banking information was not available to the CCU, the latter did not undertake an analysis of Red Diamond's financial transactions and is accordingly unable to confirm whether the money flowing from Red Diamond was in fact related to the BAE contracts.

#### **Report of suspicious financial transactions: Swisspartner**

- 98 On 6 May 2008 the FIU notified the Liechtenstein prosecutors that it had received a report of suspicious financial transactions from Swisspartner on the same day. The FIU notification and annexures thereto are item 35 of the Liechtenstein documents.
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99 The report relates to an account with the Liechtensteinische Landesbank AG, Zurich (LLB), account number 151.831.88, in the name of Swisspartner Versicherung AG (Swisspartner) on behalf of the Respondent (the LLB account). From the report it appears that the LLB account is in respect of a policy taken out by the Respondent with Swisspartners, with policy number Z0002.

100 The FIU states the following:

100.1 On 23 June 2006 a once-off deposit into the above account to the value of EUR 4 060 612,00 took place in respect of the policy. These funds were transferred from an account with the Credit Agricole in Geneva in the name of Preordain Holdings (Preordain), a company incorporated in Panama.

100.2 Preordain is described as the Respondent's holding company.

100.3 On 31 March 2008 the balance on the account was EUR 3 418 111,87. This could be attributed to a negative performance of the investments (in the region of EUR 400 000,00) and two redemptions by the Respondent in a total amount of EUR 200 000,00.

101 In its report, Swisspartner elaborates as follows:

101.1 At the time of taking out the policy, the Respondent claimed that the money transferred from Preordain originated from the Respondent's consulting services rendered to Airbus whereby Airbus was successfully introduced into the Canadian market.

101.2 The reason given for taking out the policy was that of "discretion".

101.3 Beneficiaries of the policy are the Respondent's life partner, his father and his two children.

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- 101.4 On 5 October 2007 and again on 19 October 2007 the Respondent redeemed EUR 50 000,00 and EUR 150 000,00 respectively against the policy. In both cases the Respondent received cash.
- 102 On 20 May 2008 the Landgericht granted an order prohibiting Swisspartners from dealing in any way with the funds in the LLB account relating to the Respondent's policy with Swisspartners.
- 103 The order by the Landgericht is item 37 of the index.
- 104 The Landgericht's reasons may be summarised as follows (page 343 and 344):
- 104.1 The funds in the LLB account are attributable to the Respondent, who was acting as advisor to the Minister of Defence at the same time as advising Airbus and acting in the Aerospace industry.
- 104.2 It has already been found that the Respondent and entities attributable to him accepted payments from Red Diamond which has been directly linked to corruption payments.
- 104.3 Accordingly, there is a reasonable suspicion that the funds in the LLB account are the proceeds of criminal activities or at the least money received for the purpose of making corrupt payments.
- 104.4 The cash withdrawals made by the Respondent give rise to a reasonable fear that the funds may be dissipated.
- 105 On 30 June 2008 Swisspartner addresses a letter under cover of which it surrenders documents pursuant to a letter dated 17 June 2008 from the Landgericht, which is not on file. On 7 July 2008 the Landgericht forwards the documents to the CCU with a

request for analysis. The underlying documents are not included in the Liechtenstein documents.

- 106 Swisspartner's letter is item 41 of the index and the letter by the Landgericht is item 45.

**The second CCU analysis**

- 107 On 23 September 2008 the CCU provides its financial analysis (**the second CCU analysis**) of documents seized from Swisspartner.

- 108 Information received relates to the LLB account, policy number Z-0002, which is an umbrella account for the following currency accounts:

151.831.72 CHF

151.831.88 EUR

151.831.93 USD

151.831.32 HKD

151.831.48 JPY

151.831.38 CAD

151.831.35 TRY

- 109 The total balance on the account as of 31 March 2008 is confirmed as being EUR 3 418 111,87.

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- 110 The account is in respect of a policy in the name of the Respondent and of which the Respondent is the beneficial owner.
- 111 The CCU notes information received from Swisspartner that the Respondent made a once-off deposit of to the value of EUR 4 060 612,09 in different currencies into the account, and that these funds originated from the account of Panamanian company Preordain, a holding company attributed to the Respondent, held at the Credit Agricole in Geneva with Portfolio number 0025276 (**the Preordain account**).
- 112 In substantiation of this information the CCU notes that documentation provided by Swisspartner shows a number of investments linked to the Preordain account in similar currency amounts to the amounts and currencies transferred as a deposit into the LLB account.
- 113 The CCU concludes that while the source of the deposit cannot be conclusively confirmed, it is likely to have originated from the Preordain account. The CCU further states that it is not in a position to establish the source of the funds in the Preordain account.
- 114 The CCU confirms that the following transfers were made from the LLB account:
- 114.1 Over the period 26 July 2006 to 5 March 2008, a total amount of EUR 189 832,90 was transferred to Swisspartner.
- 114.2 On 5 October 2007 the Respondent redeemed EUR 150 000,00 in cash.
- 114.3 On 19 October 2007 the Respondent redeemed EUR 50 000,00 in cash.

**The Respondent's application to the Landgericht for release of the restrained funds in the Banque Pasche account and the LLB account; the decision by the Landgericht *inter alia* to extend the restraint over the Banque Pasche account to 14 March 2010 and the Obergericht's confirmation thereof**

115 On 19 August 2009 the Liechtenstein prosecutors applied to the Landgericht to have the restraint over the Banque Pasche account extended by one year to 14 September 2010.

116 The application does not form part of the Liechtenstein documents but is referred to in an application to the Landgericht by the Respondent on 9 September 2009, for the following relief:

116.1 dismissal of the application for extension of the restraint over the funds in the Banque Pasche account; and

116.2 the release of restrained funds in the LLB account.

117 The Respondent's application is item 28 of the index.

118 In his application on 9 September 2009 the Respondent confirms being the beneficial owner of assets held in both accounts.

119 The Respondent's argument for lifting the respective restraints may be summarised as follows:

119.1 The Respondent argues that it appears from the reasons given by the Landgericht in its most recent orders relating to both accounts that the funds are restrained on the basis that they may constitute bribes or at the least money received for the purpose of engaging in corrupt activities.

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- 119.2 The Respondent submits that in terms of Liechtenstein law, it is not sufficient that it be shown that money is the instrumentality of corruption.
- 119.3 He further submits that, while he acted as consultant to Arstow as well as to the late Minister of Defence Modise, he was never a civil servant and accordingly he could not have been bribed.
- 119.4 On the basis of the above, the Respondent submits that the money he has received cannot be regarded as tainted, is not subject to eventual confiscation and accordingly he request the Landgericht to deny the application by the Liechtenstein prosecutors to extend the restraint over the Gamari Trust's assets and to lift the restraint over the Swisspartner policy.
- 120 On 11 September 2009 the Landgericht decided to extend the restraint over the Banque Pasche account for a further six months. The court's judgment is item 3 of the index.
- 121 In respect of the Respondent's submissions the Landgericht makes the following findings:
- 121.1 It remains unclear exactly what actions the Respondent has undertaken in respect of the arms deal between BAE and the South African government. What is clear is that the Respondent received money from BAE via Alexander Roberts for consulting services and that, while being active in the Aerospace industry at a consultant, at the same time he was advising the then Minister of Defence.
- 121.2 It is doubtful whether one can regard the Respondent as an independent advisor to the Minister.

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- 121.3 The South African authorities have indicated that the Respondent would likely be regarded as a civil servant in terms of South African law. But even if the Respondent was not a civil servant, the Landgericht finds it likely that he acted as the intermediary between BAE and the Minister. If it is eventually found that he received money to initiate corrupt payments to members of the South African government then his so-called consulting fees can be confiscated in terms of Liechtenstein law.
- 122 The court concludes by stating that in its opinion the criminal investigation into the Respondent's activities, possible criminal proceedings and further steps to secure the Respondent's assets should be undertaken by the authorities in the countries where the offences are alleged to have been committed, the United Kingdom and South Africa. Liechtenstein was merely a hub for the transfer of assets. In the court's opinion, this purpose is served by extending the restraint for six months.
- 123 On 14 September 2009 the Liechtenstein appeal court, the Obergericht confirmed the findings and the order of the Landgericht, including the findings discussed immediately above. The judgment by the Obergericht is item 4 of the index.
- 124 On 15 September 2009 the Banque Pasche addressed a letter to the Landgericht wherein it notes the extended restraint, and confirms the balance on account number 30.450767\_7 as being GBP 437 594.00. The letter is item 5 of the index.
- 125 I now turn to deal with the supplementation of relevant paragraphs of Murphy's affidavit, based on the information discussed above.

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**The flow of money through Arstow to the Respondent and entities attributed to him:  
dealt with at paragraph 15(ii) and paragraphs 37 to 47 of Murphy's affidavit**

- 126 At paragraph 15(ii) of his affidavit, Murphy states that bank records obtained by the SFO revealed that approximately GBP15 million were paid by Red Diamond to Arstow under its consultancy agreement. Payments were made to Arstow's accounts in Liechtenstein, the People's Republic of China and Switzerland.
- 127 In respect of payments into Arstow's Liechtenstein accounts, the Liechtenstein documents reveal payments to Arstow by Red Diamond as follows:
- 127.1 The CCU confirms payment of GBP 9 994 148,40 from Red Diamond to Arstow in twelve transactions (cf. paragraph 81 above). The income and outflows from Arstow's account with Swissfirst and the VP Bank are captured in the CCU's flow chart at page 778 and a transaction statement from which the exact dates and amounts of each transaction appear is at page 780.
- 127.2 Roberts admits to Arstow receiving an amount of GBP 9 872 772,92 from Red Diamond (cf. paragraph 70.3 above).
- 127.3 In its report of suspicious transactions to the FIU, Tremaco reported payment of a total GBP 9 872 772,92 from Red Diamond to Arstow and this is confirmed by the FIU on the basis of its analysis of underlying documentation (cf. paragraphs 53 and 61.1 above).
- 127.4 In his first statement, Matt confirms payment by Red Diamond to Arstow in an amount of approximately GBP 9.9 million (cf. paragraph 36.12). Matt specifically confirms two commission payments of GBP 2 913 161,50 each to Arstow's Bank Wegelin / Swissfirst account (cf. paragraph 36.14 above).

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- 128 Murphy further states that the SFO has failed to uncover any evidence of services rendered by Roberts to BAE, nor has BAE provided evidence of such services. This is confirmed by Matt, who states that he has not had sight of written evidence of services rendered by Roberts to BAE, and that he was not given information regarding such services (cf. paragraph 38.11 above).
- 129 At paragraphs 43 to 46 of his affidavit, Murphy discusses on-payments by Arstow to the Respondent in an amount of approximately GBP 5 million.
- 130 The Liechtenstein documents reveal that the Respondent received funds from Arstow in a number of ways: the bulk of payments were made to Westunity, though the Respondent also received money from payments made by Arstow to Shun Hing, and indirect on-payments via the CIC, and Meltec.
- 131 The Liechtenstein documents show direct transfers from Arstow to Westunity as follows:
- 131.1 The CCU confirms payment of GBP 4 305 000,00 from Arstow to Westunity in 6 transactions (cf. paragraph 83.6 above). The income and outflows from Westunity's account with the VP Bank and with Swissfirst are captured in the CCU's flow chart at page 776.
- 131.2 Roberts admits making payment to Westunity in an amount of GBP 4 903 000,00 (cf. paragraph 70.4 above). A transaction statement from which the exact dates and amounts of these payments appear is attached to his application for release of the Prominvest's funds, at pages 587 and 588.
- 131.3 In its report of suspicious transactions to the GBP, Tremaco reported payment of a total GBP from Arstow to Westunity in an amount of GBP 4 305 000,00
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and this is confirmed by the FIU on the basis of its analysis of underlying documentation (cf. paragraphs 53 and 61.1 above).

131.4 In his first statement, Matt confirms payment by Arstow to Westunity in an amount of approximately GBP 4.9 million (cf. paragraph 38.10). In his second statement, Matt specifically confirms two payments of GBP 2 million on 25 June 2001 and of GBP 1 455 000,00 on 30 July 2001, flowing from commission payments to Arstow on 5 and 15 July 2001 (cf. paragraph 36.14).

132 The Liechtenstein documents show transfers to Shun Hing as follows:

132.1 The CCU confirms payment to Shun Hing from Arstow in an amount of GBP 598 126,02 and payments of GBP 600 006,32 from Westunity (cf. paragraphs 83.5, 87, 89, 93.3 above). The income and outflows from Arstow's and Westunity's accounts are captured in the CCU's flow charts at pages 778 and 776, and a transaction statement from which the exact dates and amounts of each transaction appear is at page 781.

132.2 Roberts admits making payment to Shun Hing, pursuant to Arstow's contract with Westunity in an amount of GBP 598 000,00 (cf. paragraph 70.9). The payment is entered into the transaction statement recording Arstow's payments on 15 June 2001 with reference "Shun Hing (Westunity)", at page 588.

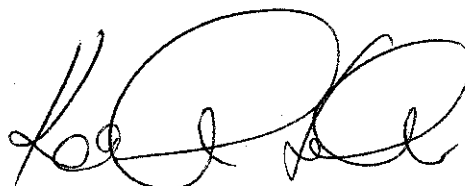
132.3 Matt confirms payment of the amount of GBP 598 000,00 to Shun Hing in his second and third statements and confirms that in his opinion this transfer was made for to finance the Respondent's property in Johannesburg (cf. paragraphs 36.14.1 and 37 above).

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- 133 The Liechtenstein documents show transfers to Meltec as follows: The CCU confirms payment to Meltec from Westunity of an amount of GBP 1 501 180,66 in two transactions (cf. paragraphs 83.5, 87, 89, 93.3 above). The income and outflows from Meltec's accounts are captured in the CCU's flow chart at page 775.
- 134 The Liechtenstein documents show transfers to the Gamari Trust as follows: The CCU confirms payment to the Gamari Trust from Meltec of GBP 438 654,92, CHF 78 914,90 and EUR 104 301,30 in a total of four transactions (cf. paragraph 94.1 above). The income and outflows from the Gamari Trust's account are captured in the CCU's flow chart at page 777.
- 135 The Liechtenstein documents show transfers between the CIC and Westunity as follows: The CCU confirms payment from the CIC to Westunity in an amount of GBP 237 254,18, as well as transfers from Westunity to the CIC of a total GBP 165 009,38 in three transactions (cf. paragraphs 90 and 93.2 above). The income and outflows from Westunity's accounts are captured in the CCU's flow chart at page 776 and those of Meltec at page 775.
- 136 The Liechtenstein documents show transfers to the Respondent directly as follows: The CCU confirms payment of GBP 151 400,98 from Westunity to the Respondent in six transactions, and payment of GBP 133 920,49 from Meltec to the Respondent in six transactions (cf. paragraphs 93.4 and 94.2). The income and outflows from Westunity's accounts are captured in the CCU's flow chart at page 776 and those of Meltec at page 775.
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**Other flows of money to the Respondent: paragraph 50 of Murphy's affidavit**

- 137 At paragraph 50 of Murphy's affidavit he discusses a telefax where reference is made to payment to the Respondent by ACS UK, a subsidiary of ACS Worldwide, in January 2006, which the SFO has been unable to trace.
- 138 The Liechtenstein documents reflect payment of USD 500 000,00 by ACS Worldwide to Shun Hing on 16 February 2001 (cf. paragraph 87 above, and the statement of transfers compiled by the CCU, page 781).
- 139 I note that this payment is the only payment that crosses the boundaries of the two conglomerates of entities discussed by the CCU, headed by Kayswell and Arstow respectively (cf. paragraphs 77 and 97.1 above).
- 140 I further note that payments channelled from Westunity to the Respondent in a total amount of GBP 600 606,53 via Shun Hing also took place around this time – in two transfers on 11 December 2000 and 8 January 2001. Matt has stated that in June of that year the Respondent made use of Shun Hing to receive payment from Arstow because it was an urgent means to channel money to himself (cf. paragraph 37 above). I submit that ACS Worldwide's payment to Shun Hing may be the payment referred to by Murphy in paragraph 50 of his affidavit.



**KARLA SUSANNE SALLER**

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I certify that on this 2<sup>nd</sup> day of March 2010, the deponent signed the affidavit in my presence and declared that she knows and understands its contents, that she has no objection to taking the prescribed oath and that she considers the oath to be binding on her conscience.

*Ans.*

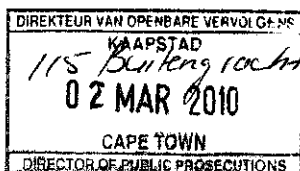
**Commissioner of Oaths**

**Full Names:** ANITA LETZ

**Designation:** CHIEF CLERK TO THE DIRECTOR OF  
PUBLIC PROSECUTIONS  
CAPE TOWN

**Area:** RSA

**Address:**



*DS*



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AFFIDAVIT

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I the undersigned

**GARY DANIEL MURPHY**

do hereby make oath and state as follows:

**A. INTRODUCTION**

1. I am a Principal Investigator employed by the Serious Fraud Office ("SFO"), 10-16 Elm Street, London WC1X 0BJ. I have been so employed since September 2003. Prior to this date I worked for 10 years as a specialist financial investigator with HM Revenue and Customs.
2. I am duly authorised to make this affidavit and the facts deposed to below are both true and correct and, unless the context indicates the contrary or I expressly state otherwise, fall within my personal knowledge or appear from documents under my control or from documents or copies of documents I have seen.
3. The SFO was created by the Criminal Justice Act 1987 ("the CJA 1987") and came into being on 6<sup>th</sup> April 1988. Under the CJA 1987, the Director

of the SFO may investigate and institute criminal proceedings of suspected offences in England, Wales and Northern Ireland which appear to him, on reasonable grounds, to involve serious or complex fraud or corruption. The Director discharges his functions under the superintendence of the Attorney-General for England and Wales, who guards the public interest in all investigations and prosecutions, and in turn accounts to Parliament.

4. Designated personnel in the SFO have all the powers of the Director as to the investigation, institution and conduct of proceedings. As a Principal Investigator I am so designated.

Provisions relevant to this are set out in Section 2 (2) and (3) of the CJA 1987 as follows:

2(2) - The Director may by notice in writing require the person whose affairs are to be investigated ("the person under investigation") or any other person whom he has reason to believe has relevant information to answer questions or otherwise furnish information with respect to any matter relevant to the investigation at a specified time or forthwith.

2(3) - The Director may by notice in writing require the person under investigation or any other person to produce at such place as may so be specified, any specified documents which appear to the Director to relate to any matter relevant to the investigation or any documents of a specified description which appear to him so to relate.

Any person who without reasonable excuse fails to comply with a requirement imposed under this section is liable to a sentence of imprisonment not exceeding two years and/or a fine.

The information obtained from a person under section 2(2) above cannot be used in criminal proceedings against that person, except in a prosecution for failure to comply with the statute.

5. On 14<sup>th</sup> July 2004 the previous Director of the Serious Fraud Office, Robert Wardle, opened an investigation into allegations of bribery and corruption by the company BAE Systems plc ("BAE"), as part of their defence contract with Saudi Arabia known as "Al Yamamah". On the same date the Director also accepted three further cases for investigation, also involving allegations of bribery and corruption by BAE through its international system of advisers. The SFO is conducting these investigations in partnership with the Ministry of Defence Police ("MDP") Fraud Squad. One of these investigations <sup>relates</sup> to the 1999 sale of Hawk and Gripen aircraft by BAE and its joint venture partner SAAB to the Government of South Africa. On 14<sup>th</sup> December 2006 Robert Wardle announced that he was discontinuing the Al Yamamah case, however the other investigations have continued and are unaffected by this decision.
6. BAE is a large UK arms manufacturer, previously known as British Aerospace plc. It is a UK public limited company, listed on the London

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Stock Exchange and is headed by a board of directors who report to a Chief Executive Officer ("CEO") and Chairman. Sir Richard Evans was CEO between 1990 and 1998, becoming Chairman from 1998 to 2004. Dick Olver succeeded Sir Richard and remains Chairman to date. John Weston succeeded Sir Richard as CEO, resigning in 2002 and replaced by Mike Turner. Mike Turner has recently left BAE and has been replaced by Ian King.

7. As Principal Investigator on this case I work as part of a greater team of investigators and prosecutors which is currently headed by Sarah Goom, Assistant Director, under the authority of the Director, Richard Alderman.

## **BACKGROUND**

8. On 3<sup>rd</sup> December 1999 BAE signed a contract with the Government of South Africa to supply Hawk trainer aircraft and Gripen fighter jets (BAE having entered into a joint venture with SAAB in 1995 to sell the Gripen internationally). The price of both aircraft was stipulated in the contract as US\$2,137,443,195, and the contract itself was part of the strategic arms package negotiated by the South African Government in 1999. A copy of the contract between BAE and the Government of South Africa is attached at Annex 1. It was obtained from BAE following service of a notice by the SFO compelling BAE to produce certain documents. For the avoidance of doubt, all documents cited in this affidavit were provided to the SFO by

BAE under compulsion pursuant to Section 2 (3) CJA 1987, unless stated otherwise.

9. UK bank statements obtained by the SFO have revealed that BAE paid over £115 million to advisers in order to assist in the securing and maintaining of the Hawk and Gripen contract (a spreadsheet setting out payments up until March 2007 is attached at Annex 2). The SFO obtained all banking material referred to in this affidavit from Lloyds TSB unless stated otherwise.

#### **THE BAE ADVISER SYSTEM**

10. The SFO investigation has revealed that BAE, in the course of its support for overseas sales, employs a network of advisers to assist in the marketing of its products. A unit within BAE, previously called Head Quarters Marketing Services ("HQMS") and now called International Business Support ("IBS"), co-ordinates all agreements, contracts and payments with BAE's advisers.
11. The SFO investigation has revealed that BAE has operated a system of "overt" and "covert" advisers in its worldwide marketing efforts. "Overt" advisers were publicly declared by BAE; "covert" advisers were not. Historically, all overt and covert advisers entered into agreements with, and were paid directly by, BAE. However, in the early 1990's this arrangement was to change.

12. During the 1990's BAE gave serious consideration to concealing the system of payment to its "covert" advisers. One of the documents obtained from BAE by the SFO was a report compiled by a US law firm (instructed by BAE) in response to an investigation by the US Department of Justice into BAE's marketing activities in Chile. Annexed to this report were internal BAE documents setting a number of potential structures designed to keep the identity of their advisers as opaque as possible. These documents are attached at Annex 3.
13. The documents confirm that, having considered the options, BAE executives concluded that the least transparent system would be to set up an offshore entity, controlled by HQMS, as a nominee company to pay its covert advisers. The name of the offshore entity would appear on banking and other documentation and would therefore conceal the involvement of BAE.
14. The same report states that in 1998 BAE set up a nominee company called Red Diamond Trading Limited ("Red Diamond") in the BVI. Red Diamond was subsequently used to enter into contractual arrangements with "covert" advisers. The "overt" advisers continued to have direct contracts with, and be paid by, BAE. Mike Turner was interviewed by the SFO under caution (an interview conducted under the Police and Criminal Evidence Act 1984 ("PACE 1984"), in which the suspect is told the following:

*"You do not have to say anything. But it may harm your defence if you do not mention, when questioned, something that you later rely on in Court. Anything you do say may be given in evidence".)*

Therefore evidence so obtained can be used in court against the interviewee.

Mike Turner claimed that the reason for such an opaque system was to ensure commercial confidentiality and to avoid intrusion by the media and anti-arms campaigners. Whilst the SFO accepts that confidentiality would be maintained through such a system, I suspect that a primary reason behind the inception of Red Diamond was to ensure that corrupt payments could be made, and that it would be more difficult for law enforcement agencies to penetrate the system. (see Annex 3).

## **THE USE OF RED DIAMOND IN THE SOUTH AFRICAN CONTRACT**

15. The following advisers had "covert" agreements with Red Diamond in relation to the South African Hawk and Gripen contract:

- (i) **Kayswell Services Ltd ("Kayswell"): paid approximately £40,000,000**

Incorporated in the BVI in 1994 (a certificate of incorporation obtained by the SFO during a search of Kayswell's UK premises is attached at Annex 4), Kayswell is 60% owned by John Arnold

Bredenkamp, a Zimbabwean national living in the UK. The remaining 40% shareholding is split equally between Julien Pelissier (a UK national also living in the UK), Trevor Wilmans (a Namibian national living in Pretoria), Walter Hailwax (a Namibian national) and Rick Passaportis (a Zimbabwean national). A copy of a certificate of incumbency relating to Kayswell, also obtained from the Kayswell search, is attached at Annex 5. The proportions of the split were confirmed by John Bredenkamp in an interview under caution (PACE 1984) with the SFO. The SFO investigation has also revealed that Julien Pelissier and Trevor Wilmans were the two people from the Kayswell organisation in contact with BAE employees in South Africa during the campaign. John Bredenkamp and his Kayswell associates continue to be suspects in the SFO investigation.

According to the consultancy agreements provided to the SFO by BAE, Kayswell originally entered into a direct agreement with BAE from 1994, but in 1999 this was replaced by an agreement with Red Diamond. Both types of agreement were subsequently amended at various times to take account of changes in the size of commission payments (copies of all the agreements and amendments are attached at Annex 6). It should be noted that BAE have provided both signed and unsigned copies of agreements. It is not clear to the SFO whether signed copies have been destroyed or



whom he would meet occasionally in the UK in relation to Hawk/Gripen campaign business. Mr McDonald also stated that Mr Bredenkamp gave progress reports directly to Mike Turner, then Head of Marketing worldwide based in the UK. Mr McDonald also stated that, in relation to the same business, he would deal with Julien Pelissier and Trevor Wilmans in South Africa.

The SFO has obtained internal BAE documents which record that meetings took place between Mr Pelissier and/or Mr Wilmans and members of the BAE team based in South Africa. However, there is no written minute of the contents of any discussions, nor have BAE provided the SFO with any written evidence of any services or progress reports provided by Kayswell and its representatives.

Kayswell and the Bredenkamp organisation are dealt with in more detail at paragraphs 48-54 below.

**(ii) Arstow Commercial Corporation ("Arstow"): paid approximately £15,000,000**

Incorporated in the BVI in 1998 (a certificate of incorporation is attached at Annex 8), powers of attorney in relation to Arstow appear to have been granted to Alexander Roberts (an Irish national now living in Switzerland), Dr Hugh Thurston, a financial adviser based in Jersey and Johannes Matt, an administrator based in

Liechtenstein (a copy of a document obtained from BAE stating this fact is attached at Annex 9).

Allan McDonald told the SFO that the controlling mind behind Arstow is Alexander Roberts.

Arstow originally entered into a direct agreement with BAE on 21<sup>st</sup> October 1998. On 14<sup>th</sup> April 1999 this was replaced by an agreement with Red Diamond. Both types of agreement were subsequently amended at various times to take account of changes in the size of commission payments (copies of all the agreements and amendments are attached at Annex 10). Again some of these agreements are signed and some unsigned.

Lloyds TSB bank records obtained by the SFO reveal that Red Diamond paid Arstow approximately £15,000,000 under its consultancy agreement relating to the South African Hawk and Gripen campaign. However, BAE also made at least one small payment to Arstow directly (a spreadsheet of all these payments, compiled by members of the SFO, is attached at Annex 11). The banking records also confirm that the payments were made to Arstow's accounts in Liechtenstein, the People's Republic of China and Switzerland.

Allan McDonald told the SFO in his section 2(2) CJA 1987 interview that Alexander Roberts was the most influential man on the campaign. However, not only have BAE have failed to provide the SFO with any written evidence of services provided by Arstow/Mr Roberts, but the SFO investigation itself has thus far failed to uncover any evidence to support Mr McDonald's assertion.

Arstow is dealt with in more detail at paragraphs 37-47 below.

**(iii) Huderfield Enterprises Inc ("Huderfield"): paid approximately £26,000,000**

Incorporated in the BVI in 1997 (a certificate of incorporation is attached at Annex 12), Huderfield retained nominee directors during the currency of its agreement with Red Diamond (minutes of a directors meeting on 2<sup>nd</sup> July 1997 identifying the directors are attached at Annex 13). A power of attorney was vested with Huderfield's Swiss administrators, Claude Tournaire and Martine Zufferey (a copy of the power of attorney belonging to Claude Tournaire is attached at Annex 14). The SFO has not been provided with a power of attorney for Martine Zufferey, but she has signed some of the agreements.

Richard Charter was the controlling mind behind Huderfield (a BAE internal memo confirms this fact and is attached at Annex

15), but also operated an "overt" agreement directly with BAE through his company Osprey Aerospace Pty Ltd ("Osprey").

Huderfield first entered into an agreement with Red Diamond in relation to the Hawk/Gripen campaign in South Africa on 12<sup>th</sup> January 1999. This agreement was later amended to allow for changes in the size of the commissions but also to allow for a one off payment of US\$4,000,000 (copies of the agreement and amendments are attached at Annex 16)

Lloyds TSB bank records obtained by the SFO confirm that Red Diamond paid Huderfield over £26,000,000 into an account in the Bahamas (a spreadsheet detailing all of these payments, including the US\$4,000,000, compiled by members of the SFO, is attached at Annex 17).

The US\$4,000,000 amendment to Huderfield's contract was made on 2<sup>nd</sup> December 1999 (the day before the contract between BAE and the Government of South Africa was signed), the payment being made on 7<sup>th</sup> December 1999. This amendment was not made through BAE's Referrals Committee procedure, where the merits of such a payment are discussed by the committee and either authorised or dismissed. Instead on 16<sup>th</sup> November 1999 Hugh Dickenson, the Head of HQMS and the person in charge of agency arrangements at BAE at that time, subjected the application to an

"ex-committee" procedure where just a small number of the most senior BAE executives are invited to decide and sign the proposal without convening a formal meeting. In this instance four executives authorised the proposal. It would appear from a handwritten note on the proposal form that two of the executives were not concerned about the amount and timing of the payment but were concerned about how Richard Charter would repay the money if "*anything goes wrong*" (a copy of this document is attached at Annex 18)

This payment was made 4 months prior to the contract becoming effective and BAE itself receiving any money from the Government of South Africa.

Huderfield, however, was not the first "covert" entity used by Richard Charter in his consultancy arrangements with BAE; Huderfield had a predecessor, a Jersey-registered entity called Kevan Investments Ltd ("Kevan"). Kevan entered into a consultancy agreement with BAE directly, in relation to the Hawk aircraft in South Africa, on 27<sup>th</sup> November 1991, the agreement being subsequently amended to add the Gripen aircraft, and also amend the size of the commission payments. It appears that for some reason, Richard Charter decided that he no longer wanted to use Kevan and replaced it with Huderfield. (copies of the Kevan agreement and subsequent amendments are attached at Annex 19).

Kevan itself received only 2 payments from BAE, totalling £150,000, very early on in the campaign. As can be seen from the agreements these appear to have been one-off payments (a spreadsheet detailing the payments, compiled by members of the SFO, is attached at Annex 20). As set out above, the commission fees flowing to Richard Charter from BAE following contract signature were paid through Huderfield.

In their section 2(2) CJA 1987 interviews, Sir Kevin Smith (who replaced Allan McDonald) and Stuart McIntyre (who was a BAE employee based in South Africa) confirmed that Richard Charter provided legitimate services under the Hawk/Gripen campaign. Indeed, his company Osprey was BAE's publicly declared adviser in South Africa. Osprey had entered into a direct agreement with BAE on 21<sup>st</sup> June 1991 (in Osprey's previous name, the Stanley Walters Company Pty Ltd) and continued to contract directly with BAE (the original Stanley Walters Company Pty Ltd agreement, the first Osprey agreement, and the final version of the agreement before the signature of the contract between BAE and the Government of South Africa are attached at Annex 21).

Lloyds TSB bank records confirm that BAE paid Osprey a total of approximately £2,000,000 into its account at Nedbank in

Johannesburg (a spreadsheet detailing all of these payments, compiled by members of the SFO, is attached at Annex 22).

To date, no BAE executive, whether interviewed under section 2(2) CJA 1987 or under caution (PACE 1984) has been able to explain why it was necessary for an adviser to enter into both "overt" and "covert" agreements.

#### **OTHER ADVISERS PAID UNDER THE RED DIAMOND SYSTEM**

16. Documents obtained from BAE detail consultancy arrangements with a further four advisers on the Hawk/Gripen campaign using the Red Diamond system. Red Diamond's Lloyds TSB bank records confirm that payments were made to the following advisers:

- (i) Approximately £5,000,000 to **FTNSA Consulting Ltd**, a Nevis-incorporated company. Allan McDonald confirmed that this company was operated by Basil Hersov, a South African national (a certificate of incorporation and spreadsheet detailing these payments, compiled by members of the SFO, are attached at Annex 23);
- (ii) Approximately £7,900,000 to **Zomita Development Ltd** ("**Zomita**"), a BVI-incorporated company operated by Nabil Hajazi (the Red Diamond agreement showing Zomita as a BVI company and an internal BAE document identifying Nabil Hajazi

as the controlling mind, along with a spreadsheet detailing these payments, compiled by members of the SFO, are attached at Annex 24);

- (iii) Approximately £8,500,000 to **Brookland Management Ltd**, a BVI-incorporated company. Allan McDonald confirmed this company was operated by Sir Alan Curtis, a UK national (a certificate of incorporation and spreadsheet detailing these payments is attached at Annex 25).

#### **TOTAL AMOUNT OF PAYMENTS ON THE HAWK/GRIPEN CAMPAIGN**

- 17. I can confirm that whilst the Red Diamond system was in operation, over £103,000,000 was paid to "covert" advisers under the South African Hawk/Gripen campaign from the Red Diamond UK accounts. The amount of money paid directly by BAE to "overt" advisers is approximately £12,000,000.

#### **BAE'S OFFSHORE STORAGE FACILITY**

- 18. The internal BAE documents charting the genesis of Red Diamond set out at Annex 3 also reveal that BAE executives wished to keep details of the "covert" contractual arrangements offshore, despite having high security premises in the UK. One explanation put forward by Mike Turner in his interview under caution (PACE 1984) was that BAE was concerned about potential break-ins at their domestic premises. However, the location



ultimately chosen by BAE to house the "covert" documentation was described by Martin Bromley, a former BAE security manager as an unmanned office in Switzerland; its only security being an alarm system wired to a monitoring company based elsewhere in Geneva. Mr Bromley has stated the following in a signed witness statement:

*"In my opinion I do not think that the office in Geneva was physically more secure than the HQ Marketing department [at BAE] in the UK, this is because the Geneva office was unmanned and had no "gatekeeper". If BAE were concerned with something valuable being stolen then the UK was safer. However if BAE were concerned with disclosure and jurisdictional safety then Geneva might be safer".* A copy of Mr Bromley's witness statement dealing with the establishment of BAE's premises in Switzerland is attached at Annex 26.

#### **THE END OF THE RED DIAMOND SYSTEM**

19. By some point in 2001 BAE had made a decision to no longer use Red Diamond. The SFO believes that this decision stemmed in part from the imminent clarification of UK law following the 1997 OECD Anti-Bribery Convention (which from 14<sup>th</sup> February 2002 put beyond doubt that bribery of foreign public officials was an offence). Furthermore, there appears to have been a risk of increased scrutiny of BAE's business practices by the US authorities following a letter written in November 2000 by John Weston, then CEO of BAE, to the Honorable William S. Cohen, the US

Secretary of State for Defence, in which Mr Weston confirmed that BAE would henceforth comply with the provisions of the US anti-bribery legislation: the Foreign Corrupt Practices Act.

Julia Aldridge, current head of agency arrangements at BAE, has been interviewed under caution (PACE 1984) by the SFO. She stated that following the above decision, no agreements were renewed in the name of Red Diamond, and steps were taken to enable the winding up of the company. Subsequently all agency agreements began to be entered into directly with BAE.

#### **FANA HLONGWANE: PAYMENT METHODS USED BY BAE**

20. When the SFO commenced its investigation into allegations of corruption by BAE, it compelled BAE to produce documentation relating to certain advisers paid in relation to South Africa under section 2(3) CJA 1987. I believe that BAE have sought to conceal from the SFO the involvement of Fana Hlongwane prior to the December 1999 signing of the Hawk/Gripen contract.
21. Indeed, the only mention of Fana Hlongwane was in a 2003 consultancy agreement between BAE and Hlongwane Consulting Pty Ltd ("Hlongwane Consulting"), of which Fana Hlongwane is both Chairman and CEO (documents confirming this are attached at Annex 27). In fact, Stuart McIntyre, a member of the BAE team based in South Africa, sent an email in July 2003 to the BAE press office in response to a query about BAE's

relationship with Fana Hlongwane. The following is an extract from the email:

*Do you have a relationship with Advocate Hlongwane?*

*No, we do not at the moment, although we are negotiating with his consulting company around providing certain consultancy support to our civil offset programme....*

*... Have you had any historical relationship with him of any sort?*

*No, never, we knew him only as a member of the Minister's entourage.*

*(A copy of this email is attached at Annex 28).*

*This text  
differs from  
the  
email  
attached  
at  
Annex 28*

22. However, as the investigation continued, the SFO has discovered that BAE had a financial relationship with Fana Hlongwane long before 2003, continuing until very recently. These financial arrangements have been both overt and covert.

23. The overt agreements were as follows:

- (i) A 2003 consultancy agreement between Hlongwane Consulting and BAE; and
- (ii) A consultancy agreement between Hlongwane Consulting and another BAE-controlled company called South African National Industrial Participation ("SANIP").

*CA*  
*JS*

24. The covert arrangements included the following:

- (i) through Arstow, the entity controlled by Alexander Roberts, detailed at paragraph 15(ii) above; and
- (ii) through Jasper Consultants Ltd ("Jasper"), a entity controlled by the same controlling mind as Kayswell (see paragraph 15(i) above): John Bredenkamp.

### **THE OVERT ARRANGEMENTS**

#### **HLONGWANE CONSULTING (PTY) LTD**

25. Hlongwane Consulting was registered in South Africa on 28<sup>th</sup> September 1999 as Clidet No 293 (Pty) Ltd (registration number 1999/021633/07) changing its name to Hlongwane Consulting on 25<sup>th</sup> April 2000 (a certificate of incorporation, and confirmation of change of name are attached at Annex 29). Hlongwane Consulting entered into a consultancy agreement with BAE on 9<sup>th</sup> September 2003, backdating its services to 1<sup>st</sup> January 2002, for a retainer of £250,000 per quarter.

26. This agreement was subsequently varied on 3<sup>rd</sup> March 2005 to allow for an ex-gratia payment of £250,000 in addition to the retainer. It was varied again on 5<sup>th</sup> September 2005 to allow for a US\$8m ex gratia payment "*in full and final settlement for all additional work regarding Gripen Tranche*

3" on top of the retainer (copies of all of this agreement and subsequent amendments are attached at Annex 30).

27. In his section 2(2) CJA 1987 interview, Kevin Smith stated that "tranche" refers to the result of negotiations between the Government of South Africa and BAE in 1999 to make the purchase of both aircraft more affordable. As negotiations progressed, the Government of South Africa considered deferring the purchase of the Gripens until a later date due to affordability issues. In response, BAE advanced the concept of splitting the contract into three tranches. The Government of South Africa would then have the option to terminate both second and third tranches if they wished. I understand that some time around March 2002 and April 2004 the Government of South Africa decided not to exercise their options to terminate in respect of both Tranches 2 and 3.
28. Between September 2003 and January 2007 Hlongwane Consulting was paid in excess of £10,000,000 by BAE. The payments were made from BAE's own Head Quarters Marketing account at Lloyds TSB directly into Hlongwane Consulting's Nedbank account. A spreadsheet setting out these payments, compiled by members of the SFO, is attached at Annex 31.
29. BAE have not provided the SFO with any written reports to justify the size of these payments.

- (iv) A bonus of ZAR 30,000,000, should investments of at least \$2,000,000,000 and exports of \$5,200,000 be achieved by April 2011.

A copy of this agreement is attached at Annex 33.

32. On the same date, 1<sup>st</sup> April 2003, SANIP in a separate letter, agreed to pay Mr Hlongwane ZAR 4,200,000 for a report on black economic empowerment within South Africa, to be completed within two months. SANIP payment requisition forms obtained from BAE show that this amount was paid in two instalments of ZAR 2,100,000. BAE have provided the SFO with a two page report on the choice of a strategic black empowerment partner, although it is not clear whether this is the same report (copies of the letter, report and a payment requisition form are attached at Annex 34).
33. On 1<sup>st</sup> June 2004 the agreement changed, with SANIP contracting directly with Ngwane Aerospace (Pty) Ltd ("Ngwane Aerospace") also registered in South Africa (1999/021633/07). There was a further amendment on 23<sup>rd</sup> August 2006, allowing for a payment of ZAR 1,275,000 following *"resolution to the Companies satisfaction, of the issue relating to the credit review timing under NIP"* (Copies of both these amendments are attached at Annex 35).

34. BAE has provided to the SFO with two reports that were prepared by Hlongwane Consulting/Ngwane Aerospace under the terms of the SANIP agreement (these are attached at Annex 36). However it is clear from other documentation also provided to the SFO by BAE that a number of meetings did take place and were attended by Fana Hlongwane. The SFO has not been provided with any record of what was discussed.
35. As set out at paragraph 30 the SFO has thus far been able to trace a total of approximately ZAR 51,000,000 to Hlongwane Consulting/Ngwane Aerospace from SANIP through cash book statements and Nedbank deposit slips obtained from BAE (a spreadsheet, compiled by members of the SFO, is attached at Annex 37). However, it should be stated that the SFO investigation has thus far not concentrated on post-contract offset support.

#### **THE COVERT ARRANGEMENTS**

36. In addition to the "overt" arrangements outlined above, Fana Hlongwane has received significantly more money through other routes, set out below.

#### **ARSTOW**

37. As outlined in paragraph 14(ii) above, Arstow received approximately £15,000,000 for services purportedly provided to secure the Hawk and Gripen contract. Mutual legal assistance requests have been directed to

Liechtenstein, Switzerland and the People's Republic of China to trace the ultimate beneficiaries of the £15,000,000 paid by Red Diamond to Arstow. I am at present unable to share the results of information received from these jurisdictions until permitted by the relevant authorities.

38. It is of note, however, that Red Diamond made three large payments to Arstow (£75,000, £30,000 and £100,000) prior to the signature of the contract between BAE and the Government of South Africa (see spreadsheet at Annex 11). In particular, the £100,000 payment was made on 5<sup>th</sup> October 1999, after the South African Government announced the procurement of the Hawk and Gripen aircraft and approved the tranching arrangements on 15<sup>th</sup> September 1999, and two months before the formal signature of the contract.

39. As with the US\$4,000,000 payment to Huderfield, this up front payment of £100,000 was not authorised by the BAE Referrals Committee procedure. Instead, on 20<sup>th</sup> September 1999, Hugh Dickenson subjected the application to the "ex-committee" procedure. This is despite the fact that there was a Referrals Committee meeting the very same day (the ex-committee paperwork is attached at Annex 38). The SFO have not been provided with any internal BAE documentation which explains why this up front payment had to be made at this time.



## FANA HLONGWANE'S INVOLVEMENT IN ARSTOW

40. Although the controlling mind behind Arstow was Alexander Roberts, the SFO investigation has revealed that Arstow was also partly used by BAE to make onward commission payments to Fana Hlongwane.
41. Allan McDonald told the SFO in his section 2(2) CJA 1987 interview that a share of Alexander Roberts' commission payments received by Arstow from Red Diamond would be paid onwards to Fana Hlongwane for advice on black empowerment and offset opportunities. Mr McDonald has told the SFO he is prepared to give a signed witness statement confirming all matters raised by him in interview, however the SFO is as yet undecided about his position as potential witness or suspect. One of the reasons for this is that he disclosed he had also received money from Arstow (approximately £5,000,000).
42. In November 2007 Alexander Roberts attended a voluntary interview in Switzerland which was conducted by the Federal Authorities at the request of the SFO. Mr Roberts was not interviewed as a suspect. The SFO took a pragmatic stance in relation to his ill health and age. He was provided with an undertaking that his answers to any of the questions posed would not be used against him in any corruption prosecution concerning BAE.
43. Mr Roberts stated that he was introduced to Mr Hlongwane by BAE at some point in 1999 and felt that Mr Hlongwane was of great assistance to

BAE in helping to formulate and ultimately implement both the offset and black empowerment requirements of the Hawk/Gripen campaign. Mr Roberts also said that Mr Hlongwane was undertaking work for BAE despite not having his own consultancy arrangements, nor being paid. Mr Roberts stated he was sufficiently concerned about this that he approached BAE, (Hugh Dickenson), himself and recommended that Mr Hlongwane be remunerated for his efforts. BAE then told Mr Roberts to pay a proportion of Arstow's fee onwards to Mr Hlongwane, the size being left to Mr Roberts' discretion. Mr Roberts accepted this, never asked BAE why Mr Hlongwane could not have his own consultancy agreement and went on to pay him over £5,000,000.

44. Both Mr McDonald and Mr Roberts told the SFO that the arrangement between Mr Hlongwane and Arstow continued until a breakdown of confidence occurred between them. Subsequently Mr Roberts refused to deal any further with Mr Hlongwane and told BAE to liaise with him directly.
45. Mr Roberts has not formally stated that he will provide the SFO with a signed witness statement but he has confirmed that he wishes to assist the investigation. The SFO, however, has some concerns over his credibility, particularly in respect of this informal financial arrangement with Mr Hlongwane. It remains clear, however, that Mr Hlongwane received a substantial amount of money from BAE through this circuitous route.

46. I consider the arrangement between Mr Hlongwane and Arstow/Mr Roberts to be highly suspicious. Despite operating the "covert" Red Diamond system, BAE chose to add a further layer to the payments structure by using Arstow to transfer over £5,000,000 to Mr Hlongwane. This resulted in a further lack of transparency.

47. For the avoidance of doubt, at no point has BAE disclosed any documentation confirming the existence of:

- (i) any relationship between Arstow/Mr Roberts and Mr Hlongwane;
- (ii) any relationship before 2003 between BAE and Mr Hlongwane.

The SFO have thus far failed to identify any possible legitimate reason why Mr Hlongwane would receive money from BAE via this complex structure.

#### **JASPER**

48. On 17<sup>th</sup> October 2006 officers from the MDP Fraud Squad and the SFO executed a search warrant at Kayswell's UK premises. During the search files relating to both Kayswell and Jasper were found in Julien Pelissier's office.

49. Jasper is a Mauritian-incorporated entity, with the same directors and shareholders as Kayswell (a certificate of incorporation is attached at

Annex 39). According to documents found during the search, it appears that at one point it was envisaged by the Bredenkamp organisation that Jasper would enter into an agreement with Airbus Industrie G.I.E. ("Airbus"), a subsidiary of EADS, the aeroplane consortium based in France. This agreement would be for consultancy services in Namibia (a completed application form which includes details of Jasper's shareholders is attached at Annex 40). No formal signed agreement between Jasper and Airbus was found during the search, although there were similar completed application forms in the names of other entities operated by the same organisation. It appears that Jasper is used by Mr Bredenkamp and his associates in a similar manner to Kayswell, namely as an offshore entity used to contract with major defence and aerospace suppliers.

50. A telefax dated 5<sup>th</sup> December 2005 was found in Angela Welch's office (she is Julien Pelissier's secretary). It was addressed to Trevor Wilmans and was written on headed paper of Aviation Consultancy Services (UK) Ltd ("ACS UK"). It stated that a payment was due to be made to "Hlongwane" in January 2006, although it did not state the size of the payment (a copy of the telefax is attached at Annex 41). ACS UK is a UK registered company and subsidiary of ACS Worldwide SA ("ACS WW"), operating out of the same offices as Kayswell and Jasper. ACS WW has exactly the same shareholding arrangements as Kayswell (a certificate of incumbency for ACS WW, found on the search, is attached at Annex 42). The SFO has thus far been unable to trace this payment.

51. However, the Directorate of Special Operations ("DSO") in South Africa has obtained banking documentation relating to Hlongwane Consulting's account number 1970755466 at Nedbank, Johannesburg. This account has received a number of payments from a company called Jasper Consultants Ltd, totalling over \$1,000,000. It therefore appears that Hlongwane Consulting has received money from an entity controlled by Mr Bredenkamp and his associates. The SFO does not know whether these payments relate to BAE money under the Hawk/Gripen contract, or a similar arrangement with Airbus, since the same Hlongwane Consulting account also received payments directly from Airbus. The SFO's investigation into the link between the John Bredenkamp organisation and Mr Hlongwane is continuing.

#### **BUSINESS PRACTICES OF THE BREDENKAMP TEAM**

52. Allan McDonald told the SFO in his section 2(2) CJA 1987 interview that when he first met John Bredenkamp and Julien Pelissier regarding their consultancy arrangements in South Africa, John Bredenkamp suggested identifying the key decision makers, with a view to "*financially incentivising*" them to make the right decision with regard to the Hawk/Gripen contract. Mr McDonald went on to state that during his tenure on this campaign (which terminated soon after the Hawk and Gripen were selected as the preferred aircraft in late 1998) Mr Bredenkamp and his team contributed nothing towards the selection of BAE as preferred bidder for the aircraft. It should be remembered that

Kayswell was the highest paid adviser, receiving over £40,000,000 from Red Diamond.

53. Mr McDonald also told the SFO that Richard Charter complained to him that Mr Bredenkamp's team had been speaking to Chippy Shaik, Chief of Acquisitions, about the Hawk without the prior knowledge of the campaign team in South Africa. Mr McDonald also stated that the Bredenkamp team told him "*we can get to Chippy Shaik*" and that they knew the contents of Chippy Shaik's diary.

54. Additionally, I believe that a document obtained from Julien Pelissier (having been issued with a notice by the SFO compelling him to provide all documentation in his possession relating to the involvement of Kayswell in the Hawk/Gripen campaign) identifies the reality of the working practices of the Bredenkamp team. The document is an internal memorandum from Mr Pelissier to Mr Bredenkamp (a copy is attached at Annex 43). In describing the methods used by the team in relation to the South African campaign, Mr Pelissier writes as follows:

*"I find it extraordinary coming from people who had no involvement and therefore no knowledge whatsoever on the inputs and activities over a period of four years in a ruthlessly competitive market, incorporating both first world and third world procedures, towering egos of all the key players and continuous rival attempts to undermine our position as representatives."*

In my experience in this investigation, I believe that a reference to "third world procedures" is a veiled reference to the payment of bribes to ensure contract success.

## CONCLUSION

55. I believe that the varied ways in which Fana Hlongwane has received payments in relation to the Hawk/Gripen contract is highly suspicious. BAE operated a covert method of payment through the Red Diamond system, however it appears that even this system was insufficiently opaque to disguise payments to Fana Hlongwane. As such, BAE chose to use Red Diamond and Arstow to transfer money to Mr Hlongwane.

56. I suspect that this secretive arrangement was designed to facilitate any or all of the following:

- (i) The onward payment of monies by Fana Hlongwane to South African government officials who could influence the decision making process on the selection of the Hawk and Gripen; and/or
- (ii) Payments to Mr Hlongwane himself for influence brought by him whilst he was special adviser to the Minister of Defence; and/or
- (iii) The onward payment of monies by Mr Hlongwane to South African government officials to ensure that the tranching arrangements were honoured.

57. The SFO are still in the process of following relevant funds through various jurisdictions and I believe that there may be further payments made to Fana Hlongwane which the SFO is yet to identify.

58. I declare that on <sup>9th</sup> ~~7th~~ October 2008 at the address given below I signed this affidavit in the presence of the commissioner of oaths and confirm that I:

(a) know and understand the contents thereof;

(b) have no objection to taking this oath;

(c) consider the oath binding on my conscience,

and uttered the words "I swear that the contents of this affidavit are true and correct, so help me God".

SIGNED

DATED

9th October 2008.

AT

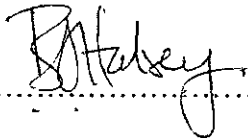
Lewis Silkin LLP  
5 Chancery Lane  
Clifford's Inn  
London EC4A 1BL



I certify that the deponent has acknowledged that he/~~she~~ knows and understands the contents of the statement. This statement was sworn to/~~affirmed~~\* before me and the deponent's signature was placed thereon in my presence

at.....on the 9<sup>th</sup> October 2008.....

Lewis Silkin LLP  
5 Chancery Lane  
Clifford's Inn  
London EC4A 1BL



Commissioner of Oaths (ex officio\*)

Full name in print :

BENJAMIN JOHN HALSEY

Designation :

A SOLICITOR

Business address :

Lewis Silkin LLP  
5 Chancery Lane  
Clifford's Inn  
London EC4A 1BL

## RE: BAE Systems plc

### ANNEXES IN SUPPORT OF AFFIDAVIT OF GARY DANIEL MURPHY

Annex	Page	Description
1	1	Contract between BAE Systems plc ("BAE") and the Government of South Africa
2	57	List of payments by BAE/Red Diamond to advisers under the Hawk/Gripen contract
3	64	Documents from the Wilmer Cutler Pickering Hale and Dorr LLP report
4	76	Certificate of Incorporation for Kayswell Services Ltd
5	78	Certificate of Incumbency for Kayswell Services Ltd
6	80	Agreements and amendments between BAE/Red Diamond and Kayswell Services Ltd
7	118	List of payments made by Red Diamond Trading Ltd ("Red Diamond") to Kayswell Services Ltd
8	120	Certificate of Incorporation for Arstow Commercial Corp.
9	122	Power of Attorney for Arstow Commercial Corp.
10	124	Agreements and amendments between BAE/Red Diamond and Arstow Commercial Corp.
11	162	List of payments made by BAE/Red Diamond to Arstow Commercial Corp.
12	164	Certificate of Incorporation for Huderfield Enterprises Inc.
13	166	Minutes of Directors meeting for Huderfield Enterprises Inc.
14	168	Power of Attorney for Huderfield Enterprises Inc.
15	170	Document confirming that Richard Charter is the controlling mind behind Huderfield Enterprises Inc.
16	172	Agreements and amendments between Red Diamond and Huderfield Enterprises Inc.
17	207	List of payments made by Red Diamond to Huderfield Enterprises Inc.
18	209	Ex-committee (referrals) documentation relating to Huderfield Enterprises Inc.
19	212	Agreements and amendments between BAE and Kevan Investments Ltd
20	235	List of payments made by BAE to Kevan Investments Ltd
21	237	A number of agreements between BAE and The Stanley Walters Company / Osprey Aerospace (Pty) Ltd
22	247	List of payments made by BAE to Osprey Aerospace (Pty) Ltd
23	249	Certificate of Incorporation for FTNSA Consulting Ltd and list of payments from Red Diamond to FTNSA Consulting Ltd
24	252	Agreement between Red Diamond and Zomita Development SA, internal BAE document confirming that Nabil Hajazi is the controlling mind behind Zomita Development SA and list of payments from Red Diamond to Zomita Development SA.
25	266	Certificate of Incorporation for Brookland Management Ltd and list of payments from Red Diamond to Brookland Management

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26	269	Witness Statement of Martin Wilding Bromley
27	275	Documents confirming that Fana Hlongwane is Chairman, Director and CEO of Hlongwane Consulting (Pty) Ltd
28	291	Email from Stuart McIntyre (BAE) to BAE colleagues
29	293	Certificate of Incorporation for Clidet No 293 (Proprietary) Ltd and document confirming change of name fo Hlongwane Consulting (Proprietary) Ltd
30	296	Agreement and amendments between BAE and Hlongwane Consulting (Pty) Ltd
31	315	List of payments from BAE to Hlongwane Consulting (Pty) Ltd
32	317	Document confirming SAAB's ownership of SANIP
33	319	Agreement between SANIP and Hlongwane Consulting (Pty) Ltd
34	331	Letter, report and payment requisition form between SANIP and Advocate Hlongwane
35	336	Amendments to agreement between SANIP and Hlongwane Consulting (Pty) Ltd
36	339	Reports produced by Ngwane Aerospace (Pty) Ltd
37	370	List of payments made by SANIP to Hlongwane Consulting (Pty) Ltd and Ngwane Aerospace (Pty) Ltd
38	372	Ex-committee (referrals) documentation relating to £100,000 payment to Arstow Commercial Corp
39	377	Certificate of Incorporation for Jasper Consultants Ltd
40	379	Documents identifying shareholders of Jasper Consultants Ltd
41	390	5 December 2005 telefax from Angela to Trevor
42	392	Certificate of Incumbency for ACS Worldwide SA (Panama)
43	394	13 July 2000 memorandum from Julien Pelissier to John Bredenkamp

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# Index to Liechtenstein documents

## File Vol. I

No.	Translated y/n	Page no.	Description and date	Brief description of content
1.		1-2	Excerpt from the Criminal Code (StGB), article 164  undated	In English
2		3-7	Cover page of criminal matter against 1. Alexander Roberts ( <b>Roberts</b> ) 2. Fana Hlongwane ( <b>Hlongwane</b> ) 3. Allan McDonald ( <b>McDonald</b> ) 4. Julien Pelissier ( <b>Pelissier</b> ) 5. Trevor Williams ( <b>Williams</b> ) 6. Richard Passaportis ( <b>Passaportis</b> ) 7. Walter Hailwax ( <b>Hailwax</b> ) 8. Johan Bredenkamp ( <b>Bredenkamp</b> ) 9. and unknown perpetrators  Volume IV  Case reference 11 UR.2006.284  undated	Five duplicate copies of the same page  The charge recorded on the cover page is contravention of Article 165(1), (2) and (3) of the Criminal Code ( <b>the Criminal Code</b> )  The judge in the matter is Judge Martin Nigg (per Nigg)  Case entered on 14 September 2006  Handwritten comments in German relate to filing of documents (eg. Brown box, purple file, duplicates in filing cabinet)
3		8-20	Judgment and Reasons by the Fürstliches the Landgericht of Liechtenstein ( <b>the Landgericht</b> )	Extension of a restraint order initially granted on 14 September 2006, and extended on 11 September 2008

			Case reference 11 UR.2006.284, ON148 11 September 2009	Subject of the restraint are assets held by the Gamari Trust ( <b>Gamari</b> ) with Banque Pasche (Liechtenstein) ( <b>Banque Pasche</b> ), account number 30.450767.7  Extension of restraint until <u>14 March 2010</u>
4	Whole	21-33	Judgment and Reasons by the Fürstliches Obergericht of Liechtenstein ( <b>the Obergericht</b> )  Case reference 11 UR.2006.284, ON151 14 September 2009	Confirmation of the extension of the restraint order (item 3)
5	Letter only	34-43	Letter by Banque Pasche to the Landgericht (to the attention of Nigg) 15 September 2009	The letter notes the extended restraint, and confirms the balance on the investment account 30.450767_7 as of 15 September 2009 as being GBP 437 594.00  Annexures to the letter are a breakdown of the investments
6		44	File note by member of the Landgericht (to the attention of Nigg) 16 September 2009	Nigg records agreeing to forward a copy of the order in item 3 above to attorney Dr Wolfgang Müller ( <b>Müller</b> )
7		45-48	Letter by Swisspartners Versicherung AG ( <b>Swisspartners</b> ) to the Landgericht (to the attention of Nigg) 17 September 2009  Stamp: received by Liechtenstein prosecutors 21 September 2009	Swisspartners reports being approached by attorney Müller, requesting a report on status quo. Müller provided Swisspartners with a purported power of attorney by Hlongwane dated 13 January 2009.  The signature on the power of attorney gives rise to concerns by Swisspartners, which informs the Landgericht.
8		49-52	Letter by Swisspartners to the Landgericht (to the attention of Nigg) 17 September 2009	Same letter as item 7

			Stamp: received by Court 21 September 2009	
9		53-56	Email by Olaf Gierhake (Gierhake) of Swisspartners to Müller, copied to Nigg, the Liechtenstein prosecutors and others 22 September 2009, 13h36	Gierhake's email is a response to a previous email by Müller who seeks to explain the discrepancies noted in the letter that is item 7 and 8 above (Müller's email is item 10)  Attachment to Gierhake's email: same letter as item 7 and 8
10	Müller's email only	57-65	Email by Müller to Gierhake, copied to Nigg, Liechtenstein prosecutors and others 22 September 2009, 10h04	Müller's explanation for discrepancies noted in items 7 and 8 above:  <ol style="list-style-type: none"> <li>1. Müller confirms advice from Mr Johannes Matt(Matt) of Tremaco Trust (Tremaco) that Hlongwane uses different signatures depending on the importance of the document, a long-hand legible one and a short one.</li> <li>2. Müller provides a number of documents as annexures from which the above is alleged to appear, namely a copy of Hlongwane's passport, a letter dated 30 January 2004 by Hlongwane addressed to Tremaco setting out the former's intentions for the founding of the Gamari, a number of receipts in respect of cash dated 4 June 2003, 1 July 2003 and 22 September 2003.</li> <li>3. Müller further confirms having spoken to Hlongwane's South African legal representative Mr Fouche of Stockenström Fouche Inc who confirmed that the power of attorney in question was signed in his presence.</li> </ol>
11	Whole, with exception of English annexures	66-124	Witness statement (under protest) by Matt (trustee/fiduciary)  taken by the Landgericht (presiding officer Nigg) in the context of legal assistance rendered to the Serious Fraud Office (SFO), London, in the criminal case against Michael Peter Rouse (Rouse) and others  Initial case reference: 11 R.S.2007.56, ON44 crossed out, new case reference 11 UR.2006.284, 108	<p>Subject of the statement is Matt's involvement in the financial and contractual dealings between BAE, Alexander Roberts, Arstow Commercial, Westunity, and Hlongwane.</p> <p>Roberts provides a number of documents in support of his statement, which are annexures 1 to 11 to his statement. Most annexures in English. German annexures as follows:</p> <p>Annexure 6 is a file note regarding a meeting by Mr Dickinson of BAE, Hugh Thurston (Thurston), and Matt on 14 April 1999 regarding the cancellation of the contract between Arstow and BAE concluded on 23 October 1998 and conclusion of the same contract between Red Diamond and Arstow; further regarding the conclusion of a contract for the payment of 1.5% commission on the delivery of aircraft to South Africa.</p>

12	Whole	125-143	27 September 2007	<p>Annexure 8 contains on the last page a file note dated 29 August 2001 recording the instruction that Thurston no longer has signatory powers over Tremaco</p> <p>Subject of the statement are further enquiries as to the financial dealings of Roberts, Thurston, Arstow, and specific questions regarding documents attached to the statement, marked 012321000043, 012321000074, 012321000066, 012321000155, 012321000156.</p>
13	Whole	144-159	<p>Witness statement (under protest) by Matt (trustee/fiduciary)</p> <p>taken by the Landgericht (presiding officer Nigg) in the context of legal assistance rendered to the SFO, London, in the criminal case against Rouse and others</p> <p>Initial case reference: 11 R.S.2007.56, ON 51 crossed out, new case reference 11 UR.2006.284, 109</p> <p>2 October 2007</p>	<p>Subject of the statement are specific questions regarding BAE and Red Diamond's structuring and contractual matrix with advisors, as well as the company Poseidon.</p> <p>Questions relate to underlying documents that were apparently provided to the witness beforehand along with the questions, but which are not attached.</p>
14	Whole	160-200	<p>Witness statement (under protest) by Guido Wilhelm Meier (attorney) (Meier)</p> <p>taken by the Landgericht (presiding officer Nigg) in the context of legal assistance rendered to the SFO, London, in the criminal case against Rouse and others</p> <p>Initial case reference: 11 R.S.2007.56, ON 96 crossed out, new case reference 11 UR.2006.284, 110</p> <p>28 October 2008</p>	<p>Subject of the statement are detailed questions regarding the financial dealings of Hlongwane and entities attributed to him, payments made to Hlongwane and entities attributed to him, and Hlongwane's personal and professional relationships.</p>

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		taken by the Landgericht (presiding officer Nigg) in the context of legal assistance rendered to the SFO, London, in the criminal case against Rouse and others  Initial case reference: 11 R.S.2008.33, ON 22 crossed out, new case reference 11 UR.2006.284, 111  27 October 2008	Questions relate to underlying documents that were apparently provided to the witness beforehand along with the questions, but which are not attached.
15	201	Email by Senior State Advocate Elizabeth Le Roux ( <b>Le Roux</b> ) to Nigg  11 December 2008	In English, handwritten notes in German are filing references only
16	203-209	Letter by Swisspartners to the Landgericht (to the attention of Nigg)  15 December 2008	Swisspartners requests release of funds to cover administration costs on frozen accounts
17	210-226	Judgment and Reasons by the Fürstlicher Oberster Gerichtshof sitting as appeal court (accused Hailwax is the appellant) in the criminal case against Roberts, Hlongwane and others  Case reference 11 UR 2006.284-117  7 January 2009	Hailwax appealed against an order by the Obergericht on 13 October 2008, which in turn confirmed a prior decision by the Landgericht to extend a restraint order over assets by Wilmans and Hailwax.  Appeal dismissed and extended restraint confirmed
18	227-228	Email by Nigg to SFO's Lydia Jonson ( <b>Jonson</b> ) in reply to latter's original mail appearing below  16 March 2009 (per Nigg to Jonson)	Nigg confirms that the restraint over Gamari's funds was extended to 14 September 2009 and over Wilmans and Hailwax's funds to 10 October 2009.  Nigg further note that a future extensions of the restraint is likely to require progress in

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			4 March 2009 (Jonson to Nigg)	the investigation.  Original email states that SFO is continuing with its investigation against BAE, Hlongwane, Wilmans and Hailwax and requests information and documentation regarding actions by Liechtenstein authorities in particular against Gamari and Meltec Foundation (Meltec).
19		229-230	Email Nigg to Le Roux 17 March 2009	In English
20		231-233	Email Le Roux to Nigg 23 March 2009	In English
21		234-236	Email Nigg to Le Roux 7 May 2009	In English
22		237-238	Email Le Roux to Nigg 14 May 2009	In English
23		239-240	Email Nigg to Jonson 16 July 2009	Follow up on item 18: further evidence required in light of restraint orders lapsing on 14 September 2009 and 10 October 2009.
24		241-247	Email Le Roux to Nigg  With attachment: informal reply to Liechtenstein's request for legal assistance to South Africa  4 August 2009	In English

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25	248-253	Translation of the attachment included in item 24	Direct translation of attachment contained in item 24, handwritten notes are filing references only
26	254-256	Email Nigg to Jonson 1 September 2009	Follow up on item 23
27	257	Cover page of criminal matter against Roberts, Hlongwane, and others Volume III Case reference 11 UR.2006.284	
28	258-294	Whole, without annexures Due to clerical error, last page not translated Application by Hlongwane to the Landgericht, for dismissal of the application dated 18 August 2009 by the Liechtenstein prosecutors for the extension of the restraint against Gamari's assets; and for the immediate lifting of the restraint order dated 20 May 2008 (item 37) Case reference 11 UR.2006.284, 146 9 September 2009	All annexures in English or French
29	295	Email Jonson to Nigg and others 11 September 2009	In English
30	296	Cover page of criminal matter against Roberts, Hlongwane and others Volume II Case reference 11 UR.2006.284	

31	297-300	Cover page of criminal matter against Roberts, Hlongwane and other Volume III Case reference 11 UR.2006.284	Multiple copies, as well as duplicate of item 27
32	301-304	Cover page of criminal matter against Roberts, Hlongwane and others Volume II Case reference 11 UR.2006.284	Multiple copies, as well as duplicate of item 30
33	305-318	Letter by the Liechtenstein Financial Intelligence Unit (FIU) to the Liechtenstein prosecutors, attaching report of suspicious activity by Cordico Management AG (Cordico) to the FIU dated 26 October 2007 5 November 2007	Cordico sets out the matrix of a number of legal entities established in the British Virgin Islands by Hlongwane, which collectively control assets of approximately USD 11 million.  None of the entities referred in the report are expressly implicated in the present matter.  In light of press reports implicating Hlongwane in corrupt activities and further in light of the criminal investigation against him, Cordico sought to verify the source of funds held by the entities referred to above and was unable to do so.
34	319-326	Request for legal assistance by Liechtenstein to SFO 7 May 2008	English translation is part of this item p. 323ff
35	327-331	Letter by the FIU to the Liechtenstein prosecutors, attaching report of suspicious activity by Swisspartners to the FIU dated 30 April 2008 6 May 2008	Swisspartner records a number of high value withdrawals by Hlongwane from his policy with Swisspartners during October 2007. As a result, and in light of press reports implicating Hlongwane in corrupt activities, the report is made to the FIU.  Annexure: Copy of Hlongwane's South African passport

36		332	Email by Michael Jehle (Jehle) of the Landgericht (standing in for Nigg) to Georges Berger (Berger) and Georg Oehry (Oehry) attaching item 35	The email states that the Liechtenstein prosecutors have requested that Hlongwane be questioned, and requests Berger and Oehry to ascertain whether Swisspartners is prepared to assist with notifying the authorities when Hlongwane appears at Swisspartners.
37	Whole	333-345	Judgment and Reasons of the Landgericht ordering the restraint of assets Case reference 11 UR.2006.284, ON 55 20 May 2008	The Landgericht prohibits Swisspartners for a period of two years from dealing in any way with assets attributable to Hlongwane held with the Liechtensteinische Landesbank AG, Zürich (LLB AG) in account nr. 151.831.88.
38		346	Letter from the commercial crimes unit of the police (CCU) (responsible persons Berger and Oehry) to the Landgericht 26 May 2008	The letter confirms return of the court file, volumes I and II.
39		347	Cover letter to request for legal assistance by Liechtenstein to the United Kingdom 26 May 2008	In English
40		348-349	Email from Berger to Nigg, forwarding original email from Oehry to Berger 27 May 2008 (Berger's email) 21 May 2008 (Oehry's email)	The email exchange deals with the enquiry by Jehle addressed to Berger and Oehry contained item 36. They report that an appointment by Hlongwane with Swisspartners for 23 May 2008 was cancelled and there are no further appointments by Hlongwane.
41		350	Cover letter by Swisspartners to the Landgericht (to the attention of Nigg) 30 June 2008	Cover letter confirms delivery of documents in two purple lever arch files. The documents themselves are not on file.

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42	351	Email Nigg to Jonson 2 July 2008	Confirmation of receipt of formal request for legal assistance in the matter of Hlongwane, Wilms and Hailwax and request for further information relating to Arstow and Gamari.
43	352-356	Excerpt from the register of companies for Liechtenstein, apparently in respect of Swisspartners  Excerpt from the "main public register for Liechtenstein", also in respect of Swisspartners  17 June 2008 (date of certification)	Seems likely the documents have been badly sorted, hand-written page numbers at top of the pages and content suggests the following order: p.356, p.352, p.353 and p.355. p.354 is blank.  It does not appear that there is a page missing, rather that information on originals was only collected on uneven numbered pages.
44	357-362-	Request by the Landgericht (per Nigg) to Swiss prosecutors for legal assistance.  Annexures: excerpts from criminal code, fax transmission report  7 July 2008	Request refers to order dated 20 May 2008 (item 37), imposing a restraint over Hlongwane's assets in account 151.831.88 with the LLB AG in Switzerland (order is not attached in our file). The Landgericht requests that the account be frozen and the balance on the account confirmed.  Annexures are extract from the relevant legal code and fax transmission confirmation.
45	363	Letter from the Landgericht (per Nigg) to the CCU  7 July 2008	Request for analysis of information contained in the two purple files received from Swisspartners (referred to in item 41), pursuant to which the Landgericht intends addressing a request for mutual legal assistance to South Africa to question Hlongwane
46	364-369	Response by the Landgericht (per Nigg) to supplemented request for mutual legal assistance by the SFO  7 July 2008	Order of documents should be: Cover letter (in English) page 369, original German pages 364/5, English translation pages 366/7, fax transmission report page 368.  Response is to enquiries by Jonson referred to in item 42
47	370-373	Judgment and Reasons by the Landgericht extending restraint order over Gamari's funds	Original restraint was in respect of funds held with Swissfirst Bank (Liechtenstein) AG (Swissfirst) which has become the Banque Pasche. Restraint extended for one year to 14

			Case reference 11 UR.2006.284, ON 79 11 September 2008	September 2009,
48		374-377	Judgment and Reasons by the Obergericht confirming the extension of the restraint (item 47)  Case reference 11 UR.2006.284, ON 82 15 September 2008	
49	Whole, except English annexures	378-433	Financial Analysis Report by CCU 23 September 2008	<p>Analysis is based on documents referred to in item 41, provided by Swisspartners.</p> <p>Many of the annexures in English. German annexures are as follows:</p> <p>Annexure 1 (page 381): Report of suspicious transactions by Swisspartners, relating to the investment account held with the LLB AG by Swisspartners in the name of Hlongwane.</p> <p>Annexure 3 (page 398): Account statements showing the money flows through a number of current accounts held in various currencies with LLB AG by Swisspartners attributable to Hlongwane.</p> <p>Annexure 4 (page 427): Documents relating to two cash withdrawals in October 2007 in the respective amounts of €50 000,00 and €150 000,00.</p> <p>Annexure 5 (page 433): Flow chart compiled by the CCU depicting the flow of money through accounts of Swisspartners attributable to Hlongwane</p>
50		434-455	Request for legal assistance by Liechtenstein to South Africa 6 October 2008	Translation into English included from page 445

51	456-463	Investment proposal by Swisspartners addressed to the Landgericht (to the attention of Nigg) 10 October 2008	2 duplicate copies
52	464	Request by Liechtenstein Department of Justice to Liechtenstein Embassy to relay a request for mutual legal assistance to the National Prosecuting Agency 22 October 2008	Cover page only
53	465-468	Email exchange Cronje and Nigg from Hermione Cronje to Nigg 13 November 2008 (Nigg to Cronje) 6 November 2008 (Cronje to Nigg)	Includes translation of Cronje's mail into German  Exchange relates to South African proceedings for 1. Application to have Mutual Legal Assistance Request issued and 2. Preservation and Forfeiture proceedings.
54	469-473	Cover page of criminal matter against Roberts, Hlongwane and others Volume 1  Case reference 11 UR.2006.284	Duplicates
55	474-497	Letter by FIU to the Liechtenstein prosecutors, referring to reports of suspicious activity by Temaco and Swissfirst to the FIU dated 5 September 2006 and 11 September 2006 respectively.  13 September 2006	Annexures referred to but not included: 1. Underlying reports by Temaco and Swissfirst 2. Transaction analysis 3. Transaction analysis summary  Annexures that are attached are all in English

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## File Volume II

56	498-500	Record of previous convictions in Liechtenstein for Roberts, Hlongwane and MacDonald 14 September 2006	No previous convictions recorded in respect of any of these persons
57	501-513	Judgment and Reasons by the Landgericht, ordering the delivery and seizure of documents Case reference 11 UR.2006.284, ON5 14 September 2006	The Landgericht orders the Verwaltungs- und Privat-Bank AG (VP Bank) to deliver to the court within 14 days all documents relating to the following accounts and orders the seizure thereof: 1. No. 316.208.034 in the name of Westunity 2. No. 324.019 in the name of Wyburg Management Inc. 3. No. 314.449.019 in the name of Arstow (because these documents have already been provided to the court in case 11 RS.2006.130, these do not have to be delivered again)
58	514-527	Judgment and Reasons by the Landgericht, ordering the restraint of assets and delivery of documents Case reference 11 UR.2006.284, ON6 14 September 2006	The Landgericht orders Swissfirst to refrain from dealing in any way with assets in the name of Prominvest Foundation, account nr. 30.435676.0, and Gamari, account nr. 30.450767.7, for a period of two years.  The Landgericht further orders the Swissfirst to deliver to it all documents relating to the following accounts and to confirm the balance on those accounts: 1. Nr. 30.435676_0.200 in the name of Prominvest; 2. Nr. 30.570354_2.200 in the name of Arstow; 3. Nr. 30.192944_1.200 in the name of Westunity; 4. Nr. 30.450767_7.100 in the name of Gamari; 5. Nr. 30.484456_8.100 in the name of Meltec.
59	528-541	Judgment and Reasons by the Landgericht, authorizing a search and seizure operation at the premises of New Haven Treuhand AG (New Haven)	The Landgericht authorizes the search for all documents relating to the Fona Foundation that may be relevant to criminal proceedings against, <i>inter alia</i> , Hlongwane, and authorizes the seizure thereof.



			Case reference 11 UR.2006.284, ON7 14 September 2006	The order is to be executed by the national police force
60		542-555	Judgment and Reasons by the Landgericht, ordering the delivery and seizure of documents  Case reference 11 UR.2006.284, ON8 14 September 2006	The Landgericht orders Tremaco to deliver to the Landgericht all documents relating to the following corporate entities and orders the seizure thereof. 1. Prominvest; 2. Gamari; 3. Arstow; 4. Westunity; 5. Meltec; 6. Wyburg; 7. Fona Foundation.
61		556-562	Report by the CCU 18 September 2006	The CCU confirms executing the search and seizure order referred to at item 59 above. Attached is a file note indicating that all documents were voluntarily surrendered and that two bundles of documents were seized, both relating to the Fona Foundation.
62		563	Receipt for the two bundles of documents seized (referred to in item 61)  Undated and unsigned	
63		564	Letter by Swissfirst to the Landgericht (to the attention of Nigg) 22 September 2006	Swissfirst confirms receipt of order dated 14 September 2006 (item 58) and confirms compliance. The balance on the respective accounts is confirmed as follows: 1. Prominvest: GBP 1 203 084,88 2. Gamari GBP 369 040,18
64		565	Letter by Swissfirst to the Landgericht (to the attention of Nigg) 3 January 2006	Invoice for work done and disbursements in respect of documents made available to the court to a total amount of CHF 715,00  The date of the letter appears to be a mistake. The date on the receipt stamp is 26 September 2006.

65	Appeal without annexures	566-594	Appeal by Roberts to the Obergericht Case reference 11 UR.2006.284 29 September 2006	<p>Appeal is against the restraint order granted by the Landgericht over Prominvest's accounts, dated 14 September 2006 (item 58). Appeal is against restraint only, Roberts agrees to seizure of documents and undertakes to co-operate with the investigation.</p> <p>Annexures to appeal doc:</p> <ol style="list-style-type: none"> <li>1. Power of Attorney by Roberts to his attorney in German;</li> <li>2. By-law of Prominvest Foundation, setting out beneficiaries (Robert's wife and children) in English;</li> <li>3. Administration contract between Arstow and Tremaco, documents relating to Robert's powers in respect of Arstow in English and German;</li> <li>4. Income and Expenditure statement relating to Arstow from 5 May 1999 to 13 September 2001 in English;</li> <li>5. Extract of consultancy contract between Arstow and Westunity dated 2 September 1999 in English;</li> <li>6. Portfolio Valuation for assets held by Swissfirst in the name of Prominvest Foundation in English</li> </ol>
66		595-596	Letter by VP Bank to the Landgericht (to the attention of Nigg) 29 September 2006	<p>Confirmation by VP Bank that, pursuant to order by the Landgericht of 14 September 2006 (item 57), documents are enclosed.</p> <p>The bank records that the account number given in the order relating to Wyburg is incorrect (account no. 324.019 instead of the correct account no. 324.929).</p> <p>The bank further confirms enclosing only those documents relating to Westunity that arise from the specific account referred to in the order, with suffix .034.</p>
67		597-599	Memorandum signed by Tremaco and the Landgericht, concerning delivery of documents to the Landgericht 29 September 2006	<p>Tremaco confirms delivery of documents pursuant to order by the Landgericht on 14 September 2006 (item 60), relating to the following corporate entities:</p> <ol style="list-style-type: none"> <li>1. Prominvest</li> <li>2. Arstow</li> <li>3. Gamari</li> <li>4. Westunity</li> <li>5. Meltec</li> <li>6. Wybourg</li> <li>7. Fona Foundation</li> </ol>

68	Letter with annexures 1 and 2	600-671	Letter by FIU to the Liechtenstein prosecutors, attaching report of suspicious activity by LGT Bank in Liechtenstein (LGT Bank) to the FIU dated 27 September 2006 as well as press clippings  5 November 2007	Included is a short description of the nature of the documents and filing references, but no description of the contents (eg. founding documents, client information, banking information)  Letter summarizes suspicious transactions on accounts held by Kayswell Services (Kayswell), ACS Worldwide S.A. (ACS), Pellissier, Wilmans, and Hailwax with LGT. The conclusion drawn by the FIU is that the money flows indicate possible money laundering.  Letter attaches report by LGT Bank, with annexures as follows: 1. Statement of suspicious transactions; 2. Judgment and Reasons by the Landgericht on 18 August 2006 ordering the LGT Bank to provide all documents relating to accounts by Kayswell and Gabstar Corporation. Reasons relate to a corruption investigation into BAE and Red Diamond and others by the SFO; 3. Certificates of incorporation Kayswell and ACS; 4. Copies of passports Plessier, Wilmans, Hailwax 5. LGT Bank records, showing persons with powers over the accounts of ACS and Kayswell
69		672-673	Flow chart  Undated	Duplicate and incomplete
70		674-676	Company information by ICC Information Group (ICC) relating to Global Aviation Consultants Limited  29 September 2006 ("load-date") 2 October 2006 (date of print-out)	Executive directors listed include Hailwax, Wilmans, Pellissier
71		677-678	Company information by ICC relating to Aviation Consultancy Services (Aviation Consultancy)	Executive directors listed include Wilmans and Pellissier

			29 September 2006 ("load-date") 2 October 2006 (date of print-out)		
72	679-680		Document entitled "Namibia Economic Forum" held at Stuttgart, Germany 30 November 2005	Document provides short summary of services offered by Aviation Consultancy and Bio Dynamics Group to German partners looking to Southern Africa.  Contact person for Aviation Consultancy is Hailwax	
73	681-684		Newsletter "Other Facets: News and Views on the International Effort to End Conflict Diamonds" April 2001	One article on page 2 provides background on Hailwax, ACS	
74	685-686		Internet print out from the home page of Meinjities, Vermooten & Vennot, Chartered Accountants and Auditors (S.A.) 4 October 2006 (date of print-out)		
75	687-688		Media clipping Business Day 21 September 2006		
76	689-697		FIU Flow chart: Operational Analysis 2006 0405 3 October 2006	Reflects financial transactions originating with:  1. Hailwax 2. Pelissier (summary) 3. Hailwax (summary) 4. Pelissier 5. Kayswell 6. Wilmans 7. Kayswell (summary) 8. Wilmans (summary) 9. ACS	

77		698-711	Judgment and Reasons by the Landgericht, authorizing a search and seizure operation at the Präsidial Anstalt  Case reference 11 UR.2006.284, ON17  10 October 2006	The Landgericht authorizes the search for all documents that may be relevant to criminal proceedings against, <i>inter alia</i> , Hlongwane, including documents relating to Kayswell and ACS, and authorizes the seizure thereof.  The order is to be executed by the national police force.
78		712-716	Record of previous convictions in Liechtenstein for Pelissier, Wilmans, Passaportis, Hailwax, Bredenkamp  10 October 2006	No previous convictions recorded in respect of any of these persons
79		717-723	Report by the CCU  13 October 2006	The CCU confirms executing the search and seizure order with case reference no. 11 UR.2006.284, ON16 and ON17 (former not on file, latter is item 77).  Attached is a file note indicating that all documents were voluntarily surrendered and that three bundles of documents were seized, all relating to ACS.
80		724	Letter by LGT Bank to the Landgericht (to the attention of Nigg)  18 October 2006	LGT Bank requests an extension of time within which to provide documents as ordered on 10 October 2006 (order not on file)
81	Whole	725-745	Judgment and Reasons by the Obergericht, dismissing appeal by Roberts (item 65)  Case reference 11 UR.2006.284, ON28  23 October 2006	Robert's appeal (item 65) is against the restraint of Prominvest's funds held with Swissfirst.
82		746-747	Letter by the Landgericht (per Nigg) to the CCU	The Landgericht requests the analysis of documents seized by courts in various search and seizure operations. The suspected illegal activity is money laundering flowing from

			27 October 2006	corruption.  The Landgericht also requests that the statement by Roberts (under reference number ON 11) be verified against the documents enclosed.  Note – there does not appear to be a witness statement by Roberts on file. I note that the appeal by Roberts (item 65) also makes reference to a witness statement by Roberts.
83		748-754	Letter by LGT Bank to the Landgericht (to the attention of Nigg) 1 November 2006	LGT Bank confirms delivery of documents as per order of 10 October 2006 (not on file)  The documents themselves are not attached.
84		755	Letter by the Landgericht (per Nigg) to the CCU 13 November 2006	Cover letter forwarding additional documents received from LGT Bank (referred to in item 83) for the purpose of analysis as requested in item 82
85	Whole except for English documents	756-809	Preliminary Financial Analysis Report by the CCU 23 February 2007	The CCU presents its preliminary findings regarding the suspicion of money laundering in case no. 11 UR.2006.284  Annexures 1. to 15. are Flow charts showing the flow of money to and from various accounts in German  Annexures 16. to 18. are financial transaction statements from the view point of the respective entities in German  Annexure 19. comprises mainly receipts, file notes or instructions for payment in English  Annexure 20. is a file note in German by "jm" recording a consultation with Hlongwane and McDonald on 16 May 2001
86		810-811	Report by the CCU 13 October 2006	The CCU confirms receiving further documents regarding the Fona Foundation from New Haven pursuant to the court order referred to at item 59 above.

whether agreements themselves were implemented without ever being signed.

The SFO has obtained Red Diamond's banking records from its UK bank, Lloyds TSB. These indicate that Red Diamond paid Kayswell over £40,000,000 under its consultancy agreement relating to the South African Hawk and Gripen campaign. The same UK bank statements reveal that the £40,000,000 was paid into offshore accounts in Liechtenstein, the Netherlands Antilles and a bank called Trust Bank Corporation which the SFO have been unable to trace (a spreadsheet detailing all of these payments, compiled by members of the SFO, is attached at Annex 7).

In interview John Bredenkamp distanced himself from any operational involvement in Kayswell's activities. He accepted that he was the majority shareholder, but expected the other shareholders to run the business. However, Allan McDonald, BAE's Marketing Director for Southern Africa during the Hawk/Gripen campaign until his departure from BAE in January 1999, has been interviewed by the SFO and contradicted Mr Bredenkamp's assertion.

In August 2007 I interviewed Allan McDonald using the SFO's powers of compulsion, under section 2(2) of the CJA 1987. He maintained that John Bredenkamp was "*the boss*" of Kayswell,